

## Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of COVID-19

The March 18, 2020 edition of the Official State Gazette has published Royal Decree-Law 8/2020 of March 17, 2020 on urgent and extraordinary measures to confront the economic and social impact of COVID-19. The decree-law comes into force on its publication date, for a one-month term, and allows this term to be extended.

The adopted measures cover many different fields of business activity. Below is a summary of the main measures classified by area.

### Individual support measures during the state of emergency

- Guaranteed supply of electricity, natural gas and water during the month following the entry into force of the royal decree-law for groups classified as vulnerable consumers, severely vulnerable consumers or consumers at risk of social exclusion pursuant to Royal Decree 897/2017, of October 6, 2017.
- The validity of the energy assistance relief (*bono social*) is automatically extended until September 15, 2020 for those beneficiaries for whom the 2-year period provided for in said Royal Decree 897/2017 expires beforehand.
- Moratorium on the payment of mortgage debts for acquisition of the principal residence for mortgagors who are unemployed or who, as entrepreneurs or professionals, suffer a substantial loss of income or drop in sales greater than 40%, or mortgagors whose family unit, in the month prior to the request for the moratorium, does not reach a certain level of income, depending on its members, the mortgage payment represents more than 35% of their income and the health emergency has altered their economic circumstances. The moratorium must be requested by the debtor from the creditor, providing certain regulated documentation. It may be requested up to 15 days after the end of the valid term of this royal decree-law and the creditor has a maximum period of 15 days in which to process the request. Once the moratorium has been granted, its existence and duration must be notified to the Bank of Spain for accounting purposes and so that it is not included in the risk forecast calculation.
- The benefit of discussion is granted, even where it has been contractually waived, to mortgage guarantors or sureties which are in a situation of vulnerability.
- While the state of emergency is in place, maintenance of electronic communication services and broadband connectivity is guaranteed to all current users, as is the provision of the elements making up the universal telecommunications service, for which purpose the electronic communication service provider designated to provide the universal telecommunications service must guarantee the continuity and quality of the service to all current beneficiaries.
- Additionally, the possibility of launching extraordinary commercial campaigns for the contracting of electronic communication services requiring number portability is temporarily suspended, and all operations for portability of fixed and mobile numbers that are not already underway are suspended, save in exceptional cases of force majeure.
- While the state of emergency is in place, the periods for returns of any products bought by any means, whether in person or online, are suspended, and will resume upon expiry of the royal decree-law or any extension thereof.

# GARRIGUES

## Measures to ensure liquidity and of a financial nature

- The Ministry of Foreign Affairs and Digital Transformation will grant up to one hundred thousand million euros (€100,000,000,000) in guarantees for funding provided by credit institutions, specialized credit institutions (*establecimientos financieros de crédito*) and electronic money and payment institutions, to any companies and selfemployed workers needing that funding to meet their needs arising from managing their invoices, need for working capital (cash), financial or tax obligations or other liquidity needs. The council of ministers will have to implement the terms and conditions and requirements for accessing those guarantees.
- The net indebtedness limit for Spanish official credit institute (ICO), is raised by ten billion (10,000,000,000) euros for the purpose of increasing the ICO facilities providing funding to companies and the self-employed.
- Authorization is given for an insurance cover facility amounting to up to two thousand million euros (2,000,000,000) for the working capital credit facilities needed for export companies out of the reserve fund for risks in international trade, for certain small and medium enterprises that are encountering liquidity problems (but which are not in insolvency or pre-insolvency state) as a result of the impact of the crisis caused by COVID-19. This insurance cover will be provided by CESCE (Spanish Export Credit Agency).
- Financial measures are granted targeted at any owners of farm operations that had entered into credit facility loans as a result of the drought in 2017, who will be allowed to enter into agreements with financial institutions to extend their repayment periods by up to a year.
- It allows the sums in the Fund for “Red Cervera” Technical Provisions and R&D&I projects to be used to cover any of the risks that Centro para el Desarrollo Tecnológico e Industrial may incur by providing loans to finance R&D&I projects of small and medium enterprises, and of mid cap companies.

The measures for ensuring liquidity that fall within the tax field are summarized further below.

## Administrative measures

- Provision is made for suspension of public contracts for ongoing utilities and services and contracts for public works, which can no longer be performed or are impossible to continue, as a result of COVID-19 or the measures laid down by the central government or any of the regional authorities.
- An obligation is established for the contracting entity whose contract has been suspended to indemnify the contractor for certain damage and loss (basically relating to salary, maintenance of definitive guarantees, rents or machinery maintenance costs and insurance policies) suffered during the suspension period, subject to an application.
- Provision is made, with certain requirements, for extension of the term or of the renewal in cases of public contracts, which, while they do not meet the conditions for suspension, incur delays in their performance by the contractor as a result of COVID19 or the measures adopted by the central government or the regional authorities. These contractors will have certain rights to payment of salary expenses with limits.
- In public contracts for the concession of works or services entered into by public sector entities, the de facto situation generated by COVID-19 or the measures adopted by the central government or the authorities will give concession holders the right to restore the economic balance by extending the term (up to a maximum of 15%) or modify clauses with economic content. Moreover, concession holders will have certain rights to payment of salary expenses with limits.

# GARRIGUES

- Similar measures are provided for contracts entered into with respect to excluded sectors.
- Special support measures are granted for research into COVID-19.

## Extraordinary measures for private law legal entities

- During the state of emergency period, companies, associations or foundations of all types are allowed to hold meetings of their governing bodies by video or audio conference call, subject to certain requirements, even if their bylaws do not specifically allow that form of holding meetings.
- During the state of emergency period, companies, associations or foundations of all types are allowed the adoption of resolutions by their governing bodies by written consent without a meeting, if the chairperson so decides or that procedure is requested by two of their members, even if their bylaws do not specifically allow that form of holding meetings.
- The three month period following the fiscal year-end for the preparation of financial statements by legal entities required to do so is suspended during the state of emergency, and will resume for another three months from when the state of emergency ends.
- In the case of financial statements that had already been prepared on the date of declaration of the state of emergency, the period for their verification by auditors, where they are subject to statutory audit, is extended until two months after the end of the state of emergency.
- Annual shareholders' (members') meetings for approval of financial statements must be held in the three-month period following the end date of the period for preparing the financial statements.
- For shareholders' (members') meetings called before publication of the state of emergency and to be held after that publication, the place and date may be changed or the meeting notice may be revoked by placing an announcement on the company's website, or if the company does not have a website, in the Official State Gazette, 48 hours in advance. If the meeting notice is revoked, the managing body will have to issue a fresh meeting notice in the month following the end of the state of emergency.
- The rights of withdrawal of members (shareholders) have been suspended, even if there is due cause, until the state of emergency ends.
- The reinstatement of any cooperative members who leave the cooperative during the state of emergency is extended, until six months after the end of the state of emergency.
- If the company's term envisaged in the bylaws ends while the state of emergency is in place, the winding-up of the company by operation of the law is deferred until two months following the end of the state of emergency.
- Even if before or during the state of emergency, a statutory or bylaw ground requiring the company to be wound up exists, the period for calling the meeting that must resolve on that winding-up by the managing body is suspended until the state of emergency ends.
- If the statutory or bylaw ground for winding-up occurs while the state of emergency is in place, the directors will not be liable for the company's debts incurred in that period.
- In the case of listed companies:
  - The time limit for the obligation to publish and send the annual financial report and the auditor's report on the financial statements to the CNMV is extended to six months following

# GARRIGUES

the fiscal year-end. That time period is lengthened to four months for the publication of interim management statements and six monthly financial reports.

- Annual shareholders' meetings may be held in the ten months following the fiscal year-end.
- The board of directors may set out in the meeting notice for the shareholders' meeting remote attendance and distance voting, together with the holding of the meeting anywhere in Spain, even if these scenarios are not specifically envisaged in the company's bylaws. If the meeting notice has already been published, any of these scenarios may be set out in an additional announcement which will have to be published at least five calendar days before the scheduled date for holding the meeting.
- If the measures imposed by public authorities prevent the meeting being held in the place and physical venue set out in the meeting notice and the power described above cannot be used: (i) if the meeting has been validly convened in that place and venue, it may resolve to continue holding the meeting on the same date in another place and venue within the same province, allowing a reasonable period for the attendees to travel there; and (ii) if the meeting cannot be held, the holding of the meeting on a subsequent call may be announced with the same agenda and the same publicity requirements as the meeting that was not held, at least five days before the date scheduled for the meeting. In this case, the managing body may resolve in the additional announcement to hold the meeting remotely only, namely, without physical attendance by shareholders or their representatives, provided the option is provided of participating in the meeting by any of these means: remote assistance, proxy granted to the meeting chairperson on distance media; and advance voting using distance media. Directors may attend the meeting, which will be deemed to be held at the registered office regardless of where the meeting chairperson is located, by audio or video conference call.
- It accepts the validity of board meetings held by video conference or conference call, even if this is not specifically allowed in the bylaws.
- The expiry period for registry entries is suspended, and will resume at the end of the state of emergency.
- While the state of emergency is in place, technically insolvent debtors and debtors that have given notice to the courts of the pre-insolvency negotiations under article 5 bis of the Insolvency Law, will not be required to file a petition for the opening of insolvency proceedings even where the relevant time period for doing so has ended.

Until the end of two months following the end of the state of emergency, judges will not admit for consideration any petitions for mandatory insolvency submitted by creditors that have been filed in that state of emergency period or that may be filed during those two months. If a voluntary petition for the opening of insolvency proceedings has been filed, it will be admitted for consideration, on a priority basis, even if it has a later date.

## Measures to control foreign investment

The regime for deregulation of direct foreign investment in Spain is suspended (i.e., investments made by residents of countries outside of the European Union and of the European Free Trade Association where the investor comes to hold a stake equal to or greater than 10% of the share capital of the Spanish company, or where, as a result of the corporate transaction, act or legal transaction, they effectively participate in the management or control of that company), if:

- the investment is made in certain sectors affecting public policy, public security and public health; or
- the foreign investor is directly or indirectly controlled by the government, including the public agencies or armed forces, of a third country; has made investments or participated in activities in sectors affecting security, public policy and public health in another member state; or if an

# GARRIGUES

administrative or judicial proceeding has been brought against the foreign investor in another member state or in the state of origin or in a third state due to carrying on criminal or illegal activities.

In order to carry out these investments, authorization must be obtained on the terms provided for in the applicable legislation (Law 19/2003, of July 4, 2003).

## Tax related measures

In the tax field, the following measures have been introduced:

### 1. Measures designed to ensure liquidity

To ensure liquidity with the aim of sustaining economic activity in the face of transitional difficulties caused by the public health emergency, the following tax measures are introduced:

#### a) Suspension of tax time periods

In view of the difficulties companies will encounter for fulfilling their tax obligations and carrying out the steps in tax procedures, various measures are adopted aimed at extending and suspending the time periods in those procedures.

It must be taken into account that Royal Decree 463/2020, of March 14, declaring the state of emergency established (in additional provision three) a general suspension of administrative time periods. In view of the interpretation doubts that this provision had generated, however, on March 18, 2020 Royal Decree 465/2020, of March 17, 2020, amending the earlier royal decree, was published also, which states that that suspension of time limits and interruption of administrative time periods (i) will not be applicable to tax time periods, and (ii) will not affect the time periods for filing tax returns and self-assessments, given that for these tax time periods the rules that the royal decree-law now approves will be applicable.

Specifically the royal decree-law approves the following measures:

#### a. Lengthening of time periods in administrative procedures

The time periods mentioned below are lengthened until **April 30, 2020**, if they had not started before entry into force of the royal decree-law and had not ended on the date of its entry into force:

- i. The time periods for payment of tax debts envisaged in article 62.2 and article 62.5 of the General Taxation Law.

It needs to be recalled that article 62.2 relates to payment in the voluntary period of tax debts resulting from assessments by the authorities<sup>1</sup>.

Article 62.5 relates to payment time periods after the enforced payment period has commenced and the order initiating enforced collection procedures has been notified.

In other words, the time periods for filing and paying self-assessments under article 62.1 have not been lengthened or been affected in any way.

- ii. The expiry dates for time periods and split payments under deferred and split payment agreements that have already been granted.

---

<sup>1</sup> From a literal interpretation of this royal decree-law, it would appear that any tax assessments by the authorities that had been notified on March 16 and March 17, 2020, after the state of emergency had already been declared, could have had their voluntary payment period shortened to end on April 30 rather than May 5, even though this does not appear consistent with the spirit of the law.

# GARRIGUES

- iii. The time periods related to auctions and allocations of property that are referred to in article 104.2 and article 104 bis of the General Collection Regulations.

Article 104.2 refers to the making of electronic bids when the auctions have commenced; article 104 bis, to the allocation of property or lots when the phase for submitting bids has ended.

- iv. The time periods for complying with demands, attachment orders and requests for information with tax relevance, together with the time periods for submitting pleadings in relation to decisions commencing the period for pleadings or for inspection of the case file and comments by the taxpayer in the following procedures:

- Procedures for application of taxes.
- Penalty procedures
- Procedures for a null and void declaration.
- Procedures to claim refunds of incorrectly paid tax.
- Procedures for correction of clerical errors and revocation.

- v. The time periods for foreclosure of real estate collateral in the context of administrative enforced collection procedures.

- vi. The time periods for complying with demands and requests for information from the General Directorate of the Cadaster.

It delays until **May 20, 2020** (unless the time periods granted by the royal decree-law are greater, in which case these time periods will be applicable) the expiry dates of any of the time periods described below that are notified on or after the date of entry into force of the royal decree-law:

- i. As in the previous case, those relating to payments in the voluntary or enforced payment period for assessed tax debts (article 62.2 and 62.5 of the General Taxation Law), the expiry dates for time periods and split payments under deferred and split payment agreements that have already been granted; and the time periods related to auctions and allocations of property that are referred to in article 104.2 and article 104 bis of the General Collection Regulations.
- ii. The time periods relating to demands, attachment orders, requests for information or decisions commencing the period for pleadings or for inspection of the case file and comments by the taxpayer; including any communications from the Directorate General of the Cadaster.

All of the above must be interpreted without prejudice to the specific provisions in customs legislation on time periods for pleadings and fulfillment of demands or requests. In this field, no periods are lengthened or procedures modified.

In any event, the party with tax obligations may fulfill those obligations within the original time period, without this preventing the formalities being deemed completed.

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

It provides that the period between the entry into force of the royal decree-law and April 30, 2020 will not be included for the purpose of calculating the maximum length of any procedures for application of taxes, penalty and review procedures conducted by AEAT; or of any procedures commenced by the Directorate General of the Cadaster.

# GARRIGUES

The authorities are allowed, however, to continue with ordinary conduct of tax procedures, by being recognized the power to set in motion, order and carry out any steps they consider absolutely necessary and make notifications, demands, requests for information or grant periods for inspection of case files and comments. It must be taken into account, however, that, as mentioned in the preceding section, the periods for fulfillment of these steps by the taxpayer have been lengthened until April 30 or May 20, depending on the case concerned.

Along the same lines, it provides that the period between the entry into force of the royal decree-law and April 30, 2020 will not be included for the purpose of calculating statute of limitations periods (article 66 of the General Taxation Law) or time bars for tax purposes.

For the sole purpose of calculating the statute of limitations periods mentioned above and those relating to appeals for reconsideration and economic-administrative proceedings, the decisions bringing them to an end will be deemed notified where it is evidenced that any single attempt was made at notification between the entry into force of the royal decree-law and April 30, 2020. The time period for lodging economic-administrative appeals or claims against tax acts and for appealing in the administrative jurisdiction against decisions rendered in economic-administrative proceedings will not start to run until the end of that period or until the notification has taken place, if this notification is made later.

## b) Measures in the customs field:

To speed up customs formalities for imports in the industrial sector, so as to prevent effects on the supply chain of goods from third countries or a halt in exports, it provides that the person in charge of the department of customs and excise and other special taxes at the Spanish tax agency (AEAT) will be able to order that the declaration procedure and customs clearance must be conducted by any body or public official from the customs and excise and special taxes division.

## 2. Other measures: exemption in relation to transfer and stamp tax for mortgage transactions

Final provision one of the royal decree-law adds a new point 23 to article 45.I.B) of the revised Transfer and Stamp Tax Law, approved by Legislative Royal Decree 1/1993, of September 24, 1993, to allow 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 the royal decree-law.

## Employee-related and social measures

- Measures to make the mechanisms for temporary adjustment of activity more flexible in order to avoid layoffs.

The following measures will remain in force while the extraordinary situation caused by COVID-19 persists:

- With respect to temporary layoffs (*regulaciones temporales de empleo* or ERTes) due to force majeure:

These will be understood to be temporary layoffs having as their direct cause a loss of activity as a result of COVID-19, including the declaration of the state of emergency, which entails the suspension or cancellation of activities, the temporary closure of premises where people gather, restrictions on public transport and, in general, on the movement of persons and/or goods, a lack of utilities that seriously impedes the ordinary conduct of activities from continuing, or urgent and extraordinary situations due to the infection of the workforce or the adoption of preventive isolation measures decreed by the health authorities, which are duly evidenced.

The following special provisions will apply to them:

# GARRIGUES

(i) The procedure will be commenced with an application by the company, accompanied by a report linking the loss of activity to the consequences of COVID-19, as well as the relevant documentary evidence.

(ii) The company must notify its application to the workers and forward the report and the documentary evidence, if any, to the workers' representatives.

(iii) The labor authority must hand down a decision within five days and confine itself to establishing the existence, where applicable, of force majeure. The decision will take effect from the date of the fact or event giving rise to the force majeure.

- ERTes on economic, technical, organizational and production-related grounds related to COVID-19.

(i) Where there are no workers' statutory representatives, the representative committee will be made up of the labor unions with the highest membership in the sector and with standing to form part of the negotiating committee of the applicable collective labor agreement. The committee will be made up of one person from each of the labor unions that meet these requirements, and decisions will be taken by the required representative majorities. If it cannot be assembled with those representatives, the committee will be made up of three workers from the company, chosen according to the provisions of article 41.4 of the Workers' Statute.

(ii) The representative committee must be created within the non-extendable time period of 5 days.

(iii) The consultation period must not exceed a maximum of seven days.

- In ERTes due to force majeure related to COVID-19, the Social Security General Treasury will exempt the company from the obligation to pay the employer contribution provided for in article 273.2 of the General Social Security Law, as well as the contributions for joint collection items, while the ERTE persists. This will apply when the company, at February 29, 2020, had less than 50 registered workers. If the company had 50 workers or more, the exemption from the obligation to pay contributions will cover 75% of the employer's contribution.

- In ERTes based on the extraordinary circumstances defined in the royal decree-law, the right to the contributory unemployment benefit shall be recognized even if workers have not met the minimum contribution period required for such purpose. The time during which the contributory unemployment benefit is received for these reasons will not be included for the purposes of determining completion of the established maximum periods for receiving benefits.

The requirements for the extraordinary benefit due to cessation of activity have also been made more flexible.

- The special provisions set out in the royal decree-law regarding the processing of ERTes will not apply to procedures already commenced or notified prior to the entry into force of the royal decree-law and based on the grounds it defines. In contrast, the extraordinary measures regarding social security contributions and unemployment benefits will apply to those affected by ERTes notified, authorized or commenced prior to the entry into force of the royal decree-law, provided they are caused directly by COVID-19.

- Encouragement of teleworking:

Organization systems will be established that allow activity to continue by means of alternative mechanisms, particularly teleworking, and companies must adopt the appropriate measures, if this is technically and reasonably possible and the effort required to adapt is proportionate. These measures must take priority over the temporary cessation or reduction of the activity. The obligation to carry out a risk assessment shall exceptionally be deemed to have been met by means of a self-assessment voluntarily carried out by the workers themselves.



# GARRIGUES

- Adaptation of timetable and reduction of working hours:
- Workers who evidence duties of care with respect to their spouse or spousal equivalent, and with respect to relatives up to the second degree of consanguinity of the worker, will be entitled to adapt and/or reduce their working hours where exceptional circumstances exist that are related to the steps necessary to prevent the community transmission of COVID-19.
- Such circumstances shall be deemed to exist when the presence of the worker is required to attend to any of the indicated persons who, by reason of age, illness or disability, require personal and direct care as a direct consequence of COVID19.
- Exceptional circumstances will also be deemed to exist when there are decisions adopted by government authorities relating to COVID-19 that entail the closure of educational establishments or establishments of any other nature that provide care or attend to the person requiring them and, where exceptional circumstances exist that require the presence of the worker, when the person that, up to that time, had directly cared for or attended to the spouse or relative up to the second degree of the worker is not able to continue doing so due to justified reasons related to COVID-19.
- This is an individual right of each of the parents or caregivers, which must presume shared responsibility for the distribution of care duties and avoidance of the perpetuation of roles, and it must be justified, reasonable and proportionate in relation to the situation of the company, particularly in the event that various workers from the same company exercise this right.
- The initial proposal corresponds to the worker, both in terms of its scope and content, provided that it is justified, reasonable and proportionate, taking into account the specific care needs that must be provided by the worker, duly evidenced, and the organizational needs of the company. The company and the worker must do everything possible in order to reach an agreement.
- The right to adapt working hours may refer to the distribution of working time or to any other aspect of the working conditions, and may consist of a change of shift, altered timetable, flexible timetable, split or continuous working day, change of workplace, change of duties, change in the manner of performing the work, including teleworking, or any other reasonable and proportionate change, taking into account the temporary and exceptional nature.
- In the case of a special reduction in working hours, the guarantees, benefits or special provisions currently established will apply, in addition to the following special provisions:
  - (i) it must be notified 24 hours in advance.
  - (ii) it may cover 100% of the working hours where necessary (in this case, it is specified that it must be justified, and reasonable and proportionate in light of the situation of the company).
  - (iii) In the case of direct care of a relative, up to the second degree of consanguinity or affinity, who by reason of age, accident or illness cannot take care of themselves, it will not be necessary for the relative requiring care and attention to not perform a paid activity.
- The extraordinary employment-related measures will be subject to the company's obligation to maintain employment for a period of six months following the date of resumption of the activity.