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EMERGENCY MEASURES COVID-19: Relaxation of certain commercial obligations

This News Alert XIX deals with the measures to relax certain commercial obligations provided for in Article 40 of RDL 8/2020 of 17 March, and subsequently amended by Final Provision One of RDL 11/2020 of 31 March.



RELAXATION OF CERTAIN COMMERCIAL OBLIGATIONS

- The governing and administrative bodies of associations, civil corporations, business enterprises, cooperatives and foundations, as well as boards or assemblies of members or associates, will be allowed, over the duration of the state of emergency and even if not provided for in their bylaws, to:
 - ∧ Hold their meetings by videoconference or telephone conference call, provided that all the members of the body have the necessary means at their disposal and their identity is recognised by the secretary and recorded in the minutes, which will be sent by e-mail to all members.
 - ∧ Adopt resolutions by written vote without a meeting if so decided by the chairman or requested by at least two members of the body.

- Annual accounts and, if legally required, the management report and other documents:
 - ∧ Preparation deadline: The three-month period from the end of the financial year is suspended and will be resumed for a further three months as from the date of termination of the state of emergency.
 - ∧ Deadline for auditing the accounts (statutory and voluntary): If the accounts for the previous financial year had already been drawn up on the date on which the state of emergency was declared or during the same, the time limit for auditing the accounts will be understood to be extended by two additional months as from the end of the state of emergency.
 - ∧ Approval period: within three months as from the end of the period for drawing up the annual accounts.
 - ∧ Change in announcements of general meetings published before the declaration of the state of emergency to be held after said declaration: the administrative body may modify the place and time initially envisaged and may even revoke the resolution through a notice published on the company's website or, if none exists, in the Official State Gazette at least 48 hours in advance.
 - If the resolution convening the meeting is revoked, the new announcement must be made within one month of the date on which the state of emergency terminates.
 - ∧ The proposed distribution of profits contained in accounts that have already been drawn up may be replaced by another proposal in the event that the



ordinary general meeting had been convened after the entry into force of Royal Decree Law 8/2020 (new paragraph 6.(ii) of Article 40).

- ^ The postponement of the decision on the profit distribution to a later meeting is also allowed for cases in which the ordinary general meeting has already been convened.
 - In both cases, the replacement of the proposal or the postponement of the decision on the proposed profit distribution must be supported by both the management body and, where applicable, the auditor.
- ^ Conclusion of the duration of a company set by its bylaws; in the event that this occurs during the state of emergency, full dissolution will not take place until two months after the end of the state of emergency.
- ^ Occurrence of grounds for dissolution (by law or under the bylaws): if this situation occurs before and during the state of emergency, the legal period for the convening of the general meeting by the administrative body to adopt the dissolution resolution will be suspended until the end of the state of emergency.
 - If the grounds for dissolution (by law or under the bylaws) have arisen during the state of emergency, the directors will not be liable for the company's debts incurred during that period.

o Official books:

- ^ According to the FAQ document issued by the Spanish Association of Property and Mercantile Registrars, considering the general suspension of ordinary deadlines and particularly the deadline for the preparation of accounts, to which the deadline for the official stamping of the books of account is related, it should be interpreted that the deadline for having the books stamped is suspended until the end of the month following the deadline for the preparation of the accounts, i.e. four months after the end of the state of emergency.

o Other flexibility measures:

- ^ Any notary asked to attend a general meeting of shareholders and certify the minutes of the meeting may use distance communication methods in real time to ensure the fulfilment of his or her functions.



- ^ The exercising of shareholders' right of separation is suspended **until the end of the state of emergency.**
- ^ **Dissolution by law or under the bylaws is suspended until the end of the state of emergency.**

We will continue to inform you of any new socio-economic measures and/or changes in legislation that may arise as a result of the COVID-19 pandemic.

The professionals that regularly work with your company are at your disposal for any clarification or additional information you may require in relation to the content of this Alert.
Please contact us by telephone at 934 677 414.

Yours sincerely,
AUDICONSULTORES

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