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Spain Approves Additional Measures to Mitigate the Social and Financial Impact of COVID-19

The new Royal Decree-Law contains measures affecting real estate, finance, and corporate matters as well as the right of consumers to terminate certain agreements.

On 1 April, the Spanish Government's Council of Ministers approved Royal Decree-Law 11/2020, setting forth additional measures to mitigate the social and financial impact of COVID-19 (RDL 11/2020). This follows (i) the government's approval of a State of Alarm on 14 March to manage the public health crisis, (please see *Client Alert* [Spain Imposes Royal Decree 463/2020 to Manage COVID-19 Health Crisis](#)) and (ii) the approval of Royal Decree-Law 8/2020 on 17 March, which set forth a number of urgent and extraordinary measures (RDL 8/2020) (please see *Client Alert* [Spanish Government Approves Urgent and Extraordinary Measures to Mitigate the Impact of COVID-17](#)).

This *Client Alert* summarises the main aspects of the measures approved by RDL 11/2020 in relation to real estate, finance, and corporate matters, as well as the termination of agreements entered into by consumers. RDL 11/2020 contains additional provisions, including, among others, an amendment to the suspension of the liberalisation of certain foreign investments in Spanish companies operating in strategic sectors. (see *Client Alerts* [New System for Screening Foreign Direct Investments in Certain Sectors in Spain](#) and [Spain Amends Again New Foreign Direct Investment Screening System](#) for a description of the foreign investment suspension and its amendment.)

RDL 11/2020 was published 1 April 2020 in the State Official Gazette (BOE) and enters into force on 2 April 2020. As a general rule, unless given a specific term, the measures provided for in RDL 11/2020 will remain in force until one month after the end of the State of Alarm.

1. Measures to support tenants in a situation of “economic vulnerability”: impact on residential lease agreements

Suspension of eviction procedures on vulnerable households with no alternative housing

- 1) Until the State of Alarm is lifted, residential eviction procedures will be suspended for a maximum period of six months ending on 2 October 2020 for leases involving tenants in a situation of economic

or social vulnerability as a consequence of COVID-19. This includes tenants for whom it is impossible to find a housing alternative for him/herself and his/her household.

- 2) In order for such suspension to take place, the tenant must prove that he/she is in a situation of economic vulnerability (see below). If the Administration of Justice accepts the situation of economic vulnerability, the suspension will apply retroactively from the date on which the situation occurred for the time strictly necessary, having regard to the report from the social services.
- 3) In the event that the suspension affects landlords who can prove to the court that they are also in a situation of economic or social vulnerability as a result of the effects of COVID-19, the Ministry of Justice must communicate this to the competent social services for their consideration in establishing the period of suspension and in defining the social protection measures to be adopted.

Extraordinary extension of the term of residential leases

In the case of residential leases relating to the primary residence of a tenant, where, within the period from 2 April 2020 until the date falling two months after the end of the State of Alarm, the period of compulsory extension for lease agreements set forth in the Urban Leases Act expires (*i.e.*, five years in the case of individual landlords and seven years if the landlord is a legal entity), an extraordinary extension of the term of the lease for a maximum period of six months may be applied at the request of the tenant.

This request for extraordinary extension must be accepted by the landlord, unless other terms or conditions are agreed between the parties.

Moratorium on rent payments

Automatic moratorium for “large property holders”

- 1) The tenant in a situation of economic vulnerability may request from any large property holding landlord (*i.e.*, any individual or legal entity that owns more than 10 urban properties, excluding garages and storage rooms, or a constructed surface area of more than 1,500 square meters), within one month from the entry into force of the RDL 11/2020 (*i.e.* until 2 May 2020), temporary deferment of rent payments, provided that such deferment or its cancellation has not already been agreed between the parties.
- 2) In the event that an agreement has not been reached between the landlord and tenant, the landlord must expressly inform the tenant, within a maximum period of seven working days, of his/her decision, which must be chosen from the following alternatives:
 - A reduction of 50% of the rent due during the State of Alarm and the following monthly payments if the situation of vulnerability caused by COVID-19 extends beyond the State of Alarm, with a maximum of four months from the declaration of the State of Alarm (*i.e.*, rents accrued from 14 March 2020 to 14 July 2020).
 - A moratorium on rent payments, which will be applied automatically during the State of Alarm and the following monthly rent payments, which may be extended one by one, on a monthly basis, if the situation of vulnerability caused by COVID-19 extends beyond the State of Alarm, with a maximum of four months from the declaration of the State of Alarm (*i.e.*, rents accrued from 14 March 2020 to 14 July 2020).

- A deferment of rent payments, beginning on the next monthly rental payment. Repayment of the deferred rent will extend over a period of, at least, three years from the moment in which the situation of economic vulnerability is overcome, or from the end of the four-month period mentioned above, and always within the period during which the lease agreement or any of its extensions continues to be in force. The tenant will not be penalised in any way and no interest will be charged on any deferred amounts due to the landlord.
- 3) The tenant can access the transitional financing aid programme set forth in RD 11/2020, which would replace the moratorium on rent payments described above.

Definition of situations of economic vulnerability

To benefit from the moratorium on rental payments, the tenant's and/or his/her "family household's" circumstances must meet certain criteria. For these purposes, "family household" comprises (a) the tenant, (b) his/her spouse or registered common-law spouse (unless the debtor is legally separated), or, (c) the children, regardless of their age, who live at the residence, including those in a relationship of guardianship, custody or foster care, and (d) the spouse or common-law spouse of the children (unless the child is legally separated), who lives at the residence.

The household of the tenant must meet both of the following requirements:

- 1) The tenant has become unemployed (including as a result of the temporary unemployment programme ERTE) or has reduced his/her working hours due to healthcare-related matters, if the tenant is self-employed, or, in general, faces a similar substantial loss of income, in both cases resulting in a situation in which the total income of the "family household" does not exceed the following thresholds in the month prior to the request of the moratorium:
 - In general terms, the limit of three times the so-called "Indicador Público de Renta de Efectos Múltiples" (IPREM) monthly indicator (*i.e.*, €537.84).
 - This limit will be increased by 0.1 times the IPREM for each custodial child of the "family household" or, if applicable, 0.15 times the IPREM for each custodial child for single-parent "family households".
 - This limit will be increased by 0.1 times the IPREM for each person above 65 years old who is a member of the "family household".
 - The general limit will be four times the IPREM (instead of three times) if any of the members of the "family household" has certain disabilities (over 33%), a situation of dependence, or a permanently incapacitating disease. This limit will be increased by the children that are members of the "family household", if any.
 - The general limit will be five times the IPREM (instead of three times) if the tenant is a person with cerebral palsy or serious mental illness or intellectual disability, or a person with certain serious physical or sensory disabilities, as well as in cases of serious disease that incapacitate the person or his/her caregiver.
- 2) The amount of the rent plus the basic expenses and supplies is equal or higher to 35% of the net income received by all the members of the "family household". For these purposes, "basic expenses and supplies" means the cost electricity, gas, oil, water, fixed and mobile telecommunications services, and any contributions to the owners' association.

It will not be deemed a case of economic vulnerability if the tenant or any member of the household is the owner or holds a right of use of the residential property in Spain (except when (a) such right is only over a share (proindiviso) by means of an inheritance, or (b) the owner can evidence the unavailability of the residential unit due to separation or divorce, or for any other cause beyond his/her control or when the dwelling is inaccessible because the owner or any of the members of the household is handicapped).

Evidence of the situation of economic vulnerability

The tenant will have to show evidence of the situation of economic vulnerability to the landlord providing documentation listed in RDL 11/2020 (e.g., a certificate of the social security authorities evidencing unemployment, a certificate from the tax authorities of the cessation of the activity for self-employed individuals, etc.) The tenant must also provide a statement declaring the fulfilment of the requirements to be considered a tenant without sufficient economic resources. If the tenant has difficulties caused by the State of Alarm that prevent him/her from obtaining certain documents, he/she can replace them through the presentation of a statement and submit the relevant documents within a one-month period.

Undue application of the moratorium

If any tenant benefits from the moratorium without fulfilling the applicable requirements, he/she will be liable for any damages and expenses caused by the application of these measures without prejudice to any other applicable measures. A tenant shall also be held liable if he/she is placed or maintained in a situation of economic vulnerability deliberately, in order to obtain the benefit of the moratorium.

Moratorium against landlords which are not “large property holders”

Economically vulnerable tenants of primary residences may ask the landlord, when the latter is not a “large property holder”, within one month of the entry into force of RDL 11/2020, for the temporary and extraordinary postponement of rent payments, provided that such postponement or the total or partial cancellation of the rent has not been previously agreed between the two parties on a voluntary basis. If the individual landlord does not accept any agreement on deferment within the seven working days following the tenant’s request, the tenant can access to the transitional financing aid program of established by RDL 11/2020.

Transitional financing aids

In order to provide financial coverage for housing expenses by households in situations of social and economic vulnerability as a result of the COVID-19, the Ministry of Transport, Mobility and the Urban Agenda is authorised, by agreement with the Official Credit Institute, to provide interest-free financing for a period of up to 14 years, through a line of bank guarantees from the State. This allows banks to offer transitional financing assistance to people in the situations of vulnerability, with a repayment period of up to six years, exceptionally extendable for a further four year period and in no case accruing any costs or interest for the applicant.

The transitional financing aid will be aimed at end-users, and must be used to pay rent for residential leases and may cover a maximum amount of six months’ rent.

These transitional financing aids will be available to all tenants who are in a situation of vulnerability as a result of COVID-19, in accordance with the criteria and requirements defined through an Order of the Ministry of Transport, Mobility and the Urban Agenda, which will include in all cases, and as a minimum, the situations defined above.

2. Measures to support debtors and guarantors in a situation of “economic vulnerability”: impact on mortgage-backed and unsecured loans

Modifications on the moratorium on residential mortgage loans set out by RDL 8/2020

Definition of situations of economic vulnerability

The definition of economically vulnerable situations caused by the COVID-19 public health crisis set out in RDL 8/2020 have been amended as defined below.

The measures are assessed considering the circumstances of the debtor and/or his/her “family household”. For these purposes, “family household” comprises (a) the debtor, (b) his/her spouse or registered common-law spouse (unless the debtor is legally separated), or, (c) the children, regardless of their age, who live at the residence, including those in a relationship of guardianship, custody or foster care, and (d) the spouse / common-law spouse of the children (unless the child is legally separated), who lives at the residence.

The household of the tenant must meet, cumulatively, the following criteria to benefit from the moratorium on mortgage debt:

- 1) The debtor (i) is placed into an unemployment situation, or (ii) is a self-employed debtor who suffers a substantial loss of income or a substantial drop in sales (*i.e.*, at least 40%).
- 2) The total income of the “family household” does not exceed the following limits in the month prior to the request of the moratorium:
 - In general terms, the limit of three times the IPREM monthly indicator (*i.e.*, €537.84).
 - This limit will be increased 0.1 times the IPREM for each custodial child of the “family household” or, if applicable, 0.15 times the IPREM for each custodial child for single-parent “family households”.
 - This limit will be increased 0.1 times the IPREM for each person above 65 years old who is a member of the “family household”.
 - The general limit will be four times the IPREM (instead of three times) if any member of the “family household” has certain disabilities, a situation of dependence, or a permanently incapacitating disease. This limit will be increased by the children who are members of the “family household” in accordance with roman (ii) above.
 - The general limit will be five times the IPREM (instead of three times) if the mortgage debtor is a person with cerebral palsy, mental illness, or serious intellectual disability, or a person with serious physical or sensory disabilities, as well as in cases of serious disease that incapacitate the person or his/her caregiver.
- 3) If the amount of the mortgage instalments plus the basic expenses and supplies is equal or higher to 35% of the net income perceived by all members of the “family household”. For these purposes, “basic expenses and supplies” means the amount of the cost of the supply of electricity, gas, oil, water, fixed and mobile telecommunications services, and contributions to the owners’ housing associations.

- 4) If, as a consequence of the COVID-19 crisis, the “family household” has suffered a significant alteration of the economic circumstances in terms of access to housing. This event will be triggered if the financial burden represented by the mortgage instalments over the “family household” income has multiplied by at least 1.3 times.

It will not be deemed a case of economic vulnerability if the tenant or any member of the household is the owner of or has the right of use of a residential property in Spain (except when (a) such right is only over a share (*proindiviso*) by means of an inheritance, or (b) the tenant or member of the household can certify the unavailability of the residential unit due to separation or divorce, or for any other cause beyond their control, or when the dwelling is inaccessible because the owner or any of the members of the household is handicapped).

Evidence of the situation of economic vulnerability

The debtor will have to evidence the situation of economic vulnerability to the creditor by providing the documentation listed in RDL 8/2020 (or if the debtor is leasing the residence, the lease agreement). If the debtor has difficulties caused by the crisis that prevent obtaining certain documents, he/she can replace them through the presentation of a responsible statement and submit the relevant documents within a one-month period.

Scope of application

The moratorium will apply to residential mortgage loans for the acquisition of (a) the primary residence, (b) property used for the economic activity of self-employed individuals, or (c) dwellings other than the debtor’s main residence that are let but where the debtor has ceased to receive rental income during the entry into force of the state of alarm (or ceases to receive it until one month after the end of the state of alarm).

Additionally, the moratorium shall have a duration of three months, which may be extended by the Council of Ministers.

RDL 11/2020 has extended the moratorium that was applicable to mortgage loans to debtors in economic vulnerability pursuant to RDL 8/2020 to unsecured loans in accordance of the following

Scope of application

The definition of “economic vulnerability” for debtors of unsecured loans is the same as defined above for secured loans, with the following adjustments:

- 1) If the debtor under the unsecured loan is the beneficiary of a moratorium of a mortgage loan or a rental moratorium, the impact of such moratoriums will not be taken into account for the purposes of the calculation of the thresholds which apply to the suspension of the obligations of unsecured loans.
- 2) If the potential beneficiary did not enter into a mortgage loan, but has to pay a periodic payment, rent, or unsecured loan against a financial entity for his/her primary residence, the amount of the mortgage payment shall be replaced by the total sum of these amounts, including the rent (even if it is subject to a moratorium).

The concurrence of the circumstances referred to above shall be accredited by the debtor to the creditor through the presentation of the documentation referred to above in relation to mortgage loans *mutatis mutandis*.

Guarantors

Guarantors to whom the suspension of obligations arising from non-mortgage loan agreements applies may require the creditor to claim the assets of the principal debtor before claiming the debt from them, even if they have expressly waived such benefit of exception in the agreement (which is the market practice in Spain).

Granting of the moratorium

- 1) Once the request for moratorium has been made and the situation of economic vulnerability has been established, the creditor shall proceed to the automatic suspension of the obligations arising from the unsecured credit.
- 2) The application of the suspension will not require an agreement between the parties for it to take effect, nor any formal amendment of the agreement. The suspension of the contractual obligations will take effect from the debtor's request to the creditor, supplemented by the required documentation, by any means.
- 3) Once the moratorium has been applied, the creditor shall notify the Bank of Spain of its existence and term. The amounts that would be payable to the debtor if the moratorium were not applied shall not be considered to be due.
- 4) The moratorium shall have a duration of three months (*i.e.*, until 2 July 2020), which may be extended by the Council of Ministers.
- 5) When the lender and the borrower benefiting from the moratorium agree on an amendment of the agreement, in relation to provisions other than the moratorium, they shall incorporate, in addition to those other provisions, the suspension of the contractual obligations imposed by RDL 11/2020 and requested by the debtor, as well as the non-accrual of interest during the period of suspension.

Effects

While the moratorium is in force:

- 1) The creditor may not demand any payments of instalments, or of any of the items making up the loan (repayment of principal or payment of interest), either in full or in part.
- 2) No interest of any kind, whether ordinary or delayed, will accrue.
- 3) The maturity date agreed in the contract shall be understood to be automatically extended without any modification of the rest of the agreed conditions.
- 4) The moratorium of the payment of interest shall not be applicable to debtors or contracts other than those regulated in the RDL 11/2020.

Undue application of the moratorium

If any debtor benefits from the moratorium without fulfilling the applicable requirements, he/she will be liable for any damages and expenses caused.

A debtor shall also be held liable if he/she is placed or maintained in a situation of economic vulnerability deliberately in order to obtain the benefit of the moratorium.

3. Right of consumers and users to terminate certain agreements without penalty

Any consumer contract which is a services agreement or agreement for the sale of goods (i) which obligations are impossible to be fulfilled, or (ii) in which the parties thereto are not able to seek for a remedy that restores the reciprocity of interests of the agreement, due to the measures carried out by the Spanish government during the state of alarm imposed by the COVID-19 crisis, will be subject to a 14-day suspension/termination right in favor of the consumer. The deadline for seeking such remedy is 60 calendar days following the impossible performance of the contract.

If the obligations of the abovementioned agreements are impossible to be fulfilled in accordance to the previous paragraph, the counterparty shall be obliged to refund the consumer in full, less any reasonable expenses incurred by such company, in the same form in which payment was made by the consumer within a maximum period of 14 calendar days, unless the consumer expressly agrees otherwise.

Particular cases

- 1) Agreements for the provision of successive services
 - Companies may offer alternatives for the consumer to be able to seek provision of the relevant service at a later date. This proposal is subject to the consumer's acceptance, and the amounts already paid in respect of the period of service not provided shall be refunded if the consumer rejects such alternatives. Companies must refrain from issuing additional invoices until the relevant service can be provided under regular circumstances with unilateral termination right arising thereof, except by agreement of both parties.
- 2) Package holidays which have been cancelled due to COVID-19
 - The organiser or, where appropriate, the retailer, of package holiday contracts may provide the consumer with a voucher to be used within one year from the end of the state of alarm and its extensions, for an amount equal to the refund that would have corresponded to the applicable holiday. If such voucher is not used by the consumer during the one-year term from the end of the state of alarm and its extensions, the consumer shall receive a refund or a new voucher.
 - If the consumer requests the termination of the package holiday contract under article 160, paragraph 2 of the Spanish Consolidated General Law for the Defense of Consumers and Users, the organiser, or where appropriate, the retailer, shall proceed to make the refund, provided that the service providers related to such agreement had also proceeded to the full refund of the amount for their services. The consumer will have the right to a partial refund of the refunds made by the service providers, and such amounts may be deducted from the amount of the voucher to be provided to the consumer.
 - The abovementioned refunds shall be made within a period not exceeding 60 calendar days from the date of termination of the agreement or from the date on which the service providers have made the refund.

4. Corporate measures

RDL 11/2020 includes some clarifications and amendments on the provisions introduced by RDL 8/2020 in respect of legal entities governed by Spanish law and listed companies.

In respect of legal entities, the main changes include the following:

- 1) RDL 11/2020 clarifies that meetings 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 may be held by videoconference or by multiple conference call, provided that: (i) all members of the relevant management body have the necessary tools to do so; (ii) the secretary acknowledges their identity; and (iii) the secretary records such circumstance in the minutes of the meeting, which is sent immediately thereafter to the members of the relevant management body.
- 2) The same flexibility rules shall also be applicable to the general shareholders meetings or associates meetings even if it is not expressly provided under the by-laws.
- 3) 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. RDL 11/2020 clarifies that the suspension applies to annual accounts, ordinary or abbreviated, individual or consolidated. RDL 11/2020 also provides that the formulation of the annual accounts by the relevant management body during the state of alarm shall be valid. Likewise the verification of the annual accounts will be also possible within the maximum term established by law or within the extended maximum term as provided under the same provision.
- 4) Regarding allocation of results, RDL 11/2020 provides for different scenarios:
 - If the company has already formulated its annual accounts and convenes a general shareholders meeting from the entry into force of RDL 11/2020, the management body may modify its proposal for allocation of results with a new proposal. Such new proposal needs to be justified on the basis of the COVID-19 crisis, which must also be accompanied by an opinion from the auditor stating that he would not have changed his audit opinion if he had known the new proposal when he issued it.
 - If the GSM is already convened, the management body may withdraw the proposal for the application of the result from the agenda for the purpose of submitting a new proposal for approval by the GSM, which must also be held within the period legally established for holding the ordinary GSM. The decision of the management body shall be published before the new GSM is to be held. The same conditions as described in section 3 above shall be applicable.

If **listed companies** opt for the amendment of the proposal of allocation of results in the terms described above, the new allocation proposal, its justification by the management body, and the auditor's report must be made public as soon as they are approved, as supplementary information to the annual accounts on the company's website and on the CNMV's website as other relevant information or, if required, as privileged information.

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

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If you have any queries about this *Client Alert*, please contact one of the authors listed below, or your contact at Latham & Watkins:

Ignacio Gómez-Sancha

ignacio.gomez-sancha@lw.com
+34.91.791.5026
Madrid

Rafael Molina

rafael.molina@lw.com
+34.91.791.5075
Madrid

Jordi Domínguez

jordi.dominguez@lw.com
+34.91.791.5043
Madrid

Naiara Rodríguez-Escudero

naiara.rodriguez-escudero@lw.com
+34.91.791.5110
Madrid

Ignacio Pallarés

ignacio.Pallarés@lw.com
+34.91.791.5019
Madrid

José María Jiménez-Laiglesia

JoseMaria.Jimenez-Laiglesia@lw.com
+34.91.791.5085
Madrid

María José Descalzo

Maria.Descalzo@lw.com
+34.91.791.5106
Madrid

Óscar Franco

Oscar.Franco@lw.com
+34.91.791.5009
Madrid

José Antonio Sánchez Dafos

Jose.Sanchez@lw.com
+34.91.791.5028
Madrid

Fernando Colomina

Fernando.Colomina@lw.com
+34.91.791.5014
Madrid

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