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Covid-19: Venezuela Legal Update (as of March 26, 2020)

This memorandum summarizes the measures enacted by the Venezuelan government in response to the Covid-19 pandemic and other issues that should be considered in connection with this pandemic.

State of Alarm

On March 13, 2020, the Venezuelan President issued Decree No. 4,160 declaring the “state of alarm” given the public health and security risks deriving from the Covid-19 pandemic (the “**State of Alarm Decree**”).¹ The State of Alarm Decree will be in effect until April 12, 2020, but can be extended for additional periods of 30 days, until the pandemic is deemed to be adequately contained.

The main provisions of the State of Alarm Decree include:

- suspension of all school and academic activities; educational institutes must coordinate academic reprogramming and distance education platforms;
- suspension of public shows, exhibitions, concerts, conferences, sports events or any other public events or other activities involving crowd gathering;
- closure of coffee shops and restaurants (delivery and take-outs are allowed), movie theaters, theaters, casinos, sport fields, stadiums, parks and beaches;
- mandatory use of face masks in all mass transportation systems, terminals, health centers, supermarkets and other public places;
- suspension of administrative proceedings;
- quarantine and isolation of confirmed and suspected Covid-19 cases;
- creation of a Covid-19 presidential commission, led by the Vice President, in charge of coordinating and advising on all matters relating to the

¹ Official Gazette Extraordinary No. 6,519 dated March 13, 2020. In January 2019, the Venezuelan National Assembly declared the vacancy of the office of the Presidency and proclaimed National Assembly President Juan Guaido as Interim President of Venezuela. The Maduro government and the Supreme Court do not recognize the National Assembly’s proclamation.

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implementation of measures to slow and control the spread of the pandemic;
and

- the health care system is declared in permanent emergency; public and private health centers must provide daily updates on their capabilities to treat or diagnose Covid-19 cases.

Nationwide Quarantine

On March 16, the President ordered a nationwide quarantine and severe restrictions to move around states, cities and municipalities. This decision and the terms of the quarantine have not been published. However, under the terms of the State of Alarm Decree, the quarantine should not affect the following activities or sectors: health services, police and military, utilities, fuel sales and gas stations, medical supplies, pharmaceutical services, food supply and water distribution and port activities.

Suspension of National and International Flights

On March 13, flights from Europe and Colombia were suspended. The suspension was extended the following day to flights from Panama and the Dominican Republic. On March 17, all national and international flights (commercial or private) were suspended, except for overflight, air cargo and air mail operations.²

Labor Measures

On March 16, the President ordered the nationwide suspension of labor activities, except for certain sectors deemed essential, including health services, police and military, utilities, fuel sales and gas stations, medical supplies, pharmaceutical services, food supply and water distribution and port activities. Restaurant delivery and take-out services are permitted. Such sectors are working with the minimum personnel required to sustain operations and are adopting measures such as shift rotations to reduce personnel risk exposure.

In the context of the State of Alarm Decree, to the extent that work cannot be performed remotely, employment relationships are suspended. This means that during the suspension, employees are not required to work, and employers are not required to pay

² Communications of the National Institute of Civil Aviation published on Twitter:
https://twitter.com/INAC_Venezuela?s=20

D'EMPAIRE

salary but must continue to pay social security contributions and food benefits.³ Also, employee seniority continues to accrue during the suspension (this affects seniority-based benefits such as severance). Some employers have chosen to pay a compensation matching the employees' full salary or a portion of it, during the suspension.

On March 22, the President announced that the Executive would pay the wages of all employees working for small and medium companies, for six months (from March to August). Payment would be made through the "Patria" platform (an online system originally used for individuals to register and receive benefits from social assistance programs). No guidelines or regulations on how this will be implemented have been published yet.

On March 23, the President confirmed a labor freeze until December 31, 2020.⁴ The labor freeze was already in effect before the Covid-19 pandemic.

Court Activities

On March 20, the Supreme Court of Justice announced that Venezuelan courts will suspend activities until April 13, 2020.⁵ Cases will remain pending and procedural time limits will not run. As an exception, urgent and/or constitutional actions can be heard by any competent judge. Courts must take the necessary provisions to grant the administration of justice, and criminal courts will operate regularly for urgent matters.

Tax Measures

On March 17, the President granted a VAT and custom duties exemption for the import and sale of face masks and other coronavirus-related products made by public entities.⁶

To date, the Venezuelan national tax authorities have not issued an extension for filing and paying annual income tax, which for most individuals and companies is due

³ Articles 72 and 73 of the Venezuelan Labor Law, published in Official Gazette Extraordinary No. 6,076 dated May 7, 2012.

⁴ Decree No. 4,167 published in the Official Gazette Extraordinary No. 6,520 dated March 23, 2020. The labor freeze implies that employees cannot be terminated by the employer without cause and without obtaining a previous authorization from the Labor Ministry. All employees are covered by the labor freeze, except top-level employees and occasional employees. The labor freeze was already in effect before the Covid-19 pandemic.

⁵ Resolution No. 001-2020 of the Supreme Court of Justice dated March 23, 2020.

⁶ Decree No. 4,166 published in the Official Gazette No. 41,841 dated March 17, 2020.

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March 31. The state of alarm and the suspension of activities across the country due to Covid-19 pose significant challenges for taxpayers to fulfill their tax obligations, and raise the issue on whether taxpayers, in absence of an extension, may claim that Covid-19 constitutes a *force majeure* event as set forth in the Venezuelan tax code.

Some municipalities (including the Chacao Municipality, one of the most important municipalities of Caracas) have extended the due date for filing the municipal tax on economic activities.

Banking Services

On March 15, the Venezuelan banking regulator (“**Sudeban**”) suspended the activities of bank branches, administrative offices and other banking activities involving presential customer service. Banks must guarantee the assistance of the minimum personnel required for the operation of ATMs, internet banking, electronic means of payment, such as interbank mobile Payments (P2P, P2C, C2P), wire-transfers, points of sale, and any online banking service.

Banking Reserve Requirements

Sudeban is considering the relaxation of currently existing bank reserve requirements (*encaje legal*) to facilitate granting of credit.

Debt Relief Program

On March 22, the President ordered the Minister of Finance and Sudeban to create a special regime for providing financial relief of debtors of Venezuelan state-owned and private banks in light of the global crisis caused by the Covid-19 pandemic (the “Debt Relief Program”).⁷

The guidelines of the Debt Relief Program set forth by the President include: (a) potential suspension of debt payments for a period of up to 180 days (during such term, debt collections will not be enforceable and no default interest will accrue), (b) the debt relief will apply to all types of outstanding bank loans granted by Venezuelan banks until March 13, 2020, (c) the suspension of payments will apply to principal and interest payments, restructuring terms or any other clause set out in the loan agreements, (d) the Debt Relief Program may include special conditions for certain types of debt, (e) calculation of debt payments based on certain special adjustment mechanisms will be

⁷ Decree No. 4,168 published in the Official Gazette Extraordinary number 6.521 dated 23 March 2020.

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maintained during the suspension period, but payments will be subject to new conditions to be defined in the Debt Relief Program,⁸ and (f) priority for granting credit for strategic areas to address the health emergency.

The Minister of Finance and Sudeban have not published the terms of the Debt Relief Program.

Health Insurance Coverage

The approved terms of health insurance policies issued by Venezuelan insurance companies exclude from coverage illnesses declared as epidemic by the competent public authority, and such exclusion applies to expenses incurred after such declaration. However, on March 14, 2020 the Venezuelan Chamber of Insurers indicated the insurance industry's commitment to give continuity and coverage to all health policies and especially to pathologies associated with Covid-19.

Other Measures

On March 22, the President announced other economic measures in response to the Covid-19 pandemic, including the suspension of rent payments for homes and businesses and the prohibition of canceling telecommunication services. However, these measures have not been published to date.

Force Majeure

Companies need to evaluate on a case-by-case basis whether Covid-19 or the governmental measures taken in connection with Covid-19 trigger a force majeure or act of God clause within their specific contracts, as well as other provisions related to material adverse change, material adverse effect, suspension, termination, change of law, change of circumstances, or similar clauses. As a general rule, an event to qualify as force majeure under Venezuelan law must be unforeseeable, unavoidable and not attributable to the party

⁸ The special adjustment mechanisms referred to in the Debt Relief Program are set out in (a) Resolution 19-09-01 issued by the Venezuelan Central Bank, published in the Official Gazette No. 41,742 dated 21 October 2019, sets forth that, among other provisions, commercial credits granted by Venezuelan banks in local currency after 23 October 2020 must be adjusted following the variation in value of the "Unit of Value of Commercial Credit" or UVCC, which is calculated and periodically published by the Venezuelan Central Bank, and (b) Resolution No. 20-02-01, issued by the Venezuelan Central Bank, published in the Official Gazette No. 41,742 dated October 21, 2019, sets forth that, among other provisions, credits granted by Venezuelan banks in local currency to the agrofood, manufacture, touristic, health and mortgage sectors after February 26, 2020 must be adjusted following the variation in value of the "Unit of Value of Productive Credit" or UVCP, which is calculated and periodically published by the Venezuelan Central Bank.

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claiming the force majeure. Depending on the case, force majeure may allow suspension of performance, contract termination or other remedies.

Gasoline Rationing

The Venezuelan government has imposed severe gasoline rationing across the territory, including Caracas.

State and Municipal Regulations

Several States and Municipalities have also enacted local regulations in response to the Covid-19 pandemic, mainly regulating the suspension of activities, restricting circulation and health related measures.

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