

March, 27th 2020

CORONAVIRUS – Overview of the various measures taken around the world to face the Covid-19 pandemic

Dear Friends,

The world is facing some difficult times due to the COVID-19 pandemic. The rapid proliferation of cases across an increasing number of countries is a cause of global concern.

China and Southern Asia were the first affected regions. European Countries have progressively stepped in. Upon the 1st of March, all EU and American countries governments progressively made unprecedented promises and adopted measures to protect health as well as to save companies. How will the COVID- 19 pandemic impact Africa?

In this context, the DS Group, a global European-based law firm with a global reach, has put in place an internal and global task force within its 22 offices in Europe, North and South America, Asia and Africa, dedicated to assisting clients on the diverse range of legal problems that COVID-19 presents.

Since January, our teams are heavily involved alongside our clients' teams all over the world, advising them in their local as well as international crisis-impacted-transactions. And, by the end of March, we are assisting an increasing number of our Chinese and Asian clients in their newly found activities in Europe, LATAM, Canada and Africa...

Whilst protecting the health and safety of our people is a priority throughout the COVID -19 pandemic, we also are committed to continuing to provide the same quality of advice and service standards to our clients that they expect from us.

This Newsletter aims to highlight the main measures taken by the government in 15 jurisdictions where DS acts. Our lawyers provide you with some updates and insights on the impact of these regulatory, economic and business measures to deal with the pandemic.

We hope the insights below from our lawyers across the world will help you prepare for the evolving impact of Covid-19 to your business, as well as our thoughts on the potential change to future business.

Best,
The DS Group Team



Table of contents

Find the latest changes in the legal landscape that potentially affect your business. From changes in legislation and case law to regulatory reforms, at DS we're able to support you on all legal developments.

EUROPE

[European Union](#)

[Belgium](#)

[France](#)

[Italy](#)

[Germany](#)

[Greece](#)

[Spain](#)

AMERICA

[Canada](#)

[Argentina](#)

[Chile](#)

[Peru](#)

ASIA

[China](#)

[India](#)

[Indonesia](#)

[Singapore](#)

[Vietnam](#)



EUROPEAN UNION – Measures taken by the European Commission and regarding State Aid

1. EU STATE AID AND COVID-19 OUTBREAK: A SWIFT AND MASSIVE RESPONSE

Faster than during the 2008-2009 crisis, and almost as quick as the spreading of the Covid-19 virus ... that's how the EU's response to the current pandemic crisis can be characterized. In exceptional circumstances such as the 2008-2009 financial crisis or during the 2010 Icelandic ash aviation lockdown, EU State aid law allows for flexible derogations to its standard approach to State aid control.

Indeed, as soon as on March 13th and 19th, the EU Commission (the "Commission") has adopted a series of measures implementing this flexible approach for approving urgent aid granted by Member States to companies affected by the COVID-19 outbreak.

This flexibility illustrates how deeply the Commission's perception of State has evolved between the pre-2008 crisis and today. Back in the early 2000s, State aids were largely perceived negatively. Following the 2008 crisis, the Commission's philosophy has gradually shifted towards a more positive approach –subject to conditions–, in a process that culminated during the 2012-2014 reform.

We briefly discuss below the measures adopted last week by the Commission.

THE EU EXISTING LEGAL TOOLBOX

- **Natural Disasters or Exceptional Occurrences: Automatic Approval**

Pursuant to Art. 107.2 (b) TFUE, State aid measures are automatically exempted, i.e. without discretionary compatibility assessment by the Commission, in order "*to make good the damage caused by natural disasters or exceptional occurrences*". This provision applies provided that there is an "exceptional occurrence" causing economic damages. The Commission has already clarified that the COVID-19 outbreak constitutes an "exceptional occurrence".

- **Serious Disturbance in the Economy of a Member State: Compatibility Assessment**

Pursuant to Art. 107.3 (b) TFEU, State aid measures may be exempted under a discretionary compatibility assessment by the Commission, when they aim at remedying "*a serious disturbance in the economy of a Member State*". This legal basis had only been used on a handful of cases between 1958 and 2008, then over 400 times during the financial crisis.



- **Rescue and Restructuring Aid**

Pursuant to Art. 107.3 c) TFEU, EU State aid law also allows for “traditional” rescue and restructuring aid to save companies in difficulty, under very strict conditions. Here too, the EU’s response during the financial crisis illustrates how the Commission was able to quickly adapt its practice: specific guidelines were adopted by the Commission in 2009, which later influenced the 2014 guidelines for this type of exemption. While the Commission has not yet adopted specific Covid-19 guidelines on rescue and restructuring, it may do so in the (near?) ” future.

THE NEW TEMPORARY FRAMEWORK (MARCH 19TH, 2020)

On March 13th 2020, the Commission adopted a [coordinated response](#) to counter the economic impact of the COVID-19 crisis and, on March 19th 2020, it adopted a new State aid [Temporary Framework](#) valid until the end of 2020.

This Framework describes the measures that the Member States can adopt in compliance with EU State aid rules. These measures primarily aim at helping companies to cope with insufficient short term liquidity. The Framework aims at complementing the existing tools, and do not replace them.

- **Measures that do NOT constitute State aid (no need for the Commission’s green light):**

- a) Measures available to all companies (no selectivity):*

Wage subsidies, suspension of payments of corporate and value added taxes or social contributions, and support directly to consumers, for example, for cancelled services or tickets that are not reimbursed by the operators concerned (§ 12).

- b) Measures available to specific companies:*

Measures to compensate specific companies for the damage directly caused by “exceptional occurrences”, for instance in sectors such as aviation and tourism, hospitality and retail. The principle of “one time, last time” would not apply in this context.

The Commission will require a number of information and data from the Member States, in order to track these exempted measures:

- date of first case reported in the country and number of affected persons at the time of notification;

- economic impact of the COVID-19 outbreak in the Member State;
- sequence of events between the occurrence of the COVID-19 outbreak and the adoption of the State aid scheme including any official recommendations or prohibitions;
- detailed required information that were published for certain sectors, such as the aviation sector (identification of the additional costs, of the foregone revenues -loss of traffic, reduced demand-, variable costs, catering not incurred, reference period, reconstitution of damages caused by comparison of the situation during the period of spread of the COVID-19 and the reference period);

- **Rescue and restructuring aid:**

Measures granted to individual companies facing acute liquidity needs, and support to undertakings facing financial difficulties, due to or aggravated by the COVID-19 outbreak.

- **Beyond Direct Grants: Other Types of Measures**

The Framework clarifies other types of measures which Member States can adopt to support enterprises affected by the COVID-19 outbreak.

The measures eligible to the Framework apply only to companies which entered into difficulty after 31 December 2019 and subject to prior notification to, and approval by, the Commission:

- **direct grants, repayable advances or tax advantages** (small size aid measures up to €800,000) to address urgent liquidity needs;
- **guarantees on loans** – measures more destined to large enterprises: (i) guarantee premiums set at a minimum level depending the recipient credit risk margin or (ii) aid schemes on the basis of this credit risk margin basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity); this type of aid will ensure banks keep providing loans to the business customers who need them to cover immediate working capital and investment needs;
- **subsidised interest rates for loans:** (i) loans granted at reduced interest rates (at least 1 year IBOR or equivalent plus the credit risk margins depending on recipient's credit risk margin), or (ii) aid schemes, on the basis of the credit risk margin, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity); these loans can help businesses cover immediate working capital and investment needs;
- **aid in the form of guarantees and loans channeled through credit institutions or**



other financial institutions: measures building on banks' existing lending capacities, and using them as a channel for support to businesses/small and medium-sized companies; this type of aid is considered as direct aid to the banks' customers, not to the banks themselves;

- **short-term export credit insurance:** additional flexibility on how to demonstrate that certain countries are not-marketable risks.

- **Procedure and Timing**

As of today (March 24th) the Commission has already adopted several decisions:

- on 12 March 2020, a €12 m Danish scheme to compensate damages caused by cancellations of large public events due to COVID-19 outbreak;
- on 21 March 2020, a Danish €130 million aid scheme to support small businesses and three French aid schemes State guarantees on commercial loans and credit lines to companies that have up to 5,000 employees and State guarantees to banks on portfolios of new loans for all types of companies up to €300 bn of liquidity support);
- on 22 March 2020, an Italian €50 m aid scheme for the production and supply of medical equipment and masks; four Portuguese €3 bn schemes for small and medium-sized enterprises and midcaps; two German subsidised loan programmes (one covering up to 90% of the risk for loans for mid-sized and larger companies with a maturity of up to 5 years and to €1 billion per company, depending on the company's liquidity needs, and one in which the German federal promotional bank participates together with private banks to provide larger loans – risk cover taken by the State up to 80% of a specific loan but not more than 50% of total debt of a company).

DG COMP has set up a dedicated mailbox and telephone number to assist Member States with any queries on COVID-19 State aid measures: +32.2.296.52 00 - COMP-COVID@ec.europa.eu.



2. EUROPEAN UNION: TEMPORARY RESTRICTION ON NON-ESSENTIAL TRAVEL TO THE EU (17.03.2020)

EU Leaders agreed to temporary restriction of non-essential travel from third countries into the EU area for 30 days. Any possible prolongation of this period should be assessed depending on further developments. The temporary travel restriction foresees exemptions for nationals of all EU Member States and Schengen Associated States (Iceland, Liechtenstein, Norway and Switzerland; whilst UK nationals are still to be treated in the same way as EU citizens until end 2020), for the purposes of returning to their homes. Exceptions are also foreseen for travellers with an essential function or need.

Start date: 17.03.2020

End date: 30 days from starting date

info: <https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-respons...>

3. EUROPEAN UNION: EASA ISSUES SAFETY DIRECTIVE (16.03.2020)

The safety directive of the European Union Aviation Safety Agency (EASA) specifies measures to be taken by national authorities for flights serving high-risk destinations. It recommends thorough disinfecting and cleaning of aircraft which operate from high-risk destinations after each flight. The definition of high risk geographical areas is based on World Health Organisation (WHO) situation report assessments and guidance issued by the European Centre for Disease Prevention and Control (ECDC), combined with regional public health assessments. EASA further recommended that airlines operating on all routes step up the frequency of cleaning, disinfect as a preventative measure and ensure full disinfection of any aircraft which has carried a passenger who was suspected or confirmed as being infected with COVID-19. Airport operators should similarly disinfect terminals regularly.

Start date: 16.03.2020

End date: not available

Further information: <https://www.easa.europa.eu/coronavirus-covid-19>

Further information: https://eeas.europa.eu/headquarters/headquarters-homepage_en

4. COMMISSION PRESENTS PRACTICAL GUIDANCE TO ENSURE CONTINUOUS FLOW OF GOODS ACROSS EU VIA GREEN LANES (23/03)

The Commission issued new practical advice on how to implement its Guidelines for border management, in order to keep freight moving across the EU during the current pandemic. To



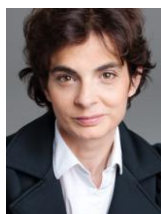
ensure that EU-wide supply chains continue to operate, Member States are requested to designate, without delay, all the relevant internal border-crossing points on the trans-European transport network (TEN-T) as **'green lane' border crossings**. The green lane border crossings should be open to all freight vehicles, whatever goods they are carrying. Crossing the border, including any checks and health screening, should not take more than 15 minutes.

A collective and coordinated approach to cross-border transport is more important today than ever before. The green lanes are also specifically designed to protect transport workers at the frontline of this crisis. This set of recommendations will ease their already stressful mission and it will bring more safety and predictability to their work.” Green lane border crossings Procedures at green lane border crossings should be minimised and streamlined to what is strictly necessary. Checks and screening should be carried out without drivers having to leave their vehicles, and drivers themselves should undergo only minimal checks. Drivers of freight vehicles should not be asked to produce any document other than their identification and driving license and if necessary a letter from the employer. The electronic submission/display of documents should be accepted. No freight vehicle or driver should face discrimination, irrespective of origin and destination, the driver's nationality or the vehicle's country of registration. In light of the current situation, Member States are also urged to temporarily suspend all road access restrictions currently in place in their territory, such as weekend, night and sectoral bans. The Commission encourages Member States to set up safe passage transit corridors to allow private drivers and their passengers, such as health and transport workers, as well as EU citizens being repatriated, regardless of their nationality, to directly pass with priority through the country in each necessary direction along the TEN-T Network. This should be done while staying strictly on the designated route and to take the necessary minimum rest breaks. Member States should ensure that they have at least one airport functional for repatriation and international relief flights. Enhanced cooperation among EU Member States and beyond Following the video-conference between EU Transport Ministers on 18 March, the Commission set up a network of national contact points and a platform to provide information on national transport measures taken by Member States in response to the coronavirus. The national contact points should support the effective functioning of the green lane border crossing points. Neighbouring non-EU countries are invited to work closely with this network to ensure the flow of goods in all directions. Application of rules for transport workers To keep transport moving, the Commission recommends that Member States take action to ensure the free movement of all workers involved in international transport, whatever the transport mode. In particular, rules such as travel restrictions, and mandatory quarantine of transport workers not displaying symptoms, should be waived. For example, Member States should not require that transport workers carry a doctor's certificate to prove their good health. To ensure the safety of transport workers, enhanced hygiene and operational measures are also needed in airports, ports, railway stations and other land transport hubs. Today's note from the



Commission includes a full list of recommendations to protect drivers from the coronavirus (Annex 2). Internationally recognised certificates of professional competence should be considered sufficient to prove that a worker is active in international transport. In the absence of such certificates (not all international drivers have one), a letter signed by the employer (Annex 3) should be accepted. All of these principles should also apply to third country nationals if they are essential to ensuring that cargo moves freely within and into the EU. Background The coronavirus pandemic is having a major disruptive impact on European transport and mobility. The European supply chain is maintained through an extensive network of freight transport services, including all modes of transport. Continued and uninterrupted land, waterborne and air cargo services are of crucial importance for the functioning of the EU's internal market and its effective response to the current public health crisis.

For further information, please contact:



Marie-Christine Bonnamour
Partner
mc.bonnamour@squaris.com



Liza Dignac
Senior Public Relations Consultant
l.dignac@squaris.com



Michel Debroux
Partner
debroux@dsavocats.com

#Belgium - Measures taken by Belgian National Security Council

As announced on March 10, the evolution of the spread of the coronavirus is **assessed every day**, as the situation is constantly changing. In light of the most recent developments, the **National Security Council met on Thursday 12 March** in the presence of and in consultation with the Ministers-President. This meeting of the NSC followed on from the meetings of the expert groups, namely the Risk Assessment Group and the Risk Management Group.

The decision was to **reinforce the current measures with additional social distancing measures** aimed at the **same objective**: to prevent the epidemic from spreading. This phase ensures better coordination and information on the measures taken by the various entities. **The measures announced will apply throughout the country.**

All levels of authority share the **same commitment to coordinated action, communication and implementation** for the measures decided. We want the same decision to be applied consistently throughout the country. The primary objective is to protect public health.

These measures are **in effect from Friday midnight until 3 April**. As before, the ongoing situation will be assessed on a daily basis.

1. Schools

- Regarding schools, all lessons are suspended. Childcare will be organised, **especially** for children of medical and healthcare staff and staff working in safety and security roles (public safety and security). If the only childcare that is available for children involves elderly persons, these children will also be able to go to the schools.
- Nurseries will remain open.
- For **universities and colleges of higher education**, the recommendation is to **develop remote learning modules**. These schools will not be closed, but are encouraged to provide alternatives to traditional courses in lecture halls or in confined spaces.



2. Commercial and recreational activities (sports, culture, folklore, etc.)

- All activities are cancelled, regardless of the size of the event and whether they are public or private.
- Discos, bars and restaurants, among other locations, remain closed.
- Hotels will remain open, except for their restaurant.
- Home delivery and drive-in are allowed.
- **Shops will be open during the week, but not on weekends.**
- **Food stores and pharmacies will be open, even on weekends.** However, they are advised to step up hygiene measures following the recommendations already made.

3. Work

- Everyone should keep working as much as possible, but **working from home should be encouraged and, if necessary, reinforced.**

4. Public transport

- Public transport will continue to function normally, but **trips** should be limited to only those that are **necessary**. Flexible working times should prevent overloading public transport.

Please note that these measures complement the recommendations already made. The reinforced phase two continues to apply.

We are well aware that these decisions will impact the economy, and certain industries in particular.

In this respect, on 6 March, the Council of Ministers had adopted ten measures in support of business, namely:

- Temporary unemployment due to force majeure
- Temporary unemployment for economic reasons
- Payment plan for employers' social security contributions
- Payment plan for VAT
- Payment plan for withholding tax

- Payment plan for personal income tax/corporate tax
- Reduction of tax prepayment for self-employed persons
- Postponement of or exemption from payment of social security contributions for self-employed workers
- Entitlement to replacement income for self-employed persons (droit passerelle/overbruggingsrecht/bridging right)
- Flexibility in the performance of federal government contracts

These measures will be constantly monitored, with a view to strengthening them where necessary.

5. Measures taken by the tax authorities


Businesses are granted the following temporary extensions of the deadline to file tax returns and pay taxes:

INCOME TAXES

- For corporate, legal entities, non-resident tax returns with a deadline between 16 March and 30 April 2020, an extension is granted until 30 April 2020
- The deadline for paying wage withholding tax for February and March/Q1 2020 is automatically extended by 2 months
- The payment of income taxes related to AY 2019 and established as from 12 March 2020 is automatically extended by 2 months
- The ruling commission introduced a special 'fast track' procedure for the home work allowance of 126,94 EUR. All employees working at home due to special Corona measures will be entitled to the maximum amount of 126,94 EUR without a distinction in function categories. The new home work allowance will replace the current 'office' allowance if applicable. The ruling can be obtained in a few days, following a special procedure.

VAT

- The deadline for filing VAT returns and intra-Community statements for February and March/Q1 2020 is extended to 6 April and 7 May 2020, respectively
- For starters and businesses with a monthly VAT refund licence that wish to receive a monthly repayment of VAT credit, an extension of the filing deadline of the VAT return is granted until the 24th of the month following the return period
- The deadline for filing the annual sales listing is extended to 30 April 2020

- 
- The deadline for paying VAT for February and March/Q1 2020 is automatically extended by 2 months

Audit

- Non-essential tax audits on the premises of the taxpayer are postponed.

Businesses can ask for support from the tax authorities regarding their tax debts. This support covers:

- a payment plan,
- an exemption from late payment interest,
- a waiver of fines for non-payment.

Specifically, this support can be requested for the following tax debts.

- Corporate Income Tax and Income Tax on Legal Entities;
- Value Added Tax;
- Wage Withholding Tax;
- Personal Income Tax.

WHEN ARE BUSINESSES ELIGIBLE FOR SUPPORT?

Businesses are only eligible for support if they are adversely affected by the Coronavirus crisis and if they are able to substantiate that (e.g. a drop in turnover, a serious drop in orders and/or reservations, a result of a domino-effect within a group, etc.). Businesses are not eligible for support if they are already facing structural payment difficulties.


Support is also conditional upon compliance with the timely filing of tax returns. Support will be withdrawn if a collective insolvency procedure (e.g. bankruptcy) arises.

6. Measures taken by the social security authorities

An extension is granted of the deadline for paying social security contributions for the first and second quarter of 2020 until 15 December 2020.

Businesses can also request a payment plan for their social contributions which are due for the first and second quarter of 2020. This plan allows for payment to be spread over a maximum of 24 months.

Businesses must file a specific application form wherein they must provide evidence of the financial impact of the crisis on their business. The form can be found [here](#).



Businesses can also invoke temporary unemployment as a result of “overmacht/force majeure”. This possibility can be widely applied as from 13 March 2020. Employees will benefit from a temporary increase of their allowance in the event of temporary unemployment. The “RVA/ONEM” will bear an amount of 5,63 EUR/day of unemployment. All allowances would be paid out in April. If not, an advance of 1.450 EUR will be paid.

On 20 March 2020, the Belgian social security authorities published an update of their quarterly instructions, specifically with respect to the COVID-19 measures.

NL: [Social zekerheid: onderneming](#) / FR: [Sécurité sociale: entreprise](#)

Particularly interesting is the confirmation that a possible supplementary pay of the employer, in addition to the temporary unemployment allowance foreseen by the Federal authorities and the RVA/ONEM, can be allocated to the employee with exemption of Belgian social security provided that the eventual total net pay (allowance + supplement) will not be higher than the regular net salary should the employee have worked.

In case of questions, do not hesitate to contact your social law team.

7. Measures for the self-employed


An extension is granted of the deadline for paying social security contributions for the first and second quarter of 2020 until 15 December 2020. The self-employed can also benefit from support regarding their social security contributions in the form of a reduction, delay or exemption of payment. If you are obliged to interrupt or stop your activity because of the crisis you can apply for a replacement income.

Self-employed should contact their social security fund:

NL: [Sociale verzekeringsfondsen](#) / FR: [Caisses d'assurances sociales](#)

8. Measures taken by the Flemish government

- The assessment notices regarding immovable withholding taxes will only be sent in September 2020 (instead of March 2020)
- The government has provided a budget for guarantees for bridging loans which businesses are forced to contract in order to be able to pay their bills
- When small businesses are forced to close their business, they can apply for a tax-free premium to compensate for their loss of business.
- The assessment of car taxes will be postponed by 4 months



The Flemish authorities will show flexibility regarding the conditions for support measures and subsidies which have already been granted to businesses.

[Click here for more information on Flemish support measures.](#)

9. Measures taken by the Walloon government

The Walloon government has created a [crisis fund](#) of 100 million EUR to support sectors affected by the coronavirus crisis.

TAX MEASURES

- Taxpayers will benefit from a suspension of the tax payment deadlines during the crisis
- Deadlines for claims against assessment will be frozen
- Negative administrative decisions will be frozen. However, all positive decisions will be applied.
- Moderation of current recovery procedures, payment plans will be facilitated
- All physical and correspondence audits are eliminated
- Administrative fines for the mileage tax will be moderated.

OTHER MEASURES

- (Very) small businesses in certain sectors can ask for a tax-free compensation if they are forced to close
- Mobilization of regional agencies (SOWALFIN, SOGEPa-Wallonie Santé Group, SRIW) via loans, guarantees, frozen reimbursements, etc.
- [Overview of additional support measures](#) taken by the Walloon government

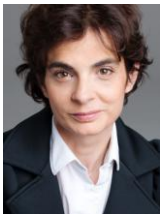
10. Measures taken by the Brussels government

The Brussels government has also taken a series of measures totaling 110 million EUR including:

- A one-off tax-free premium for some sectors (horeca, travel, retail, ...) which are affected by the emergency measures and are forced to close.

- The abolition of the regional City Tax for the first semester of 2020.
- Government guarantees on bank loans for 20 million EUR.
- The accelerated treatment of grants of expansion support for certain sectors (horeca, tourism, culture and events).
- More details are available on the website of the Brussels authorities ([NL](#) / [FR](#)) (cfr. measures for businesses in Brussels).
-

For further information, please contact:



Marie-Christine Bonnamour
Partner
mc.bonnamour@squaris.com



Liza Dignac
Senior Public Relations Consultant
l.dignac@squaris.com



Michel Debroux
Partner
debroux@dsavocats.com

#France - Main legal and business measures adopted

Dealing with the public health emergency of COVID-19, from mid – March onwards the French government has progressively adopted measures to face the coronavirus crisis in order to protect its citizens' health as well as French companies' business.

Like other countries, the French government has then introduced measures on sanitary rules and in order to increase hospital capacity and treatments, on one side; and to put companies in a position to overcome the crisis, on the other side.

In this context, we have prepared an overview of the key aspects concerning labour, taxes, trade & customs, real estate, construction, public procurement, Life Sciences and Intellectual property law issues.

Uncertainty could arise in the next weeks because of the evolution of the situation and potential new measures.

As usual, DS Avocats will be your partner to manage the situation and to meet new challenges

1. [Labour](#)
2. [Tax](#)
3. [Trade & Customs](#)
4. [Real Estate](#)
5. [Construction](#)
6. [Public Procurement](#)
7. [Life Sciences](#)
8. [Intellectual Property](#)


1. Labour

Following the French government's announcements aimed to protecting people from the coronavirus pandemic, you will find hereafter the main measures to best organize your business.

What measures should be implemented to deal with the decline in the Company's business?

- **If possible, the implementation of telework**

The French Labour Code expressly provides for the of the employer to implement telework under exceptional circumstances, including the threat of an epidemic, without the agreement of the employees.



It does not require any particular formalism. It is nevertheless essential to inform employees and to ensure that they are informed, for example by e-mail.

- **The partial activity system**

While the Government initially indicated that the coronavirus epidemic was an exceptional circumstance allowing companies to benefit from the partial activity procedure, it appears to have more recently given much stricter instructions to the DIRECCTE, (the French authority in charge of the treatment of partial activity requests).

These new directives in a general way limit application of partial activity only to companies that have had to shut down. For all the others, the use of telework should be given maximum priority.

In this case, lacking the possibility to implement telework, the Minister of Labour has enjoined companies to maintain the activity, which would mean that the partial activity would not be automatically accepted.

However, if companies and associations in any sector are not directly affected by the administrative closure, they will suffer the full impact of the activity decline.

Article R5122-1 of the French Labour Code currently in force provides that an employer may place its employees in a position of partial activity when the enterprise is forced to reduce or temporarily suspend its activity for one of the following reasons:

- 1° The economic situation;
- 2° Difficulties in the supply of raw materials or energy;
- 3° A disaster or bad weather of an exceptional nature;
- 4° The transformation, restructuring or modernization of the company;
- 5° Any other circumstances of an exceptional nature.

After having consulted staff representatives if they exist, and having informed employees individually of the project of partial activation, Company can make a prior request to the DIRECCTE, via a secure and confidential internet portal.

[\(https://activitepartielle.emploi.gouv.fr/apart/\)](https://activitepartielle.emploi.gouv.fr/apart/).

Pending clarification, particular care should be taken in compiling partial activity files and not simply invoke the health crisis linked to Covid-19. In our opinion, it will also be necessary to establish the reality of the decline in activity linked to the epidemic suffered by the company. By way of illustration, it is possible to indicate that orders/works/events are cancelled; to



specify the difficulties in the supply of raw materials or energy, and to specify the impact on turnover. This motivation may be the subject of a separate note to be attached to the application. Applications may be filed retroactively within 30 days. You must therefore take the time to justify your request, and even if you are currently opening files, take advantage of the 30-day retroactive period to "beef up" your arguments.

Finally, and for those who will not have opted for telework or who will be refused short-time working, the question of the employer's criminal liability will arise in the event that one of his employees is invited by the employer to return to physical work, despite the adoption of safety rules and information on the extreme need to respect barrier gestures. Here too, the Government is alerted to the need to provide clear rules in this area, which is not yet the case.

While the DIRECCTE usually has 15 calendar days to give its response, the Minister specified that the DIRECCTE would respond within 48 hours to employers via the dedicated website.

During the period of partial activity, the employee benefits from a single partial activity allowance paid by the employer, who in turn receives a partial activity allowance paid by the State.

Also, you will be required to pay employees an hourly allowance at the normal pay date. In return, the State will have to pay the companies a partial activity allowance.

The employer must pay its employees at the time of pay, an allowance equivalent to 70% of their gross hourly pay (based on paid holidays) which will correspond to 82% of the net (except for employees at the SMIC who will receive 100% of their salary).

On the other hand, according to a press release from the Ministry of Labour which has been transmitted on March 17, 2020, the compensation received by companies would no longer be capped at 8.04 €/hour but would be 100% of the payments within the limit of 4.5 Smic by virtue of a decree which will be issued shortly.

The companies will have a 30 days deadline to submit their request, which will be retroactive, (as the Minister specified on March, 16 2020).

The unemployed hours taken into account correspond to the difference between the number of hours actually worked and the legal working time (or the collective working time or that provided for in the employment contract if it is lower). Overtime hours worked due to collective working hours in excess of 35 hours do not have to be paid at the originally agreed salary. For employees who work a fixed number of hours or days over the year, the legal



duration corresponding to the days on which the establishment or department is closed is taken into account (up to a limit of 7 hours per day or 3.5 hours per half-day). The allowance is paid monthly to the employer by the Service and Payment Agency (SPA). As an exception, the ASP pays the allowances directly to the employees in the event of receivership or judicial liquidation or the employer's financial difficulties.

- **Deadlines for the payment of social security contributions**

It is possible to request, via the urssaf.fr (French Social Security Authority) website through the section "a declarative formality", then "declare an exceptional situation", a request for a delay in the payment of social security contributions and the exceptional remittance of surcharges and penalties for late payment for the periods concerned.

The URSSAFS have indicated that these requests will be processed as a matter of priority.

- **The alternative of training**

The Government has indicated that FNE (French National Employment Fund) funds and OPCOs (skills operators) will be deeply involved in order to maintain the training effort for employees during their partial period of activity, but without further details to date.

Two options are available: the use of training within the framework of the partial activity ("common training law"), or the FNE FORMATION (with the benefit of State aid for the employer).

For further information, please contact:



Frédéric Godard-Auguste
Partner
Godard@dsavocats.com



Monique Figueiredo
Partner
figueiredo@dsavocats.com



Gwladys Beauchet
Partner
Beauchet@dsavocats.com



Patricia Jeannin
Partner
jeannin@dsavocats.com



2. Tax

DEFERRAL OF DIRECT TAXES PAYMENT

Companies can request to postpone, without penalty and condition, the payment of their next direct tax installments (advance payment of corporate income tax, payroll tax, Corporate Property Tax called “CFE”, Contribution on the added value of companies called “CVAE”) using a special form available on the French tax authorities website.

If payments for March have already been done, two solutions are possible:

- Companies that still have the possibility to do so should reject the SEPA Direct Debit corresponding to this payment with their online bank;
- Alternatively, they can request a refund from the corporate tax authority once the direct debit has been processed.

However, requests for direct tax rebates have a different regime and must be justified, as these can only be granted in the event of serious difficulties which cannot be overcome by deferring payment.

***NOTE:** VAT and assimilated taxes are excluded from the measure, as the repayment of withholding tax by collectors.*

ACCELERATED REPAYMENT OF CORPORATE TAX RECEIVABLES

Companies benefiting from one or more tax credits refundable in 2020 can speed up the process and request immediately the refund of the balance of the available claim, after deduction, if applicable, from their corporate tax due for the 2019 financial year, without waiting for the filing of the income statement. This request can be made online at impots.gouv.fr.

This system applies to all tax credits that can be refunded in 2020, such as the CICE and the CIR. The system also applies to certain sectors in difficulty (cinema, audiovisual, phonographic, performing arts and video games tax credits).

CFE AND PROPERTY TAX

Possibility to suspend monthly contracts for the payment of the "CFE" or property tax, on the following website: impots.gouv.fr or by contacting the Service Deduction Centre: the remaining amount will be deducted from the balance, without penalty.

Independent professions

As it was already the case, it is possible to modulate the rate and withholding tax on salary at any time.

It is also possible to defer the payment of withholding tax installments on professional income from one month to another up to three times if the installments are monthly, or from one quarter to the next if the installments are quarterly. Any action taken on the individual area of the following website "impots.gouv.fr" before the 22nd of the month will be taken into account for the following month.

***NOTE:** In order to facilitate all procedures, the French Tax Authorities provides sample applications, available on the impots.gouv.fr website, to be sent to the corporate tax department.*

For further information, please contact:



Jean-Luc Raffy,
Partner
raffy@dsavocats.com



Christophe Billet,
Partner
billet@dsavocats.com



3. Trade & Customs

- The DGDDI is setting up a platform for Questions and Answers.

Government movement restrictions do not apply to goods. <https://www.douane.gouv.fr/covid-19-reponses-vos-questions-les-plus-frequentes>

- Is there any facilities for the payment of duties and taxes collected by the customs administration (DGDDI)?

The DGDDI explains that at present the emergency measures taken by the government only concern direct taxes. Duties and taxes collected by the customs administration are therefore not included.

It should be recalled that since **VAT on imports** is an own resource of the European Union, the latter is fully competent, particularly in the area of remission. Furthermore, since 2016, a large number of companies have been granted a reverse-charge authorization enabling them to avoid paying import VAT.

Customs duties and anti-dumping duties are also own resources of the European Union budget, but their mechanism is different from that of VAT: it is not possible to deduct them, nor to proceed to a reverse-charge : it is a real burden for the company.

Finally, as regards **excise duties applicable to alcohol, tobacco and energy products** (i.e. National consumption taxes, NCT), they do not correspond to EU own resources but are directly fed into the general budget of each Member State. The absence of payment facilities is therefore all the more surprising insofar as the French State has total room for manoeuvre with regard to these taxes, the weight of which is very significant for companies which, for example, use petroleum products, natural gas or electricity for their manufacturing process.

The DGDDI states that each case will be analysed in the light of the applicant's financial situation.

The Customs & International Trade Department of DS is at your side to assist you in your dealings with the customs authorities.



▪ **Notice from French Customs to pharmacists wishing to manufacture hydro-alcoholic gel**

The DGDDI has communicated for pharmacists wishing to prepare hydro-alcoholic solutions intended for human hygiene in application of the decree of the Directorate General for Health of 6 March 2020 on various measures relating to the fight against the spread of the covid-19 virus.

In order to be supplied with alcohol exempted from tax (i.e. excise duty) for the manufacture of these preparations, pharmacists must :

- Have a tax "user status"...
- Obtain alcohol from an alcohol supplier with authorized warehousekeeper (AW) status
- Apply the WHO formula contained in the decree of 6 March 2020 of the Directorate General for Health for the manufacture of hydro-alcoholic gel. This will allow the pharmacist to benefit from tax exemption, as this operation is equivalent to denaturing the alcohol by a special process in application of article 302 D bis I b of the CGI;
- To justify at any request of the administration that the alcohol received has been used in the conditions provided for (conservation of the documents accompanying the alcohol received, followed by the alcohol received and the quantities used for the preparation of hydro-alcoholic gel).

▪ **Commission ensures continuation of trade defence proceedings despite limitations imposed by the VIDOC epidemic-19**

These measures will allow the Commission to pursue its trade defence activity on a sound factual basis and within the legally binding deadlines. The current exceptional circumstances prevent the Commission services from carrying out verification visits at the premises of the companies concerned and may affect the respect of procedural deadlines by interested parties.

The measures include making greater use of written submissions and granting, where warranted, additional flexibility to companies with regard to time limits for submission. As soon as the health situation permits, the Commission will be ready to review on its own initiative any trade defence measures adopted on the basis of data which could not be fully verified due to the circumstances of COVID-19 and to adapt them if necessary.

More information : [Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations](#)



▪ **Commission acts to ensure the provision of personal protective equipment in the European Union**

The Commission has announced measures to ensure the provision of protective equipment for citizens. Trade Commissioner Phil Hogan said: "*The challenges posed by the spread of VIDOC-19 justify the urgency of this action. The Commission is sparing no effort to offer concrete help to our citizens and all those who care for them*".

The Commission thus adopted Implementing Regulation (EU) 2020/402 on 14 March 2020 making the export of certain products subject to the presentation of an export authorization. This implementing act, adopted by emergency procedure, provides for authorizations for exports to third countries. The export of personal protective equipment is now subject to authorization under penalty of an export ban. Member States shall process applications for export authorizations within a time limit set by national law, which may not exceed 5 working days. The products covered by this export authorization are protective goggles and visors (e.g. 9004 90 10), face shields (ex 3926 90 97), oral and nasal protection equipment (ex 6307 90 98), protective clothing (ex 3926 20 00) and gloves (ex 4015 11 00).

The Regulation will be valid for a period of six weeks, during which Member States will be consulted on potential adaptations and the scope of the current measure and future steps.

More information: [Règlement d'exécution 2020/402](#)

For further information, please contact:



Jean-Marie Salva,
Partner
salva@dsavocats.com



Sophie Dumont-Kappe,
Partner
dumontkappe@dsavocats.com

4. Real Estate

The French health emergency bill was finally adopted on Sunday, March 22, 2020.

According to article 7.I.g, the government may, by ordinance, postpone in full or stagger the payment of rents. Please note that this text does not cover the charges which will thus remain due.

Above all, it can only benefit micro-enterprises (and not SMEs), which limits its scope of application.

Indeed, under Decree 2008-1354 of 18 December 2008, this will concern companies employing fewer than 10 people and whose turnover or balance sheet total does not exceed EUR 2 million.

Finally, the situation of lessors is not addressed even though non-payment of rent, particularly for small owners, can be very problematic.

It is therefore appropriate to await the implementation of this new provision.

For further information, please contact:



Sébastien Legrix de la Salle
Partner
legrixdelasalle@dsavocats.com




Jean-Marc Peyron
Partner
peyron@dsavocats.com



Florence Bouthillier,
Partner
bouthillier@dsavocats.com



Olivier Fages
Partner
fages@dsavocats.com



5. Construction – Consequences to date of Covid-19 related measures on construction sites

In this current context of unprecedented health crisis, in view of the quarantine measures ordered by the Government, the professional organizations of the construction industry and the Executive face major difficulties in reaching a consensus as to whether or not to continue work on construction sites, notably in view of the necessary measures to be taken to ensure the health of the persons working on sites, considering the spread of Covid-2019.

Decree No. 2020-260 of 16 March 2020 on the regulation of displacement in the context of the fight of the spread of the Covid-2019, requires that displacements are authorized for professional reasons and cannot be postponed ‘in compliance with the general measures to prevent the spread of the virus and avoiding any gathering of people’.

While the construction companies have not received any guideline from the Government to stop their activities, the professional organizations of the construction industry (CAPEB, FFB, FNTP) have risen to request temporary stoppage of the construction site, while organizational solutions are found, mainly of a sanitary kind, in order to ensure the safety of the workers on the building sites.

80% of companies, and therefore of construction sites stoppage, is then mentioned.

An agreement seems, however, to have been reached to ensure the continuation of the activity under satisfactory sanitary conditions and a guide for the proper continuation of operations should be published at any time, under the control of the *Organisme professionnel de prevention du BTP* (Professional Body for the Prevention of Building and Public Works - OPPBTP), and previously approved by the Ministries of Labour, Solidarity and Health.

In the meantime, on behalf of the Government, the Minister of the Interior Security, Mr. Christophe Castaner, and the Minister of Labour, Ms. Muriel Penicaud, have confirmed that the construction sites were not suspended to date and, on the contrary, has encouraged the continuation of the activity, despite the strong protests from the construction industry, in particular from Mr. Jacques Chanut, President of the FFB.

However, the Government has invited the Owners and other companies not to seek contractual liabilities from the Contactors, their subcontractors or suppliers when they had to suspend their activities while the conditions of performance were no longer possible to guarantee health and safety of the workers attending on the construction sites.



It is likely that this request will also concern companies which cannot materially comply with the guide to good sanitary practices on construction sites, which publication is firmly awaited.

In other terms, it is requested, and not imposed, that Owners should not apply penalties in the event of a suspension of the worksite at the initiative of the Contractor.

However, question must be raised as regard the claim that may arise after the crisis by the Contractor, particularly regarding the mobilization of materials and equipment on site:

WHO WILL HAVE TO TAKE FINANCIAL RESPONSIBILITY FOR IT?

Likewise, in the event of a site suspension, the company's duty to guard the site will have to be considered.

Moreover, will the operational losses resulting from the Covid-19 be compensated?

On this point, it is important to refer to the terms of the Civil Liability policies subscribed, in order to ascertain whether immaterial damages are covered in case of external event or force majeure.

However, this being said, the force majeure cause has not been officially enacted for the construction industry. Indeed, the Ministry of the Economy, Mr. Bruno Lemaire, mentioned it particularly for public construction contracts, at the closure of a working meeting with the social representatives on 28 February 2020, without returning to it since then.

As a consequence, without clarification from the Executive, it will be necessary to comply with the provision of the construction agreements, or with the CCAG to which they refer, if necessary.

Hence, many issues remain unresolved to date.


For further information, please contact



Marie-Pierre Alix
Partner
alix@dsavocats.com



Stéphanie de Laroulliere
Pre-Partner
delaroulliere@dsavocats.com



6. Public procurement - Adaptation of the rules governing the award, procedure or performance of public contracts

The Ordinance on various measures for adapting the rules for the award, procedure or execution of contracts subject to the code of public procurement and public contracts that do not fall under it during the health crisis caused by the covid-19 epidemic, issued pursuant to Article 11 of Law No. 2020-290 of 23 March 2020 on emergency measures to deal with the covid-19 epidemic, was published in the OJ of 26 March (Order No. 2020-319).

Its content encourages buyers to agree to a certain number of flexibility measures, with the aim of protecting economic operators and allowing contracts to get back on track at the end of the health crisis.

SCOPE (ARTICLE 1)

The scope of application of the Ordinance is broad, since its provisions ultimately apply to the following contracts:

- Those, public as private, subject to the public procurement code, in progress or concluded as of March 12, 2020, which includes public procurement contracts concluded before the entry into force of the Public Procurement Code under the regime of previous texts;
- Administrative contracts that are not subject to the public procurement code, such as domain occupation agreements.

It is intended to apply for a period covering the entire duration of the health crisis, increased by two months, which should give buyers and operators time to anticipate the resumption of consultations or contracts in progress.

However, the application of the provisions of the Ordinance will have to be studied and justified on a case-by-case basis, as these provisions should only be implemented "*insofar as they are necessary to deal with the consequences, in the award and execution of these contracts, of the spread of the covid-19 epidemic and the measures taken to limit this spread*".

There is therefore no automaticity in the provisions summarized below.

In practice, this means that the flexibilities offered by the Ordinance, particularly in terms of termination, cannot be implemented lightly by buyers; and that operators who request the



implementation of the flexibilities in terms of deadlines and subsequent non-application of penalties will have to document their requests.

ADJUSTMENT OF CURRENT PROCEDURES (ARTICLES 2 AND 3)

The Ordinance allows for two types of adjustments to ongoing consultations for the award of a contract subject to the Public Procurement Code:

- Extension, for a "sufficient period", of the delivery deadlines, unless "the services which are the subject of the contract cannot be delayed".

In practice, a margin of appreciation is therefore left to the buyers on this point. Of course, attention must be paid to the delivery deadlines closest to the start date of the confinement, and to procurements in which a visit is made mandatory or in which services are expected. Moreover, there is nothing to prevent candidates from requesting appropriate postponements.

With regard to the implementing arrangements, it may be necessary to publish a corrective notice or even a request for an extension of the period of validity of the tenders (to be obtained from all the candidates competing in the competition).

- Adaptation, "in compliance with the principle of equal treatment of candidates", of the competitive tendering procedures initially provided for in the consultation file which "cannot be complied with by the contracting authority".

One thinks, of course, of procedures involving negotiations with candidates, which could not be held in person because of the confinement. The question will then be whether it is possible, or more appropriate, to replace meetings by videoconferences, for example, or whether it is preferable to extend the time limits for the procedure, it being recalled that the same measure will have to be taken with regard to all candidates.

ADJUSTMENT OF CONTRACTUAL DEADLINES AND PENALTIES (ARTICLES 4 AND 6, 1° ET 2°)

In addition to the measures extending the consultation periods, the Ordinance authorizes the extension of the duration of contracts that would expire during its period of application, including beyond the maximum duration of four years for framework agreements, and without prior review for concessions.



A safeguard is nevertheless provided for: this extension may not exceed the duration necessary for reopening competition at the end of the period of application of the Ordinance (end of containment + 2 months).

Moreover, two specific cases of "difficulties in executing the contract, [...] notwithstanding any stipulation to the contrary, except for stipulations that would be more favorable to the contract holder" are provided for: the impossibility of execution or the impossible respect of contractual deadlines.

In such cases, and provided that he proves that the performance of the contract or an order form, or its execution within the contractual time limits "would require means the mobilization of which would place a manifestly excessive burden on [him]", the holder may be granted an extension of the time limits for execution upon request (again, this time limit may not exceed the time limit for application of the order), and may neither be sanctioned nor have his contractual liability incurred in the event of non-performance of the services which are the subject of the contract or of delay in performance.

On the other hand, the purchaser may, for his needs "which cannot be delayed in any way", and even in the presence of an exclusivity clause, have the services performed by a third party at his own expense within the framework of a substitute contract.

FRAMEWORK FOR THE FINANCIAL CONSEQUENCES OF THE SUSPENSION AND TERMINATION MEASURES TAKEN IN APPLICATION OF THE HEALTH CRISIS (ARTICLE 6)

Finally, with the aim of protecting incumbent operators in the event of difficulties in execution, and always "notwithstanding any stipulation to the contrary, with the exception of stipulations which would be more favorable to the holder of the contract", the Ordinance provides for the financial consequences of certain measures:

- In the event of cancellation or cancellation of a purchase order following a state of health emergency (this causal link is intended to be justified), "the holder may be compensated, by the buyer, for expenses incurred".
It should be noted that in a number of contracts, global or concessive in particular, compensation in the event of termination for prolonged force majeure period goes beyond strict compensation for expenses incurred; to the extent that such a stipulation is to be regarded as "more favorable" to the contract holder than that provided for in the Ordinance, it should be allowed to continue to apply.
- If the buyer suspends performance of a lump-sum contract, "*he shall proceed without delay to settle the contract in accordance with the terms and for the amounts provided for in the contract*". At the end of the suspension, the parties shall make any necessary amendments by means of an amendment and shall draw the financial consequences thereof.



These provisions do not say whether the payment should concern the services actually performed, in accordance with the rule of the service rendered, which may require a contradictory statement of fact drawn up in accordance with procedures adapted to the current circumstances, or, exceptionally, the payment of the totality of the services corresponding to the lump sum.

- In the event of suspension of a concession by the grantor, "any payment of a sum to the grantor is suspended and, if the economic operator's situation justifies it and up to its needs, an advance on the payment of the sums due by the grantor may be paid to it". This rule may concern, respectively, payments by the concessionaire of royalties or shares of the remuneration received from users, or payments by the grantor of subsidies for public service charges. Moreover, if the grantor "significantly changes the terms of performance provided for in the contract, the concessionaire is entitled to compensation for the additional cost of performing the service or works, even partially, where the continued performance of the concession requires the use of additional resources not provided for in the original contract and which would represent a manifestly excessive burden in relation to the concessionaire's financial situation".

In the end, without finally addressing the notion of force majeure, the tone is set: buyers are in any case invited, in the context of the measures they will apply as a result of the health crisis, to protect their co-contractors financially. Constructive exchanges will have to be favored in order to implement adequate and proportionate measures, and to allow the continuation/resumption of contracts at the end of the period covered by the order.

For further information, please contact :



Nathalie Sultan
Partner
sultan@dsavocats.com



Philippe Zeller
Partner
zeller@dsavocats.com



Clémentine Liet-Veaux
Associate
lietveaux@dsavocats.com



7. Life Sciences

For several weeks now, France has been actively fighting against the coronavirus. In addition to health measures, the Government has adopted various texts as a matter of urgency in order to put an end to speculation in strategic health products and limit the movement of French people.

Some of these unprecedented measures raise questions about their legal regime.

WHAT MEASURES HAVE BEEN TAKEN BY THE GOVERNMENT IN ORDER TO FIGHT AGAINST HEALTH PRODUCTS SPECULATION?

First measure to many to come, on March 4, 2020 (modified by the decree dated 13 March 2020) a decree was published in the *Journal Officiel* relating to the requisition by the government of stocks of protective masks (FFP2 and anti-projection masks) held by any legal entity under public or private law. The text aims in particular to ensure priority access to health professionals and patients affected by Covid-19.

The practice of requisitioning is not new. It is a constraint procedure attributed by specific texts to administrative authorities (mayors, prefects, etc.) authorizing them to obtain goods and services by force. Requisitioning is necessarily temporary and it is in this respect that it differs from expropriation.


Under French law, the requisition appears in a law of 1877 which is today codified in the defense code.

Regarding health matters, the Act dated March 5, 2007 relating to the preparation of the health system for large-scale health threats grants the administration with the means of action and in particular the possibility of requisitioning goods or putting in place places a health reserve.

This text was adopted in the context of health threats such as bird flu and Chikungunya.

The measures that can be adopted are codified in the French Public Health Code in articles L. 3131-1 and following. The issue of compensation for these requisitions is dealt with in the French Defense Code in articles L.2234-1 et seq.

Concerning the hydro-alcoholic gels prices, Article L.410-2 of the French Commercial Code establishes the principle of free pricing. However, its third paragraph states that this principle "*does not prevent the Government from adopting, by decree, temporary measures against excessive price, motivated by a crisis situation...*" These are the provisions used in the recently published decree of 5 March 2020, which corrects abnormal market prices linked to excessive speculation.



In addition, an Order dated March 7 authorizes pharmacies to prepare hydro-alcoholic solutions until May 31, 2020.

WHAT OTHER EXCEPTIONAL MEASURES HAVE BEEN TAKEN IN FRANCE TO GUARANTEE ACCESS TO HEALTHCARE FOR THE POPULATION?

Access to teleconsultation has been made more flexible by the Decree of 10 March 2020. For instance, from now and until April 30 teleconsultation is possible even if the patient is not directed by his doctor and if even if it is not known to the teleconsultant.

In addition, healthcare professionals can use any digital tool to consult them which worries in particular with regard to the protection of the health data of patients who will now circulate via applications such as FaceTime or WhatsApp which belong to GAFAM...

WHAT ABOUT CONTAINMENT MEASURES AND THE STATE OF HEALTH EMERGENCY?

On March 16, 2020 The Prime Minister Edouard Philippe has imposed containment measures on the population, who are under a 14-day nationwide lockdown.

Moreover, The Prime Minister announced Monday evening additional rules to safeguard the public, which include a ban on leaving one's house for more than one hour, once a day, and further than a 1km radius away; a ban on open-air markets except in regions where they are the primary source of a food supply; and an increase in a fine for violating confinement, from €135 (\$147) to €1,500 (\$1,630) for recidivism within 15 days; in the event of four violations in 30 days, a fine of €3,700 (\$4,021) and six months in prison is imposed.

Alongside, the state of health emergency has been adopted by the French Parliament which "*is the basis for any regulatory or individual measure restricting certain freedoms in order to combat the epidemic*".

This law replaces the legal framework of "*exceptional circumstances*", circumstances which, since the famous Dame Dol and Laurent Council of State ruling of 1919, allowed the administration, under the supervision of the judge, to derogate from ordinary legality in order to ensure the continuity of the public service.

It was these exceptional circumstances that led to the adoption of the decree of March 16, 2020 issued by the Prime Minister on the basis of his general police powers and which allowed the adoption of the specific orders issued by the Minister of Health on the basis of articles L. 3131-1 et seq. of the Public Health Code.

The state of health emergency is now becoming the specific framework that will serve as legal basis for the administrative policies measures needed to manage the health crisis we are going through.

.For further information, please contact:



Joanna Peltzman
Partner
peltzman@dsavocats.com

8. Intellectual Property

The INPI - Institut National de la Propriété Industrielle, and the EUIPO - European Union Intellectual Property Office, have decided to extend the deadlines for monitoring trademark and design registration procedures due to Coronavirus pandemic.

By decision of March 16, 2020 No. 2020-32, the Director of the INPI thus decided that the time limits set by the INPI and not expired on March 16, 2020 are extended to 4 months with the exception of the time limits relating to trademark opposition proceedings.

The two-month period for filing opposition against a trademark application from the date of publication is therefore not interrupted.

DS AVOCATS assures you of its fully availability to initiate all oppositions to trademark applications that could present a risk of confusion with your prior rights, whether they are constituted by a company name or business name, a trade name, a sign, a domain name, a geographical indication, a name, an image or the reputation of a local authority or the name of a public entity.

The EUIPO has also decided to extend all time limits expiring between 9 March and 30 April 2020 inclusive until 1 May 2020.

For further information, please contact:



Catherine VERNERET
Partner
verneret@dsavocats.com



Bertrand POTOT
Partner
potot@dsavocats.com

Italy – Law – Decree “Cura Italia” (D.L. n. 18 of 17 March 2020)

The new law decree "Cura Italia" of 17 March 2020, published on 18 March 2020 in the official bulletin (Gazzetta Ufficiale), provides for various measures to support employees and companies affected by the Covid-19 pandemic. Below are the main measures implemented by the Decree.

A. MEASURES TO SUPPORT EMPLOYMENT

ENTREPRISES

- Ordinary Technical Unemployment Fund (CIGO) (art. 19)
- Wage allowance (art. 21)
- Exceptional Technical Unemployment Fund (art. 22)

EMPLOYEES

- Assimilation of quarantine and permanent residence to disease (art. 26)
- Leaves and allowance for parents (art. 23) and bonus baby-sitter (art. 24)
- Extension of paid leave (art. 24)
- Suspension of appeal procedures against dismissals (art. 46)

B. MEASURES CONCERNING TAXES

- Tax credit for shops and stores (art. 65)
- Suspension of payment of withholding taxes, social security charges and compulsory insurance premiums for the sectors most affected (art. 61)
- Suspension of payment of taxes and social security contributions (art. 62)
- Extension of deadline for payments to the Public Administration (art. 60)
- Suspension of the activity of the tax administration (Art. 67)
- Suspension of deadlines for the collection of tax returns (art. 68)
- Bonuses for employees (art. 63)
- Work place health and safety tax credit (art. 64)

C. SUPPORT MEASURES TO THE LIQUIDITY OF COMPANIES

- Financial support measures for micro, small and medium-sized enterprises affected by the Covid-19 epidemic (art. 56)
- Central Guarantee Fund for SMEs (Art. 49)
- Guarantee measure of the Confidi (art. 51)
- FIR (art. 50)
- Support for the liquidity of companies affected by the epidemiological emergency via guarantee mechanisms (art. 57)

- Financial support measures for enterprises (art. 55)
- Conditions for suspension of the reimbursement fund law 394/81 (Art. 58)
- Increase of advances from the Development and Cohesion Fund 2014-2020 (Article 97)

D. OTHER RELEVANT MEASURES FOR COMPANIES

- Provisions regarding the shareholders' meetings of companies (art. 106)
- Measures for the internationalization of the country (art. 72)

1. MEASURES TO SUPPORT EMPLOYMENT

ENTERPRISES

- « CASSA INTEGRAZIONE ORDINARIA » Ordinary Technical Unemployment Fund for temporary lay-off ("CIGO") (ART. 19)


The CIGO ("Cassa Integrazione Ordinaria") is one of the main social shock absorbers provided for by the Italian system. It consists in the payment by the INPS (Italian Social Security Body) of reduced wages to the employees who are redundant and whose employer has had to reduce or interrupt their work activity for temporary reasons beyond the control of the employer and the employees.

The CIGO can be ordinarily requested by the enterprises indicated in art. 10 D.lgs. 148/2015 (industrial enterprises, production and distribution of energy, water and gas, construction etc.).

More specifically under CIGO, INPS shall pay to the employees 80% of their total remuneration, with a cap, which is currently set by the INPS circular 10 February 2020, in a monthly sum of: € 998,18 gross (€ 939,89 net) for employees with a salary below € 2.159,48; or € 1.199,72 gross (€ 1.129,66 net) for employees with a salary exceeding € 2.159,48.

It shall be noted as well that the INPS has a total cap of expenditure for CIGO of € 1,347.2 million.

Law-Decree Cura Italia confirms the enterprises mentioned in art. 10 D.lgs. 148/2015 can benefit from the CIGO due to the emergency Covid-19 without further justifications with simplified formalities and no consultation of the Unions, for a period of 9 weeks (until August 2020 at the latest).



The employees to be placed under CIGO shall be employed at least since February 23, 2020 (by way of derogation from the 90 days seniority ordinarily required).

▪ **WAGE ALLOWANCE (ART. 21)**

It is a wage subsidy allowance paid, in the event of suspension or reduction of work, to employees of enterprises enrolled in the Solidarity Fund (Fondo di solidarietà di settore and Fondo di integrazione salariale - FIS).

The Solidarity Fund (governed by Articles 26 et seq. of Legislative Decree No 148 of 14 September 2015) provide instruments of income support in the event of suspension or termination of employment of employees belonging to sectors not covered by the legislation on technical unemployment (CIG or CIGS).

In order to ensure easier access to the service and to facilitate maximum use, a simplified framework has been introduced, partially derogating from the provisions of Legislative Decree No 148/2015. In particular:


- the payment of the additional contribution is not due;
- the company's contribution cap is not taken into account;
- the following limits are not taken into account: (i) limit of 52 weeks in the two-year rolling period or 26 weeks in the two-year rolling period for the Supplementary Wage Fund (SIF); (ii) limit of 24 months in the five-year rolling period; (iii) limit of 1/3 of the hours worked;
- periods already authorized are neutralized in the event of subsequent claims;
- It is not necessary for workers to comply with the requirement of 90 days of actual work, it is sufficient that they are employed by the applicant company on 23 February 2020.

The deadline for submitting applications shall be the end of the fourth month following the month in which the period of suspension or reduction of work began, like the CIGO the benefit can be granted for a maximum period of 9 weeks (until August 2020).

The amount of the subsidy allowance is the same provided for the CIGO, with the same caps, within the limit of expenditure by INPS of € 1,347.2 million.

▪ **« CASSA INTEGRAZIONE IN DEROGA » - Exceptional Technical Unemployment Fund for temporary lay-off (CIGD) (art. 20, 21, 22)**

By way of derogation from the general rule, with the “Cassa integrazione in deroga” the Law-Decree Cura Italia extends the same benefits of CIGO to all employers (including companies with less than 5 employees) who interrupt or reduce activities as a result of the epidemiological emergency (not already benefiting from the subsidy allowances of FIS).



The CIGD is granted by decree issued by the relevant Regions and Autonomous Provinces, which shall be transmitted to INPS within 48 hours of the adoption of the decree. Applications must be submitted to the Regions and provinces concerned and will be processed in chronological order of submission (**art. 22**).

EMPLOYEES

- **ASSIMILATION OF QUARANTINE AND PERMANENT RESIDENCE TO DISEASE (ART. 26)**

The period of quarantine with active surveillance or permanent residence with active surveillance is assimilated to sick leave for employees in the private sector (for the public sector such a measure was already provided for by the law decree of 9 March 2020).

- **LEAVES AND ALLOWANCES FOR PARENTS (ART. 23, ART. 24)**

In order to **support working parents**, following the suspension of school services, provision is made for the possibility of taking an additional 15 days' parental leave in the event that the children are aged 12 or under, or in a situation of demonstrated severe disability. An allowance equal to 50 % of salary will then be paid.

Alternatively, a bonus is granted for the purchase of babysitting services up to a maximum of 600 euros, increased to 1,000 euros for National Health Service staff and law enforcement officers. The bonus will be paid through the family record book, in accordance with article 54 bis of Law No. 50 of 24 April 2017.

- **EXTENSION OF PAID LEAVE (ART. 24)**

The number of days of paid monthly leave covered by the contributions paid, according to article 33, paragraph 3, of Law 5 February 1992, n. 104, in case of severe disability, is increased by a further twelve days;

- **SUSPENSION OF APPEAL PROCEDURES AGAINST DISMISSALS (ART. 46)**

All appeal procedures against dismissals (collective and for justified objective reasons) initiated after 23 February 2020 are suspended for 60 days.

2. MEASURES CONCERNING TAXES

- **TAX CREDIT FOR STORES AND STORES (ART. 65)**

For year 2020, those engaged in commercial activities benefit from a tax credit equivalent to 60% of the amount of the rent for the month of March 2020 for buildings belonging to



cadastral category C/1.

- **SUSPENSION OF THE PAYMENT OF WITHHOLDING TAXES, SOCIAL SECURITY CHARGES AND COMPULSORY INSURANCE PREMIUMS FOR THE SECTORS MOST AFFECTED (ART. 61)**

The payment of withholding taxes, social security contributions and compulsory insurance premiums for the months of March and April, as well as the payment of VAT for the month of March, are suspended, without limitation linked to turnover, for the sectors most affected.

The sectors affected are: tourism and hotelery, spa, transport, catering, culture (cinema, theatres), sport, education, amusement parks, events (trade fairs and conferences), gaming halls and betting centers. To date, this benefit has not been extended to shops, but trade associations are discussing how to extend its application to stores.

- **SUSPENSION OF PAYMENT OF TAXES AND SOCIAL SECURITY CONTRIBUTIONS (ART. 62)**

The payment of taxes and social security contributions (VAT payments, deductions, and contributions for the month of March) by taxpayers whose turnover does not exceed 2 million euros is suspended.

- **EXTENSION OF DEADLINE FOR PAYMENTS TO THE PUBLIC ADMINISTRATION (ART. 60)**

For economic operators, the payment of sums due to the public administration, including taxes, social security charges and compulsory insurance premiums, due since 16 March is postponed until 20 March.

- **SUSPENSION OF THE ACTIVITY OF THE TAX ADMINISTRATION (ART. 67)**

Suspension until 31 May 2020 of clearance, control, verification, recovery and litigation activities by the Tax Agency.

- **SUSPENSION OF DEADLINES FOR THE COLLECTION OF TAX RETURNS (ART. 68)**

The deadlines for the collection of tax collection files, for balancing and withdrawal and for scrapping, sending new files and executory acts are suspended until 31 May 2020.

- **BONUSES FOR EMPLOYEES (ART. 63)**

Workers whose gross annual income does not exceed 40,000 euros and who do not telework but visit their place of work will receive a tax-free bonus of 100 euros in March; the bonus will be paid by the employer in lieu of tax (its amount will be deducted from the payment of taxes).



- **THE WORK PLACE HEALTH AND SAFETY TAX CREDIT (ART. 64)**

For enterprises, incentives are provided for sanitation interventions and for increasing safety at work, through the granting of a tax credit, as well as contributions through the creation of an INAIL fund; in particular: granting of a tax credit up to 50% of the costs of sanitation of working environments and of tools up to a maximum of 20,000 euros.

3. SUPPORT MEASURES FOR THE LIQUIDITY OF COMPANIES


In order to support companies' cash flow due to the lack of liquidity, numerous interventions have been planned, in particular through collaboration with the banking system.

- **FINANCIAL SUPPORT MEASURES FOR MICRO, SMALL AND MEDIUM-SIZED COMPANIES AFFECTED BY THE COVID-19 EPIDEMIC (ART. 56)**

Moratorium on loans and financing for micro, small and medium-sized companies (mortgages, leasing, credit facilities and short-term loans).

- **CENTRAL GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED COMPANIES (ART. 49)**

Reinforcement of the Central Guarantee Fund for small and medium-sized companies, including the renegotiation of existing loans. The amendments are as follows: **(i)** free guarantee by the fund, with the suspension of the obligation to pay the fees for access to the fund; **(ii)** eligibility for guarantee of debt rescheduling operations, to meet the immediate liquidity needs of companies considered reliable by the banking system; **(iii)** automatic extension of the guarantee in the event of a moratorium or suspension of financing linked to the emergence of the coronavirus; **(iv)** provisioning for operations up to 100,000 euros of the evaluation procedures for access to the fund for economic and financial reasons, in order to make the guarantee available to enterprises in financial difficulty as a result of the crisis linked to the epidemic; **(v)** suspension of the commission for failure to perform all operations not carried out; **(vi)** possibility of combining the fund's guarantee with other forms of guarantee acquired for operations of significant amount and duration in the hotel tourism and real estate sectors; **(vii)** possibility of increasing the junior tranche guaranteed by the Fund for portfolios aimed at the enterprises/sectors/industries most affected by the epidemic; **(viii)** possibility of setting up special sections of the Fund to support access to credit for certain specific sectors or business sectors, on the initiative of the administrations of the sector in collaboration with other associations and reference organizations; **(ix)** suspension of the Fund's operational deadlines; **(x)** extension of the limit for granting a guarantee by 2.5 million to 5 million in financing; **(xi)** extension to private entities of the possibility of contributing to increasing the fund's resources (currently granted to banks, regions and other public organizations and bodies, with the



intervention of the Cassa depositi e Prestiti and of Sace); **(xii)** facilitation of the granting of guarantees for financing to the self-employed, freelancers and individual entrepreneurs; **(xiii)** extension of the use of the Fund's resources.

▪ **GUARANTEE MEASURES FOR THE CONFIDI (ART. 51)**

Reinforcement of Confidi for micro-enterprises through simplification measures.

▪ **FIR (ART. 50)**

Possibility of granting shareholders and bondholders adversely affected by banks an advance of 40% of the amount of compensation due, from the Investor Compensation Fund (FIR).

▪ **SUPPORT FOR THE LIQUIDITY OF COMPANIES AFFECTED BY THE EPIDEMIOLOGICAL EMERGENCY VIA GUARANTEE MECHANISMS (ART. 57)**

Introduction of a counter-guarantee mechanism for banks, by the Cassa Depositi e Prestiti, to extend credit expansion to companies affected by the crisis.

▪ **FINANCIAL SUPPORT MEASURES FOR COMPANIES (ART. 55)**

Facilitation of the disposal of impaired loans (NPL) by converting deferred tax activities (DTA) into tax credits for financial and industrial companies.

In particular, companies are entitled to convert pecuniary credits into tax credits if:


- the credits are assigned before 31 December 2020;
- 90 days have elapsed since the deadline for the payment of the assigned credit expired;
- the aggregate amount of the assignments does not exceed a maximum of two billion euros.

This measure could be very useful to "offset" debts with the tax authorities by assigning receivables that are difficult to collect.

▪ **CONDITIONS FOR SUSPENSION OF THE REIMBURSEMENT FUND LAW 394/81 (ART. 58)**

Companies that have obtained funding for "internationalization" projects are entitled to request the suspension for up to twelve months of the payment of the principal and interest on instalments falling due in 2020, with a consequent shift in the amortization plan for a corresponding period.

▪ **INCREASE OF ADVANCES FROM THE DEVELOPMENT AND COHESION FUND (ART. 97)**



Within the framework of the Operational Plans of the Central Administrations and the Development Pacts, with the possibility of requesting 20% of the resources allocated to the different initiatives, if they have an approved or definitively approved executive project in case of joint design and execution of the works.

4. OTHER RELEVANT MEASURES

■ PROVISIONS REGARDING THE SHAREHOLDERS' MEETINGS (ART. 106)

Art. 106 of the Decree "Cura Italia" provides certain simplifications with respect to the meetings of the shareholders and the next deadlines for the approval of the annual balance sheet, in particular:

- The shareholders' meetings can be validly held even if all the attendants, including the Chairman and the Secretary (and the Public Notary in case of extraordinary meetings), participate by telecommunication means that allow the identification and the participation (right of intervention, voting right....).
 - The provision is mandatory and applies even in case the Articles of Association: (i) do not allow to hold the shareholders' meeting by telecommunication means, or (ii) require for the validity of the shareholders' meeting held by conference call or videoconference that the chairman and the secretary are in the same physical place;
- by way of derogation from articles 2364, para. 2, and 2478-bis of the Civil Code or the Articles of Association, the shareholders' meeting for the approval of the financial statements can be validly convened within 180 days from the closing date of the financial year, instead of within the ordinary deadline of 120 days;
- by way of derogation from article 2479, co. 4 of the Civil Code, the quotaholders of limited liability companies (SRL) can validly take decisions by written consultation or written consent in writing even if otherwise provided by the Article of Associations;
- companies, whose shares are listed on a regulated market, can appoint a Designated Representative (pursuant to art. 135-undecies of the Legislative Decree n. 58/1998) to whom the shareholders can grant a proxy with voting instructions on all or some of the items on the agenda, even if otherwise provided by the Articles of Association. The companies with shares listed on regulated markets can also provide in the notice of call that shareholders can only attend the shareholders' meeting through the mentioned Designated Representative, thereby further strengthening the measures to prevent the risk of contamination;
- by way of derogation from art. 135-undecies of Legislative Decree 58/1998, proxies granted to the Designated Representative can be issued also in the form of *simple proxy* pursuant to art. 135-novies of Legislative Decree 58/1998.

■ **MEASURES FOR THE INTERNATIONALISATION OF THE COUNTRY (ART. 72)**

The Ministry of Foreign Affairs and International Cooperation has set up a fund for integrated promotion to support the internationalization of the country's entrepreneurship.

5. INCENTIVE FOR SMART WORKING IMPLEMENTED BY THE LOMBARDY REGION

In addition to the above, though it is not included in the Law-Decree Cura Italia, it is worth mentioning that the Region of Lombardy has issued a public notice/tender aimed at promoting smart working and working from home, an organizational model that allows greater flexibility in terms of working place and time in Lombard companies. Moreover, the adoption of smart working increases productivity and the well-being of employees.

The Notice is addressed to employers who meet the requirements determined by the Notice and in particular, employers must be registered with the Chamber of Commerce or have a VAT number, with at least 3 employees and is aimed at supporting two types of actions:

- a. Action A: consultancy and training services aimed at the adoption of a smart working plan with relative company agreement or company regulations approved and advertised on the company notice board and intranet
- b. Action B: purchase of "technological tools" for the implementation of the smart working plan.

The initiative - for which 4.5 million euros will be allocated - is financed through the resources of the European Social Fund. Applications may be submitted from April 2, 2020 until December 15, 2021.

For further information, please contact:.



Samanta Libro,
Partner, Milan
librio@dsavocats.com



Chiara Poggi-Ferrero,
Partner, Desk Italie
poggiferrero@dsavocats.com



Marta Longoni,
Partner, Milan
longoni@dsavocats.com

#Germany - Impact of the pandemic Covid-19 on the German Economy

For Germany, which had an extremely solid economy until now, the coronavirus is a serious challenge for the whole society. Not only citizens but also companies are concerned. Due to the globalization of trade, German companies are affected a lot by the impact of the pandemic in other parts of the world.

All sectors of the German economy are affected by this crisis and no one is currently able to accurately assess the damage that may occur.

The German government has announced last week important economic and fiscal policy measures. It wants to make liquidity available to secure the business activities and the employment. The main message was that there is enough money available to tackle the crisis and it is going to use this money now.


Given the exceptional nature of the moment and for information purposes, we proceed to point out a summary of the main issues that we believe may have a greater impact on a business level, in relation to each specific area:

1. [Package of economic measures by the German Federal Government to stabilize and support the economy \(employees and companies\)](#)
2. [Labor law](#)
3. [Real Estate / Tenancy law](#)
4. [Effects of Covid-19 to sales contracts](#)

1. Package of economic measures by the German Federal Government to stabilize and support the economy (employees and companies)

a) In labor law / Short-time allowance (see also Section 2) :

- During the financial crisis 2008/2009 the enlargement of payment of short time compensation was one of the most important measures to avoid insolvency of small and big companies. This measure has now been reinstated: Compensation is paid when at least 10% of staff is partially employed (before: 33%).
- Partial or complete waiver of building up negative working time balances (before: building up negative working time balances was required before applying for short-time allowance)

- 
- full reimbursement of social security contributions by the Federal Employment Agency
 - Short-time allowance also for temporary employees possible

b) Tax liquidity support:

- Facilitating the granting of deferrals where recovery would constitute a significant hardship
- Easier adjustment of advance payments
- No enforcement measures until 31.12.2020 if the tax debtor is directly affected by the effects of the corona virus

c) Financial aid:

- Expansion of existing credit programs
- Facilitating access to credit programs
- Higher risk assumption by the state owned bank by KfW (“Kreditanstalt für Wiederaufbau”)
- Doubling of the maximum guarantee amount given by guarantor banks to EUR 2,5 million
- Additional special programs for all kind of companies
- Facilitating of export credit guarantees


d) Insolvency law / Suspension of the obligation to file for insolvency :

- Suspension of the obligation to file for insolvency for companies due to insolvency or overindebtedness caused by Coronavirus until 30.09.2020
- Reduction of liability and rescission risks for lenders/creditors

Regarding the above announcements, the government wants to finish drafting the implementing legislation before June 27th, 2020.

Of course any measure is likely to evolve or to be adapted at any time depending on the development of the crisis and its magnitude which cannot be really predicted at this stage.

Germany being a Federal State, there will be additional financial support given by every single state of the Federation. E.g. to support the companies of North-Rhine-Westphalia (18 million



inhabitants) the local government in Düsseldorf has opened a rescue umbrella amounting to EUR 25 billion.

The European Commission and the European Central Bank will also grant a large financial support to European companies.

2. Labor law

a) Employee in Quarantine

If the employee is incapacitated by the infection with the corona virus, he will receive continued remuneration in accordance with the usual regulations (continued remuneration in the event of illness).

If the employee is not acutely ill, but is in quarantine because of suspected infection, the employee receives compensation in the amount of the net salary for the first six weeks of the quarantine. The compensation is paid by the employer, but will be reimbursed by the competent authorities upon request. From the seventh week of quarantine onwards, the competent authorities pay compensation equal to the sickness benefit directly to the employee.

b) No offsetting of quarantine days against annual leave

If the employee is not acutely ill, but has been quarantined because of suspected infection, he is not incapacitated and is still obliged to work. The obligation to work only ceases when the employee becomes incapable of work due to the illness.

If the employee performs his work from home or from the place of quarantine, he will continue to receive his remuneration from the employer. If he is unable to do so, he will receive compensation equal to his previous net salary. There is no offsetting against his annual leave.

c) Home office vs. mobile working

The employer cannot unilaterally order the establishment of a home office. In addition, he would be responsible for the compliance with the provisions of occupational health and safety law in the employee's home office. For this purpose, the employer would have to carry out a risk analysis and inspect the home office accordingly.

Therefore, the arrangement of mobile work is more appropriate in the current situation. For this purpose, the employer provides the employee with the necessary work equipment (usually a laptop with the software to be used) and temporarily instructs the employee to perform his work on the move. This is also conceivable using the employee's own devices (bring your own device), although the employer cannot order this unilaterally.



d) Release of the employee due to the closure of day-care centers and schools

If the employee's own child is ill, the employee can temporarily stay at home to care for the child while continuing to pay his salary. If the child does not fall ill and no suitable care is available, the limits of the temporary paid leave are quickly reached. However, the employee is prevented from performing his work if the child is in genuine need of care, for which the employee has been unable to find suitable care even after making serious efforts. The burden of proof lies with the employee. However, the obligation to temporarily take paid leave under § 616 BGB (German Civil Code) is often excluded by a regulation in the employment contract. Employees should therefore inform their employer in order to find a joint solution.

e) Order of short-time work by the employer

The employer can order short-time work if there is a basis for this in the employment contract, a works agreement or a collective agreement. The introduction of short-time work is also subject to the codetermination of the works council.

f) Requirements for applying for short-time work compensation

Entitlement to short-time working compensation exists if

- there is a considerable loss of working hours,
- the operational requirements are met,
- the personal requirements are fulfilled and
- the work stoppage has been displayed.


Employees can receive short-time work compensation if deliveries are not made due to the corona virus and working hours have to be reduced as a result. This also applies if a company is temporarily closed due to government protective measures.

A considerable loss of working hours is deemed to exist if at least 10% of the employees in the company are affected by a loss of earnings of more than 10%. Previously, the proportion of employees affected had to be at least one third. Access to the short-time working allowance is to be facilitated retroactively to 01.03.2020.

The operational requirements are met by every company in which at least one employee is employed.

An employee fulfils the personal requirements for receipt of short-time working compensation if he is in an employment relationship which has not been terminated and is subject to compulsory insurance. Accordingly, marginal part-time employees are exempt from short-time work compensation if they are not subject to compulsory insurance.

In order to facilitate access to short-time work compensation during the Corona period, it is



also planned that employers will be reimbursed for social security contributions by the Employment Agency.

3. Real Estate / Tenancy law

a) Impacts of the Corona crisis on the obligation to pay the rent

Tenants who are exempt from an official order to close their shops remain obliged to pay the contractually agreed rent. A decline in the number of customers and visitors alone does not automatically lead to a reduction in rent or a tenant's claim to a rent reduction.

The legal situation for tenants affected by official orders to close shops must be viewed in a more differentiated manner:

b) Rent reduction

- **Independent closure for economic reasons**

The prerequisite for a rent reduction is the existence of a defect in the rental object (§ 536 Para. 1 S. 1 BGB). If the tenant closes his business on his own responsibility for economic reasons, there is no such defect and the tenant must continue to pay the rent in full.

- **Officially ordered closure**

According to previous case law, public law obstacles to use and restrictions on use only constitute a defect if they are based on the specific quality, condition or location of the rented item. In contrast, restrictions of use which are caused by personal or operational circumstances of the lessee shall not be qualified as a defect. If the closure is due to the fact that a certain object may no longer be operated, a rent reduction can be considered. The situation is different, however, if the respective arrangement relates to certain modes of operation. The risk of the operating mode is therefore borne by the tenant.

The store closures ordered to date in the course of the Corona crisis are purely business-related sovereign interventions that are not directly related to the rented property. The tenants affected can continue to use their rental object, for example, for internal purposes, physical inventory, decoration, and so on. The permission to reopen the property to the public is therefore equivalent to a decision on the business license. Based on the current legal situation and the previous legal situation, the obligation to pay rent therefore continues to exist.



c) Reduction of rent due to restriction of the transfer for use

According to the current legal situation, landlords should avoid a hasty restriction of the right to use the property on their own responsibility, without an official order addressed to them. Otherwise, the tenants concerned could - depending on the individual case - invoke a de facto impairment of the usability of the rented property and be forced to claim a rent reduction or damages.

d) Right to contract adjustment

If the tenant and landlord did not foresee special circumstances at the time of conclusion of the contract which lead to a serious change in the business relationship, a legal correction may be necessary in good faith. In special exceptional cases, there is therefore the possibility of a contract adjustment according to the principles of the so-called "disturbance of the basis of the business" (§ 313 para. 1 BGB). Until now, case law in commercial landlord and tenant law has been hostile to recourse to these principles. This means that even taking into account the legal institution of the disruption of the business basis, current case law assumes that the obligation to pay rent will continue. However, in view of the historical extent of the Corona crisis and the associated duration and intensity of the economic burden on tenants, a divergent line may develop in case law, which cannot be foreseen at present.

However, even if the principles of disruption of the business basis are applied, the distribution of risk defined in the affected lease agreement must still be taken into account.


e) Claims for damages

Claims for damages by the tenant against the landlord may only exist in exceptional cases. Because these presuppose regularly a fault of the landlord, at which it will be missing usually. However, claims for damages would be conceivable if the landlord - e.g. in a shopping center or retail park - decided to close rental space without an official order or if an official order for closure is issued specifically against an individual landlord (e.g. due to non-compliance with hygiene regulations).

f) Draft law amending the tenancy law

The federal government plans to limit the possibilities of termination due to non-payment of rent during the Corona crisis. The following measure is planned:

The lease agreement cannot be terminated due to rent arrears in the Corona crisis if the arrears are a result of the Corona crises. This is to apply to rent debts from the period from 01.04.2020 until 30.06.2020. However, the tenants' obligation to pay the rent will in principle



remain in force. The draft law provides for the possibility of an extension for a further year. The law is to be passed on Wednesday, 25.03.2020.

Nevertheless, the landlord has the right to terminate the lease due to rent arrears that have arisen in an earlier period or will arise from a later period. The other reasons for termination also remain unaffected.

g) Recommendation for tenants

Tenants should contact the landlord as soon as they notice that the rent cannot be paid. A rent reduction and / or a deferment of the rent payment should then be negotiated.

4. Effects of Covid-19 to sales contracts

Due to Covid-19 pandemic, companies cannot meet their delivery obligations, supply chains are disrupted. Especially companies that purchase their products from foreign manufacturers are wondering at whose expense the omitted or delayed delivery is. Can the supplier invoke force majeure? If so, the consequence would be an at least temporary exemption from the obligation to perform and a simultaneous exclusion from liability for damages.

a) Force Majeure under Art. 79 sec. 1 CISG

It can be possible to qualify an epidemic such as Covid-19 as a case of Force Majeure according to Art. 79 sec. 1 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). However, it is important to note that many sales contracts contain a Force Majeure clause which may modify the legal conception. In both cases, however, it has to be determined on a case by case basis if the seller is exempt from performance due to Force Majeure.

Art. 79 CISG stipulates that a party need not be held liable for non-performance of its obligations if it proves that the non-performance is due to an impediment beyond its control and that it could not reasonably be expected to avoid or overcome such impediment or its consequences. This rather broad provision is of benefit to the supplier.

If CISG is applicable, there is a good chance that the affected party to the contract can successfully invoke force majeure. To do so, it must be able to prove that the delivery was omitted or delayed as a result of the coronavirus - for example with a Force Majeure Certificate, like those certificates issued by CCPIT (China Council for the Promotion of International Trade), which can be recognized as circumstantial evidence for a case of Force Majeure. However, the courts are free in their case-by-case assessment (is "force majeure" applicable to the specific case?) and not bound to such certificate issued by foreign agencies.



Recommendations :

- The certificate should precisely state the specific circumstances and exact timeline leading to the supplier's impossibility to perform the contract.
- It is of utmost importance that suppliers have a proper documentation on all circumstances such as administrative decisions or orders, domestic transportation restrictions, work prohibitions, quarantine orders etc. including the corresponding timeline.
- The supplier must immediately notify the buyer if the goods cannot be produced and shipped in time due to reasons related to Covid-19 (such as travel restrictions for employees etc.). If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt, cf. Art. 79 sec. 4 CISG.
- Besides notifying the buyers (also in written form), discussing and negotiating with the contractual partners, we strongly advise to collect any evidence on the occurrence of the Force Majeure event, adopted mitigation measures and incurred own losses.

b) Basic information on German sales law and service contract law

If the parties have agreed to the application of German law under express exclusion of the CISG, the following principles shall apply. Please note that these principles apply not only to contracts of sale but also to contracts of service.

Exclusion of the supplier's / service provider's obligation to perform

According to German civil law, obligations of suppliers or service providers to perform the contract can be excluded in case of

- **Impossibility of performance**, section 275 subsec. 1 BGB (German Civil Code)
 - Factual: e.g. export/import restrictions, production stop of supplier
 - Legal: e.g. officially ordered temporary closure of operations, official ban on events
- **Disproportionate effort** of service provision or performance of delivery, sec. 275 subsec. 2 BGB
- **Unacceptability of the provision of services**, sec. 275 subsec. 3 BGB, Relevance of infection protection
 - In principle, the legal consequence would be the loss of the claim for payment according to the law, sec. 326 I BGB, however, a claim for damages by the service recipient or purchaser can arise in the case of culpable non-performance, sec. 283 BGB
- **Modification of the obligation to perform of the supplier / service provider**
Furthermore, obligations could be modified by law if

- there are **serious subsequent changes in circumstances** that have become the basis of the contract,
- Parties would have concluded a contract with a different content if the change had been foreseen and it would be unacceptable to stick to an unchanged contract ("frustration of contract", so-called "disturbance of the basis of the contract")
In principle, there is a right to demand adaptation of the contract, sec. 313 I BGB. However, in exceptional cases there is a right to withdraw from the contract in the event of "loss of the basis of the contract", if adaptation of the contract is not possible or one party cannot reasonably be expected to accept it, sec. 313 subsec. 3 BGB.

For further information, please contact:



Reiner Graner
Partner, Stuttgart
Reiner.graner@ds-graner.com



Sandrine Kirschenbilder
Jurist, Stuttgart
Sandrine.kirschenbilder@ds-graner.com



Thierry Schwenk
Associate, Stuttgart
Thierry.schwenk@ds-graner.com



Stefanie Bieg
Associate, Stuttgart
Stefanie.bieg@ds-graner.com

Greece – New 2MDS€ financial package to cope with the economic impact of Covid-19 pandemic

1. Finance, Development & Investment Ministers Announcement, March 18, 2020

- **Strengthening the health system, by allocating a budget of at least €200M**, in addition to the current budget of the Ministry of Health. The Ministry of Health will be given all the additional funds it needs to fight the spread of the coronavirus.
- **More flexible labour market legislation for access to work**, for parents with children, flexible working hours, facilitation of teleworking and the possibility of obtaining a special purpose permit. The State participates in the distribution of costs.
- **Possibility of suspending the payment of tax and social insurance obligations** for companies closed by government decision and in sectors heavily affected by the spread of the virus. These measures are horizontal, as they concern enterprises of the specific activity code (KAD), whether they are left in operation, whether their activity is partial, whether they are closed by government order or whether they are closed on their own initiative.

The categories of KAD affected by these measures will be defined by the Ministry of Finance, on the basis of daily electronic transaction data, as well as decisions adopted on the prohibition of operation of certain sectors. The period of application of the measures will cover the month of March and, if necessary, will be extended.

For all businesses in these sectors, which maintain existing jobs, the March payments of VAT, all obligations to the tax authorities, due dates under deferred payment schemes are suspended for 4 months, i.e. until 31 July.

CORPORATE SUPPORT

Financing of companies up to €1bn Implementation of an expanded financing framework in the form of a repayable advance, with an extended repayment period and a grace period, for all companies that are strongly affected by the emergence and dissemination of Covid-19. The amount of financing available will take into account the reduction in turnover as well as the wage and non-wage costs of the employees employed by the company. The framework for the grant will be specified shortly. A precondition for obtaining this financing is the maintenance of existing jobs.



Additional support for businesses 3-month interest subsidy for sectors of the economy that are directly affected by the health crisis. If the crisis persists, the measure may be further extended.

In consultation with the banks, payments and their amortisation will be deferred until 30/9/2020. These two measures create the time needed for companies to meet their direct debt obligations and to continue operating unhindered after the crisis.

In consultation with the European Commission, for the period of economic recovery, a guarantee mechanism will be put in place for capital loans to small and medium-sized enterprises up to €3 billion.

The European Investment Bank will provide banks with liquidity to provide new loans of €2 billion.

Creation by the European Investment Bank of a guarantee facility for investment loans of up to €500 million.

Simplified access to the Entrepreneurship Fund of the Hellenic Development Bank and increased its resources by €250M to provide new loans to companies affected by the health crisis, with a subsidy of 100% of the interest rate for two years.

EMPLOYEES


All employees whose employment contract is temporarily suspended due to a suspension of activity by execution of a government decree will receive compensation in early April, from the state budget, of €800. This measure concerns around 500,000 workers, at a cost of around €400 million.

The state covers workers' social security, pension and health insurance rights and their social security contributions in full, based on their total nominal wages. (The budgetary cost, for March and April, for the approximately 500,000 workers is about €450M). For these same employees, the payment of March tax obligations is suspended for 4 months.

SELF-EMPLOYED PROFESSIONALS, AUTO ENTREPRENEURS AND SOLE PROPRIETORSHIPS

For this category of professionals, active in sectors with a strong reduction in economic activity due to the appearance and spread of the coronavirus, all tax obligations payable in March will be deferred for 4 months.

Maintenance of employment in all companies that have not suspended their activity as a



condition for the suspension of the payment of insurance and tax obligations and the use of exceptional financial support instruments.

Express prohibition of dismissal of staff in enterprises closed down by order of the public authority, where such prohibition will be considered null and void.

UNEMPLOYMENT BENEFIT

Extension of the payment of ordinary unemployment benefit, as well as long-term unemployment benefit and unemployment benefit for self-employed persons and self-employed entrepreneurs for a further two months, for unemployed persons whose benefit expires on 31 March.

MEASURES IN FAVOUR OF THE SELF-EMPLOYED AND AUTO-ENTREPRENEURS

Deferral of February insurance premium payments for 3 months without interest or penalty.

MEASURES IN FAVOUR OF EMPLOYERS

Suspension of February insurance contributions for three months without interest or penalty for the companies concerned Suspension of payment of arrears to the insurance funds for three months for all companies concerned.

2. EUROPEAN INVESTMENT FUND

Beyond the €2bn, €1.8bn will be made available through the European Investment Fund, set up last week. Depending on the Eurogroup's decision, this amount will be able to finance various actions, such as company liquidity, employment support and workers' incomes.

There will be a further strengthening of corporate liquidity, through an optimum combination of resources from the public investment program, the Specific National Reference Framework, the Hellenic Development Bank and the European Investment Bank Group, in order to ensure maximum leverage.

VAT reduced to 6%, as opposed to 24% today, on the products needed to protect against Covid-19 and prevent its spread: masks and gloves, antiseptics, wipes and other preparations; soaps and other preparations for personal hygiene; ethyl alcohol used as a raw material by industry to produce antiseptics.

The addition of these species to the reduced rate of VAT will be applicable until the end of the year.



REAL ESTATE

For companies that necessarily interrupt their activity due to the spread of the virus, a payment of 60% of the rent for the commercial premises is foreseen for the months of March and April. The same measure is applied to employees of companies which interrupt their activity by necessity and whose employment contract is suspended, as regards the rent for their main residence. For the owners of the above-mentioned properties, the payment of tax obligations and the instalment payment of arrears is suspended for 4 months.

The exercise of assessing the values of real estate properties under the land value reform (new objective values) is postponed. The 2020 ENFIA property tax will be calculated on the basis of the previous regime, with the new provisions to apply from next year.

REPAYMENT OF STATE DEBTS TO THE PRIVATE SECTOR

The independent public revenue authority (AADE) will immediately reimburse all outstanding obligations to individuals and companies and return the amounts in all cases under control, up to a maximum of €30,000. AADE is simplifying procedures to avoid delays and lack of liquidity in the real economy.

A total of €218 million was reimbursed between 25 February and 13 March.

11. EUROPEAN CENTRAL BANK

On March 18th 2020, the ECB unveiled a massive €750 billion emergency support plan to restore calm to the bond markets. European government bond yields fell sharply at the start of the session, but this trend lost some of its strength during the day. They remain at very low levels.

In addition to the very large amount of 750 billion euros that the ECB is allocating to the European financial markets to deal with the economic impact of COVID-19, and even slightly higher than that announced by the Fed, this facility will be more flexible than the asset purchase program (APL) launched in 2015 and still underway. For example, the ECB will be able to buy bonds from Greece, which was not the case with the programme in place. It will be able to be used without a ceiling on monthly expenditure. And if necessary, the ECB will be able to temporarily deviate from the capital key that determines the share of purchases devoted to each euro zone country.

Bruno Le Maire: "if it does not help Italy in the face of the coronavirus, "Europe will not recover" 20 March 2020".



The French Minister of Economy and Finance said that if it did not help Italy, the EU would not recover. He also called on member states to "come together" to tackle the coronavirus crisis. "If it's every man for himself, if we let some states down, if we say to Italy, for example, 'fend for yourself', Europe will not recover," French Economy and Finance Minister Bruno Le Maire said on Friday 20 March on the 24-hour news channel LCI.

The ECB is unveiling a €750 billion plan to support the European economy. "If we are not able to pull together, it is the European political project that will be swept away by this crisis," he added, calling on the EU to follow the example of the European Central Bank (ECB), which announced a €750 billion emergency plan on Wednesday.

"We can see that the solidarity of the euro zone is being rebuilt, that interest rate differentials are narrowing," said Bruno Le Maire. "We are on the right track and we must continue to demonstrate this European solidarity over the long term so that the European continent can emerge stronger from this crisis," he added, without specifying the measures that the Member States should take. In an interview with the Financial Times on Friday, Italian Prime Minister Giuseppe Conte was more explicit. He called on the EU to use "all the power" of the eurozone's European Solidarity Mechanism (ESM) to deal with the "unprecedented" crisis of the Covid-19 epidemic. The way forward, he said, is to open up all the credit lines of the relief fund to all member states "to help them combat the consequences of the Covid-19 epidemic, on condition that each state is transparent and accountable for the way in which the resources are spent". This mechanism was set up in 2012 during the eurozone debt crisis. With a reserve of 410 billion euros, the ESM provides loans to countries in difficulty. In exchange, states - as was the case for Greece - have to submit to certain conditions. Greece, for example, has been forced into a programme of severe budgetary rigour and privatisations which have deprived it of some 15 regional airports, ports and energy infrastructure in particular.

12. EUROPEAN UNION

On 24th March 2020, nine EU countries have been calling for corona bonds to be issued EU-wide: Spain, Italy, France, Belgium, Luxembourg, Ireland, Portugal, Greece and Slovenia.

WHAT ARE 'CORONA BONDS'?

"Corona bonds" are joint debt issued to member states of the EU. The funds would be common and would come from the European Investment Bank.

This would be mutualized debt, taken collectively by all member states of the European Union. Pro-bonds countries versus the 'Frugal Four'



"We need to work on a common debt instrument issued by a European institution to raise funds on the market," the nine countries wrote in a letter to European Council President Charles Michel, ahead of Thursday's video call summit of EU leaders.

These nine countries are prone to calling for the mutualisation of European national debts, while others – richer countries in the north of Europe – usually oppose such measures.

They are Germany, Netherlands, Austria and Finland, also known as the "Frugal Four" the fiscally conservative EU states.

For decades, Germany applied a "Schwarze Null" (black zero) debt brake policy: it would never, under any circumstance, allow government borrowing.

In response to the coronavirus crisis in February, Germany announced that it would stop applying this rule, which was a major change in policy, but it does not mean it will be more inclined to accept "corona bonds". Bonds 'unlikely' to be EU's response to the crisis

Unlikely, Thursday's (26 March 2020) EU Council ended up not agreeing to issue such joint debt.


Germany and the Netherlands are reported to be leading to opposition to "corona bonds" during Thursday's meeting.

Debt sharing remains a taboo among the "Frugal Four" and issuing common bonds has already been a divisive idea among EU members in the past.

During the 2010-2012 sovereign debt crisis, while France and Italy supported the idea of issuing joint "Eurobonds", Germany strongly resisted the idea, pointing to the individual responsibility of EU member states to keep their finances in order.

Instead, the EU could decide to use the Eurozone bailout fund, named the European Stability Mechanism (ESM), a permanent agency based in Luxembourg that was created during the 2008 financial crisis and provides financial assistance, in the form of loans, to Eurozone countries or as new capital to banks in difficulty.

All EU countries that will be allocated credit from the ESM will be eligible to receive a special, unlimited programme of bonds buying from the European Central Bank, which was created during the 2012 crisis but has never been used yet.



The European Central Bank, headed by its new president Christine Lagarde, is planning to spend more than €1 trillion in private and public debt bonds buying until the end of 2020 to keep the Eurozone in good financial conditions.

Christine Lagarde has urged the EU to consider the option to issue of "corona bonds".
EU states 'should absorb coronavirus losses not private sector'

The former president of the European Central Bank, Mario Draghi, has also called for European states to "absorb" market losses caused by the coronavirus crisis.

"The loss of revenue suffered by the private sector, and the debt contracted to reduce the deficit, must be finally absorbed, fully or in part, in the governments' statements of accounts," Draghi said on Wednesday.

Comparing the impact of the virus to that of World War I, Draghi said that the private sector did not cause" this economic shock and "cannot absorb" it.

For further information, please contact



Anastasia Mandraveli,
Avocat Of Counsel
mandraveli@dsavocats.com

Spain – Main business measures introduced in Spain to deal with the economic and social impact of the health emergency

In recent weeks, a series of extraordinary measures have been decreed in order to mitigate the economic effects of the health emergency generated by COVID-19, especially after the World Health Organization (WHO) officially declared a pandemic on 11 March 2020.

Among them, the following normative instruments stand out:

- *Royal Decree 463/2020 of 14 March declaring the state of alert for the management of the health crisis situation caused by COVID-19 (amended in certain respects by Royal Decree 465/2020 of 17 March¹).*
- *Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of the COVID-19³.*

There have also been several communications, orders and instructions from various public entities and authorities that have an impact on the normal performance of the company's daily activities.

For all the above reasons, given the exceptional nature of the moment and for information purposes, we proceed to point out a summary of the main issues that we believe may have a greater impact on a business level, in relation to each specific area.

1. [General measures](#)
2. [Tax measures](#)
3. [Labour measures](#)
4. [Measures in relation to procedural and administrative deadlines](#)
5. [Corporate and registration measures](#)
6. [Financial measures](#)
7. [Data protection measures](#)
8. [The use of the rules or figures "rebus sic stantibus" and "force majeure" in civil and commercial contracts](#)

Also, since it is expected that new measures will be decreed in the coming days and/or weeks, this document may be subject to changes and/or nuances.

¹ Royal Decree 463/2020 of 14 March. - [\[LINK\]](#)

² Royal Decree 465/2020 of 17 March. - [\[LINK\]](#)

³ Royal Decree-Law 8/2020 of 17 March. - [\[LINK\]](#)



1. GENERAL ACTIVITIES

The main measure that has been taken is the declaration of a **state of emergency health alert**, establishing a series of limitations on the freedom of movement of people and vehicles, as well as the prohibition of certain commercial activities, especially those aimed at retail trade and establishments open to the general public.


In principle, the measures contained in RD 463/2020 will be in force for an initial period of fifteen calendar days, i.e. until 30/03, without prejudice to any extension for justified reasons.

2. TAX MEASURES

So far, the main measures that have been taken in the **tax area** are the following:

- **Possibility of requesting deferment of tax debts.** SMEs with a turnover of less than Euro 6 Million per year may request the deferral of tax debts (settlements / self-assessments) of less than Eur 30,000 that fall due before 30/05, for a period of up to 6 months, of which the first 3 months will be without interest.
- **General extension of (some) tax deadlines.** The following general extensions are established:
 - Tax deadlines extended **until 30/04**: (i) the of tax debts arising from settlements made by the Administration before 18/03; (ii) the expiry of deferrals or instalments granted and notified before 18/03; and (iii) the procedures for the application of taxes, penalties and reviews notified before 18/03.
 - Tax deadlines extended **until 20/05**: (i) the payment of tax debts arising from settlements made by the Administration since 18/03; (ii) the due dates of deferrals or fractions thereof notified as of 18/03; and (iii) the procedures for the application of taxes, penalties and reviews notified as of 18/03.

Similarly, the period from 18/03 to 30/04 will be suspended for tax purposes: (i) term to file economic-administrative appeals or claims; (b) maximum term of duration of tax application, penalty or review procedures processed by the Spanish Agency for Tax Administration (“AEAT”, by its initials in Spanish); and (c) term of prescription of the right to verify and investigate of the AEAT with respect to tax obligations of previous years.



NOTE: It is important to note that the general deadlines for filing state monthly or quarterly information returns or tax self-assessments (income tax, VAT, withholdings, etc.) have NOT been postponed.

3. LABOUR MEASURES

So far, the main measures taken in the **labour field** are as follows:

- **Preference for telecommuting.** Wherever technically possible and reasonable, companies should adopt alternative organisational systems such as distance working.
- **The worker's right to adapt the timetable and reduce the working day.** Exceptionally, employees may, in certain exceptional circumstances, adapt or reduce their working hours (e.g. care of a family member, up to the second degree of consanguinity).

This right is established at the initiative of the worker, who may establish conditions such as change of shift, change of timetable, flexible timetable, split or continuous working day, change of working center, etc.), with the possibility of reducing up to 100% of the working day with proportional pay.

- **Extraordinary benefit for cessation of activity.** Exceptionally, and for a period limited to one month, self-employed workers or those whose activities are suspended, by virtue of the deadline laid down in Royal Decree 463/2020 on the state of alert, or when their turnover in the month prior to that for which the benefit is requested is reduced by at least 75% in relation to the average turnover for the previous six-month period, shall be entitled to an extraordinary benefit.
- **Exceptional measures in relation to procedures for the suspension of contracts and reduction of working hours due to force majeure.** The consequences established in article 47 of the Workers' Statute will be applied when the suspension of the contract and reduction of the working hours per day is due to force majeure. Force majeure will be understood as: *"having its direct cause in losses of activity as a consequence of the COVID-19, including the declaration of the state of alarm, which imply the suspension or cancellation of activities, temporary closure of premises of public affluence, restrictions on public transport and, in general, on the mobility of people and/or goods, lack of supplies that seriously impede the development of the activity, or in urgent and extraordinary situations due to the contagion of the staff or the adoption of preventive isolation measures decreed by the health authority, which are duly accredited"*.




Particularities of the procedure:

- At the company's request, a report will be provided on the link between the loss of the activity and COVID-19, as well as, where appropriate, the corresponding supporting documentation. This request must be communicated to the workers and this report and documentation, if any, must be sent to the workers' representatives.
- The existence of force majeure must be established by the labour authority, whatever the number of workers affected.
- Following a report from the Labour and Social Security Inspectorate, this request will be optional for the labour authority, and will be issued within a non-renewable period of five days.
- The decision of the labour authority shall be issued within five days of the request, and shall be limited to ascertaining the existence, where appropriate, of the force majeure alleged by the company. Such a decision shall take effect from the date of the event causing the force majeure.
- The processing of files affecting worker members of worker cooperatives and labour companies included in the General Social Security System or in some of the special systems that protect the contingency of unemployment, will be subject to the special rules.

The present procedure shall enjoy the recognition of the right to contributory unemployment benefit and shall not count the time that the unemployment benefit is received at the contributory level.

- **Exceptional measures in relation to the procedures of suspension and reduction of working hours for economic, technical, organizational and production reasons.** The procedure set out in the regulations for these cases will be applied:
 - In the event that there is no legal representation of the workers:
 - ✓ The representative committee will be made up of the most representative unions in the sector to which the company belongs and will be entitled to form part of the negotiating committee for the applicable collective agreement. The committee will be made up of one person from each of the unions that meet these requirements, with decisions being taken by representative majorities.

- 
- ✓ In case this representation is not conformed, the commission will be integrated by three workers of the company itself.

In any of these cases, the representative commission must be set up within a period of five days, which cannot be extended.

- The period of consultation with the employees' representatives or the representative body provided for in the previous point must not exceed the maximum period of seven days.
- The report of the Labour and Social Security Inspectorate, whose request will be optional for the labour authority, will be issued within a non-renewable period of seven days.
- The processing of files affecting worker members of worker cooperatives and labour companies included in the General Social Security System or in some of the special systems that protect the contingency of unemployment, will be subject to the special rules.

The present procedure shall enjoy the recognition of the right to contributory unemployment benefit and shall not count the time that the unemployment benefit is received at the contributory level.

- **Extraordinary measures in the area of contributions with regard to the procedures for the suspension of contracts and reduction of working hours due to force majeure related to COVID-19.**

Total or partial exemption from the business contribution established in article 273.2:

- The General Treasury of Social Security will exempt the company from the payment of these concepts when the company, as of 29 February 2020, had less than 50 workers.
- However, if the company has 50 or more employees and is registered with the Social Security system, the exemption from the obligation to pay contributions will be 75% of the company's contribution.

Exemption from contributions will be applied by the General Treasury of Social Security at the request of the employer, after communication of the identification of the workers and the period of suspension or reduction of the working day.



The measures of the three previous points will be in force while the extraordinary situation derived from the COVID-19 is maintained.

- **Safeguarding of employment.** The planned extraordinary measures in the field of employment will be subject to a commitment by the company to maintain employment for a period of six months from the date of resumption of activity.

Time limitation. The specialties in matters of contract suspension will not be applied to the procedures of contract suspension or reduction of working hours initiated or communicated before the entry into force of RDL 8/2020. On the other hand, the protection measures for unemployment and contributions will be applicable, as long as they derive directly from the COVID-19.

4. MEASURES IN RELATION TO PROCEDURAL AND ADMINISTRATIVE DEADLINES

So far, the main measures taken in the **procedural-administrative field** are as follows:

- **General suspension of procedural deadlines.** Suspension of procedural deadlines in all jurisdictions, with the exception of certain cases due to their specificity:
 - Criminal jurisdiction: habeas corpus proceedings, guard service actions, prison surveillance and gender violence.
 - Labour jurisdiction: actions related to collective conflicts and protection of rights and fundamental freedoms.
 - Contentious-administrative jurisdiction: matters related to the protection of fundamental rights.
 - Civil jurisdiction: activities relating to the protection of minors or detention for mental disorder.
- **General suspension of administrative deadlines.** General suspension of all administrative deadlines related to the public sector (with the exception of certain administrative deadlines related to taxes (declarations and self-assessments) and social security (affiliation, settlement and contributions)) and those procedures closely linked to the facts justifying the State of Alarm.




However, with regard to the general suspension of administrative deadlines, the door is left open to agreeing on measures or resuming those deadlines which, if suspended, could cause some serious damage to the rights and interests of the concerned person, but for this it is necessary to have the agreement of the concerned person.

In principle, the procedural and administrative deadlines referred to above will be held in abeyance until the end of the State of Alarm, and/or any extensions thereof. In addition, the same applies to prescription and expiry periods, which are interrupted for the duration of the state of alarm and/or its extensions.

5. CORPORATE AND REGISTRATION MEASURES

The main measures taken in the **corporate area** are as follows:

- **Telematic celebration of the meetings of the governing bodies of entities.** During the period of the State of Alert, the governing bodies of Spanish entities may hold their meetings electronically or, under certain circumstances, by means of a written mechanism and without a meeting, even though this is not expressly provided for in the entity's articles of association.
- **Formulation and approval of annual accounts.** Temporary suspension of the deadlines for the formulation and approval of the annual accounts during the validity of the State of Alarm, which must be formulated and approved, respectively, within three months from the date on which the end of the State of Alarm is decreed.
- **Modification or, as the case may be, revocation of the agreement to call a general meeting of shareholders.** The administrative body may modify the place and time scheduled for the holding of the general meeting of shareholders or, if applicable, revoke it, provided that it is scheduled to be held during the term of the State of Alert, by means of a notice published at least forty-eight hours in advance on the company's website and, if the company does not have a website, in the "Official State Gazette". In the event of the revocation of the agreement to call a meeting, the administrative body must call a new meeting within one month of the date on which the State of Alarms ended. The notary required to attend a general meeting of shareholders and to take the minutes of the meeting may use remote communication means in real time that adequately guarantee the fulfilment of the notary function.
- **Suspension of certain corporate deadlines.** Any right to separation, refund of contributions to cooperative members, or any legal or statutory cause for the



dissolution of a company, will not take effect until the end of the state of alert, with their respective deadlines.


- **Cancellation of the duty to apply for competition.** During the validity of the State of Alarm, the obligation to request bankruptcy is suspended for those entities that have the obligation to declare it because they have a legal cause for dissolution due to losses.
- **Dissolution of companies.** If, before the declaration of the State of Alarm and during the validity of that state, there is a legal or statutory cause for the dissolution of the company, the legal period for the convocation by the administrative body of the general meeting of shareholders to adopt the agreement of dissolution of the company or the agreements that have the purpose of enervating the cause, is suspended until the end of that State of Alarm, the administrators will not be liable for the company's debts incurred during that period.
- **Suspension of the expiration of registration records.** General suspension of the expiration period of any registry entry subject to cancellation during the Alarm Status period.
- **Term of duration of the companies.** If, during the period of validity of the state of alert, the term of duration of the company established in the articles of association expires, the company will not be dissolved with full rights until two months have passed since the end of the state of alert.

NOTE: It is important to note that the deadlines for the submission of registration books have **NOT** been suspended.

6. FINANCIAL ARRANGEMENTS

So far, the main measures taken in the **financial field** are as follows:

- **Prohibition of constitution and increase of short positions and obligation to inform about them.** The National Securities Market Commission (CNMV) and the European Securities and Markets Authority (ESMA) have decreed, respectively, a series of measures aimed at controlling the short positions that have appeared in recent days on the securities markets:
 - Firstly, the CNMV has temporarily prohibited the constitution and increase of short positions in securities admitted to trading in Spanish trading centres (Stock Exchanges



and Alternative Stock Market (MAB)), with effect until 17/04, and this period may be extended if considered necessary⁴.

- Secondly, the ESMA has instructed that any net short position in excess of 0.1% of the share capital of any share listed on European regulated markets must be⁵ disclosed.

By virtue of the above, it is foreseeable that in the next few days the short positions built up in the last few weeks will be communicated, as well as those short positions of agents who do not want to communicate their position.

- **Measures related to the corporate governance of Spanish companies listed on regulated markets.** Exceptionally, it has been agreed to relax certain obligations relating to the corporate governance of listed companies:
 - Extension of the deadlines for the submission of the annual financial and audit report, as well as for the interim statement and half-yearly report.
 - Extension of the deadlines for holding the Ordinary General Meeting of Shareholders of listed companies.
 - The possibility of calling a general meeting by telematic means, enabling remote voting and the possibility of holding the meeting anywhere in Spain, even if this is not provided for in the articles of association or, if this is not possible, holding it telematically.


In any case, these measures should be considered as extraordinary and, therefore, only applicable in relation to the financial year 2020.

- **Limitation of control positions of non-EU investors.** The acquisition of control positions or positions exceeding >10% in Spanish entities dedicated to certain sectors by entities resident in countries outside the European Union and the European Free Trade Association is limited. This circumstance, although it is intended to prevent foreign investors from taking advantage of the current market situation to take control positions in strategic Spanish companies, may have the adverse effect of paralyzing certain investments, to the extent that it does not specify the size of the investment or limit its scope to listed entities.

It should be noted that these extraordinary measures may be revoked at the discretion of ESMA, the CNMV or the Spanish Government, with the exception of the rules on the relaxation

⁴ CNMV. Temporary prohibition of the constitution or increase of net short positions on quoted shares - [\[LINK\]](#).

⁵ ESMA. Obligation to report net short positions of 0.1% and above - [\[LINK\]](#).



of corporate governance obligations in respect of 2020, which we understand will remain in force regardless of the duration of the State of Alert.

7. DATA PROTECTION MEASURES

With regard to the area of **data protection**, the Spanish Agency of Data Protection (“AEPD”, by its initials in English) has expressed its opinion on the processing of data resulting from the current situation caused by the spread of the COVID-19 coronavirus:

- **The General Data Protection Regulation (GDPR) contains the necessary rules to legitimately allow the processing of personal data in situations where there is a health emergency of general scope.** Consequently, data protection should not be used to hinder or limit the effectiveness of measures taken by the authorities, especially health authorities, in the fight against the pandemic. It therefore provides that:
 - Recital 46 of the RGPD explicitly recognises as a legal basis for the lawful processing of personal data in exceptional cases, such as the control of epidemics and their spread, the mission carried out in the public interest (Art. 6.1.e) or the vital interests of the data subject or other natural persons (Art. 6.1.d).
 - The above legal bases allow for the processing of data without the consent of those concerned.
- **The processing of health data related to the COVID-19 coronavirus is allowed both for employees and for other external employees.** The AEPD concludes in its report that in accordance with the regulations on the prevention of occupational risks and occupational medicine, employers may process, in accordance with these regulations and the guarantees established by these rules, the data of their employees that are necessary to guarantee the health of all their employees, which also includes the rest of the employees other than the person concerned, to ensure their right to health protection and to avoid contagion within the company and/or work centres.
- **The information obligations and other principles of the RGPD are not excluded.** The AEPD states in the report that:
 - Information obligations and other principles of applicable data protection regulations are not excluded. Furthermore, the collection of data should be limited to that which is strictly necessary without convenience being confused with necessity for the control of the spread of the epidemic.



You must be informed of the purpose of the processing and the data may not be processed for any purpose other than that indicated.

8. THE USE OF THE RULES OR FIGURES "REBUS SIC STANTIBUS" AND "FORCE MAJEURE" IN CIVIL AND COMMERCIAL CONTRACTS

The absolutely exceptional circumstances that are taking place during these last weeks mean that in the framework of civil and commercial contracts, the parties may use various tools of our legal system, which are widely developed by Spanish case law to try to relax or modify the performance of previously acquired obligations or even try to cancel or extinguish them.

It should be remembered that Article 1,258 of our Civil Code obliges the parties to the contract to comply with the agreement and everything that derives from it. Similarly, once contracts are entered into by the parties, they are understood to be unalterable and that within the framework of such legal relationships the parties must be in accordance with the aphorism "pacta sunt servanda", derived from the content of articles 1,256, 1,257 and 1,258 of the Civil Code.

In accordance with the above, the aphorism "pacta sunt servanda" should in principle remain unaltered between the parties, but our legal system and reiterated case law has recognized the existence of various exceptions to this, which allow some flexibility in the performance of obligations or in some cases even termination of the contract itself. Among them are: the force majeure and the clauses "rebus sic stantibus".

FORCE MAJEURE


The assumptions of the application of force majeure are mainly based on Article 1,105 of our Civil Code.

Force majeure is defined as an event outside the circle of the debtor of an obligation and completely independent of his will that is both unforeseeable and foreseeable. ⁶

In accordance with reiterated Jurisprudential doctrine, the characteristic notes that would allow alleging force majeure are mainly the following:

- The existence of a fact or circumstance that is unforeseeable, or else foreseeable but inevitable.

⁶ Supreme Court Ruling 18 December 2006, Supreme Court Ruling No. 1857/2007 of 8 July 2008.

- 
- The existence of such a fact or circumstance is not attributable to the debtor of the obligation itself.
 - That the unforeseeable or unavoidable fact or circumstance produces a real and serious effect on the clauses of the contract, and that this is the cause and consequence of the breach of the obligation.
 - That the unforeseeable or unavoidable fact or circumstance makes the fulfilment of the obligation impossible.
 - The figure of "force majeure" is not applicable to debts for payment of money, i.e. it cannot be used by the debtor to obtain exemption from payment of money obligations.

Force majeure acts as an exception to the debtor's liability in the event of non-performance of the contract, but it shall only be applicable when the impossibility of performance of the contract is total; otherwise, once the fact which would have caused it has been mitigated, the debtor shall be bound to perform the contract, but the creditor cannot claim damages from the debtor for the non-performance.

THE CLAUSES "REBUS SIC STANTIBUS" ("THINGS THUS STANDING")

The assumptions of the application of the rebus sic stantibus clauses are based on articles 7 and 1,258 of our Civil Code.

Doctrine and Jurisprudence understand that their application must be limited to solving the problems derived from an overdue alteration of the existing situation or of the concurrent circumstances at the time of the execution of the contract. The alteration of circumstances that may cause the amendment or, ultimately, the termination of a contract, must be of such importance that it significantly increases the risk of frustrating the purpose of the contract.⁷

The fundamental characteristics of this figure are as follows:

- It can only be applied and invoked when there are changes or exceptional circumstances that were unforeseeable for the parties when the contract was entered into.
- Such changes or circumstances must result in a significant alteration, either commercial or economic, of the obligations assumed under the contract, or which cause a profound imbalance between the performance of the two parties.

⁷ Supreme Court Ruling 452/2019 of 18 July, Supreme Court Ruling 455/2019 of 18 July, Supreme Court Ruling 333/2014 of 30 June

- The existence of such changes or circumstances must be objective and must not have been generated by any of the parties.
- The regulation of the existence of such changes or circumstances must not have been provided for in the contract.
- The rule or figure of the "rebus sic stantibus" clauses does not apply to monetary debts, i.e. it cannot be used by the debtor to get an exemption from payment of money obligations.
- The debtor of the obligation must not have been in default prior to the occurrence of the changes or extraordinary circumstances.

The "rebus sic stantibus" clauses could allow, in situations such as the present one, the modification and flexibility of the obligations contracted, and even if the Jurisprudence adopts restrictive criteria in this respect, the possibility of termination of the contract.

Likewise, we must make it clear that we understand that although the State Decree of Alarm contains as a measure the suspension of the periods of prescription and expiration of some legal actions, no measure of flexibility or modification of the pre-existing contractual obligations has been established.

For this reason, and in view of the current State of Alarm, the limitation of the free movement of persons, the suspension of many business activities and the measures adopted in the employment field, will in many cases make it impossible to comply with various contractual obligations, which will lead to the debtors to use the figure of "force majeure" or the "rebus sic stantibus" clauses as a means of exoneration, relaxation, modification or resolution.

In any case, the applicability and invocation of such clauses must be reviewed on a case-by-case basis, and always under the principle of good faith which must govern all commercial and contractual relations under Spanish law.

For further information, please contact:



Angela Lopez
Partner, Madrid
Angela.lopez@ds-ovslaw.com



David Aviles
Partner, Barcelona
David.aviles@ds-ovslaw.com

Canada – Canada’s response to address the economic and social impact of the Covid-19 Pandemic

Canada has introduced, over the past fourteen days, drastic measures to stem the propagation of the COVID-19 virus among its citizens. In recent weeks, a series of extraordinary measures have been introduced at both the Federal level as well as by the Provinces and several Municipalities in order to mitigate the economic effects of the health emergency crisis resulting from COVID-19, which the World Health Organization officially declared to be of pandemic scale on March 11, 2020.

The Provincial governments of Quebec and Ontario have declared emergency measures in the provinces, restricting the movement of citizens, banning congregations of more than three persons and enforcing a sanitary confinement of persons away from workplaces. All but priority economic activities have been restricted. The Federal government has closed curtailed air travel, restricted the use of airports and instructed airlines to limit their activities to essential services, as well as closed the US-Canada border to all but essential travelers.

1. [Response of the Federal \(Canada\) Government](#)
2. [Response of the Quebec Government](#)
3. [Response of the Government of Ontario](#)
4. [Response of the Government of British Columbia](#)

1. Response of the Federal (Canada) Government

As of March 21, 2020, a temporary 30-day restriction on all non-essential travel at the Canada-U.S. border has been implemented.

This restriction covers all travel of an optional or discretionary nature, including but not limited to tourism, entertainment and recreation

On March 18, 2020, Canada announced a new set of economic measures to help stabilize the economy during this challenging period. These measures, delivered as part of the Government



of Canada's COVID-19 Economic Response Plan, will provide up to \$27 billion in direct support to Canadian workers and businesses.

EMPLOYMENT INSURANCE ASSISTANCE

The Government of Canada is implementing the Employment Insurance (EI) Work Sharing Program (WSP), which provides EI benefits to workers who agree to reduce their normal working hour as a result of developments beyond the control of their employers, by extending the eligibility of such agreements to 76 weeks, easing eligibility requirements, and streamlining the application process.

PROVIDING SMALL BUSINESS WITH WAGE SUBSIDIES

To support businesses that are facing revenue losses and to help prevent lay-offs, the government has introduced eligible small employers a temporary wage subsidy for a period of three months. The subsidy will be equal to 10% of remuneration paid during that period, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer. Businesses will be able to benefit immediately from this support by reducing their remittances of income tax withheld on/ their employees' remuneration. Employers benefiting from this measure will include corporations eligible for the small business deduction, as well as non-profit organizations and charities.

ESTABLISHING A BUSINESS CREDIT AVAILABILITY PROGRAM

The Business Credit Availability Program (BCAP) will allow the Business Development Bank of Canada (BDC) and Export Development Canada (EDC) to provide more than \$10 billion of additional support, largely targeted to small and medium-sized businesses. BDC and EDC are cooperating with private sector lenders to coordinate on credit solutions for individual businesses, including in sectors such as oil and gas, air transportation and tourism. The near-term credit available to farmers and the agri-food sector will also be increased through Farm Credit Canada.

LOWERING THE DOMESTIC STABILITY BUFFER

The Office of the Superintendent of Financial Institutions (OSFI) announced it is lowering the Domestic Stability Buffer by 1.25% of risk-weighted assets, effective immediately. This action will allow Canada's large banks to inject \$300 billion of additional lending in to the economy.

CUTTING THE INTEREST RATE

The Bank of Canada took a series of actions to support the Canadian economy, including cutting the interest rate to 0.75% as a proactive measure in light of the negative shocks to Canada's economy arising from the COVID-19 pandemic and the recent sharp drop in oil prices.



CREATION OF AN INSURE MORTGAGE PURCHASE PROGRAM

The government announced on March 16 that it was launching an Insured Mortgage Purchase Program (IMPP). Under this program, the government will purchase up to \$50 billion of insured mortgage pools through the Canada Mortgage and Housing Corporation (CMHC) to provide long-term stable funding to banks and mortgage lenders, help facilitate continued lending to Canadian consumers and businesses, and add liquidity to Canada’s mortgage market. The Bank of Canada also announced that it will broaden eligible collateral for its term repo facility to include the full range of collateral eligible under the Standing Liquidity Facility, with the exception of the non-mortgage loan portfolio.

EXTENSION OF ALL DEADLINES TO PAY INCOME TAXES

The Canada Revenue Agency (CRA) will allow all businesses to defer, until after August 31, 2020, the payment of any income tax amounts that become owing on or after today and before September 2020. This relief would apply to tax balances due, as well as instalments, under Part I of the *Income Tax Act*. No interest or penalties will accumulate on these amounts during this period. Further, CRA will not initiate any new post assessment GST/HST or Income Tax audits until May, 2020.

SUSPENSION OF JUDICIARY ACTIVITIES

Courts and Tribunals of Federal jurisdiction have suspended their hearings but are allowing the filing of procedures, electronically where possible.

Supreme Court of Canada	Court remains open for case-related matters. However, the hearings scheduled for March 24, 25 and 26, 2020 are rescheduled, tentatively, to the month of June 2020. All other currently scheduled hearings remain on the agenda until further notice.
Federal Court of Appeal	Adjourning all hearings scheduled to be heard between now and April 17, 2020, with the exception of urgent matters that will be heard by teleconference
Federal Court of Canada	Hearings previously scheduled to be heard between now and April 17, 2020 are being adjourned sine die
Tax Court of Canada	Cancelled all its judicial activities for the weeks of March 16 and March 23, to and including March 27, 2020



2. Response of the Quebec Government

Quebec has introduced sweeping measures to ensure that its citizens do not contribute to the propagation of the COVID-19 virus. The measures essentially focus on self-containment and isolation. As part of this effort, the government of Quebec ordered, as of March 25, 2020, the minimization of all non-priority services and activities. Educational institutions and daycare services will be closed until May 1 save and except for childcare services for jobs and essential services. Business are encouraged to telework and transact business via e-commerce. All businesses that produce inputs or raw materials necessary for priority services and activities must maintain their activities accordingly, bearing in mind the directives from public health authorities. Businesses that provide non-essential services, excluding stores, can maintain minimal operations to ensure the resumption of their activities, bearing in mind the directives issued by public health authorities. The government has prioritized business and essential activities as follows:

PRIORITY HEALTH SERVICES AND SOCIAL SERVICES

- Institutions in the health and social services network, including 811 call centres
- Pre-hospital emergency services, including the Corporation d'Urgences santé, first responders, ambulance service operators and healthcare communication centres
- Private health consulting room of office, including dentists and optometrists (for emergency services only)
- Pharmacies
- Intermediate resources and family-type resources
- Private seniors' residences
- Individuals, enterprises and organizations providing services to the elderly, to the disabled and to the vulnerable, in particular as part of the direct allocation—service employment paycheque measure
- Specialized resources offering accommodation for vulnerable groups (domestic violence, vagrancy, cancer, addicts housed in community or private resources, palliative and end-of-life care, the underprivileged, immigrants, the elderly, the mentally ill, mother and child, prenatal and postnatal groups, young people in difficulty and their families, people with an intellectual or physical deficiency or an autism spectrum disorder, victims of crime)
- Héma-Québec
- Transplant-Québec
- Canadian Red Cross
- Institut national de santé publique du Québec
- Régie de l'assurance maladie du Québec
- Commission des normes, de l'équité, de santé et de la sécurité du travail


- Wholesalers and manufacturers of medication accredited by the Minister of Health and Social Services
- Medical and pharmaceutical laboratories and research centres
- Enterprises manufacturing vaccines or by-products to produce vaccines
- Suppliers, distributors and co-contractors in the health and social services network
- Independent placement agencies in the field of health services and social services
- Private IV clinics
- Joint procurement groups

PUBLIC SECURITY SERVICES

- Police departments and police forces, including emergency call dispatch centres (operated by a municipality or the Sûreté du Québec)
- Fire services
- Correctional services
- Special constables
- Highway controllers
- Wildlife protection officers
- Security agencies
- Ministère de la Sécurité publique (civil security and coroners)
- Forest firefighters and all types of professionals providing support for civil security operations
- Communication services
- Enterprises involved in environmental emergencies

GOVERNMENT SERVICES AND OTHER PRIORITY ACTIVITIES

- Québec government departments and bodies
- Childcare workers and support staff for emergency childcare services
- Online higher education
- Suppliers of goods and services for underprivileged citizens
- Food inspection and food quality
- Waste collection and residual materials management
- Government air services
- Suicide prevention centres
- Assistance services for victims of domestic violence
- Services deemed essential by municipal organizations (administration, public works, etc.)
- Food banks
- Veterinarian clinics

- 
- Animal shelters
 - Courts of justice and administrative tribunals, for matters they deem urgent
 - Legal services (lawyers, notaries, bailiffs, translators and other workers)
 - Professional orders – public protection component
 - Priority union activities

MAINTENANCE AND OPERATION OF STRATEGIC INFRASTRUCTURE


- Energy production, supply, transmission, transportation and distribution (hydroelectricity, fossil fuels, wind energy, biomass energy)
- Maintenance of essential public infrastructures in proper working order (bridges, municipal buildings, etc.)
- Construction, maintenance and upkeep of essential activities in connection, in particular, with public and private infrastructures that may create a risk for public health and safety (private dams, management of hazardous and radioactive waste, etc.)
- Sanitary services and supply chains (for example water treatment plants)
- Computer resources (security, maintenance, urgent needs in the current situation)
- Data centres

PRIORITY MANUFACTURING ACTIVITIES

- Food production (for example agricultural operations, food processing, drink production, slaughterhouses, market-garden vegetable production)
- Production of inputs necessary for priority sectors
- Pulp and paper sector
- Manufacture of medical instruments
- Manufacture of chemicals
- Manufacture of sanitary products
- Manufacture of micro-electronic components
- Industrial facilities (in particular in the aluminum sector) and mining facilities, which must reduce their activities to a minimum
- Manufacturing and maintenance in the defence sector

PRIORITY COMMERCIAL ENTERPRISES

- Grocery stores and other food retailers
- Pharmacies
- Convenience stores

- 
- Stores not in a mall (offering grocery, pharmacy or hardware products)
 - Businesses supplying agricultural operations (machinery, fertilizer, etc.)
 - Société des alcools du Québec and Société québécoise du cannabis
 - Furniture and household appliances (online or telephone sales only)
 - Funeral services business and cemetery
 - Restaurants (drive-through, take-out and delivery only)
 - Hotels
 - Cleaners, laundries and laundromats
 - Medical and orthopaedic supply firms
 - Suppliers of pet food and supplies
 - Moving firms
 - Work equipment (safety and protection)

MEDIA AND TELECOMMUNICATIONS SERVICES

- Telecommunications (network and equipment)
- Cable services
- Printing (newspaper printing only)
- National media
- Local media
- Communications agencies (advertising, production, feedback)

BANKING, FINANCIAL AND OTHER SERVICES

- Financial services (financial institutions, automatic teller machines and other payment methods)
- Insurance (telephone services)
- Payroll services
- Accounting services
- Financial market and stock exchange services
- Placement agencies

CONSTRUCTION SECTOR SERVICES

- Construction firms, for emergency repairs or to ensure safety
- Electricians, plumbers and other trades (emergency services only)
- Equipment rental firms



BUILDING MAINTENANCE AND UPKEEP SERVICES

- Cleaning, upkeep and pest management
- Building maintenance (elevators, ventilation, alarm systems, etc.)
- Household appliance maintenance and repair

PRIORITY SERVICES IN THE FIELD OF TRANSPORTATION AND LOGISTICS

- Public transit services and passenger services
- Ports and airports
- Maintenance of locomotives, aircraft and boats and essential air operations (air transportation)
- Supply and distribution of foodstuffs, grocery stores and convenience stores
- Transportation, storage and distribution of goods
- Snow removal and road maintenance
- Service stations and mechanical repair of cars, tow truck and trucking services and specialized equipment for essential industries and roadside assistance
- Remunerated passenger transportation and paratransit services
- Postal, courier and parcel delivery services

The stores and services covered by this list must ensure that the people in their establishments comply as far as possible with the principles of social distancing. The government further introduced the following measures:

TEMPORARY AID FOR WORKERS PROGRAM (PATT COVID-19)

- Announced on March 17, 2020, this program grants a lump sum of \$573 per week to an eligible person, for a period of 14 days of isolation. If justified, the coverage period could be extended to a maximum of 28 days.
- Beginning on March 19, 2020, workers could apply to PATT COVID-19 if they were (or are) in isolation because they had contracted the virus or are showing symptoms, had been in contact with an infected person or had returned from abroad.
- Workers are not eligible if:
 - they are being compensated by their employer;
 - they have private insurance;
 - they are covered by another government program, including federal employment insurance.

FLEXIBILITY MEASURES FOR INDIVIDUALS AND BUSINESSES

- The deadline for individuals for producing and filing provincial income tax returns for the 2019 taxation year is postponed to June 1, 2020, from April 30, 2020.
- For individuals and individuals in business, the deadline for applying balances due related to income tax returns for the 2019 taxation year is postponed to September 1, 2020.
- The deadline to make instalment payments for the 2020 taxation year is postponed to September 1, 2020.
- The deadline to pay any Québec Pension Plan, Québec Parental Insurance Plan, Health Service Fund, and Québec drug insurance plan contributions for the 2019 taxation year is postponed to September 1, 2020.
- The deadline for businesses to pay tax instalments and taxes due between March 18, 2020, and September 1, 2020, is suspended until September 1, 2020.
- The deadline to file a trust return will be postponed to May 1, 2020, for trusts (other than Specified Investment Flow-Through Trusts (SIFT)) whose tax return filing-due date, for the 2019 taxation year, is March 30, 2020.
- The deadline for a trust (other than a SIFT) to pay any balance of tax due no later than March 30, 2020, for the 2019 taxation year will be postponed to September 1, 2020 (Note that the March 19 press release applies the September 1 deadline to “individuals”, which we interpret to include trusts; in the alternative, the due date is August 31, 2020).
- The payment of tax instalments and the balance of tax otherwise due by specified investment flow-through trusts between March 17, 2020, and September 1, 2020, will be postponed to September 1, 2020
- Partnerships that had to file a Partnership Information Return for 2019 by March 31, 2020, now have until May 1, 2020, to file the return.
- The payment of tax instalments and the balance of tax otherwise due by specified investment flow-through partnerships between March 17, 2020, and September 1, 2020, will be postponed to September 1, 2020

INJECTION OF FUNDS TO HELP BUSINESSES

- The Government of Québec announced the *Programme d'action concertée temporaire pour les entreprises (PACTE)*. The government is committing at least \$2.5 billion to help companies overcome liquidity issues connected to the pandemic. This program is intended to support business' working capital to help them continue operations. All industries will be eligible for this emergency program. Businesses will have to demonstrate that they are likely to be profitable after the crisis. The financial assistance is a minimum amount of \$50,000, provided in the form of a loan guarantee, but may also take the form of a loan.



LOANS AND LOAN GUARANTEES

- In order to support businesses affected by the impacts of COVID-19, flexibility for outstanding loans and loan guarantees are being put in place by the *Fonds local d'investissement* ("FLI").
- A three-month moratorium has been put in place for the repayment (principal and interest) of loans already granted through the FLI. Interest accrued during this period will be added to the loan balance. This measure is in addition to the moratorium already
- in place under most investment policies in effect, which can be as long as twelve months.

SUSPENSION OF JUDICIARY ACTIVITIES

Courts and Tribunals of Provincial jurisdiction in Quebec have suspended their hearings but are allowing the filing of procedures, electronically where possible.

Ministry of Justice	Suspended their activities, while maintaining essential services
Court of Quebec	
Superior Court of Quebec	
Court of Appeal of Quebec	Rescheduled all of the hearings that were to be held between March 17 and April 3, 2020
<i>Tribunal administratif du Quebec</i>	Postponed the scheduled hearings until April 17, inclusively. Until then, only the proceedings that are deemed urgent by law will be heard

3. Response of the Government of Ontario

Ontario declared a provincial state of emergency under the province's *Emergency Management and Civil Protection Act*. To further contain the spread of COVID-19, the Ontario Government ordered the mandatory closure of all non-essential workplaces effective as of Tuesday, March 24th at 11:59 p.m. The closure will be in effect for 14 days with the possibility of extending this order as the situation evolves. The Ontario Government ordered the following establishments to be closed until March 31, 2020:

- All facilities providing indoor recreational programs,
- All public libraries,
- All private schools as defined in the Education Act,
- All licensed child care centres,



- All bars and restaurants, except to the extent that such facilities provide takeout food and delivery,
- All theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies, and
- Concert venues

NEW LEGISLATION PROTECTING WORKERS

- Ontario recalled its provincial legislature on March 19, 2020. The legislature unanimously passed the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* to provide “job-protected leave” to workers during the COVID-19 crisis.
- The legislation provides job-protected leave for employees who are in isolation or quarantine due to COVID-19, or employees that need to be away from work to care for children or relatives.

\$200 MILLION SOCIAL SERVICES RELIEF FUNDING

- The province will be providing municipalities and organizations that administer social services with \$200 million in relief funding to support them in their response to COVID-19. The funding will help municipalities and social service providers continue to deliver critical services and promote social distancing and self-isolation.

SUSPENSION OF JUDICIARY ACTIVITIES

Courts and Tribunals of Provincial jurisdiction in Ontario have suspended their hearings but are allowing the filing of procedures, electronically where possible.

Superior Court of Justice – Civil and Family	Suspending all regular operations, effective Tuesday, March 17, 2020, and until further notice
Superior Court of Justice – Criminal	
Superior Court of Justice – Small Claims Court	Suspending all regular operations, effective Monday, March 16, 2020, and until further notice
Ontario Court of Justice	Except urgent criminal or family court appearance in the Ontario Court of Justice between Friday, March 20, 2020 and Friday, May 29, 2020, court is suspended
Ontario Court of	Suspended all scheduled appeals for a period of 3 weeks (until April



Appeal	3, 2020). During this period, urgent appeals will be heard based on either the written materials or remotely
Tribunals Ontario	As of March 13, 2020, postponed in-person hearings and rescheduled to a later date. Where feasible, alternative hearing options such as written and telephone hearings will be considered to minimize disruption to hearings across the organization

4. Response of the Government of British Columbia

British Columbia declared a provincial state of emergency under the *Emergency Program Act* on March 18, 2020. Effective March 17, bars, pubs and night clubs must close if they are unable to adequately meet the requirements of social distancing. Restaurants and cafes that cannot maintain social distancing will need to move to takeout and delivery. British Columbia Provincial Health Officer's ordered self-isolation due to contact with a case of Covid-19 or travel. British Columbia Provincial Health Officer's prohibits the gathering of people in excess of 50 people. All schools (K-12 and post-secondary learning) are suspended in-class instruction until further notice. British Columbia Provincial Health Officer's has ordered the closure of all personal services establishments, including salons, spas, massage parlours and tattoo shops

CHANGES TO THE *EMPLOYMENT STANDARDS ACT*

- On March 17, 2020, the Premier of British Columbia announced that the government is looking to amend B.C.'s employment standards act to enable greater worker support.

SPECIFIC RELIEF TO AGRICULTURAL SECTOR

- On March 22, 2020, the Minister of Agriculture announced that they are working with the Federal Government to ensure seasonal labour can still enter Canada to support the agriculture industry.
- In addition, the Minister of Agriculture stated that it will be providing financial support to develop an operating model for a farmer's market better suited to times of a pandemic.



SUSPENSION OF JUDICIARY ACTIVITIES

Courts and Tribunals of Provincial jurisdiction in British Columbia have suspended their hearings but are allowing the filing of procedures, electronically where possible

BC Supreme Court	Effective March 19, 2020 and until further notice, suspended regular operations
BC Provincial Court	Effective March 25, 2020 and until further notice, suspended regular operations
BC Court of Appeal	Strictly limiting its operations to urgent matters only

For further information, please contact:



Vincent Routhier,
Partner, Quebec
vrouthier@dsavocats.ca

#Argentina - Health Emergency – Measures of the Argentine Republic

On March 11th, 2020, the World Health Organization (WHO) declared the COVID-19 as a pandemic. As a consequence, the Argentine Republic implemented the following measures in order to prevent the spread of the virus.

Given the exceptional nature of the moment and for information purposes, we proceed to point out a summary of the main issues that we believe may have a greater impact on a business level, in relation to each specific area:

1. [Labour measures](#)
2. [Education](#)
3. [Judicial procedures](#)
4. [Administrative procedures](#)
5. [Suspension of visas and residences](#)
6. [Prohibition of entry into the national territory](#)
7. [Temporary suspension of international flights](#)

1. LABOUR MEASURES

▪ Suspension of Employment Assistance Duty


Taking into consideration the exceptional circumstances caused by the Coronavirus COVID-19, the Resolution N° 207 - published in the Argentine Official Journal on 16 March 2020 - suspends the duty to attend the workplace for a period of 14 days, with full payment of their remuneration, to the following workers:

- Over 60 years of age;
- Pregnant; and
- Included in the Risk Groups indicated by the National Health Authority, such as workers with chronic respiratory diseases, heart diseases, among others.

Such workers should –in case it is possible - coordinate with their employer to continue fulfilling their responsibilities from their domicile.

In addition, it is recommended that employers take the necessary measures to reduce the number of workers in the offices, by implementing a teleworking system.

▪ The Teleworking System



On 16 March 2020 the Resolution N° 21 was also published in the Argentine Official Journal, and it requires the employers to report to the OCCUPATIONAL ACCIDENT INSURANCE (“ART” in Spanish) the following information as regards their employees who are enabled to work from their domicile:

- Surname, First Name and Fiscal Code of each worker,
- Place of residence and frequency of their work (number of days and hours per week).

The teleworking system is temporary and exceptional, and employers and workers should make every necessary effort to comply with their liabilities.

- **Preventive, Compulsory and Social Isolation.**

The Decree of Need and Urgency N° 297 - issued on March 19, 2020 - establishes a preventive, compulsory and social isolation from 20/03/2020 to 31/03/2020, for everyone living in Argentina or residing in the country temporarily.

During such period, people must remain at their home. They may only go outside for the purchase of cleaning products, medicines and food.

Employees shall be entitled to full payment of their remunerations.

The ones who do not comply with the measures imposed by this Decree shall be liable to imprisonment for a term of six months to two years.

Nevertheless, employees who provide essential services such as health, security, supermarkets, pharmacies, among others, are exempted from isolation.

2. EDUCATION

On March 15, 2020, the Ministry of Education issued the Resolution N°108 suspending classroom classes at the initial, primary and secondary levels for 14 days.

However, the activities proposed by the Educational Authorities will continue to be carried out by using the digital media that each school considers most appropriate.

In addition, the Resolution N°104 recommends to the Universities the implementation of virtual campus or any other digital media in order to keep fulfilling their educational responsibilities.



3. JUDICIAL PROCEDURES

The National Supreme Court of Justice issued the Resolutions N° 04 and 06 in which the judicial procedures' deadlines are suspended until March 31, 2020.

During such period, the National and Federal Courts will provide services, mainly for affairs that could not be delayed.

In addition, from March 18th 2020 all the filings before the National and Federal Justice shall be done by digital systems.

4. ADMINISTRATIVE PROCEDURES

The Resolution N° 298 of March 19, 2020 suspends the administrative procedures' deadlines until March 31, 2020.

Emergency procedures are exempted regarding the National Law of Social Solidarity.

5. SUSPENSION OF VISAS AND RESIDENCES

On March 12, 2020, the Migration National Direction issued the Resolution N°1644 which temporarily suspends the issuance of visas and temporary, transitory and special residences in Argentina.

The nationalities concerned by this suspension are: China, South Korea, Iran, Japan, the United States of America, the United Kingdom, Northern Ireland, States of the European Union and countries forming the Schengen area

6. PROHIBITION OF ENTRY INTO THE NATIONAL TERRITORY

On March 16, 2020, the National Executive Branch issued the Decree of Need and Urgency N° 270 prohibiting the entry into the country of non-resident foreigners through any airport, port or border center until 31/03/2020.

The National Directorate of Migration was authorized to make exceptions in case it is required.

7. TEMPORARY SUSPENSION OF INTERNATIONAL FLIGHTS

On March 12, 2020, The Decree of Need and Urgency N° 260 was issued in order to suspend international flights for a period of 30 days.

However, the Ministry of Transport has informed that the airline "Aerolíneas Argentinas S.A." will be the only one authorized to facilitate the return of Argentine residents who are currently abroad.

For further information, please contact:



Monica Orlando
Partner, Buenos Aires
morlando@dsbuenosaires.com.ar

#Chile – Main legal and business measures adopted

On 18 March 2020, the President of the Republic of Chile, Mr. Sebastián Piñera, declared a state of constitutional exception, the “State of Catastrophe”, concerning the entire national territory as from Thursday 19 March 2020, for an initial period of 90 days, in order to prevent dissemination of and infection/contagion by COVID-19 virus.

The specific measures to be adopted by the President are within the framework of the Political Constitution of the Republic and by the Constitutional Organic Law No. 18.415 (“LOC”) that governs states of constitutional exception. The instructions and measures adopted may vary as the number of cases of COVID-19 patients’ increase.

Given the exceptional nature of the moment and for information purposes, we proceed to point out a summary of the main issues that we believe may have a greater impact on a business level, in relation to each specific area:

5. [General guidelines related to the State of Catastrophe](#)
6. [Financial and Tax Measures adopted](#)
7. [Labor Law Measures adopted and Regulations](#)
8. [Other matters of interest](#)

1. General guidelines related to the State of Catastrophe.

- The President may delegate the powers and authorities vested on him by the Chilean Political Constitution on “Chiefs of Zone” to be appointed for each of the country’s administrative regions.
- Chiefs of Zone will be autonomous and may issue restrictive measures that can differ from one administrative region to another in the country.
- Among the different measures that can be adopted, the Constitution and the LOC allow the restriction of free circulation and transit, the establishment of curfews, ensuring quarantine compliance, protecting national borders, ordering the stockpiling and reserves of food, controlling entry and exit of goods, and even limiting ownership rights

At this date the Chilean borders have been closed and only Chileans and foreigners that live in the country can enter back into Chile. All these persons that entry the country will be subject to mandatory quarantine.



Furthermore, schools and universities have been closed since March 15, and public gatherings have been limited.

Finally, as of March 22, a 22:00 to 5:00 curfew has been declared in order to ensure the quarantine compliance, amongst others such as (i) mandatory quarantines in specific cities or zones, (ii) strict sanitary and customs enforcements in the Estrecho de Magallanes (Strait of Magellan), Chiloe and Chillán; (iii) Prohibition of transit to secondary homes and the instruction to return to the main domicile; (iv) as of tomorrow mandatory quick tests can be mandatory for persons that have no or few symptoms; (v) positive cases that do not respect the quarantine can be sent to places specially adapted for these purposes; (vi) police control, especially in the Santiago neighborhoods where the majority of positive cases are concentrated (Providencia, Vitacura and Las Condes).

- Below, some additional measures that could be applied under the State of Catastrophe:
 - Requisition of goods and limitations to ownership rights: In case of requisition of goods, the Government shall first make a detailed inventory of the goods, setting record of the state in which they are. A copy of this inventory shall be furnished to whomever was in possession of the goods at the time of requisition within 48 hours. In case of limitations being placed on ownership rights, it will suffice for the authorities to notify the party affected, leaving with such party a copy of the document instructing such limitation.
 - In both cases, damages compensations apply against the State, for direct damages caused as a result of the measure. The amount of that compensation and the way in which it ought to be paid shall be jointly determined by the authority ordering the requisition and the affected party.
 - The authority may order the stockpiling, storage or creation of reserves for foods, items and goods required for the care and survival of the population in the zone, and to control the entry and exit of such goods.
 - The authority is empowered to decide on the distribution or use, free-of-charge or for a charge, of the foregoing goods aimed at the maintenance and survival of the population in the affected area.
 - Establish the conditions under which meetings may be held in public places.
 - Passing measures aimed at protecting artwork and utilities, mining, industrial and other hubs.



2. Financial and Tax Measures adopted

On March 19, 2020 President Piñera announced an US\$11.7 billion package of emergency measures aimed at saving jobs and protecting small businesses while easing the coronavirus outbreak's impact. This measure was adopted invoking a special clause in the Constitution to immediately free up funds without congressional approval. In total, spending on the package would equal 4.7% of Chile's gross domestic product.

In general, as the most relevant measures, the announcement provides for extending unemployment insurance to those who are sick or unable to work from home, delay tax payments for small businesses, a cash bonus for approximately 2 million workers who lack formal employment, emergency funds for municipalities.

Through this Action Plan, the following measures have been adopted:

- **Protection of the employment:**

- **Protection of the employment:** If an employee is not able to work due to Force Majeure or has no possibility to do home office, a temporary suspension of his functions in the company may be decided, as well as the payment of his salary.


The employment contract will not be terminated, and the salary will be paid by the Unemployment Insurance. On the other hand, the obligation of the employer to pay pension and health contributions will be maintained.

To sustain the solvency of the Unemployment Insurance, Public Treasury will introduce fund for up to US\$2.000 million.

- **Labor flexibility with the purpose to reduce the working hours.** It will allow the reduction of the working day, with a compensation of the salary decrease, financed through the Unemployment Insurance mentioned above.


- **Tax relief measures:**

- Suspension of the monthly provisional payments (PPM) of the Income Tax for Q2 2020. This measure is expected to ease the cashflow situation for around 700.000.- companies, and to require additional government resources of up to US\$ 2.4 billion over the period.
- Postponement of VAT payment for the next 3 months for all companies with sales



below UF 350.000. (US\$11,5 Million approx.) with the option to pay the tax in 12 monthly installments, with no interest charge. This is expected to provide additional liquidity of up to USD 1.5 billion for around 240.000.- companies during the second quarter.

- Anticipation of income tax refund for SMB. it is estimated that this measure will allow the injection of US\$770 Million in cash flow and benefit 500.000 small and medium size businesses/companies (SMB).
 - Postponement of Corporate Annual Income Tax for SMBs until July 2020, based on the annual tax return for 2019 due to be submitted in April 2020. This is expected to release cash resources for close to US\$ 600 Million for around 140.000.- SMBs.
 - Postponement of the quarterly (April) payment of Property Taxes (Contribuciones de bienes raíces) for companies with sales representing less than 350.000 UF (US\$11.5 approx) and individuals that own properties with a value for such tax purposes of less than US\$155.000.- (CLP 133 Million). Payment will be allowed at any time during 2020, with no interest charge. This measure is expected to require additional government funding of close to US\$670 Million, and the government will compensate municipalities for the temporary reduction of income.
 - For individuals and SMB, relief measures for payment of debts with the National Treasury.
 - All expenses paid by companies generated due to the sanitary contingency will be considerate as “tax-deductible”.
- **Special measures for small and medium businesses (SMB).**
- Relief for outstanding national tax liabilities, focused on SMBs and people with lower incomes, including the flexibility to agree tax payment arrangements with the General Treasury of the Republic (Tesorería de la República), without interest or penalties, and the temporary suspension of legal action to collection of unpaid taxes and auctions of tax debts.
 - The State will make cash payment of all invoices issued to the same for services and goods provided to the State.
 - New capitalization program of Banco Estado for US\$500 Million to encourage credits applications.
 - A temporary reduction in stamp tax (imposed on documents evidencing loans or credit transactions, and on foreign loans whether or not they are documented) to



0% for all credit operations during the next six months. This will reduce the cost of obtaining finance for businesses, at an expected fiscal cost of up to US\$ 420 Million.

- **Support for family businesses.**

- Special support bonus.
- Solidarity Fund for emergency situations due to sales decrease.

3. Labor Law Measures adopted and Regulations:

At this date, it needs to be understood that before any comments and suggestions, there is no Governmental order to impose a total or partial mandatory quarantine that authorizes employees to not work at their employee's offices or premises. However, as mentioned, a national curfew (prohibition to circulate) in all the national territory, from 22:00 y 05:00 hrs., has been imposed.

As for the Labor Administrative Authority (Dirección del Trabajo), on March 5, 2020 issued a first ruling through which it recommended "Home Office" to all persons that could work under said standards and maintain high standards of hygiene and safety for those companies where the "Home Office" was not a possible option.

Thus, on a practical basis, as no legal quarantine has been ordered, the following measures could be adopted:

- Grant pending vacations to employees and/or anticipate vacations for up to two periods (30 working days) previous agreement with the employee.
- Close the company or a part of the same for at least 15 working days and grant collective vacations to said employees. This decision can be adopted by the company on a unilateral basis.
- Suspend the working relation by mutual agreement, being able to negotiate with the employee all or part of his salary.

Moreover, in case the Government issues a mandatory quarantine, the Administrative Labor Authority issued a complementary ruling (1239/005 dated March 19, 2020) that stated:

- The possibility to maintain the labor relationship with out the obligation to render services for the employee nor pay the salary for the employer, as the pandemic and authority order establishing a mandatory quarantine constitute force majeure. This needs to be understood and complemented with a Law Project announced by the



Finance Ministry that ratifies such option, in which case the employer shall keep on paying social and health contributions, and the State will pay 25% of the employee's salary on account of the fore mentioned Unemployment Insurance.


- The possibility that the employer has to terminate the work contract by virtue of Article 159 N° 6 of the Labor Code, this is fortuitus case or force majeure. Such possibility shall be adopted in a restrictive sense and favoring option a. above, as the employee would be dismissed without any indemnity rights. Only proportional vacations due to employee shall be paid in this case.

Finally, it is relevant to bear in mind that Labor Administrative Authority rulings are not enforceable to the parties nor for the Labor Courts. Thus, even though mentioned doctrine should be noted, each specific case will be resolved on a particular basis by the relevant and competent jurisdictional authorities.

4. Other matters of interest:

- **Measures adopted by Banks.**- It should be noted that on recent days, on a voluntary basis, the local Banks have already announced relevant measures in order to help debtors that will be affected, specifically in relation to payment of they home-mortgage debts and short term personal debts.
- **Bill of Law banning and penalizing price increases because of the sanitary alert.**- On March 17, 2020, a bill was filed in order to propose the creation of article 94 bis in the Code of Health Law banning and penalizing, in case of epidemics or pandemics declared as sanitary alert by the health authorities, the increase of prices for the following items:
 - Pharmaceutical products, food and medical devices that help in the prevention and treatment of the sicknesses associated to said alert;
 - Products that directly or indirectly help prevent the sanitary alert or pandemic;
 - Products aimed at personal, household or environmental hygiene. Said prohibition would be applied to labs, drugstores, pharmaceutical shops, and other establishments selling or commercializing these items. The health authority shall determine, via a grounded resolution, the complete list of the items subject to this measure.

This ban would only be in force during the sanitary alert, pandemic or epidemic. Breaching this



ban shall be penalized with fines of between 50 U.T.M and 1.000 U.T.M. For cases that take place once the state of constitutional exception has been declared, as it is the case, the foregoing fines may be doubled, plus requisition of the items involved. Also, an interim article is proposed that states that prices of medications, food and medical devices shall be taken back in time to those prior to the sanitary alert. A second interim article is also proposed to enable the health authorities to establish a maximum number of critical products to be bought in the establishments set forth in new article 94 bis of the Health Code.

This law must be reviewed and adopted by the Senate, where it might undergo some amendments.

For further information, please contact :



José Luis Ilabaca,
Partner, Santiago
jlilabaca@dsabogados.cl


#PERU – Main Legal and Business measures adopted in Peru

1. [Peruvian Emergency State](#)
2. [Corporate](#)
3. [Customs & International Trade](#)
4. [Labor](#)
5. [Public Procurement](#)
6. [Tax](#)

1. PERUVIAN EMERGENCY STATE

On March 15 and 18, 2020, the following regulations aimed at preventing the spread of the Coronavirus (COVID-19) in Peruvian territory were published, regulating the National Emergency State: (1) Urgency Decree N° 026-2020; (2) Supreme Decree N° 044-2020-PCM; and (3) Supreme Decree N° 046-2020-PCM; establishing the following:

- The Emergency State was declared throughout the national territory for a period of 15 calendar days, computed from 00:00 hours on March 16, 2020, arranging the mandatory social isolation (“Quarantine”).
- The supply of food and medicine was guaranteed, as well as basic public services such as: water, sanitation, electricity, gas, fuels, cleaning and collection of solid waste and funeral services.
- The constitutional rights to personal liberty and security, inviolability of the home, freedom of assembly and free transit were suspended. Based on these restrictions, it will only be possible to circulate on public use roads for the provision and access, among others, of the following services:
 - Acquisition, production and supply of food, basic necessities and pharmaceutical products.
 - Financial entities, insurance and pensions.
 - Production, storage and transportation, distribution and sale of fuel.
 - Situations analogous to the previous ones and assumptions of fortuitous event and force majeure.

- 
- From March 18, the compulsory social immobilization of all people in their homes was established between 8:00 p.m. and 5:00 a.m., except for those strictly necessary who participate in the provision of the aforementioned services.
 - The transport of cargo and commodity across borders is allowed, but not that in the case of people, which was suspended from 23:59 on March 16, 2020.
 - The interprovincial transport of people within the national territory was suspended from 23:59 on March 16, 2020. The urban transport was reduced to 50% of the offer of operations by land and pluvial.
 - Since March 18, 2020, the use of private vehicles, during the validity of the Emergency State, with the exception of the vehicles necessary for the provision of the services described in numbers 2 and 3 above; and for the transfer of people who require urgent or emergency medical attention.

Violation of some of these provisions authorizes the National Police and the Armed Forces to adopt force measures so that they are followed. Resistance to the authority could lead to the commission of criminal offenses.

2. CORPORATE

The Business Support Fund for Micro and Small Businesses (known as “FAE-MYPE”) was created, which will have an amount of S/ 300’000,000.00 destined to:

- Guarantee the credits for working capital to be granted between March 21 and December 31, 2020. The credits granted may not exceed 36 months and grace period of up to 6 months may be given.
- Reprogram and refinance debts granted by companies in the Peruvian financial system and saving and credit unions not authorized to raise funds from the public. Reprogramming of refinancing may not exceed 36 months and grace periods up to 6 months may be included.



3. CUSTOMS AND INTERNATIONAL TRADE

- Although the borders of Peru are closed for the transport of people, the entry and exit of all kinds of merchandise, by any track, is not restricted. In this sense, the companies that participate in the entire logistics and supply chain (ports, transport companies, customs warehouses, customs agencies, maritime agencies, port security companies, among others) are operating normally.
- On the other hand, the Customs Administration has suspended for 30 business days the terms of the administrative procedures (audits, appeals, etc.) that began before March 16, 2020. However, the calculation of interest has not been suspended for those tax-customs obligations notified before the Emergency State.

4. LABOR


- During the Emergency State was established the possibility for the employer to arrange remote work, which constitutes a modality characterized by the provision of services with the physical presence of the worker in his home or isolation place, using any devices or mechanism that makes it possible to carry out work outside the workplace, whenever the nature of the work allows it.
- For the private sector, in case the nature of the work is not compatible with remote work, it was established that the employer grants a paid leave, as agreed between the parties. In the absence of an agreement, the compensation of hours corresponds after the end of the Emergency State.

SOCIAL SECURITY MEASURES:

It was established that, for the cases of workers diagnosed with COVID-19 and who receive less than S/ 2,400.00 per month, the social health insurance will grant a subsidy for the first twenty (20) days of disability, which constitutes an extraordinary measure, because that period is usually assumed by the employer.

IMMIGRATION MEASURES:

- It has been authorized the rescheduling of administrative procedure appointments and the various services provided by the Migration Authority, once the Emergency State ends.

- 
- It has been arranged the suspension of the administrative deadlines and sanctions for excess permanence during the entire period of the Emergency State, allowing the corresponding regularization procedures to begin within a period of not less than forty five (45) days.
 - It has been arranged the extension of the terms of the special permits granted to foreigners to be absent from the national territory, as well as to those resident foreigners who are outside the country, for the entire term of the Emergency State, as long as they do not come from the countries that temporarily closed their borders before the entry into force of the national quarantine, extension which is subject to the accreditation that they come from that country and that will be done from the term in which it was found to be prevented from leaving it.

5. PUBLIC PROCUREMENT

- It has been established the suspension of the terms calculation for the period of 15 days (from March 16, 2020) for the selection procedures called by the Peruvian State before March 16 and for the subscription of contracts with the Peruvian State.
- This suspension does not apply to those selection procedures and the subscription of contracts with the Peruvian State, linked to essential services such as food supply, medicine, as well as the continuity of water services, sanitation, electricity, gas, fuel, telecommunications, cleaning and solid waste collection, funeral services, and other complementary and related services.
- Likewise, the suspension of calls for selection procedures was ordered for a period of 15 days from March 16 of this year, being the only exception those procedures related to the obligation to guarantee essential services and necessities.

6. TAX

- The Tax Administration Authority has extended –until June- the deadline for the submission of the Income Tax Annual Sworn Declaration for the 2019. This applies only to individuals and companies that have not generated net income greater than S/ 9'660,000.
- Additionally, it has been ordered the suspension –for 30 business days- of the deadlines for starting and processing administrative procedures subject to positive and negative silence that are in force, with the exception of those who have the authority pronouncement pending of notification.

- The Tax Administration Authority has granted the following main facilities:
 - Extension of expiration terms referring to payments of fees under the fractionation and /or fractionation with deferment for the period declared in National Emergency State.
 - Extension of the terms of payment of the tax debt subject to postponement for the period declared in Emergency State.
- It has been established that administrative sanctions will not be applied for tax infractions incurred by taxpayers (without distinction of the level of net income). Therefore, there will be no fines, only delay interest for late payment of the tax.

For further information, please contact:



Percy Castle
Partner, Lima
pcastle@dscasahierro.pe



Rafael Artieda,
Partner, Lima
raartieda@dscasahierro.pe



Charles Castle
Partner, Lima
ccastle@dscasahierro.pe

China – Measures taken by the Chinese central government

To cope with the crisis originated by the COVID-19 pandemic, the central government has taken strict control measures, including but not limited to traffic control, spring festival extension, and work and school resumption delay. These protective yet restrictive measures cause concerns among companies.

To minimize the adverse impacts of the COVID-19 pandemic in China, the central government has introduced major supporting policies to both domestic and foreign invested enterprises (the “FIEs”).

1. GENERAL POLICIES APPLICABLE TO DOMESTIC ENTERPRISES AND FIEs

I.1.LABOUR AND SOCIAL INSURANCE POLICIES


I.1.1. LABOUR

The Chinese authorities have been concerned in maintaining employment during and after the COVID- 19.

There was no particular new regulation as far a labour laws were concerned, however, the principles have reminded to the employers as follows :

- 1-the employers shall maintain regular wages and salaries
 - -to all the employees during the extra leave days which have been ordered by the Chinese authorities after the official new year leave and during the shutting down period of factories and offices
 - -to all the employees who are under quarantine, who cannot be back to work, who are working from home, or who have to stay at home to deal with children under 18
- 2-the employers can apply for temporary unemployment only if they can prove that the situation cannot be avoided (factories are shut down, quarantine measures are implemented, decrease of turnover is very important).

In addition to the existing regulations, the central authorities urge employers to find agreement with the employees on these principles.



In case of temporary unemployment, the responsibility of the cost of wages and salaries is borne by the employer. However, after one month, the wages and salaries can be reduced within the limit of the local minimum wage: that is RMB 2 480 (Euros 332.4) for example in Shanghai.

I.1.2. SOCIAL INSURANCE


The State Council has issued the Decision of its Executive Meeting of the State Council to Reduce and Remit the Social Insurance Expenses of Enterprises at Different Stages and to Implement the Policy of Delaying the Payment of Housing Fund for Enterprises effective on February 18, 2020

Main principles are

- To reduce the contribution of enterprises' endowment insurance, unemployment insurance and work-related injury insurance in stages, so as to reduce the impact of the epidemic on enterprises, especially small and medium-sized enterprises, so that there is a buffer period for enterprises to resume production. Except for Hubei, the above three fees can be exempted for small and medium-sized micro enterprises from February to June, and can be reduced by half for large enterprises from February to April; Hubei Province can be exempted for all kinds of insured enterprises from February to June.
- Before the end of June, the enterprise can apply for delaying the payment of housing provident fund. During this period, no overdue treatment will be made for the provident fund loans that the employees fail to repay normally due to the impact of the epidemic.
- To guarantee the basic life of the unemployed: the State Council will promptly include those affected by the epidemic into the scope of employment assistance, and ensure that unemployment insurance benefits are paid in full and on time. We will support the development of temporary public welfare posts in areas with severe epidemics, and use unemployment insurance funds to provide unemployment benefits to the unemployed.

Ministry of Human Resources and Social Security , Ministry of Finance and the State Taxation Administration have jointly issued the Notice on the Reduction and Exemption of Social Insurance Premiums of Enterprises in Stages effective on February 20, 2020, which main content is as follows :

- Since February 2020, provinces, autonomous regions, municipalities directly under the central government (except Hubei Province) and Xinjiang production and Construction Corps (hereinafter referred to as "the Province") can exempt the payment (the part




undertaken by enterprise) of three social insurance units of small and medium-sized micro enterprises according to the situation affected by the epidemic and the capacity of fund, with the exemption period not exceeding 5 months; for large enterprises and other insured units (excluding governmental institutions), the payment (the part undertaken by enterprise) of the three social insurance units can be collected in half and the period of reduction shall not exceed 3 months.

- Since February 2020, Hubei Province can exempt the payment of the parts undertaken by enterprises of the 3 types of social insurance of all types of insured units (excluding governmental institutions), with the exemption period not exceeding 5 months.
- Production and operation of enterprises with serious difficulties, can apply for a deferred payment of social insurance premiums. The delay period of in principle is not more than 6 months, and overdue fee is exempted for the delay period.
- To ensure that the social insurance rights and interests of the insured are not affected, the enterprise shall fulfill the obligation of withholding and paying the individual contributions of the employees in accordance with the law, and the social insurance agency shall record the individual rights and interests properly.

I.2. TAX AND FOREIGN EXCHANGE POLICIES


Ministry of Finance, State Taxation Administration have jointly issued an Announcement on Tax Policies in Support of Prevention and Control of the Epidemic Situation Caused by Novel Coronavirus Pneumonia (Announcement No.8) effective on January 1, 2020, which main principles are as follows :

- The costs of relevant equipment newly purchased for capacity expansion by enterprises that manufacture key supplies indispensable for prevention and control of the pneumonia outbreak could be counted, on a lump-sum basis, into the costs and expenses for the current period and are deductible before the calculation of enterprise income tax.
- Enterprises that manufacture key supplies indispensable for prevention and control of the pneumonia outbreak may file applications with the competent tax authorities, on a monthly basis, for a refund of all incremental tax credits of value-added tax (VAT).
- The incremental tax credits for the purpose of this Announcement mean newly-added tax credits at the end of a period compared to the end of December 2019.
- The income obtained by taxpayers from transportation of key supplies indispensable for prevention and control of the pneumonia outbreak will be exempt from VAT.

- 
- The losses incurred in 2020 by enterprises engaged in those industries getting into difficulty as a result of the epidemic may be carried forward for a period of up to eight years, instead of the previous five years. The enterprises engaged in difficult industries include those in the four sectors of transportation, catering, accommodation and tourism (tourism includes the two sectors of travel agencies & relevant services and scenic spots management). Specific judging criteria shall be implemented according to the Industrial Classification of National Economic Activities. In 2020, the main business income of enterprises in difficult industries must account for at least 50% of the total income (excluding non taxable income and investment income).
 - The income obtained by taxpayers from the provision of public transportation services and daily life services and from the provision of express delivery services for daily necessities of residents will be exempt from VAT.

Ministry of Finance, and State Taxation Administration have jointly issued an Announcement on the Tax Policy for Donations in Support of Prevention and Control of the Epidemic Situation Caused by Novel Coronavirus Pneumonia(Announcement No.9) effective on January 1, 2020, which main content is as follows :

- Where enterprises or individuals donate cash or articles to cope with the epidemic situation caused by the novel coronavirus pneumonia outbreak through non-profit social organizations, or state organs such as the people's governments at or above the county level and their departments, such donations are allowed to be fully deducted from taxable income.
- Where enterprises and individuals directly donate articles to hospitals undertaking epidemic prevention and control tasks to cope with the epidemic situation caused by the novel coronavirus pneumonia, such donations are allowed to be fully deducted from taxable income.
- Donors may handle the matters relating to pre-tax deduction by virtue of the donation receipt issued by a hospital undertaking the task of epidemic prevention and control.
- Where entities and individual businesses donate goods self-produced, processed on a consignment basis or purchased through public welfare social organizations, or through state organs such as the people's governments at the county level or above and the departments thereof , or directly to hospitals undertaking epidemic prevention and control tasks to cope with the epidemic situation caused by novel coronavirus infected pneumonia, the VAT, consumption tax, urban maintenance and construction tax, education surcharge and local education surcharge shall be exempted.



State Taxation Administration has issued an Announcement on Matters Concerning the Administration of Tax Levy in Support of Prevention and Control of the Epidemic Situation Caused by Novel Coronavirus Pneumonia (Announcement No.4 of the State Taxation Administration) effective on February 10, 2020, which main principles are as follows :

- According to the Announcements No. 8 and No. 9, if a taxpayer is entitled to VAT and consumption tax exemption, it may file for tax exemption independently without going through the relevant record-filing formalities for tax exemption, but the relevant proof materials should be retained for future inspection.
- During epidemic prevention and control period, a taxpayer may declare export tax refund (exemption) for all its exported goods and services as well as cross-border taxable acts by submitting electronic data online. Upon acceptance of a declaration, the tax authorities may handle export tax refund (exemption) if it is found upon examination that the taxpayer is not suspected of obtaining export tax refund fraudulently, and should promptly notify the taxpayer of the results through online feedback.
- If a manufacturer of key supplies for epidemic prevention and control is entitled to the lump-sum pre-tax deduction policy for corporate income tax according to Article 1 of the Announcement No.8, it should refer to the Announcement of the State Taxation Administration on Issues concerning the Implementation of Corporate Income Tax Policies for Deduction of Equipment and Appliances (Announcement [2018] No.46) for preferential policies. The manufacturer should, at the time of filing a tax return, fill in the relevant information in the row "Lump Sum Deduction of Fixed Assets" in the enterprise income tax return form.
- Enterprises in difficult industries severely affected by the epidemic that apply the policy of extending the carry-over period for losses in accordance with Article 4 of the Announcement No.8 should submit the Policy Statement on Applying the Policy of Extending the Carry-over Period for Losses via the electronic tax bureau at the time of final settlement of enterprise income tax in 2020.
- If a taxpayer's income can be exempted from VAT according to the Announcement No.8, the urban maintenance and construction tax, education surcharge and local education surcharge will be exempted accordingly.

The "non-profit social organizations" under Article 1 of the Announcement No.9 refer to the social organizations that are eligible for pre-tax deduction of public welfare donations according to the law.




Where an enterprise enjoys the full amount pre-tax deduction policy stipulated in the Announcement No. 9, it should conduct "self-assessment, filing for policy entitlement and retention of the relevant materials for future inspection", and state the full amount deduction of donation in the corresponding rows in the enterprise income tax return form.

Enterprises and individuals receiving the letters of acceptance of donations issued by designated hospitals for epidemic prevention and control should retain such letters by themselves for future reference as the basis for pre-tax deductions.

Ministry of Finance, General Administration of Customs and State Taxation Administration have jointly issued an Announcement on Tax Exemption Policies for Imported Materials for the Prevention and Control of Epidemic Situation Caused by Novel Coronavirus Pneumonia effective on February 1, 2020, which main content is as follows :


- Goods and materials imported by competent health departments for epidemic prevention and control will be exempted from duties. The department (bureau) of finance at the provincial level shall, in concert with the competent health department at the provincial level, determine the list of importers and the list of imported materials, and inform the local customs directly under the General Administration of Customs and the tax authorities at the provincial level in writing at the places where the importers are located.
- Taxes shall be refunded to the tax-free imported materials under this Announcement if they have been collected. In particular, for those imported with tax paid and for which no deduction of input VAT has been declared yet, the formalities for refunding the levied import duties and import VAT and consumption tax may be handled with the Customs on the strength of the Proof of Non-deduction of Input Value-added Tax on Imported Goods for Prevention and Control of New Coronavirus Infection Pneumonia Epidemic issued by the competent tax authorities; where the deduction of input VAT has been declared, only the formalities for refunding the levied import duties and import consumption tax may be handled with the Customs. Relevant importers shall complete formalities for the tax refund with the Customs by September 30, 2020.
- For tax-free imported goods and materials under this Announcement, they may be released after registration and before completion of relevant formalities required.

State Taxation Administration has issued a Circular on Several Measures for Giving Full Play to the Functional Role of Taxation to Contribute to Winning the Battle Against the Epidemic effective on February 10, 2020 which stated the following principles :

- 
- **To make clear the online tax service items.** The State Administration of Taxation summarizes and publishes the online list of tax related items. Local tax authorities shall actively inform taxpayers and payers that all items in the list can be handled at home and online, and shall not require taxpayers and payers to go to the tax service hall or the administrative service hall to handle the relevant businesses listed in the list.
 - **Many diversified non-contact handling methods.** While expanding online tax payment services, local tax authorities should actively provide other non-contact tax payment channels for taxpayers and payers. To continue to expand the business scope of "online application and distribution by mail" invoices, paperless declaration of export tax refund (exemption) and delivery of materials by fax, mail and electronic means, and expand the coverage of non-contact tax payment.
 - **To extend the time limit for tax declaration and payment according to law.** On the basis of extending the tax declaration period in February, taxpayers, affected by the epidemic, who still have difficulties in handling the declaration can apply for further extension according to law. In severe epidemic areas, taxpayers and withholding agents who pay vehicle purchase tax and other tax returns on a case-by-case basis may postpone their tax returns if they are unable to do so within the prescribed time limit due to the epidemic situation.
 - **To handle tax deferment according to law.** For enterprises, especially small and micro enterprises, which are seriously affected by the epidemic, the tax authorities shall timely approve their application for tax deferment according to the law, and actively help enterprises to alleviate the financial pressure.

State Taxation Administration has issued a Circular on Optimizing the Tax Payment Service to Cooperate in the Prevention and Control of Epidemic Situation Caused by Novel Coronavirus Pneumonia on January 30, 2020 which main content concerns the extension of the period for filing tax returns as required by epidemic prevention and control.

For taxpayers and withholding agents that file tax returns on a monthly basis, the statutory time limit for filing tax returns in February 2020 will be extended to February 24, 2020 throughout the whole nation. In Hubei and other areas affected by serious epidemics, the time limit may be extended appropriately depending on the circumstances. The specific time limit will be determined by provincial taxation bureaus and reported to the State Taxation Administration for record-filing. Where taxpayers and withholding agents affected by the epidemic still have difficulties in handling the matters after the time limit for filing tax returns in February 2020 is extended, they may apply for further extension according to the law. At the same time, the tax authorities at all localities shall adopt the corresponding measures



beforehand to ensure that the tax control equipment of taxpayers can be normally used and the VAT invoices can be normally obtained and issued after the extension of the tax declaration and payment period.

State Administration of Foreign Exchange has issued a Circular on Establishing the Green Channel of Foreign Exchange Policy in Support of Prevention and Control of Epidemic Situation Caused by Novel Coronavirus Pneumonia effective on January 27, 2020 which principles are as follows :

- When enterprises handle foreign exchange settlement and payment of receipts under capital accounts related to epidemic prevention and control, they do not need to submit documents and materials in advance and one by one, and the bank shall strengthen the post inspection on the truth of the use of enterprise funds.
- If there is a real need for epidemic prevention and control, the limit of foreign debts borrowed by enterprises can be cancelled, and foreign debt registration can be applied online through the "online application system for administrative affairs service of the State Administration of foreign exchange" (<http://zwfw.safe.gov.cn/asone/>), so as to facilitate enterprises to carry out cross-border financing.

I.3. RENT PREFERENTIAL POLICIES

Rent preferential policies have been established at the provincial level. Hereby are described the main principles applicable in Shanghai, as a reference.

The People's Government of Shanghai Municipality has issued Several Policies and Measures of Shanghai Municipality on All-out Efforts in Epidemic Prevention and Control to Support and Serve Enterprises for Their Stable and Sound Development on February 8, 2020 which provide the many following principles :

Where SMEs lease commercial premises (including various development zones, industrial parks, entrepreneurial bases and high-tech business incubators) from SOEs in this Municipality to engage in production and operation activities, the rent for two months in February and March shall be exempted first; where the enterprises lease indirectly, the rent reduction or exemption shall be ensured so as to ultimately benefit the small- and medium-sized enterprises that actually operate. SOEs are encouraged to benefit small and medium-sized enterprises as much as possible by means of reduction, exemption, postponement of payment and other



methods after negotiation, and the relevant impact of reduction of revenues shall be recognized in the assessment of operating performance. Various types of market operators such as large commercial buildings, shopping malls, parks etc. are encouraged to reduce or exempt rent for lessees operating as entities. Where an enterprise that takes the initiative to reduce or exempt real estate or land rent for tenants has genuine difficulties in paying real estate tax or urban land use tax, it may apply for reduction or exemption from the corresponding real estate tax or urban land use tax.

Shanghai State Owned Assets Supervision and Administration Commission has issued Detailed Rules for the Implementation for Shanghai State-owned Enterprises on Reductions and Exemptions for Rental of Small and Medium-sized Enterprises effective on February 11, 2020 which state the following principles :

- Where SMEs lease operating real estate from SOEs to engage in production office work and business operation activities, the rent for two months in February and March shall be exempted first by the SOEs which own the real estate.
- For SMEs which still have difficulties after the 2 months rent exemption, the SOEs groups shall clearly indicate the standard of the rent relieve standard to provide further supports for such SMEs.
- The districts and relevant SOEs that have introduced and announced their own reduction and exemption policies before this Rules should make the relevant policies correspondent with each other. The districts and related enterprises are encouraged to negotiate with the SMEs to help them actually solve the problems. The rent relieving standard announced by districts and related SOEs before shall not lower than the standard of this Rules.
- In the case of indirect renting of operating property from SOEs in Shanghai, the sub-lessor should not enjoy this reduction and exemption policy in principle. Among them: if the sub lessor is an SOE, it shall be implemented in accordance with the relevant provisions of Promulgating Several Policies and Measures of Shanghai Municipality on All-out Efforts in Epidemic Prevention and Control to Support and Serve Enterprises for Their Stable and Sound Development; if the sub-lessor is not an SOE, the relevant authorities should urge the sub-lessor to implement the rent reductions and exemptions to the actual operating lessees, so as to ensure that the SMEs who operate business actually could benefit ultimately.



2. SPECIAL POLICIES APPLICABLE TO FIE's

Along with general supporting policies, the committees of commerce at national level and at local levels (the “COFCOM”) have been focusing on FIEs and foreign invested activities and have adopted supporting rules to reassure and stimulate foreign investment in China. Please find below an overview of COFCOM supporting policies for FIEs during COVID-19, in order to bring more comfort to foreign investors in China.

1. SUPPORTING POLICIES AT NATIONAL LEVEL


On February 7, 2020, the General Office of the Ministry of Commerce promulgated the *Notice on Actively Responding to the Novel Coronavirus-infected Pneumonia and Strengthening the Services for Foreign-funded Enterprises and Investment Promotion (the “General Office Notice”)*. The General Office Notice specifies supporting measures in the following dimensions for FIEs:

- Positively assist FIEs in order to resume normal production and operation;
- Intensify services for foreign-funded projects;
- Innovate and optimize investment promotion methods;
- Provide targeted support in light of local conditions;
- Constantly optimize the business environment.

Furthermore, eleven days later, the Ministry of Commerce promulgated some additional specific incentives for FIEs during COVID-19 pandemic. On February 20, 2020, the Ministry of Commerce promulgated the *Notice on Effectively Stabilizing Foreign Trade and Foreign Investment and Promoting Consumption in Coping with the Epidemic of Novel Coronavirus-infected Pneumonia (the “Notice”)*.

Besides reiterating the above five dimensions, the Notice further provides below comforting measures for FIEs:

- The Council for the Promotion of International Trade (CCPIT) and chambers of commerce are advised in providing Force Majeure Certificates to prove that a FIE or a foreign-invested project failed to perform the contract on time due to the COVID-19 pandemic. The Force Majeure Certificate will be an important evidence for companies to prove their non-performance, partial performance or delay in performance in commercial transactions.
- For foreign-related economic and technical exhibitions that have been examined and approved or filed by the COFCOM, if the cancellation or delay has been decided due to



the impact of the COVID-19 pandemic, the company may cancel or adjust the exhibition time on the COFCOM uniform platform.

Both the General Office Notice and the Notice underline that it is imperative to effectively implement laws and regulations including *the Foreign Investment Law* and its *Implementing Regulations*. COFCOM at all levels are also aimed at guiding FIEs to effectively make full use of various supporting policies and measures to deal with the COVID-19 pandemic. Under this policy regime, FIEs will be treated equally as domestic companies and will be assured under the compliant mechanism in case of any discrimination. Equal application of supporting policies will also be implemented to FIEs.

2. SUPPORTING POLICIES AT LOCAL LEVELS

The General Office Notice and the Notice stress that in light of local conditions, efforts should be made by local COFCOMs to refine and elaborate special policies to support FIEs in dealing with the impact of the COVID-19 pandemic, putting more efforts on stabilizing foreign investment and timely reporting such different measures and practices to the Ministry of Commerce. Consequently, the Ministry of Commerce will decide to promote and share these measures and practices with other regions in China.

Up until today, DS has observed COFCOMs in Gansu, Hebei, and Zhejiang provinces, each taking its special policies for FIEs during COVID-19 pandemic.

- **Gansu province:** The local COFCOM shall push forward projects-in-progress, further comprehensive application of Gansu government affairs services, deal with relevant formalities for foreign investment projects on applicable online platform, utmost reduce the timeline for examination and approval on the premise of compliance, and coordinate related departments in land use, environmental assessments, construction permits, and water and electricity supply in order to intensify protection and safeguard foreign investment, and minimize the impact of the COVID-19 pandemic.
- **Hebei province:** The local COFCOM shall coordinate and solve difficulties and problems encountered in the resumption of production of FIEs, take the initiative to strengthen communication between FIEs and relevant departments, and help FIEs to solve difficulties in procurement of raw materials and transportation of goods to the maximum extent. Further, the local COFCOM shall actively meet requirements for prevention and control of the COVID-19 pandemic and assist world top 500 FIEs as well as other large FIEs in Hebei province and local authorities.
- **Zhejiang province:** The local COFCOM shall make its best endeavors to dynamically cope resumption of work with COVID-19 pandemic status, and strive for full resumption of work of FIEs and major foreign-funded projects by the end of February, with a work resumption



rate of over 75%, except in high-risk areas. Further, the local COFCOM shall assist to solve the problem of labor shortage, make full use of the Internet, hold online job fairs, expand recruitment channels, coordinate and help FIEs to arrange their employees from other places to resume work by means of direct buses and chartered buses.

Moreover, the local COFCOM shall coordinate implementation of various policies to reduce costs and burdens, actively promote implementation of tax reductions, rent reductions, and social security tax reductions and defer payments for FIEs, and do their best to help FIEs tide over difficulties. The local COFCOM is also required to simplify procedures for confirming resumption of production, adopt a list of epidemic prevention and control measures, implement management of “*record-filing system + negative list + commitment system*”, provide convenient services for resumption of production of FIEs and foreign invested projects, and refrain from restricting resumption of production by means of examination and approval.

Meanwhile, the local COFCOM will establish a green channel for approval of foreign-invested projects, speed up tax-free application process for equipment imported from foreign-funded projects, improve business environment for foreign investment, and deepen reform to encourage foreign investment by “*onsite visiting at most once*”. The local COFCOM shall promote service innovation for foreign-funded projects, and shall ensure a “*maximum time of 80 days*” from foreign project code assignment to completion of inspection and obtaining of approval, and further improve the facilitation of foreign investment.

For further information, please contact:



Anne Séverin,
Partner, Shanghai
severin@dsavocats.com



Sylvie Savoie,
Partner, Beijing
savoie@dsavocats.com

#India - Measures taken in India

1. Immigration

NO MORE INTERNATIONAL FLIGHT

To curb the spread of COVID-19, India has decided to close its borders. No scheduled international commercial passenger aircraft will be authorised to land in India after 00:01 hrs GMT of March 22, 2020 (*i.e. 05:31 hrs Indian Standard Time (IST) of March 22, 2020) until 00:01 hrs GMT of March 29, 2020.

No passengers (Foreigner or Indian) can be disembarked on Indian soil after 20:01 hrs GMT of March 22, 2020 (*i.e. 01:31hrs IST of March 23, 2020).

CANCELLATION OF ALL VISAS

From 13 March 12:00 GMT, all visa and e-visa issued by the government of India are invalidated till 15 April 2020.

This does not apply to:

- diplomatic, official, UN/International Organizations, employment, project visas; and
- airline crew.

Note: this does apply to dependants of valid visa holders (Entry Visa).

Visa free travel facility granted to OCI card holders is kept in abeyance till April 15th 2020.

2. Economic measures

The Central Government is working on a set of policy measures to combat the economic impact of COVID-19.

On 19 March 2020, the Government of Kerala announced a USD 2.6 billion economic relief package, which includes a Rs. 500 crore health package and Rs. 2,000 crore worth loans and free ration.

3. Announcements so far

Below is a snapshot of the measures taken in some of the main states as of 23 March 2020. Many states are going in lock-down:

CENTRAL

Notification	Summary	Effective date
Extension Of Payment Of ESI Contribution For The Month Of February and March	ESIC has extended the ESI contribution for the month of February 2020 and March 2020 to 15th April 2020 and 15th May 2020 respectively on account of COVID-19. Time limit for payment of contribution has been extended to 45 days instead of 15 days for February and March 2020	May 15, 2020
Press Release By National Security Council On COVID-19	National Security Council has declared restricted movement from 18th March to 31st March in furtherance of social distancing to deal with COVID-19.	No Effective End Date Available
Ministry Of Corporate Affairs Notice On Covid-19 To All Employers (refer to table below)	MCA has moved the dates with reference to meetings of board and holding physical meetings towards financial statement, board report, restructuring etc. upto 30th June 2020 as preventive measure towards curtailing COVID-19. MCA has also advised all companies to implement Work From Home policy as a temporary measure till 31st March 2020.	June 30, 2020
Government Of India Advisory To All Employers On Termination Of Employees Due To Covid-19	Ministry of Labour and Employment Government of India has advised the Employers of Public/Private Establishments not to terminate/reduce wages of employees, particularly casual or contractual workers. Leave during this period must be deemed to be on duty, without any deduction in wages. If the place of employment becomes non operational	No Effective End Date Available



	due to COVID - 19, the employees of that unit will be considered to be on duty	
--	--	--

The Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI) have taken some measures in light of the global outbreak of SARS-CoV-2:

Measure	Details
Board meetings through audiovisuals (AV) means	<p>Considering the need to take precautionary steps to overcome the outbreak of SARS-CoV-2 and travel restrictions imposed on foreigners, the Government has decided to relax the requirement of holding Board meetings with physical presence of directors under section 173 (2) r/w rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the certain matters. Such meetings may be held through AV means till 30th June, 2020.</p> <p>These matters include inter alia:</p> <ul style="list-style-type: none"> - approval of financial statements; and - approval of board's report. <p>http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf</p>
Companies Affirmation of Readiness towards COVID-19	<p>MCA released a new eForm CAR (Company Affirmation of Readiness towards COVID-19) to be filed by companies/LLPs to affirm their readiness towards the COVID-19 threat. There is no exclusion or exemption for OPCs, private companies or small companies. However, looking at the language of the applicability, partnership firms and proprietorship concerns have been kept outside the purview of filing CAR, 2020. eForm CAR, 2020 was deployed on 23 March 2020 and can be filed till 30th March, 2020.</p> <p>Filing of eForm CAR,2020 does not require a DSC and does not involve payment of any fee.</p> <p>Since the advisory is not coming from any statutory requirement but out of a social obligation only, non-filing of eForm CAR, 2020 may not lead to any penal consequences.</p> <p>eForm CAR, 2020 : http://www.mca.gov.in/Ministry/pdf/Car_22032020.pdf</p>

MCA advisory on WFH	Companies and LLPs are being advised to put in place an immediate plan to implement a 'work from home' (WFH) policy as a temporary measure to ensure social distancing. Such WFH policy will be reported in the eForm CAR, 2020.
Relaxation of compliance under SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015	SEBI has extended timelines by 21/45 days for quarterly and half yearly filings to be made by listed companies.

NCT OF DELHI

Notification	Summary	Effective date
Guideline To Restaurants And Sports Complexes In Delhi	Closure of all restaurants, sports complexes and events with more than 20 persons. Takeaway service are allowed to continue March 31, 2020	March 31, 2020
Delhi Order On Covid-19	Closure of all shops in malls in the NCT except shops dealing with items of daily needs (groceries, pharmacy, vegetables)	March 31, 2020
Delhi Order Related to Essential and Non Essential Services	Order describing the extent of operations that can be taken by various sectors including the government. A list has been provided with a table containing essential services and the extent of operations that are permitted	March 31, 2020
Delhi Guidelines To Private Establishments On COVID-19	All Private Sector Offices situated in Delhi are advised to allow employees to work from home till 31st March 2020.	March 31, 2020
Delhi Guideline On COVID-19	Order calling for closure of gyms, night clubs, theatres, weekly bazaars and other mass gathering in consonance with Delhi Epidemic Diseases, COVID-19 Regulations, 2020	March 31, 2020

GOA

Notification	Summary	Effective date
Goa Government Orders Section 144 In South Goa To Control COVID-19 Epidemic	Social distancing measures	No Effective End Date Available

HARYANA

Notification	Summary	Effective date
Announcement Of Lock-down Of Major Districts In Haryana To Stop The Spread Of COVID-19	Lockdown of major districts effective 22 March 2020 to 31st March 2020	March 31, 2020
Guidelines To Factories And Establishments In The State Of Haryana In Respect Of COVID-19	Guidelines to the management of Factories/Establishments in the State of Haryana in the view of prevailing epidemic situation of COVID-19.	No Effective End Date Available
Gurugram COVID-19 District Administrator Order	Suspension of operations of all general utilities, clubs, malls, theatres used by public except pharmacies and medical establishment, grocery stores and super markets. Restrictions on any mass gathering of more than fifty persons	March 31, 2020
All Private, Corporates, Establishments And Factories To Be Completely Shut Down In Gurugram	All Private Sector Offices situated in Gurugram are advised to allow employees to work from home till 31st March 2020. The General Public and particularly children, Senior Citizens and person with Medical conditions specified in the notification are also advised to stay at home	March 31, 2020
Order On Lock-down In Territorial Jurisdictions	Haryana lock-down in the territorial jurisdiction of revenue districts of Gurugram,	31st March 2020



Of Revenue Districts In Gurugram To Stop Spread Of COVID-19	Faridabad, Sonipat, Panipat, Jhajjar, Rohtak, Panchkula from 9 pm on Sunday 22nd March 2020 to 31st March 2020	
---	--	--

KARNATAKA

Notification	Summary	Effective date
Announcement Of Lock-down Of Major Districts In Karnataka To Stop The Spread Of COVID-19	Restrictions in certain cities from 00.00 hrs of 23rd March 2020 to 00.00 hrs 1st April 2020. All shops and commercial establishment, workshops, godowns dealing with non essential services shall close their operations subject to certain exceptions	April 1, 2020
Karnataka Government Directive For Paid Leave For Employees Infected By Corona Virus	Karnataka has instructed Labour department to take necessary action. Since there is a need for leave for infected employees, if any, the concerned employees who are covered under ESI should obtain declaration from ESI hospital and submit to the employer to avail 28 days of leave with wages. Those employees who are not covered under ESI shall avail leave for twenty-eight days of paid sick leave along with other leave as per Section 15(3) of Karnataka Shops And Establishment Act 1961.	No Effective End Date

MAHARASHTRA

Notification	Summary	Effective date
Pune Guidelines For Establishments On COVID-19	Bans of activity in Pune	No Effective End Date Available
Pune Government Advisory to IT Software ITES Establishments	Pune Administration has instructed all IT, Software, ITES Establishments to provide work from home to employees and advised to allow	No Effective End Date Available

Notification	Summary	Effective date
COVID-19	employees to work from home till 31st March 2020.	
Maharashtra Labour Department Order To Employers On Termination Of Employees During Covid-19 Epidemic	Maharashtra has ordered all employers not to terminate any employees during COVID-19 outbreak	No Effective End Date Available
Mumbai Guidelines On Covid-19	Maharashtra has issued a notification mandating closure of schools, cinema halls, swimming pools, gyms, malls, mills, spa centre, clubs, amusement parks etc. It has also directed all private, corporate, establishments to be completely shut down.	No Effective End Date Available
Maharashtra Mahanagar Palika COVID 19 Guidelines	Municipal Commissioner of Municipal Corporation Greater Mumbai issued these regulations to implement containment measures in the city such as restriction of vehicular movement in areas of isolation centres, closure of schools, offices, cinema halls, swimming pools, gyms and stipulating that non essential office services function at only 50% staff capacity	No Effective End Date Available

TELANGANA

Notification	Summary	Effective date
Telangana Issues Standard Operating Protocol For IT Companies/IT Parks	Standard operating protocol for IT companies/IT Parks in light of the COVID-19 outbreak	No Effective End Date Available
Announcement Of Lock-	Telangana notifies a lock down in the whole	



down In The State Of Telangana To Stop The Spread Of COVID-19	State of Telangana with immediate effect till 31st March, 2020	
---	--	--

WEST BENGAL

Notification	Summary	Effective date
West Bengal Government Declares Complete Safety Restrictions	Notification stipulating certain restrictions to prevent the spread of COVID-19.	March 27, 2020

For further information, please contact:



Olivier Monange
Partner
monange@dsavocats.com



Lisbeth Lanvers-Shah
Counsel
lanversshah@dsavocats.com

Indonesia - Measures taken in Indonesia

So far, Indonesia has released two stimulus packages to counter the impact of the COVID-19 pandemic. The first package was introduced on February 25th 2020 for an amount of US\$725 million, and the second package was issued on March 13th 2020 for an amount of US\$8 billion.

Alongside the *stimulus* packages, the Indonesian Government has taken several other measures to manage the underlying crisis, as follows:

1. [Immigration](#)
2. [Business Operations](#)
3. [Labour Law](#)
4. [Tax](#)
5. [Financial Regulations](#)

1. Immigration

The Ministry of Law and Human Rights alongside with the Minister of Foreign Affairs and the Directorate General of Immigration have implemented the following emergency measures and recommendations as of Friday 20th March at 00.00 Western Indonesia Time (GMT+7):

- For Indonesian citizens currently travelling abroad: it is advised to return to Indonesia at the earliest possible time to avoid further travel disruptions.
- The Indonesian government has suspended its visa exemption policy for short-stay visit, visa-on-arrival and diplomatic/service visa-free facilities for all countries, for a period of 1 month.
- All foreigners/travellers who wish to visit Indonesia must obtain a visa from Indonesian missions in accordance with the purpose of their visit. Upon submission, applicants must provide health certificate issued by relevant health authorities from their respective countries.

In addition, a number of country-specific policies are as follows:

- measures for visitors from China remain in effect:
 - direct flights to and from China have been temporarily suspended;
 - all passengers arriving from Mainland China and had been there for 14 days are temporarily not permitted to enter and transit in Indonesia;

- the policy of granting visa-free and on-arrival visa facilities for Chinese citizens residing in Mainland China is temporarily suspended;
 - the government asks Indonesian citizens to temporarily not travel to Mainland China.
- measures for visitors from South Korea, Daegu City and Gyeongsangbuk-do Province remain in effect,
 - Beside China and South Korea, the Government of Indonesia denies entry or transit to Indonesia for visitors/travellers who have travelled to the following countries, in the last 14 days: Iran, Italy, Vatican, Spain, France, Germany, Switzerland and the United Kingdom.
 - all visitors/travellers must complete and submit a Health Alert Card to the Port Health Authority upon arrival at Indonesian airports.
 - Should the travel history indicate that a person has travelled to the countries above in the last 14 days, such person may be refused entry to Indonesia.
 - for Indonesian citizens who have travelled to the countries above, an additional screening shall be carried out by the Port Health Authority upon arrival:
 - if the additional screening shows initial symptoms of COVID-19, a 14-day observation in a government facility will be applied;
 - If no initial symptom is found, a 14-day self-quarantine will be strongly recommended.
 - The extension of Short Visit Pass for foreign travellers who are currently in Indonesia and have expired, shall be conducted in accordance with the Regulation of the Ministry of Justice and Human Rights No. 7 of 2020.
 - The extension of Residence Permit for holders of Temporary Stay Permit Card (KITAS)/ Permanent Stay Permit Card (KITAP) and holders of Diplomatic Visa and Service Visa who are currently overseas and will expire, shall be conducted in accordance with the Regulation of the Ministry of Justice and Human Rights no.7 of 2020.

2. Business Operations

BUSINESS RESTRICTIONS

Starting 23rd March, all business activities in the province of DKI Jakarta should implement a Temporary Cease of Business or a Work From Home policy for at least 14 days.

Such restriction should not include business sectors of health, energy, and food distribution.



COMMERCIAL INCENTIVES

- Incentives for the tourism and airline industries:
 - The government has provided 98.5 billion rupiah (US\$6 million) worth of incentives to airlines and travel agencies, 103 billion rupiah (US\$7.1 million) towards tourism marketing and promotions, and an estimated 72 billion (US\$5 million) to social media influencers to also promote the country's tourist destinations;
 - The government has provided 443-billion-rupiah (US\$27 million) worth of discounts available for domestic tourists visiting one of the 10 tourist destinations promoted by the government to conduct a 30% discount for flights from March to May 2020;
 - State-owned oil company PT Pertamina will apply discounts on jet fuel equivalent to 265 billion rupiah (US\$18 million) at nine airports to support airlines providing the 30% airfare discounts.
- Extra funding for the Affordable Food Program:
 - The government has provided 4.6 trillion rupiah (US\$324 million) for the Affordable Food Program (Sembako Murah). This program aims to enable 15 million low-income households to purchase staple food products at discounted prices.
 - Low-income households will also receive 200,000 rupiah (US\$13.97) per month in financial benefits, an increase from 150,000 rupiah (US\$10), for the next six months.

3. Labour law

INCENTIVES

As of 20th March 2020, the Indonesian government has launched the disbursement of training funds for workers through the pre-employment card as defined in Presidential Regulation No. 36/2020, as part of its broader efforts to cushion the economy from the impacts of the COVID-19 pandemic. The pre-employment cards aim to aid job seekers and laid-off workers by granting them access and funding to a broad range of trainings.

Due to the income tax relief applicable starting 1st April 2020, for a period of 6 months and for the eligible employers from the manufacturing industry (please refer to paragraph 2.4.), employees may receive a full amount of salary without income tax deduction.



PREVENTIVE MEASURES AND EMPLOYMENT MANAGEMENT


Several measures have been taken in different areas of Indonesia, according to the relevant Governor Policy, below is a description of the applicable policy in DKI Jakarta. In its decision No. 6 Tahun 2020, as of 23rd March 2020, the Governor of DKI Jakarta has advised:

1. to stop all office activities for a certain amount of time, closing operational facilities, and conducting business activities from home;
2. for companies that cannot stop their total office activities, those are asked to reduce these activities to a minimum (number of employees, time of activities, and operational facilities); and,
3. to comply with recommendations of Decision of Ministry of Labor No. M/3/HK.04/III/2020 dated 17th March 2020 (the “**MOL Decision**”).

It is to be noted that such measures are not applicable to the following business sectors: health, energy, food distribution and to some extent transportation.

The MOL Decision, read with the recommendations for the prevention of health within the work environment (eg. information, providing safety measures, travel restrictions, reporting obligations etc.), provides instructions concerning the payment of wages during this period of time, as follows:

- For employees who are categorized as Monitoring Insiders related to COVID-19, based on doctor's recommendation, so that they cannot enter the employer's premises for a maximum of 14 days or according to the Ministry of Health (“**MOH**”) standards, their wages should be paid in full.
- For employees who are categorized as COVID-19 suspected cases and quarantined / isolated according to doctor's statement, their wages should be paid in full during the quarantine / isolation period.
- For workers who do not come to work due to COVID-19 illness and as evidenced by a doctor's statement, the wages are paid according to illness regulations: 100% from 0 to 4 month; 75% for the following 4 months period; 50% for the following 4 months period and 25% for each remaining months.
- For companies that restrict business activities due to government policies in their respective regions for the prevention and control of COVID-19, so as to cause some or all workers not to come to work, taking into account business continuity, changes in the amount and method of payment of wages for workers are carried out in accordance



with an agreement between employers with employees. Such agreement may include a reduction of work and salary.

Also, in both case of implementation of Work from Home or Cease of Operation policies by the employers, it is to be noted that when implementing this measure, unless the employees (or the labor union, if any) agree on a different arrangement, the employer must continue paying the salary and other benefits.

In addition, it is to be noted that mandatory paid or unpaid-leave must obtained the agreement of the employee.

There are no specific requirements with regard to redundancies taking place during the current COVID-19 situation. The general issues, process and obligations on termination of employment apply.

For employers who are not able to pay the minimum wages as per provincial regulations, a suspension of the implementation of the minimum wage may be filed with the Governor through the relevant agency (the **“Suspension Request”**).

Such Suspension Request should be based on a written agreement with the employees and the Labour Union, if any, and should follow the process prescribed in MOL regulation KEP.231/MEN/2003.

The authorization or rejection from the responsible agency should be provided within one month. Should no answers being provided within one month, the authorisation is deemed to be provided.

4. Tax

CORPORATE INCOME TAX & VAT

As of 1st April 2020, the Ministry of Finance will provide release of income tax for the next 6 months, ie. to September 2020, in the conditions below:

- PPh 21 – employee income tax: income tax for employees from the manufacturing industry (Kode KLU Kategori C) with an annual income of less than IDR 200 million (USD 13.000) will be relieved.
- PPh 22 – withholding taxes & import: 19 business sectors (as defined below) will be exempted from paying PPh 22 and to some extent, import duties (as defined below).

- PPh 25 - corporate income tax: 19 business sectors (as defined below) will be relieved of 30% for PPh 25.
- Value Added Tax: The government also provides an accelerated six-month Value Added Tax (VAT) restitution for exporters without restrictions and non-exporters with a maximum value of Rp5 billion in restitution.

The 19 business sectors included in this tax exemptions are as follows: Chemical materials and products industry; Electrical equipment industry; Motorized vehicle industry (trailer and semi-trailer); Pharmaceutical, chemical, and traditional drugs industry; Basic/non-ferrous metal industry; Food industry; Paper and paper-based products industry; Computer, electronics and optical industry; Textile industry; Rubber industry and rubber and plastic-based industry; Furniture industry; Beverage industry; Leather, leather-based products, and footwear industry; Printing and reproduction of the recording media industry; Non-metal mining industry; Metal industry, not concerning its' machines and equipment; Other transportation equipment industry; Machinery and equipment industry; and Finish goods industry.

In addition to these 19 business sectors, Hoteliers and restaurants located in the 10 priority tourism destinations will also have their income taxes relieved for the next 6 months. Such 10 destinations are including: Denpasar (Bali); Batam; Bintan; Manado; Yogyakarta; Labuan Bajo; Belitung; Lombok; and Malang.

IMPORT DUTIES

The following measures have been taken:

- **Deferral of import tax payments** for the 19 business sectors mentioned above for the next six months;
- **Simplification and acceleration of import and export activities** by reducing the Restriction and Prohibition measures. Under such measures, certain products are either restricted or prohibited from being imported or exported. Such measure includes 749 Harmonization Codes (HS) products, consisting of 443 HS codes for fish and fish products, and 306 HS codes for forestry and forest products.
- **Simplification of import process for raw material:** the Ministry of Trade has mandated that certain goods have to be inspected prior to export by a registered surveyor to demonstrate they are compliant with national regulations. This process should be simplify for the following goods: Iron and steel; Oil and Gas; Ceramics; Cellphones; Sugar; Food and beverages; Electronics; Horticultural products; Nitro-cellulose; Toys; Tires; Salt; Textiles and textile products; Tobacco; Sugar; Rice; Precursor goods (for drug production); and Herbal medicine.
- **Assisting reputable traders:** acceleration of the licensing application for the import and export of goods classified as restricted for 'reputable traders'. The government has

named 735 companies as being 'reputable' and thus eligible for this incentive as complying with good practices.

- **Accelerate the implementation of the National Logistic Ecosystem ("NLE"):** The NLE is an electronic system established by the Directorate General of Customs and Excise to integrate the logistics community in the supply sector. Through the NLE, all logistic platforms, such as warehousing, shipping, and forwarders can access and share information. This enables importers and exporters to choose and check the price and availability of trucks, vessels, and warehouses, among others, under one application.

5. Financial regulations

The Ministry of Finance, Financial Services Authority of Indonesia ("OJK") and Bank of Indonesia have taken the following measures to stabilize Indonesian markets, among others:

- **OJK has postponed deadlines for certain obligations of public listed companies:** they have until May 31st to provide their financial report and until June 30th to provide their annual report and until August 31st to hold their General Meeting of Shareholders, which may be held through teleconference;
- **OJK has relaxed credit risk assessment and credit restructuring rules for banks;**
- **Bank of Indonesia has announced a further cut in its key rate (BI7DRRR) by 25 basis points to 4.5%:**
- **The Jakarta Stock Exchange (IDX) has revised its suspension rules:** it will now stop trading for 30 min if the JCI (benchmark index) loses more than 5%. If after 30 minutes, the index continues its fall beyond 10%, a new 30 min break will take place. Above 15% the session will be suspended.
- **SMEs that have a good credit history are eligible for loans of up to 10 billion rupiah (US\$655,000).**

For further information, please contact:



Olivier Monange
Partner
monange@dsavocats.com



Lisbeth Lanvers-Shah
Counsel
lanversshah@dsavocats.com

#Singapore - Measures taken in Singapore

Singapore has been on DORSCON (Disease Outbreak Response System Condition) Orange since 7th February 2020.

On 18th February 2020, Singapore announced a S\$4.0 billion Stabilisation and Support Package to provide assurance and support to workers and enterprises in this time of economic uncertainty. In addition to providing cash flow support, the Package supports firms to retain and retrain workers, and share productivity gains with them. Sectors more directly affected by the COVID-19 outbreak will receive additional support.

1. [Economic Measures](#)
2. [Immigration](#)
3. [Employment](#)

1. Economic measures

ECONOMY-WIDE MEASURES FOR WORKERS


- [Jobs Support Scheme to help enterprises retain local workers \(JSS\)](#)

Temporary scheme for 2020 to help enterprises retain local employees during this period of uncertainty. Employers will receive an 8% cash grant on the gross monthly wages of each local employee (Singapore Citizens and Permanent Residents) for the months of October 2019 to December 2019, subject to a monthly wage cap of \$3,600 per employee.

Employers do not need to apply for the JSS. The grant will be computed based on CPF contribution data.

- [Wage Credit Scheme](#)

The Wage Credit Scheme (WCS) is a transition Support Package introduced in Budget 2013. Under the WCS, the Government co-funds 40% of wage increases given to Singaporean employees earning a gross monthly wage of up to \$4,000



WCS has been extended with an increase of the government co-funding ratios for wage from the current 15% and 10%, to 20% and 15% respectively in 2019 and 2020. The qualifying gross wage ceiling will also be raised to \$5,000 for both years, up from the current \$4,000.

Employers do not need to apply for WCS.

Employers will receive payouts automatically in the month of March after the qualifying year (Y+1), for qualifying wage increases given to their employees in the qualifying year (Y).

ECONOMY-WIDE MEASURES TO HELP BUSINESSES WITH CASH FLOW

■ Corporate Income Tax (CIT) rebate

To help companies with cash flow, a CIT rebate of 25% of tax payable, capped at \$15,000, will be granted for Year of Assessment (YA) 2020.


■ Enhancements of Tax Treatments under the Corporate Tax System

These tax treatments will be enhanced under the corporate tax system for one year.

- (i) Companies paying their CIT by GIRO can automatically enjoy an additional two months of interest-free instalments, when they file their Estimated Chargeable Income (ECI) within three months from their Financial Year End;
- (ii) Allow up to \$100,000 of the unabsorbed capital allowances and trade losses for YA2020 to be carried back up to three immediate preceding YAs, instead of one preceding YA;
- (iii) Provide an option to accelerate the write-off of the cost of acquiring plant and machinery in financial year 2020 (i.e. incurred for YA2021) over two years; and
- (iv) Provide an option to accelerate the deduction of expenses incurred on renovation and refurbishment in financial year 2020 (i.e. incurred for YA2021) in one year.

■ Enhancements to Enterprise Financing Scheme – SME Working Capital Loan

The Enterprise Financing Scheme – SME Working Capital Loan (EFS-WCL), which is available to SMEs across all industries, will be enhanced for one year to help SMEs with their working capital needs. The Government will raise the maximum loan quantum from \$300,000 to \$600,000, and enhance the Government's risk-share to up to 80% (from the



current 50% to 70%) for SMEs borrowing from Participating Financial Institutions under the scheme.

The Enhanced EFS-WCL will start in March 2020, and is available for one year till March 2021.

SECTOR SPECIFIC SUPPORT

In addition to the economy-wide measures to help workers and businesses, sectors directly affected by the COVID-19 outbreak will get additional support.

- Enhancement to Adapt and Grow Initiative

WSG will enhance support under the Adapt and Grow initiative for more directly impacted sectors, such as hotel, retail, food services, tourism, and air transport. As a start, funding support duration for the certain existing redeployment programmes will be extended from the current three months to a maximum of six months.

- Property Tax Rebate for Qualifying Commercial Properties

Qualifying commercial properties will be granted a rebate up to 30% for Property Tax (PT) payable for the period 1 January 2020 to 31 December 2020.

- Temporary Bridging Loan Programme for Tourism Sector Enterprises

A new Temporary Bridging Loan Programme (TBLP) will be introduced to provide additional cash flow support for tourism sector enterprises. Under the TBLP, eligible enterprises can borrow up to \$1 million, with the interest rate capped at 5% p.a., from Participating Financial Institutions. The Government will provide 80% risk-share on these loans.

The TBLP will start in March 2020, and is available for one year till March 2021.

- Aviation Sector Measures

The Aviation Sector Assistance Package, co-funded by the Government, the Civil Aviation Authority of Singapore (CAAS) and the Changi Airport Group (CAG), aims to help defray business costs and protect jobs, as well as safeguard Changi's air



connectivity. The assistance will be provided for a 6-month period. The package will provide immediate relief to affected companies during the COVID-19 outbreak period.

(i) Airlines

All airlines that had operated scheduled passenger flights between mainland China and Singapore before the COVID-19 outbreak will receive landing credits.

In addition, those that continue to operate scheduled passenger flights between mainland China and Singapore during the COVID-19 outbreak period will receive 100% Landing Charge Rebates for these flights.

Further support will also be provided to defray airlines' other operating costs:

- 100% Parking Charge Rebate for all scheduled passenger flights;
- 10% Landing Charge Rebate for all scheduled passenger flights to Singapore from points in Southeast Asia;
- 50% Rebate on CAAS's regulatory fees for new and renewed Certificates of Airworthiness paid by Singapore carriers flying scheduled flights in FY2019; and
- 6-month waiver of the planned 1% annual increase in Landing, Parking, and Aerobridge (LPA) Charges for all flights, which had been previously announced on 28 February 2018 and is scheduled to take effect from 1 April 2020.

(ii) Cargo Industry

Freighter airlines and cargo agents impacted by the disruption in supply chains will receive the following assistance:

- 10% Landing Charge Rebate for all scheduled freighter flights;
- 10% Rental Rebate for cargo agents tenanted in Changi Airfreight Centre; and
- 6-month waiver of the planned 1% annual increase in LPA Charges scheduled to take effect from 1 April 2020.

(iii) Other Airport Stakeholders

Ground handling agents and retail/F&B tenants at the airport are also affected by the decline in traffic. They will receive assistance, such as rental rebates.



- 50% Port Due Concession

The Maritime and Port Authority of Singapore (MPA) will be giving 50% port dues concession to cruise ships and regional ferries with a port stay of not more than five days, and passenger-carrying harbour craft. This will be on top of any existing concessions. This measure will be implemented from 1 March 2020 to 31 August 2020.

- Rental Waivers for Commercial Tenants in Government-owned / managed facilities

To support hawkers, NEA will provide one month's worth of rental waivers to stall holders of NEA-managed hawker centres and markets, with a minimum waiver of \$200.

To help alleviate costs for businesses located in other Government-owned / managed facilities, Government agencies such as HDB, PA, SLA, NParks, JTC, URA, STB and SDC will provide half a month's worth of rental waivers to eligible commercial tenants/lessees who are on leases not exceeding three years, and do not pay Property Tax. Eligible tenants/lessees may include those providing commercial accommodation, retail, F&B, recreation, entertainment, healthcare and other services.

The rental waivers do not apply to any premises or a part of any premises used for a residential, industrial or agricultural purpose, or as an office, a business or science park, or a petrol station.

Commercial tenants with cash flow concerns may apply to SLA for assistance including flexible rental payments such as instalment plans.

- Tourism

Licence fees for hotels, travel agents and tour guides to be paid to the Singapore Tourism Board will be waived as part of measures to help the tourism sector.

- Taxis and Private Hire Car drivers

A \$77-million package to help taxi and Private Hire Car drivers

- Help for employers affected by 14-day Leave of Absence (LOA) and Stay-Home Notices (SHN)

Employers affected by LOA/SHN can apply for the Leave of Absence Support Programme. It gives the employer \$100 daily per affected worker for the duration of the LOA/SHN.



2. Immigration

- As of 23rd March 00:00 GST, all short-term visitors will not be allowed to enter or transit through Singapore. Visitors who need to visit Singapore due to extenuating reasons may submit the completed [Form 14](#).
- Returning Singapore residents (i.e. Singapore citizens, permanent residents) and long-term pass holders (including Student's Pass, Dependant's Pass, Long-Term Visit Pass) and foreign employees issued with a work pass will be issued with a 14-day Stay-Home Notice (SHN) upon entry into Singapore.
- -
- New and existing work pass holders are only allowed to enter Singapore with the Ministry of Manpower's (MOM) prior approval. They are required to show the MOM's approval letter to airline staff upon check-in and before boarding, as well as to the Immigration & Checkpoint Authority (ICA) officers at the immigration checkpoint upon their arrival in Singapore. priority will be give to employees working in sectors deemed essential. **The Ministry of Manpower takes enforcement measures against employees and employers who do not comply with these requirements, including revocation of work passes and suspension of work pass privileges.**
- Since 31 January 2020, MOM rejects all new work pass applications for foreign workers from mainland China. Renewal applications for existing work pass holders is not affected.

3. Employment

No confinement has been put in place since January. However the Ministry of Manpower regularly issues updated general advisory for workplace measures in response to DORSCON Orange situation in Singapore.

- Business Continuity Plans and managing operations

Employers should step up their Business Continuity Plans (BCPs) and prepare for widespread community transmission. BCP measures include flexible work arrangements split team arrangements, work from home, temperature screening, control of visitors/customers access, special attention to vulnerable employees (older employees, pregnant employees and employees who have underlying medical conditions)



- Employees with caregiving needs

Employers are encouraged to adopt flexible work arrangements to allow the employee to work from home. If working from home is not possible, employers can consider the following options, or a combination of the options, for the employees:

allow employees to use their leave entitlements such as hospitalisation leave, outpatient sick leave, annual leave, childcare / family care leave;

for employees who have used up their leave entitlements, be flexible in granting paid time-off or allow them to use advanced paid leave or no-pay leave; or

Other mutually agreed arrangements between the employers and employees / unions.

- LOA/SHN

Employers may allow employees to work from home. If working from home is not possible, employers should provide additional paid leave for the SHN period. If this is not feasible, employers can consider the above options.

- Quarantined employees

Employees who are served a Quarantine Order will be deemed to be on paid hospitalisation leave for the duration of the Order.

For further information, please contact:



Olivier Monange
Partner
monange@dsavocats.com



Lisbeth Lanvers-Shah
Counsel
lanversshah@dsavocats.com

#Vietnam - Measures taken in Vietnam

1. Immigration

- **Halt of foreigner’s entry into Vietnam**

In order to implement the measures to curb the spread of COVID-19, Vietnam decided to halt the entry of the foreigner into Vietnam as from 00:00 (GMT +7) March 22nd, 2020.⁸

This decision would not include the entrants for diplomatic purposes, official duties and special cases (foreign guests attending, serving important external activities; experts, business managers, high-tech workers). However, the consent of the Vietnamese competent authorities must be approved for such cases if they have intention to get into Vietnam.

- **Suspension of visa issuance for foreigners**

As from 00:00 March 18th, 2020, The Government has decided to temporarily halt visa issuance to foreigners for 30 days.⁹

Foreigners enjoying visa-waiver program or overseas Vietnamese and their spouses and children having been granted with certificate of visa exemption shall only be allowed to enter Viet Nam if they can submit papers certifying they are not positive for the virus. The aforesaid measures shall also be applied to foreigners who are experts, business managers, highly skilled workers upon arrival to Viet Nam.

Both of those regulations do not apply to diplomatic purposes and official duties.

In addition, due to COVID-19, Vietnam has temporarily suspended visa-waiver program for the following countries:

No.	Name of the country	Date of effective
1.	South Korea	February 28 th , 2020
2.	Italia	March 2 nd , 2020
3.	Denmark	
4.	Norway	
5.	Finland	
6.	Switzerland	
7.	England	

⁸ Notification No. 118/TB-VPCP of Office of the Government dated March 21st, 2020

⁹ Notification No. 102/TB-VPCP of Office of the Government dated March 17th, 2020

No.	Name of the country	Date of effective
8.	France	
9.	Germany	
10.	Spain	
11.	Belarus	March 21 st , 2020
12.	Russia	
13.	Japan	

- **Compulsory concentrated medical isolation**

From 00:00 March 21st, all passengers entering into Vietnam is required to take the order of concentrated medical isolation for a period of 14 days.

- **Restriction of international flights**

Many airline companies have stopped to exploit the international flights until April 30th, 2020 such as Vietnam Airlines, Jetstar Pacific. There are still some international flights run by Vietjet Air but this company is considering to stop these flights.

2. Economic measures

- **Releasing the credit support package**

Following the instruction of the Prime Minister, a credit support package of VND 250k billion (equivalent to USD 10.6 billion¹⁰) has been released to support the enterprises affected by COVID-19.¹¹

- **Rescheduling of the term to repay the loan**

Following the instruction of the State Bank of Vietnam, the term to pay the loan might be rescheduled if the following condition are met:¹²

- (i) Arising from lending, financial leasing activities;
- (ii) Arising the obligation to repay the principal and/or interest within the period from January 23rd, 2020 to the next day after 3 months from the date the Prime Minister announces the end of the Covid-19; and
- (iii) Clients are unable to pay the loan principals and/or interests on time according to

¹⁰ Exchange rate: USD 1 = VND 23,500

¹¹ Directive

¹² Article 4 of Circular No. 01/2020/TT-NHNN dated March 13th, 2020

the executed loan or financial leasing contracts, agreements, due to the decrease in revenue and income by Covid-19.

On the basis of request by the client and the consideration of the credit institution on the client's ability to fully repay the principal and/or the interest, the credit institution shall decide to reschedule the term to repay the loan to an period not exceed 12 months from the last day of the loan or financial leasing term (the time when the client has to pay all the principal and/or interests under executed loan or financial leasing contracts, agreements).

▪ **Exemption and reduction of interests and fees of the loan**

Credit institutions shall decide on the exemption and reduction of interests and fees according to internal regulations for outstanding loans arising from credit extension activities (except for activities of buying and investing in corporate bonds) which the principal and/or interests is due within January 23rd, 2020 to the next day after 3 months from the date the Prime Minister announces the end of the Covid-19 and Clients are unable to pay the loan principals and/or interests on time according to the executed contracts, agreements due to the decrease in revenue and income by Covid-19.¹³

▪ **Exemption of import tax**

The following products shall be exempted from import tax for the purpose of preventing and fighting COVID-19:¹⁴

No.	Product	HS Code
1.	Medical masks.	6307.90.40
		6307.90.90
2.	Antiseptic hand sanitizer (hand gel or liquid hand sanitizer).	3808.94.90
3.	Materials to produce medical masks.	
3.1	Nonwoven fabric for manufacturing medical masks.	56.03
3.2	Antibacterial filter for manufacturing medical masks.	56.03
3.3	Elastic for producing medical masks.	5604.10.00
		5606.00.00
		6002.40.00
		6002.90.00

¹³ Article 4 of Circular No. 01/2020/TT-NHNN dated March 13th, 2020

¹⁴ Decision No. 155/QĐ-BTC dated February 7th, 2020 of the Ministry of Finance

3.4	Nasal splint for the production of medical masks (bars/rolls).	3916.10.20
		3916.20.20
		3916.90.42
		3916.90.92
		3926.90.99
		7217.90.90
		7326.90.99
		7604.10.10
		7604.29.10
7616.99.90		
4.	Antiseptic water (liquid bactericidal preparation).	3808.94.20
		3808.94.90
5.	Other necessary materials and equipment.	
5.1	Outfits against epidemic prevention (including: pants, shirts, glasses, medical masks, helmets, gloves, shoes)	6210.10.90

- **Extension of tax payment and Exemption of late payment**

The tax payer suffering the material damage directly affecting production and business due to COVID-19 might be considered to have an extension of tax payment and exemption of late payment.¹⁵


Upon the application dossier of the tax payer, the competent authorities will decide the amount and the term of tax payment to be extended, as well as the exemption of late payment.

3. Labor Policies

- **Partly suspension of contribution to the Compulsory Social Insurance**

With 12 months from March 9th, 2020, provided that any enterprises fulfilled with one of the following conditions, they might suspend the contribution to the fund of retirement and

¹⁵ Official letter No. 897/TCT-QN dated March 3rd, 2020 of the General Department of Tax



survivorship:¹⁶

- (i) Failing to provide works for employees, in which there are 50% or more of total employees determined before the business suspension that are subject to social insurance; or
- (ii) Suffering damage of 50% of total assets' value due to COVID-19.

Upon the expiration of the suspension period prescribed above, the employer and the employee shall continue paying social insurance and make a supplementary payment for such suspension period, the supplementary amount shall not be charged late-payment interest.

▪ **Inspection on the contribution status to the Compulsory Social Insurance**

During the suspension of contribution to the Compulsory Social Insurance, in case there is no sign of violations, the enterprises affected by COVID-19 will not be subject to the specialized inspection of the authorities on the payment status and the compliances on the contribution of social insurance, medical insurance and unemployed insurance.

▪ **Employees subject to the order of concentrated medical isolation**

During the compulsory concentrated medical isolation, the employees subject to such orders will receive an amount of wage in case of work suspension, paid by the employer.¹⁷

The exact amount will be agreed by the employee and the employer, but it must not be lower than the regional minimum wage stipulated by the Government. The regional minimum wage applied from January 1st, 2020 in Vietnam is as follow:

- (i) For enterprises located in region I: VND 4,420,000 per month.
- (ii) For enterprises located in region II: VND 3,920,000 per month.
- (iii) For enterprises located in region III: VND 3,430,000 per month.
- (iv) For enterprises located in region IV: VND 3,070,000 per month.

¹⁶ Official Letter No. 797/LDTBXH-BHXH dated March 9th, 2020 of the Ministry of Labors, Invalids and Social Affairs

¹⁷ Article 98 of Labor Code 2012

4. Force Majeure

Under the laws of Vietnam, an event of force majeure is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken.¹⁸

Covid-19 is classified as the class-A infectious disease, which would be announced by the Prime Minister for the certain infected epidemic zones. At present, there are only 3 epidemic zones being officially announced by the Prime Minister, including: Khanh Hoa, Vinh Phuc, Thanh Hoa.

Hence, the classification of COVID-19 as a force majeure might be challenged due to the lack of the authority's official announcement in a certain area.

Our teams remain mobilized to answer your questions. Please contact:



Olivier Monange
Partner
monange@dsavocats.com



Lisbeth Lanvers-Shah
Counsel
lanversshah@dsavocats.com

¹⁸ Article 156 of Civil Code 2015