

TOP TEN CONSIDERATIONS FOR COVID-19 IN ECUADOR

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I. INTRODUCTION:

The Executive Decree No. 1017 of March 16th 2020 declared a State of Emergency throughout the national territory for sixty days. Since March 17th, the national Government has prohibited foreigners and Ecuadorian citizens from arriving by air, land or sea to the country. Domestic passenger flights including the Galapagos Islands have also been banned.

Likewise, internal daily mobilization has been restricted by making mandatory home office and imposing a curfew from 2 p.m. until 5 a.m. of the following day. There are very limited exceptions to such dispositions; food, medical, health, delivery, importing and exporting companies have been excluded and can work freely.

The last pronouncement of the National Emergency Operations Committee (COE) was on April 2nd and stipulated the following:

- From April 13th a traffic light will start restricting mobilization according to the state of the province: red, orange or green.
- There will be no classes in April.
- Ban on travel within the country.
- Ban on public events during April and May.

Statistics in Ecuador at the date:

Suspicious Cases	Confirmed Cases	Recovered	Deceased
5,137	3,747	100	191

Since the declaration of the State of Emergency in Ecuador, our Law Firm has received various queries in all areas of expertise. However, in this document we collect the ten most frequent asked questions.

II. TOP TEN CONSIDERATIONS FOR COVID-19 IN ECUADOR

COVID-19 LEGILASTION

1. WHAT DOES THE STATE OF EXCEPTION DECLARATION MEAN AND WHAT DOES IT ESTABLISH?

The Ecuadorian Constitution establishes that it is the power of the President to decree a state of emergency in case of serious internal commotion or public calamity, observing the principles of necessity, proportionality, legality, temporality, territoriality and reasonableness. Since the President does not require authorization to decree a state of emergency, he decides what extraordinary powers to assume and what rights and freedoms to suspend or limit.

A state of emergency may govern all or part of the national territory, and while it lasts the inviolability rights of domicile and correspondence, freedom of transit, freedom of association and assembly, and freedom of information may be suspended or limited.

The primary purpose of declaring a state of exception is to face the contingency raised through extraordinary mechanisms that allow solving or reducing its negative effects on people. In no case may the state of emergency interrupt the activities or the functions of the State.

The Executive Decree given on March 16th 2020 entered into force on the same date, contains 17 provisions that, mainly, establish the following:

- i. Declares a state of emergency for sixty days throughout the national territory in order to control the health emergency situation.
- ii. Secures the mobilization throughout the national territory of Central and Institutional Public Administration entities to coordinate efforts in order to mitigate the effects of CODIV-19.
- iii. Suspends the exercise of rights to transit, as well as association and assembly.
- iv. Declares a curfew as of March 17th 2020 in the terms established by the National Emergency Operations Committee, restricting freedom of transit and mobility at national level.
- v. Suspends presential work from March 17th to 20th 2020 for both public and private sector employees, safeguarding the right of the National Emergency Operations Committee to extend the period of suspension.
- vi. Orders that the State Functions and other national organisms issue the respective resolutions to suspend terms and deadlines in judicial, administrative processes and in alternative mechanisms of conflict resolution.

LABOR LAW

2. MY COMPANY IS ENLISTED AS AN EXCEPTION TO THE MOVILIZATION RESTRICTIONS, DO MY EMPLOYEES NEED A PERMIT TO COME TO WORK?

The National Emergency Operations Committee issued the guidelines for the use of a digital safe-pass that allows exempt industries to keep functioning at national level.

The guidelines differentiate between people and vehicles who do not need a safe-pass to circulate in compliance with their activities, and people and vehicles that do need a safe-pass.

People who do not need a safe-pass:

Government servers, diplomatic corp members, health servers, security personell, journalists, strategic sector employees (electricity, mining, hydrocarbons, postal service, garbage collection, aviation and telecommunications), people who work in companies or businesses in food production chain, beverages, medications and medical supplies, cleaning and hygiene supplies, export and import, and in the financial sector.

Vehicles that do not need a safe-pass:

Vehicles used in the logistics chain infrastructure, vehicles for the transfer and provision of services and operational execution belonging to the aforementioned sectors, used for financial services and transportation of securities, used in the transfer of hydrocarbons, product transfer vehicles for processing, packaging and transfer to ports, airports and company personnel, wholesale and retail distribution vehicles for cleaning supplies and hygiene, transportation of all kinds of food, beverages, restraint and animals for supply, supply of the Galápagos Governing Council and transportation of port and dock managers, shippers, stevedores and port operators, only in the development of their activities and distribution of medicines wholesale and retail (sale to address, only authorized for pharmacies on duty) and transfer of company staff.

People who do need a safe-pass:

To attend medical appointments, those who work in the related food production chain and supply (agriculture, livestock, fishing and aquaculture), those who work in the chain related to the production and distribution of medications and medical supplies and those who work in the chain related to the production and distribution of cleaning and hygiene supplies.

Vehicles that do need a safe-pass:

Vehicles for transporting raw materials, supplies, and services in the supply chain food production) and company personnel, for companies producing cleaning supplies and hygiene and company personnel and production chain of medicines and supplies, doctors and company personnel.

In the case of related chain safe conduits, these must be removed by a single time during the time of the emergency or until contrary provision of the authority. On the other hand, the safe conduits on the occasion of medical appointments or emergencies, their duration will be one day. The granting of safe conduct is an automatic process that does not require the manual approval, as it is an online self-declared procedure.

3. HOW DOES TELECOMMUTING WORK?

The Minister of Labor, through the agreement N° MDT-2020-076 of March 12th 2020, issued the guidelines for applying telework during the sanitary emergency period for public and private sector employees.

Teleworking is the provision of non-presential services on ordinary or special work days, where the worker carries out his activities outside his central workplace.

During the implementation of teleworking, the employer shall establish guidelines, control and monitor the activities that the emergent teleworker performs during the declared health emergency. The emergent teleworker will be responsible for the care and custody of the tools and / or equipment for the development of the emergent telework that are provided, as well as the custody and confidentiality of the information, which will be exclusively used for the execution of the work.

Once the emerging telework has ended, the employer must communicate the end of this modality to its workers.

4. HOW CAN THE WORKDAY BE AJUSTED?

As established in Article 1 of the Ministerial Agreement No. MDT-2020-077, the employer may reduce, modify or suspend the working day: *“The purpose of this agreement is to make viable and regulate the application of the reduction, modification or emergent suspension of the working day, during the sanitary emergency period due to the novel coronavirus (COVID-19).”*

During this health emergency, the employer in order to ensure its activities and / or production, may modify the workday of its workers (shifts and hours), including work on Saturdays and Sundays, without exceeding the maximum working day of 8 hours and 40 hours a week, with two consecutive days of rest. Working hours may be reduced to 30 hours per week in accordance with the provisions of Article 3 of the Ministerial Agreement No. MDT-2020- 077.

The employer must record the start and possible end date of the reduced working hours or the suspension of working hours, together with a list of all workers to be uploaded in Excel format, through the SUT platform.

For cases of It is important to remember that, in order to reduce employess working hours, a previous agreement with the worker is required, as established in the Labor Code.

We do not recommend reducing the working hours of women who are breastfeeding or in maternity leave. Doing so can mean contingents for the company.

5. WHAT WOULD HAPPEN IF MY COMPANY DECIDES TO SUSPEND WORKING DAYS, AND WHEN WILL MY WORKERS HAVE TO RECOVER THOSE HOURS?

For all those work activities that by their nature are impossible to execute by teleworking or their activities are not established in Presidential Decree No. 1017, the employer will order and communicate the suspension of the working day, which will be recovered once that the sanitary emergency period ends.

Currently, regular working day is suspended by decision of the National COE until April 12th 2020.

In order to recover those working days, the employer will determine the form and the schedule, being allowed to add twelve hours from Monday to Friday; and / or, eight hours on Saturdays.

CRIMINAL LAW

6. ARE THE PROSECUTOR' OFFICES WORKING?

The State Attorney General's Office, in the exercise of its powers, restricted attention to the public and staff attendance to their workplace as of March 16th 2020. In other words, ongoing investigations will not be promoted until everything normalizes.

Likewise, while the state of sanitary emergency lasts, the terms provided in the Law for prosecution instructions and judicial processes are suspended.

Said suspension does not apply to the Flagrancy Units, which continue to operate 24 hours a day, in order to solve flagrant crimes and contraventions in a timely manner. Cases in which people are detained after the fact is committed.

In order to not interrupt the provision of service in relation to the receipt of complaints of alleged crimes of public action, the Pichincha Judicial Police is providing due attention to citizens 24 hours a day, giving priority to cases against life, sexual violence, and disappearances.

On the other hand; and, in relation to acts of violence against women and family members, a service channel has been set up in the system of calls to 911 and 1800-CRIME (option 4).

CORPORATE AND COMPANY LAW

7. WHAT SHOULD MY COMPANY DO TO COMPLY WITH THE MANDATORY ORDINARY GENERAL SHAREHOLDERS' MEETING?

By mandate of articles 119 and 234 of the Companies Law, until March 31th of each year, the ordinary general meeting of partners or shareholders must be held to know and resolve about the financial and accounting information of the company. However, due to the health emergency situation that the country is going through, the holding of these meetings could be disrupted to the point of not being held, even more so if Resolutions SCVS-INPAI-2020-00002715 and SCVS- INPAI-2020-00002715 issued on March 16th by the national emergency do not extend the deadline.

Legal tools to comply with the provisions of articles 119 and 234 of the Companies Law:

First, there is the option of **deferral** contained in article 248 of the Companies Law and, which applies to both public and private limited companies. The deferral can be exercised by the shareholders or partners for not accessing the information related to the items on the agenda. In the specific case, this could occur due to the validity of the state of exception and curfew, which in turn results in the impossibility of obtaining and / or withdrawing the documentation. However, the meeting may only be deferred for three days.

Second, there is the option of a **second call** for lack of quorum provided for in article 237 of the Companies Law. Legal representatives may make a second call if and only if those attending the meeting do not represent half of the paid-in capital. The period between the first and second call must not exceed 30 days.

Thirdly, the use of **telematic means** as provided in article 233 of the Companies Law and developed in the Regulation of General Meetings of Partners and Shareholders of Companies. Thus, the general meeting may validly sit, meet and resolve any matter within its competence by videoconference. In this case, the partners or shareholders will be responsible for perfecting their appearance through electronic communication and, in addition, they must send an email to the Secretary of the meeting to record their appearance.

Finally, the option of **universal shareholders' meetings** provided for in article 238 of the Companies Law. In this case, the prior call requirement may be waived as long as all the paid-in capital is present. However, this option added to the possibility of appearing through telematic means, allows the meetings to be held until before March 31st 2020, despite the mobility restriction that rules in Ecuador.

8. WHEN IS THE DEADLINE TO PRESENT MY COMPANY'S FINANCIAL INFORMATION AS DETERMINED IN THE COMPANIES LAW?

The Resolution SCVS-INPAI-2020-00002715 of March 16th 2020, provided for the extension for the period of 30 days for the presentation of the financial information determined in article 20 of the Companies Law, counted from the expiration of the original term. In other words, until April 30th the legal representative and / or attorney general must deliver to the Superintendency of Companies, Securities and Insurance the annual documentation of national or foreign companies.

TAX LAW

9. CAN MASKS BE IMPORTED INTO THE COUNTRY, WHAT TARIFF REGIME WOULD BE APPLICABLE?

To import masks is not forbidden in the country and they can be used freely in any given manner. However, it should be considered that one of the effects of the current national state of emergency, is the State power to make "necessary requisitions". It could be the case that the State constitutionally "requires" imported masks for a public health issue as permitted by Article 165, numeral 8) of the Constitution and thereby makes masks available to the public or uses them for the purposes it deems necessary. The State would be constitutionally limiting ownership:

"Art. 165.- During the state of emergency, the President of the Republic may only suspend or limit the exercise of the right to inviolability of domicile, inviolability of correspondence, freedom of transit, freedom of association and assembly, and freedom of information, in the terms indicated in the Constitution.

(...)

8. Order the mobilization and requisitions that are necessary, and decree the national demobilization, when normality is restored.

The activity that is forbidden is the shipment from Ecuador to overseas of products such as masks and other medical supplies necessary to combat the health emergency.

On the other hand, the tariff subheading No. 6307.90.30.00 corresponds to masks, and it has a tariff rate of 0%.

10. CAN NATIONAL AND FOREIGN COMPANIES DOMICILED IN ECUADOR DEFER THE PAYMENT OF INCOME TAX FOR THE YEAR 2019? AND IF FEASIBLE, WOULD THE INSTALLMENTS GENERATE INTERESTS?

The NAC – DGERCGC20–00000025, issued by the Tax Administration, established that the Ecuadorian and foreign domiciled companies that cannot pay the entire income tax corresponding to the year 2019, which was to be paid in April 2020, may freely request that the payment be deferred in six (06) installments, this benefit being only for taxpayers who meet the following requirements:

- i. They must be micro-companies, whatever their activity, for which those taxpayers who in the fiscal year 2019 have obtained gross income of up to USD 300,000.00 will be considered as such.
- ii. Those who as of March 27th 2020 have registered the operation of airlines as the main economic activity in the RUC; the provision of tourist accommodation and / or food services; or, activities in the agricultural sector;
- iii. Those who as of March 27th 2020 have had the province of Galapagos registered with the RUC as their main tax domicile;
- iv. Those who are habitual exporters of goods, in accordance with current tax regulations; or, for whom 50% of their income corresponds to goods export activities.

No, payments made in installments will not generate any additional value for interest. Only in the event that the payment of a quota is not complied with, the State will proceed to collect interest corresponding to the unpaid quota, considering for the the time and the proportional value of the quota that was not paid.

III. CONTACT:



Dr. Jose Meythaler is president and main partner of Meythaler & Zambrano. He is an expert lawyer in pharmaceutical matters with more than 30 years of experience. His experience includes but is not limited to official control of drug prices and defence of the pharmaceutical and agrochemical market against unfair trade and anticompetitive practices.

He has vast experience with pharmaceutical and agrochemical patents. He has litigated frequently in both the administrative and judicial fields. He has successfully defended several companies' patents against applications for compulsory licences, and has made significant progress granting patents before administrative authorities and competent judges.

In compliance actions, Dr Meythaler is considered a national benchmark in obtaining judicial control measures for patent holders' rights in Ecuador. He is considered one of the most experienced pharmaceutical patent litigators in Latin America.

Dr Meythaler has been actively involved in regulatory issues and market access for pharmaceutical products, including biotechnology and agrochemical research. More recently, he has intervened in the implementation of test data protection laws for new pharmaceutical and agrochemical products in Ecuador.

Dr Meythaler's experience also includes specific taxes issues on foreign trade of medicines and defence in commercial matters related to the medicine and agrochemical industry, such as commercial intermediation contracts, research, personal data protection, compliance and other legal issues of the pharmaceutical industry.

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