

**Special Information Briefing
COVID-19 (No. 14):**

Financial aspects of Royal Decree-law 15/2020 of 21 April, adopting additional urgent economic and social measures to deal with COVID-19

Index

1. Background and purpose of RDL 15/2020
2. Financial measures implemented under RDL 15/2020
3. Deferral of instalments under refundable subsidy programmes or aid provided in the form of a loan, by the IDAE
4. Reinsurance by the Insurance Compensation Consortium of credit and surety risks assumed by private entities
5. Modification of the features of the guarantee facility for an aggregate amount of EUR 100 billion approved under article 29 of RDL 8/2020
6. Measures to provide financial support to the scientific and technological sector

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On 22 April 2020, Royal Decree-law 15/2020 of 21 April was published in the Official State Bulletin, adopting additional urgent measures to support the economy and employment ("**RDL 15/2020**").

The purpose of this legal briefing is to specifically analyse the economic and financial measures included in RDL 15/2020.

1. Background and purpose of RDL 15/2020

Until now, Royal Decree-law 8/2020 of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19 ("**RDL 8/2020**") was, and remains, the most ambitious legislation designed to stimulate the liquidity of the Spanish business sector in light of the temporary and exceptional situation caused by COVID-19.

Under said RDL 8/2020 the first package of economic measures was put in place, consisting mainly of the following:

- the approval of a guarantee facility on behalf of the State, of up to EUR 100 billion, aimed at guaranteeing the financial debt (existing or new) assumed by companies and self-employed workers from regulated financial entities, in relation to certain working capital and liquidity needs of such companies and self-employed workers;
- the increase in the net borrowing capacity of the Official Spanish Credit Institute (*Instituto de Crédito Oficial*) in the General State Budget Law by EUR 10 billion, in order to provide additional liquidity to companies, especially SMEs and self-employed workers; and
- the creation of an insurance coverage facility, for up to EUR 2 billion, from the Internationalisation Risk Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*).

These measures are currently being implemented. In this regard, for example, two separate tranches of guarantees have already been put in place, for an aggregate amount of EUR 40 billion, under the EUR 100 billion guarantee facility referred to above, which is mostly aimed at helping self-employed workers and SMEs. At least 86¹ financial institutions have entered into the corresponding collaboration agreements with the Official Credit Institute for the implementation of this measure.

¹ Data published on 10 April 2020 by the Government through the following link: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/asuntos-economicos/Paginas/2020/100420linea-avales.aspx>.

Notwithstanding the above, it is undeniable that the paralysis of economic activity resulting from the state of alarm adopted to face the current healthcare crisis makes it necessary to adopt additional measures to strengthen and extend the liquidity and economic activity support measures described above.

RDL 15/2020 intends to, among other things, fulfil the said purpose, with the aim of addressing and mitigating, as far as possible, the consequences arising from the temporary extension of the healthcare crisis caused by COVID-19.

2. Financial measures adopted under RDL 15/2020

RDL 15/2020 provides for a package of financial measures consisting mainly of the following:

- The Spanish Institute for Energy Diversification and Saving (*Instituto para la Diversificación y Ahorro de la Energía*) (the "IDAE") is authorised to defer payments under refundable subsidy programmes or aid provided in the form of a loan which is payable from March 2020 until two months after the end of the current state of alarm.
- The Spanish Insurance Compensation Consortium (*Consortio de Compensación de Seguros*) ("ICC") is authorised to carry out credit and surety reinsurance activities from 2020 and, consequently, to enable this body to reinsure credit insurance risks assumed by private insurance companies.
- Article 29 of RDL 8/2020 (which approves the guarantee facility for the amount of EUR 100 billion referred to above) is modified, reinforced and/or extended, in order to, among other things:
 - specify that the financing transactions which are eligible to be covered by the guarantees issued under this guarantee facility include discounting and collection management transactions (such as factoring agreements) as well as payment management transactions (such as confirming agreements) which are necessary to maintain economic activity and employment;
 - extend the deadline for the issuance of guarantees under this facility until 31 December 2020;
 - provide that the guarantees issued under this guarantee facility may be issued in favour of Spanish Reinsurance Company, S.A. ("CERSA"), in order to increase the latter's capacity to issue guarantees securing the payment at first demand of guarantees issued by third parties in relation to transactions entered into by SMEs and self-employed workers; and
 - provide that guarantees issued under this guarantee facility may be used to secure

promissory notes listed in the Fixed Income Market of the Association of Financial Intermediaries (AIAF) and the Alternative Fixed-Income Market (MARF), in order to encourage the maintenance of sources of liquidity other than traditional banking sources (i.e. capital markets).

- Certain financial support measures are provided for science and technology parks and the debt of the Barcelona Supercomputing Centre (*Centro Nacional de Supercomputación Consortium*) (BSC-CNS) is authorised up to a maximum amount of EUR 47,888,247.62 for 2020.

3. Deferral of instalments under refundable subsidy programmes or aid provided in the form of a loan, by the IDAE

RDL 15/2020 has launched its range of economic measures enabling the IDAE, attached to the State Secretariat for Energy and under the Ministry for the Ecological Transition and the Demographic Challenge, to approve deferrals in the repayment of loans granted as part of its subsidy programmes or refundable aid.

In this regard, RDL 15/2020 has extended the deferral regime provided for in previous regulations (for example, for loans of the General Secretariat of Industry, among others, through the REINDUS programme).

This measure is aimed at entities of the private sector (all public sector entities, both state and local, are expressly excluded from its scope) that have experienced periods of inactivity or a reduction of their sales or turnover caused by the situation arising from COVID-19 and which, as a result, have experienced difficulties in meeting the payment obligations of the loans granted to them by the IDAE.

In order to benefit from this measure, such entities must expressly request it and submit a declaration that certifies the abovementioned inactivity or decrease in sales or turnover. In the event of providing false or biased information, the acceleration of the loan may be determined (regardless of any other additional liability) by the IDAE.

In addition, entities shall comply with the following requirements or conditions:

- (i) Not be in a bankruptcy situation.
- (ii) Be up to date with all their obligations relating to the loans which are subject to this measure, immediately prior to the entry into force of the state of alarm.
- (iii) Be up to date with all of their obligations to both the Treasury and the Social Security.

- (iv) That the request concerns instalments for the months of March, April or, May 2020, which shall be automatically extended (unless otherwise expressly requested) until 2 months have elapsed after the lifting of the state of alarm.
- (v) That the instalments which are requested to be deferred are paid prior to the end of the term of the relevant loan.
- (vi) That these instalments to be deferred have not been subject to any previous deferment or instalment or claim (judicial or extrajudicial) by the IDAE.

Finally, it is important to note that this measure consisting of deferring the payment of certain instalments of loans granted by the IDAE must comply with the limits laid down by the applicable EU regulation on State aid.

In this regard, on 19 March 2020, the European Commission published a Communication on the "Temporary framework concerning State aid measures aimed at supporting the economy in the context of the current COVID-19 outbreak", amended on 3 April 2020, in which it considers that, to the extent that the COVID-19 outbreak affects all member States and the containment measures adopted by them affect businesses, "*State aid is justified and may be declared compatible with the internal market pursuant to article 107(3)(b) of the Treaty on the Functioning of the European Union for a limited period of time in order to remedy the liquidity shortage that companies are facing and to ensure that the disruption caused by the outbreak of COVID-19 does not undermine their viability, in particular, that of SMEs*"².

4. Reinsurance by the Insurance Compensation Consortium of credit and surety risks assumed by private entities

In addition to the measures provided for in RDL 8/2020 and as stated in the explanatory memorandum to RDL 15/2020, this new regulation aims to "*guarantee the continuity of the development of the economic transactions and provide security for commercial transactions in a context of uncertainty such as the current one*" through the implementation of certain measures aimed at encouraging the maintenance and proper functioning of the private insurance sector, more specifically, in relation to the credit and surety insurance market.

In this regard, RDL 15/2020 is sensitive to the deterioration of the credit market and commercial relations and aims to promote the insurance of payments between companies, encouraging the maintenance of coverage for insured risks by authorising the ICC to carry out credit reinsurance and surety activities from 2020.

² Within the framework of this Communication, the European Commission approved the measure concerning the "Guarantee facility for businesses and self-employed workers to relieve the economic effects of COVID-19" provided for in RDL 8/2020.

A. Scope of the provision

RDL 15/2020 authorises the ICC to accept, under reinsurance transactions, risks assumed by insurance companies operating in the credit and surety branches, provided that (i) the prior approval by its Board of Directors is obtained; and (ii) such insurance companies enter into the corresponding agreements with the ICC.

B. Reinsurance conditions

RDL 15/2020 provides for the following conditions for the reinsurance by the ICC:

- (i) Forms of coverage: RDL 15/2020 leaves open the forms of coverage, provided that they promptly and effectively complement the coverage of the insurers.
- (ii) Economic conditions: these will be determined by the ICC, although it is stated that such economic conditions should focus on the financial balance of the agreement in the long term and shall include and take into consideration the management costs incurred by the ICC.
- (iii) Purpose: Insurance transactions carried out by authorised insurers in the credit sector with a significant volume of transactions and with policyholders domiciled in Spain.
- (iv) Temporary validity: from 1 January 2020 and for a minimum period of two years or as long as the grounds of the general interest remain.

C. Separation from other transactions

From a financial and accounting point of view, the ICC shall keep these reinsurance transactions separated from other transactions, integrating the contributions made by the State to maintain the technical financial balance of such transactions.

5. Modification of the features of the guarantee facility for an aggregate amount of EUR 100 billion approved under article 29 of RDL 8/2020

RDL 15/2020, both in its explanatory memorandum and in the fourth section of its eighth final provision, clarifies and modifies certain aspects of the guarantee facility for the amount of EUR 100 billion provided for in article 29 of RDL 8/2020.

A. Clarifications or modifications to the scope and/or permitted beneficiaries of guarantees issued under the guarantee facility

Firstly, the explanatory memorandum to RDL 15/2020 begins by clarifying that the financing transactions that may be covered by guarantees issued under this guarantee facility include discounting and collection management transactions (such as factoring transactions) and payment management transactions (such as confirming transactions) which are necessary to maintain economic activity and employment.

This clarification which, in our view, is not strictly necessary (as this wording does not contradict the provisions of RDL 8/2020 and/or the resolutions of the Council of Ministers implementing it up to the date hereof), is based on the objective of maintaining the levels of working capital and liquidity in particular of SMEs and self-employed workers (to which 75% of the amount of the guarantees included in the two tranches that implement this measure to date are addressed). Additionally, the explanatory memorandum states that financial entities involved in financing those benefits from such guarantees "*must ensure that these objectives are met so that liquidity continues to reach the entire production system, in particular through commercial credit and payment to suppliers*".

Notwithstanding the above, RDL 15/2020 aims, among other things, to diversify the transactions that can benefit from the guarantees issued under this facility and, consequently, amends, in the fourth paragraph of its eighth final provision, paragraph 1 of article 29 of RDL 8/2020 to:

- (i) allow guarantees issued under this guarantee facility to be assigned to CERSA, in order to increase its capacity to issue guarantees securing the payment at first demand of guarantees issued by third parties in relation to transactions entered into by SMEs and self-employed workers; and
- (ii) allow guarantees issued under this guarantee facility to be used to secure promissory notes listed in the Fixed-Income Market of the Association of Financial Intermediaries (AIAF) and the Alternative Fixed-Income Market (MARF), in order to encourage the maintenance of sources of liquidity other than traditional banking sources (i.e. capital markets).

In this regard, it is important to note that the abovementioned rule has not provided a limit for each of the categories into which the obligations that can benefit from the guarantees issued under the facility provided for in article 29 of RDL 8/2020 are divided (i.e. traditional bank financing, guarantees issued by CERSA and/or promissory notes listed in the capital markets provided for in the regulation), and we, therefore, understand that these limits will be set, if applicable, in each of the resolutions of the Council of Ministers approving additional tranches to the guarantee facility that may be issued in the future.

B. Time limit

In this regard, RDL 15/2020 incorporates the time limit for the issuance of guarantees under the guarantee facility provided for in article 29 of RDL 8/2020 and, consequently, amends its paragraph 2 to establish this limit until 31 December 2020.

6. Measures to provide financial support to the scientific and technological sector

RDL 15/2020 essentially provides for the following two financial measures to support the scientific and technological sector:

- A first general measure in relation to the instalments arising from loans granted since 2000 to entities sponsoring science and technology parks under programmes or tenders managed exclusively by the Ministry of Science and Innovation or the Ministry responsible for research, development, and innovation in previous years, which expire in 2020. These instalments will be deferred to the same date in 2021.

In addition, these entities may request from the Ministry of Science and Innovation the refinancing of the instalments payable under these loans or advances whose maturity is prior to 2020. Such refinancing will be structured as a new loan. In the event that the refinancing is granted in relation to instalments that are in the executive payment period by the Tax Agency, the Ministry of Science and Innovation will proceed to cancel the charge to prevent the executive procedure on these instalments from continuing.

The new loan resulting from the refinancing must comply with certain conditions:

- (i) The principal of the new loan will be the sum of the instalments to be refinanced, which will be capitalised at the interest rate applied in the granting of the original loan of each instalment.
- (ii) The maximum maturity of the original loans will not change, although the instalments of those loans maturing in 2020 or 2021 can be refinanced until 2022.
- (iii) The interest accrued on the refinanced instalments shall be that applicable to debt issued by the State in instruments of similar maturity, being the interest rate on the new loan equal to zero if the interest rate on that debt is negative.
- (iv) The amount of the new loan must be used to repay the amounts recorded in the accounts of the General State Administration in relation to the instalments (as well as the remaining debt) that is to be refinanced.
- (v) The guarantees applicable to the new loan will be those provided for in the original

loan.

Finally, similarly to the deferral of loan repayments granted by the IDAE, these new loans granted to refinance entities sponsoring science and technology parks will be subject to compliance with Community regulations on State aid, the limits of which have been established by the European Commission³.

- A second measure, provided for in the thirteenth additional provision of RDL 15/2020, authorises the debt of the Barcelona Supercomputing Centre (*Centro Nacional de Supercomputación Consortium*) (BSC-CNS) up to a maximum amount of EUR 47,888,247.62 for 2020.

This rule only authorises the maximum amount of debt and refers to the research, development and, innovation policies, as established in the corresponding General State Budget Law, to determine the permitted interest rate.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 22 April 2020 and Pérez-Llorca does not assume any commitment to update or review its content.

³ See footnote 2 above.