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# URÍA MENÉNDEZ

Measures implemented by the Spanish  
Government regarding residential leases

3 April 2020

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# 1. Introduction

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The rapid escalation of the COVID-19 public health crisis has created an unprecedented situation that poses innumerable legal challenges, at both the national and international level.

Since the World Health Organisation (“WHO”) on 30 January 2020 declared this situation to be a public health emergency on an international scale, the seriousness of the crisis has gradually worsened and numerous countries, including Spain, have now taken measures to restrict citizens’ freedom of movement, limited or restricted entry of people travelling from countries with outbreaks of COVID-19 and approved various types of measures, with the dual aim of protecting public health and mitigating, as much as possible, the economic consequences of the public health crisis. On 11 March 2020, the WHO finally confirmed that the COVID-19 outbreak had risen to the level of a pandemic.

Spain reacted to this situation by passing, among others, the following extraordinary regulations: (i) Royal Decree 463/2020 of 14 March 2020 declaring a state of emergency to address the COVID-19 health crisis, which came into immediate effect and was then amended by Royal Decree 465/2020 of 17 March (“RD 463/2020”); (ii) Royal Decree-Law 8/2020 of 17 March on urgent and extraordinary measures to address the economic and social impact of COVID-19 (“RDL 8/2020”); (iii) Royal Decree-Law 9/2020 of 27 March adopting supplementary employment measures to mitigate the effects of COVID-19 (“RDL 9/2020”); (iv) Royal Decree-Law 10/2020 of 29 March establishing recoverable paid leave for workers who do not provide essential services in order to reduce population mobility in the context of the fight against COVID-19 (“RDL 10/2020”); and (v) Royal Decree-Law 11/2020 of 31 March adopting additional urgent measures to address the social and economic impact of COVID-19 (“RDL 11/2020”).

This document – which is for information purposes only – describes the most significant aspects regarding **leases for main residence** that have been introduced by RDL 11/2020 to assist persons in a state of vulnerability due to COVID-19.

The measures provided for in RDL 11/2020, which will be developed by the Government, will enter into force from 2 April 2020 and **remain in force until one month after the end of the state of emergency**, except for those provisions for which a different period is set, and without prejudice to the possibility of the Government expressly agreeing to extend them by means of a royal decree-law.

Although not addressed in this memorandum, it is worth noting that RDL 11/2020 modifies the “State Housing Plan 2018-2021” (*Plan Estatal de Vivienda 2018-2021*) by approving, among other measures, **a new aid programme** called “Aid programme to help minimise the economic and social impact of COVID-19 on rented main residence”. This programme aims to alleviate the financial burden on lessees who lease their main residence and may face one of the situations of vulnerability included in the programme itself (which will cover, at the very least, those referred to in section 2.1 of this memorandum) to help them pay the rent or repay any financial aid to which they may access to fund rent payments as a result of the COVID-19 health crisis. This aid may reach EUR 900 per month and up to 100% of the rent or, if applicable, 100% of the principal and interest of the loan eventually signed in order to pay the rent for main residence.

On the other hand, the measures in RDL 11/2020 regarding leases do not concern **rentals other than those for a person’s main residence** (i.e., they do not impact any kind of commercial leases). However, RDL 11/2020 does extend the mortgage moratorium provided for in RDL 8/2020 to loans granted for the acquisition of a second home that the buyer intends to lease out as a third party’s main residence, as well as to mortgage loans to acquire properties devoted to the debtor’s economic activity.

## 2. Vulnerable persons

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### 2.1. REQUIREMENTS

According to RDL 11/2020, **grounds for vulnerability** exist – and therefore benefits are available – when the following requirements are met:

- (A) The person who is legally obliged to pay the rent becomes unemployed, is laid off temporarily or his or her working hours are reduced (known as an “**ERTE**” for its Spanish acronym) or he or she is forced to reduce his or her working hours in order to care for others, if he or she is an entrepreneur<sup>1</sup>, or other similar circumstances involving a reduction of the total income of the family unit<sup>2</sup> in the month prior to the application of the moratorium to be below the following multiples of the monthly National Indicator of Earnings (*Indicador Público de Renta de Efectos Múltiples*) (the “**IPREM**”):<sup>3</sup>
- (i) **in general**, the limit will be **three times the IPREM** (i.e. EUR 1,613.52 per month), which will be adjusted by adding 0.1 times the IPREM for each dependant child in the family unit (0.15 times in the case of a single-parent family unit) and for each member of the family unit over the age of 65;
  - (ii) **four times the IPREM** (i.e. EUR 2,151.36 per month), which will be adjusted by adding 0.1 times the IPREM for each dependant child (0.15 times in the case of a single-parent

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<sup>1</sup> It is unclear whether the intention is for it to apply to entrepreneurs (*empresarios o autónomos*) who find themselves in a state of vulnerability with regard to their rent payment obligations as lessees of their main residence. However, it may be reasonable to understand that it also applies to entrepreneurs as the “certificate of cessation of activity issued by the State Tax Agency” is one of the documents required to evidence the grounds of vulnerability of self-employed workers.

<sup>2</sup> A “**Family unit**” is formed by the person legally liable to pay the rent, his or her spouse (from whom he or she is not legally separated) or civil partner, and the children – regardless of their age – who reside in the place of residence, including those linked by a relationship of guardianship, custody or foster care, and their spouses (from whom they are not legally separated) or civil partners who reside in the place of residence.

<sup>3</sup> In 2020, the monthly IPREM is EUR 537.84 (<http://www.iprem.com.es/2020.html>).

family unit)<sup>4</sup> in the event that **any of the persons in the family unit** is recognised to have a degree of disability greater than 33%, is a dependant, or has an illness that prevents him or her from working; or

- (iii) **five times the IPREM** (i.e. EUR 2,689.20 per month)<sup>5</sup> in the event that **the person legally liable to pay the rent** has cerebral palsy, a mental illness, an intellectual disability (with a degree of disability equal to or greater than 33%), a physical or sensory disability (with a degree of disability equal to or greater than 65%), or a serious illness that prevents him or her or his or her caregivers from working.

- (B) The **rent**, plus basic expenses and supplies,<sup>6</sup> is greater than or equal to **35% of the net income** received by all members of the family unit.

However, RDL 11/2020 expressly establishes that the conditions for vulnerability are not met when the lessee, or any of the persons making up the family unit, is the **owner or usufructuary (usufructuario) of a residence in Spain**, except in cases in which (i) the lessee has inherited a portion of the residence only, or (ii) when the residence is not available for his/her use due to separation or divorce, or for reasons beyond the control of the person concerned, or when the place of residence is inaccessible due to the disability of its owner or of any member of the family unit.

## 2.2. PROVING THAT THE REQUIREMENTS ARE FULFILLED

To prove that they are in a state of vulnerability, lessees must provide their lessor with the following:

- (A) **Unemployment:** the lessee's official unemployment form and his or her monthly benefits or subsidies.

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<sup>4</sup> RDL 11/2020 expressly mentions the increase of the IPREM in the case of dependant children. However, we cannot confirm beyond doubt that the increase also applies in the case of each member of a family unit over the age of 65.

<sup>5</sup> In this section, RDL 11/2020 makes no mention of the increases for dependant children or persons over the age of 65 who are part of the family unit.

<sup>6</sup> "**Basic expenses and supplies**" are defined as the main residence's electricity, gas, fuel supplies for heating, running water, fixed and mobile telecommunication services and condominium charges (*comunidades de propietarios*), as long as they are borne by the lessees.

- (B) **Cessation of activity by self-employed workers:** certificate from the State Tax Agency (or the competent regional authority) confirming the cessation of the lessee's activity.
- (C) **Persons who reside in the main residence:** (i) the family record book (*libro de familia*) or document certifying a civil partnership (*pareja de hecho*); (ii) certificate from the municipal register regarding the persons registered as residing in the main residence, which must refer to the time of the request as well as to the six months prior; or, when appropriate (iii) certifications of disability, dependance or permanent incapacity to work.
- (D) **Property ownership:** land registry excerpts (*nota simple*) from each member of the family unit.
- (E) **Statement of compliance (*declaración responsable*):** statement by the lessee that he or she meets the economic requirements to be classed as vulnerable.

If the applicants are unable to provide any of the documents required under paragraphs (A) to (D), they may substitute it with a statement of compliance including express justification of the reasons – necessarily related to the consequences of the COVID-19 health crisis – that prevent them from providing such documents. After the end of the state of emergency or any of its extensions, applicants have one month to provide the documents they have been unable to provide previously.

### 2.3. CONSEQUENCES OF IMPROPER USE OF THE MORATORIUM

RDL 11/2020 establishes the consequences of benefiting from the moratorium when one is not entitled to due to not meeting the requirements set out in section 2.1 above.

Lessees who request and benefit from the moratorium without being legally entitled to do so are liable for **any damage that may arise**, as well as for any expenses incurred as a result of applying the exceptional measures, without prejudice to **any other damages** their conduct might trigger. The amount of the damages and expenses cannot be less than the amount of the unjust enrichment obtained.

Likewise, lessees will be liable in cases where they have sought, voluntarily and deliberately, to place themselves or remain in a state of vulnerability in order to benefit from the exceptional measures provided for under RDL 11/2020.

## 3. Protection measures for families and vulnerable persons

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### 3.1. STAY OF EVICTIONS FOR FAMILIES WITHOUT ALTERNATIVE HOUSING

After the suspension of the terms and procedural deadlines has been lifted as provided for in the second additional provision of RD 463/2020, **scheduled evictions** of vulnerable lessees without alternative housing **may be stayed**. If an eviction was not yet scheduled, the procedural deadline will be suspended until the public social services take the appropriate measures, to care for the housing needs of the evicted lessee, such a suspension not to exceed **six months**<sup>7</sup> starting from the date RDL 11/2020 enters into force.

In order for this stay to apply, lessees must evidence to the court clerk (*Letrado de la Administración de Justicia*) that they are in a state of vulnerability, in accordance with the requirements indicated in section 2.1. above. If the court clerk deems that the state of vulnerability has been proved, he or she will **order the stay** with effects as from the date on which the state of vulnerability is deemed to have occurred, **only for as long as necessary**, and in light of the report prepared by social services (*servicios sociales*).

### 3.2. EXCEPTIONAL EXTENSIONS FOR LEASE OF PLACES OF RESIDENCE

As a general rule, lessees<sup>8</sup> will have the right to **extend up to six months** lease contracts the term of which expires within the period between the entry into force of RDL11/2020<sup>9</sup> and the two months

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<sup>7</sup> Social services must set the period of the exceptional suspension taking into account whether the lessor has proved to the court that he or she is also in a state of vulnerability. RDL 11/2020 does not provide a specific and clear solution when both parties are in a state of vulnerability (e.g. lifting the suspension or providing for a more limited period of suspension), but relies on the decision of social services as to the length of the suspension (and not on the decision of the court hearing the case).

<sup>8</sup> Even when they are not in a state of vulnerability as described in section 2.1 above.

<sup>9</sup> The extension requested by the lessees, if any, will apply once (and if) the mandatory extensions applicable under Law 29/1994 of 24 November on urban leases, have expired.

following the end of the state of emergency. During these exceptional extensions, the terms and conditions of the existing contract will continue to apply.

### 3.3. MORATORIUMS OR WRITE-OFFS FOR LARGE PROPERTY OWNERS AND PUBLIC HOUSING COMPANIES OR ENTITIES

Within one month of the entry into force of RDL 11/2020, vulnerable lessees of a main residence whose lessor is a large property owner, whether public or private (including the Social Housing Fund of financial institutions), will be entitled to request a **temporary and extraordinary moratorium** on rent payment, provided that the parties have not previously agreed a total or partial write-off or a moratorium on the payment.

For the purposes of RDL 11/2020, “**large property owners**” are natural or legal persons who own (i) more than ten urban properties (excluding garages and storage rooms); or (ii) a constructed surface area of more than 1,500 m<sup>2</sup>.

In the absence of a prior agreement between the parties, the lessor who has been requested to grant a moratorium must choose (within a period of seven working days) between one of the following mechanisms:

- (A) a **moratorium** on the payment of rent; or
- (B) a **50% write-off** of the debt.

The moratorium or write-off, as appropriate, will be in force for the duration of the state of emergency or the duration of the state of vulnerability, up to a **maximum of four months**.

If the lessor opts for the moratorium, once the state of vulnerability has been overcome, the lessee must return any unpaid rent in instalments, at least, within the following three years **without any penalties or interest being charged**.<sup>10</sup> However, if the lessees benefit from the economic aid referred to in section 3.5, the moratorium will be ended on the first monthly payment in which the aid can be used.

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<sup>10</sup> Note that if the duration of the lease contract is shorter than three years, the rent amounts to be returned may be paid within a short period of time.

### 3.4. RENEGOTIATION OF RENT FOR OTHER TYPES OF LESSOR

A **rent-renegotiation** mechanism has been established for residential leases where the lessor is not one of those included in section 3.3 above; in other words, when the lessor is a small property owner – whether a natural or legal person. In this case, vulnerable lessees will have **one month** from the entry into force of RDL 11/2020 to enter into negotiations with the lessor to **agree on the postponement** of the rental payments, provided that no postponement or write-off has already been agreed.

Once lessors receive the lessee's request, they will have seven working days to make a proposal regarding the conditions for the postponement or the split of the rental payments. If the lessors reject the proposed postponement and, in any case, when the lessees are in a state of vulnerability, they will be entitled to obtain the aid referred to in section 3.5.

### 3.5. STATE GUARANTEE LINE FOR BANK FINANCING OF LESSEES

A fully Government-backed guarantee line (*línea de avales*) to finance **lessees in a state of vulnerability** due to the COVID-19 health crisis has been approved. This lessees must use this bank financing to **pay the rent** for the lease of their **residence** only and may cover a **maximum of six monthly rent payments**.

The repayment period will be up to **six years** and can exceptionally be **extended** for another **four**. It can in no case accrue **any type of expenses or interest for the lessees**.<sup>11</sup>

The Ministry of Transport, Mobility and the Urban Agenda and the Official Credit Institute (*Instituto de Crédito Oficial*) must implement this measure through financial institutions, and it will be offered to all lessees in a state of sudden vulnerability as a result of the COVID-19 health crisis, in accordance with the criteria and requirements established through Ministerial Decree (*Orden Ministerial*), which will at the very least include the situations set out in section 2.1.

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<sup>11</sup> Since RDL 11/2020 expressly prohibits the imposition of interest or expenses on lessees, it is not clear what the incentive for financial institutions to agree to such funding is, unless it is the intention of the Government that the cost be borne by the lessor (who would be the ultimate beneficiary of the financing provided to the lessee), by the Official Credit Institute or at the expense of the State in some manner, but this would require precise regulatory authorisation that RDL 11/2020 does not contain. It would seem that the regulation is incomplete (and, therefore, of questionable practical value).

## Contact lawyers

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