

Royal Decree-law 11/2020, of 31 March 2020, adopting additional urgent social and economic measures to deal with COVID-19

Madrid, 2 April 2020

On 1 April 2020, **Royal Decree-law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**, was published in the Official State Bulletin (“BOE”). 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 information briefing, we have carried out a general analysis of the measures approved in numerous areas and have included links to specific briefings for each of them.

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Measures relating to residential leases

The main measures relating to residential leases included in RDL 11/2020 are detailed below.

- A. The extraordinary suspension of eviction procedures, once the suspension of the procedural terms and deadlines has been lifted due to the end of the state of alarm, for tenants who are able to demonstrate that they are in a situation of economic vulnerability as a result of the COVID-19 crisis and do not have an alternative housing arrangement. If the date of the eviction has not been assigned due to the fact that (a) the ten (10) day period for vacating the dwelling has not elapsed, or (b) the hearing has not been held, the ten (10) day period for vacating the dwelling or the period for holding the hearing, as the case may be, will be suspended until the measures deemed appropriate by the competent social services are adopted, up to a maximum period of six (6) months as from the effective date of RDL 11/2020.
- B. The tenant can request from the landlord an extraordinary extension of the term of the lease agreed for his or her primary residence, for a maximum period of six (6) months, when the term of the lease ends within the period between the effective date of RDL 11/2020 and the day on which two (2) months have elapsed since the end of the state of alarm.
- C. Tenants who are in a situation of economic vulnerability caused by the COVID-19 crisis, and who have not reached a prior agreement with their landlord in relation to deferring or reducing the rent payment, may be able to benefit from a temporary and extraordinary reduction of the monthly rent, or a temporary and extraordinary deferral of the rent payment, when, for the purposes of RDL 11/2020, the landlord is considered to be a public housing company or entity, or a great property holder. If their landlord does not fall under any of those categories, they can request a temporary and extraordinary deferral of the rent payment and if the landlord does not accept the deferral and does not propose alternative measures, the tenants can benefit from the transitional financing aid programme.
- D. A number of public aid programmes are envisaged, such as the transitional financing aid programme, which will be established, modified or substituted by means of Orders of the Ministry of Transportation, Mobility and Urban Agenda, and which tenants in a situation of economic vulnerability can access.

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Measures applicable to the moratorium on mortgage payments

Some amendments have been made to Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to address the economic and social impact of COVID-19, and these measures have been extended to include non-mortgage borrowers.

The most significant amendments are the following:

- A. It amends the scope of application of Royal Decree-law 8/2020, so the mortgage moratorium can be applied to a mortgage that is registered in respect of: (i) the primary residence; (ii) properties used for the economic activity of entrepreneurs or professionals who have suffered a substantial loss of income or a substantial drop in turnover; and (iii) dwellings other than the primary residence which are subject to a leasehold and for which the mortgage holder, individual, owner, and lessor of such dwelling, has stopped receiving the rental income since the entry into force of the state of alarm.
- B. It clarifies that the moratorium will be for a period of three (3) months from when it is granted.
- C. It relaxes the requirements for benefiting from the moratorium, allowing the borrower to replace any necessary supporting documents with an affidavit.
- D. It clarifies that the suspended instalments will not be due at the end of the moratorium, but all remaining instalments are postponed for an identical period, thus extending the relevant amortisation scheme.

In addition, RDL 11/2020 introduces the possibility of a moratorium for non-mortgage borrowers, provided that they are in a situation of vulnerability, in substantially similar terms to those applicable to the moratorium on mortgage debt.

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Measures relating to employment

RDL 11/2020 includes some developments relating to employment, including the following:

- A. ERTes can be applied in companies undergoing insolvency proceedings, due to force majeure and for economic, technical, organisational and productive reasons, provided that the conditions of articles 22 and 23 of RDL 8/2020 are met.
- B. Self-employed workers are entitled to receive the discount rate (*bono social*) for utilities if they have ceased their activity or their turnover has reduced as a result of COVID-19.
- C. Those persons with temporary contracts with a minimum duration of two months, and whose termination date is after the entry into force of RD 463/2020, will be entitled to an exceptional unemployment benefit due to the termination of a temporary contract, subject to certain conditions.
- D. It provides for the possibility of companies and self-employed workers (who meet the requirements that will be established by Ministerial Order) being granted 6-month interest-free moratoriums on social security contributions.
- E. Companies and self-employed workers (who have not been granted any other deferrals) can apply for a deferral of the payment of the social security debts due between April and June 2020. The interest applicable will be 0.5%.
- F. Availability of pension schemes in the event of unemployment or cessation of activity arising from the health crisis caused by COVID-19: It establishes that members of pension schemes can exercise their vested rights (for 6 months from the entry into force of RD 463/2020) in certain cases.
- G. With effect from the beginning of the confinement situation, and on an exceptional basis, Temporary Incapacity protection will be extended to workers who are forced to leave their area and who have an obligation to provide essential services (provided that the requirements of RDL 11/2020 are met).
- H. During the state of alarm, the allowance for caring for children affected by cancer or other serious illnesses, which employed or self-employed workers were receiving as of 14 March 2020, will not be affected by ERTes implemented on the basis of articles 22 and 23 of RD 8/2020.
- I. The extension of the validity of all measures adopted in RDL 8/2020 for 1 month following the end of the state of alarm is established, except as regards measures which have a specific

period of validity. It also provides for the possibility of the Government extending the validity of the measures foreseen.

J. It regulates an extraordinary benefit for domestic workers who are unable to work.

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Measures applicable to foreign investment

RDL 11/2020 introduces certain amendments to Law 19/2003 in relation to the creation of article 7bis of the aforementioned regulation approved by RDL 8/2020, which regulates certain restrictions on foreign direct investment in Spain for reasons of security, public order and public health in Spain's main strategic sectors.

Thus, RDL 11/2020 extends the scope of the application of article 7bis to investments made by investors who are resident in the European Union and European Free Trade Association countries but who are controlled by entities resident outside those jurisdictions. It also provides for a simplified authorisation process for investments of between EUR 1 million and EUR 5 million (with an exemption for those of less than EUR 1 million), or those transactions that already existed at the time of the entry into force of article 7bis.

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Measures applicable to legal entities governed by private law

The first final provision of RDL 11/2020 amends articles 40 (“*Extraordinary measures applicable to legal entities governed by private law*”) and 41 (“*Extraordinary measures applicable to the functioning of the management bodies of listed companies*”) of RDL 8/2020 with the aim of (a) including new content and (b) clarifying some of the issues raised by the publication of the latter. The most significant amendments are the following:

A. Extraordinary measures applicable to legal entities governed by private law:

- (i) Governing and management bodies may hold their meetings during the state of alarm, by both videoconference and multiple teleconference, provided that certain conditions are met.
- (ii) During the state of alarm and even if the by-laws do not provide for this option, the general shareholders’ meetings of companies or the associates’ assemblies may be held by means of “video or multiple teleconference”, subject to certain conditions.
- (iii) It clarifies that (a) the drafting of the annual accounts can be carried out during the state of alarm, and (b) the audit of the accounts can be carried out within the legally established period or with the option of the extension provided for in article 40.4 of RDL 8/2020. It also clarifies that the extension of the two-month period from the end of the state of alarm in which to complete mandatory and voluntary audits applies regardless of whether the annual accounts were drafted before, or during, the state of alarm.
- (iv) It foresees that (i) companies which, having drafted their annual accounts, convene the general shareholders’ meeting from the date of the entry into force of this regulation, may replace the proposal for the distribution of profits with a new proposal; and (ii) if the general shareholders’ meeting has already been called, the management body may withdraw the proposal for the distribution of profits from the agenda and must submit the new proposal to a subsequent general shareholders’ meeting to be held within the legally established period.

- B. Extraordinary measures concerning the functioning of the management bodies of listed companies:** RDL 11/2020 introduces a third paragraph to article 41 of RDL 8/2020. In accordance with this new rule, when listed companies want to substitute the proposed distribution of profits in accordance with article 40.6 bis of RDL 8/2020 (a) the new proposal for the distribution of profits, (b) its justification by the management body and (c) the auditor’s report must all be made public, as soon as they are approved, as supplementary

information to the annual accounts on the company's website and on the website of the CNMV as other relevant information or, if required, as privileged information.

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Measures on insolvency-related matters

In terms of insolvency, RDL 11/2020 introduces a series of amendments in relation to the suspension of employment contracts and reductions of the working day:

- A. Firstly, it amends the Commercial Court's jurisdiction, established in article 64 of the Spanish Insolvency Act 22/2003, of 9 July, to adopt the employment measures provided in articles 22 and 23 of RDL 8/2020, namely, the suspension of employment contracts and the reduction of the working day in the circumstances provided in RDL 11/2020. 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 issued, applications must be submitted to the labour authority.
- B. Secondly, the Tenth Additional Provision of RDL 8/2020 is included with the purpose of regulating the procedure to be followed by insolvent companies if they decide to adopt any of the measures indicated in articles 22 and 23 of RDL 8/2020.

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Measures relating to public procurement

- A. RDL 11/2020 introduces the following amendments to section 1 of article 34 of RDL 8/2020: (i) the reference to the automatic suspension of these contracts is removed; (ii) it specifies that the suspension may be total or partial; (iii) it specifies that, in the event that the personnel assigned to the contract include personnel affected by the recoverable paid leave provided for in RDL 10/2020, the payment by the contracting body of the relevant salary expenses shall not be considered compensation, but rather a prepayment for the portion corresponding to the hours that need to be recovered under the terms of article 3 of the aforementioned RDL 10/2020, to be taken into account in the final settlement of the contract.
- B. It clarifies that the suspension of works contracts whose performance has become impossible may be requested and granted regardless of their completion date.
- C. It clarifies certain aspects regarding the contracts that are excluded from the applications of article 34 of RDL 10/2020.
- D. It specifies that, for the purposes of article 34 of RDL 8/2020, only those contracts which, according to their terms, are subject to (i) Law 9/2017 of 8 November; or (ii) Royal Legislative Decree 3/2011 of 14 November; or (iii) Law 31/2007 of 30 October; or (iv) Book I of Royal Decree-law 3/2020 of 4 February; or (v) Law 24/2011 of 1 August, will be considered “public contracts”.
- E. It provides that the salary expenses referred to in article 34 of RDL 8/2020 will include those relating to the relevant social security contributions.
- F. The second subparagraph of section 4 of article 29 is amended to allow, by way of exception, supply contracts (in addition to service contracts, for which this exception was already provided) to be made subject to a term of more than five years, if certain conditions are met.

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Measures relating to taxation

RDL 11/2020 also contains a series of tax measures, the main purpose of which is to clarify some of the questions that arose following the publication of RDL 8/2020. These measures are as follows:

- A. **Deferral of customs debts:** It provides for the possibility of deferring the payment of the customs and tax debt corresponding to the customs declarations presented from the date of entry into force of RDL 11/2020 until 30 May 2020. This possibility only applies to taxpayers with a volume of operations of less than EUR 6,010,121.04 in 2019 and for an accumulated total of debts of EUR 30,000. The deferral is granted for six months, and will not accrue late payment interest during the first three months.
- B. **Measures in relation to tax procedures:** A series of measures related to the processing of tax procedures and the calculation of their deadlines are introduced, for the purpose of developing and clarifying the content of the measures included in RDL 8/2020. The extension of the measures of RDL 8/2020 to procedures carried out by the tax authorities of the Autonomous Communities and local tax offices is noteworthy, as is the clarification regarding the calculation of the period for filing an internal administrative appeal or an economic-administrative claim.
- C. **Measures in relation to Property Transfer Tax and Stamp Duty (“ITP-AJD”):** It specifies that the new Stamp Duty exemption for contractual novations of loans and mortgage credits provided for in RDL 8/2020 will apply *“when they are based on the cases regulated in articles 7 to 16 of the aforementioned royal decree-law, referring to the moratorium on mortgage debt incurred for the purchase of the primary residence”*.

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Measures regarding terms in administrative proceedings

The Eighth Additional Provision, section 1, of RDL 11/2020 states that the term for filing appeals in administrative proceedings will be calculated from the business day that follows the end date of the state of alarm, regardless of the time elapsed from the date on which the administrative resolution subject to appeal was notified. This provision also affects the terms concerning any other challenge, claim, conciliation, mediation and arbitration proceedings that substitute administrative appeals, in accordance with the applicable legal provisions.

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Measures to support industrialisation

It includes certain amendments to loans already granted or to be granted by the Spanish Ministry of Industry, Trade and Tourism through the Spanish General Secretariat of Industry and SMEs (“SGIPYME”).

These loans are part of the programmes of the General Directorate for Industry and SMEs to facilitate the access of entrepreneurs and SMEs to sources of financing, by means of the announcement of annual subsidies and other support policies. The measures approved include the following: (i) amendments to the deadlines and 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) provided for in the announcements for loans granted by the SGIPYME; (ii) refinancing of loans already granted by the SGIPYME with the aim of increasing the repayment term or the grace period; and (iii) changes to the criteria for the assessment of non-compliance.

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Measures relating to energy

The main measures relating to energy are detailed below.

- A. The right to receive the discount electricity rate (*bono social*) is extended to self-employed workers who have ceased working or reduced their turnover as a result of COVID-19, up to a maximum of six months from the date of accrual.
- B. During the validity of the state of alarm, consumers who are natural persons in their primary residence may not have essential supplies (electricity, petroleum products, natural gas and water) suspended in the event of non-payment, even if this possibility is stated in the contracts that were signed.
- C. During the validity of the alarm state, self-employed workers and companies may (i) temporarily suspend or amend their electricity supply contracts without incurring penalties. It will also be possible to change the access tariff and increase or decrease contracted power at no cost; and (ii) with regard to their natural gas supply contracts, to request the amendment of the contracted daily flow, the inclusion of a tariff corresponding to a lower annual consumption or the temporary suspension of the supply contract at no cost.
- D. While the state of alarm is in force, self-employed workers and SMEs¹ may request the suspension of the payment of bills for billing periods that include days which form part of the state of alarm and which relate to the supply of (i) electric energy; (ii) natural gas; (iii) manufactured gases and liquefied petroleum gases (LPG). In addition, electricity and gas suppliers, manufactured gas and piped LPG distribution companies, and electricity and natural gas distribution companies are entitled to access the guarantee facility established in article 29 of RDL 8/2020, or any other guarantee facilities created for this specific purpose, up to the limit of the amount by which their income has been reduced as a result of this measure.
- E. Exceptionally, during the period from 1 May to 30 June 2020, the commercialisation of fuel with a vapour and distillate pressure between the minimum summer limit and the maximum winter limit will be permitted.
- F. For holders of access and connection permits granted prior to the entry into force of Law 24/2013, of 26 December, on the electricity sector (“LSE”), which, in the event of not having obtained commissioning certificate to operate the facility prior to 31 March 2020, were subject to expiration, there is an additional period of validity of two months, starting from the end of the state of alarm.

¹ As defined in Annex I of Regulation (EU) No 651/2014 of the European Commission.

- G. Article 4.3 of RDL 8/2020 is amended to allow the updating of the regulated prices of bottled LPG (butane cylinder) and the TUR (last-resort rate) for natural gas in the event that the new resulting price is lower than that currently in force.

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Measures relating to consumer protection

RDL 11/2020 establishes consumer protection measures aimed at (i) compensating consumers in relation to contracts for the sale of goods and the provision of services when performance has become impossible as a consequence of the declaration of the state of alarm, mainly by giving the consumer the right to terminate such contracts; and (ii) restricting the commercial communications of companies engaged in gambling activities to avoid an increase in consumption that could lead to addictions.

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Measures applicable to regulated financial institutions

- A. **Modifications to the regime applicable to investment funds regarding prior notices for redemptions:** With the aim of helping the management companies ("ManCo") of collective investment undertakings ("CIS") to manage liquidity pressures due to redemptions in investment funds as a result of the crisis and volatility of the markets, and to ensure equal treatment of participants or shareholders, the law on collective investment institutions has been amended to give the CNMV the power to authorise the ManCo to establish notice periods for redemptions in one or more of the IICs 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.
- B. **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.

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