

Royal Decree-law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic

On 13 March 2021, Royal Decree-law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic ("RDL 5/2021") was published in the Official State Bulletin. It establishes a series of additional measures to strengthen the solvency of those viable companies that are suffering a sharp fall in their revenues due to the long-term downturn in certain sectors and geographical areas most affected by the COVID-19 pandemic. In particular, RDL 5/2021 focuses on the following courses of action:

1. MEASURES TO SUPPORT SOLVENCY

A. COVID-19 direct aid facility for self-employed individuals and businesses

Direct aid is introduced, which must be used to pay off debt and make payments to suppliers and other financial and non-financial creditors, as well as to pay the fixed costs incurred by the beneficiaries of such aid. The recipients of this aid will be (i) entrepreneurs or professionals and entities that belong to the sectors defined in Annex I of RDL 5/2021¹ and whose annual turnover has fallen by more than 30% in 2020 compared to 2019; and (ii) entrepreneurs or professionals that apply the objective estimate system in the Personal Income Tax assigned to the sectors listed in Annex I of RDL 5/2021.

The amount of the facility is EUR 7 billion, which is divided into two tranches: (i) the first tranche, of EUR 5 billion, which will be allocated to all the Autonomous Communities, with the exception of the Balearic and Canary Islands, as well as the cities of Ceuta and Melilla; and (ii) the second tranche, of EUR 2 billion, which will be allocated to the Autonomous Communities of the Balearic and Canary Islands.

The processing, management, monitoring and control of the direct aid granted under this facility is the responsibility of the Autonomous Communities and the cities of Ceuta and Melilla.

¹Annex I of RDL 5/2021 includes, among others, activities in sectors such as wholesale and retail trade, land, sea and air passenger transport and related activities, hotels and tourist accommodation, cinema screening activities and sporting activities, in particular gyms.

B. COVID-19 financial debt restructuring facility

In relation to financing agreements secured with public guarantees, the measures for public support for solvency created by RDL 5/2021 are divided into three levels:

- (i) **Extension of maturity periods:** the possibility of extending the maturity periods of guarantees granted by the General State Administration or on behalf of the State for an additional period is established, in the context of debt renegotiation agreements between debtors and creditor entities. This involves the possibility of extending loans secured with a public guarantee and granted after 17 March 2020 for the same period as the extension of the maturity of the guarantee.
- (ii) **Maintenance of the public guarantee in the event of the conversion of the loans into profit participating loans:** the possibility of converting these loans into profit participating loans, maintaining the coverage of the public guarantee, is proposed as a second level measure.
- (iii) **Measures to reduce indebtedness:** as a measure of last resort and an exceptional nature, the possibility of making transfers to self-employed individuals and companies to reduce the principal of financing secured with a public guarantee and entered into after 17 March 2020 is established.

This aid aimed at reducing debt will be financed by a new COVID-19 financial debt restructuring facility, initially endowed with a maximum of EUR 3 billion. The requirements to be met by the companies and self-employed individuals in order to benefit from these transfers will be determined by means of a Resolution of the Council of Ministers.

Furthermore, RDL 5/2021 creates a Code of Best Practice, the details of which will be established by the Resolution of the Council of Ministers, to which credit entities, or any other entity that has granted financing guaranteed with a public guarantee, may voluntarily adhere.

C. Debt collection system applicable to public guarantees

The Resolutions of the Council of Ministers which have authorised the release of the different tranches of the respective facilities incorporate the *pari passu* clause. In the context of the recovery processes of unpaid amounts under guaranteed loans, it is considered advisable to repeal the application of the system and procedures for the recovery and collection of executed guarantees provided for in the General Budgetary Law 47/2003, of 26 November, and to entrust the recovery procedures to the lenders.

D. Extension of the term for the granting of ICO guarantees and guarantees to promissory notes included in the MARF

RDL 5/2021 extends the deadline for the application for ICO guarantees and guarantees for promissory notes included in the MARF until 31 December 2021 (currently the deadline for both is 30 June 2021).

E. Recapitalisation fund for companies affected by COVID-19

RDL 5/2021 also creates the "Fund for the recapitalisation of companies affected by COVID-19" (the "**Fund**"). The size of the Fund amounts to EUR 1 billion, and the support measures will take the form of debt, equity and hybrid equity instruments, or a combination, and will be targeted at non-financial companies headquartered in Spain experiencing severe temporary difficulties as a result of the COVID-19 pandemic. The financing granted by this Fund will be incompatible with that granted by the Fund to support the solvency of strategic companies, provided for in Royal Decree-law 25/2020, of 3 July.

It leaves essential issues such as the regulation of the specific basic eligibility criteria for access to aid, as well as the operation, deployment of resources and liquidation of the Fund and the conditions and requirements for the execution of the Fund's operations for later implementation and specification by means of a Resolution of the Council of Ministers.

See full briefing on measures to support solvency [here](#).

2. MEASURES RELATING TO INSOLVENCY

A. Preferential treatment of holders of covered bonds and internationalisation bonds

The rule that established that the holders of covered bonds and internationalisation bonds enjoyed a special privilege in the event of insolvency proceedings is recovered. This renders ineffective the unintentional elimination of the repeal of section 18 of Article 34 of Law 14/2013, of 27 September 2013, on support for entrepreneurs and their internationalisation.

B. Measures affecting the composition agreement

- The period in which an insolvent party may submit a proposal for the amendment of the composition agreement that is in the compliance phase is extended until 31 December 2021, inclusive.
- Until 31 December 2021, a debtor who becomes aware of the impossibility of complying with the payments undertaken or the obligations contracted after the approval of the

composition agreement will not be obliged to request the liquidation of the available assets.

C. Measures relating to out-of-court payment agreements

- Article 3.5 of Law 3/2020 is amended, establishing that the rules provided for the amendment of the proposed composition agreement will apply to the out-of-court payment agreements.
- Until 31 December 2021, the out-of-court payment agreement will be deemed to have been attempted by the debtor without success, if it is demonstrated that there have been two failures to accept the appointment of the insolvency mediator, to initiate consecutive insolvency proceedings, notifying the court of such failure.

D. Measures relating to refinancing agreements

The option of the debtor who has an approved refinancing agreement to amend such agreement, or to reach a new one, is extended until 31 December 2021, even if less than one year has elapsed since the previous approval.

E. Extension of the exemption from the duty to request the declaration of insolvency proceedings

The debtor who is in a state of insolvency will not be obliged to request the declaration of insolvency until 31 December 2021, inclusive, regardless of whether or not the debtor has notified the court of the commencement of negotiations aimed at a refinancing agreement, an out-of-court payment agreement or adherence to an early proposal for a composition agreement.

F. Treatment of the State's claim arising from the enforcement of guarantees

- In the event of a declaration of insolvency by the guaranteed debtor, the general rules of presentation and defence in court established in Law 52/1997, of 27 November, on Legal Assistance to the State and Public Institutions, will be applicable. In addition, the credit of the Treasury derived from the execution of the aforementioned guarantees will be classified as ordinary and, in the event that the debtor meets the requirements to do so, the benefit of relief from outstanding liabilities will also be extended to these loans.
- In pre-insolvency matters, the RDL states that the loans arising from the execution of the guarantees may be affected by the out-of-court payment agreements and will be considered financial liabilities for the purposes of the approval of the refinancing agreements.

G. Other measures to streamline the insolvency process

- **Applications for the clawback of available assets:** (i) in the applications that are initiated before 31 December 2021, it will not be necessary to hold a hearing, unless the commercial court decides otherwise; (ii) the means of evidence must necessarily accompany the incidental claim and the responses; and (iii) in the absence of a response to the claim by any of the defendants, it will be considered as an acceptance, unless they are public institutional creditors.
- **Preferential proceedings:** The preferential processing of certain proceedings is extended until 31 December 2021, inclusive:
- **Disposal of assets:** In insolvency proceedings declared before 31 December 2021, and in those that were in process on the date of entry into effect of Law 3/2020, the auction of assets and rights of the available assets may be carried out either by auction, in court or out-of-court, or by any other means authorised by the commercial court from among those provided for in the TRLC.

See full briefing on insolvency measures [here](#).

3. OTHER MEASURES

RDL 5/2021 introduces some additional measures, among which the following are noteworthy:

- (i) **Remote meetings and remote voting:** During 2021, the board of directors of public limited companies may provide for remote attendance and remote voting in the notice of the general meeting, as well as the holding of the meeting in any place within the national territory, even if the by-laws have not so provided. In addition, the meeting can be held exclusively by remote means.
- (ii) **Capital Markets:** The CNMV is empowered to submit to authorisation or other forms of administrative control, including the introduction of warnings on risks and features, the advertising of cryptoassets or other assets and instruments presented as the object of investment.
- (iii) **Deferral of tax debts:** In relation to the six-month deferral of the payment of the tax debt corresponding to all tax returns and self-assessments whose deadline for filing and payment was 1 April to 30 April 2021, introduced by Royal Decree-law 34/2020, the period during which late payment interest will not accrue is extended to four months.

See the full version of this briefing [here](#).