COVID-19 | Royal Decree-law 8/2020 of 17 March on urgent and extraordinary measures to address the economic and social impact of the virus

Analysis of the measures and their application in different areas

CMS Spain

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Contents

Following the approval of Royal Decree-law 8/2020 of 17 March on urgent and extraordinary measures to address the economic and social impact of COVID-19 (the "RD-law"), this document details and provides a comprehensive analysis by our practice area experts on the numerous measures set out under the RD-law across several legal spheres.

Corporate law

Special arrangement for listed companies

The RD-law provides a specific arrangement for listed companies. These companies may also be affected by the provisions on foreign investments which, although not examined in this document, have seen their liberalisation suspended in certain sectors where the investment affects the control of the company in question. What is not clear is whether the RD-law applies to companies listed on other multilateral trading systems or the Madrid Alternative Equity Market (MAB).

Article 40 of the RD-law sets out various extraordinary measures applicable to the functioning of listed companies' management bodies, defining such companies as those "with securities admitted to trading in a regulated EU market". The scope of application therefore stretches beyond the definition of a listed company under Spanish law, which applies to companies who shares are trading on official secondary markets in Spain (Article 495 of the Spanish Corporate Enterprises Act). In essence, this urgent and extraordinary reform also applies to unlisted companies which have issued bonds in the market. The RD-law does not specifically mention whether it applies to Spanish companies whose securities are traded on non-EU markets.

It is important to note that in this case, the special arrangement has not been put in place for the state of emergency period, rather for the 2020 fiscal year. This is different to the measures outlined for other legal persons, the lifespan of which will run alongside the state of emergency term.

The special arrangement poses a problem in terms of its synchronisation with Article 39 of the RD-law for all legal persons and, therefore, all legal enterprises. For all intents and purposes, listed companies are also legal persons under private law and fall under the scope of application of such general rule.

The arrangement applicable to listed companies covers a smaller area than general provisions by primarily focusing on the functioning of general shareholders' meetings. In the absence of a specific regulation for listed companies, the terms of Article 41 of the RD-law should therefore be supplemented by Article 40. For example, this would occur in relation to the provisions on winding-up and administrator duties in such cases. Contrastingly, the wording of Article 41 of the RD-law in reference to the matters also regulated under Article 40 (for example, the maximum term for holding an ordinary meeting) excludes the application of the general rule.

The particular features for listed companies refer to the following elements:

1. **The time frames afforded for the publication of financial information through the Spanish Stock Market Regulator (CNMV) have been extended.** Against this backdrop, annual reports may be submitted to the CNMV up to six months after fiscal year-end (i.e. 30 June for a 31 December year-end) and bi-annual statements on management and financial reporting up to four months following year-end. While the RD-law does not specify the *dies a quo*, it would be reasonable to believe that it refers to the end of the period for the submission of the bi-annual report and the fiscal year-end.
2. **Special rules on the functioning of general shareholders' meetings** are introduced with the clear aim of minimising the issues caused by restrictions under the state of emergency. Specifically:

a. Ordinary meetings may be held up to the 10th month from fiscal year-end (i.e. up to 31 October).

b. Boards of directors are permitted to enable remote attendance and voting, even where these are not provided for in companies' articles of association, as long as they observe the related regulations under the Corporate Enterprises Act.

c. General shareholders' meetings may be held anywhere across domestic territory, even if this is not stipulated in the articles of association. Where meeting announcements have already been issued, company directors may release a supplementary invitation to be sent at least five calendar days prior to the scheduled meeting date.

d. If the general meeting has already been arranged but cannot be held at the planned physical location due to the measures adopted by the authorities, and it is not possible to adapt said location, the following two alternatives are provided:

    i. Press ahead with the meeting at another location within the same province on the same date if the meeting has already been validly established. While the RD-law is not abundantly clear in this regard, it is likely to mean that a face-to-face meeting can be replaced by one held exclusively online. The change from a physical location would enable companies to circumvent the restrictions imposed by the authorities in relation to the gathering of people.

    ii. Postpone the meeting to a later date, with the future session to be arranged under the same requirements and with the same agenda at least five days prior to being held. Evidently, the above replaces the generally-applicable prior notice of one month with a much shorter term. However, the formalities required for organising the meeting remain.

    iii. In this case, the management body is permitted to order the meeting to be held online, even where not provided for in the articles of association. When holding a meeting remotely, online attendance, representation granted to the chairman via remote communication and pre-meeting voting through identical means must all be enabled. Such communication means must provide reasonable guarantees of being able to identify the party exercising their voting rights (e.g. electronic signature or any of the mechanisms place for remote shareholder voting).

e. Lastly, and as generally established for companies, **board resolutions passed by way of conference call or videoconference will be considered valid** even where not stipulated in the articles of association or the board of directors' regulation. For such purpose, the only requirements are for all board members to have the necessary means available to access the meeting online and for the secretary to be able to identify them, which will be recorded in the meeting minutes and any certificates of resolutions issued.

Changes to unlisted companies

The related measures are born out of the idea of adapting their operations and observance of legally-prescribed time frames to the unique circumstances arising from the state of emergency. At this stage, it is important to point out that the RD-law also includes a specific arrangement for listed companies coupled with an amendment to the measures applicable to foreign investments, which undoubtedly has a significant impact. Nevertheless, we are going to focus on the provisions affecting unlisted companies.

Article 40 of the RD-law outlines a series of extraordinary measures applicable to legal persons under private law (therefore encompassing associations, foundations and cooperatives, adapted as necessary). These measures will remain in place during the period of the state of emergency declared by way of Royal Decree 463/2020 of 14 March. In summary, such measures comprise the following:

1. **The functioning of management bodies is adapted** to the obstacles stemming from the restrictions on mobility under the state of emergency.

a. Mandatory or voluntary management body and committee meetings may be held via videoconference even where not provided for in the company's articles of association, provided that stable, real-time connections with image and sound are guaranteed.

b. Management bodies and their committees may adopt resolutions in writing and without holding a meeting if decided by the chairman or requested by at least two members, even where not provided for in the company's articles of association.

On the surface, this system provides an alternative to the previous mechanism and requires all formalities for these types of resolutions under Article 100 of the Spanish Companies Register Regulation – which is adapted accordingly – to be fulfilled (for example, the requirement to place on record that none of the members have opposed to this procedure is deemed not to apply in this case given that it is decided by the chairman or proposed by at least two members).

It is worth noting that **these provisions do not affect general shareholders' meetings**, which still cannot be held in writing and for which online attendance will depend on the articles of association and fulfilment of the necessary requirements.

2. **Amendment and adaptation of time frames**.

a. The allotted time frames for executing certain corporate operations have been amended, namely those relating to the drawing up, review and approval of annual accounts.

These provisions are imposed in light of the special nature of such operations. As they should be performed swiftly, they could be significantly affected by the restrictions on the back of the state of emergency under its current terms. Thus:

i. The three-month period granted to the management body to draw up the annual accounts is suspended until the end of the state of emergency, resuming afterwards for a further three months.

This means that once the state of emergency is lifted, **any companies yet to draw up their accounts will have three months to do so,** in addition to the remaining period to date (in other words, in a normal fiscal year, there would be less than two weeks left from now before the period came to an end, whereas the RD-law grants three months from the lifting of the state of emergency).

ii. The period allotted for accounts auditing is suspended for companies subject to audit and which have already drawn up their accounts. Once the state of emergency is lifted, a two-month period will be granted for mandatory audits to take place.

iii. The six months allotted from fiscal year-end to hold a general shareholders' meeting is adapted to the new regulations and replaced by a three-month period from the end of the term to draw up the annual accounts.

In fact, this means that **any company yet to approve its annual accounts will have six months from the state of emergency being lifted to hold the corresponding shareholders' meeting**.

b. The situation whereby companies have arranged meetings for dates after the state of emergency declaration is also provided for **by affording** the possibility (usually subject to controversy without this measure) for the management body **to change the time (understood as the date and time) and place of the meeting or to cancel it**. In such cases, an announcement must be made on the company's website (where existing under Article 11 bis of the Corporate Enterprises Act) or, where there is no active site, in the Official State Gazette (surprisingly, this provision does not mention publication in the Companies Register Gazette) at least 48 hours in advance of the original meeting. **In the event of cancellation, the meeting must be held within one month following the lifting of the state of emergency**.

c. Shareholders' right of exit is suspended until the state of emergency is lifted. Although this arrangement may appear significant in relation to the non-distribution of dividends (Article 348 bis of the Corporate Enterprises Act), its application in the current climate would be somewhat difficult given the complexity of holding general meetings during this period. However, it does undoubtedly impact cases in which the right was exercised prior to the RD-law coming into force.

d. The arrangement applying to the winding-up of companies and director liability has been amended.

   i. Companies incorporated for a fixed period may not be fully wound-up until two months after the state of emergency is lifted.

   ii. Where grounds for winding-up are recognised, the two-month period granted to directors to organise the corresponding general meeting is suspended until the state of emergency is lifted.

   iii. Director liability for corporate debts associated with a breach of their duties in relation to winding-up the company will not apply to the debts incurred by the company affected by the grounds for being wound-up during the state of emergency term.

Restrictions on foreign investment (from outside the EU)

The fourth final provision of the RD-law involves an amendment to Act 19/2003 of 4 July on the legal terms of capital movements and financial transactions with those from outside Spain.

This provision **suspends the liberalisation of direct investment made by investors residing in non-EU countries and from outside of the EFTA.** Said suspension means that these types of investments will require authorisation while the RD-law remains in force. It is important to note that **this special provision is not pegged to the duration of the current crisis,** remaining valid until the Council of Ministers' issue a resolution ordering the measure to be lifted.

Equally, it should be pointed out that **indirect investments do not appear to be included**, i.e. those made through European companies controlled by investors residing in non-EU countries and from outside of the EFTA.

The **suspension of the liberalisation arrangement** is not comprehensive in the sense that it only refers to **certain sectors** and is underpinned by the intention to prevent companies from strategic sectors of public interest being acquired by foreign investors in the context of the current crisis. For that reason, the arrangement is suspended for critical sectors which **affect public order, safety and health**. In addition, the fourth final provision of the RD-law specifically provides for this suspension to be extended to other sectors in the future, namely:

1. Critical infrastructure, whether physical or virtual (including infrastructure relating to energy, transport, water, healthcare, communication, the media, the processing and storage of data, aerospace, defence, the electorate, financial frameworks and sensitive locations), as well as land and real estate assets key to the operation of such infrastructure;
2. Critical technology and dual-use products, including AI, robotics, semiconductors, cybersecurity, aerospace technology, defence and the storage of quantum and nuclear energy, as well as nano and biotechnology;
3. Supply of basic consumables, in particular energy (electricity and hydrocarbons), raw materials and food safety;
4. Sectors with access to sensitive information, especially personal data or the capacity to process such information; and
5. The media.

The restriction on investments **applies** when the transaction involves a foreign investor acquiring a **stake equal to or higher than 10% of the Spanish company's share capital**, **or** when **control of the Spanish company's management body is taken over** in accordance with Article 42 of the Spanish Commercial Code.

In addition to the acquisition of shares or control, the restriction will also apply when the investor falls within certain categories: those directly or indirectly controlled by foreign governments, investments or involvement in sectors which impact the security, public order and healthcare system in another Member State or foreign investors against whom administrative or legal proceedings have been opened in another Member State, country of origin or third country over the performance of unlawful or criminal activities.

Insolvency law

Suspension of the time-related obligations to be fulfilled under the Spanish Insolvency Act

Article 43 of the RD-law either amends or suspends several obligations imposed by the Insolvency Act on insolvent debtors or those filing for bankruptcy as a consequence of COVID-19. Broadly speaking, as with many other provisions contained in the RD-law, it is a question of adapting the time frames set out under insolvency legislation to the unique situation of a state of emergency. Certain countries such as Germany had already adopted similar measures.

The significance of these measures lies within the terms of the Insolvency Act in relation to the duty to file for bankruptcy within a certain period and the consequences of failing to fulfil such obligation. It suffices to recall that a breach of the insolvent debtor's duty to file for bankruptcy triggers the assumption that it is due to negligence (Article 165.1.1 of the Insolvency Act). Among the severe consequences which may arise in the event of liquidation is the company's directors being held personally liable for unpaid debts during bankruptcy. The exception under the RD-law enables this rule to be adapted to the specific circumstances of the COVID-19 crisis.

These provisions are as follows:

1. Article 43 of the RD-law abolishes the duty to file for bankruptcy while the state of emergency remains in place so that insolvent debtors are subsequently able to fulfil such duty.

2. The relationship between voluntary (filed by the debtor) and involuntary bankruptcy (enforced by creditors) is also affected. In a bid to guarantee the consistency of the Insolvency Act provisions, the RD-law amends the general rule by prohibiting judges from accepting bankruptcy filings by creditors for two months from the time at which the state of emergency is lifted.

3. What's more, judges will also prioritise filings by the debtor, even where creditor filings were submitted beforehand. The wording of this measure suggests that while judges will not accept bankruptcy filings by creditors until two months after the state of emergency is lifted, the filing date will be placed on record but attempts will be made to avoid involuntary bankruptcies, even though the creditor filing was submitted first. This provision clearly shows a preference towards voluntary bankruptcy even in the wake of creditors having issued their request sooner.

4. The duty to file for bankruptcy is also suspended for debtors who have notified the court that negotiations are underway with creditors to reach a refinancing agreement or out-of-court payment schedule, or to adhere to an early creditors' arrangement proposal even where the deadline set for such purpose in Article 5 bis, section 5, of the Insolvency Act has passed. Under said Act, the debtor has three months from notifying the court of the negotiations to then inform that a refinancing agreement has been reached, an out-of-court payment schedule has been agreed or their adherence to an early creditors' arrangement proposal. Where unsuccessful, the debtor has one month to file for a bankruptcy declaration. However, the special provision established on the back of the COVID-19 crisis suspends such one-month period, albeit not extending it to the two months following the end of the state of emergency as is the general rule described above for the duty to file for bankruptcy. Instead, it will run from the very time at which the state of emergency is lifted.

Financial law

Mortgage moratorium and other financial measures

The RD-law includes a moratorium on mortgage payments for first-time buyers considered vulnerable following the declaration of a state of emergency on 14 March. This measure goes a step further in protecting vulnerable debtors in respect of the regulations enacted on the back of the 2008 financial crisis, which were aimed at preventing evictions and foreclosure.

Article 8 of the RD-law sets out the scope of application of the measure: mortgages relating to the purchase of a habitual residence where the debtor is considered vulnerable. Article 9 of the RD-law defines such vulnerability as: (i) unemployed debtors or, in the case of employers and the self-employed, a substantial loss of earnings or drop in sales (at least 40%); (ii) when the family's combined earnings for the month prior to the moratorium application fall below three times the Multiplier for the Public Income Index (IPREM), increased by 0.1x per dependent child or person over the age of 65, or 0.15x per dependent child for single-parent families, or up to four or five times the IPREM due to disability of the debtor or a family member; (iii) when the mortgage payment exceeds 35% of the household's combined net income, and (iv) when the family has suffered a significant change in economic circumstances (1.3x increase in the mortgage burden on household income) as a result of the health crisis.

The RD-law is not clear in terms of determining whether the requirements described in section (i) to (iv) above are to be met on a cumulative or alternate basis. It is our understanding that they should be met on a cumulative basis given that, as indicated in the RD-law preamble, the measures are exclusively aimed at protecting debtors who are especially vulnerable due to a reduction in income on the back of the COVID-19 crisis (as opposed to being applied across the board), and such protection would not make sense if the requirement described in section (iv) was not met.

All non-debtor sureties, guarantors and mortgagees who also find themselves exposed in an economic sense may ask for the principal debtor's assets to be exhausted. In other words, waivers to the right of *excussio* under Article 1830 of the Spanish Civil Code are suspended. Nevertheless, the foregoing is notwithstanding the fact that the moratorium also applies to the principal debtor where the circumstances described in Article 9 of the RD-law are recognised.

The RD-law also stipulates how debtors are to prove they meet the requirements outlined in the preceding paragraphs and how to apply for the moratorium. Applications may be submitted to the financial institutions as of the day following the publication of the RD-law in the Official State Gazette and up to 15 days after the RD-law is no longer in force. The financial institution will then have a maximum period of 15 days to implement the moratorium and notify its existence and term to the Bank of Spain, as well as the fact that it will not be taken into account in the calculation of provisions.

In view of the previous paragraph, we believe it is important to affirm that:

1. Although the RD-law is intended as a general regulation, the wording of Articles 12 and 13 appears to be aimed exclusively at creditors supervised by the Bank of Spain. Non-regulated mortgagees or securitisation funds are not usually obliged to report to the Bank of Spain, therefore it is not clear whether they are bound to issue the notifications described in Article 13.2 of the RD-law where a moratorium is approved.
2. The RD-law does not foresee any regulations on the possibility of approving a moratorium in the case of loans granted to securitisation funds. It could be considered that approval is key to proving that the requirements have been met, so there is no option to refuse.
3. The RD-law does not indicate the moratorium period for each case, although it can be understood to last as long as the situation of vulnerability. However, the RD-law does not include a supervisory mechanism or the obligation for debtors or the authorities to notify in this regard. There is also no indication of a maximum term for a moratorium which over time could be extended indefinitely.

The approval of a moratorium would mean: the suspension of all mortgage payment obligations, coupled with the early maturity clause being rendered inapplicable on such grounds; the earning of interest being suspended; and a ban on charging late payment interest.

In a bid to combat the abuse of these measures, the RD-law stipulates that those who benefit from the moratorium without meeting the requirements set out under Article 9 or who deliberately and voluntarily seek to put themselves or to remain in a vulnerable economic situation in order to gain from the measure will be held liable for any damages caused, not to mention all costs generated on the back of the moratorium. However, as previously explained, no control mechanisms have been put in place.

The RD-law does not foresee how mortgage instalments waived during the moratorium period will be paid once the moratorium ends. Nevertheless, and as described in the following section, the RD-law does provide for an exemption from variable stamp duty payments due to the amendment of mortgage loans concluded under the terms of the RD-law.

All of these measures are aimed at a very specific group and transaction type. A tangible solution to the liquidity and solvency concerns which will undoubtedly affect many companies and self-employed workers is yet to be offered beyond the EUR 100 billion in credit lines provided by the State – covering both the renewal and granting of new financing to satisfy liquidity needs, the conditions and requirements for which are to be determined by the Council of Ministers. Moreover, Spain's Official Credit Institute (ICO) may also provide companies and the self-employed with additional liquidity through the banks.

Tax law

Approved tax-related measures

The key tax-related measures adopted under the RD-law are:

a) Freezing of time frames

As opposed to our neighbouring countries, the period for the voluntary submission of tax declarations and self-assessments set to expire in the coming weeks (for example, regular payments – VAT and withholdings – or Corporate Tax payment by instalments) has not been extended.

However, measures have been adopted to extend, among others, the periods for the payment of taxes charged by the government and those currently in their enforcement period, as well as the time frames granted to respond to tax-related requests, attachment proceedings and requests for information and to put forward arguments of defence.

Specifically, (i) time frames yet to expire upon the entry into force of the RD-law will be extended until 30 April and (ii) those notified since the entry into force of this measure will be extended until 20 May, unless the period granted under general legislation is greater, in which case the latter would apply.

Moreover, guarantees over real estate assets within debt recovery proceedings set to be enforced between the date of the RD-law and 30 April will be postponed.

Regarding the maximum duration of tax, infringement and review proceedings heard before the State Tax Authority (AEAT), the measure is more favourable towards the authority's interests given that the period between the date of the RD-law and 30 April will not be counted, despite the fact that the authority is still able to prompt, order and carry out "essential procedures" during such time.

Lastly, said period (between the date of the RD-law and 30 April) will also not count for the purpose of the statute of limitations or expiry.

b) New exemption from Stamp Duty (*Actos Jurídicos Documentados*, or "AJD").

The consolidated text of the Spanish Property Transfer Tax and Stamp Duty Act has been amended to add a new scenario entailing an exemption from paying AJD where loan and mortgage contractual amendment deeds are concluded under the terms of the RD-law.

Competition law

Three key areas have been identified as significantly impacted from a competition law perspective in respect of the health crisis triggered by COVID-19: (i) the granting of State aid; (ii) anti-competitive practices; and (iii) corporate mergers.

State aid

The RD-law sets out a plethora of support-related measures which in principle could be categorised as State aid under the terms of Article 107.1 of the Treaty of the Functioning of the European Union (the "**TFEU**"). Such measures could require notification to the European Commission ("**EC**") for prior authorisation.

In particular, these include credit lines totalling up to EUR 100 billion for companies and the self-employed to cover the extension of loans and granting of fresh financing by credit and financial institutions (Article 29) and the extraordinary insurance coverage of up to EUR 2 billion from the Internationalisation Risks Reserve Fund (Article 31) aimed at companies with a recognisable international footprint whether due to their cross-border business or as frequent exporters.

Regarding both support mechanisms, Articles 29.3 and 31.1 d) of the RD-law specifically state that they will comply with the related EU regulations. Other support-related measures provided for in the RD-law could also be categorised as State aid, including the exemption (full or up to 75%) of the obligation to pay social security contributions in cases of employment contract suspension or the reduction of hours due to COVID-19 (Article 24) and the measures concerning the owners of agricultural operations (Article 35). Nevertheless, there is nothing to suggest that they are considered State aid.

In any event, the Kingdom of Spain will fulfil the obligations stipulated in the TFEU to notify the EC of any relief granted in view of the RD-law and any other measures adopted during the current state of emergency, whether support arrangements or individual assistance which could be categorised as State aid and are not exempt from the obligation to notify.

Notwithstanding the above, the fact that the EC has already declared its full availability and flexibility in terms of the analysis and authorisation of support provided on the back of COVID-19, just as it did during the 2008 financial crisis, is a very positive sign. In a bid to assist and fast track said analysis and authorisation, the EC's Directorate-General for Competition (DG COMP) has published a specific document outlining the information that should be provided for notifications from Member States relating to aid granted on the back of COVID-19.

In a show of such commitment, on 13 March the EC authorised in record time the aid notified by Denmark just the previous day aimed at compensating the organisers of all events with over 1,000 participants for the damages suffered from the cancellation of such events due to COVID-19.

Ultimately, although it is likely that the lion's share of aid granted under the RD-law and other potentially-additional measures is deemed to be compatible with the internal market, the recipient companies will seek to ensure that the Spanish Government properly notifies the EU of such support to guarantee not only its lawfulness but compliance with the TFEU as well. They will also want to avoid the EC ruling that the aid must be paid back in the future due to a failure to notify or breach of the TFEU.

Anti-competitive practices

In addition to receiving aid from the governments of Member States affected by COVID-19, during the performance of their activities under exceptional circumstances such as those at present, companies may find themselves in situations which lead to investigations by the competition authorities.

Despite the unprecedented nature of the affect that COVID-19 is having on business activities, companies should continue to bear in mind that in principle there are no legally-provisioned exceptions under European competition law or Member States' domestic regulations which shield them from or justify the commission of competition-related infringements, whether in view of general public interest or the protection of public health.

While many companies are suffering from disruption to the supply chain and the huge reduction in customer demand on the back of the emergency generated by COVID-19, others are observing an unusually high level of demand for their products. Regardless of the situation they are in, companies may be tempted to increase contact and coordination with competitors or raise the price of their most in-demand products in the fight against the virus. However, this has the potential to pose significant risks from a competition law perspective given that its fundamental provisions – prohibition of restrictive agreements between entities (Articles 1 of the Spanish Competition Act 15/2007 of 3 July (*Ley de Defensa de la Competencia*, the "**LDC**") and 101 of the TFEU) and abuse of a dominant position (Articles 2 of the LDC and 102 of the TFEU) – remain in full force and effect.

With the best of intentions, competing companies may seek mutual collaboration and coordination as an efficient way of addressing and minimising where possible the impact generated on the back of the COVID-19 crisis, most notably where demand has significantly reduced. However, under certain circumstances these agreements could be seen as cartel-related conduct. In such case, the tough economic climate would not serve as justification or a mitigating factor for the practice. The foregoing was even affirmed by the Spanish Competition Authority (*Comisión Nacional de los Mercados y de la Competencia*, the "**CNMC**") in Automobile Manufacturers' case S/0482/13, upholding the importance that in times of economic crisis (specifically that of 2008), competition law must still be strictly followed as the risks of anti-trust behaviour and restrictive effects are significantly heightened.

Against this backdrop, the CNMC is keeping a closer eye out for potentially-abusive practice which could distort supply or trigger a rise in the price of the most in-demand products to protect the health of the population. Moreover, the Authority is encouraging citizens to continue using the channels and mechanisms at their disposal to report competition law infringements such as price fixing or other commercial agreement conditions, market or client sharing and any other violation outlawed under the LDC.

Recently, the UK's Competition and Markets Authority announced its intention to monitor any significant changes in sales and pricing during the COVID-19 crisis in order to curb potential abuse such as charging excessive prices. In turn, the Italian Competition Authority has issued requests for information to the leading online platforms selling anti-bacterial hand soap and face masks, whereas the Polish Competition Authority has launched an investigation into wholesale suppliers of healthcare products for hospital staff.

In short, all proposals to coordinate, exchange information or collaborate among competing entities should be avoided or, where backed by valid justification, be thoroughly assessed from a competition law perspective.

It is becoming more essential than ever to observe the conduct-related recommendations on competition law with regard to contact with competitors in all settings (associations, trade shows, tenders) and the effective use of the numerous preventative mechanisms under company compliance programmes.

Corporate mergers

The third additional provision of Royal Decree 463/2020 of 14 March declaring a state of emergency stipulates the suspension of the administrative time frames used by public sector entities. Said time frames will resume once such Royal Decree – or its possible extensions – is no longer in force. Moreover, the statute of limitations and expiry of rights and actions will also be frozen while the state of emergency remains in place.

Impacted by Royal Decree 463/2020, the CNMC has released a communiqué on the time frames for administrative proceedings based on the aforementioned third additional provision, in which it states that where requested by the subject, an agreement may be reached not to suspend a certain time frame and to adopt the pertinent measures to avoid serious damages to the rights and legitimate interests of those involved. The CNMC may also agree for administrative proceedings closely linked to the health crisis or critical to the protection of general interests or the basic functioning of services to continue. This would authorise the concerned entities to request the CNMC to continue ongoing proceedings – and not suspend the corresponding time frames – relating to the approval of mergers (and, as the case may be, to process and drive through those yet to be formally initiated but which have severe consequences in close relation to the crisis). Such requests are to be accepted by the CNMC on a case-by-case basis, providing reasoned grounds for its decision.

Lastly, the CNMC's website remains operational for communication purposes, with the authority keen to stress that its work will continue to the extent possible vis-à-vis the state of emergency.

In view of COVID-19, the EC's DG COMP has published an announcement on its website encouraging companies where possible to delay merger notifications with an EU scope until further notice.

This is because although sufficient measures have been put in place to ensure business continuity and merger review, DG COMP services are likely to face significant difficulties in collecting information from third parties other than the notifying party – such as customers, competitors and suppliers – whose contributions are crucial in enabling a proper assessment of the transaction. What's more, all DG COMP services may face limitations in terms of access to information and databases following the remote working measures taken as of 16 March 2020.

Lastly, the EC has also announced that hand deliveries to DG COMP premises will remain possible but may become difficult due to reduced presence of staff, hence the Directorate will also temporarily accept and actually encourages all submissions in digital format.

Employment law

Employment-related measures

The RD-law serves to supplement the labour-based measures adopted to date. Entering into force on 18 March 2020 and in place for one month, an analysis of the situation upon termination may lead to the government passing a further royal decree-law to extend the term of the RD-law.

The exceptional measures passed are as follows:

1. Clarification of the grounds and simplification of the procedures to suspend employment contracts due to force majeure and on economic, technical, organisational or production grounds;
2. Unemployment protection for employees affected by contract suspension or working time reduction procedures even if they have not observed the minimum grace period;
3. Extraordinary benefit for self-employed workers forced to cease their activity;
4. Risk prevention self-assessment to facilitate remote working; and
5. Expediting of applications to adapt or reduce working hours to care for dependants.

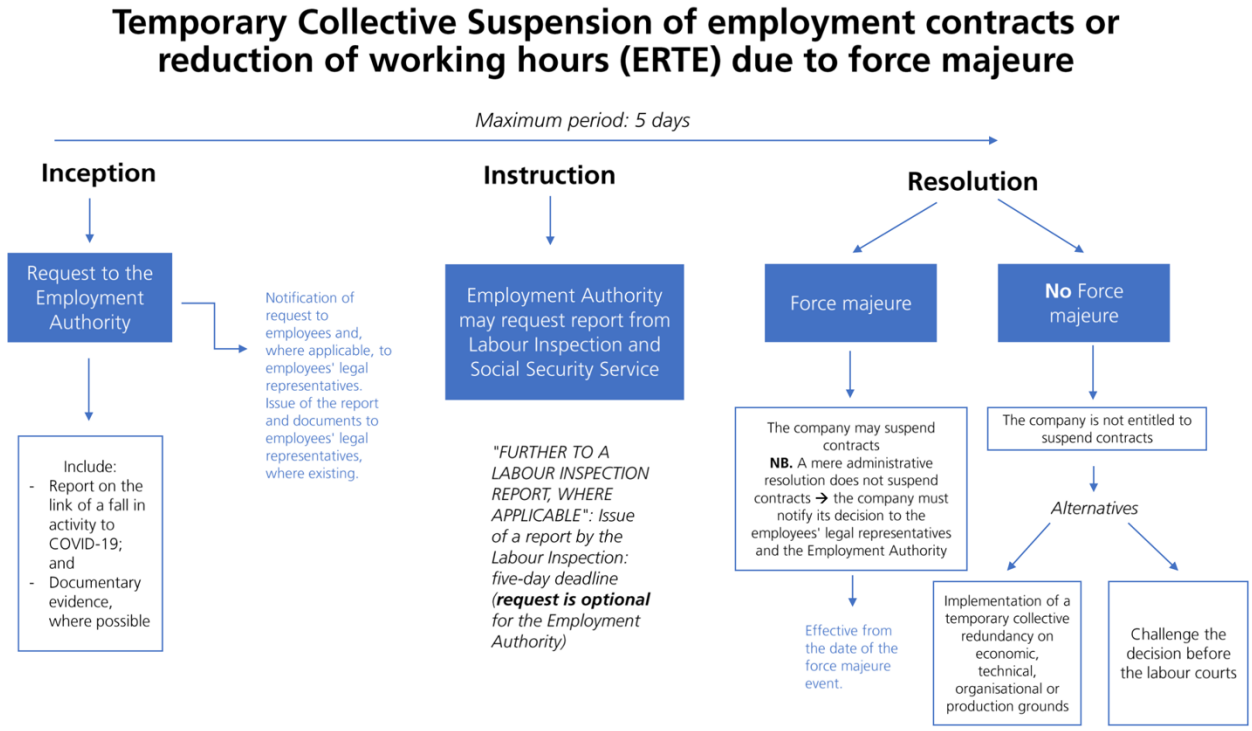
At this stage, it is important to point out that Royal Decree-law 8/2020 links the extraordinary measures listed above to a commitment by companies to retain their employees for six months from the time at which activity resumes, hence a close eye must be kept on the counteracting measures which companies wish to implement in the future.

In addition to these new measures, also published on 18 March were Royal Decree 465/2020 of 17 March amending Royal Decree 463/2020 of 14 March declaring a state of emergency to manage the health-related crisis triggered by COVID-19.

This latest regulation seeks to clarify the idea that persons found outside of their home to perform permitted activities must be alone unless accompanying those with a disability, minors, the elderly or for any other just cause. Moreover, the temporary closure of hair dressing salons – not including home-based appointments – and veterinary clinics is also confirmed.

Temporary employment-related measures: suspension of employment contracts and working time reductions

Procedures for the suspension of contracts and reduction of hours due to force majeure



The suspension of employment contracts and reduction of working hours are deemed to be underpinned by an event of force majeure when directly triggered by a fall in activity on the back of COVID-19, including the announcement of a state of emergency, entailing:

1. The suspension or ceasing of activities.
2. The temporary closure of establishments frequented by the public.
3. Restrictions on public transport.
4. Restrictions on the movement of people or goods.
5. A shortage of supplies which severely hinders the ordinary course of business.
6. Preventative isolation measures ordered by the health authorities or in urgent and extraordinary circumstances due to contagion of the workforce.

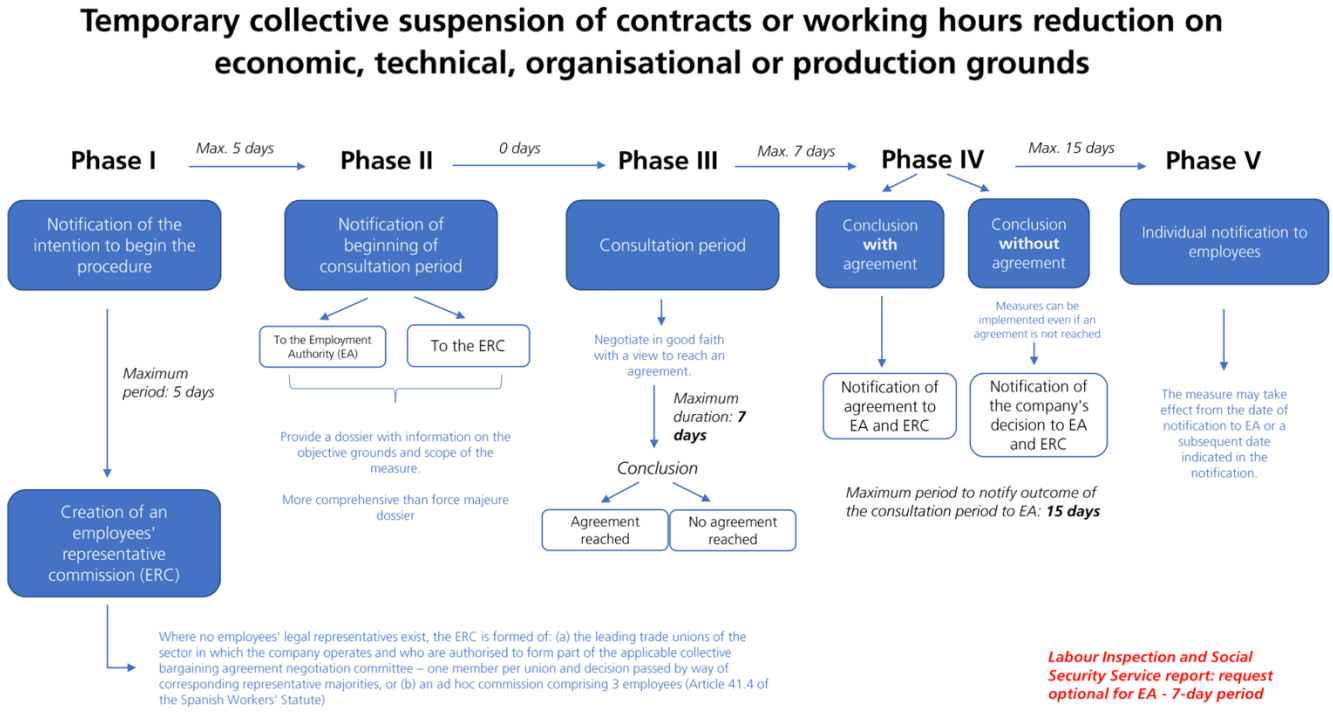
All of the above situations must be duly evidenced in order to be considered events of force majeure.

The procedures for the temporary suspension of contracts or reduction of hours due to force majeure are amended as follows:

1. Procedures shall be initiated by the company, which shall provide the relevant employment authority with a report on the link between the suspension or working time reduction and the fall in activity. Said report must include the corresponding evidence.

2. The company must notify its employees of the request and provide the employees' representatives (where existing) with the aforementioned report and any supporting documents.
3. The Labour Inspection and Social Security Service may issue a report within a non-extendable five-day period. Requests for the report will be optional for the employment authority in relation to all other force majeure procedures not linked to COVID-19, as opposed to its compulsory nature under the applicable legislation.
4. The employment authority shall deliver its final decision within a maximum five-day period, which will be limited to verifying the existence of the alleged force majeure, with the company responsible for the decision to apply the contract suspension or working hours reduction measure, which shall take effect from the date of the force majeure event.

Procedures for the suspension of contracts and reduction of working hours on economic, technical, organisational and production grounds:



In cases involving the suspension of contracts and reduction of working hours on economic, technical, organisational and production grounds due to COVID-19, the following features will be applied in relation to the procedure outlined in the corresponding regulation:

1. **Creation of an employees' representative commission:** Where a company has no legal representation for employees, the commission will be formed of:
    - The leading trade unions of the sector in which the company operates and who are authorised to form part of the applicable collective bargaining agreement negotiation committee, with one member per union;
    - Where the above is not created, a representative commission formed of three company employees chosen in accordance with the terms of Article 41.4 of the Spanish Workers' Statute.

In either of the above cases, the representative commission must be formed within the non-extendable period of five days.

2. **Consultation period**: The consultation period with the employees' representatives or representative commission as described in the previous section must not last for more than seven days.
3. **Labour Inspection and Social Security Service**: request optional for the employment authority, with the report to be issued within a non-extendable seven-day period.

Extraordinary unemployment protection and ceasing of activity measures

Unemployment benefit

In the cases involving the suspension of contracts and reduction of working hours detailed above, the State Employment Service will adopt the following measures:

1. Recognise the affected employees' entitlement to unemployment benefit, even if they fail to meet the minimum contributions to be eligible for such benefit.
2. Not count the time during which unemployment benefit is received while the current extraordinary circumstances remain, in view of the maximum period permitted to receive such benefit.

The duration of the benefit will be extended until the end of the suspension or working hours reduction period in question.

The initiation, instruction and termination of the procedure recognising the right to unemployment benefit will coincide with the terms of the applicable legislation for cases of temporary contract suspensions and working time reductions based on economic, technical, organisational and production grounds.

While the extraordinary public health measures remain in place, the submission of requests to initially register for or resume unemployment benefit or subsidies filed outside of the legally-established time frames will not lead to a reduction of the term of the corresponding right to the benefit.

Unemployment subsidies or those for persons aged over 52 whose requests for extension or other mandatory documents are submitted after the deadline will also not be affected.

Extraordinary benefit for the ceasing of self-employed activities

On an exceptional basis and limited to one month from the entry into force of Royal Decree 463/2020 declaring a state of emergency, or until the last day of the month in which the state of emergency is lifted, self-employed workers whose activity is suspended or whose turnover for the month prior to the benefit application drops by 75% against the average turnover for the preceding six months will be entitled to an extraordinary benefit for the ceasing of activity.

Said benefit will only apply to self-employed workers who were registered with the Social Security Service and up to date with the payment of contributions on the date of the state of emergency declaration, or who satisfy the Social Security authority's request for contributions to be paid within 30 days.

The benefit amount will be calculated as 70% of the applicable contribution base and the time during which it is received counted as a contribution term. Any time frames for the receipt of benefits for the ceasing of activity to which the beneficiary may be entitled in the future will not be reduced in light of the above.

Extraordinary contribution-based measures relating to the procedures for the suspension of contracts and reduction of working hours due to force majeure on the back of COVID-19

In cases of contract suspension and the reduction of working hours approved by the relevant employment authorities due to force majeure, while the period of authorisation remains, the following companies will be exempt from paying a portion of their Social Security contributions as detailed below:

1. Companies with less than 50 employees registered with the Social Security authority as at 29 February 2020 will be exempt from corporate contributions and those relating to joint quotas;
2. Companies with 50 employees or more registered with the Social Security authority as at 29 February 2020 will be exempt from 75% of corporate contributions.

In order to apply the above exemptions, the company must submit the corresponding request, identifying the affected employees and the specific periods during which their contracts will be suspended or hours reduced.

These company exemptions will not impact their employees, who for all intents and purposes will be considered as still paying contributions.

Exceptional measures to facilitate remote working

Alternative measures such as remote working are considered a priority over temporary business closure or a drop in activity. Thus, companies must organise themselves accordingly to enable such alternatives where technically and reasonably possible.

For the purpose of facilitating remote working on an exceptional basis, companies' obligation to carry out a risk assessment will be considered fulfilled by means of a self-assessment performed voluntarily by the employee.

Exceptional measures on the right to adapt working conditions and working time reductions to exceptional care-related circumstances in light of COVID-19

Employees able to prove a duty of care towards their spouse, civil partner or blood relatives up to the second degree will be entitled to adapt and/or reduce their working hours under exceptional circumstances relating to the necessary actions to prevent the widespread transmission of the virus.

The following features are therefore established in relation to the grounds triggering applications to adapt and reduce working hours, as well as the procedure to be followed.

Reasons justifying applications to adapt or reduce working hours

Said exceptional circumstances will be deemed to exist when:

1. The employee is required to be present to tend to those identified in the preceding section who require personal and direct care due to age, illness or disability.
2. Governmental measures order the closure of educational institutions or day care centres or those who usually care or assist people in need are absent.

The right to adapt or reduce working hours is an individual right afforded to each parent or carer, and must be justified, reasonable and proportional to the company's situation, most notably in the event that several employees of the same enterprise choose to exercise this right.

Working time adaptation

The adaptation of working hours shall be primarily set out by the employee in terms of scope and arrangement, provided that the request is justified, reasonable and proportional based on the specific care-related duties to be carried out by the employee. The company and employee will make their best efforts to reach an agreement.

Such adaptation may comprise a change in shifts or schedules, flexible working, split or single shifts, work centre relocation, a change of duties, a change in the way work is performed – including remote working – or any other means available in the company or which may be implemented on a reasonable and proportional basis, limited to the exceptional period during which COVID-19 remains.

Working hours reduction

The right to a special reduction in working hours under exceptional circumstances will be subject to Article 37.6 and 37.7 of the Spanish Workers' Statute, with the following exceptions:

1. Working hours reductions must be notified to the company at least 24 hours prior to the requested measure becoming applicable.
2. The reduction may stretch to 100% of the working hours provided that it is justified, reasonable and proportional in view of the company's situation, without entailing any changes as regards the application of the rights and guarantees in cases of working hours reductions for legal guardians.
3. In cases of reductions for the direct care of a relative up to the second degree of blood ties or affinity who, due to old age, an accident or illness is in a position of dependency, there is no requirement stating that the relative in need of care and attention must not be carrying out any remunerated activity.
4. If the employee has already exercised their right to reduced working hours for legal guardians, said person may temporarily waive such right or will be entitled to amend its terms. The request must reflect the present specific care-related needs, assuming that it is justified, reasonable and proportional unless proven otherwise.

Public law

Measures relating to the supply of electricity, gas and water

Measures are being put in place to alleviate the situation concerning consumers of electricity, gas and water by prohibiting the interruption of supply to those considered as vulnerable, severely vulnerable or at risk of social exclusion.[1] Moreover, the discounted rates set to expire soon have been automatically extended until 15 September 2020 for all beneficiaries.[2]

In addition, the prices of bottled and piped liquefied petroleum gases, as well as liquefied petroleum gases in bottles weighing between 8kg and 20kg (butane cylinders), will not be revised for the next three bi-monthly periods. Lastly, the price of manufactured gases by pipeline on Spanish islands will be frozen for the next two quarters.

Public procurement measures

Article 34 of the RD-law sets out a series of measures relating to public sector contracts affected in terms of performance by the circumstances of COVID-19 or by the measures adopted by the authorities to address the crisis.

Broadly speaking, such measures impact public contracts relating to services, supplies, works and works and services concessions entered into by public sector entities as defined under the Spanish Public Sector Contracts Act 9/2017 of 8 November and valid at the time of the entry into force of Royal Decree 463/2020 of 14 March declaring a state of emergency to manage the health-related crisis triggered by COVID-19.

The most salient measures in this regard are the following:

1. **Automatic suspension of public contracts for the consecutive provision of services and supplies,** the performance of which has been rendered impossible due to COVID-19 or the measures adopted by the authorities to combat the virus, from the time at which the event hindering provision occurred until it can be resumed. In such cases, the affected contractors will be entitled to compensation.
2. **Extension of the term (upon request and for as long as necessary) of public service and supply contracts other than those referred to in the previous paragraph**.
3. **Suspension upon request of public works contracts** valid at the entry into force of the RD-law, provided that (i) the purpose of such contracts has not been compromised on the back of COVID-19 or the measures adopted by the State, and (ii) the crisis has rendered the performance of the contract impossible.
4. The **right to restore the economic balance of the contract** by extending its initial term, as the case may be, by up to 15% or by amending the economic-based clauses of the works and services concession contracts.
5. While the **compensable concepts** are somewhat limited to each contract type, the grounds underpinning the inability to perform consecutive services and supplies contracts and works contracts must be recognised by the contracting authority at the contractor's request (with regard to such contracts, a period of five days has been set to issue a decision or consider the request denied). The contracting authority is also responsible for lifting the suspension when the situation causing the interruption is brought to an end.

[1] In accordance with the definitions under Articles 3 and 4 of Royal Decree 897/2017 of 6 October regulating the notion of vulnerable consumer, discounted rates and other protective measures for household consumers.

[2] For those whose discounted rates expire prior to such date, the period indicated under Article 9.2 of Royal Decree 897/2017 of 6 October will apply.

6. With variations depending on each category, the **compensable costs** are identified as (i) salaries; (ii) costs for retaining the final guarantee; (iii) the rent or costs during the suspension period of maintaining machinery, installations and equipment directly related to the performance of the contract, provided that the contractor is able to prove that such resources could not be used for other means during said period; and (iv) any costs relating to insurance policies taken out by the contractor under the administrative clauses linked to the contract purpose and in force upon suspension.

7. Lastly, **the measures set out in the RD-law will also apply to contracts in force and entered into by public sector entities subject to (i) Act 31/2007** of 30 October on contracting procedures in the water, energy, transport and postal services sectors, or (ii) **Book I of Royal Decree-law 3/2020** of 4 February on urgent measures to incorporate several EU directives on public procurement in certain sectors, private insurance, pension plans and funds, tax and tax-related litigation into Spanish law (Book dedicated to the transposition of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts).

At this stage, it is important to point out a **key exception** whereby the agreed terms relating to the services and supplies contracts mentioned above **will not apply to the following contracts under any circumstances**:

1. **Health, pharmaceutical or similar service or supply contracts, the purpose of which is linked to the health crisis triggered by COVID-19**.
2. **Security, cleaning or IT system maintenance service contracts**.
3. **Service or supply contracts necessary to guarantee the mobility and security of transport infrastructure and services**.
4. **Contracts awarded by public entities trading on regulated markets which are not allocated funds under Spain's general state budgets.**

Moreover, the arrangement under the RD-law is understood **without prejudice to the measures which may be adopted by the Ministry of Transport, Mobility and Urban Agenda as the designated authority under Article 4 of Royal Decree 463/2020** of 14 March declaring a state of emergency to manage the health-related crisis triggered by COVID-19 to guarantee the necessary provisions to protect people, assets and locations. **Said measures may entail an amendment to the circumstances triggering the suspension of contracts**.

Lastly, we must also add to the above the terms of Article 16 of Royal Decree-law 7/2020 of 12 March adopting urgent measures to combat the economic impact of COVID-19. According to said article, **the adoption of any direct or indirect measures by the General State Administration authorities to combat COVID-19 will justify the need to act in accordance with the emergency procedure provided for in Article 120 of the Public Sector Contracts Act 9/2017 of 8 November**.

The guarantee arrangement under Act 9/2017 **will not apply to contracts entered into pursuant to the above and where down payments are required for preparatory actions performed by the contractor**, with the contracting authority responsible for determining such circumstance based on the nature of the provision to be undertaken and the possibility of fulfilling the need using other means.

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