

DECREE-LAW 34/2020, OF 20 OCTOBER 2020, ON URGENT MEASURES TO SUPPORT ECONOMIC ACTIVITY IN LEASED BUSINESS PREMISES

This legal briefing summarises the most important aspects of Decree-law 34/2020, of 20 October 2020, on urgent measures to support economic activity in leased business premises (the "**Decree-law**"), published in the Diari Oficial de la Generalitat de Catalunya on 22 October.

The objective of the Decree-law is, according to its text, to protect the economic fabric and to increase legal certainty, reducing the onerous nature of contractual obligations caused by property leases used for industrial and/or commercial activities that have been affected by the suspensions and restrictions adopted by the public authorities in response to the COVID-19 pandemic. Consequently, the Decree-law seeks to re-establish the lost contractual balance by introducing measures intended to distribute between both contracting parties the negative consequences arising from the aforementioned administrative measures, with the ultimate aim of seeking to reduce, as far as possible, the litigious nature of these disputes.

1. Scope and entry into effect

The measures included in the Decree-law are applicable (i) in geographic terms, to contracts concerning premises located in the Autonomous Community of Catalonia; and (ii) in terms of their period of validity, to leases entered into on or after 1 January 1995¹.

The Decree-law entered into effect on 22 October 2020 and, in accordance with the provisions of Article 64 of the Statute of Autonomy of Catalonia, it is currently pending approval by the Parliament of Catalonia, which must ratify it within 30 business days of its enactment.

2. Main measures

The Decree-law provides that if a public administration orders the suspension or restriction of the carrying out of a certain industrial and/or commercial activity as a result of the COVID-19 pandemic, tenants of property used for that activity may request the landlord to amend the terms of their lease. On the basis of such a request, which must be made by burofax or other reliable means, the parties will have one (1) month to reach an agreement involving a "reasonable and equitable amendment to the terms of the contract" in order to restore the balance between the obligations.

¹ The Decree-law states that the tenant may avail of the powers granted by this Decree-law regardless of the agreements reached by the contracting parties, with regard to the contingencies that are anticipated, before its entry into effect.

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Nevertheless, the Decree-law establishes that, in the absence of agreement between the parties, the lease will be considered amended in the following terms:

- (i) In the event of the suspension of the activity to which the leased premises is subject, the rent and other amounts owed by the tenant shall be reduced by 50% for the duration of the suspension.

Furthermore, if the suspension is extended for more than three months in the course of a year as from the entry into effect of the Decree-law (i.e. until 22 October 2021), the tenant, by giving one month's notice to the landlord, shall be entitled to suspend the contract until three months have elapsed following the complete cessation of the measures without incurring any penalty.²

- (ii) During the period of validity of measures that only partially restrict the use of the leased premises the rent and other amounts owed by the tenant shall be reduced by an amount equal to half of the amount lost through the loss of use of the leased premises. This reduction must be calculated objectively on the basis of the limitations imposed by the measure in question (e.g. reduction in capacity, opening hours, etc.).³
- (iii) The tenant may request the landlord to deduct from the rent and other amounts due, any sums paid by the tenant as security for the fulfilment of its contractual obligations (except for the mandatory statutory deposit and any other security lodged with the relevant official body). In this case, the tenant shall be obliged to return the amount which has been deducted within one year of the lifting of the suspension/restriction measures or, in any case, before the termination of the contract.

It should be noted that, in the absence of agreement between the parties, the reductions provided for in paragraphs (i) and (ii) will be applicable from the date of the tenant's request for the amendment of the contractual terms. To this effect, the Decree-law prohibits the landlord from issuing an invoice to the tenant for the amount of the rent and/or other amounts for the period of one month provided for reaching the agreement on contractual amendment or, if applicable, until the parties reach the aforementioned agreement.

² The wording of the Decree-law does not clarify whether the aforementioned right to suspend the validity of the lease will be applicable in the event of intermittent suspensions occurring within a year that cumulatively add up to a period of three months or whether it must necessarily be a single suspension that exceeds the aforementioned period.

³ Although the regulation does not specify the precise scope of the measures of suspension or partial restriction, it does specify that the provision of home delivery or collection services on the premises will not affect the application of rent reductions.

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Finally, it should be noted that the Decree-law calls on the relevant departments of the Catalan Public Administration to draft and approve a bill to incorporate into the Catalan legal system the general regulations necessary to re-establish contractual balance in the event of unforeseen changes in circumstances, within two years of the enactment of the Decree-law. In other words, to regulate the currently non-standard legal concept of *rebus sic stantibus*.

This Legal Briefing was prepared by Sergio Agüera and Jesús García, Partner and Associate of the Corporate/M&A practice area.

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

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