

SPANISH LEGAL FLASH

SPAIN

On 13 March 2020, the Spanish Government decreed the State of Alarm in order to face the public health emergency caused by the COVID-19.

As a result, amongst other measures, a lockdown was imposed for a 15-day period, starting 14th March 2020, which was enlarged to 11 April 2020 and severe business restrictions have been approved.

TAX

Incredibly, the Spanish Government has not postponed the deadlines to file and pay the main taxes applicable to corporations and individuals, in contrast with what regional and municipal governments have approved concerning the taxes they are entitled to manage.

Only small and mid-size corporations and self-employed individuals, being those whose volume of operations did not exceed 6,010,121.04 euros in 2019, can benefit from a limited deferral of those tax payments due between 13 March 2020 and 30 May 2020.

An extension of deadlines in connection with tax procedures followed before a tax court applies as long as the State of Alarm is in force. Further, there will be an extension of the legal deadlines until 30 April 2020 or 20 May 2020, depending on the circumstances, for certain administrative tax procedures started before or after 14 March 2020. Lastly, the term to file appeals and/or claims against tax administrative acts, notified before or during the State of Alarm, shall run from next 30 April 2020.

CORPORATE

Without prejudice of the articles of association regulating it or not, it is allowed to (i) hold by telematics means the meetings of the governing and administrative bodies, and to (ii) adopt the resolutions of these bodies in writing form instead of based on a physical meeting.

(ii) Deadline to draw up annual accounts

Suspension of the 3-month period for the drawn up of the annual accounts until the end of the State of Alarm. Two-month extension from the end of the State of Alarm to audit the annual accounts, if applicable, and if said accounts have already been drawn up. The annual accounts shall be approved by the General Shareholders Meeting within three months after the end of the period for their drawing up.

(iii) Shareholders' right of separation

The shareholders shall not be entitled to exercise their right of separation until the end of the state of alarm.

(iv) Companies' wind up

- In the event of a legal or statutory cause of dissolution of a company, the legal period established for the administrative body to make the call of the general shareholders meeting shall be suspended. Additionally, in the event that said cause of dissolution has occurred during the term of the State of Alarm, the directors shall not be responsible for the corporate debts incurred during that period, and
- The dissolution of those companies whose duration ends during the State of Alarm shall not take place until 2 months after the end of said State.

(v) Listed companies

Among other measures, the two following ones shall be outlined:

- It has been increased to 6 months the deadline for publishing and submitting its annual financial report to the regulatory authority, and the audit report on its annual accounts from the end of the financial year, and to 4 months for the publication of the interim management statement and the half-yearly financial report; and
- It has been established that the Ordinary General Shareholders Meeting may be held during the first 10 months of the financial year and the attendance to the meeting will be allowed by telematic means and remote voting.

FINANCING GRANTED BY THE OFFICIAL CREDIT INSTITUTE ("ICO") TO COMPANIES

Financing granted by the is enhance by following means:

- Increase of the ICO's net debt to 10.000 million in order to provide additional liquidity to companies, especially SMEs and the self-employed professionals which operate in Spain.
- Creation of a new line of guarantees for a maximum amount of 100.000 million, with a first activated tranche which amounts to 20.000 million, for companies and self-employed professionals domiciled in Spain to meet their needs arising, among others, from the management of invoices, working capital requirements, maturity of financial or tax obligations or other liquidity needs.

BANKRUPTCY

- Neither the debtor in a state of insolvency or the debtor who has notified the court about the initiation of negotiations with creditors, shall have the duty to file for bankruptcy during the period of the State of Alarm.
- Until two months have elapsed since the end of the State of Alarm, judges shall not admit any filing for necessary bankruptcy applications that have been filed during said state or filed during those 2 months, giving priority to voluntary bankruptcy applications.

CIVIL, ADMINISTRATIVE AND JUDICIAL PROCEEDINGS**(i) Extension of deadlines for administrative procedures**

All administrative terms have been suspended and there will be an extension of deadlines in connection with administrative procedures as long as the “State of Alarm” is in force. Furthermore, the terms to file appeals and/or claims against administrative acts, notified during the State of Alarm or before it, if they were not elapsed at the beginning of the State of Alarm, shall entirely run from the day on which the State of Alarm is concluded (currently, not before 12 April 2020).

(ii) Suspension of all non-essential judicial proceedings and terms

Besides the essential judicial proceedings expressly declared so by the National Government upon the approval of the State of Alarm (mainly regarding proceedings related to fundamental constitutional rights) all judicial hearings have been postponed and all terms have been suspended. Thus, there will be an extension of deadlines in connection with judicial procedures as long as the “State of Alarm” is in force.

(iii) Suspension of the statute of limitation terms

The terms related to the statute of limitations have been suspended. Thus, there will be an extension of deadlines to claim between parties as long as the “State of Alarm” is in force.

Finally, taking into consideration its importance for foreign investors, we stress the fact of measures adopted regarding primary residence lease agreements, being the following:

(iv) Extension of the rental term

Those primary residence lease contracts whose term would elapse between 2 April 2020 and a 2-month period since the termination of the State of Alarm will be automatically extended for 6 additional months, should the lessee require it so.

(v) Extraordinary Suspension of the eviction and dispossession judicial proceedings in case of economic vulnerability due to COVID-19

Should the lessee be in a situation of economic vulnerability due to COVID-19 (as per the requirements set forth by the newly approved regulations), the eviction judicial proceeding to dispossess such lessee would be suspended for the time being, Social services will act as needed by the lessee to overcome his/her economic situation but for no more than 6 months.

(vi) Reduction or deferment of the rental payments

Should the lessee be in a situation of economic vulnerability due to COVID-19 (as per the requirements set forth by the newly approved regulations) and the lessor be deemed a relevant landlord (i.e. owner of more than 10 urban properties - beside parking or storage facilities- or 1,500 square meters of constructed urban properties), the lessee might ask for a temporary reduction of the rental. In said case, the lessor may decide between (i) applying a reduction of the 50% of the rental during the State of Alarm and the following months, if needed by the lessee, up to a maximum total of a 4-month period or (ii) applying a total suspension of the rental payments during the State of Alarm and the following months, if needed by the lessee, up to a maximum total of a 4-month period, to collect such payments during the following 36 months on proportional installments on a monthly basis.

GUARANTORS AND NON-DEBTOR MORTGAGE HOLDERS

In the case of guarantors and non-debtor mortgage holders in an economic vulnerability situation due to COVID-19 (as per the requirements set forth by the newly approved regulations), they may require the entity to exhaust the assets of the principal debtor, even if they have expressly waived the benefit of exclusion in the contract.

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