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Information for issuers of securities and
investors in listed companies in the context of
the COVID-19 pandemic (revised version)

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Information for issuers of securities and investors in listed companies in the context of the COVID-19 pandemic

The following developments are of interest to issuers of securities and investors in listed companies:

- RDL 8/2020, as amended by RDL 11/2020, has approved measures on **general meetings of listed companies**.
 - <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-3824>
 - <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4208>
- ESMA has published guidelines for issuers of securities and participants in financial markets to remind them of their **risk management and transparency obligations**.
 - https://www.esma.europa.eu/sites/default/files/library/esma71-99-1290_esma_statement_on_markets_and_covid-19.pdf
 - https://www.esma.europa.eu/sites/default/files/library/esma32-63-951_statement_on_ifrs_9_implications_of_covid-19_related_support_measures.pdf
- RDL 8/2020 has relaxed the **deadlines for drawing up, approving and publishing financial information** by issuers with securities admitted to trading on a regulated market in the European Union and which home Member State is Spain.
- RDL 11/2020 has amended provisions of RDL 8/2020 on the **modification of profit allocation proposals**, and some supervisory authorities, such as the CNMV together with the Spanish Association of Registrars or the European Central Bank, have issued **recommendations on the distribution of dividends** during the COVID-19 pandemic.
 - https://www.ecb.europa.eu/ecb/legal/pdf/oj_c_2020_102i_full_es_txt.pdf
 - <http://cnmv.es/portal/verDoc.axd?t={be06a6b8-516a-4fb0-9016-dd45bcc6f4d3}>
- The CNMV has **banned** for one month **transactions on securities and financial instruments that entail the creation or increase of a net short position** on Spanish shares listed on Spanish equity markets, following ESMA's decision to reduce the threshold that triggers reporting obligations
 - <http://cnmv.es/portal/verDoc.axd?t={5baf609e-ed4e-4dad-a697-80c55548e181}>
 - <http://cnmv.es/portal/verDoc.axd?t={49dff907-c2b4-41c8-92f2-2b4b4675082f}>

ORDINARY GENERAL MEETINGS OF LISTED COMPANIES

Measures approved by RDL 8/2020

Royal Decree-Law 8/2020 of 17 March 2020 on urgent extraordinary measures to address the social and economic impact of COVID-19 (“**RDL 8/2020**”), as amended by Royal Decree-Law 11/2020 of 31 March on additional urgent measures to address the social and economic impact of COVID-19 (“**RDL 11/2020**”), approved a set of measures designed to overcome the obstacles and alleviate the difficulties companies are facing during the COVID-19 pandemic. For more information on these measures, which apply to all Spanish companies, regardless of whether they are listed, you can consult our “*Guide to key legal matters relating to the COVID-19 health crisis*”, which is available on our website.

RDL 8/2020 also includes exceptional measures that only apply to companies which **securities are admitted to trading on a regulated EU market** (i.e. typically to Spanish *sociedad anónimas* which shares are admitted to trading on any of the four Spanish stock exchanges). These measures will apply throughout financial year 2020 (and are therefore not limited to the duration of the state of emergency).

Even if a company's articles of association do not establish that shareholders can **attend general meetings and vote remotely, this will be permitted** (under articles 182, 189 and 521 of the Companies Law), and **meetings may be held anywhere in Spain** provided that this is stipulated in the notice calling the meeting. If a meeting had already been called when the state of emergency was declared, a second notice can be sent to take advantage of these alternative arrangements, provided that the new notice is published at least five calendar days prior to the scheduled date of the meeting.

RDL 8/2020 also provides solutions in cases in which, despite these alternative measures, **it is still not possible to hold a general meeting at the location set out in the notice** as a result of the restrictions imposed by public authorities. In these cases, quorate meetings can be **moved to another location (in the same province (*provincia*))**, provided that attendees are given sufficient time to travel to the new venue, and if the meeting is not quorate, a new notice can be sent giving at least five calendar days' notice of the new date for the meeting, with the same agenda and subject to the same publicity requirements.

Companies can avoid shareholders attending the meeting in person when the original or subsequent call to the meeting establishes that they can participate (i) remotely, (ii) by granting a proxy to the chairperson by distance communication means, and (iii) by voting in advance using distance communication means, regardless of whether the companies' articles of association are silent on this matter. As such, it is possible to hold entirely “remote” meetings.

Board of directors meetings may also be held by tele or video conference (again, even if the articles of association are silent on this matter), in which case the meeting is deemed to have been held at the company's registered address.

Since the approval of RDL 8/2020, several listed companies have modified the venue of their annual general meetings or have held entirely "remote" meetings.

ESMA GUIDELINES FOR FINANCIAL MARKET PARTICIPANTS

Following recent developments in the financial markets as a result of the situation created by COVID-19 and its expected impact on the economy and on the business and prospects of issuers of securities, on 11 March, the European Securities and Markets Authority ("ESMA") published the following four recommendations for participants in financial markets:

- Market participants should all be **ready to apply their contingency plans**, including deployment of **business continuity measures**, to ensure operational continuity in line with regulatory obligations.
- Issuers of securities are reminded of their obligations regarding the disclosure of inside information established in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, and encouraged to **disclose as soon as possible any relevant significant information concerning the impact of COVID-19 on their fundamentals, prospects or financial situation**. This is particularly relevant, although not exclusively, for issuers who have published financial or business objectives which are now difficult to achieve as a result of the impact that COVID-19 has had on their activities or on the economy as a whole. In recent weeks, many issuers have communicated inside or other relevant information in this regard.
- In line with this, ESMA reminds issuers of securities **that they should be transparent and report** on the current and **potential impact of COVID-19 on business activities in their 2019 year-end financial report or in their interim financial reporting disclosures**. In both cases, to the extent possible, the information must be based on both a qualitative and quantitative assessment of their business activities, financial situation and economic performance.

Although market prices of listed securities already seem to be reflecting the impact of COVID-19 on issuers' financial situation, issuers should assess whether the most recent data on the evolution of their businesses and their internal projections of the impact that COVID-19 could have on their outlook may constitute inside information, since it could limit the actions issuers can take regarding their own securities until the information is disclosed.

In relation to both aspects (need to adequately consider and reflect the impact of COVID-19 in annual financial reports and interim financial statements and the assessment of the need to disclose specific information in this regard as inside information), on 25 March, ESMA published additional guidelines and specific details, aimed particularly at credit institutions, on the presentation in financial statements of information on increased credit risks and expected losses in credit portfolios (considering the public guarantees that debtors may receive) in accordance with IFRS 9.

- Finally, ESMA has stressed that **asset managers** must continue to fulfil the **requirements on risk management**, and react accordingly.

MODIFICATION OF THE DEADLINES FOR DRAWING UP, APPROVING AND PUBLISHING FINANCIAL INFORMATION AND OTHER INFORMATION INSTRUMENTS

RDL 8/2020, anticipating the recommendation issued by the ESMA on 27 March regarding the **deadlines for the submission of annual and half-yearly financial reports** by issuers subject to national rules transposing Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (the “**Transparency Directive**”), **has relaxed the deadlines** for compliance with these obligations by issuers whose home Member State is Spain for the purposes of the Transparency Directive. As regards issuers of securities incorporated in multilateral trading systems, the Alternative Stock Market (*Mercado Alternativo Bursátil*) has announced a similar measure, while in the Alternative Fixed Income Market (*Mercado Alternativo de Renta Fija*) the general deadlines established in RDL 8/2020 apply, all as set out below.

Issuers of securities admitted to trading on regulated markets

Exceptionally in 2020, and pursuant to RDL 8/2020, the following applies to **issuers whose home Member State is Spain and whose securities are listed on an EU regulated market**:

- They will have six **months from the end of the financial year** to comply with the **obligation to publish and submit their annual financial report to the Comisión Nacional del Mercado de Valores (“CNMV”) and the audit report** of their annual accounts. In most cases, this period will expire on 30 June 2020.

This period will also apply to the other reporting instruments which preparation and publication is linked to the drawing up of the issuer’s annual accounts, namely the statement of non-financial information, annual corporate governance report and annual report on directors’ remuneration.

- The term to **draw up** (individual and consolidated) **annual accounts is three months from the date the state of emergency ends**.
- **Ordinary general meetings** may be held during the **first ten months** of the financial year (i.e. for companies which financial year coincides with the calendar year, by 31 October 2020).
- Issuers will have **four months from the end of the relevant period to publish the half-yearly financial report and interim management statements**. For issuers in general, this will mean that they will have until 30 July 2020 to publish the interim management statement for the first quarter and until 30 October 2020 to publish their half-yearly financial report for the first half of the year. As regards the third quarter interim management statement, since the four-month term for its filing ends after the end of the 2020 calendar year, to which these exceptional deadlines for the publication of periodic financial information apply, it would be more prudent to infer that the deadline for submitting this statement is 31 December 2020.

Issuers of securities admitted to trading on MARF

In relation to the **Alternative Fixed Income Market** (“**MARF**” for its Spanish acronym), as its rules provide that issuers of securities traded on this market must submit financial information **as soon as it is available**, no specific exceptional provision is necessary and the **general rules** in articles 40 and 41 of RDL 8/2020 **apply**.

Consequently, if the issuer of securities admitted to trading on the MARF is also an issuer of securities admitted to trading on a regulated market, the deadlines indicated above will apply. However, **if the issuer is not an issuer of securities admitted to trading on regulated markets**, the following **measures** set out in RDL 8/2020 will **apply**:

- The term to draw up the (individual and consolidated) annual accounts is three months from the date the state of emergency ends, and the term for general meetings to be held to resolve on their approval is a further three months.
- In the case of companies subject to compulsory audits, if the management body had already drawn up the annual accounts when the state of emergency was declared, the term to have them approved by the auditor is two months from the date the state of emergency ends.

Issuers of securities admitted to trading on the MAB

As RDL 8/2020 does not apply to companies which shares are traded on any of the segments of the Alternative Stock Market (“MAB” for its Spanish acronym), on 18 March the MAB took the logical step of approving an equivalent measure to that of RDL 8/2020 for companies which shares are traded on any of its segments.

Thus, issuers of shares traded on the MAB may **send their periodic annual information up to six months following the accounting closure of the financial year**. In relation to the half-yearly financial information, the deadline for MAB issuers obliged to issue this type of report already coincides with that established for 2020 for issuers of securities admitted to trading on regulated markets.

MODIFICATION OF PROFIT ALLOCATION PROPOSALS

Rules on the unexpected modification of profit allocation proposals

Article 40.6 *bis* of RDL 8/2020 (modified by RDL 11/2020), setting out the guidelines circulated by the Spanish Association of Registrars (*Colegio de Registradores de España*) and the CNMV in their joint communication of 26 March, allows companies, listed or not, that have drawn up their annual accounts for financial year 2019 to modify **profit allocation proposals** if the management body wishes to adapt it in view of the uncertainty created by the COVID-19 health crisis and, in the case of financial entities, in order to comply with the recommendations of the prudential supervisory authorities. Specifically:

- If the **general meeting has not been called** yet, the management body may **change the profit allocation proposal in the annual accounts report** for another proposal. The management body must justify the new proposal on the situation created by the COVID-19 pandemic and include a letter from the auditor stating that the change made has no bearing on the audit. Listed companies that decide to adopt this measure must comply with special disclosure obligations: the new proposal, its justification and the auditor’s letter must be made public as supplementary information to the annual accounts, as soon as they are approved, on the company’s website and on the CNMV’s website as Other Relevant Information or, where appropriate, as Inside Information.
- If the **general meeting has already been called**, the management body may **withdraw the approval of the profit allocation proposal from the agenda** included in the notification of the meeting and **submit a new proposal to be considered in a subsequent meeting** that must be held within the statutory period for holding the ordinary general meeting (and which has been extended by RDL 8/2020). The management body’s decision to submit a new proposal must be published before the

general meeting that has already been called is held. The requirements explained above that are to be met when a general meeting has not already been called (i.e. justification, auditor's letter and publicity) also apply when a new proposal is made in these circumstances. With regard to filing the accounts, the certificate will simply reflect the approval of the annual accounts and a supplementary certificate on the approval of the profit allocation proposal will be filed at a later date.

In addition to these two alternatives, and although not expressly provided for in RDL 8/2020, the annual accounts may be drawn up again and a new profit allocation proposal made, as indicated in the joint communication issued by the of the Spanish Association of Registrars and the CNMV. If the general meeting has already been called when the annual accounts are drawn up again, the meeting will have to be called off.

Recommendations by the prudential supervisory authorities on suspending dividend distributions and implementing buy-back programmes for remuneration purposes

On 27 March, the European Central Bank issued a recommendation on dividend distributions by credit institutions during the COVID-19 pandemic (ECB/2020/19). It repeals the previous recommendation to credit institutions on the distribution of dividends in 2020 for financial year 2019 (ECB/2020/1), and recommends that, at least until 1 October 2020, no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by credit institutions for financial years 2019 and 2020, and that credit institutions refrain from share buy-backs aimed at remunerating shareholders. The European Insurance and Occupational Pensions Authority issued an announcement in the same vein on 2 April.

MEASURES RELATED TO TRANSACTIONS ON NET SHORT POSITIONS

Temporary bans on transactions that create or increase net short positions

The CNMV has **banned transactions on securities and financial instruments that create or increase a net short position on Spanish shares listed on Spanish equity markets** (including the Continuous Market (*Mercado Continuo*) and the Alternative Stock Market (*Mercado Alternativo Bursátil*)). For the moment, this ban will apply from 17 March to 17 April 2020. The CNMV has also published a Q&A (last updated on 22 March) on the most common doubts regarding this ban.

The ban applies to any transaction on shares or related to indexes, including cash transactions, derivatives traded on equity markets or OTC derivatives, that creates a net short position or increases a pre-existing

one, even if this occurs during the same operating day. The net short positions taken through derivatives prior to the entry into force of the ban are not affected.

The prohibition **does not apply to** the following: (i) market-making activities, provided that the entities have notified the competent authority and regardless of the country where they are domiciled, and (ii) the creation or increase of net short positions (a) when the investor who purchases a convertible bond has a neutral position (between the position in the variable income component of the convertible bond and the short position that is taken to cover that element), (b) when it is covered by an equivalent purchase in terms of the proportion of subscription rights, or (c) through derivative financial instruments on indexes or baskets of financial instruments that are not made up of a majority of shares to which the ban applies and provided that they are derivatives (such as futures or options) traded in a trading venue. The creation or increase of net short positions through ETFs is also allowed, as long as the fund is not mostly made up of shares affected by the ban.

On the other hand, investors are not obliged to reduce their exposure if the net short position was taken before the temporary ban by the CNMV and is increased exclusively as a result of the change in volatility. Furthermore, these investors can roll over their short position in derivatives, provided that doing so does not increase the pre-existing net short position. By contrast, an investor with a long position through a derivative that hedges a short position on the shares subject to the ban must either maintain the long position and its coverage or undo both.

Obligation to notify net short positions of 0.1% or above of the issued share capital

ESMA has decided to temporarily require investors with **net short positions in relation to the issued share capital of a company which shares are listed on a regulated market of the European Union to notify the relevant national authority when the position reaches 0.1% or above** of the issued share capital following the entry into force of the decision.

The measure applies directly, and therefore entailed the obligation of holders of the relevant net short positions to notify as from the close of trading on Monday, 16 March. These temporary obligations apply to all natural or legal persons, regardless of their country of residence. However, the measures apply neither to shares listed on a regulated market when the main trading venue is located in a third country nor to market creations or stabilisation activities.

Nevertheless, this measure is impractical while the temporary prohibition to establish or increase net short positions on securities admitted to trading on the Spanish equity markets described above applies.

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