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COVID-19 – Declaration of Sanitary Emergency due to Force Majeure

On March 30, 2020, the National Health Council published a decree in the Official Federal Gazette (the “DOF”) pursuant to which it declared the epidemic generated by the COVID-19 disease as a state of sanitary emergency due to force majeure and authorized the Ministry of Health to determine the actions deemed necessary to address such emergency (the “[Sanitary Emergency Decree](#)”). On March 31, 2020, the Ministry of Health published a decree in the DOF whereby, mainly, it ordered the immediate suspension, from March 30th to April 30, 2020 (the “[Contingency Period](#)”), of all non-essential activities in the public, social and private sectors (the “[Suspension of Activities Decree](#)”). Pursuant to their publication in the DOF, such decrees are binding and have full legal effects.

Force Majeure

The Sanitary Emergency Decree expressly declares the epidemic generated by the COVID-19 disease as a sanitary emergency due to force majeure. This declaration, together with the measures ordered pursuant to the Suspension of Activities Decree, determine the existence, for legal purposes, of a force majeure event, which could impact the enforceability of contractual obligations and the exercise of contractual rights. (See *Newsflash* entitled “COVID-19 – Potential Effects on Contractual Obligations” [here](#)).

Suspension of Activities

The Suspension of Activities Decree includes a list of five categories of essential activities which can continue to operate during the Contingency Period, specifically (i) those directly required to address the sanitary emergency, (ii) those involved in public security, sovereignty, the administration of justice and legislative activity, (iii) those in the fundamental sectors of the economy, (iv) those directly related to the operation of the government’s social programs, and (v) those required to ensure the critical infrastructure for the production and distribution of essential services.

While the list of categories comprising essential activities intends to be limitative, the scope of each of the five categories in such list is unclear. In particular, the category related to “fundamental sectors of the economy” contains a detailed list of activities considered as fundamental, without establishing whether such list is illustrative or it excludes any other activity not expressly listed therein. In addition, the reference at the end of the list to those “*activities whose suspension could result in irreversible effects for their continuation*” contributes to such uncertainty. It is unclear whether the activities or sectors collaborating with the sectors expressly listed as fundamental to the economy, as well as those that do not collaborate with such sectors, but do not necessarily require the assistance to a workplace, are authorized to continue operating. Therefore, a particular analysis of each case is recommended to confirm the necessity to suspend a specific activity. It is possible that, on a local level, there could be complementary decrees that should be taken into account when conducting the corresponding analysis.

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It is important to mention that the Suspension of Activities Decree does not order the general suspension of labor relations pursuant to the provisions of the Federal Labor Law. As such, the requirements contemplated in such law to temporarily suspend labor relations have not been met thus far.

Sanctions

The Suspension of Activities Decree does not detail the sanctions that could apply in case of a breach of its provisions. However, the General Health Law, which is the basis of the Suspension of Activities Decree, establishes as possible sanctions (i) caution with a warning, (ii) fines ranging between 6,000 and 12,000 units of measurement and update (*unidades de medida y actualización* or UMAs) (equal to \$521,280 and \$1,042,560 as of today), (iii) temporary or permanent closure, and (iv) arrest for up to 36 hours. Additionally, the Federal Criminal Code and certain local Criminal Codes, contemplate as a crime the non-compliance with an order or mandate issued by a competent authority, providing as penalties the imposition of community work, additional fines and / or custodial penalties, which could result in criminal liability for companies in breach.

Should you require further information, our team of professionals is available and remains at your disposal. We encourage you to reach out to your ordinary Ritch Mueller contacts to discuss any such issues so we can assist you in determining the most appropriate course of action.

Otherwise, feel free to reach out to us at contacto@ritch.com.mx so we may direct your query to the appropriate team members.

We trust you and your families are safe during these challenging times.

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