

Royal Decree-law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19: measures of a corporate and insolvency-related nature

Corporate & Commercial Area GA_P

This Royal Decree-Law will enter into force on the same day as its publication in the “Official Journal of Spain” and the measures provided for therein will remain in force for one month. The following is a summary of the main extraordinary measures regulated in Part V of the Royal Decree-law of a corporate and insolvency-related nature.

Extraordinary measures applicable to legal persons governed by private law

1. Holding of board meetings of commercial companies

- a) Even if the articles of association (by-laws) do not provide for it, the meetings of the board of directors of commercial companies may be held by **videoconference** that ensures authenticity and a bilateral or plurilateral connection with real time image and sound of those attending remotely, and the **resolutions may be passed in writing and in absentia** if the chairperson so decides and in any case when requested by at least two members of the body. The meeting will be understood to be held at the registered office¹.

¹ The same rule shall apply to meetings of the governing body of associations, business partnerships, cooperative societies and foundations.

2. Preparation and approval of annual accounts

- a) The period of three months from the end of the financial year for the board or governing body of commercial companies (and other legally bound entities, such as corporations, professional associations or foundations) to draw up the annual accounts, the directors' report, where appropriate, and other documents that are obligatory under company law, is suspended until the end of the state of alarm, and will resume for a further three months from that date.
- b) If, on the date of the declaration of the state of alarm, the board or governing body of a bound legal person has already drawn up the accounts for the previous financial year, the period for the accounting verification of these accounts, if the audit is compulsory, shall be understood to be extended by two months from the end of the state of alarm.
- c) The ordinary general meeting to approve the accounts of the previous year will necessarily meet within three months of the end of the period for drawing up the annual accounts.

3. Calling the General Meeting

If the notice of the general meeting has been published before the declaration of the state of alarm but the appointed day for the meeting is after said declaration, the governing body may change the place and time set for the meeting or revoke the resolution to call the meeting by means of a notice published at least forty-eight hours in advance on the company's website and, if the company does not have a website, in the Official Journal of Spain. If the resolution to call the meeting is revoked, the governing body must call the meeting again within the month following the date on which the state of alarm ended.

4. Notarised minutes of the general meeting

The notary who is required to attend a general meeting of shareholders and take the minutes of the meeting may use real-time remote means of communication to adequately ensure the fulfilment of the notary's function.

5. Exercise of the right to exit

Even if there is a winding-up event on statutory grounds or by reason of the articles of association, the shareholders may not exercise their right to exit until the end of the state of alarm and its extensions.

6. Winding-up upon expiry of the term set out in the articles of association

If the term of the company as set out in the articles of association expires during the state of alarm, automatic winding up will not occur until two months have elapsed since the end of said state.

7. Winding-up upon confirmation of winding-up event on statutory grounds or by reason of the articles of association

- a) If, before the declaration of the state of alarm and during the validity thereof, there is a winding-up event on statutory grounds or by reason of the articles of association for the company, the **statutory period to call a general meeting of shareholders** in order to pass a resolution for the winding-up of the company or the resolutions that have the purpose of remedying the event, **is suspended** until the end of said state of alarm.
- b) If the winding-up event on statutory grounds or by reason of the articles of association has occurred during the period of validity of the state of alarm, the directors will not be liable for the company debts incurred during that period.

8. Return of capital to cooperative members who withdraw during the state of alarm

It is extended until six months after the end of the state of alarm.

Extraordinary measures applicable to the operation of the governing bodies of listed companies.

- (1) Exceptionally, during the year 2020, the following measures shall apply to companies with securities admitted to trading on a regulated market in the European Union:
 - (a) The obligation to publish and submit the **annual financial report to the CNMV and the auditor's report on the annual accounts** may be fulfilled up to six months from the end of the financial year. This period will be extended to four months for the publication of the directors' interim statement and the half-yearly financial report.
 - (b) The ordinary general meeting of shareholders may be held within the **first ten months of the financial year**.
 - (c) The board of directors may, in the notice of the general meeting, provide for **attendance by telematic means and remote voting, as well as for the holding of the meeting in any place within the national territory**, even if these matters are not provided for in the articles of association. If the notice of meeting has already been published on the date of entry into force of the Royal Decree-law, any of these cases may be provided for in an addendum to the notice to be published at least **five calendar days before** the date scheduled for the meeting.
 - (d) In the event that the measures imposed by the public authorities prevent the **general meeting from being held at the place and physical location set out in the notice of meeting and the option provided for in the previous letter cannot be used**:
 - (i) if the meeting has assembled validly in that place and venue, it may be agreed by the meeting to continue on the same day in another place and venue within the same province, establishing a reasonable period of time for the transfer of the attendees.

- (ii) if the meeting cannot be held, the holding of the same in a subsequent call may be announced with the same agenda and publication requirements as the meeting not held, within ten days of the date of the meeting not held and at least five days before the date fixed for the meeting, which must take place within that ten-day period.

In this case, the governing body may resolve in the aforementioned addendum to hold the meeting exclusively by telematic means, provided that the possibility of participating in the meeting is offered by each and every one of these means: (1) telematic attendance; (2) proxy granted to the chairman of the Meeting by means of remote communication and (3) early voting by means of remote communication, provided that it is accompanied by reasonable guarantees to ensure the identity of the person exercising his right to vote. The directors may attend the meeting, which shall be deemed to have been held at the registered office regardless of the location of the Chairman of the Meeting,² by audio or video conference.

2. Exceptionally, the **resolutions of the board of directors and the resolutions of the audit committee** shall be valid when passed by **videoconference or multiple telephone conference**, provided that all the directors have the necessary means to do so and the company secretary recognises their identity, which must be expressed in the minutes and in the certified transcript thereof. In this case, the meeting will be considered a single one and held at the registered office.

Suspension of the period of expiry of the entries in the registry during the state of alarm and, where appropriate, its extensions

1. **The period of expiry** of filing entries, caveats, mentions, notes on the margin and any other registration entries that may be cancelled due to the passage of time is **suspended**, and the calculation of the periods shall be resumed on the day following the end of the state of alarm or its extensions.

Time limit to apply for insolvency proceedings

1. As long as the state of alarm is in force, **the debtor who is in a state of insolvency shall not be bound to apply for the opening of insolvency proceedings**. Until two months have elapsed since the end of the state of alarm, the judges shall not identify as suitable for consideration applications by creditors for insolvency proceedings made during that state or during those **two months**. If an application for insolvency proceedings has been submitted by the debtor, it will be identified as suitable for consideration, with preference, even if it is submitted at a later date.
2. Nor will it be the obligation of the **debtor who has notified the court with jurisdiction for the opening of insolvency proceedings of the initiation of negotiations with creditors to reach a**

² For consistency, the presumption that it is held at the registered office is always identified to ensure the application of Spanish law, regardless of where the chairperson is located.

refinancing arrangement or a mediated settlement agreement, or to obtain acceptances to an early composition with creditors proposal, to apply for the opening of insolvency proceedings while the state of alarm is in force, even if the period referred to in Art. 5(5) bis of the Insolvency Proceedings Act 22/2003 of 9 July has expired.

Amendment of the Capital Movements and Economic Transactions Abroad (Legal Regime) Act 19/2003 of 4 July

A new Art. 7 bis has been added, which provides that direct foreign investments (those made by investors resident in countries outside the European Union and the European Free Trade Association), are suspended for reasons of public safety, public policy and public health, in the main strategic sectors of our country, when as a result of the investment the investor becomes the owner of a stake equal to or greater than 10 percent of the share capital of the Spanish company, or when as a result of the corporate operation, juristic act or legal transaction, control is taken over the governing body of the Spanish company. Likewise, those investments which, given the circumstances mentioned above of stake in the share capital and taking of control, come from state or state-controlled companies or sovereign funds of third countries, are suspended.