

Implications of COVID-19 for the Spanish insurance sector

In the last two weeks, we have witnessed the publication of several laws that seek to address the significant challenges posed by the (health, economic and social) crisis caused by the COVID-19.

On Saturday 14 March, the Royal Decree 463/2020 declaring the state of alarm for the management of the health crisis situation caused by the COVID-19 (“RDEA”) was published in the Official State Gazette (BOE). Initially, the state of alarm was meant to last for a period of 15 days, but has been extended until 00:00 hours of 12 April, by virtue of the authorisation granted for this purpose by the Congress to the Government.

In addition, on 18 March the BOE has published the Royal Decree Law 8/2020, of March 17, of extraordinary urgent measures to face the economic and social impact of the COVID-19.

Amongst the measures foreseen in these two laws, and without prejudice to the existence of others that may be far more relevant for the purposes of our daily lives as citizens, we are going to focus our attention on those that have a direct or indirect impact on the Spanish insurance sector.

Possibility of keeping “insurance entities” open to the public

Article 7 of the RDEA contains a limitation on the free movement of people on public roads so movement is only permitted in the situations expressly set out in it (acquisition of foods, pharmaceutical products and commodities, attendance to health-care centers, commute to the workplace, etc.). Among the permitted movements, the RDEA includes **the commute to financial and insurance entities**.

However, there is a certain inconsistency between Article 7 and Article 10 of the RDEA, since the former allows, as indicated, the commute to insurance entities, and yet the latter does not include these establishments as an

exception to the suspension of the opening to the public of establishments and retail shops.

In any case, since movements are allowed in order to go to this type of entities, there seems to be no doubt that “insurance entities” (meaning, in our opinion, insurance companies, intermediaries and underwriting agencies) will be able to remain open to the public during the period of the state of alarm. Of course, nothing would prevent these entities from deciding not to offer this service to the public, or to offer it in a non-presential or telematic way. This would be a purely business decision, although the vast majority of insurance companies and mediators have already implemented teleworking plans and plans to provide services to their customers in a non-presential manner (telephone, e-mail, social networks, Skype, etc.).

Proceedings before the Directorate General of Insurance and Pension Funds (DGSFP)

What happens during this period with the proceedings that are being handled by the Spanish insurance supervisor, the DGSFP?

The answer to this question is found in the third additional provision of the RDEA. According to this provision, as of its entry into force on 14 March 2020, **the terms are suspended and the deadlines for the processing of proceedings by public sector entities, which naturally comprise the DGSFP, are interrupted**. These deadlines will only be resumed when the RDEA (or its extensions) ceases to be in force.

Consequently, and on the basis of the foregoing, the terms are suspended and the deadlines for the processing of ongoing proceedings before the DGSFP are interrupted for the duration of the state of alarm.

The third additional provision contains, however, **two exceptions** to this suspension of terms and interruption of deadlines:

1. The relevant authority may, by means of a reasoned decision, adopt any strictly necessary organizational

measure in order to avoid serious damage to the rights and interests of the interested party in the proceedings and provided that the interested party agrees, or when the interested party agrees that the deadline is not suspended.

2. This shall not apply to proceedings and decisions relating to situations closely linked to the facts justifying the state of alarm.

Obviously, in many proceedings brought by individuals, it will be in their interest to ensure that these proceedings are not suspended, but that deadlines are met and that the corresponding administrative decision is issued (for instance, in the case of applications for the registration in the register of mediators, non-objection requests to the acquisitions of significant holdings, etc.). In these cases, the DGSFP may decide, by means of a reasoned decision, not to suspend the proceedings, in order to avoid a serious harm to the administered party. Since the DGSFP is empowered to agree the non-suspension, entities may request this non-suspension and try to convince the administration that suspension will cause them serious harm, and that this can only be avoided if the proceeding continues until it is resolved.

Finally, one could wonder whether it is possible to begin an administrative proceeding before the DGSFP during the state of alarm (e.g. to request an authorisation). The RDEA does not expressly refer to this matter, but we understand that it is possible to initiate an administrative proceeding at the request of an interested party, although,

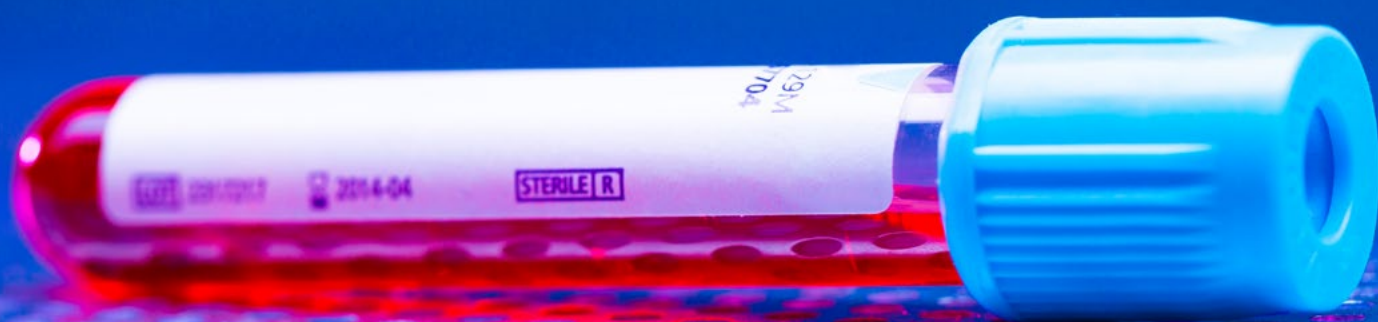
once the request has been submitted, the treatment to such proceeding will be the same as for ongoing proceedings (i.e. the proceeding will be automatically suspended, unless the DGSFP agrees otherwise by means of a reasoned decision).

Ongoing judicial proceedings

Another relevant question that arises is: what happens to ongoing judicial proceedings?

Under the second additional provision of the RDEA, as of its entry into force on 14 March 2020, **procedural terms are suspended and all deadlines provided for in procedural laws for all jurisdictional orders are suspended and interrupted**. These terms will only be resumed upon the expiry of the RDEA (or its extensions).

In line with this, in an extraordinary session held on 14 March 2020, **the Permanent Commission of the General Council of the Judiciary** agreed to suspend all scheduled hearings and procedural deadlines throughout the country, except in cases of essential services (judicial actions which, if not carried out, could cause irreparable harm, urgent confinements under article 763 of the Civil Procedure Act, adoption of precautionary measures or other actions that cannot be postponed, measures for the protection of minors under article 158 of the Civil Code, services before the duty courts of violence against women, etc.).



Again, a number of **exceptions** to this suspension and/or interruption have been set out in the RDEA:

- 1. Regarding criminal jurisdiction:** the suspension and/or interruption does not apply to habeas corpus proceedings, to proceedings entrusted duty courts, proceedings with detainees, protection orders, urgent prison surveillance proceedings and any precautionary measures relating to violence against women or minors. It may also be agreed by the competent judge or tribunal to carry out those judicial actions which, because of their urgent nature, cannot be postponed.
- 2. With respect to all other jurisdictional orders:** the interruption does not apply to: i) the procedure for the protection of the fundamental rights of the person provided for in Articles 114 et seq. of Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction, nor to the processing of the judicial authorizations or ratifications provided for in Article 8.6 of the aforementioned law; ii) collective conflict proceedings and proceedings for the protection of fundamental rights and public freedoms regulated by Law 36/2011, of 10 October, which regulates the labour jurisdiction; iii) judicial authorizations for non-voluntary confinement on grounds of mental disorder provided for in Article 763 of the Civil Procedure Act; iv) the adoption of protective measures or provisions for the protection of minors as provided for in article 158 of the Civil Code.

Furthermore, the RDEA also includes a final provision, so that the judge or tribunal may also agree to take those measures that are necessary to avoid irreparable damage to the rights and legitimate interests of the parties in the proceedings.

Thus, in general, provided that the above exceptions do not apply, any deadline that had begun at the time the RDEA came into force (deadlines to file a statement of defense, an appeal, to challenge a liquidation of interest or costs, to make allegations, etc.), has been suspended until the RDEA (or any of its extensions) ceases to be in force.

Likewise, any hearing scheduled within the effective duration of the state of alarm (preliminary hearings, trials, etc.) has also been suspended, having to wait for the corresponding court or tribunal to decide on the new date for such hearing.

Although unrelated to the RDEA, reference should be made at this point to the agreement reached on Friday 13 March 2020 (and updated 19 March 2020) by the Court of Justice of the European Union (“**ECJ**”) since this is relevant for the purposes of ongoing legal proceedings. By virtue of the above, the activity of the ECJ will continue, although priority will be given to urgent cases. The time limits for initiating proceedings and lodging appeals

will not be suspended, so the parties must comply with these time limits (although they may invoke Article 45 of the Protocol on the Statute of the Court of Justice of the European Union). The remaining time-limits for ongoing proceedings, with the exceptions foreseen for urgent proceedings, are extended by one month with effect from 19 March 2020. Those time limits will therefore end on the day on which they would have expired, but in the following month. It has also been agreed that the hearings will be suspended until 3 April 2020.

Legal proceedings pending to be initiated

Finally, how does this affect the statute of limitation and expiration periods for actions that have not yet been initiated?

This issue has also been resolved by the RDEA: by virtue of its fourth additional provision, **both the statute of limitation and expiry periods of all actions and rights are suspended for the duration of the state of alarm**. Therefore, since the entry into force of the RDEA on 14 March 2020, we must add the days of the effective duration of the state of alarm to any statute of limitation or expiration period that is in progress.

With regard to the statute of limitations, it is necessary to take into account the provisions of Act 42/2015, of 5 October, on the reform of the Civil Procedure Act, whose first final provision amended Article 1964 of the Civil Code and provided that personal actions that do not have a special statute of limitation period expire five years since the fulfilment of the obligation can be requested.

The transitory regime for existing relationships contained in this Act had recently been interpreted by the Supreme Court (Civil Chamber, Section 1), in its Judgment No. 29/2020, of 20 January. This Judgment included the different possible scenarios, concluding that:

“(i) Legal relations which arose before 7 October 2000: these would be time barred at the time of entry into force of the new law.

“(ii) Legal relations which arose between 7 October 2000 and 7 October 2005: the period of 15 years provided for in the original wording of article 1964 of the Civil Code shall apply to them.

*“(iii) Legal relations which arose between 7 October 2005 and 7 October 2015: in accordance with the transitional rule provided for in article 1939 of the Civil Code, **the statute of limitation will not elapse until 7 October 2020.***

“(iv) Legal relations arising after 7 October 2015: the new period of five years applies to them, in accordance with the current wording of art. 1964 CC.”



In what is of interest at this time, with respect to legal relations that arose between 7 October 2005 and 7 October 2015, in view of the suspension of the statute of limitation periods set out in the RDEA, it should be borne in mind that 7 October 2020 will no longer be the deadline for the exercise of such actions. The deadline (like any other statute of limitation or expiry period) will be extended by the effective duration of the state of alarm (for the moment, and after the approval of the extension authorized by the Congress, at least 30 days).

Final remark on the differences between suspension and interruption

As mentioned above, the RDEA regulates in the second, third and fourth additional provisions the “*Suspension of procedural deadlines*”, the “*Suspension of administrative deadlines*” and the “*Suspension of the statute of limitation and expiry period*”, respectively (and according to the titles of each provision).

However, the second additional provision refers to “*suspension of terms and suspension and interruption of deadlines provided for in procedural laws*”. Similarly, the third additional provision states that “*terms are suspended and deadlines are interrupted*” for the processing of ongoing proceedings by public sector entities.

Therefore, what is the difference between suspension and interruption of a deadline?

In general, it is considered that when an **interruption** occurs, the original term is fully reinstated when the term is resumed. In contrast, in the case of **suspension**, once the term is resumed, the original full term does not begin again and only the time remaining when the suspension was agreed can be considered.

With regards to the **statute of limitation and expiry periods**, the RDEA only refers to the suspension (and not the interruption) of the deadlines. Therefore, the RDEA paralyzes the term for as long as the cause for suspension lasts (in this case, the state of alarm), and the term is resumed when this cause disappears, both for the statute of limitation and the expiry periods of actions.

The issue is less clear regarding **judicial and administrative proceedings**, as the RDEA includes references to both the suspension of terms and the suspension and interruption of deadlines. On 20 March 2020, the Subdirector General of the Consultative Services of the State Attorney’s Office, in response to a consultation regarding the interpretation of the third additional provision of the RDEA, concluded that the periods referred to in said provision were suspended at the time of the declaration of the state of alarm, “*resuming for the remaining period when the said state of alarm, whether initial or extended, ceases, and in no case shall the calculation of the periods start again from zero*”. This consultation does not, however, refer to the second additional provision, which also makes reference to both the suspension and the interruption of the time limits.

Therefore, this issue will have to be considered on a case by case basis, taking into account the criteria of the appropriate judge or tribunal. However, a conservative approach, in general terms, would be to consider that the deadlines have been suspended and not interrupted.

Corporate law considerations

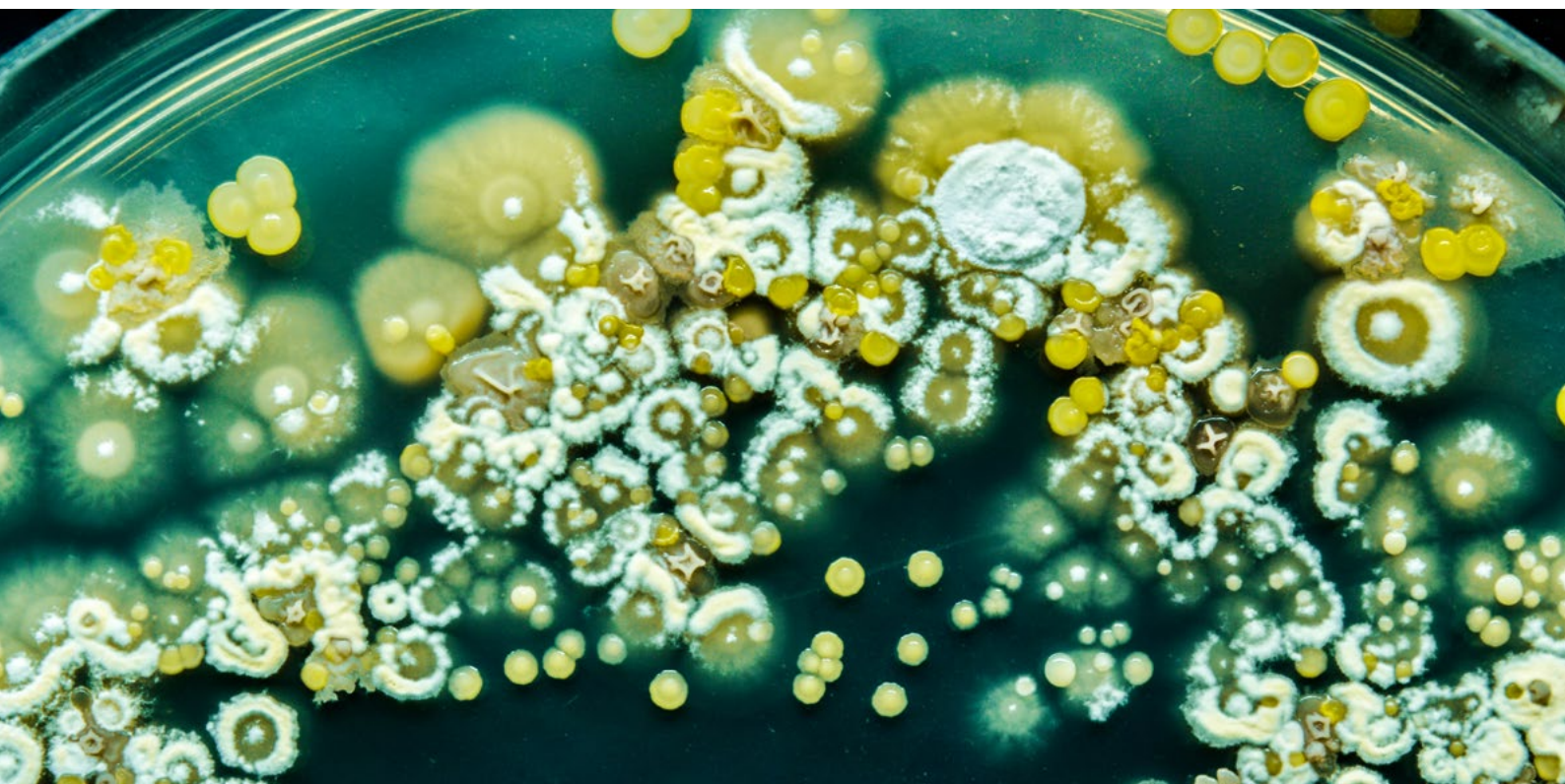
Similarly, prompted by the state of alarm declared through the RDEA, on March 18, the Royal Decree-Law 8/2020 of March 17, on extraordinary urgent measures to deal with the economic and social impact of the COVID-19 (“**RDL 8/2020**”) was published in the Spanish Official Gazette (BOE). By means of the RDL 8/2020, the Spanish government is attempting to incorporate a series of additional measures into the legal system in order to respond to the exceptional economic circumstances caused by the COVID-19. For the purposes of this article, Chapter V of the law is noteworthy, as it establishes a series of additional measures to, according to its preamble, “*facilitate an appropriate response to this exceptional situation*”, through the approval of extraordinary measures applicable to the functioning of the governing bodies of private legal entities and extraordinary measures applicable to the functioning of the governing bodies of listed companies. In this regard, Article 40 establishes a series of exceptional measures applicable to legal persons governed by private law. In particular we would like to emphasize the following:

a) The first section establishes the possibility that the meetings of the governing and administrative bodies of the associations, of the civil and corporate entities, of the governing council of the cooperative entities and of the board of trustees of the foundations may be held via videoconference (under the condition that the authenticity

and the bilateral or multilateral connection in real time are ensured through image and sound of the remote attendees). Furthermore, this rule also applies to the delegated commissions and other obligatory or voluntary commissions that any of these entities may have. It is also established that the meeting will be understood to be held at the domicile of the legal entity, which may be relevant, among others, for tax purposes.

b) The second section establishes that, during the effective duration of the state of alarm, “*the agreements of the governing and administrative bodies of the associations, of the civil and corporate entities, of the governing council of the cooperative entities and of the board of trustees of the foundations may be adopted by means of a written vote and without a session, subject to the decision of the president, and mandatorily if, at least, two of the members of the body request it. The same rule shall apply to the delegated commissions and to the other obligatory or voluntary commissions that may have been set up*”. Therefore, while the state of alarm remains in effect, any private law company (of those listed in the article itself) may hold meetings of its governing and administrative bodies in writing and without a session, and this may be done without the need for the company’s bylaws to provide for this alternative.

Article 40.2 of RDL 8/2020 refers, undoubtedly, not only to the board of directors of these entities, but also to the holding of shareholders’ meetings. The holding of board of directors’ meetings and general meetings through the “written and without session” system has been historically controversial, since Article 248.2 of the Royal Legislative Decree 1/2010 of 2 July, approving the Companies Act (“**Companies Act**”), only regulates



this system establishing that “*public limited companies (sociedad anónima) may only hold meetings of the board of directors in writing and without a session provided that none of the members of the board object to such a procedure*”. Consequently, it appears that, since nothing is said about limited companies (*sociedades limitadas*), this type of company cannot (or, rather, could) hold meetings of the board of directors in writing and without a session unless it is expressly regulated in its bylaws. The Companies Act is also silent on the possibility of the general meeting of shareholders being held by means of the written system and without a session, which is why much of the doctrine, including many commercial registrars, rejected this possibility. Nevertheless, the General Directorate of Registries and Notaries has already confirmed that the general meeting of shareholders may be held in writing and without a session, provided that this is stipulated in the company’s bylaws. Therefore, with the entry into force of RDL 8/2020, as long as the state of alarm remains in force, both the meetings of the administrative bodies (any type of administrative body, although it seems that this article makes special reference to the board of directors by referring to the figure of the president) and of any governing body (including the general shareholders meetings, general assemblies, etc.) may be held without the requirement that this alternative is expressly provided for in their bylaws.

c) Third section of Article 40 establishes that, exceptionally, the annual accounts of the companies shall not be drawn-up within the term of three (3) months since the closing of the financial year as established in article 253 of the Companies Act, but may be formulated within three (3) months from the day on which the state of alarm ends. In this way, the Spanish government is trying to alleviate those obligations that, given the circumstances, would be very difficult to comply with or would even be contrary to compliance with the free movement restriction and the confinement obligations imposed by the RDEA.

d) In the same vein, fourth section of Article 40 provides that where the annual accounts of a legal person had already been drawn up at the date of the declaration of the state of alarm, the audit of those accounts may be carried out within two (2) months after the end of the state of alarm.

e) Regarding the approval of the annual accounts of legal persons, the fifth section of Article 40, as a consequence of the provisions of the third and fourth sections of the same article, provides that these may be approved within a period of three (3) months after the end of the drawing-up period.

(f) Additionally, the sixth section establishes that in the event that the call to the general shareholders’ meeting has been made prior to the declaration of the state of alarm,

the administrative body may (i) postpone; or (ii) revoke the call by means of a notice published at least forty-eight hours in advance to the meeting on the company’s website and, if the company does not have a website, in the BOE. In the event of the revocation of the call resolution, the board of directors must issue a new call within one month since the date on which the state of alarm ends.

g) The possibility for the notary required to attend the general shareholders’ meeting by means of remote communication is established in the seventh section.

h) The eighth section prohibits the exercise of the right of separation, even when a legal or statutory cause concurs.

i) On the other hand, the ninth section establishes that the reimbursement of the contributions to the cooperative members opting out during the effective period of the state of alarm may be extended up to six (6) months after the end of the state of alarm.

j) The tenth section establishes that in the event that, during the state of alarm, the term of the company specified in the bylaws expires, the dissolution of the company will not have full legal effect until two (2) months after the end of the state of alarm.

k) Likewise, the eleventh section establishes that in the event that, before the declaration of the state of alarm and during the said state, there is a legal or statutory cause for the dissolution of the company, the legal period for the call by the administrative body of the general meeting of shareholders to adopt the agreement for the dissolution of the company or the agreements which have the purpose of enervating the cause, is suspended until the end of the said state of alarm.

l) Finally, with regard to the liability regime of the directors, the twelfth section establishes that should the legal or statutory cause for dissolution have occurred during the period of the state of alarm, the administrators will not be liable for the corporate debts incurred during that period.

Article 41 of RDL 8/2020 establishes a series of measures to be applied during the financial year 2020 by companies whose securities are admitted to trade on a regulated market in the European Union. These measures are as follows:

a) The obligation to publish and submit its annual financial report to the CNMV, as well as the audit report of its annual accounts, may be fulfilled up to six (6) months since the end of the financial year. This period shall be extended to four (4) months for the publication of the interim management statement and the half-yearly financial report.



b) The ordinary shareholders' general meeting may be held within the first (10) months of the financial year.

c) The board of directors may include in the call of the shareholders' general meeting the possibility of attending by electronic means and voting remotely, even though this is not provided for in the company's bylaws. If the call was made prior to the declaration of the state of alarm, this may be provided for by means of a supplementary call (at least five (5) days prior to the date of the meeting).

d) A series of measures are also established for cases where the measures imposed by the public authorities prevent the general meeting from being held in the place and physical location established in the notice of call and it is not possible to attend by electronic means and/or to vote remotely. These measures are:

i. if the meeting has been validly constituted in that place and venue, it may be agreed by the meeting to continue the meeting on the same day in another place and venue within the same province, establishing a reasonable period of time for the relocation of the attendees.

ii. if the meeting cannot be held, the holding of the meeting in a later call may be announced with the same agenda and the same publicity requirements as the meeting not held, at least five (5) days prior to the date set for the meeting.

In this case, the administrative body may arrange in the supplementary call for the meeting to be held exclusively by electronic means, i.e. without the physical attendance

of the members or their representatives, provided that the possibility of participating in the meeting by each and every one of these means is offered: (i) electronic attendance; (ii) representation conferred on the president of the shareholders' general meeting by means of distance communication and (iii) advance voting by means of remote communication. Any of these means of participation in the shareholders' general meeting may be arranged by the directors even if it is not envisaged in the company's bylaws, provided that it is accompanied by reasonable guarantees to ensure the identity of the subject exercising his or her voting rights. The directors may attend the meeting, which shall be deemed to be held at the registered office regardless of the location of the president of the shareholders' general meeting, by audio or video conference.

Finally, as for non-listed companies, it is established that the agreements of the board of directors and the agreements of the audit committee that, where appropriate, must be reported in advance, shall be fully valid when they are adopted by videoconference or multiple conference call, even if it is not foreseen in the company's bylaws, provided that all the directors have the necessary means and that the secretary is able to confirm their identity, which should be expressed in the Minutes and in the certification of the agreements issued. In such case, the session will be considered unique and held at the place of the registered office.

Regarding Article 42 of the RDL 8/2020, the period of expiry of the registration entries, the preventive notes, the marginal notes and any other registry entries susceptible to cancellation due to the passage of time is suspended.

This measure will affect to a great extent those documents that were pending of registration at the date of the declaration of the state of alarm, as well as those acts that must be registered during the validity of the state of alarm. The same article states that the calculation of the deadlines will be reinstated terms will be resumed the day after the end of the state of alarm or, if applicable its extensions.

Finally, Chapter V concludes with Article 43, which establishes that, during the effective period of the state of alarm, the debtor who is in a situation of insolvency will not have the duty to request the declaration of bankruptcy and, in this sense, the judges will not admit for processing the necessary bankruptcy applications that may have been presented during this state or that may be presented during these two (2) months, until two (2) months have elapsed since the end of the state of alarm. In contrast, the first section of Article 43 establishes that if an application for voluntary declaration of bankruptcy is presented, it will be admitted for processing, with preference, even if it is at a later date.

On the contrary, the second section of this article establishes that the debtor who has notified the competent court for the declaration of the bankruptcy, the initiation of negotiations with the creditors to reach a refinancing agreement, or an extrajudicial payment agreement, or to obtain adhesions to an anticipated proposal of agreement, will not have neither the duty to request the declaration of bankruptcy either, while the state of alarm is in force, even if the period referred to in the fifth section of article 5 bis of Law 22/2003, of 9 July, on Bankruptcy, has expired.

In short, the RDEA entails that:

- “Insurance entities” (meaning insurance companies, intermediaries and underwriting agencies) may remain open to the public during the period of the state of alarm.
- The terms are suspended and the deadlines for the processing of ongoing proceedings before the DGSFP are interrupted for the duration of the state of alarm, without prejudice to the power of the DGSFP to decide, by means of a reasoned decision, not to suspend them when this is deemed necessary to avoid serious harm to the administered party.
- As long as the exceptions provided for in the RDEA are not applicable, terms are suspended and deadlines provided for in procedural laws for all jurisdictional orders are suspended and interrupted. Any hearing scheduled within the effective duration of the state of alarm (preliminary hearings, trials, etc.) is also suspended.
- Both the statute of limitation and expiry periods of all actions and rights are suspended for the duration of the state of alarm. Therefore, since the entry into force of the RDEA on 14 March 2020, we must add the days of the effective duration of the state of alarm to any statute of limitation or expiration period that is in progress.
- The meetings of the governing bodies may be held by videoconference as well as “in writing and without



a session”, with no need for these alternatives to be expressly provided for in the bylaws of these entities. In the case of companies whose securities are admitted to trade on a regulated market in the European Union, the board of directors may provide in the notice of the general meeting for attendance by telematic means and remote voting, even if this is not provided for in the company’s bylaws.

- The period for the formulation and approval of the annual accounts is extended so that the annual

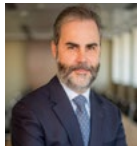
accounts for the 2019 financial year must be formulated within three (3) months of the end of the alarm state and must be approved within three (3) months of the end of said formulation period (i.e. within six (6) months of the end of the alarm state). In the case of companies whose securities are admitted to trade on a regulated market in the European Union, the period for approval of the annual accounts is extended to the first ten (10) months of the financial year.

If you want to know more about the legal challenges of COVID-19, please click [HERE](#) and [HERE](#).

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