

Special Information Briefing COVID-19 (No. 22):

Fifth extension of the state of alarm: lifting of the suspension of deadlines

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Madrid, 26 May 2020

## 1. Introduction

Following the start of the de-escalation phase of the various measures adopted as a result of the COVID-19 crisis, the Spanish Government (*Consejo de Ministros*) agreed to approve a series of measures, including Royal Decree 537/2020, of 22 May, extending the state of alarm declared in Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19 ("RD 537/2020" and "RD 463/2020" respectively)<sup>1</sup>.

RD 537/2020, in addition to extending the state of alarm until midnight on 7 June, establishes a series of procedural measures that are complementary to those established in [Royal Decree-law 16/2020, of 28 April, on procedural and organisational measures to address COVID-19 in the area of the administration of justice](#) ("RDL 16/2020")<sup>2</sup>. Of these measures, the following are particularly noteworthy:

- (i) the lifting of the suspension of procedural terms and deadlines, repealing, with effect from 4 June 2020, the Second Additional Provision of RD 463/2020;
- (ii) the lifting of the suspension of administrative terms and deadlines, repealing, with effect from 1 June 2020, the Third Additional Provision of RD 463/2020; and
- (iii) the lifting of the suspension of the statute of limitations and expiration periods, repealing, with effect from 4 June 2020, the Fourth Additional Provision of RD 463/2020.

This briefing provides a concise analysis of the procedural measures approved in RD 537/2020, and their impact on existing measures. This regulation is applicable from its entry into force on 23 May 2020, unless RD 537/2020 itself provides for another specific period. This Briefing also considers the content of the [agreements adopted by the Permanent Commission of the General Council of the Judiciary in its extraordinary meeting of 23 May 2020](#) (the "CGPJ Agreement").

For more detailed information on the procedural measures adopted in previous provisions during the state of alarm, please see the previous Briefings on this subject published by Pérez-Llorca ([Special Information Briefing COVID-19 No. 2](#), [Special Information Briefing COVID-19 No. 15](#) and [Special Information Briefing COVID-19 No. 16](#)).

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<sup>1</sup> Authorised by the Resolution of 20 May 2020, of the Spanish Parliament (*Congreso de los Diputados*), ordering the publication of the Agreement authorising the extension of the state of alarm declared in Royal Decree 463/2020, of 14 March (Official State Bulletin no. 145, of 23 May 2020, Section I). A detailed list of all the legislative instruments relating to the state of alarm is included at the end of this briefing.

<sup>2</sup> Official State Bulletin No. 119, of 29 April 2020, Section I.

## 2. Lifting of the suspension of procedural terms and deadlines

In addition to RD 463/2020 agreeing to the declaration of the state of alarm, its Second Additional Provision provided for a generalised suspension of procedural deadlines in all jurisdictions, with certain exceptions<sup>3</sup>.

However, as a result of the entry into force of RD 537/2020, the Second Additional Provision of RD 463/2020 has been repealed, with effect from 4 June 2020.

As a result of this repeal, the suspension of procedural deadlines will be lifted from 4 June 2020. This is without prejudice to the fact that said suspension, while it is in force, does not entail that decisions cannot be issued on these days, nor does it affect the normal functioning of the Administration of Justice in the form and manner determined by the governing bodies of the Judiciary. In fact, decisions have been issued by the courts during the state of alarm, albeit at a slower rate than usual.

Thus, in accordance with the provisions of article 2 of RDL 16/2020, the calculation of the procedural deadlines –which have been suspended, in the terms set out above– must be carried out as follows:

- (i) As of 4 June 2020, procedural deadlines must be recalculated from their commencement. The first day to be counted will therefore be the working day following 4 June 2020, i.e. 5 June 2020.
- (ii) For judgments or court decisions which terminate the proceedings, and which were communicated: (i) during the period of suspension of procedural deadlines, or; (ii) during the twenty working days following the lifting of the suspension, the period for the announcement, preparation or formalisation of the corresponding appeals will be extended by the same period of time as that foreseen for the announcement,

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<sup>3</sup> These exceptions are as follows:

- (i) As regards criminal proceedings: *habeas corpus* procedures, proceedings related to guard duty, proceedings with detainees, protection orders, urgent prison surveillance proceedings, interim measures relating to violence against women or children, as well as urgent measures in the investigation phase of criminal proceedings.
- (ii) In terms of contentious-administrative proceedings: procedures for the protection of fundamental rights provided for in Chapter I of Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction (the “LJCA”), as well as proceedings relating to entry into homes and places by the public administration, and authorisation and ratification processes for the health authorities provided for in article 8.6 of the LJCA.
- (iii) In employment proceedings: the procedures of collective conflict and for the protection of fundamental rights and public freedoms foreseen in Law 36/2011, of 10 October, regulating the labour jurisdiction.
- (iv) Proceedings provided for in article 763 of the Spanish Civil Procedure Act, relating to judicial authorisation for the non-voluntary detention of persons with mental disorders.
- (v) Proceedings related to the adoption of measures for the protection of children as provided for in article 158 of the Civil Code.
- (vi) Any legal proceedings that are necessary to avoid irreparable damage, among which requests for interim measures have been considered.

preparation or formalisation of the appeal, in accordance with the law applicable in each case<sup>4</sup>.

- (iii) In both cases, whether the time limits are set in days or in months must be taken into account:

<b>Time limits calculated in days</b>	First day	05/06/2020
	Saturdays, Sundays, public holidays and, where applicable, the days between 1 and 10 August 2020, are excluded from the calculation <sup>5</sup> . This exclusion does not apply to criminal proceedings, in relation to which every day is a working day during the investigation phase <sup>6</sup> .	
<b>Time limits calculated in months</b>	First day	05/06/2020
	As monthly periods are calculated considering the day after the term starts and finishing the very same day of the month after the term elapses, the calculation is unaffected by 11 to 31 August 2020 being considered working days.	

- (iv) The above calculations will apply both to periods initiated before the declaration of the state of alarm, which have been suspended –and which will be recalculated from their commencement– and the periods indicated during the application of the state of alarm. In both cases, the calculation will start on 5 June 2020<sup>7</sup>.

Notwithstanding the above, it is important to recall that, in accordance with the provisions of article 1 of RDL 16/2020:

- (i) The days from 11 to 31 August 2020 are declared to be working days for procedural purposes.
- (ii) Saturdays, Sundays and public holidays are excluded from the provision mentioned in the previous point, except in relation to legal proceedings for which these days are already considered working days, in accordance with the applicable procedural law in each case.
- (iii) The days from 1 to 10 August are excluded from the calculation of procedural time limits, except in relation to legal proceedings for which these days are already considered working days, in accordance with the applicable procedural law in each case.

<sup>4</sup> See article 2.2 of RDL 16/2020. By way of example, in criminal proceedings, decisions that terminate the proceedings are orders dismissing the case with/without prejudice –issued in the investigation phase–, or judgments –issued after the trial has taken place.

<sup>5</sup> See article 1 of RDL 16/2020.

<sup>6</sup> In criminal proceedings, the general rule is that, during the investigation phase, all days are working days –including weekends, holidays and the month of August– ex article 184 of the Spanish Judiciary Act.

<sup>7</sup> See article 2.1 of RDL 16/2020, and article 8 and the Sole Repeal Provision of RD 537/2020.

Until 31 December 2020, the proceedings provided for in article 7 of RDL 16/2020<sup>8</sup>, as well as any others that are given preferential status in the corresponding procedural law, will be processed in a preferential manner.

With regard to court proceedings filed as from 4 June 2020, the CGPJ Agreement establishes that they will be carried out whenever possible, in accordance with health, organisational and procedural requirements. The various plans for the resumption of judicial activity approved by the Governing Chambers of the High Courts of Justice (*Tribunal Superior de Justicia*) and the National High Court (*Audiencia Nacional*) will also need to be followed.

### 3. Lifting of the suspension of administrative terms and deadlines

#### A. Standard rule

From 1 June 2020, the suspension of administrative deadlines will be lifted, and the suspension of terms will also be understood to have been lifted.

For the purposes of calculating the deadlines after suspension, both the resumption of the corresponding periods and the recalculation of the periods from their commencement is foreseen.

As a general rule, periods suspended as a result of the declaration of the state of alarm will be resumed.

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<sup>8</sup> These proceedings are the following:

- (i) Voluntary jurisdiction proceedings or files provided for in article 158 of the Civil Code, regarding the defence of children.
- (ii) Special and summary proceedings in family matters provided for in article 3 of RDL 16/2020.
- (iii) In relation to civil proceedings: (i) proceedings arising from the lack of recognition by lending institutions of the legal moratorium on mortgages on habitual residences and on properties subject to economic activity; (ii) proceedings arising from any claims that may be made by the tenants for failure to apply the legally stipulated moratorium or mandatory extension of the contract; and (iii) insolvency proceedings of debtors who are natural persons and who do not have the status of entrepreneur.
- (iv) In terms of contentious-administrative proceedings, appeals filed against acts and decisions of the Public Administrations which reject the application of aid and measures legally provided for to alleviate the effects of COVID-19.
- (v) In terms of proceedings in the labour jurisdiction, the following proceedings will have urgent and preferential status: (i) proceedings relating to dismissals or the termination of contracts; (ii) proceedings arising from the procedure for declaring the duty and manner of recovering working hours not worked during the recoverable paid leave provided for in Royal Decree-law 10/2020, of 29 March (“**RDL 10/2020**”); (iii) proceedings for the application of the right to adjust the working hours and to reduce the working day as provided for in article 6 of Royal Decree-law 8/2020, of 17 March (“**RDL 8/2020**”); (iv) proceedings for the individual, collective or ex officio challenge of temporary workforce restructuring plans on the grounds regulated in articles 22 and 23 of RDL 8/2020; and (v) proceedings relating to implementing remote working or the adjustment of working conditions as provided for in article 5 of RDL 8/2020.

On the other hand, the recalculation of periods from their commencement will be applicable in those cases foreseen by a regulation with the status of a law approved during the validity of the state of alarm and its extensions.

In this regard, the Eighth Additional Provision of [Royal Decree-law 11/2020, of 31 March](#) (“**RDL 11/2020**”)<sup>9</sup>, established an extension of the time limit for appealing unfavourable or encumbering acts when the deadline for filing the appeal was affected by the declaration of the state of alarm.

In these cases, the calculation of the time limit for filing an administrative appeal or a challenge, claim, conciliation, mediation and arbitration proceedings will begin on the working day following the date on which the state of alarm ends. For this purpose, 1 June 2020 should be understood to be the first working day according to the provisions of **article 9 of RD 537/2020**.

Therefore, as a general rule, administrative time limits will resume from 1 June 2020. The time limit for filing an appeal or requesting an equivalent administrative remedy is restarted from its commencement as of that date.

## B. Tax regime

The Third Additional Provision of RD 463/2020, which provides for the suspension of administrative deadlines, is not applicable to tax proceedings, and therefore the calculation of these deadlines will be based on the provisions of [Royal Decree-law 8/2020, of 17 March](#)<sup>10</sup>, the aforementioned RDL 11/2020 and [Royal Decree-law 15/2020, of 21 April](#)<sup>11</sup>. It is worth noting that these measures are equally applicable at a local and regional level.

In particular, the one-month period for filing internal administrative appeals or an economic-administrative claim will begin on 30 May 2020, both for appeals and claims against acts served prior to the declaration of the state of alarm –provided the filing deadline had not passed by that date– and against acts served between 14 March and 30 May 2020. This one-month period will be restarted from the beginning on 30 May, so the deadline for filing such appeals or claims will be 30 June inclusive.

Likewise, deadlines for the payment of debts assessed and communicated by the Spanish Tax Authorities, deadlines and time frames relating to deferrals of payment, deadlines relating to auctions and the awarding of property, deadlines for meeting requirements, seizure proceedings and requests for information with tax implications, deadlines for making

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<sup>9</sup> Royal Decree-law 11/2020, of 31 March 2020, adopting additional urgent social and economic measures to deal with COVID-19 (Official State Bulletin no. 91, of 1 April 2020, Section I).

<sup>10</sup> Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to address the economic and social impact of COVID-19 (Official State Bulletin no. 73, of 18 March 2020, Section I).

<sup>11</sup> Royal Decree-law 15/2020, of 21 April, on urgent complementary measures to support the economy and employment (Official State Bulletin no. 112, of 22 April 2020, Section I).

submissions at the commencement of said proceedings or at a hearing, in proceedings regarding the application of taxes, penalties or declarations of nullity, returns of undue tax payments, corrections of material errors and revocations will all expire on 30 May 2020<sup>12</sup>. This date is applicable both to periods that had not ended when the state of alarm came into effect, and to those that began later, unless the period granted by the general regulation is longer, in which case the later deadline will apply.

Lastly, from 30 May, both the time limit for the duration of proceedings regarding the application of taxes, regarding penalties and for administrative review, as well as the statute of limitations and expiration periods of any actions and rights provided for in the tax regulations, will be counted again.

As we pointed out in [Special Information Briefing COVID-19 No. 13](#), the approved regulation left numerous gaps and grey areas to be reviewed by taxpayers. This could be the case for proceedings where the Spanish Tax Authorities have been able to continue to carry out actions and, consequently, in practice, the proceedings in question have not been suspended.

#### **4. Lifting of the suspension of the statute of limitations and expiration periods**

The Fourth Additional Provision of RD 463/2020 declared the suspension of the statute of limitations and expiration periods of any actions and rights during the validity of the state of alarm and, where appropriate, any extensions adopted.

Section 1 of the Sole Repeal Provision of RD 537/2020 has repealed the Fourth Additional Provision of RD 463/2020, with effect from 4 June 2020.

The lifting of the suspension of the statute of limitations and expiration periods entails the resumption of the calculation of these periods. Insofar as 13 March 2020 was the last day to be counted as regards the statute of limitations and expiration periods, the next day to be counted in the period will be 4 June 2020. In other words, the period from 14 March 2020 to 3 June 2020 is not included in the calculation of the period.

In the case of the statute of limitations, the above is without prejudice to the possibility of interrupting these periods.

#### **5. Impact on insolvency proceedings**

In the area of insolvency, the repeal of the Second Additional Provision of RD 463/2020, which leads to the lifting of the suspension of procedural terms and deadlines, with effect from 4 June 2020, does not alter the measures and deadlines established in RDL 16/2020 –to which we refer in detail in [Special Information Briefing COVID-19 No. 15](#)– and which are summarised below.

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<sup>12</sup> However, since 30 and 31 May are not working days, in practice the periods would expire on 1 June.

## **A. Deadlines for filing for insolvency –RDL 16/2020–**

The duty of a debtor who is in a state of insolvency to file for insolvency is suspended until 31 December 2020, regardless of whether they have made the notification provided for in article 5 bis of Act 22/2003, of 9 July, on Insolvency<sup>13</sup>.

This implies that from the declaration of the state of alarm until 31 December 2020: (i) applications for compulsory insolvency will not be admitted for processing; and (ii) applications for voluntary insolvency will be processed in preference to applications for compulsory insolvency, even if they are submitted after the application for compulsory insolvency.

Also, if before 30 September 2020 the debtor gives notification for the opening of negotiations with creditors in order to reach a refinancing agreement, an out-of-court payment settlement or to obtain support for a proposal for an early composition agreement, the general regime established by law will apply<sup>14</sup>.

## **B. Deadlines for submitting a proposal to amend the composition agreement –RDL 16/2020–**

Debtors who are undergoing the compliance phase of the composition agreement may submit a proposal to amend the agreement within one year of the declaration of the state of alarm, i.e. until 14 March 2021.

## **C. Deadlines for the admission for processing of applications for the declaration of breach of the composition agreement –RDL 16/2020–**

If, within six months of the declaration of the state of alarm –i.e. until 14 September 2020–, a creditor submits an application for a declaration of breach of the composition agreement, the Commercial Court will transfer the application to the debtor without admitting it for processing until three months have elapsed since the end of that period. During those three months, the debtor may submit a proposal to amend the composition agreement.

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<sup>13</sup> Official State Bulletin No. 164, of 10 July 2003, Section I.

This is the notification through which the debtor makes the competent court aware for the declaration of the opening of negotiations with creditors to reach a refinancing agreement, an out-of-court payment settlement or support for a proposal for an early composition agreement.

<sup>14</sup> After three months from the notification to the court have passed, the debtor, regardless of whether it has reached a refinancing agreement, an out-of-court settlement or has obtained the support necessary for the admission of a proposal for an early composition agreement, must file for insolvency within the following working month, unless the insolvency mediator has already done so or the debtor is not in a state of insolvency.



## **D. Deadline for requesting the opening of the liquidation phase –RDL 16/2020–**

The duty of the debtor to request the liquidation of the estate when they become aware of the impossibility of fulfilling the agreed payments or obligations undertaken following the approval of the composition agreement is suspended for a period of one year from the declaration of the state of alarm, provided that the debtor submits a proposal to amend the composition agreement and that it is admitted for processing within that period.

The same rule will apply if the debtor filed the request to open the liquidation phase following the declaration opening the insolvency proceedings up to the entry into force of RDL 16/2020, i.e. until 30 April 2020.

The liquidation phase will also not be opened even if, during the aforementioned periods, any creditor proves the existence of any of the facts that may support the declaration of insolvency.

## **E. Measures relating to refinancing agreements –RDL 16/2020–**

During the one-year period following the declaration of the state of alarm, a debtor who has an approved refinancing agreement may inform the competent court that they have initiated or intend to initiate negotiations with creditors to amend the agreement in force or to reach a new one, even if one year has not passed since the previous request for approval.

During the six months following the declaration of the state of alarm –i.e. until 14 September 2020–, the Commercial Court will notify the debtor of any applications for a declaration of breach of the refinancing agreement submitted by the creditors, but will not admit them for processing until one month has elapsed following the end of this six-month period. During that month, the debtor may notify the court that they have commenced or intend to commence negotiations with creditors to amend the existing approved agreement or to reach a new one.

## **F. Preferential processing –RDL 16/2020–**

Preferential processing will apply to the following actions that take place within one year of the declaration of the state of alarm: (i) insolvency procedural pleas in labour matters; (ii) actions aimed at the disposal of business units or the lump sale of assets; (iii) composition agreement proposals or proposals for the amendment of composition agreements; (iv) insolvency procedural pleas opposing judicial approval of the composition agreement; (v) insolvency procedural pleas regarding clawback actions; (vi) admission of the petition for approval of a refinancing agreement or amendment of the agreement in force; and (vii) adoption of interim measures.

## G. Suspension of insolvency procedural pleas

In accordance with the general regime for the resumption of the calculation of deadlines detailed in section 2 of this briefing, the corresponding deadlines for insolvency procedural pleas that were suspended as a result of the approval of RD 463/2020 will be resumed.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 26 May 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

## REGULATORY APPENDIX

### Legislative instruments approved in relation to the state of alarm and its successive extensions

- [Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19](#) (Official State Bulletin no. 67, of 14 March 2020, Section I).
- [Resolution of 25 March 2020, of the Congress of Deputies, ordering the publication of the Agreement authorising the extension of the state of alarm declared in Royal Decree 463/2020, of 14 March](#) (Official State Bulletin no. 86, of 28 March 2020, Section I).
- [Royal Decree 476/2020, of 27 March, extending the state of alarm declared in Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19](#) (Official State Bulletin no. 86, of 28 March 2020, Section I).
- [Resolution of 9 April 2020, of the Congress of Deputies, ordering the publication of the Agreement authorising the extension of the state of alarm declared in Royal Decree 463/2020, of 14 March](#) (Official State Bulletin no. 101, of 11 April 2020, Section I).
- [Royal Decree 487/2020, of 10 April, extending the state of alarm declared in Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19](#) (Official State Bulletin no. 101, of 11 April 2020, Section I).
- [Resolution of 22 April 2020, of the Congress of Deputies, ordering the publication of the Agreement authorising the extension of the state of alarm declared in Royal Decree 463/2020, of 14 March](#) (Official State Bulletin no. 115, of 25 April 2020, Section I).
- [Royal Decree 492/2020, of 24 April, extending the state of alarm declared in Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19](#) (Official State Bulletin no. 115, of 25 April 2020, Section I).
- [Resolution of 6 May 2020, of the Congress of Deputies, ordering the publication of the Agreement authorising the extension of the state of alarm declared in Royal Decree 463/2020, of 14 March](#) (Official State Bulletin no. 129, of 9 May 2020, Section I).
- [Royal Decree 514/2020, of 8 March, extending the state of alarm declared in Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19](#) (Official State Bulletin no. 129, of 9 May 2020, Section I).