

Special Information Briefing
COVID-19 (No. 12):

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

Among the measures approved by RDL 11/2020, several are intended to support industrialisation, including certain amendments to loans already granted or to be granted by the Spanish Ministry of Industry, Trade and Tourism (*Ministerio de Industria Comercio y Turismo*) through the Spanish General Secretariat of Industry and SME (*Secretaría General de Industria y de la PYME*) (“**SGIPYME**”).

These loans are part of the programmes of the General Directorate for Industry and SMEs (*Dirección General de Industria y de la PYME*) to facilitate the access by entrepreneurs and SMEs to sources of financing, by means of the announcement of annual subsidies and other support policies.

In particular, the main measures approved are:

- (i) Amendments to deadlines for the submission of guarantees provided for in the announcements for loans granted by the SGIPYME;
- (ii) Refinancing of loans already granted by the SGIPYME; and
- (iii) Changes to the criteria for the assessment of non-compliance.

2. Amendments regarding deadlines and terms for the submission of guarantees

RDL 11/2020 amends, temporarily, and only in relation to calls pending at the time of entry into force of RD 463/2020, the terms and conditions for the submission of guarantees to the General Deposit Fund (a body which reports to the Ministry of Economic Affairs and Digital Transformation) as follows:

- (i) The guarantees to be provided by the applicants shall be submitted after the granting decision and prior to the disbursement of the loan, instead of prior to the decision, as established in the regulations applicable so far;

- (ii) Once the announcement has been made, the guarantees must be submitted before 3 November 2020, which is a prerequisite for the granting of the loan; and
- (iii) The rest of the requirements established in the relevant announcements must be fulfilled at the time of the disbursement of the loan.

RDL 11/2020 establishes that the provisions set forth in Order ICT / 1100/2018 18 October¹, Order ICT / 859/2019² and the orders regulating the announcements for the year 2019 will be suspended in any term that contravenes RDL 11/2020.

3. Refinancing of loans already granted by the SGIPYME

The companies that are already recipients of loans granted by the SGIPYME in respect of industrial projects will have two and a half years from the entry into force of RD 463/2020 to request certain amendments to the repayment schedule.

The amendments that may be made to the repayment schedule are as follows:

- (i) Increase of the maximum repayment term; or
- (ii) Increase of the maximum grace period, if any principal instalment has not become due; or
- (iii) Any other amendments provided that the maximum levels of aid intensity and risk assumed at the time the loan was granted are not amended.

The programmes that may benefit from these amendments will be those granted by the SGIPYME to Reindustrialisation, Competitiveness of Strategic Industrial Sectors, Competitiveness of the Automotive Sector, Reindustrialisation and Strengthening of Industrial Competitiveness, Connected Industry 4.0 and R&D&I in the area of manufacturing, and provided that the health crisis caused by COVID-19 has caused the beneficiary to suffer:

- (i) Periods of inactivity; and/or
- (ii) Reduction in sales volume; and/or
- (iii) Supply disruptions in the value chain.

To be eligible for these amendments, the application must be submitted to the same administrative body that issued the decision to grant the loan. The relevant administrative body

¹ Order ICT/1100/2018 of October, 18, establishes the regulatory guidelines for the granting of financial support for industrial investment within the framework of the public policy of reindustrialisation.

² Order ICT/859/2019 establishes the guidelines for the granting of financial support to Industrial Research, Development and Innovation projects in the manufacturing industry

will have a six (6) month period to approve such requests. The absence of a response shall be interpreted as a denial of the request.

The request must include the following information:

- (i) A report explaining the difficulty in complying with the current repayment schedule of the loan. This report must include a provisional balance sheet, and profit and loss statement which immediately precede the health crisis caused by COVID-19, a qualitative and quantitative explanation of how the borrower has been affected, its economic and financial assessment and an action plan to mitigate these effects;
- (ii) In the event that the investment period has not yet expired, an updated technical and economic report justifying the investments made using the loan, with a breakdown by items, must also be included. A schedule showing the details of the investments and expenditure implemented (invoices and payments) as well as the expenditure commitments made, which must be duly justified, must be included; and
- (iii) An affidavit stating that the company is up to date with its tax and social security obligations, that it has no debts in connection with the repayment of any financial assistance or loans from Government and that it has fulfilled its obligations to file its annual financial statements with the Commercial Registry.

Companies included in any of the following categories will be excluded and, therefore, will not be eligible to benefit from the amendments provided above:

- (i) If there is no sufficiently proven damage that justifies the amendment;
- (ii) If the company is not up to date with its tax and social security obligations;
- (iii) If the company has any debts in connection with the repayment of any financial assistance or loans from the Government;
- (iv) If the company is not up to date with its obligations in connection with the submission of its annual financial statement to the Commercial Registry;
- (v) If the maturity of the debt is the result of a payment default or a waiver; and
- (vi) When the projects are within the investment evaluation period, if there is not a sufficient degree of progress and the fulfilment of the objectives undertaken in the decision of the granting of the loan is not guaranteed.

Lastly, RDL 11/2020 establishes that for a period of two and a half years from the entry into force of RD 463/2020, and provided that the technical-economic verification of the project has been completed, the subrogation of a credit institution in the obligation to repay the loan will be

permitted, and the beneficiary may subscribe to a bank debt for this purpose. In addition, for those loans with interest rates, the interest rate assumed by the credit institution may be reduced if the minimum interest rate required for loans granted by the State, which is set in the corresponding Spanish General State Budget Act, is complied with.

4. Amendment of the criteria for the assessment of non-compliance

The seventeenth additional provision of RDL 11/2020 amends the assessment criteria of potential breaches in SGIPYME financing programmes, for projects that were in the operational period at the time of the entry into force of RD 463/2020, providing that:

- (i) the degree of compliance demonstrated by the beneficiary is close to total compliance; and
- (ii) it is verified that the initial project objectives have been achieved,

will be considered as 100% compliance with the project, without any amount having to be reimbursed.

For the purposes of RDL 11/2020:

- (i) Total non-compliance is equivalent to a percentage lower than 60% completion of the eligible investment; and
- (ii) Significant compliance is equivalent to 80% or higher.

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