

Informative Note

Main measures in commercial matters approved in relation to COVID-19 adopted by Royal Decree Law 8/2020

18th March 2020

Regarding the Royal Decree-Law 8/2020 on urgent extraordinary measures to deal with the economic and social impact of COVID-19

The Spanish Government has approved the 17th March [Royal Decree Law 8/2020](#), adopting exceptional emergency measures to deal with the economic and social impact of COVID-19

The regulation, which comes into force when it is published in the BOE (Official State Gazette) on 18 March, contains measures of different types and scope aimed at mitigating the effects on the production structure, demand and citizens caused by the health emergency caused by the COVID-19 pandemic and will be in force until 18 April, unless a different period is envisaged for any of them. This deadline may be extended by the Government by Decree-Law if necessary.

Below are the main new features included in the Royal Decree-Law 8/2020 on commercial matters:

Alternatives for holding sessions of governing or administrative bodies

Article 40 of Royal Decree Law 8/2020 introduces, among other things, various measures to enable the continuity of the activity of the governing or administrative bodies of associations, civil and commercial companies, as well as the governing board of cooperative societies and the board of trustees of foundations.

Specifically, it allows (1) meetings of these bodies to be held remotely and by videoconference, and (2) agreements to be adopted directly by means of written votes without a meeting, even though these alternatives are not provided for in the bylaws of the entities in question.

In addition, with respect to the second of the options (voting in writing and without a meeting), its obligatory nature is established when the Chairman so decides or at least two members of the body in question request it.

Measures related to the holding of general meetings

With regard to the holding of general meetings, Article 40 of Royal Decree Law 8/2020 introduces the possibility of modifying the time and place of meetings already called, by means of a notice published on the company's website or in the Official State Gazette, if the company does not have a website, at least 48 hours in advance.

Likewise, and by the same means and with the same deadline, the possibility is foreseen of revoking the resolutions of the meeting, in which case the meeting must be reconvened "*within the month following the date on which the state of alert ended*".



In relation to the above, it is worth considering whether the means described in the Royal Decree-Law (web announcement or official state gazette) should be interpreted as exclusive, or whether, as seems to be the case with a more reasonable interpretation of the rule (whose purpose, among others, is to make certain procedures faster and more flexible), they should be understood as additional to those other means of communication obviated in the aforementioned Article 40, but expressly already provided for in the articles of association of each entity for the calling of general meetings (such as, for example, by sending written communication by registered mail, which is the predominant system in our limited companies).

The reference to the time limit for reconvening meetings after they have been revoked could also give rise to serious doubts of interpretation, since, although it could be considered that what the legislator has wanted to regulate is a maximum time limit for such meetings to be held after the cessation of the state of alarm, the reality is that, by setting such maximum time limit at one month, This period can only be considered as the maximum time allowed for the announcement of the meeting, and not for its celebration, since it would be difficult to comply with this time limit in the case of public limited companies, for which Article 176 of the Law on Corporations requires precisely a minimum of one month's notice between the announcement and the celebration date. Therefore, with regard to the new date for holding the general meetings that have been cancelled as a result of the declaration of the state of alarm, we find that Royal Decree Law 8/2020 only establishes a maximum period for their new call, but not for their holding.

On the other hand, and in addition to the above, with respect to the holding of general meetings, Article 40 of Royal Decree Law 8/2020 introduces, with respect to those in which the intervention of a notary has been requested, the possibility of such intervention being by means of real-time remote communication (such as videoconferencing).

Extension of deadlines for the preparation, verification and approval of the annual accounts

In view of the special situation generated by COVID 19, Royal Decree Law 8/2020 introduces an automatic extension of the deadlines established by law for the formulation, verification and approval of the financial statements for the immediately preceding year, and specifically in the following terms:

- Formulation: the calculation of the maximum period of three months from the closing of the financial year is suspended, starting again the mentioned period, in a complete way (that is, for other three months), counting from the date in which the state of alert ends.
- Verification by the auditor: in the case of annual accounts already prepared prior to the declaration of the alarm state, if the audit is mandatory, the period for verification is set at two months from the date on which the alarm state ends. It should be remembered that, for all other cases (i.e. accounts formulated subsequently), the maximum period will continue to be that already generally provided for in current legislation (for example, in the case of commercial companies, that provided for in Article 270 of the Law on Corporations, i.e. one month from the delivery of the accounts duly signed by the directors).

- Approval by the General Meeting: the maximum period will be three months from the end of the period for drawing up the annual accounts.

Thus, for example, and in accordance with all of the above, if the alarm condition ended on 31 March, a trading company would be obliged to draw up its accounts by 30 June at the latest, verify them before 31 July and call an ordinary general meeting for approval on 30 September of the same year.

Extension of the deadlines relating to the right of separation, the return of contributions to cooperative members, the dissolution of the company and the application for an arrangement with creditors

Also in response to the special situation created by COVID 19, Royal Decree Law 8/2020 introduces, in Articles 40 and 43, a series of modifications with respect to the legally established deadlines for the right of separation of shareholders, the restitution of contributions to cooperative members, the dissolution of the company and the application for bankruptcy proceedings against the company.

- Right of separation: the power of the partners to exercise the right of separation is suspended until the end of the state of alarm, even if there is a legal or statutory cause.
- Reimbursement of contributions to cooperative members who leave: the period is extended to six months from the end of the state of alert.
- Dissolution for legal or statutory reasons: (1) The dissolution of companies by operation of law is suspended for the duration of the statutory period, which occurred during the state of alarm, until two months have elapsed since the end of the state of alarm; (2) The obligation of the directors to call a general meeting within a maximum period of two months from the occurrence of a legal or statutory cause for dissolution, is suspended until the end of the state of alarm; and (3) as a direct consequence of the above, the directors are exonerated from their joint and several liability for corporate debts incurred by the company in the cause of dissolution during that period, if such cause has occurred during that period.

In relation to the latter issue, it should be noted that Article 40.11 provides for the suspension of the obligation of the directors to call a meeting within a maximum period of two months, when there is cause for dissolution "before the declaration of the state of alarm and during the validity of that state". However, the following paragraph 12 of the same article, by regulating the exoneration of the joint and several liability of the company's administrators for the company's debts incurred during the state of alarm, only limits it to the cases in which the "legal or statutory cause for dissolution had occurred during the validity of the state of alarm", Consequently, in practice, the directors of companies in which the cause for dissolution occurred before 14th March are not protected and therefore have little use for the provision of section 11, which only releases them from the obligation to call a meeting, and it is therefore advisable to refrain from entering into any new obligations if they wish to avoid the risk of ultimately becoming personally and jointly liable.

- Application for insolvency proceedings: the legal obligation to apply for insolvency proceedings is suspended for the duration of the state of alert (including those cases of debtors who have already submitted the notification provided for in Article 5.bis of the Insolvency Law).

At the same time, the processing of the necessary applications for bankruptcy proceedings filed by potential creditors of the debtor in a situation of insolvency is suspended until two months after the end of the state of alert, and it is also established that, if during this period the voluntary bankruptcy is filed by the latter, the voluntary one will be processed in preference to the necessary one, even if it was filed at a later date.

Specific measures related to the operation of the bodies of listed companies.

Article 41 of Royal Decree-Law 8/2020 also introduces several new features regarding the operation of the governing bodies of companies with securities admitted to trading on a European Union market, which will apply throughout the current financial year 2020, including the following:

- The deadline for the publication of the annual financial report to the CNMV (Spanish Securities & Exchange Commission) and the audit report is extended to six months from the end of the financial year, as well as four months for the publication of the interim management statement and the annual financial report.
- The deadline for holding the Ordinary General Meeting is extended to ten months from the end of the financial year.
- The power of the boards of directors to call meetings anywhere in Spain is introduced, as well as allowing attendance by telematic means and remote voting, and even including this option in those meetings already called, by means of a supplementary announcement.
- The possibility of the boards of directors and the audit committees to adopt resolutions by videoconference and even by multiple telephone conference is introduced.

Other measures: suspension of the time limits for the expiry of registration records and interruption of the time limits for the return of goods

Because of their relevance to many companies, two other measures approved by Royal Decree-Law 8/2020 are indicated below:

- On the one hand, the suspension of the deadlines for the expiry of entries in the register (including presentation entries, preventive entries, marginal entries, etc.), resuming them the day after the end of the state of alert.
- And, on the other hand, also during the validity of the alarm state, the deadlines for the return of the purchased products are interrupted (both in person and on-line).

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to deal with all the questions that may arise on this aspect or in relation to the COVID-19.

For more information, you can contact:

[Guillermo Yuste](#) | Partner in the area of Banking and Financial Law
guillermo.yuste@andersentaxlegal.es

[Pedro J. Albarracín](#) | Director in the area of Commercial Law
pedro.albarracin@andersentaxlegal.es

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