

Special Information Briefing on COVID-19 (Nº 38):

New Royal Decree-law extending economic measures to support economic recovery

On 23 November, the Council of Ministers approved and published Royal Decree-law 27/2021 in the Official State Gazette. Royal Decree-law 27/2021 extends certain economic measures to support economic recovery (“**RDL 27/2021**”).

The approval of RDL 27/2021 stems from the sixth extension of the temporary aid framework granted by the European Commission in its Decision of 18 November 2021. Its main objective is to renew the application of certain measures that were due to expire shortly. These measures were initially approved to support economic recovery following the COVID-19 pandemic. Highlights of RDL 27/2021 are:

1. **The extension of the suspension of the liberalisation of certain foreign investments (anti-takeover shield)**

RDL 34/2020, of 17 November, on urgent measures to support business solvency and the energy sector, and tax issues, introduced a transitional provision to establish the suspension of the liberalisation of certain foreign direct investments. In particular, it established that the suspension also applies to foreign direct investments made in publicly-listed Spanish companies (whose shares are listed on an official Spanish secondary market and whose registered offices are in Spain) and private companies if the value of the investment exceeds EUR 500 million, made by residents of other EU or EFTA countries. This restriction also applies to investors who are Spanish residents and whose beneficial ownership (more than 25% of the capital or voting rights, direct or indirect, or exercise of control by any other means) is non-Spanish.

This measure was due to expire on 31 December 2021 and with the approval of RDL 27/2021, the measure is extended until 31 December 2022.

2. **Legal grounds for dissolution due to losses**

This exceptional measure provided for in Article 13 of Law 3/2020 of 18 September on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice is extended exclusively for the 2021 financial year.

Consequently, for the sole purpose of the legal grounds for dissolution due to losses (established in Article 363.1 of the Companies Act), RDL 27/2021 establishes that losses for the 2020 and 2021 financial years will not be taken into consideration. Losses incurred in

the 2022 financial year will be taken into account to establish the legal grounds for dissolution due to losses.

Therefore, if the result of the 2022 financial year shows losses that reduce the net assets to less than half of the share capital, the directors must call, or any shareholder may request within two months of the end of the financial year (i.e. within two months of 1 January 2023 if the financial year ends on 31 December), a general meeting to dissolve the company, unless the capital is increased or reduced sufficiently to restore the balance of the company's assets.

3. Duty to file for insolvency

Two insolvency measures are extended until 30 June 2022:

- (i) Firstly, insolvent debtors will not be obliged to request a declaration of insolvency until 30 June 2022, irrespective of whether or not they have notified the competent court of (i) the opening of negotiations with creditors to reach a refinancing agreement; (ii) an out-of-court payment agreement; or (iii) adherence to an early proposal for a composition agreement. It should be noted that the two-month period for requesting the declaration of insolvency proceedings provided for in Article 5.1 of the consolidated text of the Insolvency Act will therefore start to run on the day following that date.
- (ii) Secondly, up to and including 30 June 2022, judges will not process any applications for insolvency proceedings filed on or after 14 March 2020. Furthermore, if the debtor files an application for voluntary insolvency proceedings before or on 30 June 2022, the application will be admitted for processing with priority, even if it was filed after the date of the application for voluntary insolvency proceedings.

The rest of the measures adopted due to COVID-19 (regarding refinancing agreements and breach of covenants) have not been extended.

4. Extension of guarantee facilities and recapitalisation funds

Self-employed individuals and companies will be able to access guaranteed financing through the guarantee facilities to cover their liquidity needs or finance their investment projects until 30 June 2022.

In addition, the deadline for the Autonomous Regions to repay funds not disbursed to self-employed individuals and companies under the COVID-19 direct aid facility has been extended to 30 June 2022.

The company recapitalisation funds managed by SEPI and COFIDES will also remain in force until 30 June 2022. To this end, Article 1(2) of Royal Decree-law 25/2020 of 3 July on urgent

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measures to support economic recovery and employment and Article 29(2) of Royal Decree-law 8/2020 of 17 March on extraordinary urgent measures to address the economic and social impact of COVID-19 are amended.

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The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 29 November 2021 and Pérez-Llorca makes no commitment to update or revise its contents.

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