

Modifications to the regime applicable to certain regulated financial institutions included in Royal Decree-law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19

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1. Introduction

On 1 April 2020, **Royal Decree-Law 11/2020 of 31 March** was published in the Official State Bulletin, **adopting additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**. The RDL establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted through the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extension, approved by Royal Decree 476/2020, of 27 March.

In this briefing, we provide a general analysis of the measures that could affect certain regulated financial institutions.

2. Modifications to Collective Investment Undertakings (CIS), Alternative Investment funds and entities (AIFs) and their management companies (“ManCo”, in Spanish, SGICs and SGEICs)

A. Modifications to the regime applicable to investment funds regarding prior notices for redemptions

RDL 1/2020 has amended the seventh paragraph of article 71 septies of Law 35/2003 of 4 November on Collective Investment Undertakings (“LIIC”) with the aim of (i) helping to manage liquidity tensions triggered by redemptions in open-ended investment funds as a result of the COVID-19 crisis and volatility in the markets, and (ii) ensuring equal treatment of unit-holders or shareholders.

Before this change, the LIIC only allowed the CNMV to require the ManCo to increase the level of liquidity in their portfolios by increasing investment in “especially liquid” assets in accordance with the criteria established by the regulator for this purpose. However, this new amendment also provides for the possibility of the CNMV authorising the ManCo to establish prior notice periods for redemption in one or more of the investment funds they manage, without being subject to the legal requirements in terms of deadlines, minimum amounts, etc. laid down in the applicable regulations. Such notice periods may also be established on the CNMV’s initiative, which will determine the redemptions to which the measure applies.

Prior to implementing this measure, the CNMV also issued other communications clarifying the regime which is applicable to certain regulated entities under its supervision, which we highlight below.

B. The CNMV's criteria on certain information duties:

On 27 March, the CNMV published a set of considerations in relation to reporting and the publication of information by UCITS, AIFs and their ManCos. In particular, the considerations related to the formulation, audit and approval of their annual accounts, as well as submission thereof to the CNMV, public disclosure and submission to investors.

The Spanish regulator considers that, following the approval of RDL 8/2020, the suspension of the deadlines for the formulation, audit and approval of annual accounts provided for in article 40 thereof is also applicable to UCITS and AIFs (both funds and legal entities, pursuant to the applicable Spanish legislation) as well as to their ManCos (in Spanish, SGEICs and SGIICs). However, the criteria varies depending on the current status of each entity in relation to their annual accounts (whether or not they are pending formulation, whether they are already audited, their submission to the CNMV, etc.).

The remaining reporting obligations (such as publication and forwarding to unit-holders and shareholders of the quarterly report of the open-ended CIS, reserved statements, reporting for other types of entities, etc.) remain fully in force. However, the CNMV states that the exceptional circumstances in which the various entities find themselves may lead to extensions of time limits or justified delays in sending the required information.

C. Resolution of the Board of the CNMV of 20 March 2020 on the suspension of administrative deadlines provided for in Royal Decree 463/2020 on the state of alarm.

(i) Activities not subject to the general suspension of administrative deadlines:

On 20 March 2020, the CNMV published a resolution regarding the suspension of administrative deadlines contained in the Third Additional Provision of RD 463/2020.

The regulator states that priority is given to those activities likely to produce favourable effects for the interested party, particularly with regard to (1) supervision; and (2) the authorisation of new entities and market operations. Therefore, both activities have been declared to be of general interest and can be carried out in a reasonably normal manner during the period in which the aforementioned Royal Decree is in force.

In relation to the activity consisting of authorising transactions and new entities, particular reference is made to those administrative authorisation procedures

which correspond to the Directorate-General for Entities or the Directorate-General for Markets (in all cases which are likely to produce favourable effects for the interested parties). Notwithstanding the foregoing, it is foreseen that these procedures will take into account any justified reasons given by the interested parties relating to circumstances that arise due to the health crisis in which the country is immersed.

Lastly, the Executive Committee of the CNMV has been delegated the power to include additional procedures other than those indicated here.

(ii) Additional Q&A on UCITS matters:

The CNMV has replied to queries raised in relation to the application of the criterion established in the Resolution of 20 March, with a view to its application in certain procedures, and in particular, the application of the one year period granted to proceed with a registration of entities in procedures for the authorisation of new SGIICs (article 41.6 LIIC) or for the reopening of SGIIC branches authorised in other EU member states (article 124 of Royal Decree 1082/2012, which develops the LIIC).

According to the CNMV, the general suspension of deadlines is applicable to those cases, given that in both cases the lack of the suspension would be unfavorable to the interested party. Thus, in both cases the period will resume when the end of the state of alarm is decreed.

In relation to the registration of new CISs, the CNMV highlighted that in order for them to be authorised and/or registered, they must have a provisional tax ID number. An online application procedure for the tax ID number is available from the website of the Spanish tax authorities ([see here](#)) for this purpose.

3. Banking Foundations

RDL 11/2020 also amends article 44(3) (b) of Law 26/2013 of 27 December on savings banks and banking foundations.

In particular, it grants banking foundations that have a divestment plan already approved by the Bank of Spain an extension of up to two years to the period in which they can complete the divestment.

If a banking foundation opts for this extension, it must set up a reserve fund with an annual allocation of at least 50% of the amounts received from the credit institution in which it is a shareholder by way of dividend.

The information contained in this Special Information Briefing is of a general nature and does not constitute legal advice. This document has been prepared on 2 April 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.