

Informative Note

Main measures in corporate matters that have been amended by Royal Decree Law 11/2020

2nd April 2020

Regarding Royal Decree-Law 11/2020 on urgent supplementary measures in the social and economic field to deal with COVID-19

The [31st March Royal Decree Law 11 /2020](#) ("RDL 11/2020"), which adopts urgent complementary measures in the social and economic field to deal with COVID-19, which comes into force the day after its publication in the Official State Gazette on 1 April 2020, contains a series of measures that complement those already adopted previously by the executive and, specifically, those included in [Royal Decree Law 8/2020 of 17 March marzo](#) ("RDL 8/2020"), some of which it dramatically modifies.

RDL 11/2020 amends Articles 40 and 41 of RDL 8/2020, which provide for certain measures for the operation of the internal bodies of both legal persons governed by private law and listed companies. The main modifications introduced in the precepts by RDL 11/2020 are the following:

- Although the articles of association do not provide for it, during the state of alert, in addition to videoconferencing, it is permitted to hold meetings of the governing and administrative bodies of associations, civil and commercial companies, the governing council of cooperatives and the board of trustees of foundations by multiple telephone conference.
- Similarly, even if the statutes do not provide for it, during the period of the state of alarm, the general meetings or assemblies of members or associates may be held by video or multiple telephone conference.
- The following requirements must be met in order to hold the meetings of the above-mentioned bodies by video or multiple telephone conference (i) all members of the body must have the necessary means to connect; and (ii) the secretary of the body in question must recognize the identity of those attending, and this must be stated in the minutes of the meeting.
- Notwithstanding the suspension of the period during the state of alert, the formulation of the annual accounts by the governing or administrative body of a legal entity during said period will be considered valid, and may be verified for accounting purposes within the legally established period or extended for two (2) months from the end of the state of alert.
- The extension to carry out the accounting verification of the annual accounts of legal entities shall also apply to voluntary audits, and not only to mandatory ones.
- A new paragraph 6a is added to Article 40 of RDL 8/2020, regarding the approval of the application of the result of the commercial companies by the general meeting. This provision distinguishes two possible situations:



- That the ordinary session of the General Meeting be called after the implementation of the aforementioned precept (1 April 2020): (i) the administrative body may replace the proposal for the application of results contained in the report on the annual accounts, in which case it must justify the replacement based on the situation generated by the COVID-19; and (ii) if the proposal for the application of the company's results is replaced, a letter from the accounts auditor must be attached indicating that it would not have changed its audit opinion if it had known the new proposal for the application of results at the time of its signing.
- That the ordinary session of the general meeting had been called prior to the coming into force of the aforementioned precept: The administrative body may withdraw the proposal for the application of the result from the meeting's agenda, and it must be published prior to the holding of the aforementioned session. In this case: (i) the proposed appropriation of earnings must be submitted to the general meeting for approval within the legally stipulated period (i.e. three (3) months from the end of the period for drawing up the annual accounts), and the requirements set out in the previous point for new proposals for appropriation of earnings must also be met; and (ii) the certification of the administrative body for the purposes of the deposit of accounts shall be limited to the approval of the annual accounts, with supplementary certification of the approval of the proposed appropriation of earnings being submitted subsequently to the Company Registry.
- A new paragraph 3 of Article 41 of RDL 8/2020 is also introduced, applicable to listed public companies only. Under this new provision, if the measures provided for in paragraph 6.a (described in the previous point) are applied, the new proposal, its justification and the auditor's report must be made public as soon as they are approved. This publication must be made as supplementary information to the annual accounts on the company's website and on the website of the Spanish Securities & Exchange Commission (CNMV) as other relevant information or, if required in the specific case, as privileged information.

As a consequence of the above, and including the modifications introduced by RDL 11/2020, the regime finally applicable during the state of alert provided for in articles 40 and 41 of RDL 8/2020 for the bodies of private law legal entities and for listed companies is as follows:

- Although not expressly stated in the statutes, meetings of the governing or administrative bodies of associations, civil and commercial companies, as well as of the board of directors of cooperative societies and of the board of trustees of foundations may be held by video conference or multiple conference, provided that the state of alarm is not expressly mentioned: (i) the members of the body in question have the necessary means to be able to hold the meeting by these means; and (ii) the secretary of the body recognises the identity of those attending and records this in the minutes of the meeting. Similarly, although it is not stated in the statutes, the resolutions of these bodies may also be adopted by written vote and without a meeting, this measure being obligatory when at least two (2) of the members of the body request it.
- Likewise, even if the statutes have not provided for it, during the period of the state of alert, the meetings or assemblies of associates or partners may be held by video or multiple telephone conference, with the same requirements as those described in the previous point.
- The calculation of the maximum period of three (3) months from the closing of the fiscal year to formulate the annual accounts is suspended. Said period will be resumed for another three

(3) months from the date of completion of the alarm state. However, the formulation of annual accounts carried out during this alarm period will be valid.

- The annual accounts formulated before or during the alert state and which are subject to accounting verification (whether mandatory or voluntary), must be audited within a period of no more than two (2) months from the end date of the alarm state. Annual accounts prepared after the end of the alert state cannot benefit from this extension and must be audited within the legally prescribed period (for example, for incorporated companies, one (1) month from the delivery of the annual accounts signed by the directors).
- The ordinary sessions of the general meeting to approve the annual accounts of the entity must be held within three (3) months from the date of the end of the period to formulate said accounts.
- In the case of general meeting sessions convened before the declaration of the state of alert, the administrative body may (i) modify the time and place of the meeting; or (ii) revoke the resolutions calling the meeting, which must be called within one month of the end of the alert condition. Said measure adopted by the administrative body must be published on the company's website (or in the Official State Gazette if there is no website) at least forty-eight (48) hours prior to the holding of said meeting.
- With respect to the ordinary sessions of the general meeting where the approval of the proposal for the application of the result of the financial year made by the administrative body will be discussed, a distinction must be made between:
 - If the call has been made after 1st April 2020, the management body may replace the proposal for the application of results contained in the report on the annual accounts and must justify this replacement on the basis of the situation generated by the COVID-19. To this end, a letter from the auditor must be attached, stating that he would not have changed his audit opinion if he had known the new proposal for the application of profits at the time of signing it.
 - If the general meeting has been called prior to 1st April 2020: the management body may withdraw the proposal for the application of profits from the agenda of the meeting. In this case, the decision to withdraw it must be published before the meeting is held and the approval of the application of the result must be submitted to the general meeting, which must be held within the legally established deadlines (in addition to the requirements set out in the previous point for new proposals for the application of results).
- In addition, for listed companies with securities admitted to trading on a EU market, the following measures will apply throughout the year 2020:
 - The deadline for the publication of the annual financial report to the CNMV and the audit report is extended to six (6) months from the end of the financial year, as well as to four (4) 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 (10) months from the end of the financial year.

- The ability of the boards of directors to call the meetings in any place of the national area is introduced, as well as allowing the attendance by telematic means and the remote voting, even being able to include this option in those meetings already called, by means of a complementary 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.
- The measures relating to the proposals for the application of the results of the financial year described above will be applicable. However, the new proposal, its justification and the auditor's letter must be made public as soon as they are approved. Such publication must be made as supplementary information to the annual accounts on the company's website and on the CNMV website as other relevant information or, if required in the specific case, as privileged information.

We hope that these comments will be useful and, in any case, the tax team at **Andersen Tax & Legal**, is at your disposal to clarify any doubts you may have in this regard.

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