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Building
the *future*
COVID-19

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Since the beginning of the outbreak, the rapid spread of COVID-19 has been unprecedented, due in part to the virus's own characteristics and essentially to today's interconnected world.

The systemic nature is precisely what has led to collective global uncertainty which has compelled some of the world's largest economies to adopt bold countermeasures, which involve the disruption of the workforce and is having a substantial impact on business continuity even leading to business shutdown.

Current events demand a firm response with a two-fold objective approach:

- Economic impact mitigation
- Structural reinforcement for the short term as well as the long term

Legal and economic relations have been fundamentally altered due to the following occurrences:

- Social factors concerning fear and uncertainty which have triggered a significant decrease and a substantial change in consumption patterns.
- External factors and governmental actions such as the adoption of numerous policies by virtue of several royal decrees and further sectoral and territorial resolutions.

As of March 13th, the following Royal Decree-Laws have been adopted:

- Royal Decree-Law 6/2020, of March 10th, whereby certain urgent measures are adopted for an economic response and for the protection of the public health.
- Royal Decree-Law 7/2020, of March 12th, whereby urgent countermeasures are adopted to counteract the economic impact of COVID-19.
- Royal Decree-Law 8/2020, of March 17th, of extraordinary and urgent countermeasures to counteract the economic and social impact of COVID-19.
- Royal Decree-Law 9/2020, of March 27th, whereby additional measures are passed affecting labor law, to alleviate the effects of COVID-19.
- Royal Decree-Law 10/2020, of March 29th, whereby non-essential worker's paid leave for those who work on their own account is regulated with the purpose of reducing the population's mobility amid the COVID-19 battle.
- Royal Decree-Law 11/2020, of March 31st, whereby urgent additional measures are passed for a socio-economic response to COVID-19.
- Royal Decree-Law 12/2020, of March 31st, of urgent measures for the assistance and protection of victims of gender violence.
- Royal Decree-Law 13/2020, of April 7th, whereby certain urgent measures are adopted concerning employment in agriculture.
- Royal Decree-Law 14/2020, 14th April, by which the deadline for the submission and payment of certain tax declarations and tax self-assessment is extended.

- Royal Decree-Law 15/2020, 21th April, whereby urgent measures are adopted to impulse the economy and the employment.
- Royal Law Decree 16/2020, 28th April, on organisational and procedural measures in to deal with COVID-19 in the area of administration of justice.
- Royal Law Decree 17/2020, 5th may, on urgent cultural and taxation measures to counteract the economic and social impact of COVID-19.
- Royal Law Decree 18/2020, 12th May, on social measures for the defence of employment.
- Royal Decree-Law 19/2020, 26th May, by which complementary measures are established in areas of agriculture, science and economics with regards to employment, Social Security and taxation to alleviate the effects of COVID-19.
- Royal Decree-Law 20/2020, 29th May, by which the minimum living wage is established.
- Royal Decree-Law 21/2020, 9th June, on emergency measures for prevention, containment and co-ordination to tackle the health crisis brought about by COVID-19.
- Royal Decree-Law 22/2020, 16th June, by which the creation of the COVID-19 Fund is regulated and the rules pertaining to its distribution and delivery are established.
- Royal Decree-Law 23/2020, 23rd June, by which measures in the area of energy and other fields are approved for economic recovery.
- Royal Decree-Law 24/2020, 26th June, on social measures in the recovery of employment and protection for the self-employed and competitiveness in the industrial sector.
- Royal Decree-Law 25/2020, July 3rd, on emergency measures in support of economic recovery and employment.
- Royal Decree-Law 26/2020, July 7th, on economic recovery measures to deal with the impact of COVID-19 in the areas of transport and housing.
- Royal Decree-Law 27/2020, August 4th, on financial measures of an exceptional and expedient nature relevant to local authorities.
- Royal Decree-Law 28/2020, September 22nd, on telecommuting.

Appropriate management of the available human and material resources and the timely adoption of appropriate future-orientated measures will be decisive for the continuity of business, position in the market immediately following the crisis and even determine who survives.

Today, more than ever before, all businesses must be future driven, and to this end all should at the very least be looking into optimizing the following pressing issues:

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SOLID ALL-ROUND SUPPORT

The present events are severely affecting and challenging global businesses existing core and infrastructure. For this very reason we are confident that our expertise will help your business navigate these stormy waters, providing support for your decision-making bodies, so that they can adopt all the necessary steps with certainty and determination.

Remaining true to the values which are an inherent part of the firm in these difficult times, we can rely on our highly-qualified, dynamic and up-to-date teams of professionals who are here to assess all your options and anticipate every possible scenario to the very best of their ability.

Our core goal is to guide our clients on this journey into unknown territory so that they can revert to normality, or what will be the new normal, sooner and fitter, ready for the challenges of the immediate new future.

COVID-19 pandemic has significantly impacted the normal course of business across the globe, disrupting all business relationships, relations between businesses, as well as business relations with employees, clients, suppliers, funders, partners or with the public administration. The exercise of individual rights and the defence of individual interests, in a timely manner according to the applicable laws, and the resolution of conflicts are key to the achievement of the company's objectives.

Any legal claims (including validity, performance and execution claims, default claims or any general liability claims whether petitioned in civil, labour and employment, criminal, administrative or otherwise contentious jurisdictions, as well as any arbitration, mediation or conciliation procedures), shall see an exponential increase as a result of the general lockdown and the extraordinary measures that have been taken to mitigate the resulting economic recession.

Furthermore, the judicial system and the courts of justice shall need to implement a plan of action in order to avoid the complete collapse of the system.

MOST PRESSING ISSUES

Given the present circumstances, it is advisable for companies to adopt measures and protocols that will both facilitate the success of their legal actions and accelerate the securing of an outcome.

Due to the possible collapse of the administration of justice once normal activity is resumed, the companies which first bring their action before the courts will be the least affected by any eventual delays in the judicial system.

Risk assessment and the analysis of all available options is a priority in order to enable adequate litigation strategies. Foresight and strategic planning will be necessary in the current situation and in the immediate future in order to ensure the success of any litigation action.



Carlos Aranguren

The global economic situation as a result of the COVID-19 chaos has sharply altered not only our global markets but also the ordinary course of all business relationships, challenging a companies' ability to meet their contractual obligations, whilst questioning the actual feasibility and/or ultimate legitimacy of a companies' strategic agreements under the present significantly changed and changing circumstances.

The new, yet evolving, hostile and uncertain grounds upon which business operates, no longer seem to depend on a party's free will, and raise numerous doubts as a consequence such as how to respond and adjust to the new scenario, how to deal with an agreement concluded under circumstances that no longer stand and which as of today seem impossible or even unlawful to comply with, how to manage the "domino effect" within the value chain of connected contracts, what to do should the company or its clients or its suppliers not be able to perform their contractual obligations, the scope of the risks and the liabilities, how to assess and protect the company's market share and new standing amid post COVID-19 chaos or what capacity does my business currently have to generate business opportunities.

There is no way out. Today is different from yesterday, the rules have changed, and all companies need to confront the new scenario as of now, and adapt strategic contracts and relations to the new economic and legal framework.

The ability to foresee any and all company issues and needs as well as the new economic picture and response, on a global scale as well as on a sectorial level is key to successful crisis management and, more importantly, to finding a successful way out whilst defending the all-important status within the new Marketplace.

MOST PRESSING ISSUES

TAKE ACTION

In order to reinforce the company's position and ensure the best possible outcome, an immediate assessment and management of all supervening contingencies, including those that may foreseeably occur, is critical, while not losing sight of the need for documenting and tracing the company's responsibility, diligence and goodfaith throughout its COVID-19 response.

TRUE UNDERSTANDING OF THE REAL AND IMMEDIATE CHALLENGES FACING THE COMPANY, PRIORITIZING THE COMPANY'S BUSINESS GOALS

It goes without saying that all legal instruments find a purpose when advancing and supporting the business objectives realistically defined consequent with the global economy and the relevant market.

UNDERSTANDING THE OPERATING LEGAL FRAMEWORK

In the midst of regulatory and information turmoil, it is essential that companies operate and carry out their activities and their contractual obligations in compliance with the existing and applicable law while observing the relevant updates for all legal instruments for an appropriate impact response:

- Impossibility of compliance with an agreement due to "force majeure" events.
- Agreement terms modifications or agreement termination due to material adverse change of the circumstances of the agreement upon conclusion and the relevance of the clause "rebus sic stantibus".



Beatriz Castelar

ANALYSING SPECIFIC CONTRACTUAL ARRANGEMENTS AND AFFECTING CIRCUMSTANCES

In order to channel the aforementioned, it is essential that each contract is analysed individually together with its evolution and any opportunity that its wording may provide is sought. Commitments pertaining to the contract must be reviewed as relevant facts may trigger any changes in the allocation of the contractual risks and liabilities.

- National and international contracts.
- Ongoing or one-off services contracts.
- Bilateral or multilateral.
- Contracts between private parties or with public bodies.
- Types of obligation.
- Evolution of contractual performance.
- Circumstances surrounding a breach of contract, the chaining of breach of contract and accountability.
- Parties' own acts throughout the state of emergency.
- Insurance contracts, coverage and exclusions.

MANAGING RISKS

It is essential to manage all risks derived from any and all contingencies that may arise from the economic impact of COVID-19 on the company's essential framework.

- Damages for economic loss.
- Company's third-party liability.
- Market share loss, loss of key accounts and loss of strategic suppliers.
- Solvency and liquidity.
- Decrease in the value of the business. (Are directors liable to shareholders for a diminution of their shares?)
- Company's feasibility as an operating business.

Up until the recent outbreak of the global COVID-19 pandemic, corporate businesses and private institutions had a well-structured internal organization and business activity in accordance with corporate regulations and private law regulations. The public health crisis has, however, disrupted the status quo.

The crisis that arise in our lives force us to face unexpected challenges from which we learn valuable lessons. The present crisis will undoubtedly bring about a permanent change to society and will have a deep impact not only in the way people live but also in the way businesses are managed.

In under three weeks, many companies have efficiently implemented remote working for their employees maintaining their business activity. Are we on the verge of a new technological revolution? Most likely we are.

Although we are starting to learn what works and what doesn't work for business continuity and profitability within the new COVID-19 scenario, there is still uncertainty on a number of issues. How can we best ease the impact on our company's corporate governance? How do we protect the interests of our shareholders or board of directors? How and when should the companies submit their annual accounts? How and when should the shareholder's and the board of director's meetings be held and take place?

In the season when business is at its most active and entrepreneurs, business managers, directors, shareholders, etc., are already inundated with work, there seems to be no end to crisis-related decision-making. Those who implement timely measures and, most importantly, plan for what is ahead, will be the ones who thrive through the present scenario, whilst avoiding future casualties and liabilities.

MOST PRESSING ISSUES

A businesses most pressing issues in the current climate will depend on organizational structure, whether it is incorporated as a limited liability company, a general partnership, a corporation cooperative, a foundation or a public listed company. *

GOVERNING BODIES AND ANNUAL SHAREHOLDERS' MEETINGS

In order to adopt all relevant resolutions where appropriate, under the present circumstances, all operating entities shall ensure that their governing and management bodies; the board of directors and partnerships for the private law institutions, cooperative steering committees, and the foundation's patronage, adjust and comply with the new session and adoption of resolutions systems as provided by any and all existing law and in the light of latest regulatory activity.

ANNUAL ACCOUNTS AND GENERAL SHAREHOLDERS MEETING

To the present effects, we must underline the importance of not failing to address and incorporate to the annual accounts, as well as to the audit's report, any event that has taken place as result of the COVID-19 crisis following the closing of the fiscal year ended as of December 31st 2019.

Likewise, in consideration of the time of the year when annual accounts are submitted and approved and the general shareholders meetings take place: the obligation to submit the company's annual accounts, ordinary or simplified, individual or consolidated, within a three month period upon the closing of the fiscal year will remain suspended throughout the state of emergency, and resumed for an additional three month period as of the lifting of the state of emergency. Nevertheless, there are still further scenarios, such as the submission of annual



Alberto Ferreiro

accounts throughout the state of emergency or the submission of the same prior to the declaration of the state of emergency, which shall be subject to additional review to ensure their compliance with new certification requirements and deadlines.

The general shareholder's meeting, the convening and holding thereof, and the adoption of resolutions have also been altered, as a matter of a fact, the proposal on the allocation of the company results, may be modified as they may have been considerably affected by the COVID-19 crisis, which in any case shall observe the new certification requirements.

DISSOLUTION

In the event of a company dissolution, this will only be effective following two months since it was completely dissolved. Moreover, the general shareholders meeting will be suspended until the state of emergency is over should the legal or statutory reasons for the company's dissolution have arisen before or during the state of emergency. However, the company's directors will not be held liable for debt arising due to and throughout the state of emergency when the legal or statutory reasons for dissolution arise during the same.

OTHER IMPORTANT ISSUES

Additionally, the exercise of other rights and interests have been affected accordingly and/or postponed, such as: shareholders' right of separation or cooperative partners' reimbursement of contributions.

PUBLICLY LISTED COMPANIES CORPORATE GOVERNANCE

It is important to take into account the various specific measures that have been passed throughout 2020 affecting companies that trade their equity securities on the EU markets, and that will considerably affect the way they pass their annual accounts and the way their governing bodies adopt resolutions.

FOREIGN CAPITAL OPERATIONS AND TRANSACTIONS, AND OTHER MONEY LAUNDERING PREVENTION MEASURES

All business managers shall pay attention to their foreign investments as the relevant regulations across the globe have been altered.

The management and control of default payment is an important aspect of any business and the current crisis created by COVID 19 has made it a priority. It is now of the utmost importance to pay special attention to the default rate as we can expect it to increase exponentially in the very near future.

MOST PRESSING ISSUES

IDENTIFICATION AND ASSESMENT

We must identify the totality of contractual agreements and contractual relationships and assess whether their fulfilment may be jeopardized in any way. It is necessary to reassess how all the initial contractual scenarios may play out and, where appropriate, reformulate both a business plan for the current fiscal period and company's previous liquidity assessments.

PLAN OF ACTION

A contingency plan must be put into place in order to cope with any liquidity stress related to any risk of third-party default payments. This plan must take into consideration specific measures including alternative funding solutions and fiscal actions which may be taken in order to ease any liquidity tensions.

LANDLORDS OR LEASING OPERATORS

Businesses operating in the leasing industry are especially vulnerable to default payment and must combine the new government-imposed obligations towards their lessees with a specific action plan in order to partially compensate the significant revenue loss derived from non-payment of rent in these contracts. This is also applicable to any lessors of business premises, especially those affected by mandatory closure, who will also need to carry out an individual analysis of each of its contracts.

SOLVENCY

The company's solvency and its capacity to fulfil any due payments also needs to be studied, and any prospective action which may be carried out in the event of insolvency needs to be either mapped out or planned beforehand.



Joaquin Cardenal

Regardless whatever of the source or the nature of a crisis it always ends up affecting a company's liquidity, as we are already experiencing due to COVID-19. In fact the 2008 crisis was fundamentally a liquidity crisis and whereas this crisis is mainly health and a demand, sooner or later it will impact company liquidity.

The fact that the economy as a whole is not only comprised by customers and suppliers but by many other players that operate across several markets must not be ignored. Global stock markets are suffering major losses, the oil market is hitting historical lows, risk premiums are increasing, etc.

This is a direct consequence of the major lock-down of facilities worldwide, yet it ultimately responds to the general uncertainty over the evolution of the pandemic in the short and medium term. We are still in a position from which we cannot determine the evolution of the virus, nor can we assess the extent of its impact on life as we know it, even in the hypothetical scenario of positive early vaccine results that may prevent it from recurring in the future. This lack of confidence affects risk perception and, thus, its assessment.

MOST PRESSING ISSUES

NEW PREDICTIONS

We must reconsider our financial predictions: what appeared to be a considerably conservative working capital, will most likely no longer be the case. This will also be true for the predictions over the company's results defined for reasonable scenarios, as well as for the company's cash flows expectations.

We must make new predictions for the company's various departments and carry out appropriate liquidity stress testing subject to the present economic climate.

Treasury forecasts may surprise us if we apply criteria such as partial activity closures for a two-week period every four months throughout the following year and a half, as some scientific research has predicted. It is critical that we prepare a new financing plan depending the new treasury results before other third parties, such as banks to reassess the risks they hold with the company and access to financial solutions becomes considerably more complicated.

SOURCES OF FUNDING

In addition to the internal measures that help to restructure our financial flows reducing expenses, deferring payments, increasing income, anticipating payment, it will be necessary to resort to external financing sources, among which we must highlight ICO guarantee lines, to the sum of 100,000 million euros issued and passed by Royal Decree-Law 8/2020, of March 17th, of extraordinary and urgent measures to address COVID-19's economic and social impact, the first round of which, amounts to 20,000 million euros and is already running out despite being in the initial commercialization phase by different entities.

Therefore, the government has already issued a second round of guarantee lines also amounting to 20,000 million euros, as provided by the resolution of the Treasury Secretary of State published last 11th of April in the BOE (Official State Gazette). To this end, companies must be prepared to prove to the relevant institutions their financial needs due to COVID-19 with sufficient clarity, rigor and support. Let's not forget, that these lines only benefit from government guarantee up to 60-80% depending on the size of the company, and that they will only be available until this 30th of September, draining of said funds notwithstanding.

Autonomous regions are also adopting and providing further financing lines, however due to the substantial volume of the guarantees as per the government's coverage up to 80%, it seems that ICO's guarantee lines are going to be the primary support system for Spanish companies during the upcoming months.



Francisco Montero

The crisis caused by COVID-19, started out as a health emergency but has managed to affect companies worldwide and across industries, severely affecting the insurance industry, not only from an economic point of view but also operationally.

As a result, companies throughout the insurance industry have suffered the effects of the pandemic internally with regards to business and continuity of employment, challenging short and medium term prospective, and externally in connection with customer service.

For this reason, it is essential that companies assess all possible implications and effects of this unprecedented health crisis not only in relation to their corresponding policies, coverage and exclusions, any potential contingencies that may affect the business, but also the consequences, as the approach and coverage will vary from one insurer to another.

Therefore, at this stage we are faced with the challenge of examining all aspects of the above and updating our crisis management plans accordingly, so that, where appropriate, we are in a position to take all necessary steps to safeguard business continuity.

MOST PRESSING ISSUES

INSURANCE TYPE ANALYSIS

First and foremost, we must address the main issues raised by companies regarding the various insurance typologies and potential claims

The contingencies by which most companies will be affected by are the following:

- **Health Insurance:** concern arises as to whether or not healthcare will be covered by insurance in the event of symptoms related to the virus, as well as the coverage of potential treatment.
- **Pecuniary Loss Insurance:** companies also need to analyse the scope of coverage as a consequence of interruption to business, both for closure and for delays and interruptions, application of contractual penalties or the fact of incurring extraordinary expenses as a consequence of the pandemic.
- **Civil Liability Insurance:** civil liability is an area of greatest concern to most companies as they evaluate their possible liability due to a lack or insufficiency of due diligence when implementing the relevant and appropriate prevention measures.
- **Payment Protection Insurance (PPI):** at this point there are doubts as to the impact arising from temporary work disability or unemployment. In addition, questions may arise about possible compensation in the event of death or temporary, permanent or serious disability due to the virus.
- **Cyber Liability Insurance:** taking into consideration the present work environment where the majority of employees are telecommuting, protection regarding cybersecurity is a must, as any cyberattack may cause substantial losses, acquiring particular significance for the financing industry where online transactions have experienced an exponential growth.



Nerea Goiriena

CONSEQUENCES

The first task for a company to carry out, along with its advisors, is to review its contracted insurance coverage and, consequently, determine whether casualties caused or in any way derived from the pandemic are excluded or not, as most policies exclude this type of claim.

In relation to the policies that include these casualties, these will likely fall into one of the following categories:

- Halting of operations: the insurer will likely compensate with a fixed daily amount, as detailed in the policy, for each day that the business is shut down, up to the maximum number of days covered by the policy.
- Loss of revenue: the insurer will likely compensate for the expenses incurred by the company that will not be recovered as a result of the pandemic, and until the business rebounds and reaches its normal revenue.

FUTURE INSURANCE

Until the general uncertainty that we are experiencing has come to an end and life and business goes back to normal, it is paramount that companies acknowledge that the present circumstances are the actual and ultimate reason they subscribed to insurance agreements in the first place, so that they provide sufficient support and means to safeguard your business' continuity and survival. Therefore, this is the ideal moment not only to assess how to mitigate the impact of all immediate contingencies, but moreover to review your current insurance framework as an efficient back-up system in the light of any future similar events, so that you emerge more resilient than before.

The impact of COVID-19 on the global economy is unprecedented, the forced closure of many companies added to the lack of demand for goods, products and services has devastated employment worldwide.

Within a matter of weeks, employers and their directors have had to let go of, if not all, most of their employees. This situation has proven difficult for employees, but no less so for their employers, who on condition of the countermeasures that they carry out, cost-cutting and avoiding future liabilities, they will manage [or fail] to survive the present situation and keep their businesses afloat.

That said, and in consideration of the considerable volume of regulatory amendments passed and proposed, a solid understanding of both labour and social security existing regimes, in addition to an adequate workforce and human resources management, should enable and guarantee a contained manageable future and a realistic one for operating businesses.

MOST PRESSING ISSUES

PAID LEAVE

The Royal Decree-Law 10/2020 provides paid leave, [subject to the relevant qualifying requirements], in order to restrict mobility as of March 30th until this past April 9th (both inclusive).

A cut in working hours compensation policy shall be determined within a period of 7 days (with effect from the 10th); should this not be the case; the above period shall compute as effective working hours.

Ultimately, any modification of the current annual calendar implies and is an amendment of conditions that shall be expressly agreed upon.

ERTES

(Temporary suspension of employment contract due to operational reasons.)

As paid leave is no longer in effect as of the 9th of April, since last past Monday or Tuesday (13,14th April), depending on the autonomous region, two further available options have been provided, depending on the volume of productivity:

- ERTE: submitting an ERTE for objective causes or *force majeure*, depending on the applicable circumstances, to affect the whole staff or part of it.
- NORMALITY: regaining regular productivity levels, adjusting the calendar to working hours compensation agreement, and in any case, guaranteeing and prioritizing all precautions to secure workforce safety.

BUSINESS REINSTATEMENT PROTOCOLS



José Ramón Mínguez

Current circumstances update the old adage attributed to Abraham Lincoln more than ever before: “You cannot escape the responsibility of tomorrow by evading it today.”

Undoubtedly, the crisis caused by COVID 19 brings numerous challenges, all of which must be approached with a diligently planned legal agenda. In times of uncertainty, we must analyse the procedures and the degree of compliance with the numerous legal obligations which are hanging over the companies and their managers in all regulatory areas and areas of practice.

MOST PRESSING ISSUES

The aim is to prevent, identify and manage any and all risk that may derive from a breach of any existing law or regulation in order to prevent the enforcement of any sanctions, economic loss or reputational damage.

Upon examination of the specific situation, the objective is to provide adequate action policies that facilitate the identification of operational and legal risk that the company faces, minimizing the possible effects, and establishing control procedures for prevention, monitoring effectiveness and solving any issues that may arise in the event of a breach.

On a different note, the specific response that business managers give to the different challenges or issues that the company currently faces will be decisive for the purpose of examining the incidence of their decisions - or lack thereof - in a hypothetical situation which may trigger legal consequences. In this sense, avoiding manager and executive liability in areas such as labour and tax is essential, as well as preventing directors from incurring any liability relating to their management, especially regarding any liability resulting from insolvency procedures.



Miguel Etchart

A crisis such as that occasioned by the spread of COVID-19 has a social and economic impact which as of today is impossible to evaluate. But even so, it provides an opportunity to think over the challenges that our businesses face under the present circumstances, and to ready ourselves to react to and confront these challenges, which may become imperative.

At this critical time it is especially important to make sure that our company has updated all its policies and that it complies with and is aligned to any and all existing laws and regulations, and that it has an up-to-date compliance code that effectively prevents it from incurring in any illicit conduct, which is what we understand by “Compliance”.

In this sense, it is important to highlight that all companies are under the obligation to be aware of all laws and regulations and any of their updates, as well as being under the obligation to act in accordance with said laws and regulations. Furthermore, companies today must also observe “Social Responsibility”, meaning that they must act in compliance with an ethical code and that they must set supervision, enforcement and control procedures.

One of the challenges is the need for a corporate compliance code as part of a company’s “Good governance” practices, which allows or facilitates preventing the company, the company directors and/or general management from committing any criminal conduct or activity, thus avoiding any criminal procedures.

MOST PRESSING ISSUES

By virtue of the amended criminal code pursuant to the Criminal Act 5/2010, whereby corporate bodies may be held liable for any criminal activity or conduct, and to the Criminal Act 1/2015, of March 31st, whereby the list and the scope of the illegal conducts for which a corporate body may be held liable is considerably extended, all companies understand the need and the virtue of implementing a Corporate Compliance Protocol in order to minimize any and all relevant risks.

For the purposes of providing a comprehensive Corporate Compliance Protocol, it is necessary that companies first analyse all possible criminal risks relating to their activity, reduce their corporate values to writing and integrate them into their ethical codes, define action protocols, define employee and director training regarding the existing laws, regulations and policies, and they must define a whistleblowing channel – which shall be safe for any informer- that allows the exposure of any illicit conduct within the company. All the above shall be carried out in a coordinated manner and shall comprise the relevant Corporate Compliance Protocols.

Following a successful first phase, comes the effective implementation with the delivery of the conduct codes, the definition of the control body (“compliance officer”), the communication channels, the relevant disciplinary measures, and finally the definition of the audit programme and continuous training programmes.

Amongst all areas of practice and conduct practices, and due to the nature of the circumstances surrounding this crisis, labour and employment risks – together with climate and environment related risks- have proven to be particularly endangered, hence, demand a quicker and more thorough response.

In a similar fashion, the labour and health risks for employees demand special attention due to the emerging situation in which we are involved and that, in fact, has led labour unions to announce criminal proceedings against companies and public administrations for actions, which in their opinion, are putting employees’ health at risk.



Martín Bilbao

Companies are acting accordingly adopting specific protocols, implementing policies that facilitate safeguarding employees' health whilst preventing the company from incurring in any risk of liability. These protocols may include, but are not limited to, the following:

- Health prevention: set guidelines for collectives with previous pathologies such as asthma, diabetes and/or cardiac that show the slightest coronavirus symptoms, who shall abstain from going to work.
- Visits and offsite companies: offsite visits are prohibited (except for those authorised), security perimeters for deliveries, quarantine of goods...
- Personal hygiene measures: handwashing, disinfecting, social distancing, use of disposable tissues, no physical contact, cleaning-up of work clothing, use of face masks, gloves...
- Work space area clean-up: daily routine clean-ups reinforcement, weekly disinfections, use of disinfectant, sprays for shared equipment...
- Operating guidelines: avoiding face-to-face meetings, maintaining proper distancing in meetings and in shared rest areas, avoid sharing a car on your way to work, avoiding company trips, shifts for changing rooms.
- Follow-up: constitution of a safety, health and medical service committee that carries out a thorough monitoring and tracking in order to implement or modify the existing measures. Additionally, the creation of a specific communication channel in order to act in the quickest way possible, which should also be available for breach of protocol exposure and report.

The ultimate purpose of the above is that companies not only appropriately adjust to the exceptional situation, but that they integrate these procedures so organically that they are able to keep operating within reasonable normality and may prevent any future contingencies.

Decisions taken today may preclude undesirable situations and future liabilities. A prudent administrator always has to be forward-thinking.

Business continuity is built on financial standing and depends on solvency. The COVID-19 crisis is compromising the liquidity of many companies and it is still impossible to forecast any early recovery of company liquidity.

MOST PRESSING ISSUES

In the event of a failure to fulfil a company's due payment there are various interests that we need to protect:

- The company as a feasible business: the profitability and survival of the company which needs to survive despite the occasional insolvency in order to avoid bankruptcy proceedings. To this end, it is necessary to set in motion the company's pre-insolvency restructuring mechanisms – "protective shields"- in order to avoid a bankruptcy procedure.
- Should the bankruptcy proceeding be likely to occur, we need to put into place adequate measures to preserve business continuity, such as an individual voluntary arrangements proposal, a continuity arrangement proposal, or even carrying out the alienation of production units.
- To prevent management from being held personally liable, either for acting or for failing to act, including those that may arise from the lack of implementation or enforcement of the relevant legal and corporate measures in the event of reaching a pre-bankruptcy or bankruptcy status.

It is advisable for a company to assess any and all insolvency risks on a case by case basis- gross negligence, negligence, minor breach of relevant duty of care- including any current or future risks which the company may incur, also in connection with any contingency plan or plan of action of any nature. To be able to rely on the support of internal appraisers and evaluators who may enlighten or provide contrasting or opposing approaches or methodologies is a clear competitive advantage.



Gonzalo Grijelmo

Company and professional tax planning has been drastically affected by the health and economic crisis we are currently undergoing.

The readiness to respond together with a forward-thinking approach when addressing any and all challenges brought about by the tax managing disruption is essential and currently occupies the greater part of all company tax managers agendas.

In response to present needs, we have produced a catalogue of urgent measures for efficient tax management. However, specific performance and arrangements will rely on the individual personalized diagnosis of specific needs and related circumstances. We have prepared an initial testing protocol in order to provide guidance on tax planning decision-making under the present challenges.

MOST PRESSING ASPECTS

What to do:

- SHOULD I HAVE TO FILE TAXES
- SHOULD I HAVE TO PAY TAXES
- SHOULD I NEED LIQUIDITY
- SHOULD I BE IN DEFAULT
- SHOULD I CARRY OUT FY2019 CLOSING
- SHOULD I BE CONSIDERING COMPANY RESTRUCTURING
- SHOULD I HAVE LIQUIDITY

— SHOULD I HAVE TO FILE TAXES —

I must take into consideration:

— Any and all regulatory measures adopted by the various taxation competent authorities (State, Regional Territories, Autonomous Regions, Local Authorities):

- Deadline extension for self-assessed tax filling.
- Deferrals
- Fractioning
- Exemption of certain advance payments.

— It is advisable to carry out an in-depth revision of the company's FY 2019 closing, any relevant deadlines, an examination of the annual accounts, the audit report, the annual report, etc. corresponding to the fiscal year ending December 31st 2019, in consideration of the present situation and any event following the FY 2019 closing that may impact the taxation data or conclusions.

— Existence of alternative and further options, subject to individual circumstances:

- Application of LGT and NFGT's principles, measures and criteria.
 - Monetization of tax credits.
 - Revision of any tax credits linked to subsequent investment, C.E.
- Compliance with any commitments for previous year's statements, including any tax benefit. Any consideration otherwise shall be planned ahead.



Javier Ruigómez

— SHOULD I HAVE TO PAY TAXES —

I must take into consideration:

— Although certain and specific taxes and circumstances have been deferred, we must continue to fulfill our tax obligations concerning the payment of the resulting fee.

— Recently adopted laws and regulations by the various competent authorities, provide, amongst others, the following possibilities:

- Deferral of payment.
- Fractioning the fee.
- Exemption of certain advance payments.

— It is advisable to carry out an in-depth revision of the company's FY 2019 closing, any relevant deadlines, an examination of the annual accounts, the audit report, the annual report, etc. corresponding to the fiscal year ending December 31st 2019, in consideration of the present situation and any event following the FY 2019 closing that may impact the taxation data or conclusions.

— There are further available tax benefits and resources given the present situation, such as the monetization of tax credits, asset valuation, among others, which should be analyzed in-depth.

— SHOULD I NEED LIQUIDITY —

I must take into account that:

— There are various financing formulas and support to take into consideration:

SPANISH GOVERNMENT

ICO - Guarantees for Large Companies, SMEs and the self-employed.
Extraordinary line of insurance coverage for SMEs.

BASQUE GOVERNMENT

ELKARGI -Financial line I.V.F. SMEs and self-employed.
ELKARGI – Working capital bank financing lines.

— Bank financing continues to be an appealing option in terms of prices and conditions.

— Comprehensive and accurate company records will be decisive when forwarding a request to the relevant authorities.

— However, companies also have their own internal means and sources to increase their liquidity, for instance, through the monetization of assets and tax credits.

— The sale of any company assets will entail capital gains (or losses) that should be taken into account.

— SHOULD I BE IN DEFAULT —

I must take into account that:

— I can recover VAT on unpaid invoices.

— There are peremptory deadlines in order to qualify for VAT recovery.

— A contractual breach may raise tax liabilities.

— Current fiscal year Corporate tax, (and maybe FY 2019) will be affected by defaults.

— SHOULD I CARRY OUT FY2019 CLOSING —

I must take into account that:

— The deadlines for self-assessed corporate tax filling will likely be subject to additional extensions depending on the taxpayer's residency.

— The presentation of the self-assessments of the Corporation Tax are expected to be subject to different extensions. It is advisable to carry out an in-depth revision of the company's financial statements, the FY 2019 closing, an examination of the annual accounts, the audit report, in consideration of any event following the FY 2019 closing that may affect taxation, so as to correctly reflect all relevant data, dimensions and circumstances.

As for example:

- Endowments.
- Valuation of financial and real estate assets.
- Cancellation of operations for subsequent breach.
- Tax impact regarding actions against the P.N.

— Deferral and fractioning formulas for the resulting fees have been recently approved.

— There is also the option of monetizing certain unused tax assets. Cash Back.

— The present circumstances could jeopardize my performance undertakings for the previous fiscal year.

— SHOULD I BE CONSIDERING COMPANY RESTRUCTURING —

I must take into account that:

— It may be a convenient time to realize fiscally compensatory losses through the sale of assets or other types of tax credits (B.I.N., etc.).

— The extraordinary economic circumstances that inform the restructuring proposal may be extended and/or accentuated as the crisis evolves.

— The valuation of my assets is essential and must be supported by supporting reports.

— SHOULD I HAVE LIQUIDITY —

I must take into account that:

— It may be a convenient time to carry out real estate and financial investments, etc.

— The distribution of results may have a double taxation effect depending on the fiscal residence of the recipient.

— The placement of financial resources in the company that needs them can generate early taxation.



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Since the beginning of the outbreak, the rapid spread of COVID-19 has been unprecedented, due in part to the virus's own characteristics and essentially to today's interconnected world.

The systemic nature is precisely what has led to collective global uncertainty which has compelled some of the world's largest economies to adopt bold countermeasures, which involve the disruption of the workforce and is having a substantial impact on business continuity even leading to business shutdown.

Current events demand a firm response with a two-fold objective approach:

- Economic impact mitigation
- Structural reinforcement for the short term as well as the long term

Legal and economic relations have been fundamentally altered due to the following occurrences:

- Social factors concerning fear and uncertainty which have triggered a significant decrease and a substantial change in consumption patterns.
- External factors and governmental actions such as the adoption of numerous policies by virtue of several royal decrees and further sectoral and territorial resolutions.

As of March 13th, the following Royal Decree-Laws have been adopted:

- Royal Decree-Law 6/2020, of March 10th, whereby certain urgent measures are adopted for an economic response and for the protection of the public health.
- Royal Decree-Law 7/2020, of March 12th, whereby urgent countermeasures are adopted to counteract the economic impact of COVID-19.
- Royal Decree-Law 8/2020, of March 17th, of extraordinary and urgent countermeasures to counteract the economic and social impact of COVID-19.
- Royal Decree-Law 9/2020, of March 27th, whereby additional measures are passed affecting labor law, to alleviate the effects of COVID-19.
- Royal Decree-Law 10/2020, of March 29th, whereby non-essential worker's paid leave for those who work on their own account is regulated with the purpose of reducing the population's mobility amid the COVID-19 battle.
- Royal Decree-Law 11/2020, of March 31st, whereby urgent additional measures are passed for a socio-economic response to COVID-19.
- Royal Decree-Law 12/2020, of March 31st, of urgent measures for the assistance and protection of victims of gender violence.
- Royal Decree-Law 13/2020, of April 7th, whereby certain urgent measures are adopted concerning employment in agriculture.
- Royal Decree-Law 14/2020, 14th April, by which the deadline for the submission and payment of certain tax declarations and tax self-assessment is extended.