

Bové Montero y Asociados

Newsletter Royal Decree-law 8/2020 on urgent measures to tackle the economic and social effects of COVID-19

March 18 saw the publication in the Official State Gazette of Royal Decree-law 8/2020, of March 17, on urgent measures to tackle the economic and social effects of COVID-19, which is effective from the date of publication. We summarise the most relevant measures of this Royal Decree-Law affecting the following areas:

I. Labour measures

II. Tax measures

III. Corporate & Commercial measures, affecting legal entities governed by private law

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I. LABOUR MEASURES

- **Preferential nature of remote working.**

Organisational systems should be established to enable continued activity by alternative mechanisms, particularly by means of remote working, wherever technically and reasonably possible. These alternative measures, particularly remote working, should take priority over the temporary suspension or reduction in activity.

- **Right to adapt or reduce working hours.**

1. Employees who can prove that they have a duty of care towards their spouse or partner, or blood relatives up to the second degree, are entitled to have their **working day adjusted** and/or reduced in exceptional circumstances stemming from measures to prevent the transmission of COVID-19.
2. The initial specification is up to the employee, both in terms of scope and content.

The right to adapt the working day may relate to the distribution of working hours, or to any other aspect of working conditions. It may consist of changing shifts, altering working hours, flexitime, split or continuous working hours, changing the place of work, changing duties, changing the way work is performed (including remote working), or any other change in conditions that is available within the company, or that can be reasonably and proportionally implemented.

3. Employees will be entitled to a **special reduction** in working hours, with a corresponding proportional reduction in salary.

The special reduction must be communicated to the company at least 24 hours in advance, and may amount to **100%** of the working hours, if necessary.

In the event of 100% reductions in working hours, the employee's right must be justified, reasonable, and proportional to the company's situation.

- **Measures to make the mechanisms for the temporary adjustment of activity more flexible, in order to avoid layoffs.**

Exceptional measures in relation to procedures for the suspension of contracts and reduction of working hours due to force majeure.

1. Suspensions of contracts and reductions in working hours **directly caused by the loss of activity resulting from COVID-19**, including the declaration of the state of alarm, which involve the suspension or cancellation of activities, the temporary closure of premises open to the public, restrictions on public transport and, in general, on the movement of people and/or goods, shortage of supplies that seriously impedes the continuation of ordinary activity, or, in urgent and extraordinary situations, due to a confirmed case of the virus within the personnel or the adoption of duly accredited preventive isolation measures from the health authorities, **shall be considered as arising from a situation of force majeure**,

2. Specifics of the procedure set out in the regulations:

- a) The procedure will be initiated at the **request of the company**, which will be **accompanied by a report on the link between the loss of activity and COVID-19**, and, where appropriate, the **corresponding supporting documentation**. The company must communicate its request to the employees and transfer the aforementioned report and supporting documentation, if any, to their representatives.
- b) The existence of force majeure must be confirmed by the labour authorities.
- c) The labour authorities' **decision** shall be issued within **five days of the request**, following a report, where appropriate, from the Labour and Social Security Inspectorate, and shall be limited to verifying the existence, where appropriate, of force majeure as claimed by the company.
- d) The company is responsible for deciding whether to apply measures to suspend contracts or reduce working hours, which will be effective from the date of the event giving rise to force majeure.
- e) The Labour and Social Security Inspectorate's report, which the labour authorities have the option to request, will be issued within a non-extendable period of five days.

Exceptional measures in relation to the procedures for suspension and reduction of working hours on economic, technical, organisational and production grounds.

1. Specifics of the procedure set out in the regulations:

- a) In the event that the employees do not have legal representation, the committee representing the employees in the negotiation of the consultation period will be made up of the major unions, and representatives from the company's sector. They will have legal authority to form part of the negotiating committee for the applicable collective agreement. The committee will be made up of one person from each of the unions that meet these requirements. If this representation is not formed, the committee will be made up of three workers from the company itself.

In any of the above cases, the representative committee must be set up within a non-extendable period of 5 days.

- b) The **period of consultation** between the company and the workers' representatives, or the representative committee provided for in the previous point, must not exceed **a maximum of seven days**.
- c) The Labour and Social Security Inspectorate's report, which the labour authorities have the option to request, will be issued within a non-extendable period of seven days.

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Extraordinary measures on Social Security contributions, relating to the procedures for the suspension of contracts and reduction of working hours due to force majeure regarding COVID-19.

1. In **cases** of suspension of contracts and reduction of working hours authorised on the basis of **force majeure**, **100% of the Social Security contribution corresponding to the employer** will cease for the duration of the period of suspension of contracts or reduction of working hours, provided that the company, as of 29 February 2020, has **fewer than 50 employees**. If the company has **50 or more employees**, the **exemption** from the obligation will be equal to **75% of the employer's contribution**.
2. This exemption is not applicable to employees, and they will be considered to have contributed during the period in question for all purposes.

Extraordinary measures for unemployment protection

1. In cases where the company decides to suspend contracts or temporarily reduce working hours based on the extraordinary circumstances regulated by this Royal Decree-Law, the State Public Employment Service (SEPE):
 - a) Recognises the right to contributory unemployment benefits for the employees concerned, even if they do not meet the minimum required period of employment and Social Security contributions.
 - b) Will not count the time in which the contributory unemployment benefit is received for the purpose of calculating the maximum periods of entitlement to future benefits.

In any case, a new right to contributory unemployment benefit will be recognised, featuring the following specifics as regards amount and duration:

- a) The regulating base of the benefit will be the result of computing the average of the bases of the last 180 days of contributions or, failing that, of the lesser period of time immediately prior to the legal situation of unemployment, corresponding to the time worked pursuant to the employment relationship affected by the extraordinary circumstances that have directly caused the suspension of the contract or the reduction of working hours.
- b) The duration of the benefit shall be extended until the end of the period of suspension of the employment contract or temporary reduction of working hours.

Safeguarding employment.

The extraordinary measures in the field of labour law provided for in Royal Decree-Law 8/2020 are subject to a commitment by the company to **maintain the employment relationship for a period of six months** from the date of resumption of the activity.

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Applicability.

The measures provided for in this royal decree-law shall remain in force for a period of **one month from its effective date**, without prejudice to the possibility of that period being extended by the Government by means of a royal decree-law following an assessment of the situation. Notwithstanding the above, those measures provided for in this royal decree-law which have a fixed term of duration shall be subject to this duration.

II. TAX MEASURES

1. **Granting of powers for Customs clearance:** The head of the Customs and Excise Department of the State Tax Agency may agree that the declaration procedure, and the customs clearance that it includes, be carried out by any body or official from the Customs and Excise Department. This measure will speed up imports and exports by allowing clearance to be carried out via existing IT applications, without any need for their modification by any body or official from the Customs and Excise Department.

2. Suspension of tax deadlines:

The deadlines for tax liabilities resulting from settlements performed by the Tax Agency are made more flexible:

- a) Submission periods that are already open but have not yet closed, as of the effective date of this royal decree-law, **will be extended until 30 April 2020**
- b) Submission periods opening after the effective date of this measure **are extended until 20 May 2020**, unless the deadline under the general rule is later, in which case the latter will apply

This extension to submission periods will affect the following cases:

- ✓ Deadlines for payment of tax liabilities resulting from settlements performed by the Agency (during the voluntary and enforced period),
- ✓ The end of periods and instalments corresponding to deferment and instalment agreements granted,
- ✓ Periods relating to tendering processes and the awarding of assets,
- ✓ Periods for responding to inquiries, seizure proceedings, and tax-related information requests; for making opening arguments or declarations in application procedures for taxes or hearings.
- ✓ In case (a) above, this suspension shall also affect sanctioning procedures or procedures to declare a decision null and void, refunding of undue payments, rectification of material errors, and revocation.

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- ✓ In addition, within the enforcement procedure, no guarantees relating to real estate shall be enforced from the effective date of this royal decree-law until 30 April 2020.
- ✓ The deadlines for responding to inquiries and information requests made by the Directorate General for Cadastre for response periods which are open as of the effective date of this royal decree-law are extended until 30 April 2020.

If the taxpayer, despite the possibility of taking advantage of the extension of the deadlines in the preceding paragraphs, or without expressly reserving this right, responds to the inquiry or tax-related information request, or makes declarations, the procedure shall be considered complete.

Cases not affected by the approved suspension of deadlines:

- ✓ The payment of tax liabilities resulting from self-assessment, which must be paid within the deadlines established by the applicable regulations for each tax.
- ✓ The payment of customs and tax liabilities arising from foreign trade operations must be paid within the time limit established by its own regulations. Nor will it affect the specifics provided for in customs regulations regarding periods for making declarations and responding to inquiries.
- ✓ The payment of liabilities to be paid by means of stamped bills of exchange
- ✓ The deadline for filing tax returns and self-assessments

Other effects of the period beginning on the effective date of this royal decree-law and ending 30 April 2020. This period will not be taken into account for the following purposes:

- ✓ The maximum duration of application procedures for taxes, sanctioning procedures, and reviews processed by the Tax Agency, although during this period the Agency may instigate, order and perform essential procedures.
- ✓ Calculating the limitation periods established in Article 66 of Act 58/2003 of December 17, General Tax, or for the expiry dates. In the appeal for reversal and in economic-administrative procedures, the final decisions shall be understood to have been issued when there is evidence of an attempt to issue notification of the decision between the effective date of this Royal Decree-Law and 30 April 2020. The period for lodging economic-administrative appeals or claims against tax actions, as well as for appealing through administrative channels against decisions issued in economic-administrative proceedings, shall not commence until the end of the previously established period, or until notification has been issued under the terms of Section Three of Chapter II of Title III of Act 58/2003, of December 17, on General Tax, if the latter has taken place after that time.

- ✓ When calculating the maximum duration of procedures officially initiated by the Directorate General for Cadastre, although during this period the Agency may instigate, order and perform essential procedures.
- 3. **Amendment to the revised text of the Law on Transfer Tax and Stamp Duty approved by Royal Legislative Decree 1/1993 of September 24.** A new point number 23 is added to Article 45.I.B) of the revised text of the previously mentioned law, to establish that deeds formalising contractual novations of loans and mortgage credits carried out within the scope of the Royal Decree-Law will be exempt from the gradual instalments applicable to deeds and document duties in accordance with the Law on Transfer Tax and Stamp Duty.

III. CORPORATE & COMMERCIAL MEASURES, AFFECTING LEGAL ENTITIES GOVERNED BY PRIVATE LAW

- **Sessions and/or meetings of governing bodies and boards of directors**

Holding meetings: Although not provided for in the statutes, the meetings of the governing bodies and boards of directors of associations, social enterprises, commercial companies, cooperatives, and the board of trustees of foundations may be held via videoconference. In this way authenticity can be ensured, with a two-way connection with image and sound of those attending remotely. The session will be considered to have been held at the legal entity's registered office.

Voting: Resolutions may be voted on in writing provided that the chairman so decides, and must be adopted when requested by at least two of the members of the body. The meeting will be considered to have been held at the registered office.

- **Changes in the preparation and approval of commercial entities' Annual Accounts**

Preparation: The period of three months from the close of the financial year for a legal entity's governing body or board of directors to prepare the Annual Accounts has been suspended until the end of the state of alarm. A new **three-month period** will commence from the date on which the state of alarm ends. This suspension affects ordinary, abridged, individual, and consolidated Annual Accounts, and also the management report, if legally required.

In the event that the Annual Accounts had already been prepared as of the date of the declaration of the state of alarm, the period for the accounting verification of these Accounts, in the case of an obligatory audit, will be extended by **two months** from the end of the state of alarm.

Approval: The general meeting must be held within three months of the deadline for preparing the Annual Accounts.

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If notice of the general meeting was given before the declaration of the state of alarm, but the date of the meeting is after that declaration, the board of directors may change the place and time, or revoke the decision to convene the meeting, by means of a notice published, at least 48 hours in advance, on the company's website, or, failing that, in the Official State Gazette. In the event of the meeting being cancelled, the board of directors must convene it again within one month of the end of the state of alarm.

With the corresponding changes in the annual accounts that these two points may entail.

- **Attendance of a notary at the general meeting**

Should a notary be required to attend a general meeting and take the minutes of the meeting, they may do so by means of real-time remote communication, to ensure that their duties are performed properly.

- **Shareholders' right of separation from commercial entities**

Even if there is a legal or statutory cause, the right of separation may not be exercised until the end of the state of alarm and any extensions thereof that may be agreed.

- **Reimbursement of members' contributions in cooperatives**

The reimbursement of contributions to cooperative members who leave during the state of alarm has been extended until six months after the end of the state of alarm.

- **Dissolution of a company**

- Due to the completion of the duration established in the company's articles of association: the company will not be automatically dissolved until two months have elapsed from the end of the state of alarm.
- For legal or statutory cause of dissolution: if, before the declaration of the state of alarm and during the term of this state, there is legal or statutory cause for the dissolution of the company, the legal period for the board of directors to convene the general meeting of shareholders in order to adopt the dissolution agreement is suspended until the end of the state of alarm.
- If the legal or statutory cause for dissolution occurs during the state of alarm, the directors will not be liable for the company's debts incurred during the state of alarm.

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- **Suspension of the limitation period for registrations**

During the state of alarm, and any extensions that may be agreed, the limitation period has been suspended. This applies to registrations, provisional registrations, mentions, marginal notes, and any other registration entries that may be cancelled due to the passage of time. The calculation of periods shall be resumed on the day following the end of the state of alarm or its extension.

- **Deadline to file for bankruptcy**

As long as the state of alert is in force, a **debtor** who is in a state of insolvency **is not obliged** to file for bankruptcy. During and up until two months after the end of the state of alarm, judges will not admit applications for bankruptcy proceedings.

If an application for a voluntary bankruptcy has been filed, it will be admitted with preference, even if it was submitted at a later date.

A debtor will not be **obliged to file for bankruptcy** during the state of alarm, even if the period referred to in Article 5b of the Bankruptcy Law (*Ley Concursal*) has expired, as long as the competent court is notified of:

- The initiation of negotiations with creditors to reach a refinancing agreement.
- An out-of-court settlement.
- To obtain support for an advance proposal for composition.

The team at **Bové Montero y Asociados** continues to work remotely and is at your service to clarify any doubts you may have in this regard, or support you in any way necessary.