

LEGAL ALERT

SPAIN: NEW URGENT MEASURES

Royal Decree-Law 8/2020: extraordinary measures affecting companies and other private law legal entities

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Today the official Spanish Gazette (*Boletín Oficial del Estado*) published the Royal Decree-Law 8/2020 (the "RDL 8/2020") which includes a new pack of extraordinary measures to address the economic and social impact of the COVID-19 pandemic, extending the initial steps that were adopted on 10 and 12 March. Among other aspects, the RD 8/2020 include some specific measures for corporate governance flexibility and dissolution or bankruptcy of companies addressed to private law legal entities.

Essentially, articles 40 and 41 of RDL 8/2020 contains a series of important measures addressed to the proper functioning of the governing bodies of legal entities during the state of emergency regarding decision-making, approval of accounts, the exercise of the withdrawal right, application for dissolution, among other. It is also relevant to point out that this exceptional regulation interrupts the period established in Law 22/2003, of 9 July, on Insolvency (*Ley Concursal*) and debtors are now discharged to request the declaration of insolvency during the validity of this exceptional regulation.

1. General provisions

- **Videoconference**

The RDL 8/2020 stipulates that the Meeting of the board of directors (or equivalent in associations, cooperatives and foundations) may be held by video or audio conference, even if their bylaws do not allow specifically this option.

However, the system should ensure the authenticity and the bilateral or plurilateral connection in real-time, with the image and sound of the remote assistants.

- **Written vote with no previous meeting**

Similarly, the board of directors may adopt their resolutions by written consent without a meeting, provided that the president so decides or at least two of the members request it, even if their bylaws do not specifically allow this option.

- **Suspension of the submission of the financial statements**

The ordinary three-month deadline for the preparation of the financial statements from the end of the fiscal year is suspended until the state of emergency is concluded. This deadline is then resumed for a further three months from when the state of emergency ends.

In the case of financial statements already been prepared on the date of declaration of the state of emergency, the period for their verification by auditors is extended until two months after the end of the state of emergency.

- **Shareholders' meetings**

Annual shareholders' meetings for approving the financial statements must be held within three months of the end of the period following the end date of the period for preparing the financial statements.

For shareholders' meetings called before the publication of the state of emergency and to be held after that publication, the place and date may be changed, or the meeting notice may be revoked by placing an announcement on the company's website, or if the company does not have a website, in the Official State Gazette, 48 hours in advance.

If the call is revoked, the managing body must issue a new meeting notice within one month after the date the emergency state ceased.

- **Notary public intervention**

The intervention of the notary public who, if appropriate, draws up the minutes of the annual shareholders meeting may be carried out through remote communication means in real-time that adequately guarantee the fulfilment of the notary's function.

- **Suspension of the right of withdrawal**

The exercise of the partner's right of withdrawal is suspended until the end of the state of alarm or its extensions. Even in the event of a legal or statutory due cause.

- **Wind-up during the emergency state**

A company will not be wound-up although its term envisaged in the bylaws has exceeded during the emergency state, but deferred two months after the conclusion of the emergency state.

Likewise, If there is a wind-up statutory or bylaw due cause, the period for calling the meeting by the managing body is suspended until the state of emergency state ceases.

- **Directors liability for company debts**

If the legal or statutory wind-up cause arises during the state of alert, the directors will not be liable for the company's debts incurred during that period.

2. Listed companies

Article 41 includes, among others, the following extraordinary measures applicable during 2020 to the board of directors of public limited companies with securities admitted to trading on a regulated market in the European Union.

- **Financial Authority reports**

The legal obligation to publish and submit the annual financial report to the Spanish Securities & Exchange Commission (CNMV) and the audit report of its annual accounts may be fulfilled up to six months after the end of the financial year.

- **Annual shareholders' meetings schedule**

Annual shareholders' meetings may be held within the first ten months following the fiscal year-end.

- **Remote attendance and vote**

The board of directors may provide in the meeting notice for the shareholders' meetings for attendance by telematic means and remote voting, as well as holding the meeting anywhere within the Spanish national territory.

If the shareholders' meetings have been already published before the publication of the RDL 8/2020, it may be included in a supplementary announcement to be released at least five calendar days before the date scheduled for the meeting

- **Shareholders' meetings**

If the measures imposed by the public authorities prevent the meeting from being held at the place and physical location set out in the notice of call and the option provided for in the previous point cannot be used:

- If the meeting has been validly convened in that place and venue, it may be agreed to continue the celebration on the same day in another place and venue within the same province, establishing a reasonable period for the transfer of the attendees;
- If the Meeting cannot be held, a new Meeting at a later date may be announced with the same agenda and publicity requirements as the Meeting not held, at least five days before the appointment.

In this case, the board of directors may agree in the supplementary announcement to hold the Meeting exclusively by electronic mean if it is offered in each one of these ways:

- (i) Electronic attendance;
- (ii) Chairman proxy conferred on remote communication means,
- (iii) Early voting through remote connection means.
- The directors may attend the meeting, which shall be deemed to be held at the registered office regardless of the location of the Chairman of the Board, by audio or video conference call.
- Meetings of the Board of Directors held by videoconference or telephone conference are permitted, even if not explicitly provided for in the bylaws.

3. Other provisions

Finally, the RDL 8/2020 contains a series of stipulations regarding the commercial register and the insolvency situation that could result during the state of emergency.

▪ Commercial registry

The period of expiry of the register entries is suspended and will be resumed at the end of the emergency state

▪ Insolvency court proceedings

- While the state of emergency, technically insolvent debtors and debtors that have given notice to the courts of the pre-insolvency negotiations under article 5 bis of the Insolvency Law, even where the period has ended, will not be required to petition for an insolvency order.
- Until the end of two months following the end of the state of emergency, judges will not accept insolvency petitions for necessary insolvency that were submitted during the state of emergency or that are submitted during those two months.
- If a voluntary petition for an insolvency order has been filed, it will be admitted for consideration, on a priority basis, even if it has been submitted at a later date

Contact



Josep Gálvez
Managing Partner

Barcelona, Spain
T: +34 646 747 816
E: josep@
galvezpascual.com

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www.galvezpascual.com

Galvez Pascual, Muntaner 292, 08021 Barcelona
Spain

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