

Informative Note

Main measures in corporate matters introduced by Royal Decree Law 15/2020

22nd April 2020

Regarding Royal Decree-Law 15/2020 of 21st April on urgent supplementary measures to support the economy and employment

On 14th March, the Council of Ministers approved the declaration of the State of Alert, by means of [Royal Decree Law 463/2020](#), which declares the state of alert for the management of the crisis situation caused by COVID-19.

As part of the set of measures subsequently approved in relation to the aforementioned state of alert, and in order to try to alleviate and deal with the situation generated by COVID-19, on 22nd April 2020, [Royal Decree-Law 15/2020](#) was approved, adopting a series of urgent complementary measures to support the economy and employment.

Specifically, the Royal Decree-Law 15/2020 (hereinafter, "**RD-L 15/2020**") has incorporated a series of developments in commercial matters, which are analysed below by means of this note:

Measures relating to rental contracts for uses other than housing where the tenants are SMEs or self-employed

In order to try to facilitate the reduction of costs for SMEs and the self-employed, the possibility has been introduced for them to apply, subject to certain conditions and requirements, for a moratorium on the payment of income derived from rental contracts for uses other than housing, in which SMEs or self-employed workers are the tenant.

Thus, in particular, Article 1 of RD-L 15, establishes that the lessees of rental contracts for use other than housing, in which the lessor is (i) a company or public housing entity or (ii) a "*large holder*", and that meet the requirements set out in Article 3 of the Royal Decree-Law itself, may request the application of a moratorium on the payment of rent, the lessor being obliged to accept it.

For the purposes of the aforementioned moratorium, the "*large holder*" will be considered to be that "*individual or legal entity that owns more than 10 urban properties, excluding garages and storage rooms, or a constructed surface area of more than 1,500 m²*".

As for the scope and applicability of the moratorium on rent payments, RD-Law 15/2020 establishes that it will be automatically applicable and will affect "*the period of time that the state of alarm lasts and its extensions and the following monthly payments, which may be extended one by one, in the event that that period is insufficient in relation to the impact caused by COVID-19, with a maximum limit of four months*".



The rent corresponding to this period will be deferred, without penalty or interest, from the next monthly payment to which the application has been made, and must be paid in instalments within two years, counting from the end of the period of suspension of rent payment, and always within the term of the lease or any of its extensions.

Article 2 of RD-L 15/2020 establishes a different regime for those tenants who, being SMEs or self-employed, and also fulfilling the requirements of Article 3 of the Royal Decree, cannot benefit from the specific measure provided for in Article 1 of the same legal text because the lessor does not meet the characteristics set out in that article.

In relation to such tenants, RD-L 15/2020 only provides for the possibility of such tenants "*requesting*" from the lessor, within one month from the entry into force of the aforementioned Royal Decree, "*the temporary and exceptional postponement of the payment of rent*", as well as the possibility of such postponement, within the framework of the possible agreement of postponement, of the application of the deposit deposited by the lessee to the payment of monthly rent, in which case the lessee must replace this deposit within a maximum period of one year from the conclusion of the agreement, or, if less, within the remaining period of validity of the contract.

In any case, all of the above with respect to the possible moratorium and deferment of the payment of rental income provided for in Articles 1 and 2 of RD-Law 15/2020, is regulated, as expressly stated in the Royal Decree itself, only in the absence of a prior different agreement already formalized between the parties, which will in any case be of preferential application.

As regards the requirements to be met by lessees in order to benefit from the measures provided for in the abovementioned Articles 1 and 2, these can be summarised in two requirements that would be common to both cases and an additional one that would apply depending on whether the lessee is a self-employed person or an SME:

- Common requirements:

- a) That its activity has been suspended as a result of the entry into force of Royal Decree 463/2020, which approved the state of alert, or by orders issued by the competent authorities delegated under it.
- b) That, if its activity has not been directly suspended, the reduction of its invoicing for the calendar month prior to that to which the postponement is requested by at least 75% in relation to the average monthly invoicing for the quarter to which that month of the previous year belongs is accredited.

- Specific requirements:

- a) In the case of self-employed tenants: Be affiliated to and registered with the Special Social Security Scheme for Owners or Self-Employed Workers or the Special Social Security Scheme for Seafarers or, where applicable, one of the RETA mutual

insurance companies, on the date of the declaration of the state of alert (i.e. 14th March 2020).

b) In the case of SME lessees: That the limits set out in Article 257.1 of the Companies Act are not exceeded. That is, the SME lessee must comply with at least two of these conditions for two consecutive years:

- (i) That its assets do not exceed 4,000,000 euros;
- (ii) That the net amount of its annual turnover does not exceed 8,000,000 euros;
- (iii) That it does not have more than 50 workers.

With regard to the accreditation of compliance with the previously described requirements, RD-L 15/2020, in article 4, includes the documentation that the lessee must present to the lessor, and it should be noted that this article only refers to the documentation relating to the accreditation of the requirements consisting of the possible suspension of the activity or reduction of it, and makes no mention of the rest of the requirements. Thus, the article only mentions the following with respect to the documentation to be presented by the lessee to the lessor:

- Regarding the suspension of activity: This will be accredited by a certificate issued by the State Tax Administration Agency or the competent body of the Autonomous Community, based on the declaration of cessation of activity declared by the lessee.
- And with regard to the reduction of activity that would have meant a reduction of more than 75% in the monthly turnover: It will be accredited by the presentation of a responsible declaration by the lessee, although, in order to accredit this, when the lessor requires it, the lessee will have to show him his accounting books.

Finally, RD-Law 15/2020, in article 5, establishes the responsibility of those lessees who could benefit from the previously described measures of temporary and extraordinary postponement of rent without really meeting the requirements, in which case they are obliged to respond to the lessor for the damages that could have been produced, as well as all the expenses generated, all of this with due regard to the responsibilities of another order that could proceed.

Extension of the maximum period for redistributing the initial share capital of worker owned companies

For worker owned companies (Sociedades Laborales) incorporated in 2017 the period of 36 months initially set out under Article 1.2.b) of Law 44/2015 dated 14th October regarding worker owned and participating companies is extended by an additional 12 months in order to redistribute the company capital of those worker owned companies which were initially set up on a fifty percent basis by two shareholders who are workers on long term contracts for an indefinite period of time, so that this company capital is now distributed in such a way as to comply with the requirement that no single shareholder or shareholder owns more than one third of that capital.

Measures to strengthen business financing

- Subsidies from the Instituto para la Diversificación y Ahorro de la Energía (IDAE) (Institute for Energy Diversification and Savings), under loan format

Article 6 of RD-L 15/2020 establishes that the E.P.E. Instituto para la Diversificación y Ahorro de la Energía ("IDAE") may grant deferments in the payment of the loan instalments it has granted to the beneficiaries of the subsidy or reimbursable aid programmes, taking into account the economic and financial situation in which the said beneficiaries find themselves as a result of COVID-19, with the applicants being in any event subject to private law. However, this is subject to the following circumstances:

- (a) The instalments subject to the above-mentioned deferral must be outstanding and due or about to be due in the months of March, April, May and June 2020. To this end, the loan may not have been subject to previous deferment or payment in instalments, nor may it have been the subject of a claim in or out of court by the IDAE;
- (b) That the aid limits permitted by the Community rules on State aid are complied with;
- (c) The party requesting such postponement (i) must not be in a state of bankruptcy; (ii) must be up to date with its obligations to the Treasury and the Social Security; and (iii) must be up to date with compliance with its obligations arising from the loans arranged when the state of alert came into force;
- d) Finally, the need is established for the interested party to make a responsible declaration stating the impact of COVID-19 on their business and the consequent difficulty or impossibility of complying with the obligations inherent in the loan taken out with the IDAE. The information provided for this purpose must be true, otherwise the entire loan will expire early.

In the event that payment deferrals are granted, unless the interested party provides otherwise, they will be automatically extended to successive instalments, until two months after the end of the alert state, and the instalments subject to deferral must be paid before the end of the loan period, and no ordinary interest will be accrued on such deferrals.

The procedure established by the IDAE's Board of Directors for granting deferments on loans subject to private law shall apply to the procedure for deferment of payments, without prejudice to the provisions of the 15th October Law 39/2015.

- Reinsurance acceptance of the credit insurance risks assumed by private insurance companies by the Insurance Compensation Consortium.

In accordance with the provisions of Article 7 of RD-L 15/2020, the Insurance Compensation Consortium ("CCS") may accept, whenever requested, in reinsurance the risks assumed by private insurance entities authorized to operate in the credit and surety insurance branches, and these entities

must subscribe or adhere to the corresponding agreement with the CCS. The conditions for reinsurance must be as follows:

- (a) The reinsurance agreement shall provide for common arrangements in the reinsurance market for greater security for insurance undertakings in these classes.
- (b) The CCH shall lay down the economic conditions to be applied to the cover, including compensation for the CCH's management costs.
- c) Coverage may be applied from January 1, 2020, for a minimum period of two years, to those insurance operations carried out by insurance companies in the branch with a significant volume of operations, and whose policyholders are domiciled in Spain.

These operations must also be governed by the provisions of RD-L 15/2020 and must be kept separate from the rest of the operations in financial and accounting terms.

Finally, 26th December Royal Decree 2013/1997, will apply to these operations, and technical equalisation provisions may be set up that are deductible up to the maximum stipulated in article 3.1, section a).

Establishment of a new ceiling for the guarantee line to cover financing on behalf of the State for tenants in a situation of social and economic vulnerability.

The third additional provision of RD-L 15/2020 establishes the maximum limit of the line of guarantees to cover financing on behalf of the State for lessees in a situation of social and economic vulnerability as a result of the expansion of COVID-19, approved in article 9 of 31st March Royal Decree-Law 11/2020 ("**RD-L 11/2020**"), providing that the Ministry of Transport, Mobility and the Urban Agenda may grant guarantees for a maximum amount of 1,200 million euros.

Measures in relation to the formalisation of the extension of the term resulting from the legal moratorium on loans and credits

The fifteenth additional provision of RD-L 15/2020 establishes a series of measures relating to the procedure for formalising extensions of time resulting from moratoriums on loans and credits secured by mortgage or other registrable rights, previously introduced by the 17th March Royal Decree Law 8/2020 ("**RD-L 8/2020**"). Specifically, the following is established:

- Recognition of the application of the suspension of the mortgage debt during the three-month period established under Article 13.3 of RD-L 8/2020 will not be subject to the provisions of the 15th March Law 5/2019 (on Real Estate Credit).
- The public filing of the recognition of the suspension, so that the extension of the initial period can be registered in the Land Registry, will be a unilateral obligation of the creditor entity.

- Likewise, it will also be the creditor entity's unilateral obligation to promote the formalization of the policy or public deed documenting the recognition of the suspension of contractual obligations in credits or loans without mortgage guarantee provided for in article 24.2 of RD-L 11/2020, as well as the registration, if applicable, in the Register of Movable Property in the event that the credit or loan is guaranteed by some registrable right other than a mortgage or has been entered in the Register.
 - The measures will be applicable even if the creditor's request or acceptance by the lending institution was made prior to the effective date of RD-L 15/2020.
- In addition, and in relation to the suspension of obligations arising from non-mortgage credit agreements (previously introduced by RD-L 11/2020), several amendments have also been made with respect to the formalisation of this suspension.

Thus, in fact:

- The initial reference to "public deeds" is replaced by a broader reference to "public instruments", as possible documents in which to formalise the extension of the time limit resulting from the suspension.
- It is established that the notarial tariffs derived from the intervention of policies in which the suspension is formalised will be those established in the 15th December 1950 Decree and will be reduced by 50% with a minimum limit of 25 euros and a maximum of 50 euros, for all concepts, including their copies and transfers.
- Registrars tariff rates derived from the registration of the suspension will be charged for the fixed amount of 6 euros is also established.
- Finally, it is expressly stated that the notary and registry fees referred to above shall be paid, in all cases, by the creditor.

Amendments in relation to the line of guarantees approved in the 17th March Royal Decree Law 8/2020

Paragraph four of the eighth final provision introduces a series of new features with respect to the initial wording of Article 29 of RD-L 8/2020, which approved the line of guarantees granted by the state for financing granted by financial institutions to companies and the self-employed. Specifically, it modifies the following issues:

- Payroll and vendor payments are included among the possible needs that can be financed.
- The possibility of allocating guarantees to the Compañía Española de Reafianzamiento, Sociedad Anónima (CERSA), as well as to promissory notes incorporated into the Fixed Income Market of the Association of Financial Asset Intermediaries and the Alternative Fixed Income Market is added.
- A maximum date has been established for the granting of guarantees by the Ministry of Economic Affairs and Digital Transformation, which will be 31st December 2020.

Changes in relation to the requirements for inability to qualify for benefits consisting of moratoria or subsidies related to rental income from the main residence, as well as the moratorium on mortgages and non-mortgage financing loans

The tenth final provision of RD-L 15/2020 modifies the requirement relating to the minimum percentage of disability that a family member must have declared in order to be eligible for benefits consisting of moratoriums or subsidies related to the rental income from the habitual residence, as well as the moratorium on mortgages and non-mortgage financing loans (initially provided for in Articles 5 and 16, respectively, of RD-L 11/2020), establishing that the aforementioned percentage of disability must be equal to or greater than 33%, whereas it was initially required that such disability be greater than 33%.

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.

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