

## Spanish Government Approves Urgent and Extraordinary Measures to Mitigate the Impact of COVID-19

*The Royal Decree-Law contains measures touching on labor, tax, insolvency, corporate, and finance matters, among others.*

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Following the approval by the Spanish Government of the state of alarm last 14 March to manage the health crisis caused by COVID-19 (please see *Client Alert* "[Spain Imposes Royal Decree 463/2020 to Manage COVID-19 Health Crisis](#)"), the Council of Ministers has approved on 17 March Royal Decree-Law 8/2020 (Royal Decree-Law), which sets forth a number of urgent and extraordinary measures which aim to mitigate the economic and social impact of COVID-19 in Spain.

We summarize below the main aspects of the measures approved by the Royal Decree-Law in labor, tax, insolvency, corporate, and financing matters. The Royal Decree-Law contains other relevant provisions as well. Among others, the suspension of the liberalization of certain foreign investments in Spain in Spanish companies carrying out activities in strategic sectors (please see *Client Alert* "[New System for Screening Foreign Direct Investments in Certain Sectors in Spain](#)" for a description of such foreign investment suspension).

### Labour measures

The labour measures approved by the Royal Decree seek to maintain business activity during the health crisis and avoid redundancies. To that end, the Royal Decree mandates companies, if possible, to implement teleworking measures as long as such measures are technically feasible and reasonably proportionate.

If cases where the business activity needs to be suspended or reduced, the Royal Decree establishes new provisions in relation to the process to follow for the **collective suspension of employment relationships or the collective reduction in working hours**, which are basically aimed at making such processes more flexible.

The Royal Decree differentiates two types of collective suspension of work or collective reduction of working hours: (a) those based on "force majeure" reasons and (b) those based on COVID-19 related reasons. In this regard, although the Royal Decree is not clearly drafted, it would seem that the force majeure process is limited to those sectors or businesses that have been mandated to suspend their

business activity while the other process will embrace the vast majority of companies, *i.e.* those that will need to suspend or reduce their activity for COVID-19-related reasons.

### **Suspension for force majeure**

For companies that will be entitled to apply a collective measure for force majeure grounds, the measures approved by the Royal Decree are the following:

- Authorization from the labour authorities: Companies will need to file the application for force majeure (including a report and documentation supporting the concurrence of the force majeure), provide a copy to the workers' representatives and inform the affected workers. Companies will need to await the express authorization from the labour authorities. The resolution of the authorities (grant or denial) will need to be issued within five days and will be effective as from the date on which the force majeure started.
- Reduction in Social Security contributions: (i) Companies with less than 50 employees will be exempted from paying Social Security contributions (employer quota only) during the term of the measures, and (ii) companies with more than 50 employees will have a 75% discount on the employer quotas.
- Unemployment allowance: All employees affected by the suspension/reduction measures will be entitled to the unemployment allowance irrespective of whether they personally fulfil or not the requirements set by law to access such allowance. In addition, the employment allowance paid during this period will not compute for future situations in which the employee may request another unemployment allowance.

Additionally, as in any other collective suspension of work, employers will not need to pay salaries.

### **Suspension for COVID-19 related reasons**

Regarding companies that need to suspend employment relationships or reduce working hours due to COVID-19 related reasons, the Royal Decree has introduced the following changes to the standard process:

- The representative committee of the workers need to be formed in five days (for companies not having employee representation, representatives will be appointed by the trade union associations having the majority of the representation in the business sector or else by employees of the company).
- The consultation process with the workers' representatives shall not exceed seven days.
- The consequences from an unemployment allowance perspective will be the same as those explained above.

In addition, the standard process will continue to apply which entails filing the application with the labour authorities and informing the labour authorities about the outcome of the consultation process. As opposed to force majeure, this type of collective suspension does not require the express consent or authorisation of the labour inspection. Lastly, companies will be exempt to pay compensation or salaries to employees (unless expressly agreed to during the consultation).

## Employment guarantee

The Royal Decree includes in its final provisions an employment guarantee whereby all extraordinary employment measures carried out by companies in application of the measures approved by the Royal Decree are conditioned to the companies keeping employment within the six months following the restart of business activity.

## Working time adaptation or reduction

Employees may request an alteration of working hours (including changes in shifts) or the reduction of working hours (up to 100%) to take care of a spouse or partner, or dependent family members up to the second degree of kindship, for COVID-19-related reasons.

## Tax measures

The Royal Decree suspends the deadline for tax debt payments assessed by the tax authorities, including deferred or suspended tax debts as well as tax debts within the enforcement period (*periodo ejecutivo*), until 30 April. In addition, a general delay in the deadline of tax administrative procedures has been approved until 30 April. For tax debts assessed or tax procedures initiated after the date of the Royal Decree's approval, the deadline for payment obligations or fulfillment of tax formalities is extended until 20 May (save in cases where the legal deadline goes beyond such date). The Royal Decree also suspends statutory limitation periods for the exercise of rights and the imposition of obligations during the application of the relevant delays.

The Royal Decree does not foresee additional measures regarding any potential deferral or suspension of payment of self-assessed taxes (like, for instance, Value Added Tax, withholding taxes or Corporate Income Tax payments on account), and the tax authorities have confirmed that taxpayers will need to continue fulfilling such self-assessment and payment obligations, unless further measures on this matter are released. So far, in accordance with article 14 of Royal Decree Law 7/2020 only those companies whose turnover in 2019 did not exceed €6,010,121.04 can benefit from the automatic six months deferral (with the accrual of interest for late payment as from the third month) of tax debts payments of less than €30,000 (without the need to file any type of guarantee or security).

Finally, the Royal Decree provides for an exemption applicable to Stamp Duty triggered in the novation of those mortgage loans that can benefit from the moratorium on mortgage payments detailed below.

## Suspension of the term to apply for insolvency

According to the provisions of the Royal Decree-Law, during the state of alarm, the debtor will not be required to apply for insolvency under the following circumstances:

- i. In case it is in an insolvency situation; or
- ii. In case it has notified the competent court the initiation of negotiations with its creditors in order to reach a refinancing agreement, an out of court payment arrangement, or to obtain the accession of the creditors to an early composition agreement (*propuesta de convenio anticipado*) event if the term set forth in article 5bis.5 of Law 22/2003, of 9 July, on Insolvency, has expired.

Courts will not accept the insolvency applications submitted by creditors during the state of alarm or during the two months following its termination.

In case any voluntary insolvency request is submitted by any debtor during the state of alarm, it will be processed by the court with priority to other insolvency requests, even if it is filed with on later date.

### **Extraordinary measures applicable to legal entities governed by private law**

The new Royal Decree-Law establishes some measures to give more flexibility in the adoption of corporate resolutions and to adapt the deadlines for the approval of certain resolutions during the state of alarm:

- a) The formalities for the adoption of agreements by the governing and management bodies of associations, civil and commercial companies, the governing bodies of cooperative entities and the management bodies of foundations are made more flexible, so that, even if the bylaws do not foresee these situation these meetings can (i) be held by videoconference provided that it ensures authenticity and bilateral or multi-lateral connection in real time with image and sound of the attendees and (ii) they can be adopted by written vote and without a holding meeting, if this is requested by the president of the management body or by, at least, two directors.
- b) The three months period from the end of the corporate year for the formulation of the annual accounts is suspended until the end of the state of alarm. Instead, there will be a three month period from the end of the state of alarm for the formulation of the annual accounts by the management body and a period of three months from its formulation for the approval of the annual accounts by the general shareholders' meeting.
- c) During the state of alarm the shareholders of commercial companies will not be entitled to exercise their separation right, even if there are legal or statutory grounds to do so.
- d) If the term of duration of a company expires during the state of alarm the company will not be considered to be fully dissolved until a two months period has elapsed since the end of the state of alarm.
- e) If a legal or statutory cause for the dissolution of a company has arisen either before or during the state of alarm, the mandatory period that the management body has to call the general shareholders' meeting so they can approve, either the dissolution of the company or any other measures to avoid the dissolution, is suspended until the state of alarm ends. If the legal or statutory cause for the dissolution has occurred during the state of alarm, the management body will not be liable for the corporate debts incurred during that period.

### **Extraordinary measures applicable to the operation of the management bodies of listed companies (*Sociedades Anónimas Cotizadas*)**

Exceptionally, during 2020, the following measures will be applied to companies with securities admitted to trading on a regulated market in the European Union:

- a) The obligation to publish and send their annual financial report to the National Commission of the Stock Market (CNMV) and the audit report of their annual accounts may be fulfilled up to six months after the end of the financial year. This period will be extended to four months for the publication of the interim management statement and the half-yearly financial report.
- b) The ordinary general shareholders' meeting may be held within the first ten months of the corporate year.

- c) The Board of Directors may foresee in the call to the general shareholders' meeting the possibility of attending by electronic means and remote voting, as well as holding of the meeting in any place within the national territory, even if these matters are not expressly foreseen in the bylaws of the companies.
- d) In the event that due to measures imposed by the public authorities it is not possible to hold the general shareholders' meeting in the place and location stated in the call, and provided that the alternatives set out above cannot be implemented, the following rules will apply:
  - i. If the general shareholders' meeting has been validly constituted in said place and location, the shareholders may agree to continue holding the meeting on the same day in another place and location within the same province, giving a reasonable period of time to move the attendees from one place to another.
  - ii. If the general shareholders' meeting cannot be held, a new general shareholders' meeting can be called, with the same agenda and the same publicity requirements as the meeting that has not taken place, at least five days before the date set for the new meeting.
- e) In this case, the management body may agree in the supplementary announcement to hold the meeting exclusively by electronic means, even if this is not foreseen in the company's bylaws, provided that it is accompanied by reasonable guarantees to ensure the identity of the persons exercising their voting rights.
- f) Exceptionally, the resolutions of the board of directors and the resolutions of the audit committee will be valid when they are adopted by videoconference or multiple telephone conference, even if this possibility is not foreseen in the bylaws of the company, provided that all the directors have the necessary means to do so and the secretary of the board recognises their identity, which must be expressed in the minutes and in the certificate of the resolutions. In this case, the meeting shall be considered as a single meeting held in the registered office.

### **Suspension of the expiration term for the registration entries**

During the state of alarm and, if applicable, during any of its extensions, the expiration term of the registration entries, the preventive annotations, mentions, marginal notes and any other registration entries which are susceptible of being cancelled for the lapse of time, will be suspended. The expiration term will be reset the day after the finalization of the state of alarm or any of its extensions.

### **Additional liquidity measures to keep the economic activity running considering the special difficulties of the current situation**

The Ministry of Economy and Digital Transformation will provide guarantees, for a maximum amount of €100 billion, to financing granted by credit institutions, electronic money institutions and payment institutions to companies and self-employed persons to meet their obligations arising, among others, from the management of invoices, working capital requirements, expiration dates of financial or tax obligations or any other cash needs. Conditions and requisites to be complied with, including the maximum term for the application of the guarantee, shall be established by agreement of the Council of Ministries, without the need of any further regulations for its implementation.

The Official Credit Institute (ICO) borrowing limit is extended by €10 billion to increase the ICO credit facilities to finance companies and self-employed persons.

It has been approved to set up a new insurance coverage of up to €2 billion from the Internationalization Risks Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*) for a period of six months from the entry into force of the Royal Decree-Law. This new insurance policy will cover working capital credit facilities that are necessary for exporting companies, provided that they are related to new financing needs and not to situations prior to the current crisis. The beneficiaries of this coverages will be (i) Spanish companies considered as small and medium-sized enterprises as defined in Annex I of Commission Regulation EU 651/2014, and (ii) other larger companies, provided that they are not-listed entities, that comply with the requirements set out the new Royal Decree-Law.

## **Moratorium in the repayment of mortgage loans granted for the acquisition of the habitual residence**

The Royal Decree-Law sets forth a moratorium in the repayment of installments of any mortgage loan or credit granted for the acquisition of habitual residency, which were in place at the time of publication of the Royal Decree, this is 18 March, held vis-à-vis debtors that are in situations of economic vulnerability, as set out in the Royal Decree-Law.

### **Individuals that can benefit from the moratorium**

An individual will be considered to be in a situation of economic vulnerability in the following circumstances:

- a) If the debtor (i) is placed into an unemployment situation or (ii) should the debtor be a professional or entrepreneur, he/she suffers a substantial loss of income or a drop in sales of at least 40%.
- b) If the total income of the family household does not exceed, in the month prior to the application for the moratorium, the limit of three times the “Indicador Público de Renta de Efectos Múltiples ” (IPREM) monthly indicator. Such limit may be modulated under certain circumstances set forth in the Royal Decree-Law.
- c) If the amount of the mortgage instalments plus the basic expenses and supplies is equal or greater than 35% of the net income perceived by all the members of the family household.
- d) If, as a consequence of the health emergency, the family household has suffered a significant alteration of economic circumstances in terms of access to housing, *i.e.* if the financial burden represented by the mortgage instalments over the family household income has multiplied by at least 1.3 times.

### **Term to apply for the moratorium**

Debtors in any of the situations above may request to the creditor a moratorium on the repayment of the mortgage loan granted for the acquisition of the inhabited residence, from the date after the publication of the Royal Decree-Law, 18 March 2020, and up until a period of 15 days since the date on which the Royal Decree-Law ceases to be in force.

Once the moratorium has been requested, the creditor shall have to implement the moratorium within a maximum period of 15 days as from the application. Once it is granted, the creditor shall notify to the Bank of Spain the existence of the moratorium, its period, and that it shall not be considered for the purposes of the calculation of any risk accounting provisions.

### **Effects of the moratorium**

The application of the moratorium shall entail the suspension of the mortgage debt and the non-application of the early termination clause during the period set forth for the application of the moratorium. Therefore, during the period of the moratorium, the creditor shall not be able to request any repayment of the mortgage debt (principal or interest) and no ordinary interest shall accrue on the mortgage debt. Additionally, no default interest shall apply as from the application filed by the debtor for the moratorium.

### **Consequences of the undue application of the moratorium**

If any debtor obtains the benefit of the moratorium without fulfilling the requirements set forth in the Royal Decree-Law, he/she shall be liable for any damages caused for this reason and for any expenses caused by the application of these measures.

A debtor shall also be held liable if he/she is voluntarily placed or maintained in a situation of economic vulnerability, in order to obtain the benefit of the moratorium. The creditor will have the burden of proof in this circumstance.

### **Pending questions in relation to the application of the moratorium**

There are certain questions that have not been clarified in the Royal Decree-Law which may impact the application of the moratorium, such as the following:

- 1) The moment upon which the circumstances set forth in the Royal Decree-Law shall have occurred in order to benefit from the moratorium
- 2) The term of the moratorium
- 3) The capacity that the creditor has to verify or reject the documents to prove fulfilment of the applicable requirements by the debtors in order to benefit from the moratorium

### **Other measures**

The Royal Decree-Law contains other relevant measures, including: (i) provisions to guarantee water and energy supply to vulnerable consumers (e.g., prohibition of interruption of supply during the alarm state and the suspension of the automatic update of energy prices); (ii) the possibility of suspension of public contracts; and (iii) the suspension of the liberalization of foreign direct investments in Spain in certain sectors.

Latham & Watkins will continue to monitor and update on the situation.

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