

March, 23rd 2020

COVID 19 CRISIS - MAIN LEGAL AND BUSINESS MEASURES ADOPTED IN CHILE

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:

1. [General guidelines related to the State of Catastrophe](#)
2. [Financial and Tax Measures adopted](#)
3. [Labor Law Measures adopted and Regulations](#)
4. [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

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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), Chiloé 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

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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 considered 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.

Our teams remain mobilized to answer your questions. Please contact :



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