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Measures regarding leases implemented by
the Spanish Government

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1. Introduction

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 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 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 10/2020 of 29 March establishing recoverable paid leave for workers who do not provide essential services to reduce population mobility in the context of the fight against COVID-19 (“RDL 10/2020”); (iii) 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”); and (iv) Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment (“RDL 15/2020”)¹.

¹ In addition, it should be noted that the autonomous regions are approving complementary measures regarding leases. Among others, the Decree 25/2020 of 1 April passed by the region of Madrid (*Comunidad de Madrid*) approving, amongst others, a reduction of rental payments for social housing leases managed by the Social Housing Agency of Madrid (*Instituto de la Vivienda de Madrid*); or the Decree 13/2020 of 21 April passed by the Catalanian Government (*Generalidad de Cataluña*) providing for the right of lessees, beneficiaries of administrative concessions or beneficiaries of rights to build (*superficiarios*) to request the Catalanian Government a deferral in their payment obligations, as well as approving an extension of the term in which statutory deposits must be deposited with the relevant body up to four months.

This newsletter is for information purposes only and describes the most significant measures implemented by (i) RDL 11/2020 regarding **residential leases** to support persons who are in a vulnerable situation due to the COVID-19 health crisis, and (ii) RDL15/2020 regarding **non-residential leases** introduced to support self-employed workers and small and medium-sized enterprises (“**SMEs**”) who have been forced to suspend their activities, or whose income has dropped significantly, as a result the COVID-19 health crisis.

2. Measures regarding residential leases

2.1. ENTRY INTO FORCE

The measures implemented by RDL 11/2020, which will be developed by the Government, **entered into force on 2 April 2020** and will **remain in force until one month after the end of the state of emergency**, except for those provisions for which a different period has been established. Nevertheless, the Government may decide to extend these measures by means of a royal decree-law.

2.2. BENEFICIARIES

In accordance with RDL 11/2020, the measures referred to in sections 2.3 to 2.6 below may apply to residential lessees who are in a vulnerable situation as a result of circumstances arising from the COVID-19 health crisis.

(A) Requirements

A person is deemed to be in a **vulnerable situation** – and therefore can benefit from the aid provided by RDL 11/2020 – when the following requirements are met:

- (i). The person who is liable to pay the rent becomes unemployed, is laid off temporarily or his or her working hours are reduced (“**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 entrepreneur², or other similar circumstances involving a drop in the family unit’s total income³ in the month prior to the

² It is unclear whether it also applies to entrepreneurs (*empresarios*) in a vulnerable situation with regard to their rent payment obligations as residential lessees. However, it is reasonable to understand that it does, as the “certificate of cessation of activity issued by the State Tax Authority” is one of the documents required to evidence that self-employed workers are in a vulnerable situation.

³ 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.

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**”):⁴

- (1) **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;
 - (2) **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 family unit)⁵ in the event that **any of the persons in the family unit** is recognised to have a degree of disability equal⁶ or greater than 33%, is a dependant, or has an illness that prevents him or her from working; or
 - (3) **five times the IPREM** (i.e. EUR 2,689.20 per month)⁷ if **the person who is 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.
- (ii). The **rent**, plus basic expenses and supplies,⁸ 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 to be classed as vulnerable are not met when the lessee, or any of the persons making up the family unit, is the **owner or usufructuary**

⁴ In 2020, the monthly IPREM is EUR 537.84 (<http://www.iprem.com.es/2020.html>).

⁵ RDL11/2020 expressly refers to 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.

⁶ The word “equal” was introduced by the tenth final provision of RDL 15/2020.

⁷ In this section, RDL 11/2020 makes no reference to increases for dependant children or persons over the age of 65 who are part of the family unit.

⁸ “**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.

(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 or 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.

(B) Proving that the requirements are fulfilled

To prove that they are in a vulnerable situation, lessees must provide their lessor with the following:

- (i). **Unemployment:** the lessee's official unemployment form and his or her monthly benefits or subsidies.
- (ii). **Cessation of activity by self-employed workers:** certificate from the State Tax Authority (or the competent regional authority) confirming the cessation of the lessee's activity.
- (iii). **Persons who are residing in their 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 their 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, dependence or permanent incapacity to work.
- (iv). **Property ownership:** land registry excerpts (*nota simple*) from each member of the family unit.
- (v). **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 (i) to (iv), they may instead submit a statement of compliance which expressly justifies the reasons – necessarily related to the consequences of the COVID-19 health crisis – that prevent them from providing the documents. When the state of emergency ends, applicants have one month to provide the documents they have been unable to provide previously.

(C) Consequences of improper use of the Moratorium

RDL 11/2020 establishes the consequences of benefiting from the moratorium when one is not entitled to because the requirements set out in section 2.2(A) above are not met.

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 vulnerable situation in order to benefit from the exceptional measures provided for under RDL 11/2020.

2.3. LEASES IN WHICH THE LESSOR IS A LARGE PROPERTY OWNER

Within one month of the entry into force of RDL 11/2020, vulnerable residential lessees whose lessor is a large property owner, whether public or private (including the Social Housing Fund of financial institutions), are 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 m².

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:

- (i). a **moratorium** on the payment of rent; or
- (ii). 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 while the person is in a vulnerable situation, up to a **maximum of four months**.

If the lessor opts for the moratorium, once the lessee is no longer in a vulnerable situation, he or she must return any unpaid rent in instalments within the following three years, **free of penalties and**

interest.⁹ However, if the lessees benefit from the economic aid referred to in section 2.6, the moratorium will be ended on the first monthly payment in which the aid can be used.

2.4. RENEGOTIATION OF RENT FOR OTHER TYPES OF LEASES

A **rent-renegotiation** mechanism has been established for residential leases where the lessor is not one of those included in section 2.3 above; in other words, when the lessor is a small property owner – whether a natural or legal person. In this case, vulnerable lessees have **one month** from the entry into force of RDL 11/2020 to enter into negotiations with the lessor to **agree on the moratorium** of the rental payments, provided that no moratorium or write-off has already been agreed.

Once lessors receive the lessee's request, they 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 moratorium and, in any case, when the lessees are in a vulnerable situation, they will be entitled to obtain the aid referred to in section 2.6.

2.5. STAY OF EVICTIONS FOR FAMILIES WHO HAVE NO 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 who have no alternative housing **may be stayed**. If an eviction was not yet scheduled, the procedural deadline will be suspended until social services (*servicios sociales*) take the appropriate measures, to care for the housing needs of the evicted lessee, such as a suspension of a maximum term of **six months**¹⁰ starting from the date RDL 11/2020 enters into force.

In order for this stay to apply, lessees must provide evidence to the court clerk (*Letrado de la Administración de Justicia*) that they are in a vulnerable situation, in accordance with the requirements

⁹ If the term of the lease contract is shorter than three years, the rent amounts to be returned may be paid within a short period of time.

¹⁰ 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 vulnerable situation. RDL 11/2020 does not provide a specific and clear solution when both parties are in a vulnerable situation (e.g. lifting the suspension or providing for a more limited period of suspension), but relies on the decision of social services (rather than of the court hearing the case) as to the length of the suspension.

provided in section 2.2(A) above. If the court clerk deems that the lessee is in a vulnerable situation, the court clerk will **order the stay** with effects as from the date on which the lessee was first deemed to be in a vulnerable situation, **only for as long as necessary**, and in light of the report prepared by social services.

2.6. STATE GUARANTEE LINE FOR BANK FINANCING OF LESSEES

A fully State-backed guarantee line (*línea de avales*) to finance **lessees in a vulnerable situation** due to the COVID-19 health crisis has been approved. 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**.¹¹

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 vulnerable situation 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 2.2.(A)¹².

2.7. EXCEPTIONAL EXTENSIONS

As a general rule, lessees¹³ have the right to **extend for up to six months** lease contracts the term of which expires within the period between the entry into force of RDL11/2020¹⁴ and the two months

¹¹ 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 the Government's intention is for the cost to be borne by the lessor (who would be the ultimate beneficiary of the financing provided to the lessee), by the Official Credit Institute or by the State in some way, 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).

¹² The third additional provision of RDL 15/2020 has authorized the Ministry of Transport, Mobility and Urban Agenda to grant state-backed guarantee lines for a maximum amount of EUR 1 billion.

¹³ Even when they are not in a vulnerable situation as described in section 2.2 (A) above.

¹⁴ 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.

2.8. MODIFICATION OF THE STATE HOUSING PLAN 2018-2021

Article 10 of RDL 11/2020 modifies the "State Housing Plan 2018-2021" by approving, among other points, a **new aid programme** called "Aid programme to help minimise the economic and social impact of COVID-19 on residential leases".

This provision has been further developed through **Order TMA/336/2020** of 9 April, which directly includes the new programme to help minimise the economic and social impact of COVID-19 on residential leases in RD 106/2018 of 9 March:

- (i). **Purpose:** granting aid (which must be used either to pay the rent or to repay the transitional financing aid obtained) to residential lessees who, as a result of the economic and social impact of the COVID-19, have problems paying part or all of their rent.
- (ii). **Beneficiaries:** residential lessees (i) in a vulnerable financial and social situation due to the COVID-19 health crisis (each autonomous region will determine what constitutes a vulnerable situation and how this must be proved, which must include at least the requirements set out in section 2.2(A) above); (ii) who have ties with or are business partners of the lessor; (iii) provided that they prove that they have paid the past three rents; and (iv) that they are not in any of the situations set out in article 13 of Law 38/2003 of 17 December on general state subsidies.
- (iii). **Deadline to apply:** to be decided by the autonomous regions and, in any case, before 30 September 2020.
- (iv). **Amount:** the aid could be granted for up to six months (including April), to be decided by the autonomous regions. The maximum amount is EUR 900 per month and 100% of the income.
- (v). **Payment:** payment may be made directly to the lessor on behalf of the lessee when rent is due, unless the lessee has taken out a loan under the transitional aid mentioned in section 2.6 above (in which case, this aid will be used to repay the loan).

This programme is expected to be further developed by the autonomous regions as the Ministerial Order instructs them to do urgently.

3. Measures for non-residential leases

3.1. ENTRY INTO FORCE

The measures provided for in RDL 15/2020 will **enter into force on 23 April 2020**.

3.2. BENEFICIARIES

In accordance with RDL 15/2020, **self-employed workers** and **SMEs** who lease property **for non-residential purposes**, that are financially unable to meet all or part of their payment obligations under the leases may benefit from the measures provided for in sections 3.3 and 3.4 below:

(A) Requirements

With regard to **self-employed workers**:

- (i). those who are **affiliated** to and **currently registered** with the Special Social Security Regime for Self-employed Persons (“**RETA**”), or with the Special Social Security Regime for Sea Workers or, when appropriate, in one of the RETA’s substitute mutual insurance companies, on the date of the declaration of the State of Alarm (i.e. 14 March 2020); and
- (ii). those whose **activity** is **suspended** as a result of the entry into force of RD 463/2020 or, if not suspended, whose turnover for the preceding calendar month to that in which the moratorium is requested, has dropped by at least 75%, in relation to the average monthly turnover for the same quarter of the preceding year.

With regard to **SMEs**:

- (i). those that do not exceed the limits established in article 257.1 of Royal Decree-Law 1/2010 of 2 July which approves the revised text on the Companies Law¹⁵; and

¹⁵ Article 257.1 of the Companies Law provides the criteria for companies to draw up abridged annual accounts and statement of changes in equity, which includes the following limits (i) that the company’s assets do not exceed EUR 4 million; (ii) that the company’s net annual turnover does not exceed EUR 8 million; and (iii) that the company has an average of 50 or fewer employees in the financial year in question.

- (ii). their **activity** is **suspended** as a result of the entry into force of RD 463/2020 or, if not suspended, that the turnover for the preceding calendar month to that in which the moratorium is requested, has been reduced by at least 75%, in relation to the average monthly turnover for the same quarter of the preceding year.

(B) Proving that the requirements are fulfilled

To prove that the requirements referred to in the previous section have been fulfilled, lessees must provide their lessor with the following:

- (i). **Cessation of activity:** a certificate from the State Tax Authority (or the relevant regional authority) confirming the cessation of the lessee's activity.
- (ii). **Drop in business activity:** statement of compliance (*declaración responsable*) that confirms a reduction of the monthly invoicing by at least 75% in relation to the average monthly invoicing of the same quarter in the previous year. In any event, at the lessor's request, the lessee will have to disclose his or her accounting books to the lessor to prove the drop in business activity.

(C) Consequences of improper use of the Moratorium

RDL 15/2020 establishes that lessees who do not meet the requirements set out in section 3.2.(A), and request the moratorium without being legally entitled to do so, will be 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.

3.3. LEASES WITH LARGE PROPERTY OWNERS

Within one month of the entry into force of RDL 15/2020, **non-residential or industrial lessees** that meet the requirements set out in section 3.2 (A) above, and whose lessor is a public housing company or entity or a large property owner¹⁶, are entitled to apply a **moratorium** on the payment of rent, provided that the parties have not previously agreed on a total or partial write-off or a moratorium on the payment.

¹⁶ RDL 15/2020 provides the same definition of large property owners as RDL 11/2020. That is, 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 m².

This moratorium will **apply** while the **state of emergency** is in force and to the following monthly payments, which can be extended on a monthly basis if the moratorium is insufficient in relation to the economic impact caused by the COVID-19 health crisis, up to a **maximum** of **four months**.

Lessees must return the unpaid rent to the lessor in instalments over the following **two years** after the contract has entered into force, **free of penalties and interest**¹⁷.

3.4. RENT RENEGOTIATION FOR OTHER LEASES

RDL 15/2020 provides for a **rent renegotiation** mechanism for non-residential or industry leases, where the lessor does not fall within the scope of section 3.3 above. In this case, a lessee that meets the requirements set out in section 3.2.(A) above will have **one month** from the entry into force of RDL 15/2020 to request a temporary and extraordinary rent payment moratorium, which **the lessor is not obliged to accept**.

However, within the framework of the possible agreement resulting from the request referred to in the preceding paragraph, the parties **may use the deposit** provided for in Law 29/1994 of 24 November on urban leases¹⁸, **to pay the rent**. If applicable, a lessee must return the amount of the deposit within **one year of the termination of the agreement** or within the remaining term of the lease contract, if under a year.

¹⁷ If the lease is terminated within two years, the amounts to be returned in instalments could be concentrated in a shorter period of time.

¹⁸ It would seem reasonable to assume that the deposit could be used to pay rent even if the lessor is a large property owner referred to in section 3.3 above, where the parties have agreed on more favourable measures for the lessee than those provided for in RDL 15/2020. However, this is not entirely clear from the wording of article 2.

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