

# COVID 19: ADMINISTRATORS' ROLE DURING COVID-19 OUTBREAK

*This document intends to provide high-level guidance to shed light from a practical point of view into administrators' duties and responsibilities during exceptional times.*

## 1. ADMINISTRATORS' LEGAL STANDARDS OF CONDUCT, GENERALLY

Administrators (which include directors, legal representatives and officers and executives with administration powers and functions) must act seeking to serve the best interests of the company while considering the interests of shareholders, avoiding to privilege administrators' own or third party's interests and giving a fair treatment to all shareholders, including by giving effect to shareholders' right of information (derecho de inspección).

Administrators must also act professionally, pondering risks and benefits with a technical and sensible approach, guiding their conduct by good faith and avoiding negligence.

Unless otherwise authorized by the shareholders, administrators must refrain themselves from participating directly or indirectly in activities that imply competition with the company. Also, they must avoid engaging themselves in acts with respect to which there is a conflict of interests, absent such prior authorization.

## 2. ADMINISTRATOR'S LEGAL EXPECTED ROLE

Administrators have the mission of leading the company to the proper development of its purpose, while assuring strict compliance with applicable laws and organizational charter provisions.

Administrators must ensure the proper development of the functions entrusted to the statutory auditor and assure and protect the commercial and industrial proprietary information of the company while refraining themselves from improper use of privileged information.

## 3. RECOMMENDATIONS FOR ADMINISTRATORS' LEGAL DUTIES AND THEIR ROLE AMIDST COVID-19 CRISIS

- Exercise care and independent judgment.

The scope of the pandemic is still to be seen. Consequences may affect not only your company but also the community as a whole. Take into account that your employees have families and relatives that may be affected by unsound company decisions.

- Think ahead of events. Learn from example.

Failing to anticipate and to appropriately adopt defensive measures resulted in thousands of casualties in certain regions, while timely anticipating and adopting protections has prevented a higher death toll in other places.

Planning on business reactivation scenarios should also be part of your agenda. Being better prepared than competitors for reactivation may provide you with an advantage. Designing scenarios for business reactivation and monitoring the assumptions over which you based your projections, is advisable.

- Act reasonably, with integrity and common-sense.

Challenge assumptions when you are uncomfortable and raise concerns promptly. Seek help and work as a team with your colleagues and company functional specialists to get help and support where needed and find appropriate solutions.

- Employment matters.

Make sure that prior to adopting any employment measure you fully understand and assess the potential labor risks behind it. Remember that government is closely watching employment decisions adopted by companies and will act to safeguard employees' rights and avoid massive dismissals.

- Contractual relationships.

Suspending compliance of contractual obligations or, conversely, receipt of

notices from counterparties seeking to suspend their obligations is a matter that should be carefully reviewed on a case-by-case basis. Suspending on grounds of force majeure could potentially be rendered baseless in case of litigation if strict legal and factual requirements are not met or properly evidenced.

- Financial position.

Take special care of your cash flow. Monitor the financial situation of the company continuously, whether you are the finance director or not. Ensure the right level and regularity of financial information is available, take time to review it and ask questions. The slowdown, governmental reliefs (including tax calendar) and bank reliefs may create opportunities to control expenses and safeguard the cash flow.

If you become concerned the company is in, or may face, financial difficulties, take steps to minimize losses and alert the issue immediately so that appropriate and timely advice can be provided. Do not simply keep quiet and hope for the best. If insolvency becomes a possibility, learn about alternatives available under Colombian bankruptcy law applicable to your business and be prepared.

- Be informed.

The pace at which new regulation is being enacted to deal with the outbreak seems overwhelming. Appoint teams to follow up on the current status of new regulation or seek help from advisors. We invite you to visit our special website regarding COVID-19 at <http://www.phrlegal.com/>.

- Organizational charter and powers.

Make sure that all measures and decisions are taken in compliance with by-laws and any other charter documents and within the scope of your corporate powers or upon receiving any requisite corporate authorization. Keep the board of directors and the stakeholders well informed about the incidence of this crisis on the business.

- Telework and company's information.

Protecting company's information during the virtualization of operations is a must. Connections and security standards must be proportional to the importance of the information being exchanged. Emails and other electronic communications may be requested by shareholders or surveillance authorities to serve as evidence. It is important to keep a professional and careful language and take measures to preserve them for the future.

- Compliance.

Adjusting compliance procedures to adapt them to the new operations and business environment, will be always recommended, in order to assure that such procedures are adequate to company's operations and relationships.

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## CONTACT:

**Gabriel Sánchez**

[Gabriel.sanchez@phrlegal.com](mailto:Gabriel.sanchez@phrlegal.com)