



The government approves to relax public procurement and corporate governance rules in view of Covid-19

In our last special CAPSULAS we briefly explained the measures adopted in Spain in order to face the unprecedented situation created by Covid-19 and which had impact on companies operating in the “life-sciences” sector. Last Tuesday 17 March, late in the evening, the Official Journal published Royal Decree Law 8/2020 through which the government approved some extraordinary measures. The main objective of these measures is to ease the management of some legal obligations of companies in view of the economic and sanitary and health crisis resulting from Covid-19. To such end the government has approved to relax some rules in the area of public procurement and corporate governance.

Public procurement

Public supply and services contracts (except for those contracts related to the Covid-19 crisis or which are needed to guarantee the well-functioning and security of the infrastructures and transport services; as well as public security, cleaning and maintenance of computer systems contracts) are subject to the following especial regime.

Contracts whose performance is impossible as a result of Covid-19 or the measures adopted to combat it will be automatically suspended. This suspension will be from the time the performance of the contract becomes impossible until the date when such performance is feasible again. The contracting authority will be, on request of the contractor, obliged to pay damages suffered by the contractor during the suspension period. Damages will be limited to those proved and related to salaries, maintenance of definitive guarantees, rents or maintenance costs of machinery, and insurance policies.

Contracts whose performance, even if possible, cannot be carried out within the agreed deadline, will be extended upon request and commitment of

compliance of the contractor. In these cases, the contractor will be entitled to the payment of certain salary expenses (maximum of 10% of the initial contract price). The new term will be at least equal to the time lost as a result of the Covid-19 crisis, or less if the contractor so requests.

Concessionaries of public work or services concession contracts will be entitled to a “restoration of the economic balance of the concession” if they lose revenues or suffer an increase of costs due to the Covid-19 crisis. Such restoration will be made by means of an extension of the initial duration of the contract (up to a maximum of 15%) or a modification of the clauses of economic content

Finally, the expired contracts at the time of entry into force of the Royal Decree Law (17 March 2020) that have not been extended as a result of the standstill of public procurement procedures due to the declaration of the State of Emergency will be extended up to a maximum period of nine months to ensure continuity of service. The terms of the contract, apart from the duration, will not be amended.

Corporate Governance

The Royal Decree Law allows that the meetings of the boards of directors of companies and of governance bodies of associations and foundations be held via videoconference. The same will be valid for voluntary or compulsory committees that may exist in these entities. In order to hold meetings via videoconference it will not be necessary that the articles of association contemplate this option, but it will be required that the system guarantees the authenticity and the bilateral or multilateral connection in real time of all the members, with exchange of image and sound. It will be considered that the meeting has been held at the domicile of the company, the association or the foundation.



Moreover, it is allowed that, while the state of emergency remains in force, corporate resolutions of the board or other governance bodies of the companies be adopted by means of a vote in writing and without a session if the chairman so decides. This procedure will have to be used if at least two members of the governance body so request.

The rules that govern the procedures to adopt resolutions by this system without a session do not change. The Secretary or Vice Secretary of the Board must issue a certificate confirming that the resolution has been adopted through this special system of voting without a session, recording the contents of the resolution, the name of the members of the Board, and the vote that each of them has casted.

If this special procedure has been used because the chairman has so decided or because at least two members of the board have so requested, it will be convenient to state this in the certificate. If this special procedure has been used because all of the members of the Board have agreed to do so it would also be convenient to state this in the certificate.

Unless the articles of association of the company state otherwise, the vote will have to be sent to the company within ten days from the day on which the request was made. The resolution will be considered to have been adopted on the date on which the last of the votes is received by the Company.

On the other hand, the obligation to formulate the accounts of 2019 before 31 of March (which is the date on which the majority of companies will have to do so given that it is common practice that the financial year ends in December), is also relaxed. In this respect the government has approved that the 2019 annual accounts may be approved within 3 months from the date on which the situation of state of emergency finishes. If the accounts have already approved by the Board and it is necessary to have them verified by the company auditors, the issuance of the audit report may be made within two months after the date on which the state of emergency situation terminates.

Finally, the shareholders meeting that must be held every year in order to approve the accounts of the previous year take place within 3 months after the date on which the term to approve the accounts by the board has expired.

For example, in the event that the state of emergency finishes on 1 April 2020 the 2019 accounts will have to be approved by the board before 1 July 2020, and the general shareholders meeting may be held before October 1, 2020.