



LUPICINIO

INTERNATIONAL LAW FIRM

COVID-19 LEGAL SERVICES

DETECTING OPPORTUNITIES AND ASSESSING RISKS

The international pandemic is an unprecedented crisis of enormous magnitude that requires companies to take measures, both to deal with the negative economic and social impact of COVID-19 and to detect risks and opportunities related to it.

The state of alarm is mentioned in *article 116 of the Spanish Constitution of 1978*, indicating that the Government, through a decree agreed upon by the Council of Ministers, can declare the state of alarm. Therefore, *Royal Decree 463/2020 of 14th March* was enacted, which declared the state of alarm, including limitations to freedom of movement, temporary requisitions, obligatory personal benefits and containment measures in the fields of educational, labour, commercial and recreational or in places of worship.

Lupicinio International Law Firm (“**LILF**”) wants to offer solutions and legal responses to businesses to help them with those aspects that are of greatest concern to them.

Lupicinio International Law Firm is a standalone Firm that essentially stands out for its three unique values:

1. Within the historical building that we have occupied for 30 years, Lupicinio welcomes or has its Core Team - Corporate and Litigations -, a band of specialized and experienced Senior counsels. The model guarantees the stability of the absent teams due to the skirmishes of lateral hirings.
2. LILF has the vision and vocation of a legal boutique. The term boutique is synonymous with the structural transformation of law firms. The Boutique model - specialized units operating with great technical autonomy - is displacing the giant Anglo-Saxon pyramid structures. The so-called global Lawyers' Office, which is very much focused on quantity, increases the costs of the legal service and adds more quality to that of the legal Boutiques.
3. LILF always has an international vision. Our immense network of prestigious legal and institutional contacts in the five continents and our passion for strengthening Spanish business in a battle for internationalization - more urgent than ever - and for a "meaningful" transformation makes us good partners in the long journey of Covid and post-Covid.

1. Crisis management/Force Majeure
2. Administration
3. Labour
4. Finance/Banking
5. Insurance
6. Tax
7. European Union
8. Data Protection/Internet/Cyber Security
9. Antitrust Law
10. Litigation
11. Civil
12. Commerce

1. CRISIS
MANAGEMENT/FORCE
MAJEURE

CRISIS MANAGEMENT/FORCE MAJEURE

	Solutions and legal responses
Crisis Management	<p>Companies must address this exceptional circumstance with clear and effective procedures.</p> <p><i>Our assistance in this regard would consist of:</i></p> <p>Advice in the preparation and/or revision of resources, policies, internal risk management procedures, such as Crisis Management, Community Management and more general aspects such as Business Resilience Plans and Compliance Manuals for crises. Analysis and proposals of solutions both global and for individual businesses. Assistance in detection, planning and the execution of short, medium and long term measures in these areas.</p> <p>We are conscious that in various sectors , including airlines, retail, tourism and leisure industry millions of workers around the whole world remain confined to their homes while their companies suffer an unprecedented crisis and are forced to review traditional models that will not work- as they are- in a world governed by rules of prevention and anti-pandemic isolation.</p> <p>At this points many executive managers, directors and shareholders are committed to achieving a “reconstruction of their business models”. Now, their job is not only the management of their traditional proceedings - which will much less time - but also carrying out a “transformational brain-storming” aimed at reedifying a survival present and to build an armored medium and long-term business model that is able to manage pandemic-like situations and other possible systemic crises (e.g. environmental) that could affect mobility, presence and activity.</p> <p>On the other hand, some governments will support their business community with flexible, intelligent policies. Others will not and this may oblige some corporations to relocate in other jurisdictions. This may mean enormous efforts on various fronts. Transformation is now a priority and we are there, accompanying our clients in their thoughts and in their moves, sharing their challenges.</p>

CRISIS MANAGEMENT /FORCE MAJEURE

	Solutions and legal responses
Force Majeure/Rebus Sic Stantibus Clause	<p>In terms of contracts (i.e. distribution, supply, agency, aerial, maritime and land transport of goods, logistics), the invocation of force majeure and the rebus sic stantibus clause will be applied more extensively.</p> <p><i>Our assistance in this regard would consist of:</i></p> <ol style="list-style-type: none">a. The possibility of applying force majeure clauses or <i>adverse effect material</i> (such as arguments for rejecting said application, according to what the contractual position of the company may be).b. Analysis of laws and case law in terms of how force majeure and <i>adverse effect material</i> is interpreted.c. Advice regarding alternate dispute resolution mechanisms. Possible difficulties in the local execution of judgements or foreign arbitral awards. Assistance in negotiations when facing a difficult judicial or arbitral proceeding.d. Problems with the foreign law applicable to the contract does not provide for the force majeure established in Spanish law.e. Advice regarding suspension and early termination of contracts, as well as legal and contractual limits thereof.

CRISIS MANAGEMENT/FORCE MAJEURE

	Solutions and legal responses
Non-legal obligations and other regulatory matters	<p>In view of the crisis situation created, which significantly affects vulnerable sectors, Article 4 of <i>Royal Decree-Law 8/2020, of 17th March, of extraordinary urgent measures to deal with the economic and social impact of COVID-19</i> (“<i>Royal Decree-Law 8/2020</i>”) establishes that the supply of natural gas, electricity and water to those consumers who are vulnerable cannot be suspended.</p> <p><i>Our assistance in this regard would consist of providing advice on such forced and uninterrupted supply and on the related current regulations.</i></p>

2. ADMINISTRATION

ADMINISTRATION

	Solutions and legal responses
Central Purchasing	<p>The crisis situation created requires the optimization of the processes of purchasing goods and supplies in a highly competitive global market. For the time being, this optimization affects only certain health-related products, as it is the highest priority, but it cannot be ruled out that in successive phases it will affect other products and supplies.</p> <p>In this sense, <i>article 4 of Royal Decree-Law 6/2020, of 10th March, in which urgent measures are adopted in terms of the economy and for the protection of public health</i>, the concept of vulnerable group in <i>Law 1/2013 of 14 May ("Royal Decree-Law 6/2020")</i> provides for the centralized supply by the Administration of medicinal products, medical devices or any product necessary for the protection of health when affected by exceptional supply difficulties in order to ensure their better distribution.</p> <p>On the other hand, <i>Royal Decree Law 21/2020, of 9 June, on urgent measures of prevention, containment and coordination to face the health crisis caused by COVID-19</i>, establishes the measures for the supply of information, supply and manufacture of medicines considered essential (<i>art. 19</i>) and regulates the granting of prior licences for the operation of facilities for the manufacture of medical products without CE marking to guarantee their rapid supply (<i>art. 20</i>).</p> <p><i>Our assistance in this regard would consist of:</i></p> <p>Advice regarding the legal certainty that must accompany such contracts and other related aspects.</p>

ADMINISTRATION

	Solutions and legal responses
Public Contracting	<p>Public contracting is another area that is going to be affected by this crisis.</p> <p><i>Article 34 of Royal Decree-Law 8/2020</i> introduces measures relating to public contracting surrounding the suspension or modification of contracts pending execution, distinguishing them from those whose execution becomes impossible and those that can still be fulfilled but within other time limits.</p> <p><i>Our services include advice relating to these aspects of contracting with public authorities and other public entities.</i></p>
Appeals/Administrative Decisions	<p><i>Additional Provision Eight of Royal Decree Law 11/2020, of 31st March, which adopts additional urgent measures in the social and economic field to deal with COVID-19</i>, has established that the calculation of the period for lodging appeals through administrative channels or for initiating any other dispute procedure (conciliation, mediation or arbitration) to replace it, which may have unfavourable effects on the interested party, will be calculated from the working day following the date on which the alarm condition was declared.</p> <p><i>Additional Provision Nine</i> of the same Royal Decree-Law establishes that the period from the entry into force of <i>Royal Decree 463/2020</i> until 30th April 2020 shall not be counted for the purposes of the maximum duration of the period for execution of the resolutions of the economic-administrative bodies. Furthermore, the periods of limitation and expiry of any actions and rights provided for in the tax regulations are suspended. Finally, <i>Royal Decree 537/2020 of 22nd May</i>, extending the state of alert declared by <i>Royal Decree 463/2020 of 14th March</i>, declaring the state of alert for the management of the health crisis situation caused by COVID-19, introduces the lifting of the suspension of the following deadlines:</p> <ol style="list-style-type: none">a. <i>Article 9</i> decrees that, with effect from 1st June 2020, the calculation of administrative deadlines that have been suspended under <i>D.A.3</i> of the aforementioned <i>RD 463/2020</i> shall be resumed, or restarted if so provided.b. <i>Article 10</i> determines that, with effect from 4th June 2020, the suspension of the deadlines of prescription and expiry of rights and actions established in <i>D.A.4</i> of the aforementioned <i>RD 463/2020</i> shall be lifted. Our assistance in this regard would consist of providing advice on all these issues.

3. LABOUR

LABOUR

One of the main regulatory aspects that has been affected by this health emergency is labor law.

Article 5 of Royal Decree-Law 6/2020 establishes that periods of isolation or infection of workers as a result of the COVID-19 virus will be considered as a situation assimilated to an **accident at work** for the purposes of the economic benefit for temporary disability of the Social Security system.

On the other hand, *Royal Decree-Law 8/2020* has established various measures in the field of employment, both in *Chapter I and in Chapter II*:

- a. *Chapter I "Support measures for workers, families and vulnerable groups"*, articles 5 and 6, establishes the preferential nature of **remote working** and the right to **adapt and/or reduce working hours**.
- b. *Chapter II* regulates "*Measures to make **temporary activity adjustment mechanisms more flexible** in order to avoid redundancies*".

Royal Decree-Law 9/2020, of 27 March, which adopts complementary measures in the field of employment to alleviate the effects of COVID-19 ("Royal Decree-Law 9/2020"), introduces the following measures

- a. *Article 2* establishes that **force majeure and the economic, technical, organizational and production (ETOP)** causes, which are covered by the measures to suspend contracts and reduce working hours due to the COVID-19 crisis, cannot be understood as justifying the termination of the employment contract or dismissal.
- b. *Article 3*, on **expediting the processing of Temporary Employment Regulation Orders or "ERTES" (TEROS)**, provides that the procedure will be initiated by means of a collective application submitted by the company with all the required information.

LABOUR

- c. *Article 5* interrupts the calculation of the maximum duration of **temporary contracts**.
- d. The *First Final Provision* establishes that the **maximum duration of TEROS** is that of the alarm state and its possible extensions. It also adds that exceptional contribution and unemployment measures will be applied to TEROS authorised or initiated before the entry into force of this *Royal Decree-Law*, provided that they derive directly from COVID-19.
- e. Finally, the *Third Additional Provision* states that the **date of effect** must appear on the company certificates (a valid document for accreditation) and will be:

In TEROS of force majeure (*article 22 of Royal Decree-Law 8/2020*): the date of the event causing it.

In the TEROS for ETOP causes (*article 23 of Royal Decree-Law 8/2020*): the date of communication of the decision taken by the company to the labor authority or later.

*Royal Decree-Law 10/2020, of 29 March, which regulates recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19, regulates **compulsory, time-limited recoverable paid leave for employees** between 30 March and 9 April.*

In addition, *Royal Decree-Law 11/2020* has introduced measures to support self-employed workers (*articles 34 and 35*) and subsidies for lack or closure of activity (*articles 28 and 30*) **.

LABOUR

* Subsequently, *Royal Decree Law 13/2020, of 7 April, adopting certain urgent measures in the field of agricultural employment ("Royal Decree-Law 13/2020")*, has extended the concept of **occupational accident** to include periods of isolation, contagion or restriction on certain outlets (D.F.1).

** Finally, *Royal Decree Law 15/2020, of 21 April, on urgent complementary measures to support the economy and employment*, has introduced certain measures:

a. *Article 15* extends the preferential nature of distance working and the **MECUIDA Plan** by two months.

b. *Article 22* assimilates to unemployment the termination of the employment relationship during the **trial period**.

c. *Article 23* allows for the availability of **pension plans**.

d. *Article 25* reduces **contribution rates** for certain workers.

e. *D.A.2* suspends certain **limitation periods** for shares.

f. *D.F.8* allows companies that carry out **essential activities** to use TEROS in their non-essential activity.

Article 9 of Royal Decree Law 19/2020, of 26 May, which adopts complementary measures in agricultural, scientific, economic, employment and social security and tax matters to alleviate the effects of covid-19, establishes that the illnesses suffered by personnel who work in health centres as a result of the contagion of covid-19 during the state of alarm are considered an **occupational contingency** derived from accidents at work.

Finally, *Article 7 of Royal Decree Law 21/2020, of 9 June, on urgent measures for prevention, containment and coordination to deal with the health crisis caused by the COVID-19*, establishes the health and safety obligations to be observed in work centres by the holder of the economic activity or, where appropriate, by the director of the centres and entities.

Our services in this regard would consist of advice relating to the following matters:

LABOUR

	Solutions and legal responses
TEROs and EROs	<p>Our services in this regard would consist of advice relating to the following matters:</p> <p>Temporary Employment Regulation Orders or “ERTES” (TEROS) for total or partial suspension of employment contracts. Employment Regulation Orders or “ERES” (EROS) for the termination of employment contracts. Advice, management and application of the same.</p>
Modification of working conditions and collective relations	<p>Modification of working conditions (remote working, flexibility, reduction or adaptation of working hours, care for minors and dependent people).</p> <p>Collective bargaining agreements.</p>
Protective Social Security Action	<p>Unemployment protection for TEROS, the processing of which is the responsibility of the companies. Exclusions from social security contributions in the case of TEROS due to force majeure and deferment of quotas.</p>
Prevention of risks related to work	<p>Legal advice on Prevention of Work-related Risks (in particular, those derived from the current situation such as remote working, self-evaluation of the workplace, etc.) and obligations of the company for regulatory compliance. Inspection procedures, resolutions of the Labor Authority, work accidents, infringements and sanctions.</p>

4. FINANCE/BANKING

FINANCE AND BANKING

Banking regulation has also been modified by the crisis that has arisen. At present, these changes are mainly aimed at providing liquidity to certain companies and self-employed persons, but it cannot be ruled out that, depending on how the situation develops, such measures may be extended and invoked by the large market operators.

In accordance with *Royal Decree-Law 6/2020*, various measures were agreed for the banking sector (*articles 1 and 3*):

In particular, the legal regime for SAREB has been amended so that it can continue to carry out its liquidation work normally and the type of financial institutions already established that can apply to be converted into banks has been extended.

The *Royal Decree-Law 7/2020*, of 12 March, adopting urgent measures to respond to the economic impact of COVID-19 (“*Royal Decree-Law 7/2020*”), establishes in its *Chapters III and IV* a series of financial support measures.

Thus, a regulatory framework for the financing of investment projects and a line of financing for certain companies and self-employed workers have been established. Other financial support measures have also been put in place in order to compensate, as far as possible, for reductions in their ordinary income and to provide them with liquidity to meet their obligations.

Subsequently, *Royal Decree Law 11/2020* suspended the obligations arising from non-mortgage credit agreements (*article 21*).

In addition, this same *Royal Decree-Law* has established in its *Section 1 of Chapter 2* measures to support industrialization. In particular, the time and period for providing guarantees in the calls for loans granted by the SGIPYME pending resolution at the time of entry into force of *Royal Decree 463/2020* is modified (*article 38*). The refinancing of loans granted by the SGIPYME is also permitted (*article 39*), as is the suspension for one (1) year of the payment of interest and repayments on other loans (State Secretariat for Tourism (*article 41*)).

Finally, *Royal Decree-Law 15/2020*, of 21 April, on urgent complementary measures to support the economy and employment (“*Royal Decree-Law 15/2020*”) establishes in its *article 6* that the E.P.E., Institute for Energy Diversification and Saving, M.P. (*Instituto para la Diversificación y Ahorro de la Energía, M.P.* or “*IDAE*”), may agree to **grant deferrals** of the instalments on the loans taken out.

FINANCE AND BANKING

Our services in this regard would consist of advice relating to the following matters:

- a. Extraordinary financial measures. Financing lines (under ICO/COVID-19 lines), including sectors, terms, limits and other conditions to meet liquidity needs (not refinancing) and digitalisation projects to promote teleworking (ACELERA PYME programme).
- b. Reinforcement of liquidity for export companies through CESCE.
- c. Facilities for borrowers of financial credits granted to farmers (affected by the 2017 drought).
- d. Review of transitory situations of possible non-compliance in financing in progress, waivers, modification of conditions, especially in specialized business financing (*leasing, factoring, confirming, renting*). Extraordinary aid and subsidies.

5. INSURANCE

INSURANCE

The crisis caused by the COVID-19 has led to the generation of a series of **claims** in different areas of insurance (guarantee insurance, insurance for the cessation of activity, insurance for the receipt of income, health care for groups -employees and/or management- etc.) which has led to the activation of insurance taken out by individuals and companies in different areas. The insurance companies in the different branches are often invoking the inappropriateness of coverage for these claims due to **contractual and legal exclusions and/or limitations**, as well as the defective declaration of the risk in the contracting process, among other causes.

Article 7 of Royal Decree-Law 15/2020 stipulates that the Insurance Compensation Consortium (*Consortio de Compensación de Seguros*) may accept in **reinsurance** the risks assumed by private insurance companies authorized to operate in the credit and surety insurance branches.

Our services would consist of advice in relation to the analysis of insurance policies, before and after the generation of the claim, particularly, coverage and exclusions, among other aspects.

6. TAX

TAX

Fiscal and tax matters have also been altered in different aspects by the crisis that has arisen. An important package of these is aimed at small or medium sized companies ("SMEs") and the self-employed, but important measures have also been adopted that affect the large market operators.

In recent days, and by means of various regulatory provisions (*Royal Decree-Laws 7/2020 and 8/2020, and Royal Decrees 463/2020 of 14 March and 465/2020 of 17 March*), the Government has established certain exceptional tax measures which are detailed below:

- a. **Deferrals** to self-employed and SMEs of tax debts of up to 30,000 euros.
- b. **Extension** until April 30, 2020 of the deadlines for payment of tax debts derived from tax settlements made by the Administration, of payments and fractions of deferrals granted, and of the deadlines for responding to requests, seizure proceedings and requests for information that had been notified prior to March 18, 2020.
- c. **Extension** of the same deadlines until 20 May 2020, insofar as the agreements were notified as from 18 March 2020.
- d. **Suspension** of the deadlines for contesting resolutions that end the appeal for reversal and economic-administrative procedures, and of the deadline for lodging economic-administrative appeals or complaints against tax acts and deadlines that do not begin to be calculated again until after 30 April.
- e. **Exemption** from the Tax on Capital Transfers and Documented Legal Acts for loan and mortgage credit novations as a result of the approved measures.

On the other hand, and despite the exceptional situation, it is relevant to mention that **the deadlines for the declaration and payment of tax returns and self-assessments are maintained**, except in the case of those in which the public debtor entity has expressly established their suspension (which some Autonomous Communities and Municipalities have done in relation to the taxes they manage, but not the Official Tax Administration Authority).

TAX

Subsequently, *Royal Decree-Law 13/2020* amended and clarified certain aspects of *Royal Decree-Law 11/2020*. Thus:

- a. The **moratorium on social security contributions** will only apply to employers' contributions.
- b. The impossibility of suspending the periods of prescription and expiry of **social security claims**.
- c. The **compatibility of the retirement pension** with the appointment of health professionals as statutory personnel. It also extends the **coverage of Social Security protection**.

Finally, *Royal Decree-Law 15/2020* introduces a series of measures in the area of taxation:

- a. *Article 8* introduces the **0% VAT rate** for certain intra-EU transactions.
- b. *Article 9* provides for the possibility of making **fractionated payments** to certain Corporate Tax payers (no more than 600,000 euros /2019).
- c. *Article 10* provides that Personal Income Tax payers may waive the **objective method in 2020**.
- d. *Article 11* reduces the **amount of the instalment payments** in objective estimation of the Personal Income Tax and the payment on account of the simplified VAT regime.
- e. Lastly, *article 12* makes payment of tax debts conditional on obtaining State-guaranteed financing. Moreover, the **enforcement period** will not commence.

Our services include advising our clients on any of the extraordinary measures relating to tax that have been mentioned.

7. EUROPEAN UNION

EUROPEAN UNION

The *Fourth Final Provision of Royal Decree-Law 8/2020* amends *Law 19/2003, of 4 July, on the legal regime of capital movements and economic transactions abroad* by introducing a new *article 7a*, suspending the regime of **liberalization of certain foreign direct investments** in Spain.

Our services include:

Advice on the limitation of European economic freedoms (*articles 63 to 66 of the Treaty on the Functioning of the European Union or TFEU*) and other European aspects, in particular how the Court of Justice of the European Union understands the limits to such freedoms.

8. DATA
PROTECTION/INTERNET
/CYBER SECURITY

DATA PROTECTION/INTERNET/CYBER SECURITY

	Solutions and legal responses
Data Protection	<p>In the framework of the <i>General Data Protection Regulation, of 27 April 2016 (GPRD)</i>, another aspect that should be taken into account is remote working, particularly the security of personal data of both clients and employees.</p> <p>On the other hand, the main responsibility for the gathering of health data related to this disease lies with the public health authorities and not with the employers. Acting otherwise could have legal consequences in this area.</p> <p>The <i>Royal Decree Law 21/2020, of 9 June, on urgent prevention, containment and coordination measures to deal with the health crisis caused by the COVID-19</i>, establishes in its <i>article 27</i> a personal data protection clause for the processing of information with epidemiological relevance that is carried out as a result of the development and application of this RDL.</p>
Internet/Cyber security	<p><i>Our assistance would be to provide advice in relation to these aspects</i></p> <p>The crisis created has highlighted the vulnerability of computer systems to global and individual cyber-attacks.</p> <p>Our assistance would consist in offering a practical cybernetic guide including:</p> <ol style="list-style-type: none">a. Planning, design and preparation of appropriate measures to deal with cyber threats, avoiding reputational risks and the possible effects of these. The preparation of employees is of particular interest.b. Investigation of cyber-attacks and response plan: our advice would include the preparation of reports on the consequences of cyber-attacks, including the response plan to them, particularly in terms of communication by the company and the actions of employees.c. Post-incident resolution: our advice would include mitigating the impact of any claims or other liabilities resulting from the incident that has arisen, as well as learning from the incident through subsequent reviews.

9. ANTITRUST LAW

ANTITRUST LAW

The National Markets and Competition Commission (“CNMC”), together with the Directorate-General for Competition of the European Commission and other authorities of the European Competition Network (“ECN”) have agreed on a joint statement on the application of **anti-trust law** during the COVID-19 crisis.

	Solutions and legal responses
Application of antitrust law during the crisis	Anti-trust law and its inspiring objectives and principles remain fully in force during this crisis.
Collaboration agreements between companies	<p>The ECN understands that this extraordinary situation may trigger the need for companies to cooperate to ensure the supply and distribution of scarce products to all consumers. Where collaborative arrangements between companies are made, such arrangements are unlikely to involve restrictions of competition (<i>article 101 TFEU</i>) and are likely to generate more efficiency than possible restrictions of competition, without intervention by the ECN.</p> <p>If companies have doubts about the compatibility of such collaborative initiatives with EU/EEA competition law, they may contact the European Commission, the EFTA Surveillance Authority or the national competition authorities for informal advice.</p>

ANTITRUST LAW

	Solutions and legal responses
<p>Essential products: prohibition of cartels and abuses of dominant position</p> <p>Acceptance of the setting of maximum prices</p>	<p>In order to ensure that products considered essential to protect the health of consumers in the present situation (e.g. face masks and disinfectant gels) continue to be available at competitive prices, the ECN will not hesitate to take action against companies that take advantage of the present situation by creating cartels or abusing their dominant position.</p> <p>In this context, the ECN notes that existing regulations allow manufacturers to set maximum prices for their products. This may be useful in limiting unjustified price increases in the distribution link.</p> <p><i>Our assistance would consist of:</i></p> <p>Advice on compliance with anti-trust law during this crisis in the prior analysis and preparation of any type of agreement or practice that could involve a collaboration agreement with third parties or the establishment of maximum prices, as well as constituting the creation or participation in a cartel or as an abuse of a dominant position.</p>

10. LITIGATION

LITIGATION

The COVID-19 pandemic is likely to generate a significant increase in litigation, as the crisis affects and disrupts almost every aspect of the economy. New disputes will arise in a wide range of areas, including product liability, insurance coverage, employment, data protection, intellectual property, commercial contracts and class actions, among others.

The aforementioned Royal Decree 463/2020, of 14 March, suspends the procedural deadlines for all court orders, with certain exceptions.

Furthermore, *Royal Decree-Law 16/2020, of 28 April, on procedural and organizational measures to deal with COVID-19 in the area of the Administration of Justice*, has introduced certain measures:

I. Procedural measures:

- a. *Article 1* declares **working days** from 11 to 31 August 2020, excluding Saturdays, Sundays and public holidays.
- b. *Article 2* determines that the suspended **procedural terms and deadlines** will be recalculated from the first working day following the end of the state of alarm.
- c. It also determines the extension of the terms for **appeals** that begin during the aforementioned suspension or within twenty working days following the lifting of the suspension.
- d. *Article 6* specifies the subjective scope of the **collective conflict**.
- e. *Article 7* gives preference to certain procedures in financial and labor matters.

LITIGATION

II. Bankruptcy and corporate measures:

- a.* Articles 8, 9 and 10 allow the **bankruptcy agreement** and the **financing agreements** to be amended.
- b.* Article 11 extends the deadline for applying for a **declaration of bankruptcy**.
- c.* Article 12 clarifies the concept of **ordinary credit**.
- d.* Articles 13 and 14 give **preference** to a number of actions.
- e.* Articles 15 and 16 decree that **auctions** must be out-of-court and speed up the processing of the **Liquidation Plan**, respectively.
- f.* Articles 17 and 18 qualify the **out-of-court settlement of payments** and losses for the purposes of **dissolution**.

III. Organizational measures:

- a.* Articles 19, 20 and 23 encourage **telematic presence** and **prior appointment**.
- b.* Articles 24 and 25 enable pending judicial bodies to be transformed into COVID-19 **judicial bodies**.
- c.* Articles 26 and 27 provide for the possibility of assigning the Court Clerks and other civil servants to other **functions and working days** (in morning or afternoon shifts).

Finally, Article 8 of Royal Decree 537/2020 of 22 May, which extends the state of alert declared by Royal Decree 463/2020 of 14 March, which declares the state of alert for the management of the health crisis situation caused by COVID-19, introduces that, with effect from 4 June 2020, the suspension of the **procedural deadlines** decreed by the D.A.2 of RD 463/2020 will be lifted.

Our assistance would consist of advising on these matters. Our professionals are exceptionally well suited to large-scale litigation.

11. CIVIL

	Solutions and legal responses
Private Contracting	<p>The daily activity of companies can be affected by this crisis. In this sense, <i>article 21 of Royal Decree-Law 8/2020</i> suspends the return periods of products purchased both in person and online during the state of alarm.</p> <p><i>Our assistance would consist of providing advice on the interpretative problems that such an interruption of contracts may cause.</i></p>
Leases	<p>The crisis that has emerged has had a strong impact on office leases, including customer service, warehouses and other properties.</p> <p><i>Our assistance would consist of:</i></p> <p>Assistance in negotiations for the temporary modification of office lease contracts, as well as relating to suspension of rental payments, rent subsidies, deferrals and breakdowns.</p> <p>Finally, the mentioned <i>Royal Decree-Law 15/2020</i> has introduced new measures in the area of leases, extending the possibility of requesting a moratorium on leases for uses other than housing or industry (<i>articles 1 to 5</i>).</p>

	Solutions and legal responses
Mortgages	<p>The situation has also had a strong impact on mortgages. Certainly, this area affects primarily individuals, but also large market operators may be affected insofar as they have a portfolio of real estate for rent or ownership.</p> <p>According to <i>article 2 of Royal Decree-Law 6/2020</i> the concept of vulnerable group of <i>Law 1/2013, of 14th of May, on measures to strengthen the protection of mortgage debtors, debt restructuring and social renting</i> has been extended, preventing the eviction that would culminate in the eviction of vulnerable persons.</p> <p>For its part, <i>Royal Decree-Law 8/2020</i> introduces new measures in the area of mortgages by granting a moratorium on mortgage debt for the acquisition of primary residences (<i>articles 7 to 16 included</i>).</p> <p><i>Our services would consist of:</i></p> <p>Advice surrounding moratoriums, renegotiation of financial conditions and subsequent novations (amounts, deadlines...) and other related aspects.</p>

12. CORPORATE

CORPORATE

Solutions and economic responses

Takeover bids

The crisis that has arisen may result in a weakening of the **legal, commercial and strategic position** of large companies.

Our assistance in this regard would consist of:

Advice regarding matters relating to the modification of foreign investment legislation to avoid **hostile takeover bids** in strategic sectors and other limitations of foreign investment set out in the *Fourth Final Provision of Royal Decree-Law 8/2020*.

Corporate

Royal Decree-Law 8/2020 introduces measures relating to Corporate law, which are set out in various articles of *Chapter V* on "*Other flexibility measures*".

a. *Article 40* establishes a series of extraordinary measures applicable to the functioning of governing bodies of legal entities under private law, in relation to **telematic meetings** of the governing bodies and the adoption of agreements in writing and without a meeting, even if they are not provided for in the articles of association.

It also modifies the deadlines for preparing the **annual accounts** and convening the general meetings for their approval.

Moreover, it suspends the exercising of **rights of separation and of legal or statutory dissolution** until the state of alarm ends.

b. In *article 41* a series of extraordinary measures are established which are applicable to the functioning of governing bodies of **listed companies**, favoring the adoption of agreements by electronic means.

The deadlines for the presentation of the **annual financial report** and the holding of the ordinary general meeting are also modified.

c. *Article 42* suspends the time limits for **registration entries** until the end of the alarm period.

	Solutions and legal responses
	<p>d. Finally, <i>article 43</i> interrupts the term established in <i>Law 22/2003, of 9 July, on Insolvency</i> so that the debtor who is in a state of insolvency does not have the duty to request the <i>declaration of insolvency</i>.</p> <p>The aforementioned <i>Royal Decree-Law 9/2020</i> establishes that, when it is not possible to hold the General Assembly by virtual means, the Governing Council shall have the authority to approve the total or partial suspension of the work of the shareholders.</p> <p>Likewise, <i>Article 14 of Royal Decree Law 15/2020 dated 21 April regarding urgent complementary measures to support the economy and employment</i>, provides for the temporary and extraordinary adaptation of some of the requirements which allow public limited companies or limited liability companies to be classified as workforce owned companies.</p> <p>Finally, <i>Royal Decree-Law 21/2020 of 9 June on urgent measures of prevention, containment and coordination to face the health crisis caused by the COVID-19</i>, through its <i>D.F.A.</i>, modifies <i>art. 40 of RDL 8/2020</i> to allow, until 31 December 2020, the possibility that the meetings of the governing bodies of the corporations can be held by videoconference and that their agreements can be adopted in writing and without a meeting.</p> <p><i>Our services cover the following:</i></p> <ul style="list-style-type: none"> i. The design and implementation of Compliance measures which protect the Board of Directors from adopting all necessary measures, controls and guidelines in the present emergency situation (recording them in the minutes of the Board) to avoid the possibility that in the future it may be argued that its inactivity or incorrect action has generated responsibilities for the company and/or the Board. ii. The review and, where appropriate, adaptation of the corporate bylaws, as well as internal regulations, to allow meetings of its governing bodies (Board of Directors, Committees and Shareholders' or Partners' Meeting) by telematic means and other non-presential systems, if they do not provide for them.

CONTACT

Madrid:

C/ Villanueva 29
28001 Madrid
T: +34 91 436 00 90

Barcelona:

Av. Diagonal 520
08006 Barcelona
T: +34 93 488 28 02

info@lupicinio.com

Lupicinio International Law Firm



@LupicinioAbogados



@LupicinioILF



www.lupicinio.com

