

## Informative Note

# Financial entities Sectoral framework agreements and moratoria developments included in RD 19/2020

28th May 2020

Regarding the 26th May Royal Decree-Law 19/2020, adopting supplementary measures in the agricultural, scientific, economic, employment and social security and tax areas to alleviate the effects of COVID-19

On 27 May, the 26th May [Royal Decree Law 19/2020](#) was published in the Official State Gazette, adopting supplementary measures in agricultural, scientific, economic, employment and social security and tax matters to alleviate the effects of COVID-19 (hereinafter "**RDL 19/2020**").

The following are the new features of RDL 19/2020 in economic matters, especially the regulation of the sectoral framework agreements that have been promoted by the associations representing financial institutions, the purpose of which is to establish the general criteria for granting conventional moratoriums with debtors affected by the crisis caused by COVID-19. This regulation stems from the need to speed up the procedures for granting these moratoriums and to obtain a quick extension of effects for borrowers affected by the crisis.

## Sectoral framework agreements advocated by associations representing financial institutions

Article 6 of RDL 19/2020 states that all credit institutions, financial credit establishments, real estate credit lenders, payment institutions and electronic money institutions (collectively, "**Financial Institutions**") that adhere to sectoral framework agreements (notified for registration to the Bank of Spain) will be subject to the regulations established in this area by RDL 19/2019, provisions that will be considered the rules of order and discipline referred to in Article 2 of 26th June Law 10/2014.

Once financial institutions have adhered to the sectoral framework agreement, they must send the information relating to the previous working day to the Bank of Spain on (i) number of requests for suspension presented by debtors; (ii) suspensions granted; (iii) requests rejected; (iv) number of beneficiaries of the suspension, divided between debtors and guarantors and, on the other hand, employees and employers/professionals; (v) number of loans for which payment has been suspended (vi) outstanding balance of the suspended payment; (vii) debtor's National Classification of Economic Activities number; and (viii) number of loans for which the debtor requests that the suspension be documented in a notarial deed.



## General provisions on conventional moratoria under a Sectoral Framework Agreement

Article 7 of RDL 19/2020 expresses the general rules on conventional moratoriums signed between a debtor and its Financial Entity within the framework of a Sectorial Agreement. In this sense, the following rules must be followed:

- The Sectoral Framework Agreement may cover all types of loans, credits, and financial leases.
- The deferred amount may be paid, as provided, by (i) redistributing the instalments without changing the maturity date; or (ii) extending the maturity date by the same amount as the months of the moratorium.
- In addition, the debtor and the Financial Institution may agree to extend, under the same conditions and premium initially agreed, the payment protection or loan repayment insurance that had been taken out, with the loan being novated for the same period of time in which the maturity is extended, with the consequent debit of the premium.
- The moratorium, within these agreements, may not, under any circumstances, modify the agreed interest rate, nor charge any expense or commission, except for the exceptions stipulated in interest-free loans. Similarly, it will not be possible to market the loan together with any other linked or combined product, and it is established that it is impossible to create additional guarantees for the granting of this moratorium, whether personal or proprietary.
- Likewise, before the formalization of the moratorium it will be necessary that the financial entity delivers to the debtor, in a durable medium, together with the agreement establishing the conventional moratorium, simplified information about the legal and economic consequences of the deferment, as well as, the conditions of extension of the payment protection insurance or loan repayment that had been initially contracted with the loan that is being renewed.

It is important to note that when the Financial Institution grants, either successively or simultaneously a legal and standard moratorium, the agreement of the latter must expressly state that the debtor is the beneficiary of a loyal moratorium, suspending the effects of the standard moratorium until the legal moratorium ends.

It is important to note that the conventional moratorium signed by the debtor will have full effect against registered intermediary creditors, even without their consent.

## Special scheme for the drawing up of moratoria

Article 8 of the Royal Decree-Law analysed above establishes a special scheme for the drawing up of moratoria, in which Financial Institutions may unilaterally raise to public status the agreement signed

by the debtor, and where appropriate, guarantors and guaranteeing parties. For this scheme to be applied, the following requirements must be met:

- The moratorium should only apply to the deferment of the capital, or the capital with interest, of a loan or credit secured by a security right or for those financial leases that require registration in a public document.
- The debtor does not express his willingness to appear before a notary, but in any case, he must be provided by the notary with an uncertified copy of the agreement free of charge.
- In addition, in the deed, the notary must verify compliance with the legal requirements for this type of grant, and must record together with the moratorium agreement: (i) the extension of the payment protection insurance or loan repayment, if applicable; (ii) the simplified information described in Article 7 above; (iii) proof of receipt by the debtor; and (iv) a declaration of liability signed by the person acting on behalf of the financial institution, stating the points set out in Article 8(2) d).

## Of the moratoria under a Sectoral Framework Agreement and signed prior to the implementation of RDL 19/2020

The first transitional provision of RDL 19/2020 states that, for those cases where the moratoriums included in a sectoral framework agreement have been signed prior to the implementation of RDL 19/2020, the obligation to provide simplified information will be understood to have been fulfilled when:

- The standard European consumer credit information set out in Annex II to 24th June Law 16/2011 has been delivered to the debtor prior to the signing of the moratorium or, before the document is made public, the European Standard Information Sheet (ESIS) set out in Annex I of 15th March Law 5/2019 has been delivered to the debtor; or
- The debtor is given simplified information before the moratorium agreement is made public, together with information on the right to withdraw from the moratorium within ten days, without the debtor having exercised that right.

Furthermore, this transitional regime expresses the need to comply with the transparency obligations of 15th March Law 15/2019 within one month of the entry into force of RDL 19/2020.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

For more information please contact:

[Guillermo Yuste](#) | Partner in the Corporate department  
[guillermo.yuste@andersentaxlegal.es](mailto:guillermo.yuste@andersentaxlegal.es)

The above comments are for information purposes only and do not constitute professional opinions or legal advice, nor do they necessarily include the opinions of the authors. If you are interested in obtaining additional information or clarification of the content, please contact us by telephone on + 34 963 527 546/34 917 813 300 or by e-mail at [communications@andersentaxlegal.es](mailto:communications@andersentaxlegal.es).