

CORONAVIRUS - HOW THE STATE OF EMERGENCY AFFECTS LEGAL PROCEEDINGS: SUSPENSION AND INTERRUPTION OF DEADLINES

Spanish Royal Decree 463/2020, of 14 March (amended by Royal Decree 465/2020, of 17 March), declaring a state of emergency to manage the health crisis caused by the COVID-19 virus, included the adoption of certain measures in relation to deadlines in judicial, administrative and civil proceedings. Further measures were added by Royal Decree-Law 8/2020, of 17 March, relating to other deadlines applicable to the legal regime governing legal entities, and by Additional Provision Eight of Royal Decree-Law 11/2020, of 31 March, relating to administrative appeals. The recent Royal Decree-Law 16/2020, of 28 April, on procedural and organisational measures relating to the Justice Administration ("RDL 16/2020"), amends some of the previous measures and establishes those that will apply after the State of Emergency is lifted. In this briefing we provide a description and analysis of the measures adopted.

Key issues

- Suspension in general of procedural deadlines, barring exceptional circumstances.
- Interruption of limitation periods for all types of actions.
- Suspension of deadlines in administrative proceedings, unless expressly authorised otherwise.
- Extension of deadlines for filing annual accounts and financial reports.

1. DEADLINES IN JUDICIAL PROCEEDINGS

Have all deadlines in judicial proceedings been suspended/interrupted?

Yes. All deadlines applicable to proceedings in all jurisdictions in Spain are suspended (and existing deadlines for proceedings already underway are interrupted) while the state of emergency or its extensions remain in force.

Are there exceptions to this general rule?

Yes. Any Court is empowered to adopt any judicial measures necessary to avoid irreparable harm to the rights and legitimate interests of parties to legal proceedings. This applies, for example, to standard and urgent interim injunctions. Due enforcement of judgments may also be requested when not doing so would cause irreparable damage.

There are also other exceptions specific to different courts:

- Criminal Courts
 - Habeas corpus, extended hours, actions involving detainees, restraining orders, urgent prison monitoring measures and any interim measure relating to violence against women or minors.
- Administrative Courts
 - Proceedings for the protection of fundamental individual rights pending before contentious-administrative courts.
 - Procedures for authorisations and judicial orders related to home inspections, public health measures and inspections by the CNMC.

- Labour Courts
 - Collective claim proceedings.
 - Proceedings for the protection of fundamental rights and public liberties.

Can procedural documents be filed even though deadlines are suspended?

Yes, this has been possible since 15 April, though only online (through Lexnet or the equivalent services provided by certain Autonomous Communities).

How are hearings, trials and other judicial functions affected?

By resolution of the General Council of the Judiciary dated 14 March 2020, scheduled court hearings are cancelled and judicial proceedings suspended, save for the exceptions established in relation to criminal law, fundamental rights and any other proceedings which, if suspended, could cause irreparable damage to the parties to the proceedings.

Moreover, Article 19 of RDL 16/2020 establishes that while *"the state of emergency is in force and for three months after it is lifted, if the court is seated, trials, summons, statements, hearings and, in general, all legal and procedural acts should be held remotely, provided that the courts and prosecutor's offices have the technical means to do so"*.

Do these measure affect appeals before the Constitutional Court?

Yes. The Constitutional Court adopted a resolution on 16 March 2020 establishing that all judicial or administrative proceedings before the Court and their related deadlines are suspended.

However, appeals and other writs may still be filed via the electronic registry available at www.tribunalconstitucional.es.

Does the suspension affect deadlines for bringing judicial proceedings?

Yes. The limitation periods of all legal actions and rights have been suspended and will resume when the state of emergency is lifted.

How will insolvency declarations be affected?

Under RDL16/2020, debtors in financial difficulties will not be obliged to apply to be declared insolvent until 31 December 2020, whether or not they have provided the notification established in Article 5 bis of the Insolvency Act (*Ley Concursal*, "LC").

Consequently, until that date no insolvency applications filed by the creditors during the State of Emergency will be given leave to proceed. In the meantime, applications filed by debtors will be processed as a priority, even where filed later.

If the notification under Article 5 bis LC is provided by 30 September 2020, the general regime established by the LC will apply, whereby the debtor will be obliged to submit an insolvency application by 30 January 2021 if its financial difficulties have not been resolved.

If the ordinary deadline for applying to be declared insolvent (two months) starts on or after 1 November 2020, the debtor will have two months to make the application, since it is not plausible to imagine that the recently approved regime would move the deadline forward, forcing the debtor to apply to be declared insolvent by 31 December.

Will time periods that have been suspended recommence once the state of emergency is lifted, or will they resume from where they were suspended?

Under Article 2 of RDL 16/2020, time periods suspended on account of the State of Emergency *"will recommence, such that their first day will be the first business day following the lifting of the suspension of the corresponding proceedings"*.

A special rule is established with respect to deadlines for processing the *"announcement, preparation, formalisation and lodging of appeals against judgments and other decisions that, pursuant to procedural law, put an end to the proceedings"*: if such decisions are notified *"during the suspension of deadlines established in Royal Decree 463/2020, of 14 March, or within the 20 business days following the lifting of the suspension"*, *"suspended procedural deadlines will be extended by a period equal to the one established for the announcement, preparation, formalisation and lodging of the appeal in the corresponding governing law"*, i.e. time periods will be doubled. Although not expressly stated, it is reasonable to assume that the time period will commence on the first business day following the lifting of the suspension, or from the notification date in the case of decisions notified in the following twenty business days.

It must be pointed out that this does not apply to all appeals, but only to appeals against judgments or decisions that put an end to the proceedings in question.

2. DEADLINES IN ARBITRATION PROCEEDINGS

Have all deadlines in arbitration proceedings been suspended/interrupted?

No. The legislation approved to date in relation to the state of emergency says nothing about the deadlines established by arbitration bodies or tribunals hearing proceedings underway.

Are there exceptions to this general rule?

The Spanish and international arbitration community has reacted in diverse ways regarding the calculation of deadlines and handling of proceedings. As there is no uniform criteria, the different Spanish and international arbitration institutions have adopted measures and recommendations that affect the arbitration proceedings carried out under their respective systems of rules. This has resulted in suspensions and postponements of hearings and trials (e.g. the Madrid Arbitration Tribunal (CAM)), the setting of new hearing dates and the suspension of proceedings already underway (e.g. Madrid Civil and Commercial Court of Arbitration (CIMA) and the Arbitration Club of Spain (CEA)). The arbitration tribunals have also reacted to a different degree, thus the exceptions must be analysed case by case in order to see how this situation specifically affects each arbitration agreement or proceeding.

3. DEADLINES IN ADMINISTRATIVE PROCEEDINGS

Do deadlines in administrative proceedings remain in force, during this situation?

No. All deadlines applicable to administrative proceedings involving public sector entities are suspended (and existing deadlines for proceedings already underway are interrupted), and will resume once the Royal Decree or its extensions cease to be in force.

These time periods will resume for the number of days that remained until the deadline initially granted. As for deadlines in administrative appeals, please see below.

Does this apply to all Public Administrations?

Yes. It applies to all territorial Administrations, public bodies and public sector entities affiliated with, or depending on, the Public Administrations, with the exceptions listed below.

It also applies to those private sector entities affiliated with, or depending on, the Public Administrations, when they exercise administrative authority.

And it applies to public sector universities, regulatory and supervisory bodies and public sector corporations when they exercise administrative authority.

Are there any exceptions based on the subject of the proceedings?

Yes, exceptions from these general rules include: administrative proceedings in relation to registration and settlement with, and contributions to, the Social Security; tax deadlines and procedures, subject to special regulations; and in particular, deadlines for the filing and payment of tax returns and self-assessments.

It is important to remember that time limits set for companies or entities to comply with certain reporting obligations vis-à-vis the Administration are not deadlines in administrative proceedings.

Are there any exceptions to this rule?

Yes there are. On the one hand, public sector entities can justifiably decide to continue those administrative proceedings which:

- refer to situations closely related to the events giving rise to the state of emergency
- are indispensable for the protection of the general interest or for the basic operation of services.

On the other hand, the competent body may decide to continue them on an exceptional basis, in two cases:

- When strictly necessary to avoid serious harm to the rights and interests of the interested party to the proceedings and provided the latter agrees; or
- When the interested party agrees that the deadline should not be suspended.

Can a request be made for the proceedings to continue and for the Administration to issue a decision?

Although all exceptions grant the Administration a broad margin of appreciation to decide to continue the proceedings or to refuse it, nothing prevents the interested parties from requesting this.

Since Royal Decree 463/2020 makes it possible to continue the procedure, it should be possible to finish it. Therefore, the parties can also request that a final decision be issued in cases where continuation of the procedure is adopted.

Before which registries can applications for arbitration and other procedures not suspended be submitted?

Legal entities will still be obliged, under the state of emergency, to notify the Public Administration electronically (Article 14 of Act 39/2015).

Apart from that, some public bodies (such as the CNMC) have announced on their websites the possibility of using a specific email address to complete certain procedures.

Whenever the hard copy of a writ or document must necessarily be submitted, it is recommended this be done at the nearest administrative registry or Spanish post office (Correos) open, so as to keep travel to a minimum.

Have deadlines for bringing administrative appeals been suspended?

By virtue of Additional Provision Eight of Royal Decree-Law 11/2020, the deadlines for lodging administrative appeals or other means of challenging administrative acts have been extended and will recommence "on the business day following the end of the declaration of the state of emergency", regardless of the number of days that had previously elapsed.

This does not mean, in any event, that deadlines already passed or time periods already expired when the state of emergency was declared will be extended or will recommence.

4. WHICH OTHER DEADLINES HAVE BEEN SUSPENDED OR INTERRUPTED?

- Limitation periods and deadlines for exercising actions

These periods and deadlines will be suspended during the state of emergency and any extensions thereof, as the case may be, and will resume, for the remaining period of time, once such situation has ended.

This exempts the creditor or the party affected from not only initiating the legal action, but also from interrupting the limitation period by issuing the appropriate summonses, which are an advisable plan of action, if they can be issued.

- Registry entries

The expiry has been postponed for those registry entries susceptible of being cancelled due to the passage of time (i.e. submissions, caveats, annotations and marginal notes, among others). As a result, these periods will resume on the day after the state of emergency (or any extension thereof, as the case may be) is lifted.

This measure is in addition to the one issued on 13 March 2020 (amended on 15 March) by the Directorate General for Legal Certainty and Trust in Public Registry Information, consisting of the extension, for a further fifteen days, of the usual time limit for the classification and execution of documents submitted for recording before Spain's Land, Commercial and Movable Goods Registries.

5. DEADLINES APPLICABLE TO PRIVATE AND LISTED COMPANIES

Is the deadline for drawing up annual accounts still the same, during this state of emergency situation?

No. The deadline for drawing up annual accounts (three months as from the end of the financial year) has been suspended, and a new three-month period will commence on the date when the state of emergency ends.

What is the deadline for issuing the auditor's report, if the management body had already drawn up the accounts when the state of emergency was declared?

If the audit is mandatory, the deadline for issuing the auditor's report (which is generally one month from the time the annual accounts are delivered to the auditor) will be considered extended for a period of two months as from the end of the state of emergency.

In the case of listed companies, are there changes to the deadlines for publishing and sending the annual financial report to the CNMV?

Yes. The obligation to publish and send to the Spanish Securities Market Commission (CNMV) the annual financial report and audit report can be fulfilled within a period of six months as from the end of the financial year (instead of the four months as usual).

In the case of interim management reports (which must be published within 45 days of the end of the first and third quarter) and the semi-annual financial report (which must be published within three months), the deadlines have been extended in both cases to four months as from the end of the corresponding period.

Have similar measures been adopted in relation to companies which trade on the Alternative Equity Market (MAB)?

Yes they have. The board of directors of the MAB has agreed, on an exceptional basis, to extend the period for companies to submit the corresponding regular annual information throughout the 2020 period, so that they may disclose such information to the market as soon as possible and, in any case, no later than six months after the end of their financial year.

Does the period for the approval of the annual accounts remain in force during the state of emergency situation?

No. The period for the approval of the annual accounts (which is six months after the end of the financial year) is also suspended, although differently, depending on whether the company is listed or not:

- in the case of non-listed companies, the general meeting of shareholders must meet to approve the annual accounts within three months of the end of the new (extended) period to draw up such annual accounts (which will depend on the date the state of emergency is lifted); and
- in the case of listed companies, the ordinary general meeting of shareholders may meet to approve the annual accounts within the first ten months of the financial year (and therefore regardless of the date on or by which such annual accounts are or should be drawn up).

During the state of emergency, if a shareholder incurs a cause for separation established in the law or by-laws, can such shareholder exercise the right of separation of the company?

No. Shareholders will not be able to exercise their right of separation of the company until the state of emergency (including any extensions thereof, as the case may be) has ended.

What happens if, under the state of emergency, the duration of a company, as established in its by-laws, should elapse?

In this scenario, the company will not be dissolved by law until a period of two months has elapsed, as from the end of the state of emergency.

Should the company be subject to dissolution, does the two-month period for directors to call a general meeting of shareholders to adopt the corresponding resolution to dissolve the company or to remove the grounds therefor still apply?

No. If the grounds for the company's dissolution occurred before the state of emergency was declared or while it is in effect, this legally-established two-month period for calling the general meeting of shareholders is suspended until the state of emergency ends.

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28046 Madrid, Spain

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