

Spain, week of March 23 to 29, 2020

The global health alert triggered by the spread of the new coronavirus known as SARS-CoV-2, which causes the disease COVID-19, is creating great challenges for companies. Governments around the world are tackling the situation by approving drastic measures to try to mitigate the effects of the health crisis first and the economic crisis second. In this context, at Garrigues we have put together – from the standpoint of all of the practice areas of business law – an overview of the key issues that companies in Spain should take into account in the coming days and weeks.

### Corporate law and Commercial contracts

The period between March and June is always a period for intense corporate activity, but the approval, in particular, of Royal Decree-Law 8/2020 of March 17, 2020 on urgent and extraordinary measures to confront the economic and social impact of COVID-19 (RDL 8/2020), has changed the time periods and usual way in which the meetings of corporate bodies are held, although the new legislation raises more than a few questions. Also, companies' contractual and commercial relationships remain in effect on their own terms and directors still have the obligation to manage their companies diligently. Companies should therefore stay attentive in the coming days and weeks to issues of the type mentioned below:

#### Corporate issues

- 1. Meetings of managing bodies.** RDL 8/2020 seeks to make it easier for the meetings of managing bodies to be held using distance communication mechanisms, or directly in writing and without a meeting. The provisions in RDL 8/2020 for board meetings of unlisted companies do not cover all of the options that exist for non-face-to-face attendance, (in this [alert](#) we describe the urgent extraordinary measures introduced by RDL 8/2020).
- 2. Financial statements.** RDL 8/2020 suspends the three-month time period from the end of the previous year for preparing the financial statements (see our [alert](#)).
- 3. Annual shareholders' meeting.** RDL 8/2020 has postponed the time periods for calling and holding the annual shareholders' meeting. In the case of unlisted companies, the provisions on remote attendance are not so clear. In the case of listed companies, if they have called but not held shareholders' meetings, they may decide whether to go ahead with, postpone or cancel the meeting. RDL 8/2020, which we analyze [here](#), addresses these issues, and lays down new rules in this connection.
- 4. Other types of shareholders' meetings.** Other types of shareholders' meetings that may be called and held while the state of emergency is in effect should also be considered. RDL 8/2020 does not clarify the legality and conditions of non-face-to-face attendance at unlisted companies (more details [here](#)).
- 5. Dividends** It may also be appropriate to evaluate whether to maintain the proposed distribution of dividends (still not approved by the shareholders' meeting) and the legal aspects to be considered.
- 6. Notarization of corporate resolutions.** Companies that have resolutions remaining to be notarized should heed the instructions of the General Council of Spanish Notaries. They are available [here](#).
- 7. Registration.** For its part, the Spanish Registrars' Association has published a guide with answers to frequently asked questions about the status of Spain's real estate property, movable property and commercial registries in view of the state of emergency due to COVID-19 (more information [here](#)).

## **Contractual issues**

- 1. Force majeure.** One of the key issues in relation to contracts is the impossibility of the parties to perform their respective obligations due to the existence of an event of force majeure. It will be necessary to review, first, whether the contract contemplates that event. Even if it is not contemplated in the contract, the Civil Code (article 1,105) refers to it by stating that “nobody shall be liable for events that could not have been foreseen or that, if foreseen, were inevitable”. In any event, the specific circumstances of each contract will have to be analyzed to consider whether force majeure could exist regarding performance of the parties’ obligations.
- 2. ‘Rebus sic stantibus’.** Application of *rebus sic stantibus* clause, a legal doctrine created by case law, should also be reviewed. It allows obligations and contracts to be reviewed when, due to supervening circumstances, the economic balance of the contract has been upset and the contract has become impossible or very difficult to perform for one of the parties. The requirements laid down are: a) the existence of a completely extraordinary alteration of the circumstances at the time the contract is performed in relation to those existing when it was concluded; b) extreme disproportion between the contracting parties’ obligations, which upsets the balance between those obligations; and c) this must result from the supervening appearance of circumstances that were completely unforeseeable when the contract was concluded. The courts have hitherto applied this clause very cautiously. The specific characteristics of each case must be thoroughly looked at also to determine whether it is applicable.
- 3. Breach of contract.** The implications of situations where it is impossible or difficult to perform contractual obligations entered into should be assessed and analyzed. And conditions governing compliance with covenants, particularly in finance agreements, should also be reviewed.
- 4. Financial guarantees.** Monitoring access to the support and financial guarantee measures set out in RDL 8/2020 ([see here](#)) is also important.
- 5. Moratoriums.** RDL 8/2020 already permits applications for moratoriums (or “holidays”) on mortgage loan payments. The rules governing the time periods and conditions of the application and the length of the moratorium, as laid down in RDL 8/2020 ([more information here](#)), should be analyzed.

## **Foreign investments**

- 1. Suspension of the regime for deregulation.** From the standpoint of the provisions approved in RDL 8/2020 ([see here](#)), it is necessary to analyze the inclusion of the target company in one of the sectors affected by the suspension of the regime for deregulation and the implications for transactions in progress, particularly as regards the need to request express authorization.
- 2. Investor profile.** The determination of the status of investor resident in countries outside the European Union and the European Free Trade Association should also be taken into account.

## **Tax**

In this last week of March 2020, individuals and legal entities that file their returns in Spain must pay special attention to the following issues:

- 1. The period for filing Form 720 is ending.** The period for filing the 2019 return on assets and rights situated abroad ends on March 31. Not meeting this requirement in a proper and timely manner can give rise to particularly costly penalties. It is worth revisiting the main features of this return and some changes in the 2019 return. Our commentary is available [here](#).
- 2. The date for submitting the April 2020 prepayment of corporate income tax and nonresident income tax (for taxpayers that have a permanent establishment in Spain or are pass-through entities with a presence in Spain) is fast approaching.** The obligation to file this return has not been suspended by the state of emergency legislation and therefore retains its usual deadline. Given the current special situation, the March 31 accounting period end should be closely analyzed and the tax implications of the provision, impairment loss and other items that, as a result of that situation, may be new to the company or present unusual figures should be taken into account. Our commentary is available [here](#).

**3. Main issues to be taken into account in tax inspection procedures as a result of the COVID-19 legislation.** The approval of Royal Decrees 463/2020, of March 14, 2020 and 465/2020, of March 17, 2020, together with RDL 8/2020, on extraordinary urgent measures to confront the economic and social impact, have raised numerous doubts regarding tax proceedings. This past Thursday, March 19, the State Tax Agency published a list of FAQs to clarify some of the issues raised. Despite this, there are still others yet to be resolved. Our commentary is available [here](#).

## Labor and employment

The crisis caused by the spread of the coronavirus (COVID-19) and the rules approved to confront its economic and social consequences have had an extraordinary impact on labor and employment matters. Exceptional measures are therefore needed for exceptional times. The **key features** of these types of measures are summarized below:

- 1. Temporary layoff procedures (ERTEs) as a temporary solution.** Given the suspension of business activities caused by COVID-19 and the preventive measures approved by the government, temporary layoff procedures (ERTEs) have exceptionally been made more flexible. This affects both those triggered by force majeure events and those caused by economic, technical, organizational and production-related grounds arising from COVID-19 and it seeks to facilitate these measures over others that may have a greater impact on employment.
- 2. Exemption from contributions in the case of ERTEs due to force majeure.** There is a full exemption from the employer's share of social security contributions for companies with fewer than 50 workers and a 75% exemption for companies with 50 or more workers.
- 3. Obligation to maintain employment.** The extraordinary employment-related measures are subject to the company's obligation to maintain employment for a period of six months following the date of resumption of operations.
- 4. Other measures to bring flexibility.** Although not contemplated in the measures approved by the government, Spanish labor law establishes other mechanisms able to be used to meet the need to adjust working hours and timetables, such as measures relating to uneven distribution of working hours, timetable flexibility agreements, adaptations or reductions to working hours, or paid or unpaid leave.
- 5. Rights to adapt and reduce working hours to care for family members.** Where workers evidence duties of care with respect to their spouse or spousal equivalent, and with respect to relatives up to the second degree of consanguinity as a result of COVID-19.
- 6. Preferential nature of teleworking:** Alternative organization systems will be established, particularly teleworking, and companies must adopt the appropriate measures, if this is technically and reasonably possible and the effort required to adapt is proportionate.
- 7. Sick leave due to COVID-19 infections or preventive isolation is treated as an occupational accident for the purposes of benefits.** This entails an improved public benefit for affected workers, in addition to any supplements that companies may provide under collective labor agreements, company policies or applicable legislation.

## Litigation and Arbitration

In the week between March 23 and March 29 2020, the suspension of procedural time periods ordered in RD 463/2020, with respect to all jurisdictions, will remain in effect, along with the suspension of all court activity -by decision of the Permanent Commission of the General Council of the Spanish Judiciary (CGPJ), on March 14, 2020-, while the state of emergency and its extensions are in place, except for any business that is urgent or cannot be postponed (our alert published on March 15 is available [here](#)).

The following points will have to be taken into account:

- 1. Civil jurisdiction.** The suspension does not apply for the adoption of injunctive remedies or for court activity that could cause irreparable harm, if not dealt with or conducted.

- 2. Criminal jurisdiction.** The suspension will not apply for habeas corpus procedures, activities of on-call or duty services, activities involving a detained person, protection orders, urgent activities relating to surveillance services for prisons and correctional facilities and any injunctive remedies in relation to domestic violence or violence involving minors or any other activity that cannot be postponed. A decision by the CGPJ on March 20, 2020 has also suspended temporarily the regular appearances of persons under investigation in criminal cases, unless there are exceptional circumstances, where it is considered there is a risk of concealment or flight.
- 3. Constitutional Court.** This court also ordered, on March 16, 2020, the suspension of time periods while the state of emergency is in place, although it will continue delivering decisions and ordering injunctive remedies as necessary, in any constitutional proceedings where this is required, to protect the constitutional system and fundamental rights and public freedoms. The adopted order is available [here](#).
- 4. EU Courts.** The Court of Justice of the European Court has not suspended time periods generally, other than for the potential occurrence of unforeseeable circumstances or force majeure. However, the time periods prescribed in ongoing proceedings, except for proceedings that are particularly urgent, are extended by one month, from March 19, 2020, and also the periods prescribed on or after that date have been extended. Hearings listed until April 3, 2020 have been adjourned. Hearings at the **General Court** listed until April 3, 2020 have been adjourned and it is only dealing with particularly urgent cases. The time limits for lodging appeals are continuing to run, although parties may have the option of invoking unforeseeable circumstances or force majeure. The procedural time limits scheduled on or after March 19, 2020 will be adapted to the context of the health crisis, according to the information published [here](#).
- 5. Arbitration.** In the field of institutional arbitration, a few Spanish arbitral institutions, such as Corte Española de Arbitraje (CEA) or Tribunal de Arbitraje de Barcelona (TAB), have suspended, under Royal Decree 463/2020 and effective from March 16, 2020, the running of all time periods for proceedings in progress. The time periods will resume when the Royal Decree or its extensions, if any, cease to be in force. Other institutions (such as Corte de Arbitraje de Madrid –CAM- or Corte Civil y Mercantil de Arbitraje –CIMA-) appear to have adopted a more flexible approach, and have suspended only the attendance at face-to-face hearings, leave the decision over their suspension to the parties, or adopt certain safety measures for the physical registration of documents.
- 6. Suspension of statute of limitations periods and time bars.** The statute of limitations periods and time bars in respect of any types of actions and rights have also been suspended while the state of emergency is in place.
- 7. Resumption of procedural time periods.** The time periods will resume when the state of emergency ends.

## Restructuring & Insolvency

- 1. Suspension of all procedural time periods and authorized judicial proceedings.** RD 463/2020 has suspended all procedural time periods for all kinds of courts, which includes time periods before commercial courts, which are the courts that specialize, among others, in insolvency matters and form part of the civil jurisdiction. These time periods will resume when the state of emergency ends. However, this suspension does not prevent the courts from ordering the performance of any judicial steps that are necessary to prevent irreparable damage to the legitimate rights and interests of the parties to the proceeding. Consequently, as the General Council of the Spanish Judiciary ordered on March 18, 2020, the filing of submissions requesting such urgent and necessary steps is authorized.
- 2. Suspension of some material time periods or partial moratorium** RDL 8/2020 has established a moratorium on the duty to file a petition for the opening of insolvency proceedings while the state of emergency is in effect. During the moratorium, the debtor will also be protected from any petitions for the opening of mandatory insolvency proceedings filed by its creditors. However, the insolvency moratorium established in RDL 8/2020 is only partial and does not protect the debtor from steps by its creditors such as non-judicial or judicial claims or enforcements (whether ordinary or of security interests) which may be deemed admissible, or from the suspension of obligations or from contractual termination by its counter-parties ([for further information, see here](#)).
- 3. New insolvency proceedings.** New insolvency proceedings are subject to the restriction of new submissions mentioned in section 1 above. This restriction affects the various insolvency mechanisms provided in Spanish law (insolvency proceedings, 5-bis communication or pre-insolvency proceedings, out-of-court payment agreement and homologation of refinancing agreements). However, given that the moratorium imposed on insolvency proceedings is only partial, as indicated in section 2 above, debtors may continue to use the relevant insolvency mechanisms provided that the steps requested to the court are urgent and necessary. When evaluating possible new petitions for the opening of insolvency proceedings, debtors should also factor in other collateral consequences of becoming subject to insolvency proceedings at this time (e.g. the debtor may be disqualified from receiving liquidity measures with public guarantees, such as the new extraordinary working capital credit facility with CESCE -Spanish Export Credit Agency- coverage on behalf of the State).

## Mobility and Transport

In the field of mobility and transport, the measures adopted in the state of emergency caused by the health crisis are numerous and are published almost daily in the Official State Gazette (BOE) to adapt to the fast pace at which the state of emergency is evolving.

**1. Mobility.** RD 463/2020 banned all citizens from walking or driving in a private vehicle on public highways, except to perform specific activities. Among those authorized activities, in addition to those necessary to purchase food, hygiene or pharmaceutical products, attend health centers or financial institutions or insurance companies, look after people in need or other force majeure or similar activities, it is allowed for people to travel to their workplaces to perform their employment obligations, or a professional or business activity. Additionally, RD 465/2020, of March 17, 2020 specified that any walking or driving in the allowed cases must be done alone, except where it is done to accompany people with special needs, minors or the elderly, or for other justified reasons.

In relation to traffic and driving in private vehicles, the Ministry of the Interior has been authorized to order the closure of roads or stretches of roads to traffic for reasons related to public health, safety or the flow of traffic, or to order a restriction of access to them for certain types of vehicles for the same reasons.

**2. Goods transport.** The priority goal is to guarantee the supply of goods and products, of healthcare and pharmaceutical and health protection supplies, so the transport of goods is an essential service and is guaranteed across the country. Similarly, measures have been put in place to guarantee the supply and delivery of products bought online, over the phone or by mail order.

**3. Passenger transport.** All domestic and international passenger transport has been restricted and prohibited in certain cases as the emergency has made it necessary to confine people to their homes and restrict their movement, with the reinstatement of border controls.

Specific transport measures have been put in place for connections between mainland Spain and the autonomous cities of Ceuta and Melilla, the Balearic Islands and the Canary Islands, and for air and sea traffic between the islands.

See this [link](#) for the legislation adopted in the field of transport and mobility.

## Administrative law

In this last week of March 2020, particular attention will have to be paid to the following issues in relation to any public contracts that may be affected by COVID-19 or the measures adopted by the public authorities as a result of the virus:

**1. Suspension of certain contracts for works, supplies and services.** The suspension must be expressly declared by the contracting authority following a request by the contractor subject to the terms and requirements specified by the legislation.

**2. Extension of the delivery period stipulated in the contract for certain contracts for works, supplies and services.** The extension must be declared expressly by the contracting authority after a request by the contractor subject to the terms and requirements specified by the legislation.

**3. Right to restore the economic balance in concessions for works and services.** This right is granted in cases of the impossibility of performance of the contract as a result of COVID-19 or of the measures adopted by the public authorities, after a request by the contractor. That restoration would be carried out, as required in each case, by extending the term of the contract by up to 15% or by amending clauses with economic content.

In view of the significance of the adopted measures, the doubts they have caused in the sector, and the interpretation reports that are being issued in relation to them, we recommend in-depth analysis and exhaustive monitoring of them. Our commentary is available [here](#).

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### **Garrigues, a multidisciplinary team of specialists facing COVID-19**

The worldwide health alert triggered by coronavirus is generating a great deal of uncertainty among companies, affecting all aspects of their activity. Since the crisis took hold, Garrigues has been at the disposal of its clients, with multidisciplinary teams specializing in all practice areas in the countries in which it is present. These are also the teams responsible for supervising the contents of this Special section, in which we provide information on all legal developments in relation to the coronavirus crisis, on proposals made by social agents, agreements, decisions, orders, etc.; in short, all the relevant information which companies need to be aware of.

**[Check our special section](#)**

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