

Spain, week between March 30 and April 5 2020

The toughening of lockdown measures in Spain and resulting closure of all business activities not classed as essential makes it absolutely necessary to keep very much in sight this week the measures approved in the labor and employment field. In the domain of corporate law and commercial contracts, the decision governing the first tranche of guarantees to soften the economic effects of the crisis has already been published in the Spanish Official State Gazette (BOE). As for tax matters, the personal income tax and wealth tax season is about to start. In the litigation arena, the general statute of limitations for personal action has been extended. And there are also important mobility and transport, and restructuring and insolvency issues and matters related to administrative law.

Labor and Employment

1. **The halting of non-essential activities and approval of additional employee-related measures for the protection of employment are the top labor and employment law headlines.**

Workers in non-essential services will be compelled to take recoverable paid leave. The government has approved the obligation to take recoverable paid leave, between March 30 and April 9 2020 (inclusive), for workers providing services at public and private companies and institutions, whose activities have not been halted by the declaration of the state of emergency. The recovery must be negotiated in a consultation period between the company and the workers' legal representatives.

This measure will not apply to the activities and cases listed in the annex to the royal decree-law, or to employees who are already working remotely, workers on sick leave or with other grounds for suspension, or employees of any companies that have already applied for or are implementing a temporary layoff with suspension of contracts or are authorized to carry out a temporary layoff with suspension of contracts while the leave set out in the legislation is in place. Further information, [here](#).

Extraordinary employment protection measures. Force majeure and the economic technical, organizational and production-related grounds justifying temporary layoffs due to Covid-19, cannot be regarded as justifying the termination of employment contracts or dismissal. Further information, [here](#).

Tolling of the terms of temporary contracts. The suspension of temporary contracts, including training, hand-over and relief contracts, on the grounds for temporary layoffs due to Covid-19 will mean that the terms of these contracts will stop running, together with lengths of the periods of reference equal to the suspended period.

2. **Companies must file applications for unemployment benefit related to the temporary layoffs.** The workers included in a temporary layoff with suspension of contracts or reduction of working hours due to Covid-19 do not have to carry out any step to apply to the State Public Employment Service (SEPE) for unemployment benefit. Companies will have to file the applications on behalf of every worker included in the measure. For these purposes a template has been prepared and posted on SEPE's website for companies to complete, which can be found [here](#).

3. **Decisions granting unemployment benefit due to Covid-19 will be reviewed:** Penalties will be levied for applications filed by companies that contain misstatement or incorrect information and practices consisting of applying for measures, in relation to employment, that do not prove necessary or are not sufficiently connected with the ground causing them, and which give rise to the generation or receipt of incorrect benefits. In addition to any administrative or criminal liability determined by law, the company will have to pay over to the managing entity the amounts received by the worker, and deduct them from the unreceived wage payments to which they would have been entitled, to the extent of the sum of those wage payments. The entity managing the unemployment benefit and the labor and social security inspection authorities will take on an active role for detecting these instances of fraud.

4. Decisions on temporary layoffs based on force majeure: Decisions accepting and refusing requests have already started being issued in relation to applications for a declaration of force majeure in the context of measures for suspension of contracts approved as a result of the Covid-19 crisis. The time period for a decision on these applications, under the extraordinary procedure approved for this purpose, is five days and it will be considered to last until the end of the state of emergency and any of its potential extensions.

Corporate Law / and Commercial Contracts

1. Financing.

- a. The European Commission published on March 27, 2020 the decision authorizing the Spanish regime for guarantees to be provided by ICO, the Spanish official credit institute, to secure new loans and any other types of financing that are provided to soften the economic effects of Covid-19, and sets out the conditions that those guarantee facilities have to meet to be compatible with the approved aid. Further information is available [here](#).
- b. Companies and the self-employed already have access to the first tranche of guarantees. This guarantee facility is to be managed by ICO and will cover new loans and other types of financing provided by financial institutions to companies and the self-employed to soften the economic effects of Covid-19. See [here](#) for further information..
- c. ICO has published the conditions and ways of applying for the guarantee facilities and useful information in this respect for financial institutions. The information provided by ICO is available [here](#).

2. Financial statements. The CNMV and the Spanish Registrars' Association have issued a joint communication on the financial statements and proposed distribution of income/allocation of loss. In their combined communication they provide a number of alternatives in relation to the financial statements and the proposed distribution of income/allocation of loss. See [here](#) for further information.

3. Cooperative companies. The power to adopt decisions on complete or partial suspension of members' benefits, which is held by the general assembly, has been transferred to the governing board, because the general assembly cannot be called to be held remotely. This has been specified in article 4 of [Royal Decree-Law 9/2020](#).

Tax

As March draws to a close and April begins, individuals and legal entities filing their returns in Spain must pay particular attention to the following issues:

- 1. Income and wealth tax season.** On April 1 the 2019 income tax (IRPF) and wealth tax (IP) season begins. In the current crisis, it is recommendable to start analyzing tax information as early on as possible to have enough time to consider all available options, and, if necessary, file the returns to receive any potential refunds sooner. In our alert (available [here](#)), we recall the key elements to be considered in relation to returns.
- 2. Covid-19: Information and advisory services on measures related to local taxes.** In view of the situation caused by the public health crisis, numerous local councils in Spain are announcing and approving tax measures affecting local taxes, to defer or temporarily suspend payment of tax debts or even reduce the amounts of tax debts to be paid. Our local taxes team offers its clients the chance to be informed of the measures announced and approved by the local authorities that might affect them, with a guarantee of ongoing monitoring and updated information in this field, together with advisory services on the best way to make use of these measures.
- 3. Covid-19: Measures on central government and autonomous community taxes.** To soften the economic situation caused by the public health crisis, various items of central government and autonomous community legislation have been approved which we have discussed in our alerts and commentaries as they have appeared. The variety of measures that have already been published and of those that will foreseeable continue to be adopted makes it necessary to have a point of information giving access to the legislation and to our alerts and commentaries almost in real time. This [interactive map](#) provides easy access to these contents.

Litigation and Arbitration

- 1. Will COVID-19 revolutionize arbitration?** The health crisis caused by COVID-19 could become an opportunity to revolutionize arbitration and to improve and reinforce it as opposed to the national court system. The flexibility which is the defining characteristic of this dispute resolution alternative should permit the use of every kind of remote and technological means to go ahead with proceedings without suspending them. For further information, see [here](#).
- 2. General statute of limitations for personal actions.** Personal actions, to which the general –not a special- statute of limitations applies, which arose between October 7, 2005 and October 7, 2015 and for which the statute of limitations has not been interrupted, will not now become time barred on October 7, 2020, since they will be affected by the “suspension” ordered while the state of emergency is in place. For further information, see [here](#).
- 3. Offense of disobedience.** It is allowed to interpret that a breach of the provisions of Royal Decree 463/2020, which declares the state of emergency, or of supplementary legislation, constitutes an offense of disobedience if certain requirements are met or, otherwise, an administrative infringement. For further information, [here](#).

Mobility and Transport

Since the declaration of the state of alarm, new measures have continued to be adopted in the area of mobility and transport, some of those already adopted have been extended depending on the evolution of the emergency situation created by the health crisis.

Among the new measures adopted, those that have been maintained and extended, the following are notable:

- 1. Mobility.** The prohibition of walking and driving in private vehicles by all members of the public on public streets and roads is maintained, except for the activities and in the cases expressly permitted by article 7 of Royal Decree 463/2020. It is allowed to walk or drive with another person to accompany disabled persons, minors, or elderly persons, or for another justified reason. Furthermore, persons in addition to the driver are permitted to engage in authorized travel in up to nine-seater vehicles, whether public, supplementary private or private transport, provided that one person at most occupies each row of seats, and the greatest possible distance is maintained between occupants.

In relation to traffic and movement of vehicles, if necessary for public health reasons safety or traffic flows, the ministry of the interior is authorized to order the closure of roads or stretches of roads to traffic, or to order a restriction of access to them for certain types of vehicles.

The opening of establishments engaged in renting vehicles without a driver is permitted in order to guarantee the functioning of goods transport operations and to ensure the necessary supply of products to the public, as well as journeys permitted during the state of emergency.

- 2. Transport of goods.** Since the commencement of the health crisis, the priority objective in the area of transport in all its forms (land, air and sea), has been to guarantee the adequate functioning of goods transport operations and to ensure the necessary supply of goods and products, healthcare and pharmaceutical and health protection material, with the transport of goods being an essential service and guaranteed throughout the territory. In the same way, measures have been established to guarantee the supply and the delivery of products purchased online, by phone or by mail order.

For the purpose of guaranteeing the adequate functioning of the sector, the opening of workshops for the repair and maintenance of motor vehicles has been ordered, as well as establishments engaged in related activities of sales of parts and accessories with direct sale to repair workshops, but they cannot be opened to the general public. For the purpose of enabling transport professionals to carry out their work, measures have been arranged to provide them with a place of accommodation and essential services of food, hygiene and rest. The Ministry of Transport has also acquired masks and protective material for distribution among professionals who ensure that supply is possible.

- 3. Transport of passengers.** The national and international transport of passengers has been restricted and prohibited in certain cases since the emergency has required the confinement of persons and the restriction of their movement, with the

reestablishment of internal border controls. The specific measures adopted for maritime and air connections between the mainland and the cities of Ceuta and Melilla, the Balearic Islands and the Canary Islands have been maintained.

As the emergency situation has evolved, more restrictive measures have become necessary and the supply of all passenger transport services under the powers of central government, whether or not subject to a public contract or public service obligations, has been adjusted, by being reduced by 70%, except in the case of suburban rail services which are reduced by 20%, during rush hour, and 50%, in off-peak times.

The set of rules which have been adopted in the area of transport and mobility can be found [here](#).

Restructurings and Insolvencies

- 1. Public health crisis and assumption of new credit by businesses.** The Covid-19 crisis is causing liquidity pressures at many companies. The government has implemented facilities to alleviate this situation (more information, [here](#)). However, this aid is not on a non-refundable basis, but rather involves the assumption of new indebtedness by the companies (see [here](#)).
- 2. New indebtedness, payment to the various creditors and business judgment rule.** The assumption of new indebtedness seems *a priori* a reasonable and necessary course of action to preserve the continuity of business activity. However, the assumption of new indebtedness and how the sums are to be used should be decided by the managing body in line with the business judgment rule (more information, [here](#)), in particular if such decisions may be subject to scrutiny in the future.
- 3. Adaptation of business plans to the post Covid-19 context.** In relation to the business judgment rule, managing bodies should consider the advisability of revising and, if necessary, updating business plans with the assumptions which may be applicable in the new context.
- 4. Potential additional restructuring or insolvency actions.** If the new credit available through conventional channels is insufficient, the business may sound out the conditions of lenders of last resort and/or adopt other additional operational restructuring measures (employment, adaptation or termination of commercial contracts, liquidation of the company and sale of the production unit as a going concern to a third party, etc.) or financial measures (debt reductions, deferrals, debt conversions, etc.).
Ideally these measures will be adopted on a consensual and negotiated basis with the relevant parties involved. If it is not possible to adopt additional restructuring measures on a consensual basis and judicial intervention is necessary: (a) if the necessary measures are urgent and the failure to adopt them may cause irreparable harm, they may be sought from the competent court while the state of emergency is still in place (further information, [here](#)); (b) if, on the other hand, those measures do not meet such requirements, the business may start diligently preparing the appropriate application during the state of emergency so as to file it immediately after it ends.

Administrative law

- 1. Time periods** In the judicial review jurisdiction, all time periods are suspended except for any relating to the special proceeding for protection of fundamental rights and to certain judicial authorizations and confirmations. In relation to administrative procedures, the suspension of time limits and interruption of time periods are established as a general rule. Time periods will be on hold while the state of emergency is in place and will resume, after it has ended, from the point where they stopped running. Statutes of limitations and time bars for action and rights are similarly suspended. For further information, see [here](#).

2. Requisition of property, mandatory obligations and other government intervention measures. While the state of emergency is in place, the competent authorities are allowed to order temporary requisitions of all types of property, impose the performance of personal obligations, and take over control of companies and services, to ensure public health and the operation of essential public services, and with the right for affected parties to claim their rightful indemnification. For further information, see [here](#).

Garrigues team

**Mónica
Martín de Vidales**

Partner in charge
of the Corporate/
Commercial Law
Department

**Álvaro
López-Jorrín**

Partner in charge
of the Garrigues
Corporate/
Commercial Law
Department

**Alfredo
Fernández Rancaño**

Partner in charge
of Garrigues'
Administrative and
Zoning and Planning
Law Department

**Carlos
de los Santos**

Partner in charge
of the Litigation
and Arbitration
Department

**Eduardo
Abad**

Partner in charge
of the Tax
Department

**Rosa
Zarza**

Partner in charge
of the Labor and
Employment Law
Department

**Adrián
Thery**

Partner in charge
of the Restructuring
& Insolvency
Department

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](#)

Follow us:

[LinkedIn](#) | [Twitter](#) | [Facebook](#) | [YouTube](#)

© Garrigues 2020. All rights reserved.