



ESTUDIO
MUÑIZ

MUÑIZ
OLAYA
MELENDEZ
CASTRO
ONO
& HERRERA
Abogados



Interact Law

Peru, March 23 2020

COVID 19 FAQs regarding CORPORATE LAW in Peru

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.



ESTUDIO
MUÑIZ

MUÑIZ
OLAYA
MELENDEZ
CASTRO
ONO
& HERRERA
Abogados



Interact Law

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



ESTUDIO
MUÑIZ

MUÑIZ
OLAYA
MELENDEZ
CASTRO
ONO
& HERRERA
Abogados



Interact Law

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.

CONTACT

Frank Boyle

Email: munizlaw@munizlaw.com

www.munizlaw.com/contacto

Member of

Interact Law

www.interact.law