

# Surviving COVID-19

## A Guide for Directors and Corporate Managers

---

The outbreak of COVID-19 -or coronavirus, as it is commonly referred to- has brought drastic changes to the world economy, and the full scope of its effects cannot yet be calculated. In the midst of this unprecedented crisis, companies must make significant and difficult choices, including suspending their operations, closing some of their facilities, or staying open for business, should they carry out activities considered essential or of strategic importance in order to face the pandemic; terminating relationships with vendors; being unable to meet previously undertaken orders... a whole host of scenarios considered unimaginable up until a few months ago.

Without a doubt, the challenge faced by corporate managers and directors in the age of COVID-19 is of titanic proportions: the decisions which they must make are not without risk to their organizations, and the consequences of such choices have, or may have, both medium and long-term effects on the continued performance of their businesses.

As a result, it's important that corporate managers and directors have a guide on which they can rely upon to help them make these difficult decisions while complying with the applicable legal provisions and at the same time, face a growing epidemic spreading throughout the world.

How should I approach decision-making if I am one of the directors or corporate managers of an organization in the context of the coronavirus?

From a legal standpoint, it is important to distinguish public companies- that is, those listed on the stock market- from private entities, insofar as the rules which corporate managers and directors must follow vary depending on whether their respective organization is publicly traded or not.

In general, managers and directors should keep the following in mind when making business decisions:

- At public companies such as public-stock corporations (*sociedades anónimas bursátiles* or SABs) as well as investment promotion corporations (*sociedades anónimas promotoras de inversión*, or SAPIs) who have willingly adopted the administrative practices of a public-stock corporation, the Chief Executive Officer is in charge of the organization's day-to-day operations, while the board of directors establishes general strategies which direct company business, and watches over the Chief Executive Officer's performance. In addition to such Chief Executive Officer, certain "chief officers" also participate in the daily functioning of the business, with their decisions often escalating to the highest of administrative, financial, operational, and legal company affairs.

Pursuant to Mexico's Securities Market Law (*Ley del Mercado de Valores*), a company's Chief Executive Officer, its chief officers, and its directors are bound, among other things, by a duty of care when making company decisions. This means that their decisions must be made in good faith, in an informed manner, and must, at all times, include prior disclosure of any relevant information which they become aware of. For such purposes, the Chief Executive Officer, the chief officers and the directors may request the opinion of other company officers

and committees, and may even solicit advice from experts outside the company so as to be provided with more information. Where directors do not have sufficient elements so as to be able to reasonably adopt a certain company decision, such directors are entitled to postpone the relevant meeting. In other words, the Chief Executive Officer, the chief officers, and the directors may, and are obliged to, gather any resources necessary in order for their decisions to be informed and implemented in good faith, and to the benefit of the company.

- At private companies- that is, those incorporated as non-listed corporations (*sociedades anónimas*); as investment promotion corporations (*sociedades anónimas promotoras de inversión*) who have not adopted the administrative structure of a public-stock corporation; or as limited liability companies (*sociedades de responsabilidad limitada*), the company's management, whether in the form of a sole manager or that of a board of directors, must act prudently, as if the company were their personal business.

The legal provisions which apply to private companies do not expressly distinguish the duties of care and loyalty expected from the Chief Executive Officer, chief officers, and directors of public companies: rather, they only establish the following general standard as to the behavior considered appropriate for sole managers and directors, as applicable: “*act as if the company were yours.*”

Such sole managers or directors who dispense with the aforementioned standard of behavior while in the course of their corporate duties, may be held liable before the company for any damages and lost profits which their actions may result in, independently of the criminal liability which they may also incur should their behavior constitute a felony.

In summary, whenever the directors or managers of a business make decisions in an informed manner and in good faith, avoiding conflicts of interest and acting prudently, they will not be held liable for the consequences which their decisions may bring upon the company, whether they be generally or particularly severe, and they will have enough reasonable arguments so as to justify that their decisions were adopted in unprecedented circumstances: those derived from COVID-19.

To obtain additional information contact our experts:

**Luis Burgueño**, Partner:

+52 (55) 5258 1003 | [lbargueno@vwys.com.mx](mailto:lbargueno@vwys.com.mx)

**Gloria Martínez**, Associate:

+52 (55) 5258 1016 | [gmartinez@vwys.com.mx](mailto:gmartinez@vwys.com.mx)

VON WOBESER Y SIERRA, S.C.

Mexico City, April 29, 2020.

---

S I N C E R E L Y