

## **Q&A - COVID 19**

**PERU LEGAL QUESTIONS AND ANSWERS  
ABOUT COVID - 19**

## ADMINISTRATIVE LAW

### 1. What can Peruvian citizens do to renew their ID cards if they expire during the State of Emergency?

By means of Supreme Resolution No. 000043-2020/JNAC/RENIEC, the government has established that, during the state of emergency, the validity of expired or about to expire National Identity Cards is exceptionally extended, in order to facilitate access to the essential services and goods regulated by Article 4 of Supreme Decree No. 044-2020-PCM, which declared the State of Emergency (as amended to date).

Please bear in mind that the government has provided such extension to enable identification of the citizens and access to the essential services and commodities established in the aforementioned Supreme Decree, mainly those related to the Right to Health and the Right to Work provided for in paragraphs c, d, and f of that regulation.

### 2. What can Peruvian citizens do if they lose their ID cards during the State of Emergency?

In accordance with the Resolution No. 000043-2020/JNAC/RENIEC, in case of loss, citizens can use the Certificate of Registration - C4 as a substitute for the ID card during the time of the state of emergency. This certificate can be obtained through the online services (Citizens' Portal) provided by the National Registry of Identification and Civil Status - RENIEC.

### 3. Where can I go to renew my driver's license if it expires during the state of emergency?

It is important to note that during a state of emergency, citizens' mobility must be restricted to the minimum permitted by the government, for the specific reasons for which it has been authorized. Moreover, on March 18, 2020, Supreme Decree No. 046-2020-PCM was issued, amending article 4 of Supreme Decree No. 044-2020-PCM, which declared a state of emergency and established the order for the immobilization of citizens during night-time hours (8 p.m. to 5 a.m.). It also provides that the transit of private vehicles will be prohibited. Thus, the use of private vehicles is prohibited except for those vehicles necessary for the provision of services allowed during the state of emergency, as well as for the transfer of persons requiring urgent or emergency medical attention.

Taking this into account, by means of Directorial Resolution No. 08-2020-MTC/18, the validity of driver's licenses and the titles authorizing land transport services for people and goods, as well as complementary services, whose validity has expired before the publication of Emergency Decree No. 026-2020, or will expire within the extension indicated in the Second Final Complementary Provision of said regulation, was extended until April 30, 2020.

Similar extension has been established for the validity of other enabling titles issued by the Transport Sector, also by means of the above-mentioned regulation.

### 4. Are ongoing Public Procurement procedures currently suspended?

Yes. By means of Directorial Resolution No. 001-2020-EF-54.01, the suspension is set, from March 16, 2020 and for the following fifteen (15) days, for the following procedures' terms and deadlines:

- a. Selection procedures convened prior to March 16, 2020, within the framework of the Single Revised Text of Law No. 30225 and its Regulations, and the other contracting regimes included in the National Supply System. With the exception of those related to the obligation to guarantee the provisions of Supreme Decree No. 044-2020-PCM (as amended), for the prevention of the spread of the SARS-CoV-2 disease (COVID-19).
- b. Execution of the contracts to be entered within the framework of the Single Revised Text of Law No. 30225 and its Regulations, and the other contracting regimes covered by the National Supply System. With the exception of those related to the obligation to guarantee the provisions of Supreme Decree No. 044-2020-PCM (as amended), for the prevention of the spread of COVID-19.
- c. Initiation and instruction of administrative sanctioning proceedings by the State Contracting Court, referred to in the Single Revised Text of Law No. 30225 and its Regulations.

Likewise, the call for selection procedures within the framework of the Single Revised Text of Law No. 30225 and its Regulations, and the other contracting regimes covered by the National Supply System have been suspended from March 16, 2020 and for the next fifteen (15) days. With the exception of those related to the obligation to guarantee the provisions of Supreme Decree No. 044-2020-PCM (as amended), for the prevention of the spread of COVID-19.

Finally, by means of Communiqués No. 003-2020 and No. 033-2020, OSCE and Peru COMPRAS, respectively, announced the suspension of the attention and attendance of the public in their premises, as well as the adoption of specific measures to comply with the State of National Emergency.

## 5. Are administrative proceedings suspended?

In relation to the general administrative proceedings' terms and deadlines, two (2) regulations were issued: Emergency Decree No. 026-2020 and, subsequently, Emergency Decree No. 029-2020. By means of the above mention Decrees, all types of administrative proceedings are declared suspended for thirty (30) working days, starting from the day after their respective publications in the Official Newspaper "El Peruano".

## CORPORATE LAW

### 1. Can I carry out notarial/registry procedures? Do notaries have a digital service where electronic signatures are validated?

You cannot carry out procedures in Notary's offices or in the Public Registries since they find their activities suspended during the period of the State of Emergency. The deadline for registration procedures are suspended until the imposed measures are lifted.

### 2. Can Shareholders' Meetings be held without physical presence?

As long as the company's Bylaws allow for this possibility, meetings can be held on a virtual basis. In the case of closed corporations (S.A.C.), they may carry remote Shareholder Meetings even if the Bylaws do not provide for it, as long as they do not

provide otherwise. This meeting must be held by virtual means that allow all participants to communicate simultaneously.

The registrable resolutions adopted at a non-attendance general meeting must be recorded in minutes drawn up and signed by those who acted as chairman and secretary or by those who were expressly appointed for such purpose. The General Manager may be appointed for this purpose, provided he/she is invited to participate in the Meeting. The minutes must record the place, date and time at which the meeting was held and the means used, the list of shareholders or their representatives, the number and class of shares owned, the votes issued and the resolutions adopted.

Resolutions adopted by the Remote General Meeting of Shareholders that are registrable in the Public Records, must be registered when social isolation has been lifted.

### 3. Can a breach of contractual obligations be suspended?

The State of Emergency declared by the government constitutes a fortuitous event and/or force majeure, insofar as it is an extraordinary, unforeseeable and irresistible event which prevents the performance of the obligations by the obligor, within the provisions of Article 1315 of the Peruvian Civil Code. Therefore, in view of this situation, a party shall not be liable for failure or delay in complying with the obligations assumed, unless otherwise provided for in the Contract.

For the rule to apply, no communication to clients is required, as the exception operates automatically as a result of unforeseen circumstances and force majeure. However, the parties usually establish a procedure for communication of the event, verification of the same and granting of a possible extension of time.

As such, no penalties or indemnities will be applicable to the obligor for not executing their obligations.

They also specify that no penalty or compensation would be applicable to them for failure to comply with their obligations, unless the party has undertaken to perform certain obligations even after the occurrence of an event that could be classified as a fortuitous event and/or force majeure. Therefore, in the case of a cause that is so far temporary, it cannot be held liable if it is delivered within a reasonable time after the situation has returned to normal.

### 4. What happens to leases?

In the case of leasing agreements, we are not facing a case of fortuitous event and/or force majeure, since the lessor continues to make the property available to the lessee. Proof of this is that, despite the fact that the lessee cannot make use of it, as he/she would like, its machinery, equipment, furniture and so on, remain in the property subject of the lease.

Therefore, we can see that the declared State of Emergency does not affect the fulfillment of the obligation corresponding to the lessor.

The same happens with the lessee's payment obligation, which can be fully executed since the banks continue operating all over the country. Additionally, as mentioned above, the lessee would continue possessing and using the leased property since items of his/her property are still within it.

Due to the aforementioned, our conclusion is that, unless the State issues a pronouncement with a different position, the lessee is currently legally obliged to pay the

rent, even though he/she cannot use the property for the desired object for reasons beyond his control.

However, we must remember that article 168° of the Peruvian Civil Code establishes that agreements must be interpreted in good faith and article 1362° provides that agreements must be negotiated, concluded and executed according to the rules of good faith. These rules impose loyal and cooperative conduct between the parties, prohibiting the parties from taking advantage and abusing situations such as the current one. In that sense, it is highly recommended to seek a negotiated solution, so that positive results are achieved for both parties.

#### **5. Can a real estate provider require the quota payment of the price of a purchased property?**

The State of Emergency constitutes a fortuitous or force majeure event, as it is extraordinary, unpredictable and irresistible. As has been established in article 1315 of the Peruvian Civil Code, in these cases, the clients could inhibit the payment of these quotas to the provider. However, it is convenient to mention that this event could prevent the clients from (i) paying the fees; or, (ii) acquiring the money to comply with the payment of the referred fees. Regarding the first scenario, it is evident that the State of Emergency does not prevent the payment of quotas, since the financial entities are still providing their services to the public and it is possible to make payments through deposits in account (designated by the supplier) or transfers through the electronic platforms of each financial entity. Regarding the second scenario, the client must prove that the State of Emergency has prevented him/her from having the money to comply with the payment of fees (either because he/she is an independent worker, has incurred in extraordinary expenses, etc.). In this last scenario, if the client proves the impediment, the partial, late or defective payment, or even the nonpayment, would not be attributable to the client, not proceeding to the application of penalty or moratorium interest.

#### **6. Does an estate provider need to extend, in benefit of the clients, the advertised promotions whose duration coincides partially or totally with the State of Emergency?**

According to the Law, advertised promotions must explicitly indicate the duration of the promotion (validity), the number of products included in it (stock), its restrictions (if any), among other things. In this sense, an estate provider must respect the advertised promotions according to the offered conditions to the consumers. Nevertheless, being in a State of Emergency constitutes an event of fortuitous case and/or force majeure, which would therefore impede the consumers from acquiring a product in base of the promotion; this event does not imply that the publicized promotions are immediately extended by the State of Emergency. Thus, it should be clarified that, in these cases, once the State of Emergency has ended, the obligation of the real estate provider (to deliver a product according to the promotion offered) would be extinguished and he would no longer be considered obliged to execute it.

#### **7. What about security in the country/beach condominiums and private surveillance in general?**

On March 16, 2020, SUCAMEC<sup>1</sup> issued a statement establishing the continuity of the services of private security companies, with the exception of their administrative areas,

<sup>1</sup> National Superintendency for the Control of Security Services, Arms, Ammunition and Explosives for Civilian Use

which must comply with the scope of the restriction to the right of transit indicated in the Supreme Decree.

It should be noted that this communication authorizes only private security companies, which are defined by Legislative Decree No. 1213 ("Legislative Decree regulating private security services") as:

*"Legal persons authorized to provide private security services, under the modalities of private surveillance, personal protection, transport and custody of money and securities, custody of controlled goods, security at events and security technology, constituted in accordance with the General Law of Business Corporations".*

In case an individual provides this service, or, in case it is an employee of the condominium, it would be understood that this is within the assumption indicated in the SUCAM communication.

Therefore, it appears from the communication that it is the entity's intention to authorize only the security personnel of the security companies authorized by SUCAMEC to operate during the period of validity of the Supreme Decree.

## 8. Will payments of financial debts of individuals and corporations be maintained?

In principle, the State of Emergency does not suspend the operation of financial institutions, so the payment schedules established in the banking agreements signed are maintained, and both natural and legal persons are obliged to comply with payment obligations.

However, through Multiple Office No. 11150-2020-SBS, the Superintendence of Banking, Insurance and Pension Funds ("SBS") has authorized the entities of the financial system to adopt exception measures for debtors affected by the State of Emergency. These measures will be determined by each entity after evaluating the level of impact on its portfolio of debtors.

Therefore, financial institutions will be able to modify the contractual conditions of the different types of credits without the need to contact each client individually, and this modification will not constitute a refinancing or a deterioration in the credit rating of the debtors. These measures shall apply as long as the total term of these credits does not extend for more than six (6) months from the original term, and that at the date of the declaration of emergency the debtors are up to date with their payments.

## COMPETITION/ ANTITRUST LAW

### 1. What happens with deadlines at INDECOPI<sup>2</sup>?

From March 16, 2020 to April 28, 2020 inclusive, the computation of the time periods for the processing of administrative proceedings subject to positive and negative administrative silence that are in progress is suspended.

<sup>2</sup> National Institute for the Defense of Competition and Protection of Intellectual Property

Maclay Murray & Spens ► Gallo Barrios Pickmann ► Muñoz ► Cardenas & Cardenas ► Lopez Velarde ► Rodyk ► Boekel ► OPF Partners ► 大成 ► McKenna Long

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Then, Emergency Decree No. 029-2020, published on March 20, 2020, has established with more precision the suspension of all types of administrative proceedings for thirty (30) working days. **Given the increase in prices of certain products and/or services, does INDECOPI have the authority to regulate price increases?**

INDECOPI does not have legal powers to regulate prices in the market, given that in Peru there is no price or tariff control for any product or service, except for public services that are regulated such as telephone (by OSIPTEL), energy (by OSINERGMIN), water and sanitation services (by SUNASS), airport infrastructure, roads and ports (by OSITRAN).

## 2. Can INDECOPI sanction any supplier who does not respect the prices previously offered?

Yes, INDECOPI, as the National Consumer Protection Authority, can sanction suppliers who do not respect the prices they have reported. Furthermore, as the Authority in charge of ensuring the proper development of the competitive process in the market, it may sanction suppliers who agree to set prices (concertation).

## LABOR LAW

### 1. Can my company continue to operate during the state of emergency?

Only companies whose activities are exempted by Article 4 of Supreme Decree No. 044-2020-PCM may continue operating. The following list, which continues to be updated during these days, details the activities that may continue to be carried out:

- a. Food production, supply, storage or distribution;
- b. Production and storage of pharmaceutical products and basic needs products;
- c. Health care or diagnosis centers or establishments;
- d. Water, sewage, electric energy, gas, fuel, telecommunications, cleaning and collection of solid waste, and funerary services.
- e. Financial entities, insurance companies, and pensions, or the complementary and related services;
- f. Production, storage, transport, distribution, and sale of fuel/gasoline;
- g. Hotels and other lodging establishments;
- h. Mass media and call centers (related to the crisis);
- i. Private surveillance services and transport of money, as authorized by SUCAMEC;
- j. Necessary services in the public sector required for the assistance of the sanitary emergency product of COVID-19;
- k. Any activity of similar nature to the activities mentioned in this list that must be performed due to force majeure (technical services for household emergencies, emergency attention for pets, amongst others.); and,
- l. Assistance and care for the elderly, children, teenagers, dependents, people with disabilities, or people in vulnerable situations.

Also included in this list are complementary and related services for the proper provision of the activities described above, which shall be determined by the competent authority.



Similarly, by Report No. 059-2020-EF, the mining sub-sector was included in the activities that can continue operating, which was detailed as follows:

*“Mining and other related activities, including: exploitation; benefit; mine closures; construction of mining projects declared of national interest; transport of minerals by unconventional means; as well as transport and storage of processed concentrates and mineral products”*

Companies not included in the above list are entitled to provide services through Remote Work, where possible, in accordance with their respective regulations.

## 2. What measures does the company need to take with employees that can continue operating?

If the employees of the company are allowed to continue working as normal, the employer must grant them a document that proves the nature of their work. In addition, a special transit pass must be requested through the unique digital platform of the Peruvian State, at the following link: <https://www.gob.pe/pasedetransito>.

Employers should also take the following complementary prevention and control actions:

- Prepare a Communication Plan on the preventive measures that the company will take regarding COVID-19.
- Distribute the institutional messages issued by the Ministry of Health.
- Deliver the hygienic material to the employees and adopt the necessary cleaning protocols.
- Require employees with cold symptoms, who have had contact with likely or confirmed people with Coronavirus, or have visited a risk zone in the previous 14 days, to go to the nearest medical facility or contact the Ministry of Health

## 3. When should the company establish remote working?

Remote work allows the employee to provide his/her services from his/her home or place of compulsory social isolation, through the use of any means that allow him/her to carry out his/her work.

Regulations are clear in pointing out that this modality can only be used *"as long as the nature of the work allows it"*. That is, depending on the functions or services that the employee is to provide, the employer must determine whether the implementation of remote work is possible.

In cases where companies may continue operating within the scope of the activities detailed in question Nr. 1 above, remote work will be mandatory for workers considered in the risk group (over 60 years of age or high blood pressure, diabetes, cardiovascular disease, chronic lung disease, cancer or other states).

It should be noted that this modality may not be applied to workers diagnosed with COVID-19 or to those who are with medical licence.



**4. If the company's employees cannot work remotely, should this period be considered as holidays or paid leave?**

This period should be considered as a paid license or leave subject to compensation. This means that during this period, the corresponding remuneration will continue to be paid in favor of the employee and, once the state of emergency is over, the company and the employee will have to agree to the recovery of the hours with extraordinary working hours. This means that employees cannot be forced to take holidays, nor can unpaid leave be imposed.

**5. What are the sanctions for companies that continue operating even when they are not considered in the allowed activities?**

According to Supreme Decree No. 010-2020-TR, companies that: (i) fail to comply with obligations on remote work; or, (ii) permit the provision of services to workers who are not exempted by Supreme Decree No. 044-2020-PCM, may be sanctioned by SUNAFIL upon finding a very serious infringement. The fine in this case will be between S/ 11,309.00 (2.63 ITU) and S/ 225,879.00 (52.53 ITU) depending on the number of workers affected.

**6. What should the company do with employees that have COVID-19 symptoms or are diagnosed with COVID-19?**

For employees with COVID-19 symptoms, the employer should instruct them to go to the nearest medical facility or contact the Ministry of Health.

After this, the employee must present a medical record justifying his/her absence, indicating the corresponding medical leave. If it is determined that the worker is not infected with this virus, the parties may agree to recover the absence days.

For employees diagnosed with COVID-19, the imperfect suspension of the employment contract occurs. This means that the salary will be paid, even when the employee does not continue to work.

Additionally, Social Security (ESSALUD) will grant a temporary disability grant to employees diagnosed with COVID-19, provided that they have received up to S/ 2,400 in as their monthly salary.

**7. Are teleworking and remote work the same thing?**

These are two different forms of work, which are regulated by different regulations. This has been corroborated by a pronouncement by the Minister of Labor in a media outlet.

	<b>Teleworking (Law N° 30036 and its Regulations)</b>	<b>Remote Work (Emergency Decree N° 026-2020)</b>
Formality	The application of teleworking must be previously agreed between the employer and the worker.	The employer may decide to change the place of service provision unilaterally.

Duration	The employer and worker may determine the duration.	It can only be applied for the duration of the Sanitary Emergency.
Equipment and Means	They may be provided by the employer or employee. In addition, the regulation of teleworking specifies that the employer must bear all the costs (energy supply, communication expenses, internet booths).	They may also be provided by the employer or employee. However, the parties can agree to the compensation of additional expenses derived from the use of the equipment and means.

**8. Is the government going to subsidize the salaries of employees that cannot perform remote work due to the nature of their work?**

This has not been regulated and we consider it highly unlikely that any legal regulation will be issued by which the State undertakes to subsidize companies in the payment of the salaries of those employees whose functions are not compatible with remote work. This is because, according to the criterion followed by the Minister of Labor, employees who are unable to carry out remote work should be under compulsory social isolation, receiving paid leave subject to compensation.

In this sense, after the State of Emergency, employees will have to compensate for the work not provided during the days of leave.

**9. With regard to the subsequent compensation of paid licenses granted to employees on the occasion of the mandatory social isolation measure, who decides how to compensate for those days? Does it require a mutual agreement or does the employer decide?**

In accordance with Emergency Decree N° 029-2020, in the case of activities not within the cases of exclusion of Supreme Decree No. 044-2020-PCM, and provided that it is not possible to apply remote work, employers must grant a paid license subject to compensation. In the private sector, the agreement between the parties regarding how the time will be compensated prevails, and, in the absence of agreement, the compensation of these hours extraordinary work will be due after the State of Emergency.

**10. Possibility to dismiss employees**

Under the current State of Emergency, dismissing employees is a sensitive issue, and will depend on how it can be implemented. It should be borne in mind that any dismissal caused by the State of Emergency itself, that is, the material impossibility of complying with the employment contract, is prohibited.

However, employers retain the possibility of terminating employment contracts for any of the reasons permitted by the current ordinary legislation. This should be assessed on a specific case-by-case basis, verifying that the measure can be implemented within the particular context generated by the State of Emergency.

## 11. How should labor documents be signed?

During the term of the State of Emergency established by Supreme Decree No. 044-2020-PCM, many management, trusted and ordinary workers will provide their services from their homes under the remote mode of work. One solution is to use electronic signatures.

Electronic signatures may be constituted by any electronically-based symbol adopted by a party with the intention of linking or authenticating a document, provided that it fulfills the function of identifying the signer, as well as ensuring authenticity and integrity of the electronic document, in accordance with Article 1 of Law No. 27269, Law on Digital Signatures and Certificates.

However, in accordance with Article 2 of that law, electronic signatures have the same validity and legal effectiveness as a handwritten signature. Therefore, during the time when workers in remote working mode can electronically sign the necessary documents.

Likewise, Article 3 of Legislative Decree No. 1310 expressly states that the employer may replace his/her handwritten signature and manual sealing with his electronic signature on all types of work documents, provided that it complies with the provisions of the Law No. 27269.

## 12. Administrative and Judicial Terms

With regard to judicial terms, in accordance with Article 1 of Administrative Resolution No. 115-2020-CE-PJ, as of 16 March 2020, and for the 15 calendar days, the work of the Labor Courts has been suspended. In this sense, judicial deadlines are suspended.

Regarding administrative deadlines, SUNAFIL reported on 16 March 2020 that the calculation of administrative procedures is suspended for thirty (30) working days, in accordance with the Second Supplementary Provision of the Decree of Emergency No. 026-2020. It also reported that regarding the receipt of complaints, and requests for access to information, the deadlines have been suspended for fifteen (15) calendar days, in compliance with the mandatory social isolation established by the Supreme Decree No. 044-2020-PCM. However, the virtual channels enabled by SUNAFIL for these purposes have been enabled.

## 13. If, prior to the establishment of the State of Emergency, an employee had already agreed the opportunity to enjoy his holiday leave, and this coincides with the social isolation period, does the company still consider those days as holiday leave or are they to be considered as paid leave subject to compensation?

With regard to holiday leave, there are two possible scenarios:

- a. That the enjoyment of the holiday leave has begun to be enjoyed before the beginning of the State of Emergency: On March 16, the State of Emergency decreed by Supreme Decree 044-2020-PCM began. In this sense, the holiday

leave that had been enjoyed prior to this date must be governed by the entire period scheduled as a holiday break; and at the end, the worker would enter the licensing system. As an example, if the holiday break had been scheduled from 10 March until 18 March, on 19 March the worker will start the paid leave period, unless he/she can provide services through remote work.

- b. That the enjoyment of the holiday leave was scheduled to be enjoyed after March 16 and during the State of Emergency: If the start of the holiday break was scheduled to be enjoyed after March 16, and during the term of the State of Emergency, the worker could not begin to take holiday leave, as the employment relationship has been suspended by the State of Emergency. Thus, instead of granting holiday leave, a paid leave must be granted, or the worker must provide services through remote work, if possible.

## MINING LAW

### 1. Have mining activities been suspended as a result of the State of Emergency declared by the government of Peru?

In accordance with the provisions of paragraph I) of numeral 4.1 of article 4° of the Supreme Decree N° 044-2020-PCM, the Ministry of Economy and Finance was authorized to include the list of productive and industrial activities exempted during the validity of the State of National Emergency, among them, the mining activity.

As a result, the Ministry of Economy and Finance, through Official Letter No. 059-2020-EF/10.01, dated March 17, 2020, granted approval for the continuation of the activities corresponding to the mining sub-sector, in order to guarantee the maintenance of critical operations with the minimum indispensable personnel, in safety, health and environmental conditions.

The mining activities exempted during the National State of Emergency are the following:

*"Mining and other related activities, including: exploitation; profit; mine closure; construction of mining projects declared of national interest; transportation of minerals by non-conventional means; as well as transportation and storage of concentrates and processed mineral products."*

### 2. What provisions must mine owners comply with during the period of the State of Emergency?

During the State of Emergency, mine owners must comply with the following provisions in order to continue to operate:

- The Mining Companies may transfer to the Mining Units only indispensable personnel to guarantee the maintenance of their critical operations and the reestablishment of the same, at normal levels after the emergency. For such purpose, each mining titleholder shall define the minimum indispensable personnel (own and contractors') to guarantee the maintenance of critical operations.

- The mining title holder must adapt and update the Emergency Preparedness and Response Plan (Plan de Preparación y Respuestas para Emergencias) in accordance with the provisions of Supreme Decree No. 024-2016-EM, Occupational Safety and Health Regulations for Mining (Reglamento de Seguridad y Salud Ocupacional en Minería) and the First Final Complementary Provision of Supreme Decree No. 037-2017-EM.
- Each mining titleholder must approve and implement monitoring and safety guidelines during the period of mandatory social isolation in the Mining Units that guarantee health protection during the state of emergency.
- Mining titleholders must comply with the protocol approved by the Ministry of Health to prevent, contain and mitigate the spread of COVID-19, as part of health control actions.

### 3. Can mining exploration activities be carried out during the State of Emergency?

Mining exploration activity is not exempted within the regulatory framework established by Supreme Decree No. 044-2020-PCM and by Official Letter No. 059-2020-EF/10.01 issued by the Ministry of Economy and Finance.

The mining activities allowed during the State of Emergency are the following: Exploitation; profit; mine closure; construction of mining projects declared of national interest; transportation of minerals by non-conventional means; as well as transportation and storage of concentrates and processed mineral products.

## CRIMINAL LAW

### 1. Do the Prosecutor's Offices work? Can complaints be filed?

According to Resolution No. 588 - 2020-MP-FN, of 16 March 2020, issued by the National Prosecutor's Office, the functions of the administrative and prosecutorial staff of the Provincial Criminal Prosecutor's Offices and the Provincial Family Prosecutor's Offices on duty and after duty, as well as those of the Specialized Prosecutor's Offices that work permanently at the national level, are maintained, with the exception of the Specialized Prosecutor's Offices for Extinction of Ownership.

Therefore, it can be concluded that **complaints can be filed with the Duty Prosecutor's Offices, according to territorial jurisdiction, during the state of national emergency.**

### 2. What happens in cases of flagrante delicto?

In accordance with Prosecutor's General's Office Resolution No. 588-2020-MP-FN, dated 16 March 2020, article 4 of that resolution states that prosecutors at all levels and in all specialties at the national level must remain on permanent alert to ensure timely and effective intervention by the Public Prosecutor's Office in the event of the commission of crimes and other urgent cases. Article 6 of the above-mentioned law also extended the jurisdiction of the Provincial Criminal Prosecutor's Office of the Permanent Duty of the Lima Fiscal District to include interventions in flagrante delicto by the decentralized prosecutor's offices of the Lima Fiscal District.

Thus, in the event of a case of flagrante delicto during the period of the state of emergency, the immediate procedure established by Legislative Decree No. 1194 will be followed, that is, the police authority will proceed to arrest the person and take him or her to the competent police station. After the arrest, the competent Prosecutor will request the Preparatory Investigation Judge to initiate the immediate process, so that the corresponding hearing can take place, ending this special process with the delivery of the sentence. That is to say, there is no alteration or modification of the procedure in the event of flagrante delicto by virtue of the declaration of the State of Emergency, except for the designation of the competent judicial body, since for the present case it has been established that the Preparatory Investigation Courts of Surco and Surquillo, in accordance with the pre-established judicial shift, will be competent to hear the requirements of immediate proceedings of the Preparatory Investigation Courts of Lima, and will act as the Emergency Preparatory Investigation Court.

### 3. In cases of expiration of pre-trial detention, can the inmate be released from prison?

In those cases where the representative of the Public Prosecutor's Office has not requested the extension of the coercive measure before the expiration of the pretrial detention, then the inmate will be released.

However, if the request for extension has been made before the expiry of the pretrial detention, in accordance with the provisions of Administrative Resolution No. 131-2020-P-CSJLI-PJ, the corresponding hearing will be scheduled immediately.

### 4. Which crime is committed when false information is provided to apply for the special transit pass issued by the Peruvian National Police, and what sanction does it deserve?

Any person who provides false information in order to process the special transit pass issued by the Peruvian National Police shall be guilty of the crime of misrepresentation, as provided for in article 438 of the Peruvian Penal Code:

*"Anyone who in any other way not specified in the preceding chapters **commits misrepresentation by pretending, assuming, intentionally altering the truth to the detriment of others, by words, deeds, or by usurping names, quality or employment that does not correspond to him**, assuming a person who is dead or who has not existed, or vice versa, **shall be punished by imprisonment of not less than two nor more than four years.**"*

This situation arises when, with the purpose of processing a special permit, a person provides information that is not consistent with reality, assuming for instance employment that is not theirs

In addition, it should be noted that the form to be completed has the status of an affidavit, thus constituting a private document, since, as established in Appeal No. 118-2026/Lambayeque, of 31 January 2018, it will have the characteristic of a private document. This is any document whose information is provided by individuals and the veracity of its content depends on what is indicated by the parties, as opposed to being guaranteed by any public official.

## TAX LAW

Maclay Murray & Spens ► Gallo Barrios Pickmann ► Muñoz ► Cardenas & Cardenas ► Lopez Velarde ► Rodyk ► Boekel ► OPF Partners ► 大成 ► McKenna Long

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**1. Have the deadlines for complying with the monthly obligations been suspended?**

Taxpayers that generated taxable income up to US\$ 6.5M in 2019 are allowed to delay their tax filing and/or payment. Instead of filing in March/April, they will be allowed to postpone their tax obligations until June/July.

**2. What will happen with the timing of ongoing audits and procedures?**

Audits and procedures have been suspended until March 31 of this year.

**3. Will it be possible to request a refund of the Selective Consumption Tax?**

Resolution of Superintendence No. 057-2020/SUNAT enables transporters that provide land transportation service to individuals within the territory and/or public land freight service to apply for a refund of 53% of the Excise Tax (ISC) that was paid on the sales price of B5 diesel and B20 diesel containing up to 50ppm of sulfide, acquired from wholesale and/or retail distributors or fuel retail establishments that provide electronic proof of payment, for a period of three (3) years, starting on January 1, 2020.

**4. What happens with tax omissions incurred during the State of National Emergency?**

Resolution No. 008-2020-SUNAT/700000 allowed the Tax Authorities to apply its discretionary power by not sanctioning tax omissions incurred by taxpayers during the National State of Emergency declared as a result of the COVID-19, including infringements committed or detected between March 16, 2020 and the date of issuance of said Resolution.

In this note, it is indicated that no refunds or compensations may be made regarding the payments related to the aforementioned omissions.

**5. Have payment facilities been established for tax debtors?**

By means of Superintendence Resolution No. 058-2020/SUNAT, additional aid measures are granted with the purpose of granting resources and benefits to taxpayers during the time declared as National Emergency, as follows:

- Taxpayers that have installment tax payment plans granted before March 15, 2020, the installment due on March 31, 2020 will not be accounted towards the limit to lose this financial aid, as long as the payment is made before April 30, 2020.
  - An emergency procedure was established to request the release of amounts deposited in the SPOT account, for one time, within the period of March 27 and April 7 of 2020, through Sunat online. The amount that can be released is the balance as of March 15, 2020.
  - The deadline for filing books and records related to tax matters is extended until May 4, 2020.

**LITIGATION AND ARBITRATION**

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## 1. Have the computation of time limits in arbitral proceedings been suspended?

The Lima Chamber of Commerce ("CCL") has provided for the suspension of all time periods in the arbitrations they administer, which in practice amounts to a suspension of the arbitration.

This means that the designation of the president of the arbitration tribunal has been put on hold (after the recent acceptance of Luciano Barchi as arbitrator on behalf of NCA).

On the other hand, even in this state of suspension, the parties may file written submissions, as these are submitted virtually. However, the CCL will give an account of these writings until the end of the state of emergency.

## 2. What about the need for urgent precautionary measures or requests of a civil nature?

In consequence of the State of Emergency, the Peruvian Judiciary, through Administrative Resolution N° 115-2020-CE-PJ of 16 March 2020, decreed the suspension of labors for 15 calendar days, which would end on 1 April 2020.

However, the aforementioned Resolution provided that for non-criminal cases (civil, commercial and constitutional), the Court of Justice of each locality would appoint a judge to deal with emergency and/or urgent cases, such as family violence, precautionary measures, admission and precautionary measures in Amparo proceedings, consignment and endorsement of foodstuffs and others of an urgent nature.

In the same way, the Supreme Court will designate a Court to resolve appeals arising from such cases.

*"Article Three. - Establish the following rules for that period:*

*(...)*

*d) Superior Courts of Justice:*

*The presidents of the Supreme Courts of Justice at the national level, who will continue their work, will designate the jurisdictional and administrative bodies that are indispensable in the emergency period.*

*II) Criminal Courts: At least one criminal judge will be designated to hear cases involving detainees, liberties, requisitions, habeas corpus; and other cases of urgent attention. Without prejudice to the issuance of sentences in proceedings with prisoners, with cases of unextendable pretrial detention to expire.*

*(III) Non-criminal courts: at least one judge shall be appointed to deal with family violence, precautionary measures, admission and precautionary measures in proceedings for protection, consignment and endorsement of food and other urgent cases.*

*(IV) Superior Court: at least one Mixed Court shall be designated to hear appeals in the cases indicated above".*

### 3. Is it possible to appeal to constitutional actions such as “Amparo” and “habeas corpus”?

The Constitutional Guarantees of Amparo and Habeas Corpus are urgent constitutional protections, which is why they are among the cases that must be attended to by the Judicial Branch, as provided for in Administrative Resolution No. 115-2020-CE-PJ, in subparagraph "d" of Article 3.

## MUNICIPALITIES AND AUTHORIZATIONS

### 1. Will municipalities continue providing services?

Municipalities will not attend to the public during the state of emergency.

Likewise, all proceedings before that entity have been suspended. However, all municipalities must comply with their functions of inspection, cleaning service, surveillance service among others.

### 2. What happens with the *Pico y Placa* measure imposed by the Municipality of Lima?

The Mayor of Lima stated that the *Pico y Placa* measure is suspended during the period of national emergency.