

GARRIGUES

COVID-19: Publication of royal decree-law mapping steps to be followed in justice system procedures

We analyze Royal Decree-Law 16/2020, of April 28, 2020, published in the April 29 edition of the Official State Gazette (BOE), adopting procedural and organizational measures to confront COVID-19 (RDL 16/2020). And entering into force on April 30, 2020 (the day after its publication in the Official State Gazette).

The provisions in RDL 16/2020 will also be applicable to any procedural activities that will be carried out on or after the date of its entry into force, irrespective of the date of commencement of the proceeding in which they occur, except for any that have a specified time period in the royal decree-law itself.

PROCEDURAL MEASURES

August vacation period reduced for courts to open for business

The days between and including **11 and 31 of August, 2020** are declared business days for all judicial activities.

Recommencement of procedural time periods

All procedural time limits and time periods that had been suspended by additional provision two of Royal Decree 463/2020, of March 14, 2020, declaring the state of emergency, will recommence from the beginning.

The first day of the period will be the day following the date when suspension of the procedure ceases to be valid. Though not specified in RDL 16/2020, in principle, they will recommence on the business day following the end of the state of emergency, unless any additional extensions to the state of emergency determine otherwise

Extension of time periods for appealing judgments and other decisions ending a proceeding

The periods for giving notice of, preparing, formalizing and lodging appeals against judgments and other decisions ending a proceeding are extended for a period equal to that specified for those procedures in their governing laws. That provision will apply:

- both to decisions notified during the suspension of time periods under RD 463/2020;
- and to any that will be notified in the twenty business days following the lifting of suspension of the procedural time periods concerned.

GARRIGUES

It will not apply to the essential proceedings that did not have their time periods suspended under additional provision two of RD 463/2020.

Special criminal proceeding in family law

A special criminal proceeding for more serious offenses (punishable by a sentence of over nine months of imprisonment) is defined to settle cases related to family law stemming directly from the health crisis. That proceeding will be applicable while the state of emergency is in place and until three months after it has ended.

Priority handling of certain types of proceedings

It is determined that **between the lifting of suspension of procedural time periods and December 31, 2020**, the following proceedings must be conducted on a **priority basis**:

- **In the civil jurisdiction:**
 - Proceedings or cases in the voluntary jurisdiction relating to adopting the parent-child related measures under article 158 of the Civil Code, together with the special criminal proceeding for more serious offenses related to family law as a result of COVID-19.
 - Proceedings arising from failure by a lending institution to grant the legal payment moratorium for mortgages on principal residences and on properties used for economic activities.
 - Proceedings arising from any claims that might be brought by renters due to failure to apply the moratorium allowed by law or the mandatory extension of the contract.
 - Insolvency proceedings on debtors who are individuals and do not have trader status.
- **In the judicial review jurisdiction:**
 - Appeals lodged against any public authority activities or decisions denying eligibility for any types of aid or measures allowed by law to soften the economic effects of the health crisis.
- **In the labor jurisdiction:**
 - Certain labor proceedings will be handled on a priority basis, such as any related to dismissals or contract terminations, any arising from recoverable paid leave arrangements, proceedings related to application of the MECUIDA plan for working arrangements, proceedings to challenge COVID-19 ERTE temporary layoff procedures and any brought to be allowed to use the working from home mechanism.

GARRIGUES

INSOLVENCY MEASURES

Encouragement of renegotiation of approved creditors' arrangements and out-of-court payment agreements

For a year following the declaration of the state of emergency, the debtor will be allowed to apply for amendment the creditors' arrangement that is in the performance period ("rearrangement"). The procedure and majorities system will be the same as those determined for approval of the original creditors' arrangement, although they will always be processed in writing. The rearrangement will not include any claims arising after approval of the creditors' arrangement or include privileged creditors, unless this is expressly approved by these creditors.

For six months following the declaration of the state of emergency, any applications for breach of the creditors' arrangement that are filed will be notified to the debtor to give them the chance to petition to a rearrangement, which will be processed with priority over those applications.

These same rules will apply to out-of-court payment agreements.

Breach of the creditors' arrangement and deferral of the duty to apply for liquidation

For a year following the declaration of the state of emergency, the debtor who knows its inability to fulfill the approved creditors' arrangement or the obligations acquired afterwards will not be obliged to apply for liquidation, provided the debtor files a proposal for a rearrangement and this proposal is admitted for consideration within that time limit. If the debtor has already applied for the opening of liquidation in the state of emergency period, no decision will be rendered on that petition if a proposal for a rearrangement is filed.

For a year following the declaration of the state of emergency, the court will not decide on the opening of liquidation, even if the creditor evidences any of the facts that may provide a ground for an insolvency order.

If the creditors' arrangement or rearrangement is breached within two years following the declaration of the state of emergency, any claims in respect of cash received from finance or the provision of personal guarantees or security interests (even if they come from specially related parties) that appear in the creditors' arrangement or rearrangement will be treated as post-insolvency claims.

Chance to renegotiate validated refinancing agreements

For a year following the declaration of the state of emergency, the debtor will be allowed to file the notice under article 5 bis to be able to renegotiate an homologated refinancing agreement or to negotiate a new refinancing

GARRIGUES

agreement, even if it is under a year since the previous application for homologation.

For six months following the declaration of the state of emergency, any applications for breach of the homologated refinancing agreement that are filed will be notified to the debtor to give them the chance to renegotiate that refinancing agreement or negotiate a new one which will be processed with priority over those applications.

Extension of suspension of the duty to petition for insolvency proceedings until the end of the year

Until December 31 2020 any insolvent debtor will not be obliged to petition for insolvency proceedings and no applications for compulsory insolvency proceedings will be admitted (including any filed during the state of emergency). In this period, any petition for voluntary insolvency proceedings by the debtor will be admitted for consideration with priority, even if its date falls after that of a petition for compulsory insolvency proceedings.

This provision repeals article 43 of Royal Decree-Law 8/2020, of March 17, 2020.

Non-subordination of financing provided by specially related parties

Any financing that a specially related party provides to the debtor after declaration of the state of emergency will give rise to an ordinary claim in any insolvency proceeding that is ordered in a two-year period following the beginning of the state of emergency. In that period, the same classification will be given to any claim for which a specially related party becomes the creditor as a result of having paid an ordinary or privileged claim.

Quick handling of challenge ancillary proceedings

In challenges of the inventory or of the list of creditors only documentary and expert evidence will be allowed -which must accompany the claim or the answer- and a hearing will not generally be necessary. Any defendant that does not answer the claim will be considered to have accepted the claim, except for public creditors.

Priority handling of various procedures

Priority handling will be in place for the following procedures: labor ancillary proceedings; sales of business units; proposals for a creditors' arrangement or rearrangement and ancillary proceedings for objection to approval of an arrangement; clawback actions; applications for homologation of refinancing agreements or renegotiation of homologated refinancing agreements; injunctive remedies; and ancillary proceedings for preservation of assets available to creditors.

GARRIGUES

Quicker approval process for liquidation plans

The courts will approve any filed liquidation plans immediately and require urgent filing of those plans in any insolvency proceedings that are in the liquidation phase so that they may be approved.

Out-of-court auction as a mechanism for enforcing liquidation plans

It makes out-of-court auctions obligatory for liquidating assets under insolvency proceedings, even if the liquidation plan provides otherwise. In any phase of the insolvency proceeding, however, business units will have to be realized using any selling system and the agreed procedure will have to be observed for any secured assets that have obtained judicial approval for their disposal.

Quicker process for out-of-court payment agreements

For a year following the declaration of the state of emergency, where two insolvency mediators turn down their appointments, for the purposes of the consecutive insolvency proceeding it will be considered that the debtor has unsuccessfully attempted to obtain an out-of-court payment agreement.

MEASURES RELATING TO CORPORATE LAW AND COMMERCIAL CONTRACTS

Suspension of the ground for winding up due to losses

- Losses in this fiscal year 2020 will not be included for the purpose of determining the existence of the ground for winding up under article 363.1 e) of the Capital Companies Law, which will not restrict the duty to petition for insolvency under this royal decree-law.
- If the results for fiscal year 2021 disclose losses that reduce net worth to below half the share capital, a shareholders' meeting must be called by the directors or may be requested by any shareholder within two months running from the fiscal year-end under article 365 of the Capital Companies Law, for the company to be wound up, unless its capital is increased or reduced to a sufficient extent.

Amendments of the measures related to the payment moratorium for rentals of principal residences under Royal Decree-Law 11/2020, of March 31, 2020

- A vulnerable tenant may ask their renter -where that renter is a company or a housing public entity or a large owner, meaning any individual owning more than ten urban properties, not including garages or storage facilities, or a built area measuring over 1,500 m²- within three months starting on April 1, 2020, for a temporary and extraordinary deferral of payment of the rent, if that deferral or

GARRIGUES

full or partial release from payment of rent had not already been obtained voluntarily by agreement between both parties.

- A vulnerable tenant may ask their renter, where that renter is not any of those mentioned above, within three months starting on April 1, 2020, for a temporary and extraordinary deferral of payment of the rent, if that deferral or full or partial release from payment of rent had not already been agreed voluntarily between both parties.

Approval of guarantee facilities for the government to underwrite financing for tenants

To provide the financial protection needed to cover the housing costs of households that have been placed in a socially and economically vulnerable position as a result of the spread of COVID-19 and which meet the specified conditions, the Transport, Mobility and Urban Agenda Ministry is authorized to put in place, under a contract with ICO (Spanish official credit institute), for a term of up to fourteen years, a guarantee facility fully underwritten by the government, which will enable credit institutions to offer transitional financing aid to those individuals:

- In the form of a specific-purpose loan, to be used for the payment of rent on their principal residence,
- they may cover an amount equal to up to six months' rent, with a repayment term of up to six years, extendible exceptionally for another four,
- and they cannot, under any circumstances give rise to any type of cost or interest for the applicant.

Simultaneously with the signing of the loan by the credit institution under the existing rules, it will be considered that a subsidy for any costs and interests associated with that loan has been granted.

LABOR LAW MEASURES

Procedure for handling a challenge of an ERTE temporary layoff procedure

Challenges of temporary layoff procedures on economic, technical, organization or production-related grounds by the representative committee defined in the labor legislation enacted to soften the effects caused by COVID-19 will be handled under the collective dispute procedural mechanism.

GARRIGUES

ORGANIZATIONAL AND TECHNOLOGY-RELATED MEASURES

Proceedings held and attended remotely

- **While the state of emergency is in place and until three months after it has ended**, once the court or tribunal has been formed, all the steps in a trial, appearances, statements and hearings, and all procedural steps generally, will preferably be carried out remotely. This will depend at all times on the courts, tribunals and public prosecutors having access to all the necessary technology to achieve this.
- In the criminal jurisdiction, however, it will be necessary for the defendant to appear in person in proceedings related to serious offenses.
- The courts' deliberations will take place remotely where the necessary technology is available for this to happen.

Other organizational measures

While the state of emergency is in place and for up to three months after it has ended:

- It is allowed for trials and hearings to be held in either the morning or afternoon.
- Public access to any oral proceedings will be restricted.
- Professionals will not be required to wear gowns at public hearings.
- Forensic medical reports will be allowed to be drawn up, wherever possible, from the existing available medical documents.
- All services for attending to the public at any court will be provided over the phone or at the email address set up specially for this purpose. Where it is absolutely necessary to go to the court building, an appointment will have to be arranged.

Creation of courts associated with COVID-19

Any courts that had not yet been brought into service when RDL 16/2020 came into force, may be converted into courts only hearing proceedings associated with COVID-19.

Extensions of time periods in relation to the Civil Registry and modification of *vacatio legis* in the Civil Registry legislation

In cases for authorization to marry in which an approval decision has been rendered, a one-year period will be granted automatically for the marriage to be held, running

GARRIGUES

from the end of the state of emergency. This provision will also be applicable to dispensations and substitute procedures.

While the state of emergency is in place and until three months after it has ended, the 72 hour time period for the managements of hospitals, clinics and healthcare establishments to notify any births that have taken place at their institutions to the Civil Registry Office has been extended to five calendar days.

Additionally, the *vacatio legis* in Civil Registry Law 20/2011, of July 21, 2011, is modified and extended until April 30, 2021.

Use of information and communication technology in the justice system

Law 18/2011, of July 5, 2011 on the use of information and communication technology in the justice system is amended to facilitate remote access to the applications used for handling procedural matters, by encouraging working from home and acknowledging the rights of citizens and professionals in the justice field to use any identification and signature systems accepted by the common administrative procedure legislation.

ADMINISTRATIVE MEASURES

Suspension of ground for dissolving public bodies

The ground for dissolving central government public bodies under article 96.1.e) of Law 40/2015, of October 1, 2015, on the public sector legal framework, where the body concerned has incurred a financial imbalance over two consecutive budgetary years is suspended. That ground for dissolution will not be applicable for the 2020, 2021 and 2022 financial statements.

Public sector contracts

In line with the latest amendments to the simplified open procedure introduced by Royal Decree-Law 15/2020, related to the remote opening of bids, the wording of article 159.4, letters d) and f), of the Public Sector Contracts Law is amended, to replace references to “public opening ceremony” with “opening of the envelope or electronic file”.