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ABOGADOS

# LEGAL IMPACTS OF COVID-19

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## LEGAL IMPACTS OF COVID-19

The purpose of this special report (the "Report") is to inform the legal considerations and initial impacts that may affect the operation of a business as a result of the state of emergency for fourteen (14) days from March 16, 2020 (the "State of Emergency") declared through Supreme Decree No. 044-2020-PCM, Supreme Decree that declares a National State of Emergency due to the serious circumstances which affect the life of the Nation as the result of the outbreak of COVID-19, established by Supreme Decree No. 046-2020-PCM (hereinafter, the "Supreme Decree"). Furthermore, Emergency Decrees No. 026-2020027-2020, 028-2020 and 029-2020 are addressed in this report, which establish certain exceptional and temporary measures to prevent the spread of Coronavirus (Covid-19) in National Territory (the "Emergency Decrees").

It must be taken into consideration that new provisions are published by the Government during this period, which clarify, precise or broaden the provisions included in the scope of the State of Emergency. In this regard, this Report shall be updated as those additional or complementary regulations are issued.

## **I. State of Emergency**

### **Which productive sectors can continue to operate?**

Firstly, it must be taken into account that the purpose of the Declaration of Emergency established by the Supreme Decree is to order social isolation. In this regard, the purpose of this social isolation extends to all sectors and layers of the production chains. However, this rule seeks to ensure that access to utilities and basic goods and services is maintained at this particular juncture, such as: supply of food, medicines, continuity in the provision of water, sanitation, energy, gas, fuel, telecommunication, cleaning and solid waste collection services, funeral and other services that are established in such Supreme Decree. Additionally, obligatory social isolation of the population in their domiciles is ordered from March 18 at 20:00 hours to 05:00 hours of the following day (similar to the curfew), except for the personnel who is strictly necessary for the provision of basic services. It was also established that the use of particular vehicles is prohibited during the State of Emergency, except for those vehicles that are necessary for the provision of the abovementioned basic services.

Furthermore, the following activities are considered essential activities: assistance and care of the elderly, children, adolescents, dependents, persons with disabilities or vulnerable persons; activities of financial, insurance and pension fund institutions, as well as those complementary and related services that ensure its proper functioning; production, storage, transportation, distribution and sale of fuel; hotels and accommodation centers (only in order to comply with the established quarantine) and the media and call centers.

Finally, it is important to differentiate the State of Emergency that commenced on March 16, 2020 from the health emergency for ninety (90) days declared by Supreme Decree No. 008-2020-SA on March 11, 2020 (the "Health Emergency") which although is related to COVID-19, it is also aimed at making viable the Health Action Plan that provided the first general health measures.

## **Can the exception be extended to other sectors?**

The Supreme Decree provides for the possibility to include in the concept of accessible goods and services, those complementary and related services that are necessary for the provision of the basic goods and services referred to in the preceding paragraph. The rule also establishes that the public and private entities can determine which the "complementary and related" goods and services are.

It is understood that there are a lot of products and services that can be validly considered "complementary and related" to those expressly established in the Supreme Decree; however, we consider that the complementarity and relativity nature must be associated with the goods and services expressly classified by the rule as basic and those goods and services referred to above.

In this regard, we consider that, unless otherwise provided for by specific complementary rules, companies must identify within their activities those that met such characteristics (for example, if a good or service is necessary for the supply of food, it would be considered a complementary and related activity). Those activities that do not meet such complementarity and relativity conditions in relation to the basic goods and services –or that are not required within the framework of an Act of God or Force Majeure event– shall be considered in the restrictions imposed by the Supreme Decree, and therefore, these activities cannot continue to be performed or provided.

Furthermore, it should be considered that if there is a lack of clarity in some respects, the Law Enforcement agencies in charge of controlling compliance with the State of Emergency could act in a more restrictive manner, as it has been announced.

Without prejudice of the foregoing, through Official Letter N° 059-2020-EF/10.01 dated March 17, 2020, the Ministry of Economy and Finance approved the proposal of the Ministry of Energy and Mines in order to exempt the activities of the mining subsector from the provisions of restriction of free transit established in article 4 of the Supreme Decree. The conditions for this operation are described in Section 12 of this Report.

## **Should a Safe-Conduct pass be processed for circulation?**

The Government considered the issuance of special passes for circulation in public roads for the provision of the basic services referred to in article 4 of the Supreme Decree No. 044-2020-PCM. This pass must be carried at all times (printed copy or in the mobile phone), together with the National Identity Document.

According to the information published, the Ministry of Internal Affairs verifies the data that was recorded in the pass request with the various State databases such as SUNAT, RENIEC, Peruvian Police Force, the Judiciary Branch, the Ministry of Labor, among others, reiterating that the persons who obtain or submit a request despite they are not considered authorized employees can be subject to an arrest warrant and criminal complaint, which shall be controlled by the Peruvian Police Force and the Armed Forces. Although this pass can be obtained via the link <https://www.gob.pe/pasedetransito>, as of the date of this Report, the virtual tool informs that no more transit passes shall be issued until further notice.

Furthermore, through a joint communication dated March 18, 2020, the Ministry of Defense and the Ministry of Internal Affairs ordered that the companies and entities engaged in exempted essential activities must provide the Peruvian Police Force with the information of the vehicles authorized to circulate, and provide their personnel with a credential (ID badge or similar one) that identify them as a member of their company. In this regard, and to avoid any problems, it is suggested to issue a work certificate or additional document that establishes the necessity and essentiality of the activities performed by the bearer, as well as the place where the employee must perform their duties.



## **II. Specific Legal Impacts**

In addition to the social isolation and distancing, the State of Emergency has a series of impacts on the ongoing legal process and proceedings, which are detailed below. The aspects to be analyzed include:

- 1. Impacts on the labor sector**
- 2. Impacts on the fiscal sector**
- 3. Impact on the administrative sector**
- 4. Impact on the compliance with obligations**
- 5. Impact on the judicial and arbitration proceedings**
- 6. Impact on the criminal sector**
- 7. Impact on imports, exports and international trade**
- 8. Impact on the financial, insurance and pension fund systems**
- 9. Impact on the Securities Market**
- 10. Impact on holding Shareholders' Meetings**
- 11. Impact on the management of crisis, restructuring proceedings and insolvency**
- 12. Impact on mining operations**
- 13. Impact on consumer protection matters**
- 14. Impact on the health sector**



## 1. Impact on the Labor Sector

As part of the measures given by the Government for the State of Emergency, the Emergency Decrees establishes the power of the employer to unilaterally implement remote work during the Health Emergency period. The main conditions for remote work (including the conditions detailed in Supreme Decree No. 010-2020-TR published on March 24, 2020) are the following:

- It is carried out from the place of home isolation chosen by the employee.
- The employer must inform the employee of its decision to implement remote work by any physical or digital means, and also inform the employee of the safety measures and conditions to be taken. The employer must confirm that they trained their employees prior to the implementation of the remote work, once the employee provides that remote work shall be carried out through information technology applications different to the ones used before.
- The employer must specify the communication channel to be used by the employees so that they can report on the following: (i) the additional risks in safety and health matters they identify in the place where they perform the remote work; or (ii) the work accidents that may occur while they carry out their activities.
- The employee must be available during working day hours. The employee must also comply with safety measures and conditions, regulations on information security and data protection and confidentiality. The applicable working day shall be the one in force prior to the commencement of the remote work modality. The parties may agree that the employee freely distributes their working day as it suits them best according to their needs, respecting the maximum legal working day. The distribution of the working day can be extended up to 6 days a week as a maximum.
- The equipment and tools to carry out the remote work may belong to the employer or the employee. The parties may agree on the compensation of any additional expenses incurred for the use of the means or mechanisms to perform the remote work that are provided by the employee.



- The employee's remuneration or other economic conditions cannot be affected, except those that are subject to the attendance at the workplace.
- The employer must identify and prioritize the remote work of employees who are considered in the risk group by age and clinical factors. If remote work is not possible, a paid leave of absence must be granted.
- Remote work cannot be implemented for employees declared to have Coronavirus, in this case, the medical leave provisions shall apply. If the employee receives a monthly remuneration no greater than S/ 2,400, EsSalud's temporary disability benefit is payable from the first day.

Moreover, Supreme Decree N° 010-2020-TR included the following infringement as very serious infringements with regard to the labor provisions to prevent the spread of COVID-19:

1. Order, demand or allow the entry or presence of employees in the workplaces when: (i) their activity is not exempted from the National State of Emergency; or (ii) their work is not strictly necessary within the scope of the exception.
2. Failure to comply with the regulation applicable to remote work for employees considered in the risk group during the national and health emergency.

Due to restrictions on the right to free transit for people, employees must not attend their workplaces, except those engaged in the production or provision of the following basic goods or services:

- Water, sanitation, energy, gas, fuel, telecommunication, cleaning and solid waste collection services.
- Production, storage and sale of pharmaceutical products and basic need products.
- Health services.
- Assistance and care of the elderly and other vulnerable persons.
- Services provide by financial, insurance and pension fund institution.

- Services provided by hotels and accommodation centers, only in order to comply with the established quarantine.
- Services provided by the media and call centers.
- Services that are complementary or related to the ones referred to above.
- Any other activity of similar nature or that must be carried out due to an Act of God or Force Majeure event.

For purposes of posting employees who are required to carry out the employer's essential activities in relation to the items described above, they must arrange and obtain the special transit pass described in the preceding section.

If the implementation of remote work is not possible during the National State of Emergency, the employer grants the employees a paid leave of absence, whether or not they belong to a risk group (for example, over 60 years old). The conditions to grant this leave of absence are defined by the parties. In the absence of an agreement, the compensation for working hours is carried out after the National State of Emergency.

Furthermore, the following measures that apply to the private labor system must be taken into account:

- Working hours.- The employer is authorized to unilaterally modify and establish the shifts and working hours in a phased manner during the health emergency period as a preventive measure against COVID-19, without affecting the obligatory weekly rest (as stated in the introductory part of this section, the health emergency period is 90 calendar days from March 12, 2020). There is no need to follow the regular procedure for the modification of the working hours or shift.
- Continuation of basic services and goods.- During the State of Emergency, the employers must adopt all the measures necessary to ensure the provision and access to basic service and goods (for example, food, medicines and basic products, health centers, financial, insurance and pension fund entities, fuel, transport of cargo and goods, among others).

Finally, the joint communication of the Ministry of Internal Affairs and the Ministry of Defense of Peru dated March 20, 2020 established that the employees that perform activities that are not included in the exceptions of the State of Emergency and who are in the headquarters, facilities or campsites located in a region or province that are not their usual residence must comply with the quarantine in that place (for example, in the case of the mining campsites). Moreover, it was reaffirmed that the interprovincial transportation of passengers is prohibited, under criminal responsibility.



## 2. Impact on the Fiscal Sector

The Declaration of a State of Emergency has resulted in the establishment of certain measures for the fiscal sector, which are detailed below:

- a. Superintendency Resolution No. 061-2020/SUNAT amends the maturity schedule of the Annual Income Tax Return and the Financial Transaction Tax for tax debtors receiving third category income, and who in taxable year 2019 have earned a net income of up to 2,500 Tax Units (S/ 21'000,000.00) or who have obtained or received revenues other than third category income, which added up do not exceed such amount. The new deadlines are the following:

| LAST DIGIT OF TAXPAYER ID NUMBER AND OTHERS                                   | MATURITY DATE |
|---|---------------|
| 0   | June 24, 2020 |
| 1   | June 25, 2020 |
| 2   | June 26, 2020 |
| 3   | June 30, 2020 |
| 4   | July 1, 2020  |
| 5   | July 2, 2020  |
| 6   | July 3, 2020  |
| 7   | July 6, 2020  |
| 8   | July 7, 2020  |
| 9   | July 8, 2020  |
| Good Taxpayers and persons who are not obliged to obtain a Taxpayer ID number | July 9, 2020  |

A few days ago, through Superintendency Resolution No. 054-2020/SUNAT, this schedule (which provides longer time limits than the ones originally provided) only applied to the Taxpayers who received an income of up to 2,300 Tax Units (S/ 9'660,000.00) during 2019. With this new regulation, the number of Taxpayers who can benefit from the extension of this deadline has increased.

Therefore, the original maturity schedules for the annual declaration and payment for all other taxpayers not included in this provision is being maintained (second paragraph of the Seven Final supplementary provision of Superintendency Resolution No. 271-2019/SUNAT).

- b. Superintendency Resolution No. 055-2020/SUNAT establishes the following measures after the declaration of national emergency as a consequence of Coronavirus (COVID-19) for taxpayers receiving third category income, who in taxable year 2019 have earned a net income of up to 2,300 Tax Units (S/ 9'660,000.00) or who have obtained or received revenues other than third category income, which added up do not exceed such amount:

1. The due dates for the declaration and payment of monthly tax obligations of February 2020 are extended as follows:

| Month of the obligation | Due Date according to the last digit of the Taxpayer ID Number |               |               |  |
|-------------------------|--|---------------|---------------|--|
|                         | 1 and 2  | 3, 4 and 5    | 6, 7, 8 and 9 | Good taxpayers (0, 1, 2, 3, 4, 5, 6, 7, 8 and 9) |
| <b>February 2020</b>    | April 3, 2020  | April 6, 2020 | April 7, 2020 | April 8, 2020                                    |

2. The maximum deadlines with respect to the Register of Sales and Revenues and the Register of Electronic Purchases of Annex II of Superintendency Resolution No. 269-2019/SUNAT for February 2020 are extended, as follows:

| Month of the obligation | Due Date according to the last digit of the Taxpayer ID Number |               |               |   |
|-------------------------|--|---------------|---------------|---|
|                         | 2  | 3, 4 and 5    | 6, 7, 8 and 9 | Good taxpayers (0, 1, 2, 3, 4, 5, 6, 7, 8, and 9) |
| <b>February 2020</b>    | April 2, 2020  | April 3, 2020 | April 6, 2020 | April 7, 2020                                     |

3. The deadline with respect to the tax related books and records that are kept physically (Resolution No. 234-2006/SUNAT) and electronically (Resolution No. 286-2009/SUNAT) -which originally expired between March 16, 2020 and March 31, 2020- was extended until April 1, 2020.
4. The delivery deadlines for submission to SUNAT, directly or via OSE where applicable, of information statements and communications from the Electronic Issuing System, -which originally expired from March 6, 2020 until March 31, 2020- were extended until April 15, 2020.
5. The deadline for submitting the Annual Declaration of Transactions with Third Parties (DAOT),-which originally expired from March 16, 2020 to March 31, 2020- were extended until April 7, 2020.
6. It is ordered that these new due dates shall be applied in order to account for the deadlines that taxpayers have to submit a request for the refund of credit balance in connection with the profit from March or later months.

Therefore, the original maturity schedules for the annual declaration and payment of all other taxpayers not included in this provision are maintained to date.

- c. Through Superintendency Resolution No. 058-2020/SUNAT, the following has been established:
  - Tax deferral and/or differ payment.- It is ordered that for all tax debtors who were granted a tax deferral and/or differ payment benefit until March 15, 2020 (including major taxpayers), the installment that becomes due on March 31, 2020 shall not be counted for the loss of the tax deferral and/or differ payment benefit if it is paid until April 30, 2020, with the corresponding default interests.
  - Free disposition of the balances of the SPOT account.- It is ordered that all taxpayers can request the free disposal of the amounts deposited in their SPOT accounts only once. The request shall include the balance accumulated in the account until March 15, 2020 and shall be submitted via SUNAT Online Operations between March 23, 2020 and April 7, 2020.

- d. Through Resolution of the Associated National Superintendency of Internal Taxes No. 008-2020-SUNAT/700000, it is ordered not to impose administrative sanctions on the tax infringements incurred by tax debtors in general during the State of Emergency, including those committed or identified between March 16, 2020 and the date of issuance of such resolution.

It is stated that the payments made until March 17, 2020 shall not be returned or compensated.

Given the extent and purpose of the regulation (applicable to all taxpayers, regardless of their annual revenue or the type of income they receive or generate), it can be concluded that it includes all type of infringements committed or incurred during the State of Emergency and that is related to the taxes administered by SUNAT.

The regulation above does not include the exemption from the default interests related to the failure to pay the corresponding taxes.

- e. Through the Amending Supplementary Provision of the Superintendency Resolution No. 058-2020/SUNAT, the deadlines with respect to the tax related books and/or records of micro, small and medium sized companies (with an income not exceeding 2,300 Tax Units during year 2019) which originally expired between March 18 and April 6, 2020, is extended until May 4, 2020
- f. Through article 8 of Emergency Decree No. 31-2020 published on March 24, 2020, SUNAT is empowered to officially return the income tax of year 2019 that was paid in excess by or withheld in excess from the individuals who received fourth and/or fifth category income, the returns should commence from the expiration date of the annual income tax return 2019.
- g. Through Board of Directors' Resolution No. 31-2020-OS/CD, the deadline for the declaration and payment of the Contribution by Regulation in favor of OSINERGMIN is extended from February 2020 until the last business day of April 2020. The deadline was originally due on the last business day of March.

h. Through Superintendency Resolution No. 060-2020-SUNAT, the companies that played the role of acquirer in the payment systems through credit and/or debit cards, as well as the operators and other parts, other than the operator, of irregular companies, consortiums, joint ventures and other forms of entrepreneurial cooperation can issue the authorized documents referred to in paragraphs j), m), n) and q) of section 6.1 of numeral 6 of article 4 of the "Regulation on Payment Receipts without using the Electronic Issuing System" until May 31, 2020.





### 3. Impact on the administrative sector

#### **On the calculation and compliance with the administrative obligations and deadlines**

The Second Final Supplementary Provision of the Emergency Decree No. 026-2020 establishes that the deadlines for processing the ongoing administrative proceedings subject to positive or negative silence (not including other type of procedures, such as the sanctioning procedures or those that arise from the contracts with the State, among others) are suspended for 30 business days starting from March 16. This rule shall only apply to the deadlines that the Administration Authority has to solve this type of proceedings, which must be extended for such time period.

Furthermore, Emergency Decree No. 029-2020 establishes that, as of 20 March 2020, the time limits for initiating and conducting administrative proceedings and any other proceedings of any kind are suspended for thirty (30) business days (including those regulated by laws or special provisions) that are subject to a deadline and are processed with entities of the Public Sector, and which do not fall within the scope of the Second Final Supplementary Provision referred to in the preceding paragraph, including those in progress as at March 20, 2020.

Most of the government agencies have suspended attention to the public and informed that their front desks are closed . However, the following must be considered:

- If there is the possibility that, within the period covered by the State of Emergency, documents may be submitted via email, the authorities should advance the submission of the document by said means, emphasizing that they have the right to expand or specify the documentation submitted while the term was suspended, as mentioned in the preceding paragraphs.
- There are certain activities that have not been affected by the State of Emergency, such as the provision of public services (electricity, telecommunications, and sanitation), health services, fuel services, supply of pharmaceutical products, financial institutions, etc. For those legal entities that provide these services, they must comply with the obligations and terms established in contracts or in the legal framework, provided that they are closely related to the continuity of the service they provide (for example, supply reconnection services).

On this point, it is important to emphasize that the goods and services on which said restrictions have been established must consider what is meant by "essential" even within these same industries or sectors.

- Administrative or commercial obligations that are not indispensable for the continuity of the provision of said service must be understood as suspended by the State of Emergency. For example, obligations regarding the settlement of claims or sales of accessory products to essential service (i.e., sales of internet packages by telecommunications companies) are suspended.

### **On state biddings and procurement purchasing processes**

On March 17, 2020, the General Supply Directorate of the Ministry of Economy and Finance published in the Official Gazette El Peruano, the Board Resolution No. 001-2020-EF-54.01 which provides for the suspension of deadlines for selection procedures and other provisions regarding supply in relation to the State of Emergency.

Said rule suspends, from March 16, 2020 and for fifteen (15) calendar days, that is, until March 30, 2020, the calculation of the terms related to:

- The selection procedures, under any contracting regime, called prior to March 16, 2020, with the exception of those that are related to the obligation to guarantee the provisions of the Supreme Decree;
- The improvement of public contracts to be concluded, reiterating the exception indicated in paragraph (i); and,
- The processing of administrative sanctioning procedures by The Supervising Agency of the Government Procurement (OSCE).

From March 31, 2020, the calculation of the terms of the suspended action will be resumed. Thus, for example, in the framework of a Public Tender, if the issuance of the Statement of Acquittal of Queries and Observations was suspended on the third day of the maximum period of five (5) days that the Selection Committee has for such purposes, once the calculation of terms is resumed, said document shall be issued within two days that complete the maximum term.

Said suspension operates by regulatory mandate apart from the records that have been carried out by the convening Entities between March 16 and 17, 2020 in the Electronic System of the Government Procurement (SEACE), once the declaration of emergency is known.

On the other hand, in sanctioning matters, said suspension will have a significant impact on the

calculation of the statute of limitations of the punitive power of the State Contracting Court. As it is known, as a general rule, the statute of limitation is verified three (3) years after the alleged commission of the imputed infringement was committed, except when the infringement consists of having presented false documents in which case it is seven (7) years.

In another order of considerations, although the standard issued by the MEF does not address this matter, we recommend taking into account the following with regard to the execution of contracts signed before March 16, 2020:

- The execution of contracts whose object is related to access to public services and essential goods and services is not suspended or deferred, in accordance with the scope defined in articles 2 and 4 of the Supreme Decree. In this case, the contractors must execute their obligations within the established deadlines, being subject to the application of penalties and other legal actions by the Contracting Entities.
- In the case of contracts that are not related to access to public services and essential goods and services, the configuration of a force majeure event may be invoked as a reason for extension of the term resulting from compulsory social isolation (quarantine), according to the procedure established in article 158 of the Regulation of the State Contracting Law.



#### **4. Impact on the fulfillment of obligations**

We consider that the limitation to freedom of transit decreed by the Peruvian State through the Supreme Decree could constitute a situation of force majeure regulated in article 1315 of the Civil Code, the same that states that "Act of God or force majeure is the non-imputable cause, consisting of an extraordinary, unforeseeable and irresistible event, that prevents the execution of the obligation or determines its partial, late or defective performance".

In accordance with the provisions of the Civil Code mentioned above, failure to comply with legal or contractual obligations relating to events classified as fortuitous event or force majeure may not be considered as imputable or punishable breach of the party who failed to fulfill such obligations. Consequently, under this general rule, there is no legal or administrative responsibility derived from the failure to comply with the legal obligations established in the applicable legislation.

In that regard, the fulfillment of certain obligations in the context of the State of Emergency and the limitation to free transit would be a fact that is beyond the control of the obligated parties, and, therefore, their failure to comply could not be subject to legal or administrative sanctions.

However, as described above, certain sectors and industries must continue to operate in order to ensure the supply of food and beverages and are exempted from the application of the restriction on free transit, in such cases; the situation of non-compliance could not be justified under the figure of a fortuitous event or force majeure. Notwithstanding this, we consider that said circumstances would have to be analyzed on a case-by-case basis in order to determine whether these specific circumstances could be included under the event of unforeseen circumstances or force majeure, considering the actions of the authorities supervising compliance with the State of Emergency (for example, if by action of the authority the obligation to transport food is prevented, among other cases).



## 5. Impact on judicial and arbitral proceedings

Regarding the attention and deadlines of the ongoing judicial and arbitral proceedings, the following has been determined:

- a. The governing body of the Judiciary has decided to suspend procedural and administrative deadlines while the state of emergency lasts. This means that the deadlines that were in progress are stopped and shall resume after the end of the fifteen calendar days, counted from Monday, March 16, 2020. The proceedings scheduled for this period are canceled.
- b. The continuation of the work of various administrative agencies and the operation of emergency courts of the Superior Court of Justice of Lima during the State of Emergency were ordered. Likewise, emergency courts were established, their jurisdiction was specified and the Combined Emergency Chamber was established in the Superior Court of Lima.
- c. In order to ensure the continuation of the work during the State of Emergency, the magistrates appointed in the emergency courts shall only attend to the serious and urgent cases mentioned in Administrative Resolution No. 115-2020-CE-PJ, and attend the respective offices when required.
- d. Attention was suspended in the Documents Filing Desk of all the Judicial Offices of the Superior Court of Justice of Lima. Likewise, the channels for the electronic filing of the different types of documents were specified.
- e. With regard to criminal material, it was established that there shall be judicial and Public Ministry assistance in cases involving detainees, complaints of flagrant crime and complaints in the process of crime prevention.

- f. The Constitutional Court has issued a statement indicating that the hearings scheduled within this period shall be rescheduled and that activities are suspended. It does not specifically refer to the suspension of time limits, but it is evident that it shall not be possible to make written submissions.
  
- g. Regarding arbitration proceedings, both the Arbitration Center of the Chamber of Commerce of Lima and the Center for Conflict Analysis and Resolution of the Pontifical Catholic University of Peru, have issued communiqués providing for the suspension of deadlines and the suspension of hearings scheduled for this period. In addition, the AmCham International Arbitration Center has announced that its offices shall be closed until further notice.



## 6. Impact in the criminal field

Failure to observe measures restricting the exercise of fundamental rights during the decreed State of Emergency may result in the commission of an infringement against public health by offenders or their representatives in the case of legal persons, Article 292 of the Code of Criminal Procedure penalizes those who violate measures imposed by law or authorities to prevent the spread of a disease, epidemic or plague.

Likewise, the resistance to abide by a specific order and legally imparted by one of the authorities responsible for ensuring compliance with the decreed State of Emergency (i.e. National Police, Armed Forces), Article 368 of the Code of Criminal Procedure provided that an offender may be charged with disobedience and resistance to authority.

Criminal laws cannot be applied without losing sight of the purposes they seek to protect. Thus, the Supreme Decree establishes within its purposes to guarantee the supply of food and medicine, as well as the continuity of water, sanitation, electricity, gas, fuel, telecommunications, cleaning and other services. To this end, Article 4 of the Convention establishes a series of exceptions to the restriction of the exercise of fundamental rights, the application of which must be interpreted based on the weighing of two interests; On the one hand, (i) the preservation of public health; and, on the other, (ii) the need to ensure the continuity of basic services that ensure the supply of food, medicine, electricity, gas, telecommunications, care for people in vulnerable situations, etc.

Therefore, in so far as this is an activity necessary to ensure access and operation of the basic services indicated in the Supreme Decree, in case the authority arbitrarily seeks to close down or impede their operation, the Office of the United Nations High Commissioner for Human Rights could be referred to the Office of the Prosecutor for Crime Prevention in order to avoid its closure, on the grounds of the imminent commission of an offence of abuse of authority. One of the bodies of the Public Prosecutor's Office that shall continue to function during the state of emergency is the Office of the Public Prosecutor for Crime Prevention.



## 7. Impact on imports, exports and foreign trade

Pursuant to article 8.3 of the Supreme Decree No.044-2020-PCM, the transport of cargo and goods for entry (imports) and exit (exports) to and from the country are not included within the closure of borders, also indicating that the competent authorities shall take measures to ensure these operations, which indicates a willingness not to affect their fluidity.

However, to date no complementary or development measures have been issued to regulate necessary aspects relating to, for example:

- ensure the timely numbering and operational process of import and export declarations;
- ensure the transport of goods to the premises of importers (consignees) or from the premises of exporters (consignors), as appropriate;
- ensure the participation of foreign trade operators (Customs Agents, Customs Warehouses, etc.) involved in import and export logistics;
- ensure the participation of the personnel of the importing or exporting company that is essential for the tasks of receiving the import cargo (for the purposes of storage) or dispatching the export cargo, as appropriate.

For now, Customs has prioritized foreign trade operations for food and medicine. It would be expected that, in the near future, a statement or precision standard would be issued on these and other issues that could affect foreign trade operations.

Likewise, through Resolution of the Deputy National Customs Superintendency No. 006-2020-SUNAT/300000, the Customs Authority approved to apply its discretion in order not to determine or sanction the infringements provided for in the General Customs Law, provided that the following conditions are met together:

1. That the infringement is included in the single annex that is an integral part of the aforementioned Deputy National Customs Superintendency Resolution No. 006-2020-SUNAT / 300000;
2. That the infringement was committed between March 12, 2020 and June 9, 2020;



3. That the infraction has been committed by a foreign trade operator, intervening operator or third party included in the single annex which is an integral part of the aforementioned Deputy National Customs Superintendency Resolution No. 006-2020-SUNAT/300000; and
4. That the omitted or correct information has been transmitted or recorded.

Likewise, it is established in said resolution that the return or compensation of the payments made in connection with the infringements subject to said resolution does not apply.





## **8. Impact on the financial system, insurance and pensions**

### **a) Non-suspended operations and customer service**

According to the Supreme Decree, financial, insurance and pension services are among the activities considered essential and, therefore, must continue to be provided during the State of Emergency.

As for the Superintendency of Banking, Insurance and AFP ("SBS"), it has communicated the suspension of face-to-face attention in its offices and customer service modules at the national level, indicating that the attention shall be given through our digital channels implemented for this. This suspension includes attention by documentary procedure or by a documents filing desk and any other face-to-face management during the term in which the State of Emergency is in force. Likewise, the deadlines applicable for administrative proceedings before the Department of Citizen Services have been suspended.

### **b) Rescheduling of payments**

Furthermore, in 2010 the SBS issued provisions allowing financial system entities to make amendments to credit contracts in order to reschedule the payment of their clients' debts without this implying a refinancing, provided that said rescheduling is not linked to difficulties in the debtor's capacity to pay. In this connection, the SBS has determined that only debtors who have not submitted arrears in their payments at the time of the declaration of the State of Emergency shall be able to access these rescheduling, being the obligation of financial entities to carry out the evaluation in each case, to have the corresponding supporting documentation included in the respective debtor's file and making the relevant reports to the SBS on this matter.

### **c) Administrative deadlines**

Through SBS Resolution No. 1259-2020, the SBS has ordered the suspension, for fifteen (15) calendar days, of the computation of the administrative deadlines related to the functions and powers assigned to it. It has also ordered the suspension of the deadlines set for the virtual delivery of information to the SBS, as well as the deadlines referred to in articles 252 (limitation period for determining the existence of administrative infringements) and 253 (limitation of the enforceability of fines imposed) of the LPAG.

By means of multiple trades signed by the competent Deputy Superintendents, the SBS shall establish the measures, supplementary instructions and exceptions applicable to the systems supervised by the SBS that are necessary for the implementation of the aforementioned.

Likewise, with regard to the Central Reserve Bank of Peru ("BCRP"), on March 20, the BCRP issued Circular No.0009-2020-BCRP whereby it considered the deadlines suspended during the validity of the State of Emergency. These deadlines were set for undertakings in the financial system to send the requested information to the BCRP, except for the deadlines applying to the following information:

- Currency exchange reports referred to in Circular No. 043-2014-BCRP.
- Money market interest rate reports referred to in Circular No. 0038-2017-BCRP.
- Report No. 5 and Annex 15-A referred to in Circular No. 0008-2020-BCRP and Circular No. 0031-2019-BCRP on domestic currency and foreign currency reserve, respectively.
- Annex No. 6, Form F, Annex No. 15-B, Report No. 3 and Report No. 4 with their respective annexes referred to in Circular No. 040-2018-BCRP and Letter No. 0037- 2018-BCRP on sending financial statements and supplementary information through the SIB-FTP System.

Additionally, the BCRP ordered that the hours of reception of the information referred to in the aforementioned regulations be made more flexible and additional means of communication with said entity shall be established, in coordination with the companies of the financial system.

### **a) Protest of Securities**

Through SBS Resolution No. 1260-2020, the SBS provided that the deadline for protesting the securities held by entities subject to the control of the SBS, and whose debtors are domiciled in Peru, or whose protest must be carried out in Peru, be extended for thirty (30) additional calendar days from the expiration date of the period that legally existed for making such a protest.

This measure applies to all securities (i) that, as of March 11, 2020, had a valid period to be protested but that, as a result of the State of Emergency, could not be protested within the statutory deadlines; and, (ii) whose expiration of the term of the protest occurs, even until April 30, 2020.

## **b) Electronic money**

As part of the measures that have been enacted on the occasion of the State of National Emergency and in order to encourage transactions with electronic money as a substitute for cash, on March 21, SBS issued Resolution No. 1262- 2020 through which it expanded the limits applicable to transactions with simplified electronic money accounts that were foreseen through the Electronic Money Transactions Regulation (SBS Resolution No. 6283-2013). The new limits are as follows:

- a) S/.3,000.00 per transaction (instead of S/.1,000.00).
  
- b) S/.10,000.00 as a consolidated balance of electronic money accounts of the same holder, under any modality, in the same electronic money issuer (instead of S/.2,000.00).
  
- c) S/.10,000.00 for conversions to electronic money accumulated by the same holder, under any modality, in the same issuer in a month (instead of S/.2,000.00).
  
- d) S/.15,000.00 for accumulated transactions (conversions, transfers, payments, reconversions, etc.) of the same holder, under any modality, in the same issuer in a month (instead of S/.4,000.00).

## 9. Impacts on the Stock Market

In response to the declaration of the State of Emergency, on March 16, 2020, the Superintendency of the Securities Market ("SMV") published a notice in which it reported certain measures adopted by said institution ("Warning"), which were subsequently supplemented or clarified through the publication of the Superintendent Resolution No. 033-2020-SMV/02 ("Superintendent's Resolution"). The main measures adopted by this entity are the following:

### **a) Suspension of reporting obligations during the period of the State of Emergency ("Period"):**

1. For issuers with securities registered in the Public Securities Market Register ("RPMV"), the financial reporting obligation, annual report, management report or any other periodic information whose deadline for submission is found within the Period was suspended. In this vein, the SMV recognized that during the Period it shall not be possible to hold the annual mandatory shareholders' meetings, bondholders' meetings, or any other meeting called or to be held in said period.
2. For the other entities under the supervision of the SMV, the obligation to send information to the SMV was suspended, including those mentioned in the preceding paragraph.

For its part, the Superintendent's Resolution approved the new maximum deadlines for the submission of the following information by issuers with securities registered in the RPMV, legal entities registered in the RPMV and collective fund management companies (collectively, the "Entities"), including that relating to the autonomous estates they manage, as follows:

### **Financial information and annual report (not applicable to entities under the SBS's supervision):**

- Audited individual or separate financial information and annual report for the 2019 financial year 2019: Maximum deadline for submission on June 30, 2020.
- Annual audited consolidated financial information for the year 2019:
- Maximum period for submission on July 31, 2020.

- Annual consolidated financial information for the financial year 2019 of the last parent companies of the Entities that is obligated: Maximum deadline for submission on August 31, 2020.
- Individual or separate interim financial information as of March 31, 2020: Maximum deadline for submission on July 31, 2020.
- Consolidated interim financial information as of March 31, 2020: Maximum deadline for submission on August 15, 2020.

### **Risk classification update:**

Updating of classification reports corresponding to the first semester of 2020 by risk rating companies, which must use audited annual financial information for the financial year 2019: Maximum deadline for submission on August 31, 2020.

### **Economic group:**

Annual update of economic group information: Maximum deadline for submission on September 30, 2020.

### **b) Obligation to send information by the MVNet System not suspended:**

In line with the provisions of the Notice, the Superintendents' Resolution establishes that the obligation to forward daily business records and prudential indicators by stockbroking companies; and the daily report of quotas, of unit-holders and of a quota value by the mutual fund management companies and the fund management companies that manage mutual funds.

Likewise, the Superintendent's Resolution clarified that the obligation to report significant events through the MVNet System, within the period established in the applicable regulation, also remains in force.

### **c) Suspension of other deadlines by SMV administrators and managers:**

According to the Notice, during the Period the deadlines that the companies have to attend to information or documentation presentation requests formulated by the SMV are suspended. This suspension was formalized through the Superintendent's Resolution, according to which the

enforceability of any obligation to submit information to the SMV established by rule or requirement prior to the declaration of the State of Emergency is suspended. Once the Period has ended, the SMV shall communicate the new delivery opportunity.

Likewise, the Notice stated that during the next 30 business days, all administrative deadlines that the SMV must observe to attend to requests, among others, are suspended. In this sense, the Superintendent's Resolution formalized the suspension of the computation of the deadlines of initiation and processing of administrative procedures in the SMV for the aforementioned 30 business days, but noting that said deadline shall be counted from March 21, 2020.

**d) Suspension of customer service and certain processes by the SMV:**

The Notice indicates that during the Period the attention to the public by the SMV is suspended and that no meeting shall be held, neither face-to-face attention, nor documentary attention to the public.

The Notice also announces that the summons for the selection of rating entities or any other similar, or equivalent, are suspended.

**e) Services that must be maintained during the State of Emergency:**

During the Period, the following services must be kept active:

- Trading of securities and transfer of securities between parent accounts of participants;
- Delivery and payment of dividends or any other right or benefit on securities registered in the RPMV;
- Subscriptions and redemptions of mutual fund shares; and,
- Price supplier by price supplier companies.
-

**f) Exceptional powers for mutual fund management companies and price provider companies:**

Through the Superintendent's Resolution, mutual fund management companies are empowered, during the Period, to modify the starting time of the validity of the quota value or cut-off time, as well as the customer service hours which must be communicated previously as a fact of importance and disseminated on the company's website.

Likewise, the companies supplying prices during the Period are empowered to modify the maximum time for the submission of prices and initial rates, which must be informed to the SMV and disseminated on the entity's website.

**g) Suspension of SMV contribution for issuers of the Alternative Securities Market - MAV:**

The Superintendent's Resolution established that the issuers that participate in the MAV shall not pay SMV tax for the months of March, April and May 2020.





## 10. Impact on holding Shareholders' Meetings

In view of the isolation measures, prohibition of movement and limitation of the right to the meeting decreed by the government, the general shareholders' meetings that have been called to meet on a date that is within the State of Emergency, may not be held, except in the case of sessions called for off-site use, in cases where this modality is allowed either by statute or by the General Companies Act (as is the case of closed public limited companies) and complies with the provisions laid down for this purpose.

Although, in accordance with article 8 of the Supreme Decree No., the restriction measures would allow the mobilization and implementation of activities designated as essential by the Supreme Decree, we consider that such provisions should be interpreted as being aimed at enabling activities which are indispensable for maintaining the provision of services within the scope of the Supreme Decree, which would not include participation in general shareholders' meetings or other corporate bodies.

Now, in relation to the companies under the supervision of the SBS, this institution has issued Multiple Report No.11-163-2020-SBS, noting that, in view of the impossibility of the general shareholder's meetings occurring in a timely manner during the State of Emergency, the annual mandatory meetings may be held after March 31, 2020, without prejudice to which institutions may hold them by alternative means to face-to face meetings; provided that the right to information and participation of all shareholders is guaranteed within the framework of the legislation in force.

Said interpretation could be extended to other companies of and shareholder's meetings, since, in the event that a second call has been made whose date is after the State of Emergency, we consider that said session could be validly held.

Without prejudice to the argument that, to the extent that the rules of quorum and majorities could be different in the case of a second call, a valid position would be to interpret that a new call would correspond (having been the first impossibility), we consider that the right of shareholders to meet as soon as they are able to do so should be safeguarded, that is to say, on a date of completion that is subsequent to the completion of the State of Emergency. Likewise, it should be taken into account that according to what was officially communicated, the publication of notices in the Official Gazette is not currently suspended and, therefore, there could be no publication of calls in the Official Gazette El Peruano during the State of Emergency.



## 11. Impact on crisis management, restructuring and insolvency

The coronavirus outbreak (COVID-19) has affected and shall continue to affect numerous companies throughout the world, a phenomenon that shall undoubtedly lead to a substantial increase in private and public restructuring, as well as insolvency proceedings worldwide. At the local level, government regulations related to the declaration of the State of National Emergency, while necessary and adequate to contain the spread of the disease, shall undoubtedly cause liquidity problems and financial stress in various companies, especially those that activities have been suspended and shall be closed throughout the term of the State of Emergency.

Although bankruptcy authorities shall not be available during the State of Emergency and it shall be difficult to take immediate action, it is important to try to anticipate the effects of the crisis and be prepared to implement the necessary measures to face the situation.

From this, private and public courses of action can be designed to overcome the immediate crisis, either in a scenario of private or public restructuring. Private restructurings often involve private debt renegotiation mechanisms with essential creditors (strategic providers, workers), of the debtor, refinancing of obligations to financial entities, the re-investment of capital or the issuance of commercial papers in order to exchange it for overdue debt, granting of guarantees, protection of production units, etc.

Alternatively, public restructuring involves the initiation of a preventive bankruptcy proceeding, which by its nature might be the most appropriate in these situations, or an ordinary bankruptcy proceeding, depending on the particular case. In this regard, the General Law of the Bankruptcy System establishes that a debtor may request the initiation of an ordinary bankruptcy proceeding provided that he is, at least, in one of the following cases: (i) more than one third of its total liabilities are due and unpaid for a period greater than 30 calendar days; or, (ii) that it has accumulated losses, net of reserves, the amount of which is greater than one third of the share capital paid. Likewise, any debtor may request the initiation of a preventive bankruptcy proceeding provided that he is not in either of the two previous cases.

Each legal strategy has its advantages and disadvantages and therefore the decision to opt for a private or public restructuring, and in turn, to choose the most appropriate mechanism, must go through a careful legal analysis. The table below summarizes the main advantages and disadvantages of both proceedings:

| No | Concepto  | Reestructuración privada                          | Reestructuración pública                        |
|----|---|---|---|
| 1  | Transaction costs   | Medium. It usually takes less time and resources. | High. It usually takes more time and resources. |
| 2  | Number of creditors that must be in favor of the proposed Restructuring Plan. | Hundred percent (100%).                           | Two-thirds (66.6%).                             |
| 3  | Property protection (suspension of individual executions)                     | No.   | Yes.  |
| 4  | Reputational risk   | Low   | High  |
| 5  | Obligation acceleration risk  | Low   | High  |
| 6  | Financing availability  | Accessible  | Not very accessible                             |
| 7  | Company control   | It is maintained                                  | It depends on the type of proceeding.           |

Taking all of the above into account, it is advisable that the financial aspects of dealing with this crisis should be accompanied by a proper evaluation of the aforementioned legal strategies and others that can help to overcome the economic crisis effectively.

The Study's restructuring and insolvency area is prepared and ready to work immediately on diagnosing the crisis and designing refinancing, restructuring and overcoming strategies, in the most efficient way possible according to the specific situation of the company.



## 12. Impact on mining operations

Through Official Report No. 059-2020-EF/10.01 of March 17, 2020, the Ministry of Economy and Finance exempted the activities of the mining subsector from the provisions limiting freedom of transit, contained in article 4 of the Supreme Decree, according to the following:

- The "mining units" were authorized to transfer the necessary personnel to the mining unit to ensure that their critical operations were sustained and restored to normal levels after the emergency. For this purpose, each mining owner shall define the minimum personnel (own and contractors) necessary to ensure the sustainability of critical operations.
- The mining owner must adapt and update the Emergency Preparedness and Response Plan in accordance with the provisions of Supreme Decree No. 024-2016-EM, Regulations on Occupational Safety and Health in Mining and the First Final Complementary Provision of the Decree Supreme No. 037-2017-EM.
- Each mining holder must approve and implement monitoring and safety guidelines during the period of mandatory social isolation in the Mining Units that guarantees health protection during the state of emergency.
- Mining holders must comply with the protocol approved by MINSA to prevent, contain and mitigate the spread of COVID-19, within the framework of health control actions.
- The mining owners are empowered to continue with the transportation of ore concentrates, refined metal, cathodes, doré and others, cargo and merchandise and related activities to ensure the operations and the logistics cycle.

Furthermore, through a joint communiqué of the night of March 20, 2020, the Ministry of Defense and the Ministry of the Interior specified the general prohibition on the use of private transport vehicles indicating that workers who carry out activities that are not included within of the exceptions of the State of National Emergency and that are in headquarters, facilities or camps located in a region or province other than that of their residence, they must comply with the quarantine in that place being that interprovincial passenger transport is not allowed, under criminal responsibility, which would be applicable to the situation of the personnel of the "mining units".



### 13. Impact on consumer protection

As a result of the entry into force of the State of Emergency and the mandatory social isolation (quarantine) caused by the outbreak of COVID-19, the total closure of the borders was ordered and the national and international passenger transport service was suspended, by land, air, sea and river.

Pursuant to article 104 of the Consumer Protection and Defense Code "The supplier is exonerated from administrative responsibility if he can prove the existence of an objective, justified and unforeseeable cause that constitutes a rupture of the causal link due to acts of God or force majeure, decisive fact of a third party or of the recklessness of the affected consumer himself".

The declaration of a State of Emergency, in principle, qualify as an event of force majeure, so it could be faced with an event of rupture of the causal link that would exonerate transport companies from liability for not providing the contracted service.

Consequently, the impediment of the provision of the transport service would not qualify as an assumption of lack of suitability on the part of the provider, since the lack of provision would be due to an event outside the sphere of its control and, therefore, he would not be obliged to make route changes or returns. However, since the transport service would not be provided (despite having been hired and paid for), transport companies should consider the possibility of offering alternatives, such as flexibility for the change, return and rescheduling of their trips, even when this is not established in the purchase conditions of your ticket.

Taking the aforementioned as a reference, it is possible to infer that the hosting services would suffer the same fate. The aforementioned is configured because we are facing an exceptional case, as it is, the declaration of a Health Emergency.

Notwithstanding the foregoing, and despite the fact that the transport and accommodation companies would be covered by the aforementioned case of force majeure, this does not prevent consumers from requesting some measures or alternatives in order not to be disappointed with their expectations regarding the services contracted and which in many cases have already been paid. Accordingly, it is essential that consumers contact providers prior to the date of service provision (for example, prior to travel or the date of accommodation) in order to know the alternatives that each of providers is offering.

Likewise, consumers should take into account that the alternatives offered, however voluntary, once offered are mandatory and, within the framework of a sanctioning procedure at INDECOPI, will serve to establish whether or not consumer expectations have been disappointed.



## 14. Impact on the health sector

### a) Authorized sector operations

As indicated above, the Supreme Decree seeks to ensure that, within this particular situation, access to public services and essential goods and services such as the supply of and continuity of health services is maintained. In this line, the purchase, production and supply of food (including storage and distribution for sale to the public, as well as the purchase, production and supply of pharmaceutical and basic necessities) are expressly authorized. In this sense, even when they are not expressly indicated, they also include medical devices, devices, equipment and accessories that by their nature and use are essential to carry out health services.

Health establishments (hospitals, clinics, medical establishments, among others), pharmaceutical establishments (laboratories, drugstores, apothecaries and pharmacies), opticians and orthopedic products may remain open during the State of Emergency. National laboratories, drugstores (importers), drugstores and pharmacies are establishments that can continue their activities so that the population has access to essential and necessary goods. The national laboratories will be able to continue with the production, as well as the drugstores will be able to continue importing and distributing those products that are part of the health plan that faces the outbreak of COVID-19 and other priority diseases. The managers of these establishments must take all the preventive measures dictated by the government to safeguard the safety of their staff.

During the State of Emergency, it will be possible to have access to the centers for attention and diagnosis in cases of emergencies and urgencies, including private, public and Armed Forces health centers that can and should continue with the emergency and emergency care and other activities related to treatments that cannot be delayed in order to safeguard the lives of patients.

In the specific case of pharmaceutical products, considered essential goods based on Article 4 of the Supreme Decree, it has been established that their entry into the country will receive priority attention, so that customs officials come, in practice, focusing their efforts so that the import process of these merchandise is carried out in the shortest possible time. As mentioned above, this provision would also cover those complementary and related goods, as well as being analogous (similar) to pharmaceutical products. It is understood that pharmaceutical products (as well as those complementary, related or similar to them) must have, if applicable, the corresponding health records and/or authorizations necessary to authorize their import.

## **b) Health sector entities**

The General Directorate of Medicines, Supplies and Drugs (Digemid) is in charge of authorizing the health records for pharmaceutical products, medical devices and sanitary products and, by means of a communiqué, indicated that the priority attention at the documents filing desk and by the Single Window of Foreign Trade (VUCE) will be carried out for (i) registration and major changes to the health records of pharmaceutical products and medical devices related to the preventive diagnosis and treatment of COVID-19 and other priority diseases; (ii) Certificate of Batch Release of biological products; and (iii) Mandatory Health Notification of medical devices. Regarding the products for sanitary purposes, priority is being applied to procedures related to the registration of soaps and gels.

Within the framework of the Supreme Decree, the Minagri has issued various communiqués referring to the measures adopted to ensure the acquisition, production and supply of food by means of which the normal supply to the wholesale markets of Lima and provinces is guaranteed and therefore there is no justification for speculative practices in any household basket product. The following activities will continue to be carried out with the minimum necessary staff: (i) Harvesting products at the national level; (ii) Maintenance of agricultural health; (iii) Transportation of food to the various processing and transformation centers, as well as storage, distribution and marketing; (iv) Primary and secondary food processing centers .; (v) Collection and sale of agricultural and livestock food; (vi) Care and maintenance of plants, animals, agricultural and forestry activities; (vii) Import and export of agricultural products; (viii) Transportation of food products in ports and airports.

Regarding the contracting of goods and services by state entities, we refer to what is indicated in Section 3 of this Report.

Notwithstanding the foregoing, on March 14, 2020, Supreme Decree No. 010-2020-SA was issued, approving the Action Plan and the List of Goods and Services required to face the Health Emergency, which includes the Ministry of Health, the National Institute of Health - INS and the Social Health Insurance - ESSALUD, whose content can be consulted below: [https://cdn.www.gob.pe/uploads/document/file/566595/Anexo\\_II\\_COVID\\_19.pdf](https://cdn.www.gob.pe/uploads/document/file/566595/Anexo_II_COVID_19.pdf)

## **c) Processing of personal data**

The Ministry of Justice through the National Authority for the Protection of Personal Data communicated that sharing health information of a patient, including data related to COVID-19



(as well as information on physical or mental health), without their consent express, constitutes a breach of Law No. 29733. It should be taken into account that the dissemination of personal data on health-related patients through social network is considered sensitive data and therefore cannot be disseminated, incurring civil or criminal liability if said information is disclosed, except in certain cases provided for by law, as required by the judicial authority, it was used for academic or scientific research purposes (as long as the information obtained from the medical history is recorded anonymously), or where necessary, in risky circumstances, for the prevention, diagnosis and medical or surgical treatment of the holder, or when there are reasons of public interest provided by law or where they must be treated for reasons of public health.

#### **d) Health standards to be met**

Although pharmaceutical establishments and those related to the health sector can and should continue to operate during the State of Emergency, they are obliged to take all the dictated measures to prevent the spread of COVID-19. Failure to comply with these measures in the health establishments allowed to operate (for example, dispensing with the use of masks, a distance of 1 meter between their personnel, among others), may lead to the commission of the crime provided for in article 292 of the Criminal Code, that sanctions with a custodial sentence of not less than 6 (six) months nor more than 3 (three) years, violating the measures imposed by law or authorities to prevent the spread of a disease, epidemic or plague.

It is important to highlight that for the commission of the aforementioned crime, it is not required that any collaborator or user of any health-care facility is actually infected with COVID-19, but for this purpose it is enough to not comply with the health guidelines dictated by the authority. On the other hand, if the health facility treats the case of a patient with symptoms of COVID-19 without being authorized to do so, it could incur the commission of the aforementioned crime, provided for in article 292 of the Criminal Code, even if there is prevention measures have been implemented to prevent its spread.