

The COVID-19 health crisis: Impact on and implications for the Spanish Insurance Sector

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The crisis caused by COVID-19 led the Spanish Government to publish Royal Decree 463/2020, in which it declared a state of alarm in Spain from March 14. As of the date of this note, the Spanish Parliament has extended the state of alarm until May 9 and this is likely to be further extended.

The purpose of this Note is to give a brief and general overview of the impact of COVID-19 on the Insurance Sector in Spain.

I. Measures already taken by European Insurance Regulators and the Spanish Insurance Supervisory Authority, and Government responses

The European Insurance and Occupational Pensions Authority (EIOPA) has provided some recommendations to member states through the so-called *Statement on actions to mitigate the impact of Coronavirus/COVID-19 on the EU insurance sector*¹.

EIOPA's recommendations focused on two key areas that should be safeguarded: (i) business continuity and (ii) solvency and capital position.

Concerning the first of these, EIOPA suggests that the competent national authorities should be flexible with the timing of supervisory reporting and public disclosure in relation to the end of 2019, stating its commitment to providing longer timeframes for reporting requirements based on Solvency II (Directive 2009/138/EC) and the Holistic Impact Assessment.

With regard to the second area, EIOPA is optimistic, as recent stress tests have shown that the sector is well capitalised (a lot better than in 2008) and will be able to withstand a severe but plausible shock to the system.

Notwithstanding the above, EIOPA offered a reminder that it could, if necessary, implement the different tools included in Solvency II to mitigate risks and harmful impacts to the insurance sector.

In addition, EIOPA recalled the duty of insurers to take specific measures to preserve a balanced capital position, with protection for the insured, following prudent dividend and other distribution policies, including variable remuneration.

Some member states, like Germany or France, have implemented specific measures as a result of the EIOPA recommendation. However, this is not the case in Spain.

¹ https://www.eiopa.europa.eu/content/eiopa-statement-actions-mitigate-impact-coronaviruscovid-19-eu-insurance-sector_en



The Spanish Insurance Supervisory Authority (Dirección General de Seguros y Fondos de Pensiones) has not implemented any of EIOPA's recommendations; it has instead just published an informative note on its website reiterating the advice and announcing its commitment to comply with it.

As of this date, the Spanish Insurance Supervisory Authority is working to determine and implement specific measures to make the reporting deadlines for insurance companies and distributors more flexible, something that, in addition, would also apply to pension funds.

Thus, it is foreseeable that within a short period of time the Spanish Insurance Supervisory Authority will issue a resolution implementing EIOPA's recommendations.

Meanwhile, because of the drastic effects arising from the COVID-19 crisis, the Spanish Government declared a State of Alarm throughout the territory from March 14, publishing Royal Decree 463/2020 and, among others, Royal Decree-Law 8/2020, on extraordinary urgent measures to tackle the economic and social impact of COVID-19.

As a consequence of the urgent legislation issued by the Spanish Government, all terms and deadlines that may apply within the framework of proceedings pursued with the Spanish Insurance Supervisory Authority have been suspended until the end of the State of Alarm is declared.

Furthermore, Royal Decree-Law 8/2020 authorizes the creation of an extraordinary insurance coverage line up to EUR2 billion, drawn from the Reserve Fund for Risks of Internationalization, with a duration of 6 months.

This extraordinary coverage line is intended for (i) Internationalized SMEs that comply with some requirements and (ii) SMEs that are facing liquidity or financing problems as a result of the COVID-19 crisis.

II. Effects on Insurance Contracts of the State of Alarm declared in Spain in Royal Degree 463/2020: Exclusions from pandemic coverage, aggravation and reduction of insured risk

a. Exclusions for pandemic coverage

Under the Regulation of Insurance of Extraordinary Risks (Royal Decree 300/2004), COVID-19 is not classified as an extraordinary event covered by the Insurance Supervisory Authority (Consorcio de Compensación de Seguros).

Specifically, article 6.m) of Royal Decree 300/2004 excludes coverage from the Insurance Supervisory Authority in relation to "*claims that due to their magnitude and severity are rated by the Government of the Nation as a catastrophe or national calamity*".

Pre-existing insurance policies do not expressly include the COVID-19 health crisis as excluded from cover, they only mention epidemics and pandemics in general.

Having qualified the above, it is possible to extract some ideas for some of the most common types of insurance contracts.

- Life insurance: it would be advisable to analyse in depth any contracts that do not expressly exclude the coverage of epidemics and pandemics.
- Health insurance: with regard to those contracts that exclude the coverage of epidemics and pandemics, the Spanish Union of Insurance and Reinsurance Companies (UNESPA) has declared its clear and firm collaboration with measures to stop the spread of COVID-19, assuming the health costs of treatments for infected patients.
- Motor insurance: those insured drivers who suffer an accident during the state of alarm do not have the burden of proving the reason why they were travelling.
- Death insurance: the majority of contracts exclude the coverage of epidemics and pandemics. Nonetheless, to date, insurance companies have not been applying this exclusion from coverage due to the epidemic.
- Travel cancellation insurance: the majority of contracts exclude the coverage of epidemics and pandemics, without prejudice to the consumer rights set out in Royal Decree 11/2020 and in Spanish Consumer Protection Law (Royal Decree-Law 1/2007) on the termination of contracts on packaged travel deals.
- Civil liability insurance for executives and directors: managing the COVID-19 crisis and business continuity is a difficult challenge for executives and directors. Thus, given the unforeseeable circumstances, it is advisable to make a case-by-case review of contracts to determine whether the «*rebus sic stantibus*» rule is applicable.
- Loss of profits insurance: the existence of prior material damage is a «*conditio sine qua non*» for cover for loss of profits.

b. Aggravation of the insured risk

For life insurance policies, to be infected with COVID-19 is not considered grounds for an aggravation of risk. Therefore, the insured does not have to inform the insurer of this circumstance.

As regards all other insurance contracts (non-life insurance), it is necessary for the insured to check the impact of COVID-19 infection, if any, on risk coverage, in order to pursue the procedure set out in article 12 of the Insurance Contract Act 50/1980.

c. Reduction of the insured risk

Unlike what happens with the aggravation of risk, communicating the possible reduction of insured risk is not an obligation for the insured; it is merely an option.

Furthermore, the reduction of insured risk is a different legal concept from that of the extinction of risk, and each of them has its own procedure to be followed. Spanish Case Law is crystal clear in this respect.

III. Conclusions

- The Spanish Insurance Supervisory Authority (Dirección General de Seguros y Fondos de Pensiones) will issue a resolution implementing EIOPA's recommendations. Meanwhile, the Spanish Government has declared a State of Alarm throughout the territory since March 14 and it has also issued some urgent legislation with direct implications for the Insurance Sector.
- Damages arising from COVID-19 are not covered by the Spanish Insurance Supervisory Authority (Consortio de Compensación de Seguros).
- It is advisable to analyze all insurance policies in depth to determine whether they are affected by COVID-19 in terms of exclusions, aggravation or reduction.

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 and all the professionals of the firm are at your disposal.

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