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Q&A COVID-19

Questions and answers to
frequent inquiries on
diverse legal matters.

summary of the week from
March 16 to 23

ENVIRONMENTAL

Currently, my company has an open environmental assessment procedure at SENACE. Is this assessment suspended or does it continue?

It is suspended. Urgency Decree 026-2020 establishes different type of exceptional and temporary measures to prevent the spread of the coronavirus in the national territory. This legal instrument states in its Final and Complementary Second Provision that, the counting of time limits for administrative procedures currently under revision subject to positive and negative silence are officially suspended for 30 business days; except for those that already have a decision from the authority but notification is pending.

Still, ministries might approve, by means of a supreme decree, the list of procedures that are not subject to the 30 business day suspension mentioned above.

This week I was supposed to submit my arguments to OEFA or, I had a scheduled oral report. Do I still have to comply with deadlines and do I still have to attend?

According to an OEFA statement, deadlines for ongoing procedures have been suspended, as well as other deadlines applicable to administrative filings.

AGRARIAN, FORESTRY AND WATER RESOURCES

Which staff, related to activities in the agrarian sector, are still allowed to transit?

In case of companies related to the agricultural sector, transit of the minimum necessary staff to carry out the following activities is permitted:

- Harvest of products nationwide.
- Maintenance of agricultural health.
- Transportation of food to processing and transformation centers, as well as storage, distribution and merchandising.
- Primary and secondary food processing centers.
- Collection and sale of agricultural and livestock food.
- Care and maintenance of plants, animals, agricultural and forestry activities.
- Elaboration and delivery of agricultural materials and supplies, which includes the import, formulation, transportation, distribution of seeds and plants; pesticides and fertilizers including their active ingredients, additives and packaging that are used for their formulation and use.
- Import and export of agricultural products.
- Transport of food products in ports and airports.
- Operation of the major and minor irrigation infrastructure for supplying water for the population and agricultural industry.
- Sale of food products in food markets, kiosks and supermarkets nationwide.

It is important that companies implement sanitation and rationalization measures in their facilities to contribute preventing coronavirus.

FOREIGN TRADE

Are the companies considered foreign trade operators (maritime agencies, shipping agencies cargo, customs agencies, bonded warehouses, among others), as well as related companies to the cargo or merchandise transport service can operate under the Supreme Decree N ° 044-2020-PCM?

On March 17, 2020, Ministerial Resolution N° 0232-2020-MTC/01.02 was published, in which the MTC establishes that no restrictions have been placed on the national and international transport of cargo and goods by land, water and rail, and that in order to carry out such an operation (of international transport or national) it is established that the following operators should continue to provide their services:

- general agencies,
- maritime agencies,
- customs agencies,
- cargo agencies,
- warehouses,
- logistics operators,
- suppliers of customs seals,
- suppliers of packaging material,
- pallet suppliers,
- vehicle custody companies,
- cargo inspectors,
- document delivery service providers,
- towing cranes,
- vehicle maintenance workshops;
- among others.

Therefore, companies that qualify as foreign trade operators (FTO) and those that provide the services described above may continue to operate with the aim of ensuring the international or national transport of cargo and goods by land, water and railway.

Following the issuance of the Supreme Decree N ° 044-2020-PCM; has the import or export operations of goods been restricted?

Pursuant to section 8.3 of article 8 of the mentioned decree, import and export operations are not restricted or limited, and foreign trade operators and public entities involved in these activities must continue to provide services to users, in order to allow the logistical flow of goods to and from the country. The Peruvian Customs Office communicated on March 16, 2020 that it will be open during the emergency period with restricted personnel, but sufficient to allow operations of customs activities.

Is the import and export activity in the country during the emergency period limited to any goods (basic needs) or is it open to any type of good?

International trade operations are not restricted or limited to a certain type of goods. Merchandise can be imported or exported, since, as mentioned above, these operations have been excluded from the border closure.

Has any amnesty or discretionary provision been established in the application or payment of fines by SUNAT for foreign trade operations during the emergency period decreed by the Government of Peru?

At this time, no special provision has been approved for exoneration of liability in the commission of customs offenses under the General Customs Law, other than or additional to those already approved by Legislative Decree 1433.

COMPETITION, CONSUMERS AND TELECOMMUNICATIONS

Can Indecopi regulate the prices of basic necessities under the declared emergency situation in the country?

Indecopi is an administrative entity that does not have the power to regulate prices in the market, since there is no price or tariff control for any product or service in the country, except for public services.

Indecopi, in its capacity as the National Consumer Protection Authority, can sanction suppliers who do not respect the prices they report or who agree to set them (concert), thus generating a detriment to consumers.

What will happen to the processing time of administrative procedures at Indecopi?

In accordance with the second paragraph of the second complementary and final provision of D.U. 026-2020, the calculation of the processing periods for administrative proceedings subject to positive and negative silence that are in progress to date (in entities of the Executive Branch such as Indecopi) is suspended from March 16, 2020 until April 28, 2020 (including), with the exception of those that have a pronouncement by the authority pending notification to the interested party. The Executive may approve by supreme decree the list of those procedures whose processing is not subject to the above-mentioned exception. Complementarily, by means of Emergency Decree 029-2020, this suspension of the computation of terms was extended to all other types of administrative procedures in charge of the entities of the Executive Branch, including Indecopi.

What happens if, as a result of the emergency measures, it is not possible to comply with the delivery of a good or service contracted by consumers?

The supplier of goods and services shall be exonerated from liability if it can be shown that the non-compliance had as its origin and direct cause the emergency measures and restrictions adopted by the State.

Can you share the information of employees who have been diagnosed with the COVID-19 virus?

Data related to health is considered sensitive data by the Personal Data Protection Act and its regulations. In this sense, they cannot be disclosed without the owner's consent. If information is shared, without such consent, companies might face fines of between 5 UIT (S / 21, 500.00) and 50 UIT (S / 215, 000.00).

Who can report on those who have been diagnosed with the COVID-19 virus?

The only official institution authorized to report confirmed cases is the Ministry of Health by virtue of its legal attributions. Thus, health establishments nationwide must implement the required security measures to guarantee the confidentiality of the information.

Will public telecommunications services (telephone, cable and internet) be suspended because of the state of emergency?

No. However, the Ministry of Transport and Communications is empowered to order the suspension of outgoing traffic (outgoing calls) and data (Internet) from the lines, if malicious calls (jokes, insults, silence) are made to the emergency, urgent and information centers. The suspension will last thirty (30) calendar days and some lines from which malicious calls were generated have already been suspended.

If I have not paid my telecommunications bill (fixed or mobile telephone, cable and internet) will my service be suspended?

No, Osiptel has provided by Resolution of the Presidency 00035-2020-PD/OSIPTTEL that, during the state of emergency, operators may not suspend or terminate public telecommunications services due to lack of payment.

ADMINISTRATIVE LAW

Is there a way to obtain a transit authorization for people while the restrictions on transit are in force?

Yes. Although there is no explicit rule on the matter, in the Peruvian Government's web platform, which can be accessed through the following link: <https://www.gob.pe/pasedetransito>, there is an option to generate, in a virtual way, a "special transit pass".

This virtual pass must be generated individually and is intended for people in the special regime of article 4 of the D.S. 044-2020-PCM and those who have to circulate in accordance with the provisions of the aforementioned standard.

To be generated, following information is required:

1. Nationality
2. Type of identification document
3. ID number
4. First and last names
5. Address
6. Cell phone
7. Email
8. Occupation
9. Workplace
10. Reason for which the pass is requested
11. Days for which the pass is requested
12. Affidavit

As a result, a virtual pass can be generated with the letterhead of the Peruvian National Police (PNP), which can be shown from cell phones or can be printed. This document also contains a code for subsequent verification of the permit or any modification of the permit, and its text indicates that it must be carried in order to move freely, along with the corresponding identity document.

Are public entities serving the public?

They are not, except for the entities related to the COVID-19 emergency, for example, the Ministry of Health, hospitals, medical post, firefighters, the Peruvian National Police, and other related entities.

Are the terms of the administrative procedures followed before different public entities suspended?

Yes, administrative procedures subject to positive and negative administrative silence are suspended for 30 business days, and this must be followed by all public sector entities. This exception can be restricted by the Executive Branch by means of a supreme decree.

Is there a safe-conduct regimen to circulate?

To date, there is no safe-conduct regimen to circulate throughout the national territory. We understand the Executive Branch is working on statute in this regard, and once it is issued it will be reported to our clients.

AERONAUTICAL LAW

Given to the total closure of borders, do Peruvians outside the country and foreigners have any option for their repatriation within the state of emergency?

In accordance with the provisions of the supreme decree No. 045-2020-PCM the General Direction of Civil Aeronautics (*Dirección General de Aeronáutica Civil*) has been exceptionally authorized to give necessary authorizations or permits for the repatriation of nationals and foreigners to their respective countries. This authorization is made only at the requests of the Foreign Affairs Ministry (*Ministerio de Relaciones Exteriores*) in relation with the official relationship of national and foreign personas traveling on the flights authorized by this decree.

Peruvians who return to the country due to the exceptional opening of borders must comply with the mandatory social isolation in accordance with the provision of the Health Ministry (*Ministerio de Salud*).

In addition to cross-border air transport, is national air transport restricted?

Yes. National and international passenger air transport may be carried out until 23:59 on March 16, which is restricted from 00:00 on March 17 until March 31.

Passengers that enter the country must comply with the mandatory 15-day period of social isolation set by the Government. Likewise, the crew is also included in said measure.

Is international airfreight restricted?

The international carriage of cargo is not covered by the restriction. However, the competent authorities may adopt measures to prioritize the entry of products from first need.

CORPORATE LAW

What happens with a call to a general meeting of shareholders whose dates coincide with the period of social isolation?

No general meeting of shareholders may be held during the Declaration of the State of Emergency. In this regard, unless any rule to the contrary indicates an express extension of these calls for specific days after the end of the social isolation, a new call must be made for a date later than indicated period of isolation.

Is it possible to publish new calls for applications in the Peruvian Official Newspaper?

The Official Newspaper *El Peruano* has informed that as of March 18, no publications will be possible for calls or similar events. The Official Newspaper where this type of publication is made is suspended until the

end of the quarantine. In cases of extreme urgency, duly accredited, the text will be published in the newspaper.

In the case of companies with widespread shareholdings (or with minority shareholders), is possible to force shareholders to hold a non-attendance meeting having already prior notice of a general meeting of shareholders in the form of a face-to-face?

Shareholders cannot be forced to participate in a non-face-to-face meeting in such cases. In these cases, it is recommendable to make a new call or wait for the pronouncement of entities of the Superintendencia of Securities Market (*Superintendencia del Mercado de Valores*) in the case of companies subject to its competition. In this regard, the MSE has indicated, for the cases of issuing companies with registered securities in the Public Registry of the Stock Market, which recognizes that during the quarantine period it will not be possible to hold mandatory annual meetings of shareholders, or any meeting called or to be carried out in that period.

Can the breach of contractual obligations be suspended?

In the cases of commercial activities that are not authorized (e.g. sales of essential products, fuels, medicines), force majeure may be invoked and thus suspend the fulfillment of the obligations, until the state of emergency ends.

What happens to notary services? Do these continue to be provided?

No, notary services have been suspended.

What happened to the registration procedures in progress in Public Registries?

The Public Registry has issued a statement noting that its offices will not provide service in person and that the expiration dates of procedures are suspended until attention to the public is regularized.

Can I apply the fortuitous event of force majeure in case of breach of obligations?

During the validity of the national state of emergency and quarantine, and due to the general prohibition on the displacement of the population, if this implies a legal impediment in order to be able to fulfill the obligations derived from a contract, the party that has been affected by the quarantine may allege majeure as a cause beyond his control that prevents them from temporarily fulfilling their obligations for the duration of the measure. In this sense, the party that invokes such event or cause of suspension of their contractual commitments may apply the clauses that in their respective contracts regulate or consider force majeure as an impediment.

In case there is no clause on the matter, the party can invoke article 1315 of the Peruvian Civil Code as well as supreme decree No. 044-2020-PCM that declares quarantine, a rule published in the Official Newspaper "*El Peruano*" on March 16 of 2020.

Despite what has just been stated in the paragraphs above, each case requires an analysis. For example, if the obligations of a party can be fulfilled or not in a virtual way that does not require displacement or mobilization, without prejudice to it, then it should also be analyzed whether it makes sense to comply with making a payment for a service or delivery of a good, which will be suspended by the application of force majeure derived from the declaration of the state of emergency and quarantine. In short, all the circumstances surrounding each contract must be considered.

What happens to a call to a general shareholders' meeting whose dates are within the period of social isolation?

Unless some norm or a norm to the contrary is published indicating an explicit extension of these calls for certain days after the end of the isolation period, a new call must be made for a date after the indicated period of isolation.

Can a general shareholders' meeting be held in a non-face-to-face meeting?

Yes, it is possible to hold the general meeting of shareholders in a non-face-to-face manner in case the bylaws allow it. If the bylaws do not indicate anything in this regard, in the case of a closed corporation (*sociedad anónima cerrada*) it is understood to be completely permitted; and in the cases of the other companies, the shareholders or partners may, for the purposes of determining the quorum, as well as for the respective voting and adoption of resolutions, exercise the right to vote electronically provided that it has a digital signature or by postal means considering that legalized signatures are required.

What happens if, because of the absence of logistics services or lack of workers, I cannot meet a delivery deadline for any product on the contractually offered date?

Given the current circumstances and the publication of recent regulations, a fortuitous event or force majeure may be invoked on the grounds that the circumstances and regulation would make impossible or extremely complicated or costly the fulfillment of obligations. This should exempt the company or person in general from any sanction for non-compliance or payment of penalties or default interests.

What happens if I am a tenant of a property destined for some activity that has been affected by the social isolation regulations? (for example: premises for restaurants or retail in general). Can I achieve any reduction in the rent?

It is a circumstance that would have to be analyzed on a case-by-case basis and according to the details that may be generated in the coming days. For example, if we are talking about stores that continue to operate (pharmacies or similar), the reduction ration is different compared to a restaurant. Even in these cases it would be necessary to consider if the government decides to allow delivery service. Undoubtedly, the circumstances create a space for conversation between the parties, since there is clearly an alteration of the foreseeable circumstances in which the rules of the contract were established.

What happens to contractual formalities that require the delivery of a legalized or notarized communication?

All these periods are suspended until the end of the state of emergency. The College of Notaries (*Colegio de Notarios*) has indicated that notarial activities, as well as the deadline for non-contentious procedures contained in notarial regulation, are suspended.

What happens with construction contracts?

If the exception does not apply, the suspension of activities is legally valid. As there are no services, the appraisals would not be paid, on the other hand, in terms of delivery times, they will have to be extended in the same proportion as the temporary impossibility.

FINANCIAL LAW, CAPITAL MARKETS AND BANKING REGULATION

What will happen to the deadline to protest securities?

The SBS, through SBS Resolution 1260-2020, has established an extension of 30 additional calendar days from the date of expiration of the legal period for the protest of securities. This applies to those securities that comply with the following:

- Those obliged to pay are domiciled in the Peruvian territory.
- The protest must be carried out in national territory.
- The securities must be in the possession of entities subject to control by the SBS, which on March 11, 2020 had valid deadlines to protest, but as a result of the decreed state of emergency, they could not be protested within the deadlines established by the specific regulations.
- It will be applied to all securities for which the protest deadline is until April 30, 2020. Consequently, for example, a security that expired on April 30, 2020, will be subject to a new extended protest deadline of June 1, 2020.

The aforementioned SBS Resolution contains an exhibit with the new protest deadlines.

Can the entities of the financial system modify the opening hours to the public?

Due to the particular situation that our country is experiencing, the Superintendence of Banking, Insurance and Pension Funds (SBS) has provided that the entities of the Financial System, Insurance, AFPs and Cooperatives may change the opening hours of their offices nationwide. To do so, each entity must establish its hours of operation, with a minimum of hours, which will be applied while the health emergency lasts, as well as the restrictions that exist for people's transit. The public must be informed of the new timetable established by the various media such as websites, notices at the doors of their agencies, social networks.

Will it be possible to reschedule the payment of debts with financial entities?

The Superintendence of Banking, Insurance and Pension Funds (SBS) authorized financial entities to reschedule the payment of their clients' debts in the context of the coronavirus health problem. The SBS has established certain details related to the power of companies in the financial system to make amendments in credit contracts that are not due to difficulties in the ability to pay borrowers, for purposes that are not considered refinancing. The plan applies to clients of the financial system that have not presented delays at the time of the emergency declaration. Having specified that companies in the financial system will be able to modify the contractual conditions of the various types of loans in general without the need to contact each client individually, without this modification constituting a refinance (or a deterioration in the credit rating of the debtors), as far as the total term of said credits does not extend for more than six (6) months of the original term, and as of the date of the emergency declaration, the debtors are up to date in their payments.

Have the deadlines for delivery of information to the Superintendence of the Stock Market (SMV) been suspended?

The SMV has issued Superintendent's Resolution 033-2020-SMV/02 effective March 21, 2020 establishing new deadlines for the delivery of information.

To whom does this rule apply?

- To issuers with securities registered in the Public Registry of the Stock Market - RPMV.
- To legal entities registered in the RPMV.
- To Collective Fund Management Companies.

It does not apply to entities supervised by the Superintendence of Banking, Insurance and Pension Fund Management Companies.

What are the new deadlines?

	Information	New Deadlines
a.	Audited annual individual financial information and annual report for 2019	30 June 2020

b.	Annual audited consolidated financial statements of the parent company of the aforementioned supervised subjects for 2019:	30 July 2020
c.	Annual consolidated financial information of the last parent companies of the referred taxpayers of 2019:	31 August 2020
d.	Individual or separate interim financial information as of March 31, 2020	31 July 2020
e.	Consolidated financial statements of the parent company of the supervised entities as at 31 March 2020:	15 August 2020
f.	Risk classification update reports prepared with annual audited financial information for 2019	31 August 2020
g.	Economic Group Information:	30 September 2020

Are important matters still being sent?

Yes, obligated companies must continue to send their significant events through the MVNET System. The SMV has made the following channels available in case they cannot send information through the MVNET:

- Telephone: 610 6300 (Annex 7062) from 8am to 10pm
- Mail: atencionsmv@smv.gob.pe

What if I was asked to provide other information?

Information required prior to the declaration of a state of national emergency will not be required. The SMV will communicate the new opportunity for delivery.

What about administrative procedures?

The computation of the periods of initiation and processing of administrative procedures at the MSE is suspended for 30 working days, starting on March 21, 2020.

What happens if I have securities registered in the Alternative Securities Market and I have to pay taxes?

The companies that participate in the MAV will pay 0% of the contributions to the SMV for the SMV Supervision Services generated in the months of March, April and May 2020.

Has trading in securities been suspended?

The services of securities trading, transfer of securities, delivery and payment of dividends, subscriptions and redemptions of quotas will be maintained.

LABOR LAW

Is the employer entitled to sanction workers who are forced to go to work or perform remote work or telework?

Yes, it's empowered. The time of legal quarantine does not create an exemption for the employee to be sanctioned in case they fail to comply with work obligations. If this happens, and depending on the If the employer is not satisfied with the seriousness of the offence committed by the employee, they are entitled to apply the principle of authority recognized in art. 9 of the Supreme Decree N ° 003-97-TR.

Is the employer required to provide workers who perform on-site PPE to prevent the spread of COVID-19?

Yes, article 4.1.3 of the Ministerial Resolution N ° 055-2020, establishes that it is the employer's obligation provide employees with appropriate and sufficient hygienic material, as well as the recommendations issued by the occupational physician of the company according to the environment and work environment in relation to the job to prevent the spread of COVID-19.

Which employers can perform work activities during the quarantine period?

Companies that can perform activities during the government quarantine period, are those that perform the following essential activities:

Workplaces dedicated to the acquisition, production and supply of food, including their storage and distribution for sale to the public; acquisition, production and supply of pharmaceuticals and basic necessities; assistance and care for the elderly, children, adolescents, dependents, people with disabilities or in a situation of vulnerability; financial entities, insurance and pensions, as well as supplementary and related services to ensure their proper functioning (such as monitoring and systems); production, storage, transport, distribution and sale of fuel; hotels and accommodation centers, only to comply with the quarantine; media and call centers, the latter only for essential services.

In addition, labor, professional or business services are allowed to guarantee the services of food supply, medicine, water, sanitation, electric power, gas, fuel telecommunications, cleaning and collection of solid waste, and funeral services.

Any other activity of a similar nature to those referred to or to be carried out by chance or force majeure.

And, by exception, in the productive and industrial sectors, the ministry of economy and finance (MEF) in coordination with the competent sector, may extend this list.

Which employers cannot perform work activities during the quarantine period?

Companies that cannot perform activities for the period of the quarantine ordered by the government, are those that do not perform essential activities.

If the employer performs non-essential activities, what alternatives do they have to continue working during the quarantine?

- a) Remote working, which is either mandatory or optional. It is mandatory for employers to provide this measure if they have employees at risk qualified as such by R.M. 084-2020-MINSA. It is optional to provide this measure for employers who do not have employees at risk. In both cases, remote working is imposed by the employer.
- b) Telework agreed with the employee.

Employer forced to assume costs of equipment used for teleworking.

What alternatives does the employer have if the work of his staff cannot be done by remote working?

In agreement with the staff, they may grant vacations, whether expired or advanced, leave with or without pay.

If there is no agreement between the parties, they may grant leave with recoverable earnings as determined by the employer.

What steps can the employer take if their income is affected?

Leave of absence without pay, reduction in remuneration, after agreement with their staff.

They may suspend your employment contracts without pay as an exceptional measure, and they must notify the Administrative Employment Authority of their decision. As a previous measure to the suspension, they can unilaterally declare the enjoyment of expired or advanced vacations of their personnel.

If the employer carries out essential activities, what obligations must they fulfil if they arrange for on-site work?

- a) Communication plan regarding prevention measures before the COVID-19 in charge of the Committee of Health and Safety at Work.
- b) Informative talks to prevent the spread of COVID-19 in the workplace.
- c) Provision of hygienic material to prevent the spread of COVID-19 at work.
- d) Apply cleaning protocols in the work center.
- e) Provide immediate attention in health insurance to workers suspected of having contracted the COVID-19 in order to carry out the corresponding medical evaluation.
- f) It is not possible to travel abroad for work.

What procedural labor effects does quarantine generate?

In the Judicial Branch, work has been suspended as of 16 March 2020 for a period of 15 calendar days.

Procedural deadlines are also suspended for this period.

In the Constitutional Court, all proceedings are suspended from March 16 to March 30 (including).

CRIMINAL LAW

What is the situation of the citizens who are intervened because they went out on the streets without any type of authorization and failed to comply with the devices set forth in the Supreme Decree 044-2020-PCM?

Those persons who are intervened for having infringed the rules established in the aforementioned decree declared a state of national emergency, will be taken to the police station in the sector to perform the police identity check. In this police unit, the person involved has the right to communicate with a family member or person of their choice and may not to be held for more than four hours; at the end of that period, they shall be released, in accordance with the provisions of Article 205 of the Code of Criminal Procedure.

And in the case of a citizen who is a reoffender, what could be their legal status?

Firstly, the National Police must keep a record book in which they record the proceedings, identification of persons, as well as the reason for and duration of such identification, having determined the repetition of the intervened. The latter may be arrested as the alleged perpetrator of the crime of violation of health measures, provided for in article 292 of the Criminal Code.

Art. 292: Whoever violates the measures imposed by law or by the authority for introduction into the country or spread of a disease or epidemic shall be punishable by imprisonment for a term of not less than 6 months or more than 3 years and with 90 to 180 day-fines.

Do the limitations on freedom of transit apply to foreign personnel?

These limitations do not apply to foreign personnel duly accredited in Peru from diplomatic missions, consular posts and representations of international organizations, provided that they transit in the exercise of their duties

What are the criminal consequences a person could incur if they obtain a special transit pass (PET) with information different from the activity which they perform?

In accordance with the provisions of the Ministerial Resolution 304-2020-IN, the PET has the character of an affidavit, so a person who inserts information other than the activity they are performing would incur the offence of falsehood. The generic nature of the offence is set out in article 438 of the Criminal Code. Similarly, such conduct would violate the presumption of truthfulness, as the police presume that the information inserted is true, so that the crime of falsehood would also be incurred declaration in administrative proceedings provided for and sanctioned in article 411 of the Criminal Code.

What about citizens, national, regional and local authorities who do not comply with, collaborate and obstruct the work of police and military authorities in the exercise of their functions?

In this case, such natural persons or their due representatives could be denounced by the crime of disobedience and resistance to authority provided for and sanctioned in article 368 of the Criminal Code.

What is the alternative solution proposed by the Government when a citizen cannot process the PET?

If a person is unable to process the PET via the website, they may go to the nearest police station in their sector to apply for authorization. It should be noted that the PET is valid for 15 calendar days.

What can a person do if they are caught in flagrant offence under Supreme Decree 044-2020? PCM?

In principle, given that the right of defense is a constitutional right, any person who is detained has the right to a phone call, and to be connected and advised by a lawyer of his/her choice, for which said lawyer in these circumstances only has to take and show his lawyer's card to the authority that requests it, and tell him that he is going to a certain police station or prosecutor's office to give advice according to law.

What can happen if I transit without being authorized to do so according to the cases of Article 4 of the Supreme Decree 44-2020-PCM?

The Armed Forces and the National Police are authorized to detain the person and conduct him/her to the police station in the area, in case he/she is intervened in transit without being covered by an exception.

How can I prove that I am entitled to transit in accordance with the cases of Article 4 of the Supreme Decree 44-2020-PCM?

To date, the people who can transit under the exception cases have been doing so with their photo identifications or documents proving their participation in the cases of exception. To date, no safe passage has been regulated, but it is possible that the Ministry of the Interior will dictate to the measures promptly.

Can criminal proceedings be brought for failure to comply with emergency measures issued by the Peruvian State?

According to Article 368 of the Penal Code, disobeying or resisting an order given by a public official in the exercise of his powers, shall be punished by a sentence of not more than two years. It should be noted that the rule exempts this sanction in case of resistance against "the detention itself". However, resistance or contempt for the order issued by supreme decree or derived rules must not be confused with resistance to the detention measure.

What to do in case of infringement of property owned by my company?

The Penal Code punishes the crimes of damages, theft and disturbances in its articles 188, 205 and 315; if they occur, they must be reported immediately to the police station in the area and to the prosecutors on duty that are in operation.

In which cases does the criminal judge have the authority to decide in the period of the state of national emergency?

It is only empowered to deal with cases of detained, requisitioned, determination of freedom, habeas corpus and matters of urgent concern. This in accordance with the Administrative Resolution 115-2020-CE-PJ dated March 16 of this year. In cases of family violence and actions of protection, jurisdiction will fall with civil or mixed courts.

When a person is considered to be aggrieved by a crime, where can they turn to file a complaint in this period of national emergency?

In this type of situation, the National Prosecutor's Office has ordered that shift and post shift prosecutors work in all fiscal districts, in order to receive and process criminal complaints. In addition, it has also been arranged that prosecutors of crime prevention and the specialized prosecution for crimes of domestic violence work.

TAX LAW

Do the deadlines for tax proceedings initiated before the declaration of a National Emergency continue to be calculated?

No, to date the computation of deadlines for tax proceedings has been suspended.

By means of the Second Final Complementary Provision of D.U. 026-2020, it has been established that the computation of the terms of the procedures subject to positive and negative silence in process is suspended for 30 working days, that is, from March 16 to April 28, 2020.

Among these tax procedures we can point out:

- Certification of recovery of invested capital (positive silence)
- Request for early recovery of VAT (IGV) (negative silence)
- Complaint procedure (negative silence)
- Application for refund of balance in favor of benefit - exporters (negative silence)
- Request for refund of undue and/or overpayments (negative silence)
- Request for deferment or fractioning of the tax debt (negative silence)

It is important to mention that, it is possible that the Executive Branch issues a supreme decree through which it approves a list of procedures, the processing of which is not subject to the measure of suspension of the above described term.

Likewise, by means of D.U. 029-2020, the computation of terms has been suspended for 30 working days for tax procedures that are not subject to positive or negative silence (regulated by D.U. 026-2020), as is the case with the appeals procedure before the Tax Court.

This suspension will operate from March 23 to May 6, 2020.

What will happen to tax debt deferrals or installments or refinancing that were scheduled to be paid on March 31, 2020?

These payments may be made until April 30, 2019, updating them with the respective interest moratoriums, for which - if applicable- the cause of loss of the respective deferral/fractionation/refinancing will not be applicable if the regularization of payment is complied with in the conditions described.

The payments that may be made pursuant to the previous paragraph are those programmed under the Resolution of the Superintendence 161-2015/SUNAT, Resolution of the Superintendence 199-2004/SUNAT, the Resolution of the Superintendence 190-2015/SUNAT or the Resolution of the Superintendence 176- 2007/SUNAT and, specifically, the following:

- The fractionation quota that expires on March 31, 2020
- The last installment due on March 31, 2020
- The deferred tax debt and its corresponding interest, which matures on March 31, 2020
- Deferral with fractionation whose deferral interest expires on March 31, 2020.
- Deferral with installments for which the payment of interest is due on March 31, 2020.
- The deferral with fractionation that expires on March 31, 2020
- Deferment with fractionation whose last installment is due on March 31, 2020

Can the advanced release of funds from a drawdown account be requested?

Yes, companies can request in advance the release of funds from drawdown accounts from March 23, 2020 until April 7, 2020, so they will not have to wait the first 5 business days of April to request such a return.

The request will correspond to the accumulated balance in the account until March 15, 2020.

Will sanctions be imposed for violations during the period of national emergency?

SUNAT will not sanction tax violations committed during the State of National Emergency, for non-compliance with formal tax obligations. No refund or compensation will be made for payments made by taxpayers until March 17, 2020, as a result of the infringements described above.

Have the deadlines for complying with monthly and annual income tax obligations been suspended?

SUNAT has issued a statement, providing for the extension of the deadlines for compliance with the monthly tax obligations of February 2020 for micro, small and medium businesses, as well as the extension of obligations regarding electronic books and records and information returns that expire in March. It is important to note that, in the case of individuals and MSMEs, provision have already been made for the 2019 income tax.

The same is not yet foreseen for large companies. As of last year, there has been a provision in SUNAT for the automatic extension of the deadlines for compliance with such obligations, when a state of emergency has been declared due to a "disaster" situation, within the framework of the legislation, which regulates the handling of disasters. However, as can be seen from the text of the Supreme Decree 044-2020-PCM, the declaration of an emergency is based on "serious circumstances affecting the life of the Nation".

What will happen to the deadlines of the ongoing audits and the attention in Taxpayer Services?

According to a statement published by SUNAT on its website, the scheduled audits and summons have been suspended, and there will be no service at Taxpayer Services Centers until March 31 of this year.

ELECTRICITY

Are the companies that provide the electricity service still operating normally?

Yes, they operate normally, because they are exempt from the emergency rule, as they provide an essential public service to the population. In this case, the companies that are within the chain of production and distribution of electricity (generators, transmitters and distributors) must operate.

Are the deadlines for filing complaints or challenges for claims derived from the public electricity service suspended?

Yes, they are suspended for a period of 30 working days.

Do electrical projects under construction have to be suspended during the emergency rule?

Yes, they have to suspend their activities because they are not within the exception of Supreme Decree 044-2020-PCM.

INFRASTRUCTURE

What happens with the execution of the concession contracts entered into with the Peruvian State during the state of emergency?

In general, the rules applicable to concession contracts that are executed under the of public-private partnerships, allow for the suspension of obligations due to force majeure.

The situation of state of emergency qualifies as a force majeure scenario. However, it would be appropriate to review the clauses of each contract to establish the formalities and procedures to be carried out in order to invoke the suspension of obligations, and the extent to which such suspension will take place.

What restrictions exist for the transport of cargo and goods during the state of emergency?

The transport of cargo and goods is not covered by the temporary closure of borders. Therefore, the entry and exit of goods from the country is guaranteed through enabled ports, airports and borders. In the case of restricted goods, the authorities may provide for special measures for their entry and exit. The transport of cargo and goods within the national territory is also not subject to restrictions.

LITIGATION AND ARBITRATION

Have the procedural deadlines in judicial proceedings at the national level been suspended?

Yes, the Executive Council of the Judiciary has declared the suspension of all procedural time limits for the period of fifteen calendar days, as well as the suspension of all work of the Judicial Branch on a national level.

Have time limits been suspended in arbitration proceedings?

It depends on whether the arbitration is ad hoc or institutional (arbitrations administered by arbitration centers). The arbitration centers of the Lima Chamber of Commerce, the Pontificia Universidad Católica del Perú and the Colegio de Ingenieros del Perú have communicated the suspension of all procedural deadlines. In the next few hours, we should see communications from other arbitration institutions. In the case of ad hoc arbitrations, the decision will finally be left to the respective arbitral tribunal.

IMMIGRATION

What will be the status of the files on immigration issues that have been filed in the Immigrations' office?

The files that are pending approval will be kept this way until April, when Immigration will resume its activities.

You should not leave the country if you have an administrative procedure underway without the 30 calendar days maximum travel permit.

What should I do if my immigration residency or temporary stay expires during the state of emergency?

Once the state of emergency ends and the borders are opened, you must not leave the country if your residence has expired or is very close to expiring until you have renewed your residence and have a travel permit for a maximum of 30 calendar days.

What will happen with the new procedures in the Immigrations' office?

The new appointments can be obtained from April onwards according to the indications given by the Immigrations' office once activities are resumed.

What will be the status of my appointment during the state of emergency?

All appointments will be rescheduled by Immigration. Attention to the public in all offices nationwide for all types of procedures is suspended for 15 calendar days from March 16 to March 30.

What are the administrative sanctions for excessive stay?

Immigration reported the suspension of administrative sanctions for a period of 15 days for those foreigners with immigration sanctions for excessive stay applicable at the time of exiting the country, as well as for

those who have entered national territory without making the respective immigration control during the emergency period.

MINING AND HYDROCARBONS

What happens to the development of mining activities during a state of national emergency?

The continuity of mining activities has not been contemplated within the exceptions to the state of national emergency. However, as this publication goes to press, the Ministry of Energy and Mines has announced that, by means of Official Letter 059-2020-EF/10.01 of March 17, 2020, the Ministry of Economy and Finance has given its agreement to the proposal which includes the mining sub-sector in the list of exempted activities provided for in Article 4 from the Supreme Decree 044-2020-PCM, in order to guarantee the maintenance of critical operations with the minimum indispensable personnel, in safety, health and environmental conditions, in the following terms:

"Mining and related activities, including exploitation; profit; mine closure construction of mining projects declared to be of national interest; transport of minerals by non-conventional means and storage of concentrates and mineral products transformed."

The statement contains various provisions to be observed by the mining owners and is available on the institutional portal of the Ministry of Energy and Mines.

What about the administrative procedures in charge of the Energy and Mines sector?

According to the information provided by the General Secretary of the Ministry of Energy and Mines, as of March 16, the activities of the ministry and its attached public bodies (Ingemmet and IPEN), as well as public attention are suspended. In this regard, administrative procedures and processes of prior consultation are put on hold.

What happens to the hydrocarbon sector during a state of national emergency?

The concessionary companies will normally provide the natural gas supply service; and, with respect to the supply of fuel, continuity of production, storage shall be guaranteed, as well as transport, distribution and marketing of the same during the state of emergency.

FISHING

Has the inspection of the fishing sector been suspended?

In a press release, the Ministry of Production (Produce) has indicated that the circulation of the minimum number of personnel to carry out activities of inspection, control and monitoring of activities and aquaculture carried out by supervisory companies, testing and inspection bodies will be permitted. Also, it has established that in the case of reuse plants they must have control of Produce. This implies that the

fishing activity continues to be subject to inspection and may generate audit reports that recommend the initiation of sanctioning procedures if non-compliance is detected.

What about time limits in sanctioning procedures?

The deadlines for resolving sanctioning procedures have not been suspended (insofar as they are not subject to administrative silence).

What about the time limits for contesting or presenting argument for sanctioning proceedings?

No express provision has been made for suspension of the time limits for contesting. If the time limit for contesting expires during the state of emergency, insofar as the ministry's filing office is not functioning, that there is no virtual filing office and that the freedom of transit is limited, resources or arguments should be submitted on the first day that the activities are resumed.

Can hydrobiological resources be extracted?

It is permitted to carry out artisanal and industrial fishing activities aimed at supplying direct human consumption.

What documents must fishermen carry to go to work?

In order to work, they must carry the document that qualifies them as artisanal fishermen (as long as they are not within the population at risk).

Can companies that distribute hydrobiological products operate?

Companies dedicated to the distribution of hydrobiological products can continue their company's activities as long as the logistics for the supply chain to the supply centers are in place: supermarkets and markets.

Will the fishing terminals be open?

The fishing terminals of Ventanilla and Villa María del Triunfo will be open to guarantee the supply to the public in compliance with safety and health protocols.

What will happen with the administrative procedures in process at Produce?

Processing will be suspended for 30 days. In compliance with the regulations issued by the Government, the staff of the entity shall cease to work except for those linked to indispensable tasks referred to the food supply or emergency.

What will happen with the sanitary procedures issued by Sanipes?

Sanipes has stated that the deadlines for administrative procedures regarding infrastructure qualifications are suspended. It is understood that the rest of the procedures will continue to be carried out normally.

SELECTION PROCEDURES

What happens with the contracts that are being executed with the State, whose contractual object is not in the exception activities foreseen in the Supreme Decree 044-2020-PCM?

Contractors who are executing contracts with the State, whose activities are not included within the exceptions of D.S. 044-2020-PCM, a deadline for the payment of benefits, claiming that this is a situation that is not attributable to them and prevents them from fulfilling the contract. The extension of time may be requested for the duration of the emergency situation. The legal basis is as follows: Contracting Regulations approved by Supreme Decree 344-2018-EF. For the purpose of contracts for goods and services:

Procurement Regulations approved by the D.S. 344-2018-EF.

In the case of contracts for goods and services

Article 158. Extension of the contractual term

158.1. It is justified to extend the deadline in the following cases:

- (a) When the additional period is approved, insofar as it affects the time limit. In this case, the contractor extends the term of the guarantees they have granted.
- (b) For delays and/or stoppages not attributable to the contractor.

158.2. The contractor requests the extension within seven (7) business days following notification of the approval of the additional or the end of the cause of the delay or stoppage.

In the case of works contracts:

Article 197. Causes for extension of time

The contractor may request the extension of the agreed term for any of the following reasons beyond their control, only if they modify the critical path of the work execution program in force at time of the request for extension:

- (a) Delays and/or stoppages for reasons beyond the contractor's efforts
- (b) When an additional period is necessary for the execution of additional work. In this case, the contractor extends the period of the guarantees that they have granted.

For contracts resulting from bidding processes called before April 3, 2017, the legal grounds are the following:

Supreme Decree 350-2015-EF amended by Supreme Decree 056-2017-EF. For contracts of Goods and services (Article 140 of the Regulation) and for work contracts (Article 169).

What happen with contracts that are being executed with the State, and that their purpose is the delivery of food, pharmaceuticals, and assistance to health centers?

Whereas, in accordance with Article 2.1. of S.D. 044-2020-PCM, it is necessary to ensure the supply of food and medicine and the continuity of public services described in Article 4 of the aforementioned law, which in its section 4.1., subparagraphs a) and b), refers to the production and supply of food and contractors who have been executing contracts with the State, whose activities are related to the supply of food and medicine, they should continue these benefits.

For this purpose, the employer must apply for the relevant road traffic permits.

What will occur with scheduled hearings at the Supervisory agency for state procurement (OSCE) Tribunal, as well as Arbitral Tribunals?

All hearings scheduled by the OSCE Tribunal, as well as those of Arbitral Proceedings for disputes related to contracts with the Peruvian State, should be rescheduled to a date beyond the period of the sanitary emergency.

What will happen with the electronic submission of proposals?

As the SEACE facility continues its operation without any difficulties, proposals must be submitted electronically by the indicated date, unless the OSCE issues a communication to the SEACE stating that such activity is suspended. The logistical actions that must be taken to make the electronic submission possible are included in exceptional cases allowing physical mobility, given that these actions are necessary for the provision of work.

INTELLECTUAL PROPERTY

What is the effect of the rules that have declared the state of health emergency in the processes related to elements of industrial property (trademarks, patents or copyrights) processed before Indecopi?

According to Article 28 of D.U. 029-2020, the deadlines in all proceedings have been suspended for 30 working days from Monday, March 23 to Wednesday, May 6. Consequently, the deadline count is reactivated on Thursday, 7 May 2020, unless there is a rule extending the suspension.

BUSINESS RESTRUCTURING AND BANKRUPTCY LAW

What will happen with deadlines in insolvency proceedings?

Deadlines regarding pending insolvency proceedings have been suspended, as well as those related to administrative applications and expiration of obligations.

What will happen to Creditors' Meeting Sessions scheduled within the emergency period?

These sessions will not take place and will be rescheduled and duly published in INDECOPI Bankruptcy Bulletin, according to the provisions of Directive 009 2018/DIR-COD-INDECOPI.

MUNICIPAL REGULATION AND AUTHORIZATIONS

During the state of emergency, are the municipalities open? What is going to happen with the proceedings that have been initiated?

No, the municipalities are not and will not serve the public during the state of emergency. The procedures initiated and the deadlines have been automatically suspended until the activities are resumed. With regard to the application of positive and negative administrative silence, the deadlines have also been suspended for up to 30 business days.

Do they have oversight powers during the state of emergency?

Yes, in addition to the serenity and public clean-up service, they may intervene independently or together with the serenity personnel, the police and the armed forces, to verify compliance with the measures adopted by the government.

SANITARY REGULATION

In addition to the production, storage and distribution of essential goods and services (such as food and pharmaceuticals), are there other economic activities allowed in this quarantine period?

The law guarantees during this period the supply and access of food, medicines and other products of first necessity, so that those complementary and related activities or those that affect the productive chain and are decisive in achieving the objective of ensuring the supply of essential goods and services, shall also be exempt. In this situation, the suppliers of inputs, equipment and packaging, specialized service companies for agriculture and the pharmaceutical industry, providers of transport and storage services or companies specializing in replacement services at points of sale could be included, provided that their intervention is indispensable for the final supply of food, pharmaceuticals and other first need goods.

The State indicates that it will guarantee the food supply, but are there any limitations regarding what type of food?

The DS 044-2020-PCM guarantees "food" supply, so it is exempted from the restriction to transit freely to acquire, produce and supply "food", which also includes storage and distribution for sale to the public.

The standard refers to a general concept of "food", so the definition should be of "food" in CODEX which states the following:

"Food" means any processed, semi-processed or unprocessed substance intended for human consumption including beverages, chewing gum and any other substances used in the preparation, manufacture or "food" treatment, but does not include cosmetics, tobacco, or substances used only as medicines.

Under this definition, any food or beverage may be marketed, unless specifically provided for in some ministry, as in the case of the Ministry of Production, which in recent communications has that the food supply would not include alcoholic beverages.

RETAIL

Does the standard allow for services or products to be delivered?

The rule does not provide for this possibility for all commercial establishments; however, the Ministry of the Interior is evaluating the inclusion of this service. It should be noted that those companies that provide essential services such as supermarkets (only shipping of groceries, perishables, and staples) and pharmacies are providing delivery service.

Should Mall and Shopping Centers activities be suspended?

All activities in malls and shopping centers should be suspended. However, if you have a tenant or usufructuary within your shopping center that operates as a supermarket, financial institution or pharmacy, then they must be provided with access to these premises, since such activities must continue to provide their services regularly and must comply with the rules and timetables laid down by the Government.

Should Restaurants suspend their activities?

Yes, paragraph 7.4 of the Supreme Decree expressly states that the activities of restaurants and other food consumption centers must be suspended.

Does the ruling allow for the provision of services or the marketing of products via delivery?

The ruling does not contemplate this option; however, the Ministry of the Interior is evaluating the incorporation of this sort of service.

Can I provide services that are accessory or related to the list of essential services and goods allowed by Article 4 of the Supreme Decree, such as the acquisition of services, supply of pharmaceuticals and necessities, services to health centers, assistance to the elderly, among others?

According to Article 2 of the aforementioned Supreme Decree, public and private entities determine the complementary and related services for the adequate provision and access to the essential services and goods established in Article 4.

Therefore, we consider that complementary security services should be provided if a pharmacy, supermarket or financial entity needs it, considering that these entities rely on such complementary service to operate appropriately. It is also necessary for malls and shopping centers to grant access to the establishments. Another example could be a clinic or hospital's cafeteria, which should continue to operate given that medical personnel may require this facility. It should be noted that these complementary services to the essential services must also comply with the rules and timetables laid down by the Government.

If you have any questions or concerns, please contact us at:

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