

CORONAVIRUS: ADMINISTRATIVE MEASURES DURING THE STATE OF EMERGENCY IN SPAIN

The state of emergency declared on 14 March by means of Royal Decree 463/2020, to manage the health crisis situation caused by the COVID-19 virus ("RD 463/2020") will be in force at least until midnight on 10 May, according to the latest decree extending it (Royal Decree 492/2020, of 24 April), further extensions notwithstanding.

ADMINISTRATIVE MEASURES

The main substantive measures currently in force as a result of RD 463/2020 (which, in some cases, go far beyond the measures permitted under a state of emergency according to article 11 of Organic Law 4/1981, of 1 June, on States of Emergency, Exception and Siege) or in its implementing legislation, affecting companies, are:

- a) The possible temporary requisition of goods and the imposition of obligatory personal duties is envisaged.
- b) All classroom-based educational activity is suspended.
- c) The following are closed to the public:
 - Retail premises and establishments, with the exception of retailers of food, beverages, essential products and goods, pharmacist and healthcare establishments, veterinary centres or clinics, opticians and sellers of orthopaedic supplies, hygienic products, press and stationery, automotive fuels, tobacconists, IT and telecommunications supplies, pet food, e-commerce, telephone or postal sales, dry-cleaners, laundromats and professional home hairdressing.

This scenario has raised the doubt as to what should be understood by essential goods and, in our opinion, it should not affect those activities that are not considered retail trade (group G, sections 4711 et seq. of the National Classification of Economic Activities -"CNAE"-). As such, industry, wholesale trade, transport and professional activities, among others, would not be affected.

It is envisaged, in any event, that the necessary conditions will be established to facilitate the transport of goods throughout Spain, with a

Key issues

- How long does the State of Emergency last?
- What activities are suspended? Does it affect any establishment?
- Can sporting, cultural or recreational activities be carried out?
- What happens to critical operators?
- What restrictions are there on freedom of movement?

view to guaranteeing the supply and delivery of the products acquired online, by telephone or correspondence.

- Museums, archives, libraries, monuments.
 - Premises and establishments in which public performances are held, those sports and leisure activities indicated in the Annex to RD 463/2020.
- d) All activities of the hotel and restaurant sectors are suspended (although catering can be provided exclusively on a take-away or home delivery basis). Although there were doubts in the initial wording of RD 463/2020 as to whether this measure meant that hotels would close, Order SND/257/2020, of 19 March, ordered the closure of hotels and similar establishments, tourist accommodation and other short-term accommodation, campsites, caravan sites and similar establishments, according to the following rules:
- Closure will take place when the establishment has no more guests to cater for and, in any event, within a maximum term of seven calendar days (meaning that they had to close by 26 March).
 - The arrival of new guests prior to the date of closure is not expressly prohibited, although the legislation can be construed to mean that if an establishment foresaw closing prior to 26 March since there were no guests left, then logically no new guests should have been accepted after 19 March, when the closure order entered into force.
 - Exceptionally, the provision of surveillance, security and maintenance services for these establishments is permitted.
 - The closure order does not affect establishments that house guests who, at the time the state of emergency was declared, are resident on a regular or seasonal basis, provided their occupants have the necessary infrastructure in their living spaces to carry out their basic activities and no new guests will be admitted.
 - The closure will remain in force for the duration of the state of emergency and any extensions.

Since the entry into force of RD 463/2020, different rules have been issued declaring certain tourist accommodation facilities to be essential services, in order to meet the needs derived from the health crisis caused by COVID-19 and guarantee the provision of essential services.

- e) Street parties, parades and local festivals are suspended.
- f) Any other activity or establishment that the competent authority considers may entail a risk of contagion is suspended. In this regard, the Ministry of Health is authorised to modify, broaden or restrict the measures, places, establishments and activities that can be opened to the public, for justified reasons of public health. Neither is there an explanation of what "risk of contagion" means, and in particular, whether it refers to risk of contagion to the public or also among employees. In any event, it fails to justify why retail establishments represent a risk of contagion for the public, and must close, save for some exceptions, while other establishments do not represent a risk of contagion per se, for the public or their employees. Neither does it explain why an establishment must close to the public

because there is a risk of contagion to the same, but that it can remain open for its employees.

However, taking into account the spread of the disease and with a view to restricting travel, Royal Decree-Law 10/2020, of 29 March, was passed, regulating recoverable paid leave for employees who do not provide essential services, with the aim of reducing population movements in the context of the fight against COVID-19 ("**RDL 10/2020**") and establishing labour measures that involved the cessation of most economic activities from 30 March to 9 April, except for those stipulated in said measure. Clifford Chance has prepared several specific client briefings on labour issues, available [here](#) and [here](#).

- g) The temporary intervention and occupation of industries, factories, installations or premises of any kind is authorised, including privately owned health centres, services and establishments and those pertaining to the pharmaceutical sector. Section eight of Order SND/232/2020, of 15 March, has ordered that private health centres and establishments, their personnel, as well as occupational accident mutual insurance entities, must mandatorily be placed at the disposal of Autonomous Regions when it is not possible to cater for the healthcare needs of the population appropriately with the Autonomous Region's own means.
- h) According to Order TMA/306/2020, of 30 March, containing instructions on the reduction of passenger transport services during the term of validity of RDL 10/2020, the passenger public transport services by road and rail, of an urban and suburban nature, which are subject to public contract or publish service obligations (PSO), or are publicly owned, regardless of the Administration that owns or is responsible for the same, will reduce their offer of services and frequencies until they reach service levels similar to those of weekends, considering the need to provide access to work for personnel working in essential services and access for citizens to basic services. This reduction applied while RDL 10/2020 was in force (that is, until 9 April).

The offer of passenger transport services other than urban or suburban, subject to public contract or PSO will adapt to the specific needs of demand, being reduced as much as possible in accordance with the terms of Order TMA/273/2020, of 24 March, by the operators or competent Administrations (a reduction of at least 70%). In relation to intercity and long-distance transport services not subject to public contract or public service obligations, a reduction of at least 70% is established, meaning that operators can adjust their offer in the context of the current regulatory framework in line with actual demand. These reductions imposed by Order TMA/273/2020 will be in force throughout the duration of the state of emergency.

- i) In terms of overland goods transport, the Resolution of 26 March 2020 from the Directorate General for Overland Transport established a temporary exception until 12 April to the rules on driving and rest times, with the rest of the safeguards envisaged in said Resolution being complied with. The subsequent Resolution dated 14 April approved similar exceptions applicable until 31 May.
- j) The competent authorities are empowered to adopt the necessary measures to ensure the supply of electricity, products derived from

petroleum and natural gas, pursuant to articles 7 of Act 24/2013, of 26 December, on the Electricity Sector, and articles 49 and 101 of Act 34/1998, of 7 October, on the Hydrocarbons Sector.

- k) Order SND/274/2020, of 22 March, adopted the measures necessary to ensure the proper operation of the services for the supply of water for human consumption and urban waste water services to the population, considered to be essential services for society due to their close link to human health. This provision affects all entities, public and private, who provide or help to provide the supply of water for human consumption to the population as well as urban waste water services.
- l) Operators of essential services are obliged to ensure the supply for the population and the essential services themselves, as well as the critical operators (pursuant to Act 8/2011, of 28 April) to adopt the measures necessary to ensure the provision of the services for which they are responsible. Provision four, section 5, of Order INT/225/2020, of 15 March, specifies the impact of this rule, in principle, on these operators, as well as enhancing the security of these infrastructures, and authorises the Secretary of State for Security to gather information from these operators on the infrastructure maintenance personnel.
- ll) Order SND/276/2020, of 23 March, among other provisions, obliges manufacturers and holders of marketing authorisations of the medicines included in the annex to said norm, regardless of whether they are acting on the own account or via contracts with distribution entities, to establish the measures necessary to ensure the supply of the medicines included in the annex in question to the health centres and services according to their needs (including holiday periods and weekends), potentially even demanding daily supplies.
- m) Public and private communications media are obliged to insert any messages, announcements and communications that the public authorities consider it necessary to release.
- n) By means of Royal Decree-Law 11/2020, of 31 March, which adopts urgent supplementary measures in the social and economic sphere to address COVID-19 ("RDL 11/2020") restrictions are imposed on commercial communications by entities involved in the activity of gambling included within the sphere of Act 13/2011, of 27 May, Regulating Gambling, including the prohibition on commercial communications that, implicitly or expressly refer to the situation of exception derived from the COVID-19 disease or that urge people to participate in gambling activities in this context.
- ñ) The terms of expiry and limitation of any actions and rights are suspended. This does not mean that actions and rights cannot be exercised, just that the term of expiry or limitation of the same is suspended. Procedural and administrative activities are also suspended, with some exceptions. Moreover, RDL 11/2020 envisages the extension of the terms for challenging certain actions via administrative channels, which will begin to run as of the business day following the date on which the end of the state of emergency is declared. It also envisages that the period running from the entry into force of RD 463/2020 to 30 April 2020 will not count for the

purposes of the maximum length of the term for enforcing decisions of economic-administrative bodies.

RDL 16/2020 establishes that the courts will not be in recess from 11 to 31 August, which will be considered working days for all court activities. It also establishes that the procedural deadlines suspended during the state of emergency will recommence, so that they begin again once the suspension is lifted. Likewise, the deadline for lodging, announcing or preparing appeals against court judgments and other decisions ending the proceedings and notified during the suspension of deadlines or during the 20 business days after the suspension is lifted, will be extended for a term equal to that granted for their respective lodging, announcement or preparation. Clifford Chance has prepared a specific client briefing on deadlines, available [here](#).

In addition, both Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures for addressing the economic and social impact of COVID-19, and RDL 11/2020 have established, among others, administrative measures in the sphere of public procurement, foreign investment and expiry of rights of access and connection to points of the electricity network already granted. Clifford Chance has prepared a specific client briefing on these measures, available [here](#), [here](#) and [here](#).

Essentially, once the declaration of the state of emergency and its extensions has been lifted, it is envisaged that an Action Plan will be approved in order to expedite judicial activity in the labour and contentious-administrative jurisdictions as well as in the Commercial Courts, in order to contribute to achieving the objective of a rapid economic recovery from the crisis.

Aside from these measures, RD 463/2020 also resolves to restrict the freedom of movement of persons in the public realm, with the exception of the following activities, which must be performed individually, unless one is accompanying disabled persons, minors, the elderly or for any other justified reason:

- Acquisition of foodstuffs, pharmaceutical products and essential items.
- Attending health centres, services and establishments.
- Travel to the workplace in order to perform one's labour, professional or business activity.
- Return to one's usual place of residence.
- Going to attend to and care for the elderly, minors, dependent persons, disabled persons or particularly vulnerable persons.
- Going to financial and insurance entities.
- Due to reasons of force majeure or situations of need.
- Any other activity of a similar nature.

Children under the age of 14 years may accompany an adult who is responsible for them when carrying out the above activities. In addition, Order SND/370/2020, of 25 April, establishes the conditions for the movement of children at this time.

Order INT/239/2020, of 16 March established restrictions on persons crossing land borders, entailing the prohibition of the entry of travellers at national land borders, from 00:00 hours on 17 March 2020, until 24:00 hours on 26 March

2020. These restrictions have been extended until midnight on 10 May by Order INT/368/2020. This prohibition:

- a) Does not affect goods.
- b) Does not prevent access by:
 - Spanish citizens.
 - Persons resident in Spain.
 - Residents of other EU Member States or Schengen States travelling home.
 - Cross-border workers.
 - Anyone who provides documentary justification of reasons of force majeure or situations of need.
 - Foreign personnel accredited as members of diplomatic missions, consular offices and international bodies based in Spain, provided the travel is linked to the performance of their official duties.

In relation to the above, Order TMA/278/2020, of 24 March, prohibited, with some exceptions, all flights between airports in the Republic of Italy and airports in the Kingdom of Spain, as well as the entry into Spanish ports by passenger vessels such as cruise ships originating in any port, as of 00:00 hours on 25 March 2020. These measures will be in force throughout the duration of the state of emergency, by virtue of Order TMA/330/2020, of 8 April.

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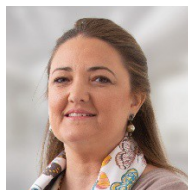
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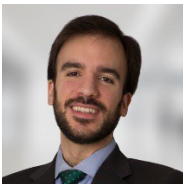
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