

Special Information Briefing
COVID-19 (Nº 12):

Measures on insolvency-related matters established by the Royal Decree-law 11/2020 of 31 March, which adopts 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, **which adopts additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**. RDL (11/2020) establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted by means of the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declares 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.

2. Measures on insolvency-related matters

In relation to insolvency-related matters, RDL 11/2020 establishes a series of amendments in relation to the suspension of employment contracts and the reduction of working time.

Firstly, it amends the Commercial Court’s jurisdiction, established in Article 64 of the Spanish Insolvency Act 22/2003, of 9 July, to adopt those employment measures provided in Articles 22 and 23 of RDL 8/2020, namely, the suspension of employment contracts and the reduction of working time in the circumstances provided in RDL 11/2020.

As further explained below, the Commercial Court’s jurisdiction will depend on whether or not, at the time that RDL 11/2020 comes into force, the Commercial Court has issued a decision in this regard. If no decision has been made, applications must be submitted to the labour authority.

Secondly, the Tenth Additional Provision of RDL 8/2020 is included with the following title “Details regarding the application of Chapter II to insolvent companies”. The purpose of this new provision is to regulate the procedure to be followed by insolvent companies when they decide to adopt any of the measures indicated in Articles 22 and 23 of RDL 8/2020.

A. Provisions regarding insolvency proceedings

RDL 11/2020 introduces a series of amendments in relation to the appropriate jurisdiction for the adoption of extraordinary measures regarding the suspension of employment contracts and the reduction of working time in circumstances where the employer is undergoing insolvency proceedings due to: (i) *force majeure*; or (ii) economic, technical, organisational or production reasons as indicated in Articles 22 and 23 of RDL 8/2020 when the company is in insolvency proceedings.

In this regard, the Fourth Transitional Provision of RDL 11/2020 provides that the jurisdiction to adopt such measures will depend on whether or not, at the time of the entry into force of RDL 11/2020, a decision on this matter has been made by the Commercial Court.

Thus, if a court decision has already been issued on this matter, it will have full effect on the recognition of the benefits established in Chapter II of RDL 8/2020.

On the other hand, for those cases in which applications for the suspension of employment contracts or reduction of working time have been filed with the Commercial Court, but the latter has not made a decision as of the date of entry into force of RDL 11/2020, the applications must be referred to the labour authority and their processing will continue according to the proceedings and details provided for in Articles 22 and 23 of RDL 8/2020. Notwithstanding the above, the fact that the proceedings must be referred to the labour authority does not mean that those actions previously carried out or the consultation period that was in progress, or previously held, lose their validity for the purposes of the new proceedings.

B. Details regarding the application of Chapter II to insolvent companies

As stated above, RDL 11/2020 provides that when the Commercial Court has not issued a decision on an application for the suspension of employment contracts or the reduction of working time, the Commercial Court will have no jurisdiction to adopt the requested measure, instead the labour authority will have jurisdiction.

In this regard, the provisions to which the above application must be submitted are those set out in Royal Legislative Decree 2/2015, of 23 October, which approves the revised text of the Workers' Statute Act, with the details set out in Articles 22 to 28 and the Sixth Additional Provision of RDL 11/2020.

Notwithstanding the above, to the extent that the company is in insolvency proceedings, the new Tenth Additional Provision of RDL 8/2020 introduced by RDL 11/2020 adds the following:

- (i) The applications for employment regulations must be filed by the insolvent company with the authorisation of the insolvency administration, or directly by the insolvency administration, according to the system of intervention or suspension of powers over company assets (*“facultades patrimoniales”*).
- (ii) The insolvency administration will be part of the consultation period provided for in Article 23 of RDL 11/2020.
- (iii) The decision to apply the measures on the suspension of employment contracts or the reduction of working time must be authorised by the insolvency administration or adopted by it, according to the system of intervention or suspension of powers over company assets (*“facultades patrimoniales”*), if no agreement is reached in this regard during the consultation period.
- (iv) The duty to inform the Commercial Court of the application, decision and measures taken.

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- (v) The Commercial Court will have jurisdiction to hear appeals in certain circumstances¹. The Court's decision may be appealed ("*recurso de suplicación*").

- (vi) The labour authority will have jurisdiction to hear appeals against the decision of the labour authority in the event that the decision does not establish the existence of *force majeure*.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 2 April 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

¹ The circumstances are the following: (i) termination of the consultation period by agreement, in which case it can only be invoked, in the event of a challenge, fraud, deceit, coercion or abuse of rights in its conclusion; (ii) challenge in the event that the measure taken could have the purpose of unduly obtaining the benefits by the workers affected by the absence of the cause of the legal situation of unemployment; and (iii) where a number of workers equal to or greater than the thresholds provided for in article 51.1 of Royal Legislative Decree 2/2015, of 23 October, which approves the restated text of the Workers' Statute Act are affected.