

A few considerations on the Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by the COVID-19, in relation to the insurance sector

On Saturday 14 March, the Royal Decree 463/2020 declaring the state of alarm for the management of the health crisis situation caused by the COVID-19 (“RDEA”) was published in the Official State Gazette (BOE).

Under this Royal Decree, a series of extraordinary measures of great relevance and impact have been adopted with a threefold objective: i) to protect the health and safety of citizens; ii) to control the spread of the disease; and iii) to strengthen the public health system.

Amongst these measures, and without prejudice to the existence of others that may be far more relevant for the purposes of our daily lives as citizens, we are going to focus our attention on those that have a direct or indirect impact on the Spanish insurance sector.

Possibility of keeping “insurance entities” open to the public

El Article 7 of the RDEA contains a limitation on the free movement of people on public roads so movement is only permitted in the situations expressly set out in it (acquisition of foods, pharmaceutical products and commodities, attendance to health-care centers, commute to the workplace, etc.). Among the permitted movements, the RDEA includes **the commute to financial and insurance entities**.

However, there is a certain inconsistency between Article 7 and Article 10 of the RDEA, since the former allows, as indicated, the commute to insurance entities, and yet the latter does not include these establishments as an

exception to the suspension of the opening to the public of establishments and retail shops.

In any case, since movements are allowed in order to go to this type of entities, there seems to be no doubt that “insurance entities” (meaning, in our opinion, insurance companies, intermediaries and underwriting agencies) will be able to remain open to the public during the period of the state of alarm. Of course, nothing would prevent these entities from deciding not to offer this service to the public, or to offer it in a non-presential or telematic way. This would be a purely business decision, although the vast majority of insurance companies and mediators have already implemented teleworking plans and plans to provide services to their customers in a non-presential manner (telephone, e-mail, social networks, Skype, etc.).

Proceedings before the Directorate General of Insurance and Pension Funds (DGSFP)

What happens during this period with the proceedings that are being handled by the Spanish insurance supervisor, the DGSFP?

The answer to this question is found in the third additional provision of the RDEA. According to this provision, as of its entry into force on 14 March 2020, the terms are suspended and the deadlines for the processing of proceedings by public sector entities, which naturally comprise the DGSFP, are interrupted. These deadlines will only be resumed when the RDEA (or its extensions) ceases to be in force.

Consequently, and on the basis of the foregoing, **the terms are suspended and the deadlines for the processing of ongoing proceedings before the DGSFP are interrupted** for the duration of the state of alarm.

The third additional provision contains, however, **two exceptions** to this suspension of terms and interruption of deadlines:

1. The relevant authority may, by means of a reasoned decision, adopt any strictly necessary organizational measure in order to avoid serious damage to the rights and interests of the interested party in the proceedings and provided that the interested party agrees, or when the interested party agrees that the deadline is not suspended.
2. This shall not apply to proceedings and decisions relating to situations closely linked to the facts justifying the state of alarm.

Obviously, in many proceedings brought by individuals, it will be in their interest to ensure that these proceedings are not suspended, but that deadlines are met and that the corresponding administrative decision is issued (for instance, in the case of applications for the registration in the register of mediators, non-objection requests to the acquisitions of significant holdings, etc.). In these cases, the DGSFP may decide, by means of a reasoned decision, not to suspend the proceedings, in order to avoid a serious harm to the administered party. Since the DGSFP is empowered to agree the non-suspension, entities may request this non-suspension and try to convince the administration that suspension will cause them serious

harm, and that this can only be avoided if the proceeding continues until it is resolved.

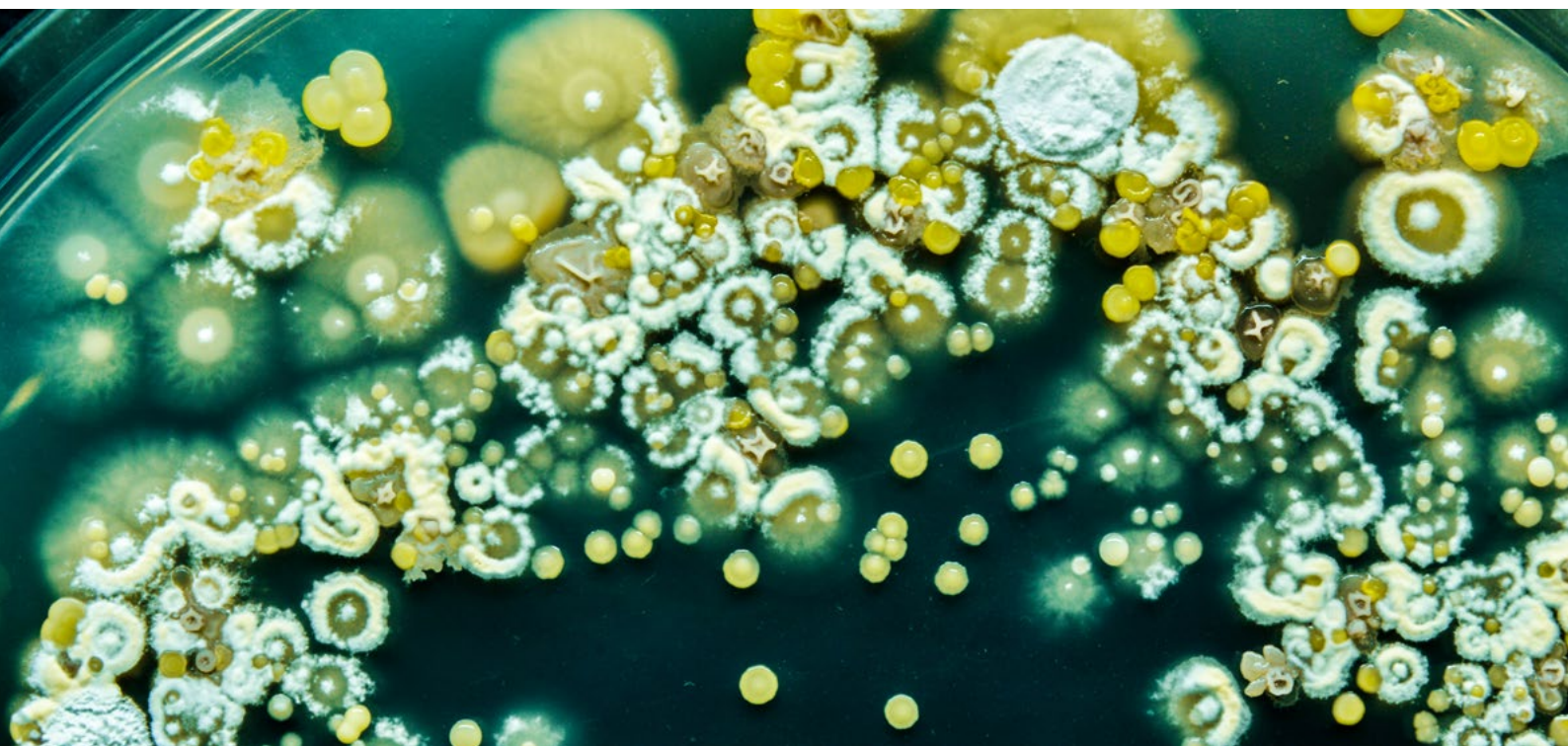
Finally, one could wonder whether it is possible to begin an administrative proceeding before the DGSFP during the state of alarm (e.g. to request an authorisation). The RDEA does not expressly refer to this matter, but we understand that it is possible to initiate an administrative proceeding at the request of an interested party, although, once the request has been submitted, the treatment to such proceeding will be the same as for ongoing proceedings (i.e. the proceeding will be automatically suspended, unless the DGSFP agrees otherwise by means of a reasoned decision).

Ongoing judicial proceedings

Another relevant question that arises is: what happens to ongoing judicial proceedings?

Under the second additional provision of the RDEA, as of its entry into force on 14 March 2020, **procedural terms are suspended and all deadlines provided for in procedural laws for all jurisdictional orders are suspended and interrupted**. These terms will only be resumed upon the expiry of the RDEA (or its extensions).

In line with this, in an extraordinary session held on 14 March 2020, **the Permanent Commission of the General Council of the Judiciary** agreed to suspend all scheduled hearings and procedural deadlines throughout the country, except in cases of essential services (judicial actions which, if not carried out, could cause irreparable harm, urgent confinements



under article 763 of the Civil Procedure Act, adoption of precautionary measures or other actions that cannot be postponed, measures for the protection of minors under article 158 of the Civil Code, services before the duty courts of violence against women, etc.).

Again, a number of **exceptions** to this suspension and/or interruption have been set out in the RDEA:

1. **Regarding criminal jurisdiction:** the suspension and/or interruption does not apply to habeas corpus proceedings, to proceedings entrusted duty courts, proceedings with detainees, protection orders, urgent prison surveillance proceedings and any precautionary measures relating to violence against women or minors. It may also be agreed by the competent judge or tribunal to carry out those judicial actions which, because of their urgent nature, cannot be postponed.
2. **With respect to all other jurisdictional orders:** the interruption does not apply to: i) the procedure for the protection of the fundamental rights of the person provided for in Articles 114 et seq. of Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction, nor to the processing of the judicial authorizations or ratifications provided for in Article 8.6 of the aforementioned law; ii) collective conflict proceedings and proceedings for the protection of fundamental rights and public freedoms regulated by Law 36/2011, of 10 October, which regulates the labour jurisdiction; iii) judicial authorizations for non-voluntary confinement on grounds of mental disorder provided for in Article 763 of the Civil Procedure Act; iv) the adoption of protective measures or provisions for the protection of minors as provided for in article 158 of the Civil Code.

Furthermore, the RDEA also includes a final provision, so that the judge or tribunal may also agree to take those measures that are necessary to avoid irreparable damage to the rights and legitimate interests of the parties in the proceedings.

Thus, in general, provided that the above exceptions do not apply, any deadline that had begun at the time the RDEA came into force (deadlines to file a statement of defense, an appeal, to challenge a liquidation of interest or costs, to make allegations, etc.), has been suspended until the RDEA (or any of its extensions) ceases to be in force.

Likewise, any hearing scheduled in the next two weeks (preliminary hearings, trials, etc.) has also been suspended, having to wait for the corresponding court or tribunal to decide on the new date for such hearing.

Although unrelated to the RDEA, reference should be made at this point to the agreement reached on Friday 13 March 2020 by the Court of Justice of the European Union (“ECJ”) since this is relevant for the purposes of ongoing legal proceedings. On that date, the ECJ agreed a temporary restriction of its judicial activities, as well as a suspension of the hearings until 27 March 2020. Thus, until further notice, only urgent cases will be handled and/or processed by the Court.

However, and without prejudice to the fact that the ECJ will not temporarily handle cases (other than urgent ones), **the procedural time limits, including time limits for instituting proceedings, shall continue to run**, so parties are required to comply with those time limits (although they may invoke Article 45 of the Protocol on the Statute of the Court of Justice).

Legal proceedings pending to be initiated

Finally, how does this affect the statute of limitation and expiration periods for actions that have not yet been initiated?

This issue has also been resolved by the RDEA: by virtue of its fourth additional provision, **both the statute of limitation and expiry periods of all actions and rights are suspended for the duration of the state of alarm**. Therefore, since the entry into force of the RDEA on 14 March 2020, we must add the days of the effective duration of the state of alarm to any statute of limitation or expiration period that is in progress.

With regard to the statute of limitations, it is necessary to take into account the provisions of Act 42/2015, of 5 October, on the reform of the Civil Procedure Act, whose first final provision amended Article 1964 of the Civil Code and provided that personal actions that do not have a special statute of limitation period expire five years since the fulfilment of the obligation can be requested.

The transitory regime for existing relationships contained in this Act had recently been interpreted by the Supreme Court (Civil Chamber, Section 1), in its Judgment No. 29/2020, of 20 January. This Judgment included the different possible scenarios, concluding that:

“(i) Legal relations which arose before 7 October 2000: these would be time barred at the time of entry into force of the new law.

(ii) Legal relations which arose between 7 October 2000 and 7 October 2005: the period of 15 years provided for in the original wording of article 1964 of the Civil Code shall apply to them.



(iii) *Legal relations which arose between 7 October 2005 and 7 October 2015: in accordance with the transitional rule provided for in article 1939 of the Civil Code, the statute of limitation will not elapse until 7 October 2020.*

(iv) *Legal relations arising after 7 October 2015: the new period of five years applies to them, in accordance with the current wording of art. 1964 CC.”*

In what is of interest at this time, with respect to legal relations that arose between 7 October 2005 and 7 October 2015, in view of the suspension of the statute of limitation periods set out in the RDEA, it should be borne in mind that 7 October 2020 will no longer be the deadline for the exercise of such actions. The deadline (like any other statute of limitation or expiry period) will be extended by the effective duration of the state of alarm (fifteen days or, more likely, its successive extensions).

Final remark on the differences between suspension and interruption

As mentioned above, the RDEA regulates in the second, third and fourth additional provisions the “*Suspension of procedural deadlines*”, the “*Suspension of administrative deadlines*” and the “*Suspension of the statute of limitation and expiry period*”, respectively (and according to the titles of each provision).

However, the second additional provision refers to “*suspension of terms and suspension and interruption of deadlines provided for in procedural laws*”. Similarly,

the third additional provision states that “*terms are suspended and deadlines are interrupted*” for the processing of ongoing proceedings by public sector entities.

Therefore, what is the difference between suspension and interruption of a deadline?

In general, it is considered that when an **interruption** occurs, the original term is fully reinstated when the term is resumed. In contrast, in the case of **suspension**, once the term is resumed, the original full term does not begin again and only the time remaining when the suspension was agreed can be considered.

With regards to the **statute of limitation and expiry periods**, the RDEA only refers to the suspension (and not the interruption) of the deadlines. Therefore, the RDEA paralyzes the term for as long as the cause for suspension lasts (in this case, the state of alarm), and the term is resumed when this cause disappears, both for the statute of limitation and the expiry periods of actions.

The issue is less clear regarding **judicial and administrative proceedings**, as the RDEA includes references to both the suspension of terms and the suspension and interruption of deadlines. Therefore, this issue will have to be considered on a case by case basis, taking into account the criteria of the appropriate judge or tribunal or the appropriate administrative authority. However, a conservative approach, in general terms, would be to consider that the deadlines have been suspended and not interrupted.

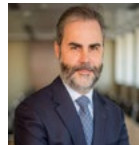
In short, the RDEA entails that:

- “Insurance entities” (meaning insurance companies, intermediaries and underwriting agencies) may remain open to the public during the period of the state of alarm.
- The terms are suspended and the deadlines for the processing of ongoing proceedings before the DGSFP are interrupted for the duration of the state of alarm, without prejudice to the power of the DGSFP to decide, by means of a reasoned decision, not to suspend them when this is deemed necessary to avoid serious harm to the administered party.
- As long as the exceptions provided for in the RDEA are not applicable, terms are suspended and deadlines provided for in procedural laws for all jurisdictional orders are suspended and interrupted. Any hearing scheduled for the next two weeks (preliminary hearings, trials, etc.), although this period will most likely extend beyond the first fifteen days, is also suspended.
- Both the statute of limitation and expiry periods of all actions and rights are suspended for the duration of the state of alarm. Therefore, since the entry into force of the RDEA on 14 March 2020, we must add the days of the effective duration of the state of alarm to any statute of limitation or expiration period that is in progress.

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