BARTOLOME & BRIONES

Legal Status in Spain

Q&A Edition

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Barcelona · Madrid

Dear clients and friends,

Over the last few months, Bartolome & Briones has been sending weekly reports on all the amendments and legal developments related to the State of Alarm.

This time, we have decided to issue a special edition with legal questions and answers in relation to a series of areas which we expect will be of your interest.

We hope that you are all doing well and that we can go back to normal as soon as possible, working and helping with economic recovery.

Ánimo y seguimos…

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1. Foreign Investments

Foreign Investments

1. Are there any new developments to be considered regarding investments in Spain due to the crisis created by Covid 19?

Yes, Royal Decree-Law 8/2020 of 17 March and then Royal Decree-Law 11/2020 of 31 March suspended the existing liberalization regime in Spain, establishing a series of limitations on certain foreign direct investments in Spain.

2. For the purposes of the new regulations, what is meant by foreign direct investment in Spain?

Firstly, a distinction is made on the basis of whether or not a holding is taken in the Spanish company, and secondly, on the basis of where the investment comes from. Therefore, for the purposes of the new regulations issued in the context of the health and economic crisis caused by Covid 19, foreign direct investments in Spain are considered to be all those investments as a result of which the investor holds a stake equal to or greater than 10% of the share capital of the Spanish company, or when, as a result of a corporate operation, act or legal transaction, the investor effectively participates in the management or control of the company, provided that one of these circumstances exists:

(a) That these actions are carried out by residents of countries outside the European Union and the European Free Trade Association.

(b) That they are carried out by residents of European Union or European Free Trade Association countries whose real owners are residents of countries outside the European Union and the European Free Trade Association. It will be understood that such real ownership exists when those concerned possess or ultimately control, directly or indirectly, a percentage of more than 25% of the capital or voting rights of the investor, or when by other means they exercise control, directly or indirectly, over the investor.

3. Do these constraints affect all sectors business activity?

No, although the list is considerable.

(a) Critical infrastructure, whether physical or virtual, including energy, transport, water, healthcare, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities.

(b) Critical technologies and dual-use items as defined in Article 2(1) of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cyber-security, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.

(c) Supply of critical inputs, in particular those related to energy, raw materials and food security.

(d) Sectors with access to sensitive information, in particular personal data

(e) Media.

It should also be borne in mind that there is a limitation on the basis of the nature of the investor, and the new regulations establish that the regime of liberalization of foreign direct investment in Spain is suspended in the following cases:

(a) If the foreign investor is directly or indirectly controlled by the government, including public bodies or the armed forces of a third country, the criteria established in Article 42 of the Commercial Code being applied for the purpose of determining the existence of such control.

(b) If the foreign investor has made investments or participated in activities in sectors affecting security, public order and public health in another Member State.

(c) If administrative or judicial proceedings have been instituted against the foreign investor in another Member State or in their home State or in a third State for criminal or illegal activities.

4. Do these limitations exist regardless of the amount of the intended investment in the Spanish company?

No, although it is true that the amount above which the above restrictions operate is relatively low. For the time being, and pending the regulation implementing the aforementioned legislation the amount in question is 1,000,000 euros, so that investments for lower amounts will not be affected by the indicated limitations.

5. Does all the above mean that foreign investments in Spain that fit the described parameters are totally prohibited?

No, the above limitations mean that if an investment is intended in Spain during the temporary period in which these measures are in force, a procedure must be followed to obtain prior administrative authorisation from the relevant Spanish authorities.

6. Are there any consequences if an investment is made in contravention of the new regime applicable?

Yes, firstly, it is established that investment operations carried out without the indicated administrative authorization will lack validity and legal effects, in that they are not legalized in accordance with the applicable regulations.

Likewise, the execution of investment operations in contravention of the new applicable regulations has been classified as a “very serious” infringement for the purposes of the applicable regulations, which may lead to the imposition of financial sanctions.

2. Corporate

Corporate

1. Is it compulsory for the meetings of the governing and administrative bodies of companies to be held in person?

No, while the State of Alarm is in force in Spain the meetings of the governing and administrative bodies of commercial companies, associations, civil societies, meetings of the governing council of cooperative societies, and of the board of trustees of foundations can be held by means of telematic systems or in writing and without holding a meeting, even when this is not expressly provided for in the Articles of Association.

The aforementioned meetings may be held by videoconference, provided that a real time connection with image and sound of the remote participants is ensured. The meeting shall be deemed to have been held at the registered office.

2. Are the standard deadlines for the presentation of the annual accounts maintained?

No, the three-month period for the formulation of the annual accounts is extended until the State of Alarm is lifted. At that time, a period of three months will begin to run for the formulation of the annual accounts and subsequently the Ordinary General Meeting will have an additional period of three months in order to approve the annual accounts from the end of that period.

3. Have the deadlines for the submission of accounting books been suspended?

Although nothing is expressly provided for in relation to the suspension of the deadlines for the presentation of books, by analogy, and given the close relationship that this has with the presentation of annual accounts, it could be understood that this deadline has also been extended to four months after the end of the State of Alarm.

4. Must the partners remain in the company until the end of the State of Alarm?

In Spain, the right partners to exercise their right of separation is suspended until the end of the State of Alarm, even if there is a legal or statutory cause that legitimizes such separation.

Likewise, the period for refunding contributions to members who leave during the State of Alarm is suspended, and this period is extended until six months have elapsed since the end of the State of Alarm.

Contracts

1. Do I have to comply with signed contracts if they provide for force majeure?

In accordance with the principle of *"Pacta Sunt Servanda",* first of all, the parties will abide by what they have agreed to in the contract, that is to say by the wording of the contract. Thus, in those cases in which the parties have regulated the effects of force majeure or special circumstances, the parties must abide by the provisions of the contract.

2. If I cannot comply with my obligations, can I claim force majeure when the contract does not specify anything on the matter?

In those cases, in which contractual provisions have not been established to regulate the impossibility of complying with contractual obligations, we have to resort to the law and jurisprudence. Although our Civil Code covers force majeure in Article 1105, jurisprudence has outlined its application and delimited the requirements for its application.

Among the most common requirements that must exist for force majeure to be accepted; an event or circumstance not only be unpredictable, but also inevitable or irresistible. It is also required that the party alleging force majeure act in good faith and have adopted all measures that were reasonably available to mitigate the effects of the breach of contract. In addition to this, a causal connection is required between the breach and the circumstance of force majeure.

3. What are the effects of force majeure?

Exoneration of the debtor on grounds of force majeure does not imply that the debtor has been indefinitely released from his contractual obligations, but rather that the debtor is released from liability for such breach and in many cases such release is accompanied by a suspension of the enforceability of the obligation.

It should be borne in mind that, in order to prove force majeure as a cause for the discharge of financial (payment) obligations, proof must be given of the absolute impossibility of payment, which in practice can prove difficult.

4. Can I apply the *Rebus Sic Stantibus* principle if I cannot meet my payment obligations?

The *Rebus sic Stantibus* principle aims at restoring or balancing the performance of the contracting parties when truly extraordinary circumstances substantially change the initial balance of the contract and as a consequence the performance of one of the parties becomes excessively burdensome.

However, this principle has been applied restrictively by our courts. There is currently no precedent for its application in the COVID-19 health crisis, thus we must wait to see if this principle will apply to the current situation.

5. What are the effects of the admissibility of the *Rebus sic Stantibus* principle?

The main objective of this legal principle is to restore the balance of the parties to the contract; thus, it is more frequent to opt for the modification of contractual terms, especially in the case of long-term contracts. In this respect, the application of this principle would allow, for example

in the case of a lease, for the suspending of the payment of certain monthly instalments or to reduce the amount of the monthly instalments.

This principle does not generally have recessive or extinctive effects, except in cases where it is impossible to restore contractual equilibrium to the legal relationship, there being no other solution than contractual termination.

6. Are there any requirements that determine the application of the *Rebus Sic Stantibus* principle?

As it is a principle that has been gradually defined by our courts, the requirements derive from jurisprudential practice and can be summarized as follows:

- That there is an extraordinary alteration of the initial circumstances of the contract foreseen at the moment of its formalization, in relation to those existing at the moment of the extraordinary circumstances. That such circumstances generate an exorbitant disproportion, beyond all calculation, between the performance of the contracting parties.
- The circumstances were unforeseeable at the time the contract was signed and therefore the parties could not have taken the change that has occurred into account.
- The circumstances occurred after the obligation was created but before it was complied with.

7. ¿ What happens if it is materially or legally impossible to comply with the obligation in the contract?

In cases in which one of the services of the contract cannot be performed, for example in the case of personal obligations, when the relevant party has died or in the case of illness, or in the case of physical impossibility, i.e. when it is materially impossible to comply with the obligation, for example when the object of the service has been destroyed, has disappeared or has been lost.

The courts have determined that in such cases of supervening impossibility, the parties are exonerated from complying with the obligation, and the contract is terminated.

8. What about public sector contracts?

Royal Decree-Law 8/2020, of 17 March, which adopts a series of measures to alleviate the effects of the COVID-19 health crisis, establishes that:

- Those public contracts for services and supplies of successive provision concluded by entities belonging to the Public Sector, and whose execution becomes impossible as a result of the Covid-19 crisis or the measures established adopted to combat it, will be automatically suspended as soon as the factual situation that prevents their provision occurs and until said provision can be resumed.
- Public works contracts can be suspended as soon as the factual situation preventing their performance arises and until such time as their performance can be resumed.

3. Employment

Employment

1. Due to the crisis caused by Covid-19, what are the main measures that companies are implementing in terms of employment?

The main measure adopted by the companies in labour matters has been the application of Files for Temporary Regulation of Employment (hereinafter, "ERTE") motivated by force majeure or due to the existence of economic, productive, organizational causes (hereinafter, "ETOP").

Companies are protected under an ERTE by force majeure when there is a direct relationship between the impact on the business and the health crisis caused by Covid-19. The procedure to follow in the case of force majeure is simpler and faster than in the case of an ERTE due to ETOP.

The companies are included in the ERTE due to ETOP causes when the impact on the business is indirectly affected by the situation of the Covid-19. The procedure requires prior negotiation with the Workers' Representation.

Both on the force majeure and ETOP situations, the ERTE allows companies to suspend employment contracts until the situation is normalized, or to reduce the working hours of the employees affected.

2. Has the relaxation of any procedure for the suspension of employment contracts or other measures been approved because of Covid-19?

Yes, the Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of Covid-19, approves the simplification and facilitation of the procedures for the suspension of contracts and reduction of working hours due to force majeure and ETOP causes related to Covid-19, in relation to the ordinary procedure provided for by general Spanish labour regulations (Workers' Statute).

As for the ERTEs due to force majeure derived from Covid-19, it is only required to prepare an Explanatory Report referring to the impact suffered by the business and the number of employees affected by the measure.

In the case of ERTE due to ETOP causes, in addition to the requirements of the ERTE due to force majeure, the consultation period (time during which the Management of the company and the Workers' Legal Representation negotiate the terms of the ERTE) is reduced from 15 to 7 days.

Once the ERTE has been filed, the Labour Authority has a period of 5 working days to decide on its acceptance or refusal. In the case of no resolution by the Labour Authority, the ERTE will be understood as accepted based on the presumption of authorization principle.

3. What economic benefits do such measures offer to companies?

The application of ERTEs allows companies to stop assuming wage costs for those employees who do not have volume of business enough to occupy their working day (total or partial).

In addition to this, Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of the Covid-19, approved the exoneration of companies that had processed an ERTE due to force majeure from the payment of 75% of the company contribution to Social Security, this exoneration reaching 100% of the contribution in the case of companies with fewer than 50 employees.

Furthermore, Article 35 of Royal Decree-Law 11/2020 of 31 March, which adopts additional urgent measures in the social and economic area to deal with Covid-19, approves the possibility of benefiting from the deferral or moratorium on the payment of Social Security debts in favour of companies to assume labour costs in terms of contributions after having overcome the most critical moment of the Covid-19 health crisis.

4. Do employees affected by an ERTE that suspends contracts or reduces working hours receive a benefit from the State?

Yes, during the suspension of contracts or the reduction of working hours under an ERTE, employees receive a benefit equivalent to 70% of the employee's regulatory wage base during the first six months and after that period, 50% of the regulatory wage base.

Similarly, a limit will be applied to this benefit, which may not exceed Euro 1,089.09 (if there are no dependent children), Euro 1,254.86 (if there is one dependent child) or 1,411.83 (if there are two or more dependent children).

5. Has teleworking been encouraged or imposed by the Government through regulatory approval?

Yes, the Spanish Government approved teleworking through Royal Decree-Law 8/2020 of 17 March, on urgent extraordinary measures to deal with the economic and social impact of Covid-19.

Specifically, it established priority for teleworking for all those economic sectors that can carry out their activity through this modality.

Accordingly, it launched the “Plan Acelera”, aiming at speeding up the process of digitalization of small and medium enterprises through the financing of the Instituto de Crédito Oficial (ICO).

6. Have occupational risk prevention measures been approved to prevent the spread of Covid-19?

Yes, the Spanish Government implemented and updated a guide of good practices in workplaces to prevent the spread of Covid-19 on 11.04.20.

This guide includes different measures both prior to access to work, as well as during commuting, and measures to carry out in the work centre itself.

Among other things, it recommends the use of individual transport, respecting the two-metre interpersonal distance, starting work in stages, and protective material.

7. Have any extraordinary protective measures been adopted to maintain employment in your country?

Yes. Specifically, the sixth additional provision of Royal Decree-Law 8/2020 of 17 March on extraordinary emergency measures to deal with the economic and social impact of Covid-19 provides for the obligation to maintain jobs for the six months following the adoption by companies of the extraordinary flexibility measures approved due to Covid-19.

In this sense, this obligation will fall on those companies that have benefited from the subsidies and the abbreviated ERTE procedures approved at the time of Covid-19.

8. Have any measures been adopted to limit or prohibit dismissals during the Covid-19 crisis?

Yes, Article 2 of Royal Decree-Law 9/2020 of 27 March expressly prohibits dismissals or the termination of employment contracts due to the Covid-19 crisis.

In this sense, the Government has prohibited the use of the ETOP reasons that enable the processing of measures to suspend contracts or reduce working hours (through the figure of the ERTE), to articulate dismissals.

9. Have extraordinary measures been taken to protect self-employed professionals who cease their activity because of Covid-19?

Yes. Self-employed professionals whose activities are suspended or whose turnover in the month prior to the month in which the benefit is requested is reduced by at least 75% in relation to the average turnover for the previous six-month period will be entitled to the extraordinary benefit for cessation of activity, provided that they meet certain requirements set out in Article 17 of Royal Decree-Law 8/2020 of 17 March.

10. Have the eligibility requirements for unemployment benefit been relaxed?

Yes.

First, it is worth noting that the suspension of contracts or reduction of working hours as a result of the application of an ERTE allows the affected employees in Spain to receive the benefit equivalent to unemployment (consisting of the terms set out in point 4).

With the approval of Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures to deal with the economic and social impact of Covid-19, the State allows employees affected by an ERTE (due to force majeure or ETOP, linked to Covid-19 through the flexible procedures approved for that purpose) to access unemployment benefits even if they do not have the necessary contribution period to access them and without consuming them from the accrued period (the benefits are entirely at the expense of the State).

11. Has any kind of paid leave been imposed on employees for the duration of the suspension of the companies' activities because of the Covid-19?

Royal Decree-Law 10/2020 of 29 March regulated recoverable paid leave (between 30.03.20 and 09.04.20) for employees who do not provide essential services (mainly health care and employees in shops selling basic necessities), in order to reduce the mobility of the population and thus stop the spread.

4. Real Estate

Real Estate

1. Have any measures been enacted to make mortgage payments more flexible?

The Spanish government has adopted a series of measures with the aim of alleviating the economic burden on citizens who cannot afford to pay their home mortgage payments as a result of the COVID-19 crisis. In order to benefit from the moratorium, citizens must be in a situation of economic vulnerability and meet certain requirements.

The moratorium is a temporary suspension of contractual obligations arising from mortgage-secured loan contracts. It is applicable to permanent residences, to properties affected by the economic activity of businessmen and professionals, and to residences other than habitual ones which have been rented out and in which the rental income has ceased to be received since the entry into force of the State of Alarm.

2. Have any measures been enacted to reduce the rent payment on my home?

Yes, those persons who are in a situation of vulnerability may request from the lessor (provided that the lessor is a company or public entity, or a "large property owner" - an individual or legal entity that owns more than 10 urban properties, excluding garages and storage premises, or a constructed area of more than 1,500 m2), a temporary and extraordinary postponement in the payment of the rent.

Within 7 working days, the lessor must choose one of the following options:

i. A reduction of 50% of the rent, while the State of Alarm remains in force and for a maximum of 4 months.

ii. Apply a moratorium on the payment of rent, while the State of Alarm remains in effect and for a maximum of 4 months.

The corresponding amounts shall be deferred and paid in instalments over at least 3 years, starting with the end of the State of Alarm (or the maximum period of 4 months), without penalty or interest.

3. What happens if my home's lease ends during the State of Alarm?

Those rental contracts in which the forced or tacit extension referred to in Articles 9.1 and 10.1 of the Urban Rental Law concludes between the entry into force of Royal Decree Law 11/2020, i.e. on 2 April 2020 and two months after the end of the State of Alarm, will be extended for an additional 6 months at the request of the tenant. This extension must be accepted by the lessor in order to be applicable.

4. Are there any economic aid measures for independent professionals or companies, applicable to rentals for use other than housing?

Yes, the Spanish government has approved the Royal Decree-Law 15/2020, of 21 April, by which aid is approved depending on each specific case.

i. When the landlord is a "large property owner", a moratorium on rental payments applies automatically whenever the tenant requests it and provided no agreement on a moratorium or reduction of rent has already been reached between the parties.

The moratorium will affect the period of time that the State of Alarm remains in force, and in no case may it exceed four months. The measure consists of a deferral of the rent by means of the division of the quotas over a term of two years, which will be counted from the moment in which the State of Alarm ends, or from the end of the term of the four months previously mentioned, and only when the contract is in force. The moratorium may not accrue interest nor will it be possible to apply penalties.

The moratorium may be requested within one month of the entry into force of Royal Decree Law 15/2020, i.e. from 23 April 2020.

ii. In cases where the lessor is not a "large property owner2, the lessor can reject the tenant's application.

5. Are all companies eligible for leasing subsidies?

No, only those that meet the following requirements:

i. That the limits indicated in Article 257.1 of the Law on Corporations are not exceeded, that is to say: those companies that for two consecutive financial years have, at the closing date of each one of them, at least two of the following circumstances prevail:

-That the total of assets does not exceed four million euros.
-That the net amount of its annual turnover does not exceed eight million euros.
-That the average number of workers employed during the financial year does not exceed fifty.

ii. That its activity has been suspended because of the entry into force of Royal Decree 463/2020, by which the State of Alarm was enacted, or by orders issued by other competent authorities, by virtue of the aforementioned royal decree.

iii. In the event that its activity is not directly suspended, it must prove that turnover for the calendar month prior to the month in which the postponement is requested has been reduced by at least 75 percent, in relation to the average monthly turnover for the quarter to which that month belongs, with reference to the previous year.

5. Tax

Tax

1. Has the filing of tax returns been deferred?

For those taxpayers, whose turnover in 2019 was less than 600,000.00 euros, the tax filing corresponding to the first quarter of the year, whose deadline was 20 April, is extended until 20 May 2020.

2. Has payment derived from tax returns been deferred? If so, under what conditions?

Those taxpayers, natural or legal persons, who in 2019 have had a volume of transactions not exceeding 6,010,121.04 Euros, may defer up to six (6) months (without accruing interest for late payment in the first three (3) months) the payment of the tax debt corresponding to all returns-settlements and self-assessments whose deadline for submission and payment ends between 13 March 2020 and 30 May 2020, up to a maximum of 30,000.00 Euros per entity or person.

3. What happens to the tax debts pending payment until the provision of guarantees?

As for the payment of these debts, there is the possibility of making it conditional on obtaining financing through the Guarantee Line. In this regard, the enforcement period for tax debts subject to the granting of financing referred to in Article 29 Royal Decree Law 8/2020 will not commence in respect of tax returns and self-assessments for which the filing deadline is between 20 April 2020 and 30 May 2020.

Finally, in the case of debts presented before 23 April 2020 in which the enforcement period has begun, they will be considered as a voluntary period of entry when, in turn, the taxpayer provides the Tax Authorities, within a maximum period of five (5) days as from 24 April 2020, with a certificate issued by the financial entity accrediting that the application for financing has been made, the application for financing is granted for at least the amount of the aforementioned debts and the debts are paid in full and immediately when the financing is granted. The latter requirement shall be deemed not to have been complied with if the debts are not paid within one (1) month of the end of the period referred to in the first paragraph of this section.

4. What about tax debts that were due before the start of the State of Alar and those that were due during that period?

Flexibility has been agreed by extending payment periods. For payments not completed by 18 March 2020, or reported after that date, the deadline is extended to 30 May 2020. By virtue of the foregoing, the following deadlines are extended:

- Payments of tax debts arising from settlements in the voluntary period as well as in the enforcement period once the enforcement order has been notified.
- Due dates and fractions of deferred or fractioned debts.

- Auctions and awards in seizure or enforced recovery procedures.

5. Are all the tax deadlines still valid?

No. Flexibility has been agreed upon through the extension of deadlines to meet tax requirements and obligations. For those deadlines that have not ended on 18 March 2020, or that are communicated after this date, the deadline is extended to 30 May 2020. By virtue of the foregoing, the following deadlines are extended:

- Attending to requests, seizure proceedings or requests for information

- Making submissions related to the opening or hearing timelines in procedures of tax application, sanctions, and declaration of nullity, refund of undue income, correction of material errors and revocation.

- Attending to requirements, making submissions related to the opening, or hearing timelines in acts before the General Direction of the Cadastre.

However, the extension of the deadlines indicated above does not affect the filing of tax returns or self-assessments.

The period between March 18 and May 30 2020 does not count for the purposes of the maximum duration of the procedures for the application of taxes, penalties and revisions processed by the AEAT, although the Administration can carry out the essential procedures, nor for the purposes of the expiration periods.

6. What happens with the deadlines for procedures before the economic-administrative jurisdiction?

In those processes where the period to lodge an appeal has not ended before the entry into force of Royal Decree 463/2020 of 14 March, the period will be one (1) month from 1 May or the day following the end of the State of Alarm, if this is later (currently the enforcement of the State of Alarm has been extended to 10 May). Notwithstanding the above, in the absence of criteria from the economic-administrative bodies on the matter, caution is advised, and the ordinary time limit for objections should be respected.

Furthermore, the period for making allegations will only be affected by the new regulations in those cases where the opening of the allegations procedure has been notified between 18 March and 30 April, both inclusive, extending to 20 May 2020, without prejudice to the fact that the general regulations provide for a longer period. However, despite the lack of specific

mention of this procedure in the new regulations, it is also recommended that it be processed within the period indicated in the ordinary regulations.

7. Have the percentages applicable to transactions subject to VAT changed?

Yes. On a temporary basis, the VAT applicable to the supply of healthcare material by national producers to public, non-profit making entities and hospital centres is reduced to 0%, a percentage that will also be applied between 23 April 2020 and 21 July 2020 to the supply of goods, imports and intra-Community acquisitions of goods referred to in the Annex included in the Royal Decree-Law, whose recipients are public law entities, clinics or hospital centres, or private entities of a social nature referred to in Article 20.3 of the VAT Law. Thus, when invoices are issued, the above-mentioned transactions will be classified as exempt.

Additionally, the percentage of VAT applicable to books, newspapers and magazines in electronic format is reduced to 4%, bringing them into line with the VAT applicable to those in paper format.

8. What action has been taken with regard to instalment payments corporate tax (IS)?

Extraordinarily, the option period for the instalment payment method regulated in Article 40.3 of the Corporate Income Tax Act (calculation of the instalment payment based on the result obtained in the current period, instead of calculating it based on the result obtained in the last corporate income tax presented) is extended for those taxpayers whose tax periods began on 1 January 2020.

This option, if exercised, will bind the taxpayer to this method of payment by instalments with respect to those corresponding to the same tax period, exclusively.

For those taxpayers whose turnover in 2019 was less than 600,000.00 euros, the presentation of the first IS instalment payment is extended until 20 May 2020. And for those taxpayers who are not eligible for the extended period and whose net turnover has not exceeded 6,000,000.00 euros during the twelve (12) months prior to the date on which the tax period began, the presentation of the second instalment payment of the IS will be in the first twenty (20) calendar days of October 2020, without being applicable to groups of companies in tax consolidation regulated in Chapter VI of Title VII of the LIS.

9. Has access to pension plans been made more flexible?

Exceptionally, provisions are regulated on the availability of pension plans, indicating who can make their vested rights effective, how to prove the circumstances arising from the health crisis that allow such availability, the amount of vested rights available and the time limit for reimbursement.

6. Energy

Energy

1. During the State of Alarm decreed in Spain arising from the health crisis generated by the COVID-19, can power and/or natural gas supply be cut off to domestic consumers in their residence?

No, except for reasons pertaining to the safety of the supply, people, and installations, even if this possibility is stated in the supply or access contracts signed by consumers. The prohibition on cutting off the supply also applies in the event that the domestic consumer does not pay the costs associated with the supply.

2. During the abovementioned State of Alarm, what main measures have been approved to mitigate the negative effects of the COVID-19 crisis on self-employed workers and companies in relation to contracts for power and/or natural supply?

(i) Self-employed workers and companies are entitled to temporarily suspend their contracts for power and/or natural gas supply free of charge during the State of Alarm and for a maximum period of three months from the end of the alarm state.

(*) Self-employed workers are defined as those who habitually, personally, and directly carry out an economic activity for profit, without being subject to an employment contract and even if they use the paid services of other persons.

(ii) Self-employed workers and companies are entitled to request a reduction of the contracted power and/or contracted flow from their power and natural gas suppliers in order to reduce the fixed costs associated with the power and/or natural gas supply. Within three months after the end of the alarm state, a company that has requested a reduction in the contracted power and/or contracted flow may request a new modification of the supply contract or new values for the technical parameters of the contract for third party access to the network.

(iii) Self-employed persons and SMEs (as a rule, companies with fewer than 250 employees and an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million) have the right to request their electricity and/or natural gas supplier to defer payment of supply invoices containing days included in the State of Alarm, including all billing items.

Once the State of Alarm has ended, the amounts due will be included in equal parts in the bills issued by power and/or natural gas suppliers for the billing periods in which the following six months are included. Companies that make use of this invoicing suspension will not be able to change their power or natural gas supplier, as the case may be, until this regularization has been completed.

3. What principal measures have been adopted to mitigate the negative effects of the COVID-19 crisis on power and natural gas suppliers?

(i) Power and natural gas suppliers are exempted from the obligation to pay the toll for access to the transport and distribution networks and the transport and distribution toll term, respectively, corresponding to the deferred invoices by virtue of the provisions of paragraph 2 (iii) above, until the consumer pays the full invoice.

(ii) Power and natural gas suppliers are exempted from the payment of VAT ("Value Added Tax"), the Excise Duty on Power, if applicable, and the Excise Duty on Mineral Oils, also if applicable, corresponding to invoices whose payment has been suspended under the provisions of paragraph 2 (iii) above, until such time as the consumer concerned has paid them in full, or six months have passed since the end of the State of Alarm.

(iii) Power and natural gas suppliers whose income is reduced as a result of the measures included in paragraph 2 (iii) above ("bill payment deferment") may have access to a special line of guarantees approved by the Government to deal with the economic and social impact of COVID-19 crisis or any other line of guarantees created specifically for this purpose, for the amount by which their income has been reduced.

7. Insolvency

Insolvency

1. Is it compulsory to file for Bankruptcy?

Yes, the law requires that the company file for Bankruptcy within two months of the date on which the Administrator becomes aware - or should have become aware - of the situation of insolvency or, failing that, to dissolve the company. Otherwise, the Administrator, or administrators, of the company may incur personal liability and be responsible for the company's debts with their personal assets. This can even lead to criminal prosecution, depending on the case.

2. Is there any stage prior to bankruptcy proceedings?

Yes, and it is voluntary. The law provides for so-called pre-bankruptcy proceedings, which enable those who are in this situation to inform the Court that negotiations have begun to reach a refinancing agreement or an out-of-court payment schedule with their creditors. The duration of this period is three months, plus an extension.

3. What effects does such pre-insolvency proceedings have on existing legal proceedings against the company?

The legal proceedings will continue until the judgment phase, moment at which they come to a stop. There are no executions against the company (except those related to the tax authorities).

4. How can we file for bankruptcy?

Through an application to the Commercial Court that covers the company's registered office. Together with the application, the following documents must be enclosed: the special power of attorney to apply for bankruptcy, the report of the economic and legal history of the debtor, the inventory of assets and rights and the list of creditors, the annual accounts, a report on significant changes in assets since the last annual accounts and the interim financial statements prepared since the last annual accounts submitted.

5. Is it possible to submit the application for bankruptcy with an advance proposal for an agreement?

Yes, it is possible. This usually occurs in cases where there has been a pre-bankrupcty phase and, despite this, the agreement has not been materialized within the established deadline. It also

tends to occur in cases where the bankrupcty proceedings are not particularly complex or the number of creditors is not excessively high.

6. How is bankruptcy declared?

Bankruptcy is declared by means of a judicial resolution, in which the Bankruptcy Administrator (bankruptcy manager) is appointed, this shall always be a person from outside the company. This resolution will be made public through official means. Once this publication has taken place, a period of one month will be opened for creditors to communicate their claims, that is to say, to inform the Bankruptcy Administrator about their own claims pending payment by means of invoices, contracts or any other documentary support.

7. What happens after bankruptcy is declared?

After the abovementioned judicial bankruptcy resolution has been issued and published, the Bankruptcy Administrator begins to manage the company's assets, to supervise its activity and to determine the inventory of assets and the list of creditors.

8. Can sales of production units of the bankrupt company be made? What protocol and requirements are followed for this?

Yes, the main interest of the Bankruptcy Law in Spain is to maintain the business, so if it is proved that the bankrupt company cannot do so because of its debts, it can seek to sell its production unit to a third party who will buy it to continue the business. A production unit can be understood as all the assets and rights of the bankrupt company that are related to its business or professional activity. The buyer must negotiate the conditions with the Bankruptcy Administrator (who supervises all the operations carried out by the company) and the latter will ask the judge for authorization for the sale. It is a process like the usual and ordinary purchase of a company, but it requires the final authorization of the bankruptcy judge. There are no specific requirements for negotiating and buying the production unit, except the obligation to preserve the employees' labour contracts, with their salary and seniority.

9. How do the Bankruptcy Proceedings end?

Bankruptcy proceedings can end in two ways: with an agreement or with a liquidation. If an agreement has been reached with the creditors, the bankruptcy judge will issue a ruling approving the agreement and establishing the payment schedule to meet the company's debts. This agreement covers all the creditors, including those who have voted against it, and usually entails deductions of around 50% and waiting, with payment fractions up to five annual instalments. If an agreement has not been approved, the company will be liquidated by means of a judicial resolution and all its assets will be sold to meet its debts.

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