

## COVID-19: Key new legislation introduced in Royal Decree-Law 11/2020

We analyze the measures introduced by Royal Decree-Law 11/2020, from every angle of business law: corporate/commercial contracts, tax, labor and employment, restructuring and insolvency, procedures and administrative law.

The April 1, 2020 edition of the Spanish Official State Gazette (BOE), published Royal Decree-Law 11/2020 of March 31, 2020, adopting urgent additional measures in the social and economic sphere to confront COVID-19 (RDL 11/2020), which also amends Royal Decree-Law 8/2020, of March 17, 2020, to correct and adjust a few issues that had raised doubts in that decree-law.

RDL 11/2020 comes into force on April 2, 2020 (the day after its publication date in the Official State Gazette), except for measures relating to the restriction on commercial communications of entities carrying on gambling activities, which come into force on April 3, 2020.

### 1. Employment and labor law measures:

The key new labor and employment legislation is summarized below:

- **Moratorium on contribution payments:** it allows the Social Security General Treasury to grant interest-free six-month moratoriums, to any companies and self-employed workers that so request and meet the requirements and conditions that will be laid down in a ministerial order.

The moratorium will last for the period between April and June 2020, in the case of companies, and in the case of self-employed workers, between May and July 2020, provided the activities they carry on have not been suspended by reason of the state of emergency.

This moratorium will not be applicable to the contribution account numbers in respect of which companies have obtained exemptions from payment of the employer's contribution and from payments of the jointly collected items, under article 24 of Royal Decree-Law 8/2020.

- **Deferral of contributions:** Companies and self-employed workers, provided they do not have any other deferral in effect, may apply for deferred payment of their social security debts for which the stipulated payment period is between April and June 2020, subject to the terms and conditions set out in the social security legislation, and 0.5% interest is applicable.
- **Application of the undertaking to maintain employment to companies in the scenic arts, musicals, filmmaking and audiovisual sectors:**

The undertaking to maintain employment under Royal Decree-Law 8/2020 will be assessed by reference to the specific characteristics of the various sectors and the applicable labor and employment legislation, and consideration will be given to the specific characteristics of companies that have a high level of variation or seasonal changes in employment or a direct relationship with specific events or shows, as occurs, among others, in the scenic arts, musicals, filmmaking and audiovisual fields.

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In particular, in the case of temporary contracts, the undertaking to maintain employment will not be considered to have been breached where the contract terminated due to expiry of the stipulated term or the completion of the project or service forming its subject-matter or where the activity hired in the contract cannot be carried out immediately.

In every case, the measures set out in articles 22 through 28 of Royal Decree-Law 8/2020, will be applicable to every worker, regardless of whether they have definite or indefinite term contracts.

- **Other employment and social security measures are as follows:**
  - An extraordinary subsidy for absence of activity is created for individuals under the special system for household workers and an exceptional unemployment benefit subsidy for temporary contracts that have come to an end.
  - There are provisions on the benefit for sick leave (temporary incapacity) in the exceptional situation of complete confinement.
  - The requirements for eligibility for the benefit for ceased operations are amended.
  - There are provisions on the compatibility of the subsidy for the care of minors affected by cancer or other serious illnesses and the unemployment benefit or benefit for ceased operations while the state of alarm is in force.

## 2. General corporate/commercial contract matters

Various corporate/commercial contract matters are clarified which up to now had given rise to debates regarding interpretation:

- Meetings of managing bodies of companies, partnerships, associations, cooperatives and foundations are allowed to be held not only by video call but also by conference call provided that the secretaries of the bodies recognize the attendees, the attendees have the means, and minutes are sent by email in which all of this is specified;
- The same system of holding meetings by video call or conference call is allowed to hold shareholders' meetings, partners' or members' assemblies (up to now it appeared to be limited to managing bodies);
- It is established that resolutions in writing without a meeting may be adopted provided that the chairman so decides or this is requested by at least two of the members of the body in question.
- In relation to the preparation of financial statements it is clarified that, although the period for doing so has been suspended until three months after the end of the state of emergency, financial statements can be validly prepared in that period, and the rules extending the period for auditing apply to financial statements so prepared.
- The extension of the period for auditing financial statements to two months from the end of the state of alarm applies to cases of financial statements prepared before the beginning of the state of alarm;

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- In relation to the proposed distribution of income/allocation of loss of companies which have prepared their financial statements before the beginning of the state of emergency, it is clarified that the proposal contained in the notes to the financial statements may be modified and another proposal may be submitted to the shareholders' meeting, attaching to the new proposal a statement of the auditor specifying that he would not have altered his opinion if he had known the new proposal beforehand. The proposed distribution of income/allocation of loss of companies whose shareholders' meeting was already called can be withdrawn and this item can be deferred to a subsequent shareholders' meeting with similar requirements to those indicated.

## 3. Matters relating to listed companies

A new section is added to the system in force until now, consisting of the fact that when listed companies decide to modify the proposed distribution of income/allocation of loss, the new proposal, the reasons for it provided by the managing body and the auditor's statement must be made public, as soon as they are approved, as information supplementing the financial statements on the entity's website and on that of the CNMV (Spanish National Securities Market Commission) as other relevant information or, if mandatory in the light of the specific case, as inside information.

## 4. Regime for foreign investments in Spain

The regime established Royal Decree-Law 8/2020 is altered in two ways:

On the one hand, it is clarified that the suspension of the liberalization of direct foreign investments regime applies to any investments which are made by residents outside the European Union and the European Free Trade Association or by residents of countries of the European Union or of the European Free Trade Association the beneficial owners of which are residents of countries outside the European Union and the European Free Trade Association. Such beneficial ownership will be deemed to exist where the latter ultimately hold or control, directly or indirectly, a percentage exceeding 25% of the capital or voting rights of the investor, or when by other means they exercise direct or indirect control of the investor.

On the other hand, a simplified authorization process is permitted for foreign investments with respect to which:

- it is proven that there is an agreement between the parties or a binding offer in which the price, fixed or determinable, was established before March 18, 2020 or
- their amount is equal to or greater than 1 million euros and less than 5 million euros.

Provisionally and until the minimum amount is established by regulations, investment operations the amount of which is less than 1 million euros will be deemed to be exempt from the prior authorization obligation.

RDL 11/2020 eliminates the power of the Council of Ministers to resolve the lifting of the suspension. Moreover, it creates a doubt as to whether the period of validity of that suspension is affected by the general rule on validity introduced by final provision 12 of RDL 11/2020.

## 5. Tax measures

### Administrative time periods and procedures

The publication of Royal Decree 463/2020, of March 14, 2020, which declared a state of emergency, its subsequent amendment by Royal Decree 465/2020 and, lastly, the publication of Royal Decree-Law 8/2020 of March 27, 2020 on urgent extraordinary measures to confront the economic and social impact of COVID-19, created considerable doubts over the scope of the measures adopted in the field of tax procedures, among others, over the suspension of tax time periods, the calculation of time periods for bringing appeals and economic-administrative claims, the time periods for the maximum length of procedures and the rules on the tax statute of limitations period.

RDL 11/2020 rectifies and clarifies the doubts posed by the earlier decrees and extends the provisions to the scope of the powers of the autonomous community governments and local government authorities.

- **Suspension of tax time periods. Extension to the tax steps and procedures of autonomous community governments and local government authorities**

Royal Decree-Law 11/2020 extends the suspension of tax time periods under Royal Decree 8/2020 to tax steps and procedures of the same type carried out or conducted by autonomous community governments and local government authorities. In relation to local government authorities, the suspension is also applicable to the steps, formalities and procedures governed by the Local Finances Law approved by Legislative Royal Decree 2/2004, of March 5, 2004.

Moreover, additional provision five specifies that the suspension applies to procedures of this type that started to be conducted before the entry into force of Royal Decree-Law 8/2020.

Additionally, it is clarified that the extension of time periods under Royal Decree-Law 8/2020 in relation to tax debts will apply also to other public appeals and applications.

- **Calculation of time periods for lodging appeals for reconsideration and economic-administrative claims**

It clarifies that, between the entry into force of the state of emergency (March 14, 2020) and April 30, 2020, the time period for lodging appeals for reconsideration or economic administrative claims governed by Law 58/2003, of December 17, 2003, the General Taxation Law (LGT), and its implementing regulations, will start to run from April 30, 2020, in cases where the time period had already started running and had not ended on March 13, 2020, and also where the administrative act or decision that is the subject-matter of the appeal or claim had not yet been notified.

This measure will also apply to appeals for reconsideration and claims in the tax field under the revised Local Finances Law.

- **Calculation of time periods relating to the maximum length of procedures for application of taxes and of the statute of limitations period.**

Royal Decree-Law 8/2020 provided that the period between its entry into force (March 18, 2020) and April 30, 2020 will not be included for the purpose of calculating the maximum

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length of any procedures for application of taxes, or penalty or review procedures conducted by AEAT; or of any procedures commenced by the Directorate General of the Cadaster.

RDL 11/2010 requires this period to run between the entry into force of Royal Decree 463/2020 that declared the state of emergency (on March 14, 2020) and April 30, 2020, and for that period not to be included for the purpose of calculating the maximum length of the time period for enforcement of decisions of the economic-administrative tribunals.

With the same aim, RDL 11/2020 provides that, between the entry into force of Royal Decree 463/2020 (March 14, 2020) and April 30, 2020, all statute of limitations periods and time bars for any actions or rights contemplated in the tax legislation are suspended.

Those provisions will apply to procedures, steps and formalities governed by the General Taxation Law (and its implementing regulations) carried out and conducted by the Spanish state tax agency (AEAT - Agencia Estatal de Administración Tributaria), by the ministry of finance, or by the tax authorities of autonomous community governments and local governments, as well as, in the case of local governments, those governed by the Local Finances Law.

## **Deferred customs debt regime for small and medium-sized companies, the self-employed and other individuals**

Royal Decree-Law 7/2020, of March 12, 2020, published on March 13, 2020, set out a deferral regime with no guarantees for the debts of small and medium-sized companies and the self-employed for a six-month period and with reduced interest.

In relation to the payment facilities that the Union Customs Code contemplates in article 112, it now allows this regime to be broadened to the customs and tax debts relating to customs declarations, with the following specific provisions:

- **Material scope:** The deferral regime applies to customs and tax debts relating to customs declarations filed between April 2 and May 30 in amounts above €100. It appears, moreover, that the deferred debts must not, in aggregate, be higher than €30,000 (this limit is not clearly inferable from the introduced provisions, but may be obtained from the reference to the requirements in article 82.2.a) of the General Taxation Law).

It expressly excludes assessed import VAT that is collected by being reported on the periodical VAT returns under the system known as “deferred import VAT”.

- **Eligible companies or individuals:** The customer of the imported good must be an individual or legal entity that in 2019 had a volume of business below €6,010,121.04.
- **Application procedure:** The application must be made on the customs declaration itself and notified in the manner specified for notifying the customs debt.
- **Guarantees:** The guarantee associated with the clearance process will be valid for obtaining the deferral, and will cover the payment of tax and customs debts until the person required to do so has complied in full with the granted deferred payment; and there is an option to apply for deferred payment of the customs debt without needing to provide the relevant guarantee if serious economic or social difficulties may be inferred from the debtor’s situation.

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- **Terms and conditions of the deferral:**

- For six months from the end of the payment period.
- No late-payment interest will accrue for the first three months of deferral.

On AEAT's website a document is already available with FAQs in relation to these measures ([accessible here](#)).

## **Suspension of assessment of VAT and of excise taxes on electricity and on hydrocarbons on the bills for electricity, natural gas and petroleum products**

Electricity and natural gas retailers and distributors of manufactured gases and piped liquefied petroleum gases are exempt from obligation to assess and pay over VAT and, where relevant, the excise tax on electricity and the excise tax on hydrocarbons relating to bills with suspended payment, until the customer has paid them in full, or six months have run from the end of the state of emergency.

## **Clarification of the exemption from stamp tax on novations and loans under Royal Decree-Law 8/2020**

Royal Decree-Law 8/2020, of March 17, 2020, allowed a new exemption in relation to transfer and stamp tax (ITPyAJD). Namely, it allowed an exemption from the ad valorem stamp tax charge on notarized documents for any deeds recording contractual novations of mortgage loans and credit facilities drawn up under Royal Decree-Law 8/2020.

Now it is provided that this exemption is only applicable in cases relating to the moratorium on payment of the mortgage debt for the purchase of the principal residence (under articles 7 through 16 of Royal Decree-Law 8/2020).

It needs to be recalled that Royal Decree-Law 8/2020 originally introduced the exemption as a new "point 23" in article 45.I.B) of the revised Transfer and Stamp Tax Law (Legislative Royal Decree 1/1993, of September 24, 1992), but later rectified this error, by stating that the new point created was number 28, which is the one now being amended. This rectification was made in a Correction of Errors published in the Spanish Official State Gazette of March 25, 2020 ([accessible here](#)).

## **6. Cashing in pension funds**

It is allowed in the six-month period from March 14, 2020, on an exceptional basis, for pension plan investors to receive their vested rights in the following cases and amounts:

- If they are legally unemployed as a result of a temporary layoff due to the public health crisis caused by COVID-19. In this case they may draw up to an amount equal to their lost earnings while the temporary layoff was in place.
- If they are traders owning establishments which are temporarily not allowed to open to the public. In this case, they may draw an amount up to the estimated net revenues not received while the establishment could not open to the public.

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- If they are self-employed workers who were previously under a social security regime as such and they have ceased operating as a result of the public health crisis caused by COVID-19. In this case, they are allowed to draw an amount up to the estimated net revenues they have ceased to receive during the public health crisis caused by COVID-19.

Lastly, the reference to implementation by regulations gives rise to the doubt about whether, for the application of the regime, it is necessary to wait for such implementation, although the fact it is put forward as “possible” allows the interpretation to be adopted that the provision takes effect from its entry into force.

## 7. Reimbursement measures in relation to collective investment undertakings

RDL 11/2020 has amended point seven of article 71 *Septies* of Law 35/2003, of November 4, 2003 on Collective Investment Undertakings, to include, in letter b), the option for the CNMV to authorize collective investment undertaking management companies (individually or with respect to more than one) to establish notice periods for reimbursements from one of more collective investment undertakings managed by them. All for the purpose of providing greater stability and trust in relation to collective investment.

No time requirements are specified for those notices, or any minimum amounts or the prior recording of those notice periods in the management regulations (and other operating documents) of the collective investment undertakings subject to them. Those notice periods may also be established directly by the CNMV. Therefore collective investment undertaking management companies are allowed to manage, in extreme cases, in an orderly and fair manner, potential scenarios of an accumulation of petitions for reimbursement which could affect the liquidity of collective investment undertakings and the calculation of their net asset values.

In this way, a new macroprudential mechanism has been added which, as mentioned in the Preamble to the royal decree-law, is subject to the obligations set out in article 16 of Royal Decree 102/2019, of March 1, 2019 creating the Financial Stability Board Macroprudential Authority.

## 8. Measures in relation to public procurement

The following are notable:

- Amendments are made to subarticle 1, paragraph four of subarticle 3 and subarticle 6 of article 34 of Royal Decree-Law 8/2020, and two new subarticles 7 and 8 are added. The following elements should be highlighted:
  - The reference to the “*automatic*” nature of the suspension of the public contracts for services and supplies with successive obligations has been removed, in line with what had already been stated by the government lawyer’s office in its reports. It clarifies also that the suspension may be full or partial, which will affect the relevant indemnification.
  - Two exceptions are provided to the prohibition on suspending the contracts mentioned in subarticle 6. Namely (i) a first general exception applicable to all contracts, relating to it not being necessary to order mandatory extension under the provisions in the last paragraph of article 29.4 LCSP and (ii) a specific exception for cleaning and security

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contracts, which may be suspended fully or partially if the buildings or public facilities where they are performed are closed.

- It is clarified what public contract means for the purpose of the regime on suspension and compensation contained in article 34 of Royal Decree-Law 8/2020. From the current wording of the article, it could be interpreted it leaves outside its scope of application all public contracts allocated before the entry into force of Legislative Royal Decree 3/2011, which, in our opinion, will have to be confirmed through any reports that will be issued for its interpretation.
- The new subarticle 8 clarifies that the salary costs item mentioned throughout the article also includes “those relating to any social security contributions that may be due”.
- Paragraph two of subarticle four of article 29 LCSP, to introduce the exceptional option of establishing a term for supply contracts longer than 5 years, when, until now, that option was only allowed for contracts for services.

## 9. Procedural measures

### Extension of administrative periods

RDL 11/2020 establishes an extension of the periods for filing administrative appeals or for commencing any other challenge, claim, conciliation, mediation and arbitration procedure which, in accordance with the laws, may replace them. Such extension means that the periods for carrying out the above-mentioned actions will be calculated from the business day following the date on which the state of alarm ends, even in cases in which part of them had elapsed before the declaration of the state of emergency.

### Measures for speeding up procedures

It is resolved to approve an Action Plan to speed up judicial activity in the labor, judicial review and commercial courts, for the purpose of contributing to the objective of rapid economic recovery, within a maximum period of 15 days from the cessation of the state of alarm and the extensions thereof.

### Suspension of dispossessions for vulnerable homes without alternative housing

It is provided, in the case of evictions from dwellings (not from business premises), that, once the suspension of the terms and procedural time limits have been lifted after the state of emergency ends, dispossessions or eviction proceedings (when a date has not yet been set for dispossession) can be suspended for a maximum period of six months from the entry into force of the Royal Decree-Law, until the adoption of the measures which the social services consider appropriate.

Such suspension will be possible when the lessees prove that that are in an economically vulnerable situation as a consequence of COVID-19 and cannot find alternative housing for themselves and for the persons with whom they live.

It is the court clerk who will order the suspension for the time that is strictly necessary, taking into account the report which is issued by the social services.

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If lessors are also in a vulnerable situation as a consequence of COVID-19, that circumstance will be taken into account for the establishment of the extraordinary suspension period and the social protection measures to be adopted.

## 10. Measures regarding the financial liability of the state

Various sectors have been raising the practical importance which in the near future the system relating to the financial liability of the state could have in the context of the health crisis caused by COVID-19. This is due to the fact that, if the requirements established by legislation for seeking this kind of liability were met, public authorities could be faced with having to pay out indemnification for the general damage caused by any acts or omissions by them in their management of that crisis. In relation to the royal decree-law, it is surprising that, when announcing the specific action plan for the jurisdictional areas, the Preamble itself points out that it is foreseeable that a notable increase in claims for financial liability of the state will occur.

## 11. Restructuring and insolvency measures

Measures are adopted in the case of suspension of contracts and reduction of working hours at companies that are under insolvency proceedings arising directly from COVID-19 (temporary layoff due to force majeure) or which are related to COVID-19 (temporary layoff on economic, technical, organizational or production-related grounds).

Together with these temporary layoffs under RDL 8/2020 (to which Article 64 of the Insolvency Law (LC) does not apply), the suspension of contracts and reduction of working hours on grounds which do not directly arise from, nor are related to, COVID-19 continues to exist (to which procedure Article 64 of the LC still applies).

### Situation before RDL 11/2020

- RDL 8/2020 did not clarify whether insolvent companies could contact the labor authority to commence a temporary layoff under that legislation or, on the other hand, should file with the judge hearing the insolvency proceedings an ancillary proceeding under Article 64 of the LC to suspend the contracts and reduce the working hours of their employees.
- Faced with this vague situation, some insolvent companies opted to elect the option under RDL 8/2020, but by requesting the temporary layoff from the judge hearing the insolvency proceeding.

### Situation after RDL 11/2020

- In relation to temporary layoffs under RDL 8/2020 filed with the judge hearing the insolvency proceeding prior to the entry into force of RDL 11/2020, the following procedure shall be followed:
  - If they have already been approved by the judge hearing the insolvency proceeding, they will be maintained and have full effect for the entitlement to the benefits provided in RDL 8/2020.
  - If they have not yet been approved, they will be sent to the labor authority so that it may continue to process them, the steps previously carried out remaining valid.
- Companies under insolvency proceedings may elect the temporary layoffs under RDL 8/2020: (i) due to force majeure or (ii) on economic, technical, organizational and production-related reasons related to Covid-19.

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- Access to both types of temporary layoff depends on the viability of the company under the insolvency proceeding, which is deemed to be proven upon submission of an undertaking to maintain employment for a period of six months from the date of resumption of activity.
- The procedure must comply with the provisions of the Workers' Statute (ET) and of RDL 8/2020 itself (Article 64 of the LC not being applicable), with the following specific features:
  - In relation to both types of temporary layoff:
    - The applicant will be the company itself with the authorization of the insolvency manager (in insolvency proceedings subject to intervention) or directly the latter (in insolvency proceedings subject to suspension); and
    - The judge hearing the insolvency proceedings must be informed immediately by remote means, of the request, decision and measures applied in the temporary layoff.
  - In relation to layoffs due to force majeure:
    - The decision of the labor authority which has not confirmed the existence of force majeure may be challenged in the labor courts.
  - In relation to temporary layoffs on economic, technical, organizational and production-related reasons related to COVID-19:
    - The insolvency practitioner will be a party to the consultation period (provided in RDL 8/2020 solely for this type of temporary layoff);
    - If no agreement is reached with the workers during that consultation period, the insolvency manager will authorize (in insolvency proceedings subject to intervention) or will adopt (in insolvency proceedings subject to suspension) the employer's decision to suspend contracts or reduce working hours; and
    - The judge hearing insolvency proceedings will have jurisdiction to resolve challenges relating to the employer's decision regarding suspension of contracts or the reduction of working hours.

## 12. Measures in relation to residential leases

### Concerning the lease agreements

The tenant is granted the right to request a six month extension, in which the price and other terms and conditions of the existing agreement continue to apply, where the minimum term or its extension under the Urban Leasehold Law (LAU - Law 29/1994, of November 24, 1994), expires in the period between April 2, 2020 and the date marking two months after the end of the state of emergency. This extension needs to be requested by the tenant and the lessor is under obligation to accept it, unless there is an agreement between both.

Although the right is included in the chapter on measures for vulnerable sectors of society, there is no requirement to be vulnerable in the rules on the right to extension of the agreements, and therefore it may be interpreted that it applies to all types of renters of principal residences.

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## **Moratorium (holiday) for payment of the rent debt**

This section applies to individuals renting their principal residence who are in a position of economic vulnerability caused by COVID-19, meaning that to obtain this they need to meet the following requirements, which have to be evidenced as described in RDL 11/2020:

- The person with the obligation to pay the rent has become unemployed or has had their work reduced by a temporary layoff (ERTE) or their hours reduced for care reasons, if they are an entrepreneur, they are losing income with the effect that the income of the whole family unit, in the month preceding the month of the moratorium is below the following limits, which are increased, in every case, by 0.1 times for each child (0.15 times per child for single-parent families) or for each member of that family unit over the age of 65.
  - the limit is 3 times the monthly public multi-purpose income indicator, IPREM in Spanish, generally.
  - the limit is 4 times the monthly multi-public multi-purpose income indicator if one of its members has a disability higher than 33%, or is dependent or has a medical condition rendering them permanently unfit for work.
  - the limit is 5 times the monthly public multi-purpose income indicator if the disability is intellectual higher than 33%, cerebral palsy or a mental illness or physical or sensorial disability higher than 65% or the family member has a serious medical condition rendering the individual or their carer unable to work.
- The rent plus the costs of basic utilities are equal to 35% or more of the family unit's net income. Costs and basic utilities means the cost of supplies of electricity, gas, gas oil for heating, running water, landline and mobile telecommunications services, and any potential contributions to the owners' association, all relating to the principal residence and having to be paid by the tenant.
- The individual required to pay the rent or any of the members of their family unit are not owners or usufructuary of a home in Spain, with a few exceptions relating to inheritance or divorce or inaccessibility where there any family members are disabled.

Any tenants classed as vulnerable due to meeting the foregoing requirements may:

- Request from the lessor a rent deferral or reduction, within 1 month running from April 2, 2020, under the following rules:
  - If the lessor is a public housing company or entity or holds more than 10 urban properties, excluding separate storage rooms or buildings or garages, or a built area measuring over 1,500 square meters, in the month following April 2, 2020, the tenant may request deferral or forgiveness of all or part of the rent (provided no agreement has been reached beforehand). If there is no agreement, the owner, within 7 working days, must choose either to (1) forgive 50% of the rent over the state of emergency period, which may be extended due to vulnerability, for up to 4 more months or (2) defer payment of the rent, with no penalty or interest, and split that payment over 3 years following the time period mentioned and while the agreement remains in force.
  - If the lessor is anyone other than those mentioned in a., they will have to propose, within 7 business days, to the tenant the measures for deferred or split payment or

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forgiveness of the rent or other alternative measures. If they fail to reach an agreement, the tenant will be allowed to request the aid mentioned below.

- Take part in the financial backing program out of government funds. The ministry of transport, mobility and urban agenda, under an agreement with the Spanish official credit institute (Instituto de Crédito Oficial), and for a period of up to fourteen years, must develop a guarantee facility fully backed by the government, enabling banks to offer temporary assistance providing funding to tenants, with repayment terms of up to six years, extendable exceptionally for a further four, and they cannot have any type of associated cost or interest for the applicant.
- Access the aid program to contribute to softening the social and economic impact of COVID-19 on rental payments on principal residences (Programa de ayudas para contribuir a minimizar el impacto económico y social del COVID-19 en los alquileres de vivienda habitual), which is included in the 2018-2021 Government Housing Plan under Royal Decree 106/2018, of March 9, 2018. The new program has been set up to grant rent assistance, to be allocated directly and the aid will amount to up to €900 a month and up to 100% of the rent under the lease or, if applicable, to up to 100% of the principal and interest on any loan that has been signed and used to pay the rent on the principal residence.

## 13. Moratoriums (payment holidays) for loans

The provisions on the moratorium apply to both RDL 11/2020 and the moratorium under Royal Decree-Law 8/2020.

### Vulnerable debtor

To qualify as vulnerable for the purposes of the moratorium rules in RDL 11/2020 and Royal Decree-Law 8/2020, the mortgage debtor or the debtor in respect of a loan not secured with a mortgage must provide evidence, as specified in RDL 11/2020, that:

- They are unemployed, or if they are a trader or professional, are experiencing a considerable loss of income or a considerable drop in their gross revenue by at least 40%.
- The whole family unit, in the month preceding the month of the moratorium is below the following limits, which are increased, in every case, by 0.1 times for every child (0.15 times per child for single-parent families) or for every member of that family unit that is over the age of 65.
  - The limit is 3 times the public multi-purpose income indicator, IPREM in Spanish, generally.
  - The limit is 4 times the public multi-purpose income indicator if one of its members has a disability that is higher than 33%, or is dependent or has a medical condition rendering them permanently unfit for work.
  - The limit is 5 times the public multi-purpose income indicator if the disability is intellectual higher than 33%, cerebral palsy or a mental illness or physical or sensorial disability higher than 65% or the family member has a serious medical condition rendering the individual or their carer unable to work.
- The total mortgage payment plus the basic utility costs account for 35% or more of the net revenues of the family unit. This article defines basic utilities as the cost of supplies of

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electricity, gas, gas oil for heating, running water, landline and mobile telecommunications services, and contributions to the owners' association in respect of the principal residence.

- As a result of the public health crisis, the effort required to meet the total mortgage liability, meaning the ratio between the sum of the mortgage payments on the real estate properties and the income of the family unit has multiplied by at least 1.3.

And for the purposes of determining vulnerable debtors in relation to loans not secured by a mortgage, the following two specific requirements are added:

- If the debtor also has a mortgage debt, any mortgage moratorium that has been taken will not be included for the purpose of calculating the 35% limits and the 1.3 multiplier mentioned in points 3 and 4 above. So the mortgage liability is included among the costs, even if it is deferred.
- If the debtor does not have a mortgage debt, but rents their principal residence or has received any type of financing not secured with a mortgage from a financial institution, or both simultaneously, the amount of the mortgage payment will be replaced with the total sum of those amounts, including the rental, even if it is subject to a moratorium

## **Debts eligible for the moratorium**

The mortgage debt qualifying for the moratorium is that in respect of the principal residence, the properties used for the economic activity or properties other than the principal residence that are rented out on which the owner has stopped receiving the rent over the state of emergency period or until the month following the date it ends.

Non-mortgage debts giving entitlement to claim the moratorium are those relating to loans or credit facilities not secured with mortgages.

## **Characteristics of the moratorium**

Any vulnerable debtor, in respect of a mortgage or other type of loan, may apply for a temporary suspension of any contractual obligations relating to their loan or credit facility that are in force on the date this royal decree-law comes into force.

The application may be submitted up until the end of a month after the state of emergency period.

Terms and conditions of the moratorium:

- Similarly to the moratorium for mortgage loans under Royal Decree-Law 8/2020, the suspension will not require an agreement between the parties to take effect, or any contractual novation. The suspension of the contractual obligations will take effect from the debtor's application to the lender, accompanied by the required documents, by any means (in addition to fulfillment of registration obligations, if there are any types of collateral other than the mortgage or registered installment sales).
- The suspension will be in force for a three-month period extendible by decision of the Council of Ministers.
- During the suspension, the lender will not be able to collect all or part of either the mortgage payment, or interest of any type, and the due date will be extended

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automatically until after the whole suspension period, without altering any of the other specified terms and conditions.

A liability system is laid down (with the relevant penalties) covering cases where debtors provide inaccurate or false information to banks to claim the scheme described above.

## 14. Measures in the energy industry

The royal decree-law contemplates a set of measures aimed at guaranteeing, on a transitional basis, the continuity of the supply of electricity to homes, given the increasingly essential nature of this supply after the adoption of confinement measures, including most notably, the following:

- prohibition against suspending the supply of electricity, natural gas and other derivative products to individuals in their principal residence while the state of emergency is in place, unless on grounds directly related to security reasons;
- recognition, with respect to energy assistance relief and to supply in the principal residence, of the status of “vulnerable consumer” for self-employed workers whose activity has ceased or whose gross revenues have been reduced as a result of COVID-19 and who meet a certain level of income. The validity of this measure cannot extend beyond 6 months.

The decree-law also envisages a number of measures aimed at lessening the financial burden that will have to be borne by the self-employed and small and medium-sized companies in their businesses during this time, as a result of the temporary discontinuation of activities, such as those referred to below:

- Making electricity and natural gas supply contracts more flexible, so as to bring them into line with the new use patterns, through their temporary suspension or amendment without penalty, or the change of access charge and adjustment of contracted power or capacity at no cost.
- Establishing a mechanism for suspending the payment of bills for electricity, natural gas and certain petroleum products, and releasing retailers, also, from the payment of charges and the assessment of the indirect taxes chargeable on these supplies during the same period of time.
- Authorizing retailers and distributors of electricity and natural gas, as well as distributors of manufactured gases and piped LPG, potentially affected by the aforesaid suspension mechanism, to access the guarantee facilities for financing envisaged in article 29 of Royal Decree-Law 8/2020 or any other guarantee facility arranged for this specific purpose.

The time bar on rights of access and connection to a point on the electricity network granted before the LSE came into force is extended. Transitional provision eight of the LSE stated that those access and connection permissions would expire, among other reasons, if the associated generation plant had not obtained the related authorization for operation prior to March 31, 2020. Although that time limit was affected by the suspension of time periods under Royal Decree 463/2020, transitional provision eight of the LSE is now amended so as to extend the time limit up to 2 months after the end of the state of emergency.

## 15. Measures in the gambling industry

All entities engaging in gambling activities included within the scope of Law 13/2011, are subject, for as long as the state of emergency remains in place, to the prohibition against making “commercial communications which implicitly or expressly refer to the exceptional situation resulting from COVID-19 or encourage participation in gambling activities in this context”. Point two clarifies that “commercial communications” means “any form of advertising activity disseminated via any medium or support, aimed at the direct or indirect promotion of gambling activities defined as being subject to Law 13/2011, of 27 May 2011, or the entities that engage in them”. Point four stipulates various activities that are also prohibited for as long as the state of emergency is in place: (i) promotional activities to attract customers or encourage their loyalty, if they contain rebates, discounts, gifts or similar mechanism that imply economic amounts; (ii) commercial communications (except during time slots comprised between 1 and 5 in the morning) issued in audiovisual communication services (including on-demand services) or marketed, sold or organized by video exchange service providers; and (iii) commercial communications in information society services, including social networks and e-mails or equivalent media. A failure to comply with these obligations will be treated as a serious infringement of Law 13/2011. The regulations of article 37 will enter into force two days after the publication of the Royal Decree-Law.

## 16. Measures for consumers and users

RDL 11/2020 stipulates a number of measures applicable to agreements for the sale and purchase of assets and for the provision of services and to agreements for package tours:

- Where it is impossible to perform the agreement for sale and purchase or for the provision of services as a result of the application of measures adopted in the declaration of the state of emergency, consumers and users will have 14 days in which to request the termination of the agreement. Nonetheless, this right is conditional on the failure to agree on a proposal for the review of the agreement, satisfactory to both parties, within a period of 60 days after the agreement became impossible to perform.
- In agreements for the provision of a service over a period of time, the collection of new charges is suspended until the service can again be provided normally. Nonetheless, the agreement is not canceled.
- In the case of agreements for package tours, the consumer or user may choose to request a refund (provided that the suppliers of the organizer or, as the case may be, the retailer, have reimbursed the latter for the amount of the services not provided) or make use of the voucher given to the consumer by the organizer or, as the case may be, the retailer. This voucher can be used within one year after the end of the state of emergency. Should it not be used within that period, the consumer may exercise the right to a refund.

## 17. Public aid and subsidies

The Royal Decree-Law also contains a series of support measures aimed at mitigating the economic impact of the health crisis caused by COVID-19 and which consist essentially of the following:

- A guarantee facility is approved for the State to back the financing of lessees in a situation of social and economic vulnerability as a result of the expansion of COVID-19 (article 9).

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- Procedures for the call for applications for loans or aid from the Department of Industry and SMEs which were still to be decided when Royal Decree 463/2020 entered into force are made more flexible (article 38). Thus, the guarantees for new loans in the process of being decided can be submitted after the state of emergency has ended. It will also be possible to request modifications in loan repayment tables already granted for industrial projects (article 39). Additionally, scaling criteria are established for compliance with programs financed by the Department (Additional provision 17).
- The endowment for CERSA (Spanish Refinancing Company) is extended to 60 million euros, with a view to being able to guarantee a larger number of transactions (Additional Provision 1).
- The ICEX (Spanish Institute for Foreign Trade) is authorized to refund non-recoverable expenses incurred by companies on this or future editions, in particular with respect to fees paid for participation in trade fairs or other activities for promoting international trade, which had been called by the entity and were then cancelled, postponed or otherwise affected by COVID-19.
- The payment of interest and repayment of certain credit facilities provided by the Department of Tourism under the Emprendetur program to support companies in the tourism industry is suspended for a period of one year, without a need for prior request (article 41).
- Additionally, exceptional approval is given to aid amounting to 15 million euros to cover a portion of the costs incurred by providers of the audiovisual communication service of digital terrestrial television at national level, as a result of maintaining certain percentages of obligatory population coverage for six months (article 45).
- Procedures for the grant of subsidies, orders and decisions on the call for applications and grant of subsidies and public aid (envisaged in article 22.1 of General Subsidy Law 38/2003, of 17 November 2003) which had already been granted when Royal Decree 463/2020, of 14 March 2020, declaring a state of emergency to manage the COVID-19 public health crisis, entered into force, can be modified so as to extend the time periods in which to carry out the subsidized activity and, as the case may be, to justify and verify that it has been carried out, even where this had not been included in the related regulatory bases, provided that the competent body justifies the impossibility of carrying out the subsidized activity while the state of emergency remains in force and the insufficiency of the period remaining after it ends for carrying out the subsidized activity, or for justifying or verifying that it has been carried out. Decisions and agreements for the grant of subsidies pursuant to article 22.2 of the mentioned Law 38/2003 can be modified on similar terms (article 54).
- Lastly, the CDTI (Center for the Development of Industrial Technology) is included among the bodies that can expedite aid and contributions to the business sector, with a view to fostering innovation in combating the pandemic, as well as guaranteeing the suitable functioning of businesses in Spain. This is not only to permit the rapid functioning of prototypes but also to have available manufacturing resources for medical devices needed urgently (Final Provision 1.12).

## **18. Date of effect of RDL 8/2020**

In general, the measures provided in this royal decree-law will remain in force until one month after the declaration of the state of emergency ceases to be in force. However, any measures provided in this royal decree-law which have a specified time period will be subject to that period. Nevertheless, the period of validity of the measures provided in this royal decree-law, following evaluation of the situation, may be extended by the government by royal decree-law.