Spain is under the state of alarm declared by the Government and a number of urgent and extraordinary measures to deal with the economic and social impact of COVID-19 are now in force. Below is a highlight of some of them.

Temporary restriction to new foreign investments in Spain

The temporary restriction is applicable to all those investments as a consequence of which the investor has a participation equal to or greater than 10 percent of the share capital of a Spanish company, or when as a result of a corporate transaction, act or legal business, an effective participation in the management or control of said company is reached, provided that one of these circumstances occurs:

a) They are carried out by residents of countries outside the European Union and the European Free Trade Association. 

b) They are carried out by residents of countries of the European Union or the European Free Trade Association whose real ownership corresponds to residents of countries outside the European Union and the European Free Trade Association. This real ownership shall be understood to exist when either directly or indirectly the last beneficial owner controls a percentage greater than 25% of the investor's capital or of its voting rights, or when otherwise the last beneficial owner(s) exercise by other means the control, either directly or indirectly, of the investor.

Flexibility for private companies under certain circumstances

In addition to measures to support vulnerable individuals and groups (ie. extensions regarding mortgages and rents) and to guarantee liquidity to sustain economic activity, also measures to make the law more flexible for legal entities under private law have been approved, among which:

- suspension and extension of the deadline for drawing up the annual accounts (three months after the end of the alarm) and of the deadline for auditing;
- in the event of a cause for dissolution, suspension of the period for calling a meeting to agree on dissolution or amendments.
- if the cause for dissolution occurs during the state of alarm, the administrators will not be liable for the social debts incurred during that period.
- suspension of the term of the duty to apply for bankruptcy

Protective measures for consumers

Among those protective measures is the right to terminate certain contracts without penalty. If, as a result of the measures taken during the state of emergency, contracts are impossible to perform, consumers shall be entitled to terminate the contract within a period of 14 days. Companies are allowed to offer alternatives, from reimbursement to substitute vouchers, for the consumer to accept, with a maximum period of 60 days to negotiate. Companies shall be obliged to return the sums paid by the consumer, except for expenses incurred which are duly evidenced and informed, in the same form in which payment was made within a maximum period of 14 days.

Regarding package holidays that have been cancelled on the occasion of the COVID19 the tour operator or the travel agency shall deliver a substitute voucher for the same amount. If consumers do not use the voucher within one year since the end of the estate of alarm, they may request a refund of the payment made.
For the time being, those measures do not affect civil and commercial contractual obligations and their deadlines; in other words, the principle according to which agreements must be fulfilled and each party assumes the risks involved in fulfilling them ("pacta sunt servanda") continues to apply.

However, this principle has limitations specifically foreseen in legal texts, such as fortuitous event and force majeure, and even developed by doctrine and jurisprudence, such as the theory "rebus sic stantibus" (things being as they are).

These limitations, foreseen for situations of exceptionality and uncertainty, such as this one of COVID-19, can be used by the affected parties as mechanisms to react when due to extraordinary and supervening circumstances, external to their control, it is absolutely impossible or burdensome for one of them to comply with the obligation.

However, their application is not automatic, and will depend both on the specific circumstances and the wording of the contract, and on the causality between circumstance and performance and the proportionality of the intended modification.

It will therefore be necessary to examine each case in detail in order to assess the feasibility of both actively proposing contractual changes (e.g. changing the delivery or performance period) and reacting to the proposals of those with whom they have contracted (e.g. requests for a rent waiver).

The above is general information only. Any precise decision requires the advice of a lawyer. As always, ROS PETIT is at your disposal to assist you.