Guide to key legal matters relating to the COVID-19 health crisis

1 May 2020
6.1 TAX DEBT DEFERRAL .................................................................................................................... 27
6.2 SUSPENSION OF TERMS ................................................................................................................. 28
6.3 MEASURES IMPLEMENTED BY RDL 11/2020 .................................................................................. 29
6.4 DEFERRAL ON THE FILING AND PAYMENT OF CERTAIN RETURNS-ASSESSEMENTS OR SELF-ASSESSEMENTS .................................................................................................................................................. 29
6.5 MEASURES IMPLEMENTED BY RDL 15/2020 .................................................................................. 29
6.6 MEASURES RELATED TO CUSTOMS APPROVED BY THE SPANISH GOVERNMENT AND THE EUROPEAN UNION ........................................................................................................................................ 31

7. FINANCIAL MATTERS ............................................................................................................. 33
7.1 THE MORTGAGE PAYMENT MORATORIUM ........................................................................................ 33
7.2 CONSUMER FINANCE MORATORIUM ............................................................................................... 36
7.3 REGULATORY CONSEQUENCES OF THE MORTGAGE PAYMENT MORATORIUM AND THE CONSUMER FINANCE MORATORIUM FOR CREDIT INSTITUTIONS ........................................................................................................... 36
7.4 FOSTERING LIQUIDITY .................................................................................................................. 36

8. KEY BANKING REGULATORY-RELATED MEASURES ........................................................ 45
8.1 MEASURES ON CAPITAL CONSERVATION ......................................................................................... 45
8.2 MEASURES ON CAPITAL REQUIREMENTS RELIEF ............................................................................. 45
8.3 AMENDMENTS ON CLASSIFICATION AND CREDIT RISK COVERAGE ...................................................... 47
8.4 OTHER REGULATORY CONCESSIONS .............................................................................................. 48

9. REAL ESTATE MATTERS ....................................................................................................... 49
9.1 MEASURES APPROVED BY RDL 11/2020 ON LEASES FOR MAIN RESIDENCE ...................... 49
9.2 MEASURES APPROVED BY RDL 115/2020 ON NON-RESIDENTIAL LEASES ............................... 53

10. INSOLVENCY MATTERS ......................................................................................................... 56
10.1 SUSPENSION OF THE OBLIGATION TO FILE AN INSOLVENCY PETITION ........................................... 56
10.2 THE TREATMENT OF FINANCING PROVIDED BY “SPECIALY-RELATED” PERSONS ........................... 57
10.3 MODIFICATION OF A DEBTOR’S EXISTING AGREEMENTS WITH A NUMBER OF CREDITORS .......................................................... 57
10.4 PROCEDURAL CHANGES AFFECTING INSOLVENCY PROCEEDINGS ...................................................... 59

11. LITIGATION MATTERS ............................................................................................................ 60
11.1 ORDINARY JURISDICTION .............................................................................................................. 60
11.2 CONSTITUTIONAL COURT .............................................................................................................. 63
11.3 European Courts .......................................................................................................................... 63
12. Arbitration Matters ......................................................................................................................... 64
13. Foreign Investment Restrictions .................................................................................................... 65
13.1 The Screening Mechanism ........................................................................................................... 65
13.2 Scope ........................................................................................................................................ 66
13.3 Consequences of not undergoing the Screening Mechanism ...................................................... 67
13.4 Future Developments ..................................................................................................................... 67
14. Securities Market Matters .............................................................................................................. 69
14.1 ESMA Guidelines for Financial Market Participants ...................................................................... 69
14.2 Deadlines for Publishing Financial Information and Other Information Tools ......................... 70
14.3 Temporary Prohibition on Taking Up or Increasing Net Short Positions ......................................... 71
14.4 Obligation to Notify Net Short Positions of 0.1% or Above of the Issued Share Capital .............. 72
15. Public Law Matters ......................................................................................................................... 73
15.1 Measures to Bolster the National Health System ........................................................................ 73
15.2 Suspension of Administrative Terms ........................................................................................... 73
15.3 Public Sector Contracts .................................................................................................................. 74
15.4 Potential Claims Based on the State’s Pecuniary Liability ............................................................ 80
16. Transport and Seaport Matters .................................................................................................... 81
16.1 International Transport ................................................................................................................. 81
16.2 National Transport ....................................................................................................................... 82
16.3 Seaport Sector ............................................................................................................................. 83
17. Energy Sector ................................................................................................................................. 85
17.1 Electricity Supply .......................................................................................................................... 85
17.2 Supply of Petroleum Products ..................................................................................................... 86
17.3 Natural Gas Supply ...................................................................................................................... 86
17.4 Prohibition to Cut Electricity, Natural Gas or Water Supplies to Vulnerable Consumers ............ 87
17.5 Automatic Extension of the Benefits Applicable to Beneficiaries of the Discount Rate ................. 87
17.6 Suspension of the Mechanism to Review the Regulated Price of Bottled Liquefied Petroleum Gas (LPG) and the Last Resort Tariff of Natural Gas ......................................................... 87
17.7 Suspension of the Demand-Side Interruption Management Service for Economic Reasons Owing to the COVID-19 Outbreak ................................................................. 88

17.8 Extension of the Period of the Permits for Access and Connection of Electricity Generators to the Transport and Distribution Network ......................................................... 88

18. Measures Adopted in the Pharmaceutical and Health Sector .................... 89

18.1 Reinforcement of the SNS ...................................................................................................... 89

18.2 Ensuring the Supply of Necessary Goods and Services ........................................ 89

18.3 Economic Reinforcement Measures ................................................................................. 90

18.4 Digital-Related Measures ................................................................................................. 91

18.5 Other Measures ................................................................................................................ 91

19. Gambling Sector Measures .......................................................................................... 92

19.1 Restriction on Commercial Communications by Entities that Conduct Regulated Gambling Activities........................................................................................................... 92

19.2 Non-Compliance ................................................................................................................... 93

20. Intellectual Property Matters ....................................................................................... 94

20.1 Spanish Patent and Trademark Office .............................................................................. 94

20.2 European Union Intellectual Property Office ................................................................. 94

21. Competition Law ............................................................................................................... 96

21.1 State Aid ................................................................................................................................ 96

21.2 Merger Control ...................................................................................................................... 98

21.3 Sanction Proceedings – Cooperation Between Undertakings and Deadlines ................. 98

22. Digital and Personal Data Protection Implications ................................................. 100

Annex 1
Tax Measures to Address the Social and Economic Impact of the COVID-19 Health Crisis ................................................................................................................................. 103

Annex 2
Contact Lawyers ..................................................................................................................... 111
1. INTRODUCTION

The rapid escalation of the public health crisis caused by the COVID-19 coronavirus has created an unprecedented situation that poses innumerable legal challenges, both on a national and international scale.

Since the World Health Organisation (“WHO”) on 30 January declared this situation to be a public health emergency on an international scale, the seriousness of the crisis has gradually worsened and there are now numerous States, including Spain, that have taken measures to restrict citizens’ freedom of movement, limited or restricted the 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 resulting from this situation. Finally, on 11 March, the WHO confirmed that the COVID-19 outbreak had risen to the level of a pandemic.

Spain reacted to this situation by passing, amongst others, the following main extraordinary regulations: (i) Royal Decree 463/2020 of 14 March 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, Royal Decree 476/2020 of 27 March and Royal Decree 492/2020 of 24 April (the “State of Emergency RD” or the “RD 463/2020”); (ii) Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to address the social and economic impact of COVID-19, which was partially modified by RDL 9/2020, RDL 11/2020 and RDL 15/2020, as defined below (“RDL 8/2020”); (iii) Royal Decree-Law 9/2020 of 27 March adopting supplementary labour-related measures to mitigate the effects of the COVID-19 health crisis, which was partially modified by RDL 15/2020, as defined below (“RDL 9/2020”); (iv) Royal Decree-Law 10/2020 of 29 March on recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19 (“RDL 10/2020”); (v) Royal Decree-Law 11/2020 of 31 March on additional urgent measures to address the social and economic impact of COVID-19, which was partially modified by RDL 15/2020 and RDL 16/2020, as defined below (“RDL 11/2020”); (vi) Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment, which was partially modified by RDL 16/2020, as defined below (“RDL 15/2020”); and (vii) Royal Decree-Law 16/2020 of 28 April on procedural and organisational measures to address the COVID-19 health crisis in relation to the justice system (“RDL 16/2020”).

Undoubtedly, the social and economic impact of the spread of the epidemic and the measures taken to bring it under control is vast and affects several major production sectors, among others, the tourist industry, the services sector (particularly, restaurants, leisure and entertainment) and the industrial and manufacturing sectors.

This Guide offers, on a practical rather than an exhaustive basis, a description in various areas of law (civil, commercial, procedural, administrative, labour and tax, amongst others) to be borne in mind by all economic agents in light of the current circumstances, including a reference whenever applicable to the most salient aspects of the abovementioned provisions.

As the situation develops over the coming weeks, additional regulations will probably be passed.
In order for our clients to receive timely information regarding this issue, our Knowledge Management Department has prepared a regulatory compendium (in Spanish), classified by subject matter and sectors, with the provisions approved with regard to the health crisis created by COVID-19. This compendium will be regularly updated to facilitate ongoing monitoring of the regulations issued in this regard and their potential impact on economic and business activity.

All our analyses and considerations in connection with the legal impact of the crisis caused by COVID-19 are available on our website and on LinkedIn.
2. INITIAL CONSIDERATIONS CONCERNING THE DECLARATION OF THE STATE OF EMERGENCY AND SUBSEQUENT ROYAL DECREE-LAWS IMPLEMENTING URGENT SOCIAL AND ECONOMIC MEASURES

2.1 DECLARATION OF THE STATE OF EMERGENCY

By means of the State of Emergency RD and in accordance with article 116 of the Spanish Constitution and article 4, sections b) and d) of Basic Law 4/1981 of 1 June on states of emergency, exception and siege, the state of emergency has been declared to address the health emergency caused by COVID-19. The state of emergency, initially in force for 15 calendar days from the publication of the State of Emergency RD was first extended to 12 April, then until 26 April and again until 10 May 2020, in all cases with the approvals of the Spanish Parliament granted on 25 March, 9 April and 22 April 2020, respectively. This period may be extended again with the Parliament’s approval.

The following exceptional measures are particularly worth highlighting:

(A) The Government has been designated the competent authority and, under the guidance of the President of the Government, the Ministers of the Interior, Health, Defence and Transport, Mobility and Urban Agenda have been designated as the competent authorities by delegation. These authorities have been conferred extraordinary powers to issue orders, resolutions, provisions and interpretation instructions which, within their specific scope of action, are necessary to ensure the provision of any ordinary or extraordinary services necessary to protect persons, property and places.

Amongst others, the competent delegated authorities have been granted far-reaching powers to implement a number of measures to support the National Health System throughout the national territory, to ensure supplies of the necessary goods and services to protect public health, food supplies and the supply of electricity, petroleum products and natural gas, in addition to regulating mobility and transport services. The relevant administrative procedures need not be followed to implement these measures, but are subject to review by the competent authorities.

(B) A number of measures have been implemented to contain the spread of the disease, including, but not limited to: (i) limiting freedom of movement of the public while the state of emergency is in effect, save for a series of activities such as commuting to work and for other professional or business activities; (ii) suspending in-person education for all centres and ages, cycles, grades, courses and teaching levels, including university education, together with any other educational or training activities at other public or private centres; and (iii) suspending, in general, the activities of retail premises and establishments, together with hotels and restaurants, except for home delivery services.

(C) A stay of procedural and administrative time periods has been decreed, as described in sections 11 (Litigation) and 15 (Public law).
2.2  RDL 8/2020, RDL 11/2020 AND RDL 15/2020: EXTRAORDINARY SOCIAL AND ECONOMIC MEASURES

Under RDL 8/2020, RDL 11/2020 and RDL 15/2020, among others, a wide range of extraordinary measures have been implemented to try to mitigate the economic and social consequences of COVID-19 and to prevent its economic effects from extending beyond the duration of the health crisis.

Apart from trying to address the current difficulties affecting different areas or sectors (e.g. corporate law, insolvency, consumer contracts, etc.), the aim of these measures is threefold:

(A) To protect workers, families and vulnerable groups, including measures to guarantee home assistance for dependant persons, to ensure the continuity of energy and water supplies and to offer telecommunications services and a moratorium on the payment of mortgage and consumer financing fees for vulnerable groups.

In addition, in order to protect families and vulnerable groups, a wide range of measures relating to the lease of a main residence have been implemented. The modification of the “State Housing Plan 2018-2021” is especially noteworthy, as it approves, among other matters, a new aid programme called “Aid programme to help minimise the economic and social impact of COVID-19 on main residence leases”. This programme aims to alleviate the financial burden on tenants of main residences who are in a vulnerable financial situation and are struggling to pay rent or repay the temporary funding to pay rent to which they are entitled as a result of the COVID-19 crisis. Other measures regarding main residence leases are also noteworthy, such as the suspension of evictions (desahucios y lanzamientos) for persons who have no alternative housing, the extraordinary extension of leases and moratoriums or reductions for large property owners and companies or public housing entities.

A number of consumer protection measures have also been implemented, including provisions to facilitate the termination of contracts, to suspend fee payments in continuing-performance contracts or to regulate specific remedies.

(B) To support production and maintain employment, by implementing measures aimed at enhancing flexibility and putting in place systems to enable temporary job adjustment, while increasing the cover available for workers and reducing the burden of social security costs for companies that meet the job continuity objectives. A moratorium on social security contributions has also been approved.

(C) To temporarily support companies suffering from liquidity problems as a result of the discontinuance or reduction of their activity, to which end it provides, amongst others, (i) alternatives to promote financing, including Government-backed guarantee facilities of up to EUR 100 billion; the net borrowing capacity of the Official Credit Institute (“ICO” for its Spanish acronym) will be increased, mainly to provide financing for small and medium-sized companies (“SMEs”) and for the self-employed, together with the protection of the Export Credit Insurance (“CESCE” for its Spanish acronym), which has been boosted to increase its Government-backed guarantees, (ii) tax measures to relax the time periods applicable to various tax obligations and
procedures, (iii) a special regime to suspend public contracts, which prohibits their termination with a view to averting any negative impact on employment and the business viability of the public contracts; and (iv) a moratorium on the payment of rents related to non-residential leases in favour of self-employed workers and SMEs who have been forced to suspend their activities, or whose income has dropped significantly, as a result the COVID-19 health crisis.

2.3 SUSPENSION OF NON-ESSENTIAL ECONOMIC ACTIVITY

In order to limit the movement of persons as much as possible and thus limit the spread of the disease, the extraordinary measure passed by the Government that is likely to have had the greatest public impact to date has been to establish a **compulsory leave** that has affected workers in sectors that are not deemed to be essential and whose activity had not previously been suspended as a result of the declaration of the State of Emergency established by RD 463/2020. This measure is set out in RDL 10/2020 and suspended all non-essential economic activity in Spain. Workers in public and private companies and institutions had to take recoverable paid leave. The annex to RDL 10/2020 provides that some workers were exempted from this measure, such as those providing services in the sectors that RDL 10/2020 classes as essential and those who were able to work remotely (see section 5.1 below).

The leave applied from Monday 30 March to Thursday 9 April 2020, both inclusive. Workers retained their right to the wages they would have earned under normal circumstances, including basic salary and pay supplements. Consequently, the rights and obligations of companies and workers regarding the settlement and payment of social security and other contributions remained in force.

Work time may be recovered from the day following the end of the state of emergency and until 31 December 2020. Recovery of work time will be negotiated during an open consultation period, which will be subject to the rules established in RDL 10/2020.


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1 To consult the list of activities excluded from the recoverable paid leave, see the Annex to RDL 10/2020 at: https://www.boe.es/buscar/act.php?id=BOE-A-2020-4166
3. IMPACT ON CONTRACTS AND CONTRACTUAL OBLIGATIONS

It is important to note that the State of Emergency RD provides for the suspension of prescription and expiry terms of any legal actions and rights (fourth additional provision), but this is not equivalent to establishing a suspension of the legal or conventional terms or deadlines, for compliance or expiration of contractual obligations. Therefore, there is no general or sector specific deferment of contractual obligations or moratorium other than those specifically provided for in respect of vulnerable groups or consumers as described below.

Consequently, companies must pay special attention to the impact that the situation created by COVID-19 may have on their specific contractual relations and especially on their ability to perform their obligations in due time and manner.

Given the extraordinary nature of the health emergency caused by COVID-19 and the measures implemented to limit its effects, several Spanish contract law concepts could lessen the impact of any resulting breaches of contract, in accordance with the circumstances applicable to each case. In particular, it is necessary to evaluate whether any possible breach of obligations relating to the COVID-19 health crisis and its effects may (i) be covered by force majeure, or (ii) justify a potential cancellation or termination of contract on this basis or, if applicable, the modification of its terms and conditions (rebus sic stantibus doctrine).

Two general caveats apply. The first is that the parties' freedom of contract to develop their contractual relations renders the legal regime, in many cases, operative, ancillary or complementary. Thus, the legal regime will only apply where the parties have not agreed to exclude it (either expressly or by agreeing upon a different regulation). Therefore, the starting point for determining the possible legal consequences of this situation must always centre on the contract signed by the parties. Secondly, the context and circumstances of each case also need to be analysed to determine the different consequences this situation may have for any existing contractual obligations. Therefore, given the range of possible scenarios, general conclusions applicable to all types of contract or situation cannot be drawn.

3.1 FORCE MAJEURE

The concept of force majeure is implicitly contained in article 1105 of the Civil Code (the “CC”), which provides that “when not expressly provided by law or made an obligation, no person is liable for events that are unforeseeable or, if foreseeable, are inevitable”. This is a necessarily case-based concept, seated in the existing case law, according to which force majeure is generally reserved for extraordinary events that are beyond the control and organisational reach of a contracting party who intends to resort to it.

In light of the above, and given the exceptional nature of COVID-19 and the actions taken to prevent its spread and effects, both of which underpin the declaration of the state of emergency in Spain, the measures adopted may certainly be categorised as force majeure. In any event, in order to assess each situation, we must, as mentioned above, refer to the specific provisions of the contract (which, except in
consumer contracts\(^2\), may have modified or totally excluded any consequences arising from force majeure). This must be construed in accordance with the common intent of the parties and with regard to standard business practice and good faith as concepts inherent to contracts.

It should also be noted that the effects of force majeure on contractual obligations are not specific but may relate to different aspects of the contract with differing conditions and scope. Thus, force majeure may lead to or indeed justify the release from an obligation to compensate the counterparty for damages when relevant goods or services have not been provided, or a potential modification, cancellation or termination of a contract when the agreed benefit is no longer possible or feasible, thus thwarting the original purpose of the transaction. Yet again, no general conclusion may be drawn regarding this point as this will depend on the specific contract and particular circumstances of the case.

3.2 MODIFICATION OF THE TERMS AGREED DUE TO AN UNFORESEEABLE CHANGE IN CIRCUMSTANCES

Based on the principle of *rebus sic stantibus* (“*rebus*”), and according to academic opinion and case law, albeit with restrictions, a contracting party may request the modification of the terms of the contract based on an extraordinary and unforeseeable event during performance of the contract, rendering the consideration excessively onerous and significantly altering over a significant period of time the economic balance of the contract, thus leading to an unreasonable disproportion between the obligations of the parties to the contract. The academic opinion on the *rebus* principle has usually been applied to continuing-performance contracts, because the performance of one-off contracts generally renders unforeseeable events unable to cause an imbalance of obligations.

In short, the elements required to date by case law as the basis for an action based on this principle are as follows:

(A) The existence of an extraordinary change in the circumstances when performing the contract compared to those existing when the contract was entered into.

(B) Excessive hardship of the obligation in light of the unforeseeable events. This circumstance shall be deemed to exist in essence, when there is imbalance or disproportion between the obligations of the parties to the contract.

(C) Unforeseeability and, in particular, a failure to include the unforeseeable event in the contract, excluding the normal risk inherent to or arising from the contract or risks assumed explicitly or tacitly by a contracting party.

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\(^2\) The Law on consumer protection provides that exemption or limitation of liability clauses are ineffective vis-à-vis the injured party. Therefore, the general conditions contained in consumer and user contracts providing the release from liability of the offering party in the event of force majeure are considered an unfair term. In this regard, our courts have ascertained the unfair nature of clauses inserted in consumer and user contracts and as a result, their nullity in not considering the possibility of the consumer withdrawing from the contract in cases of force majeure. This is considered to impose an excessively burdensome condition and clear limits on the rights of consumers and users which is prohibited.
The ongoing (i.e. not merely episodic or transitory) nature of the change in circumstances, such that the balance of obligations may be reasonably expected to be disrupted for a long period of time.

With regard to this matter, to the best of our knowledge, there is no Spanish case law on the application and interpretation of material adverse change (“MAC”) clauses and material adverse effect (“MAE”) clauses. Their use is less frequent than in common law based systems, although, for example, they are not uncommon in contracts for the acquisition and financing of companies. Nevertheless, to a large extent, there is some common ground between the qualifying cases and effects that other legal systems afford this type of clause and those attributed under Spanish law to force majeure and the rebus principle.

As they are not concepts rooted in Spanish law, the interpretation of the effects of the COVID-19 health crisis and the public measures to combat it in contracts that do contain this type of clause will essentially depend on the terms agreed and other contract-related factors. Therefore, this matter will be relevant solely in cases in which this type of clause has been expressly set out in the contract.

The wording of these clauses varies from case to case, although perhaps this practice is better established in financing contracts that are based on Loan Market Association (LMA) standards. As a general rule, the application of these clauses should be limited to cases in which MAC or MAE deal solely with matters relating to the specific business or sector in which the company with the obligation (or the target in an M&A contract) operates, provided that general, systemic or macroeconomic circumstances are excluded from these provisions.

3.3 Effects on consumer contracts

Article 36 of RDL 11/2020 includes several provisions regulating the rights of consumers in the event of breach of contract by entrepreneurs as a result of the measures adopted during the state of emergency.

3.3.1 Right to terminate consumer contracts

Entrepreneurs and consumers will have the right to terminate the contract where it has become impossible to comply with the contract as a result of the measures implemented during the state of emergency. This right must be exercised within 14 days of it becoming apparent that contract performance is impossible.

This provision is in line with the right of consumers to terminate the contract due to objective breach by the entrepreneur, which is generally recognised in the regulations protecting the rights of consumers and users; notably in Royal Legislative Decree 1/2007 of 16 November, which approved the consolidated text of the General Consumers Law and other complementary laws (“RLD 1/2007”).

However, RDL 11/2020 somewhat adjusts the consequences of this right, perhaps in view of the evidence that, in the current exceptional context, the simultaneous exercise by consumers of their right to terminate the contract in the event of any objective breach by entrepreneurs distributing goods or providing services could irremediably damage the solvency of the latter, thus rendering the right to terminate the contract and, especially, consumers’ rights to reimbursement futile.
In this regard, where contract performance has not become definitively impossible as a result of the measures implemented during the state of emergency, RDL 11/2020 recommends that entrepreneurs offer consumers, in good faith, and that consumers accept, also in good faith, arrangements that seek to re-establish the reciprocity of interests and avoid the termination of the contract. RDL 11/2020 reiterates this recommendation by encouraging the parties to consider, for instance, vouchers or coupons in lieu of reimbursement.

RDL 11/2020 provides that no alternative proposal can be implemented if the parties have been unable to reach an agreement on the revised proposal within 60 days from the date of the request of termination by the consumer or user.

Where the contractual balance cannot be readjusted, for which the consumer just needs to reject the entrepreneur’s proposal, the latter is obliged to reimburse the consumer in full, minus any expenses the entrepreneur has incurred. Such expenses must be duly itemised and made available to the consumer, in the same way as payment was originally made, within a maximum term of 14 days, unless the consumer and user expressly agree otherwise.

### 3.3.2 Specific provisions on continuing-performance contracts

The regulation in RDL 11/2020 of the impossibility of entrepreneurs performing continuing-performance contracts is also worth noting.

Firstly, the regulation encourages entrepreneurs to offer and consumers to accept *ex post* service recovery options (i.e. when the measures implemented during the state of emergency that have made it impossible to provide the service cease to apply). Only if the consumer cannot or does not accept the *ex post* recovery of the service option, would the amounts paid while the service was not provided be refunded or, if the consumer agrees, be offset against future fees for the provision of the service.

Secondly, RDL 11/2020 states that the service provider will refrain from submitting new monthly fees until the service can be provided as usual.

Thirdly, as an exception to the right to terminate generally recognised for consumers in RLD 1/2007, RDL 11/2020 provides that the right to terminate does not apply when it is impossible to continue providing services due to the measures implemented during the state of emergency, unless the entrepreneur and consumer agree otherwise.

### 3.3.3 Specific provisions on package travel contracts

Finally, RDL 11/2020 also provides for specific regulations for the termination of package travel contracts, modulating the general regulation provided for in article 160.2 of RLD 1/2007. Thus, it maintains the right to termination of the contract by the consumer in the event that the execution of the package travel or, in general, the transport of passengers to the destination has become impossible, but limits the trip organiser’s obligation to reimburse the consumer: the trip organiser will only be obliged to reimburse the consumer the part of the amount that the consumer had paid to purchase the trip that the organiser has recovered from the suppliers of services included in the package travel contract.
In relation to the part that the organiser has not recovered from the service providers, the organiser will comply with its obligation to reimburse the consumer by giving him or her a voucher valid for one year from the end of state of emergency or any of its extensions, worth the amount of the pending reimbursement. If the consumer does not use the voucher before it expires, the consumer may request a full refund of the amounts paid.

RDL 11/2020 also states, without specifying the details of this requirement, that there must be sufficient financial resources to be able to execute the temporary voucher offered.

This regulation supplements Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, which continues to apply in full.
4. CORPORATE MATTERS

RDL 8/2020, partially modified by RDL 11/2020, has implemented some measures to overcome the obstacles and alleviate the difficulties faced by companies during the COVID-19 health crisis (articles 40 and 41 RDL 8/2020). On 26 March, the Spanish Association of Registrars and the Spanish National Securities Market Commission (“CNMV” for its Spanish acronym) published a joint communication which provides guidelines for companies on changes to profit allocation proposals that have already been approved by their management bodies.

4.1 MEASURES RELATING TO THE MANAGEMENT BODY OF COMPANIES AND PROFESSIONAL PARTNERSHIPS

During the state of emergency and even when not provided in the articles of association:

(A) The meetings of the management body and other committees (delegated, statutory and voluntary) may be held by tele or video conference, provided that all its members have the necessary means, the secretary to the body recognises their identity and states so in the minutes, which must be sent immediately to the email addresses of each of the attendees.

(B) The resolutions of the management body and other committees (delegated, statutory and voluntary) may be passed by circular resolution if so determined by the chairperson or at the request of two of its members. It is not, therefore, necessary during this period for all the directors to be in agreement with this procedure to pass resolutions, as is currently the case.

4.2 MEASURES RELATING TO DRAWING UP AND APPROVING THE ANNUAL ACCOUNTS

(A) The term to draw up the (individual and consolidated) annual accounts is three months from the date the state of emergency ends, although they will also be valid if drawn up during the state of emergency, in which case they may be audited within the legally established period or benefit from the extension referred to in paragraph (C) of this section.

(B) The term for general meetings to be held to resolve on their approval is a further three months following the term to draw up the accounts. In the case of listed companies, in the case of listed companies, they are given a certain deadline for holding the 2020 ordinary general meeting: within the first ten months of the financial year, which will generally mean until 31 October.

(C) In the case of companies subject to compulsory or voluntary audits, should the management body have already drawn up the annual accounts by the date the state of emergency was declared or while it is in effect, the term for approval by the auditor is extended for two months from the date the state of emergency ends.

4.3 MODIFICATION OF PROFIT ALLOCATION PROPOSALS

RDL 11/2020 has added a new section to articles 40 and 41 of RDL 8/2020 to give legal protection to the guidelines included in the joint communication issued by the Spanish Association of Registrars (Colegio de Registradores de España) and the CNMV of 26 March. These provisions address the situation of companies that have already drawn up their 2019 annual accounts, including a proposal for the allocation
of profits (in accordance with article 260.20 of the Capital Companies Law\(^3\)), when the management body wishes to modify it in view of the uncertainty created by the COVID-19 health crisis and, in the case of financial entities, in order to comply with the recommendations of the prudential supervisory authorities\(^4\).

Although these guidelines apply to capital companies, their essential scope of application is that of listed companies or large capital companies with dispersed groups of shareholders.

The new wording of RDL 8/2020 (articles 40.6 bis and 41.3) provides two alternatives in this scenario:

(A) If the general meeting has not been called yet, the management body may change the profit allocation proposal in the annual accounts report for another proposal. The management body must justify the new proposal on the situation created by COVID-19 and the new proposal must explain the new circumstances and include a letter from the auditor stating that the change made has no bearing on the audit. Listed companies that decide to adopt this measure must comply with special disclosure obligations: the new proposal, its justification and the auditor’s letter must be made public as supplementary information to the annual accounts, as soon as they are approved, on the company’s website and on the CNMV’s website as “Other Relevant Information” or, where appropriate, as “Inside Information”.

(B) If the general meeting has already been called, the management body may withdraw the approval of the profit allocation from the agenda included in the notification of the meeting and submit a new proposal to be considered in a subsequent meeting that must be held within the statutory period for holding the ordinary general meeting (and which has been extended by RDL 8/2020 – see section 4.2(A) above –). The management body’s decision to submit a new proposal must be published before the general meeting that has already been called is held. The requirements explained above that are to be met when a general meeting has not already been called (i.e. justification, auditor’s letter and publicity) also apply when a new proposal is made in these circumstances. With regard to filing the accounts, the certificate will simply reflect the approval of the annual accounts and a supplementary certificate on the approval of the profit allocation proposal will be filed at a later date.

In addition to these two alternatives, and although not expressly provided for in RDL 8/2020, the annual accounts may be drawn up again and a new profit allocation proposal made, as indicated in the joint communication issued by the Spanish Association of Registrars and the CNMV. If the general meeting

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\(^3\) Consolidated text of the Spanish Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July (the “Capital Companies Law”).

\(^4\) On 27 March, the European Central Bank issued a recommendation on dividend distributions by credit institutions during the COVID-19 health crisis (ECB/2020/19). It repeals the previous recommendation to credit institutions on the distribution of dividends in 2020 for financial year 2019 (ECB/2020/1), and recommends that, at least until 1 October 2020, no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by credit institutions for financial years 2019 and 2020, and that credit institutions refrain from share buy-backs aimed at remunerating shareholders. The European Insurance and Occupational Pensions Authority issued an announcement in the same vein on 2 April.
has already been called when the annual accounts are drawn up again, the meeting will have to be called off (see section 4.4(A) below).

4.4 MEASURES RELATING TO THE GENERAL MEETING

(A) During the state of emergency and even if not provided in the company’s articles of association, the general meeting may be held by tele or video conference, provided that all persons entitled to attend or those representing them have the necessary means, the secretary of the body recognises their identity and states it in the minutes, which must be sent immediately to the email addresses.

(B) The management body may cancel or modify the time and place of the meeting (a reference to “date” was probably also intended) when called prior to the declaration of the state of emergency. To this end, an announcement must be published on the company’s website at least 48 hours prior to the scheduled date and, if the company does not have a website, in the BOE (which is probably an erratum and the intended reference was to the BORME, that is, in the Official Commercial Registry Bulleting not Spain’s Official Gazette). Should the meeting be called off, the management body must call it again within one month after the state of emergency ends.

(C) Notaries required to attend the general meeting to take the minutes of the meeting may do so using remote, real-time methods to ensure their ability to fulfil their role.

4.5 MEASURES RELATED TO THE LEGAL GROUNDS FOR DISSOLUTION

If grounds for dissolution exist in companies by reference to the law or the articles of association (such as, especially, if their equity falls below half of their share capital as set out in article 363.1.e) of the Capital Companies Law), the term for the management body to call a general meeting (to decide on the dissolution or dismiss the grounds for dissolution) will be suspended until the end of the state of emergency. This measure not only applies to companies in which grounds for dissolution exist during the state of emergency, but also to companies that are in that situation before the state of emergency was declared. RDL 8/2020 (article 41.12) establishes that should the grounds for dissolution arise during the state of emergency, directors will not be liable for any corporate debts incurred during this period. In this way, they will be able to operate with certainty and without fear of being held personally liable for company debts during this period.

In addition, RDL 16/2020 excludes the results of financial year 2020 from the calculation of losses for the purposes of assessing whether there are legal grounds for dissolution as provided for in article 363 of the Capital Companies Law. The Law does state, in any event, that if the results for financial year 2021 reduce the company’s equity below half of the amount of its share capital, the directors must call a meeting or any shareholder may request, within a period of two months from the end of the financial year in accordance with article 365 of the Capital Companies Law, a meeting to proceed with the dissolution of the company, unless the share capital is increased or reduced sufficiently. This is without prejudice to the duty to apply for insolvency in accordance with RDL 16/2020 (see section 10).
This means that the result of financial year 2020 will not be taken into account to calculate a company’s equity for the purposes of dissolution due to qualified losses. This measure aims to avoid a widespread massive dissolution of companies in view of the risk for directors of keeping them in business when grounds for dissolution exist.

4.6 OTHER MEASURES APPLICABLE TO COMPANIES DURING THE STATE OF EMERGENCY

(A) Shareholders may not exercise the right to withdrawal whether established by law or in the articles of association.

(B) Companies which term of existence has elapsed will not be dissolved during the state of emergency. Dissolution in these cases will take place two months after the end of the state of emergency.

4.7 MEASURES APPLICABLE TO LISTED COMPANIES

For financial year 2020 (and unrelated to the duration of the state of emergency) RDL 8/2020 (article 41) has implemented exceptional measures applicable to companies which securities are admitted to trading on a regulated EU market (i.e. typically to Spanish sociedades anónimas which shares are admitted to trading on any of the four Spanish stock exchanges). Specifically:

(A) The annual financial report and audit report may be drawn up and filed with the CNMV up to six months from financial year-end. Normally, this means that companies which fiscal year coincides with the calendar year, have until 30 June 2020 (for further information see section 14 (Securities market) below).

(B) The ordinary general shareholders’ meeting may be held within the first ten months of the financial year (i.e. for companies which financial year coincides with the calendar year, until 31 October 2020).

(C) Even if a company’s articles of association do not establish that shareholders can attend general meetings and vote remotely, this will be permitted (under articles 182, 189 and 521 of the Capital Companies Law) and meetings may be held anywhere in Spain provided that this is stipulated in the notice calling the meeting. If a meeting had already been called when the state of emergency was declared, a second notice can be sent to take advantage of these alternative arrangements, provided that the new notice is published at least five calendar days prior to the scheduled date of the meeting.

RDL 8/2020 (article 41.1.d) also provides solutions in cases in which, despite these alternative measures, it is still not possible to hold the meeting at the location set out in the notice as a result of the restrictions imposed by public authorities. In these cases, quorate meetings can be moved to another location (in the same province (provincia)), provided that the attendees are given sufficient time to travel to the new venue, and if the meeting is not quorate, a new notice can be sent giving at least five calendar days’ notice of the new date for the meeting, with the same agenda and subject to the same publicity requirements.
In the cases indicated above, companies can avoid shareholders attending the meeting in person when the original or subsequent call to the meeting establishes that they can only participate (i) remotely, (ii) by granting a proxy to the chairperson by distance communication means, and (iii) by voting in advance using distance communication means, regardless of whether the companies’ articles of association are silent on this matter. Board of directors meetings may also be held by tele or video conference (again, even if the articles of association are silent on this matter), in which case the meeting is deemed to have been held at the company’s registered address.

In addition, the Spanish Association of Registrars (Colegio de Registradores de España) and the CNMV issued a joint communication on 28 April 2020 in relation to the general meetings of listed companies called and to be held while the restrictions or recommendations of the authorities in relation to people’s mobility or the limitation of the number of people present at a meeting are in force.

The communication indicates that the provisions of RDL 8/2020, explained in this section, apply while the restrictions or recommendations are in force. Moreover, the boards of directors of the listed companies should also be given, as stated in the communication issued by the CNMV on 10 March 2020, ample scope, in accordance with the law, to implement measures and solutions that prioritise public health and aim to diminish the spread of COVID-19, even if not provided in the company’s articles of association, the board of directors regulations or in the notice calling the meeting, provided that the shareholders’ rights to information, assistance and voting and the principle of equal treatment of shareholders is guaranteed.

Without prejudice to the reasonableness of the Spanish Association of Registrars and the CNMV’s approach, we note that the measures approved by RDL 8/2020 in relation to the holding of general meetings of listed companies apply during financial year 2020 and are therefore unrelated to the duration of the state of emergency and restrictions on mobility and the holding of meetings.

In line with the above, the Spanish Association of Registrars and the CNMV consider admissible and recommended that the notice calling the meeting regulates the holding regime to be applied to the general meeting in the event that there are restrictions or recommendations to the mobility and the holding of a meeting, as well as in the event that such restriction and recommendation have ceased at the time the general meeting is held. When applying this alternative, it is appropriate that the call establishes the publication of a complementary announcement to specify the regime for holding the meeting a minimum of five calendar days before the date of the meeting.

In relation to the right of equal treatment of shareholders who are in the same situation, provided for in article 514 of the Capital Companies Law, the communication states that potential restrictions or recommendations by public authorities in relation to the mobility of people or with respect to meetings of more than a certain number of people that affect all or part of the national territory could in practice restrain the right of all or part of the shareholders to attend, personally or by proxy, the general meeting at the location initially indicated. In this scenario, the board of directors, in order to avoid discriminatory situations, may decide to hold the meeting by electronic means only, as provided for in article 41.1.d) of RDL 8/2020.
5. **LABOUR MATTERS**

The Government has issued successive regulations that include labour-related measures, in order to deal with the COVID-19 health crisis, including RDL 8/2020, RDL 9/2020, RDL 10/2020, RDL 11/2020, Royal Decree-Law 13/2020 of 7 April adopting urgent measures concerning agricultural employment (RDL 13/2020) and RDL 15/2020.

In relation to the labour-related measures implemented, the most recent and far-reaching to date is the compulsory paid leave established by RDL 10/2020. Its aim was to restrict mobility in order to reduce the spread of COVID-19. To this end, the strategy was not to introduce an outright ban on certain activities, but rather to approve a compulsory period of leave between 30 March and 9 April 2020, both inclusive and which excluded workers who provided activities considered to be essential.

Notwithstanding the above, in view of the economic impact of the COVID-19 health crisis, companies are required to assess the need to implement other labour-related measures to mitigate the consequences of the crisis and implement guidelines based on the regulations approved by the authorities.

5.1 **COMPULSORY RECOVERABLE PAID LEAVE**

RDL 10/2020 introduced a period of recoverable paid leave, which was compulsory for workers who provided services in public and private companies and institutions whose activity had not been suspended by the declaration of the state of emergency in RD 463/2020.

Workers in any of the following circumstances, were exempted from the scope of the application of this compulsory leave: (i) those who provided specific services, considered essential and listed in the annex to RDL 10/2020; (ii) those who were hired by companies that had applied for or were currently implementing temporary layoff measures or that had been authorised to apply temporary layoff measures during the period of compulsory recoverable leave; (iii) those who were on leave for temporary incapacity or whose contract was suspended for other statutory reasons; and (iv) those who could continue to work as normal by teleworking or through any other form of telecommuting.

This compulsory leave applied from Monday 30 March to Thursday 9 April 2020, both inclusive, and workers retained their right to receive the wages they would have earned under normal circumstances, including their basic salary and pay supplements. Consequently, the rights and obligations of companies and workers regarding the settlement and payment of social security and other contributions remained in force. Work time may be recovered from the day following the end of the state of emergency until 31 December 2020. Recovery will be negotiated during an open consultation period, which will be subject to the rules established in RDL 10/2020.

5.2 **TELEWORKING**

RDL 8/2020 states that companies must implement organisational systems that enable activities to continue by alternative methods, especially teleworking. Companies must implement measures when technically and reasonably possible and when the need to adapt is proportionate. These alternative measures, teleworking in particular, must be prioritised over a temporary discontinuance or reduction of
activities. RDL 15/2020 has extended the term of application of these measures for a three month period after the end of the state of emergency.

5.3 ERTE DUE TO FORCE MAJEURE

Force majeure is an exceptional cause for implementing temporary layoffs ("ERTE" for its Spanish acronym), i.e. a procedure that allows the suspension of employment contracts or the reduction of working hours. RDL 8/2020 expressly considers force majeure temporary layoffs and reductions of working hours directly caused by (i) the loss of business as a result of the COVID-19 outbreak, including the declaration of the state of emergency, which entail the suspension or cancellation of activities, temporary closure of venues where people gather, restrictions on public transport and, in general, the movement of persons and/or goods, a lack of utilities that significantly hinders the carrying out of ordinary business or (ii) urgent and extraordinary situations due to the infection of the workforce or the implementation of preventive isolation measures as decreed by the health authorities. Furthermore, RDL 8/2020 establishes certain rules aimed at speeding up this procedure.

The existence of force majeure for the purposes of executing an ERTE must be determined by the labour authorities (with retroactive effects from the date of existence of force majeure) after reviewing the application and documents submitted by the company for this purpose. The labour authorities have five days to issue a decision.

If force majeure is deemed to exist, the company may implement the ERTE on the terms it deems appropriate. In any event, the measures must be proportionate and limited to the workers affected by force majeure.

RDL 15/2020 amended RDL 8/2020 to establish that force majeure can be partial, so that it may affect only a part of the business or a part of the staff of companies engaged in those activities that are considered essential.

In the event of temporary layoffs and reduction of working hours due to temporary force majeure resulting from the COVID-19 outbreak, companies will be exempt, at their request, from paying social security contributions during the temporary layoff or reduction of working hours when the company has fewer than 50 workers. If the company has 50 or more workers, this social security exemption amounts to 75% of the company contribution.

In this context, an obligation to maintain employment for a period of six months from the date activity resumes has been established, the scope and consequences of which are rather vague.

5.4 ERTE BASED ON OBJECTIVE GROUNDS (DROP IN DEMAND)

Companies may also consider carrying out an ERTE if the COVID-19 outbreak causes a drop in demand for its products or services. A severe (but temporary) drop in demand resulting in a disproportional workforce is generally a valid reason to implement an ERTE.

An ERTE must be proportional to the drop in demand and affect only employees whose services have been affected by the drop in demand. For this reason, temporary layoff are generally linked to total or
partial discontinuance of business. On the other hand, reductions of working hours are generally linked to a decrease in the volume of work. In this case, the working hours may be reduced by between 10% and 70%.

During an ERTE, salary payments may be suspended or decreased in proportion to the reduction in working hours, unless otherwise agreed during the consultation period. However, companies are still obliged to pay the relevant social security contributions.

During the period of suspension or reduction of working hours, employees have the right to collect social security unemployment benefits, in whole or in part.

To implement an ERTE based on objective grounds, companies must have documents in place that provide detailed evidence of the need for the ERTE and negotiate for a maximum period of seven days with the employee representatives, as part of a consultation period, to agree the terms under which the ERTE is to be implemented. Additionally, workers may have up to five additional days prior to the consultation period to elect their representatives. This process is to be supervised by the labour authorities.

If an agreement is reached, it will govern the ERTE. Otherwise, the company is free to decide the terms of the ERTE. In both cases, employees may file challenged the ERTE in court. For this reason, the workers' cooperation is fundamental to reach a swift agreement and avoid future litigation.

5.5 ERTEs in Companies in Insolvency Proceedings

RDL 11/2020 incorporates a new tenth additional provision to RDL 8/2020, in order to make it easier for companies in insolvency proceedings to implement an ERTE when they have been affected by the COVID-19 health crisis.

According to this provision, the measures for temporary layoffs and reduction of working hours based on force majeure and for economic, technical, organisational and production reasons will apply to companies in insolvency proceedings, provided that the factual assumptions referred to in articles 22 and 23 of RDL 8/2020 are met.

These procedures will be governed by the Workers’ Statute (“ET” for its Spanish acronym), with the specificities provided for in articles 22 to 28 and in the sixth additional provision of RDL 8/2020; article 64 of the Insolvency Law will not apply. Therefore, these procedures will not be handled by the insolvency court.

The following specificities also apply to the processing and resolution of these procedures:

(i) The case must be applied for or notified by the company in insolvency proceedings with the approval of the insolvency trustee, or by the insolvency trustee directly, depending on the extent to which the debtor’s economic rights have been restricted or suspended.

(ii) The insolvency trustee will be part of the consultation period established in article 23 of RDL 8/2020.
(iii) The decision to apply the measures on temporary layoffs or reduction of working hours, as provided for in article 23 of RDL 8/2020, requires the approval of or must be directly implemented by the insolvency trustee, depending on the extent to which the debtor’s economic rights have been restricted or suspended, in the event that no agreement is reached in this respect during the consultation period.

(iv) In any event, the judge must be informed immediately by electronic means of the request, resolutions and measures applied.

(v) In the cases provided for in article 47.1 paragraphs 10, 15 and 16 of the ET and article 33.6 of Royal Decree 1483/2012 of 29 October, which approves the Regulation on the procedures for collective redundancies, temporary layoffs and reduction of working hours, the insolvency court will hear any such appeals. These challenges will be handled through an insolvency procedural plea on labour matters and the ruling will be subject to appeal for reversal.

5.6 Timetable Adjustment

If the applicable collective bargaining agreement ("CBA") is silent on this matter and no agreement has been reached with the employee representatives, companies may adjust up to 10% of the working hours throughout the year.

For instance, if the annual working hours is 1,800, the company may distribute 180 hours in an uneven manner. Thus, a company may suspend up to 10% of the annual working hours and then “recoup” them throughout the year (i.e. a store of hours). Although the hours are distributed unevenly, companies must continue to pay employees their regular wages.

To implement this measure, employees must be given five days’ notice and the rules regarding rest times and working hours must be complied when the hours are “recouped”, which can make its implementation difficult in practice.

5.7 Other Labour Regulations

RDL 9/2020 has introduced labour-related provisions, among which the following are noteworthy:

(i) Force majeure and the economic, technical, organizational and production reasons to implement the measures to suspend contracts and reduce working hours as a result of the COVID-19 health crisis will not be deemed valid justification to terminate employment contracts or dismiss employees.

(ii) The suspension of temporary contracts as a result of an ERTE, including training, relief and interim contracts, will interrupt the calculation of both the duration of these contracts and the reference periods equivalent to the suspended period for each of these types of contracts.

(iii) The review and control systems concerning ERTEs and social security measures are reinforced.

(iv) The submission by a company of applications with false or incorrect data may lead to the imposition of fines. Companies will also be penalised for requesting employment-related measures that are not necessary or are not related to the cause that gave rise to them, when
they result in the granting of undue benefits or the undue application of reductions of social security contributions.

(v) Unjustifiably recognising employee benefits for reasons that are not attributable to them, as a result of the breaches provided above, will trigger an ex officio review of the act of recognising the benefits. In this case, and without prejudice to the administrative or criminal liability that may arise in law, the company must pay the amounts received by the employee to the relevant managing entity.

5.8 SOCIAL SECURITY MEASURES

Among others, RDL 11/2020 includes the following social security measures described in this section 5.8.

5.8.1 Moratorium on social security contributions

Article 34 of RDL 11/2020, as amended by RDL 13/2020, empowers the Spanish Social Security Treasury to grant six-month moratoriums, without interest, to companies and self-employed workers included in any Social Security regime, who request it and meet the requirements and conditions to be established by ministerial order.

The moratorium, where granted, will affect the payment of social security and joint collection contributions, payable by the employer, which accrual period, in the case of companies, is between April and June 2020 and, in the relation to self-employed workers, between May and July 2020, provided that the activities they carry out have not been suspended due to the state of emergency.

The moratorium does not apply to the listing of account codes for which the companies have obtained exemptions in their contributions, as well as in the joint collection quotas, regulated in article 24 of RDL 8/2020, as a result of the procedures of temporary layoff and reduction of working hours due to force majeure referred to in that article (see section 5.3).

In accordance with the provisions of the legislation on labour infringements and sanctions, applications submitted by companies or self-employed workers that contain false or incorrect information will give rise to sanctions. For these purposes, the following is considered to be false or incorrect information: “providing the Social Security Treasury, when applying for registration as a company, or when registering an employee in a special regime, or when modifying already registered information, information about a false or incorrect economic activity, or any false data in order to fulfil specific conditions or requirements” referred to in article 34.1 of RDL 11/2020 (article 34).

5.8.2 Deferment of outstanding social security payments

Companies and self-employed workers included in any social security regime or those allowed to use the Social Security Electronic Data Referral System (RED System), provided that they are not benefiting from another deferral, may request a deferral of their outstanding social security payments due between April and June 2020, as established in the social security regulations, for which purpose an interest rate of 0.5% will apply rather than that established in article 23.5 of the Consolidated Text of the General Social
Security Law. The requests for deferment must be made within the first ten calendar days of each of the regulatory periods for payment indicated above.

5.8.3 Temporary special allowance for female domestic workers

Those persons who were registered with the Special System for Domestic Workers of the General Social Security before the entry into force of RD 463/2020, are entitled to the extraordinary subsidy for lack of activity when:

(i) they have ceased to provide services, in whole or in part, on a temporary basis, in order to reduce the risk of contagion, through no fault of their own, in one or more homes and on the occasion of the COVID-19 health crisis; or

(ii) their employment contract has been terminated for the dismissal cause set out in article 49.1.k of the ET or by the employer’s unilateral termination due to the COVID-19 health crisis.

This benefit, which is retroactive if the cause is the COVID-19 health crisis, is equal to 70% of the employee’s calculation base. It is compatible with other activities, but the payments may not exceed the national minimum wage.

5.8.4 Allowance for exceptional circumstances applicable to temporary workers

Persons under a temporary contract of a minimum of two months that has expired after the declaration of the state of emergency and who do not reach the minimum contribution period to receive unemployment benefits may be granted an extraordinary subsidy of 80% of the monthly amount of the National Indicator of Earnings (IPREM for its Spanish acronym), subject to requirements based on the family unit’s income.

5.8.5 Unemployment condition arising from the termination of contracts during the trial period during the state of emergency

Pursuant to RDL 15/2020, employees whose contracts are terminated during the trial period after 9 March 2020 are eligible for unemployment benefits, regardless of the cause of termination of their contracts.

Likewise, employees who resigned from their employment after 1 March 2020 and had a firm employment offer that was subsequently withdrawn as a result of the COVID-19 crises are also eligible for unemployment benefits.
6. TAX MATTERS

With a view to alleviating the effects caused by COVID-19 and lightening the financial burden for taxpayers, different tax rules have been passed and included in RDL 7/2020 dated 12 March on urgent measures to address the economic impact of COVID-19 (“RDL 7/2020”), in the State of Emergency RD, in RDL 8/2020, in RDL 11/2020, in Royal Decree-Law 14/2020 of 14 April which extends the deadlines for the filing and payment of certain tax returns-assessments or self-assessments (“RDL 14/2020”), in RDL 15/2020 and in RDL 16/2020. However, further measures may be implemented in the coming days depending on the circumstances5. This section describes the scope and conditions applicable to the provisions in effect on the date this Guide is published.

6.1 TAX DEBT DEFERRAL

RDL 7/2020, which came into effect on 13 March, regulates financial support measures, including increased flexibility regarding the deferment of tax payments.

As regards RDL 7/2020, its aim by introducing these measures is to mitigate the possible economic impact that the extended confinement may have on SMEs and the self-employed. Below is a brief summary of the measures implemented by RDL 7/2020.

(A) Objective scope of the deferment

The deposit of tax debts arising from all returns-assessments or self-assessments which deadline for presentation ends on 13 March to 30 May 2020, both inclusive, may be deferred without furnishing any form of guarantee, provided they are for a sum lower than EUR 30,000.

In addition, the following tax debts may be deferred:

(i) Withholdings and payments on account;

(ii) Statutory taxes (i.e. value added tax).

(iii) Corporate income tax instalments.

(B) Subjective scope of the deferral

Only debtors who are individuals or companies with a turnover not greater than EUR 6,010,121.04 in 2019 may apply this deferment.

(C) Deferral conditions

Prior debts will be deferred for six months. No default interest will accrue during the first three months.

(D) Application for deferral

Taxpayers seeking to defer payment as provided in RDL 7/2020 must:

5 In addition, the regional and local tax authorities have recently approved specific tax rules that apply in their territory which suspend the deadlines to submit and settle self-assessments.
(i) Present the self-assessment in the usual manner, by checking the option “acknowledgement of debt”.

(ii) Go to the procedure “File request”, in the deferment section of the Spanish Tax Agency (AEAT)’s website.

In addition to completing the fields for taxpayer identification, debts for deferment and direct debit bank details, the following fields must be checked:

- Request to opt for the application of article 14 of RDL 7/2020 dated 12 March on urgent measures to address the economic impact of COVID-19: check “YES”.
  If “NO” is checked, the request will be processed as a deferral subject to the general terms of the General Tax Law.
- “Type of guarantees offered”: check “Exemption”.
- “Proposed instalments; no. of instalments”: add number “1”.
- “Frequency”: check “Not applicable”.
- “Date first instalment”: add the date six months from the ordinary submission deadline for self-assessment, which must end on 05 or 20 of the relevant month.

6.2 Suspension of terms

In addition, and as stated above, during the state of emergency all procedural terms under administrative jurisdiction are suspended. In accordance with RDL 16/2020, all these terms will be deemed to restart on the first business day following the date the suspension is lifted. Additionally, RDL 16/2020 establishes the following:

(A) The terms to announce, prepare, formalise and lodge appeals against court rulings and other resolutions that, according to the procedural laws, end the proceedings and that are notified while the terms are suspended, as well as those notified within 20 business days following the lifting of the suspension, are extended for a period equal to the period provided to announce, prepare, formalise and lodge appeals in the relevant law. This provision does not apply to proceedings which terms were specifically excluded from the suspension.

(B) In the context of the administrative jurisdiction, from the lifting of the suspension of the procedural terms to 31 December 2020, claims against acts and decisions of the public authorities that deny the application of legally-established aid and measures to mitigate the economic effects of the COVID-19 health crisis will be given priority and handled first.

(C) The period between 11 and 31 August 2020 (except Saturdays, Sundays and national public holidays, unless they are business days according to procedural laws) are declared business days, and, for the purposes of article 183 of the Basic Law on the judiciary, urgent.

6 https://www.agenciatributaria.gob.es/AEAT.sede/procedimientoini/RB01.shtml
For tax purposes, the prescription and expiry terms of any legal actions and tax rights are suspended from 18 March to 30 May 2020.

Other tax terms which are subject to special regulations, are modified solely as regards article 33 of RDL 8/2020, which provides specific measures regarding the suspension of deadlines in tax matters but which do not affect the time limits for filing returns and tax self-assessments. These measures are analysed in Annex 1.

### 6.3 Measures Implemented by RDL 11/2020

RDL 11/2020, which came into force on 2 April, introduces the following main measures:

**A** The suspension of procedural terms provided for in article 33 of RDL 8/2020 applies to actions, formalities and procedures carried out and processed by regional and local tax authorities.

**B** From 14 March 2020 to 30 May 2020, the period to file appeals for administrative review or financial claims begins from the latter date. This period will not be included in the maximum duration of the period to enforce resolutions of tax appeal boards. Likewise, during this time, limitation periods and the prescription of any actions and rights provided for in the tax regulations are suspended.

### 6.4 Deferral on the Filing and Payment of Certain Returns-Assessments or Self-Assessments

Taxpayers with an annual 2019 turnover that does not exceed €600,000 have been granted a deferral on the filing and payment of returns-assessments or self-assessments, which deadline for presentation ends between 15 of April to the 20 May 2020, both inclusive, until 20 May 2020. The deferral applies to federal taxes, such as Corporate Income Tax, VAT and Personal Income Tax. The deadline to file tax returns which are paid by bank charge will also be increased from 15 April to 15 May 2020.

In the case of taxpayers who are considered public administrations, including the Social Security, it will be required that their last annual budget approved does not exceed €600,000.

Therefore, the deferred will affect to the filing of the VAT return of the first quarter of 2020, to the first instalment payment on account of the Corporate Income Tax and to the payments on account of the Personal Income Tax.

This measure is not available to taxpayers filing tax returns on a group consolidated basis, as it refers to CIT and VAT, respectively. It is also not applicable to customs assessments.

### 6.5 Measures Implemented by RDL 15/2020

(A) From 23 April 2020 to 31 July 2020, the VAT rate applicable to the supply of healthcare material (from a person located in Spain, in the EU or outside the EU) whose recipients are public law entities, clinics or hospital centres, or private entities of a social nature (entidades de Derecho

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7 As provided by Royal Decree 465/2020 of 17 March amending Royal Decree 463/2020 of 14 March declaring the state of emergency to address the COVID-19 health crisis published on 18 March 2020.

8 Annex 1 to this Guide examines these measures in detail.
Publico, clinicas o centros hospitalarios, o entidades privadas de caracter social) established in article 20.3 of the VAT Law 37/1992 (LIVA) is reduced to zero. These transactions will be documented in an invoice as exempt. Moreover, the application of the 0% VAT rate do not limit the right to deduct the input VAT of the suppliers.

(B) Taxpayers with an annual turnover of less than EUR 600,000 in 2019 whose tax period began from 1 January 2020 onwards may opt to calculate the first advance payment of CIT under the method set forth in article 40.3 of the CIT Law, based on taxable income generated during the first 3, 9 or 11 months of the calendar year, as the case may be, by filing before 20 May 2020 the first CIT advance payment determined by applying the said method.

Of those taxpayers which had not been able to elect for this option in such first advance payment of CIT, may opt to calculate the second advance payment of CIT under the said method by filing the second CIT prepayment following said option. For these purposes, the first CIT advance payment could be used as a credit against the two following CIT advance payment on account of the same tax period.

Nevertheless, this measure is not available to taxpayers filing tax returns on a consolidated group basis

The option made for this method will only apply for the advance payments of CIT corresponding to the same tax period.

(C) Taxpayers subject to PIT under the objective assessment method (método de estimación objetiva) who waive the application of this method by filing within the assessment period the advance payment of PIT corresponding to the first quarter of 2020 calculated under the direct assessment method, will be able to calculate their net income under the objective assessment method in 2021, provided that they meet the requirements for it to be applicable and revoke the waiver to the objective assessment method during December, or by filing within the assessment period the advance payment of PIT corresponding to the first quarter of 2021 calculated under the objective assessment method.

The waiver to the objective assessment method and its subsequent revocation will have the same effects in respect of the VAT or General Indirect Canary Islands Tax special regimes (simplified system and special regime for agriculture and fisheries).

(D) Taxpayers subject to PIT under the objective assessment method (método de estimación objetiva) (carrying out economic activities included in Annex II of Order HAC/1164/2019), will calculate the advance payments of PIT by excluding from each quarter the calendar days in which the State of Emergency has been in force.

The same measures will apply for the calculation of 2020 VAT quarterly advance payments under the simplified system (régimen simplificado de IVA).

(E) Returns-assessments or self-assessments on federal taxes, for which the deadline for submission is between 20 April 2020 and 30 May 2020, filed by the taxpayer before the end of the voluntary
period of payment, without payment of the tax debt, will not enter into an enforcement period (período ejecutivo) as long as all of the following requirements are fulfilled:

1. The taxpayer has to apply within the voluntary period or before it commences, for the financing line mentioned in article 29 of RDL 8/2020 for the payment of the tax debt and it must cover at least such amount;

2. The taxpayer must submit to the AEAT within five days after the deadline to file the returns-assessments or self-assessments a certificate issued by the financial entity that evidences the taxpayer’s request for the financing line, including the amount and the tax debt covered by it;

3. The financing line mentioned above has to be granted for, at least, an amount equal to or exceeding the tax debt; and

4. The tax debt has to be paid in full as soon as the financing line is granted. This requirement will not be fulfilled if the tax debt is not paid within one month after the deadline for submission of the relevant returns-assessment or self-assessment.

If any requirement is not met, the beginning of the enforcement period would not have been prevented.

To achieve their purposes, the Spanish tax authorities will have direct and, where appropriate, online access to the information and to the complete records related to the request and granting of the financing line.

Moreover, in the case of tax debts derived from returns-settlements and self-assessments filed prior to 23 April 2020 in respect of which the enforcement period has already begun in accordance with the provisions of article 161 of the General Tax Law, they shall be considered to be in the voluntary period of entry when the requirements set forth above are met. In particular, the five-days term to communicate the certificate issued by the financial entity will begin as of 24 April 2020. The breach of any requirement will determine the beginning or the continuation of the enforcement period from the date on which this period begun.

(F) From 23 April 2020, the VAT rate on digital books, newspapers and magazines is reduced to 4% according to RDL 15/2020 that modifies article 91.1.2º of the VAT Law 37/1992.

6.6 Measures related to customs approved by the Spanish Government and the European Union

This measures are developed in Annex 1 of this Guide.

(A) Functioning of the customs: In general terms, during the State of Emergency the customs clearance, both physical and documentary, will continue to operate according to the current legislation and procedures, giving priority to perishable goods, medicines and sanitary products, other basic necessities and those needed for the maintenance of the production chains. Different
alternatives are provided for face-to-face procedures. Moreover, a contingency plan with minimum services has been approved.

(B) **Terms in customs procedures:** the terms to adopt decisions in relation to the application of the customs legislation set out in the Union Customs Code ("UCC") has not been affected by the deferral of tax terms. Nevertheless, the Spanish tax authorities consider that the terms to meet requirements or information requests, as well as the terms of sanctioning procedures in customs matter laid down in the General Tax Law and the term to bring actions and claims, have been extended.

(C) **Payment of the customs:** the term of payment of the customs has not been affected by the terms deferral. Exceptionally, RDL 11/2020 has established a general deferral of the payment corresponding to the customs declarations presented from 2 April 2020 until 30 May 2020, both inclusive, provided that the amount of the debt to be deferred is between EUR 100 and EUR 30,000 and that the recipient of the imported goods is a person or entity with an operating volume that does not exceed EUR 6,010,121.04 in 2019, and in the same conditions as the tax debts deferral exposed in section 6.1(C) above.

(D) **Import and export of medical equipment:** a duty-free market access and a VAT exemption has been granted in relation with the import of goods needed to combat the effects of COVID-19 outbreak during 2020, provided that certain requirements are met. These tax benefits will be applicable to imports carried out from 30 January to 31 July 2020. Furthermore, the European Commission has established in its recent Guidance on Customs issues related to the COVID-19 emergency that the present exceptional situation shall be considered as a “disaster” for the purposes of the customs legislation. Therefore, all goods brought to the customs territory of the Union to counter the effects of the disaster should be eligible to be declared for temporary admission with total relief from import duty. A licence still needs to be obtained to export specific protection equipment (excluding some countries), a list which was simplified by the European Commission on 24 April. The measure will be in force for 30 days.
7. **FINANCIAL MATTERS**

7.1 **THE MORTGAGE PAYMENT MORATORIUM**

RDL 8/2020 includes a payment moratorium for particularly vulnerable mortgage borrowers (the "Moratorium"). The Moratorium regime regulated in RDL 8/2020 has been modified by RDL 11/2020.

7.1.1 **Objective scope of the Moratorium**

Loans or credits secured by a real estate mortgage may benefit from the Moratorium if granted to purchase any of the following:

(A) main residence;

(B) properties linked to the business activities of self-employed workers who suffer a drop in income or sales of at least 40%; or

(C) leased residential properties for which owner and lessor (and mortgagor) has stopped receiving rent since the state of emergency was declared by Royal Decree 463/2020 of 14 March or stops receiving rent up to a month after the end of the state of emergency.

The scope of application of the Moratorium seems to be limited to loans in force and not due as at the entry into force of RDL 8/2020, i.e. on 18 March 2020.

7.1.2 **Subjective scope of the Moratorium**

(A) **Borrowers: vulnerability conditions**

Only borrowers classed as especially vulnerable under RDL 8/2020 may benefit from the Moratorium.

The following criteria determine the vulnerability of the borrower (all conditions must be met to benefit from the Moratorium):

(i) The mortgage borrower becomes unemployed or, in the case of self-employed workers, suffers a drop in income or sales of at least 40%. With regard to unemployed workers, although it is not clear how long the need to be in that situation for, the reference to "who have become unemployed" suggests that they must have lost their job after the entry into force of RDL 8/2020 or, at least, after the declaration of the state of emergency (i.e. on 14 March 2020).

(ii) The total income of the members of the borrower's family unit in the month prior to the application for the Moratorium does not exceed a multiple of the National Indicator of Earnings ("IPREM" for its Spanish acronym) as set out in RDL 8/2020 with regard to certain circumstances of the family unit.

(iii) The borrower's mortgage payments, utility payments and basic expenses together account for 35% or more of the family unit's net income. For these purposes, "utility payments and basic expenses" should be understood as the cost of electricity, gas, fuel for heating, running
water, fixed and mobile telecommunication services and owners association fees. By analogy with paragraph (ii) above, it would appear that data for the month prior to the request should be taken into account for the purpose of calculating both net income (i.e. excluding contributions, deductions and direct taxes) and basic expenses and supplies.

(iv) As a result of the health emergency, the family unit has undergone a significant change to its financial circumstances in terms of efforts to access housing. This is understood to take place whenever the effort represented by the mortgage’s total burden (understood as the sum of the mortgage payments on any real estate assets subject to the Moratorium with respect to the family unit’s income) has been multiplied by at least 1.3, all in accordance with the terms defined in RDL 8/2020.

(B) Guarantors and sureties

The Moratorium applies to both guarantors and sureties of the principal debtor and to non-debtor mortgagors in two ways:

(i) Article 8.2 of RDL 8/2020 (which literally transcribes article 2 of RDL 6/2012) states that the measures (i.e. the Moratorium) “applies to both the guarantors and sureties of the principal debtor, in respect of its main residence and under the same conditions as established for the mortgage holder”. The drafting could certainly have been better and it is not quite clear whether the vulnerability requirements can be said to also apply to the guarantor (in any case, since the guarantee or surety are ancillary to the principal obligation, it would not seem possible in practice to claim any obligations suspended for the principal debtor from a non-vulnerable guarantor or surety).

(ii) On the other hand, in accordance with article 10 of RDL 8/2020, guarantors, sureties and non-debtor mortgagors in a vulnerable economic situation may require, even if they have contractually waived the benefit of *excusicio* (i.e. right to compel the creditor to seek payment from the principal first), that the entity exhausts the principal debtor’s assets before claiming the guaranteed debt from them. This rule thus limits the possibility of accessing the assets of persons in vulnerable situations from whom, although they are not the principal debtors under a mortgage, payment may be claimed.

7.1.3 Applying for a Moratorium

Borrowers eligible for a Moratorium pursuant to sections 7.1.1 and 7.1.2 above, may request it from their credit institution up to fifteen days after RDL 8/2020 is no longer in force (RDL 8/2020 expires one month after the end of the state of emergency has been declared).

In the application, borrowers must prove they meet the mentioned requirements by filing the documents set out in article 11 of RDL 8/2020. It is expressly provided that, if the applicant is unable to provide any of the documents required due to the current exceptional situation, he or she may substitute it with a statement of compliance including express justification of the reasons that prevent him or her from
providing the documents. Applicants have one month after the end of the state of emergency or any of its extensions to provide the documents they were unable to provide during the state of emergency.

The creditor entity must implement the Moratorium within a maximum term of 15 days from the date the borrower makes the application.

7.1.4 Effects of the Moratorium

RDL 11/2020 clarifies that **the Moratorium will last three months** (which may be extended by resolution of the Council of Ministers), which corrects the uncertainty that existed in this regard under the previous wording of RDL 8/2020. Although this matter is not expressly regulated, it must be understood that this three-month period should be calculated from the date the application for a Moratorium is made within the deadline legally established for such purpose. Likewise, it seems clear that the Moratorium entails an extension of the term of the loan or credit for the same duration.

The effects of the Moratorium are as follows:

(A) **The mortgage debt is suspended**; in particular, **no interest** – neither ordinary nor default interest – **will accrue**, **nor may the lender demand payment of the principal or interest** on the loan or credit; and

(B) **The creditor entity** will **not be able to accelerate the mortgage loan** through the early termination clause contained in the contract.

There is no need for the borrower and lender to sign an agreement or a novation of the contract for the borrower to benefit from the Moratorium. This is reasonable since RDL 11/2020 already determines the duration and consequences of the Moratorium. Therefore, the Moratorium will be valid ex lege from application.

Notwithstanding the above, RDL 8/2020 establishes that a Moratorium must be formalised in a public deed and registered with the Land Registry. Significant discounts have been provided for the notary and registry fees to be paid by creditors for this formalisation and registration.

In this regard, RDL 15/2020 states that the obligation to formalise the Moratorium in a public deed will be carried out unilaterally by the lender entity, so that such public deed can be filed with the Land Registry. Likewise, it has been clarified that the acknowledgment of the Moratorium will not be subject to the provisions of Law 5/2019, of 15 March, on real estate credit.

7.1.5 Anti-abusive rules

Debtors who are not in a vulnerable economic situation and benefit from a Moratorium will be liable for damages and for the expenses incurred in applying the Moratorium, without prejudice to any other liability to which the debtor may be subject. The amount of damages and expenses cannot be less than the benefit unduly gained by the debtor by applying the measure.

Debtors who voluntarily and deliberately try to enter into or remain in a vulnerable economic situation to benefit from the Moratorium will also be subject to liability. This liability will not be easy to prove, since the burden of proof lies with the entity granting the loan or credit.
7.2 **CONSUMER FINANCE MORATORIUM**

RDL 11/2020 includes a moratorium that allows for the suspension of the obligations derived from financing contracts not secured by mortgages for vulnerable debtors.

As happens under the Moratorium described in section 7.1 above, lenders under consumer finance agreements will not be able to demand full or partial payment of any of the instalments, or of any of the elements that make up such payments (capital or interest), and no interest will accrue. This moratorium will also apply for three months and may be extended by resolution of the Council of Ministers.

In general, the regulation of this moratorium is similar to that of the Moratorium and they share the same structure (definition of vulnerability, application, validity, duration, etc.). Some minor differences include the definition of vulnerability and the slightly shorter term to apply for this moratorium (up to one month after the state of emergency ends).

RDL 15/2020 has introduced the same rule of unilateral granting of the public deeds formalising the moratorium on credits and loans not secured by mortgages which has been established with regards to the Moratorium on mortgage loans and credits.

7.3 **REGULATORY CONSEQUENCES OF THE MORTGAGE PAYMENT MORATORIUM AND THE CONSUMER FINANCE MORATORIUM FOR CREDIT INSTITUTIONS**

The European Banking Authority (“EBA”) and the Bank of Spain issued on 25 and 30 March 2020, respectively, communications providing guidelines on the application by credit institutions of the regulatory framework for prudential supervision relating to non-performing loans and moratoriums in the context of the measures implemented by the governmental and legislative authorities in relation to the COVID-19 health crisis, such as the Moratorium and the consumer finance moratorium referred to in the preceding sections. These communications have been followed by more detailed guidelines, in the case of the EBA, and a Q&A, in the case of the Bank of Spain, dated 2 and 3 April 2020, respectively (see section 8.3 below).

In its 25 March 2020 communication, the EBA also commented on the application by the credit institutions of the standards of IFRS 9 with regard to the increase in credit risk and the expected loss on their credit portfolios (see section 14.1).

7.4 **FOSTERING LIQUIDITY**

7.4.1 **Approach**

The situation caused by COVID-19 and the magnitude of the containment measures to limit its spread approved by the authorities are having great economic impact and it is foreseeable that they will cause liquidity stress in different economic agents, especially for those operating in the sectors most affected by the crisis (i.e. tourism, restaurants, leisure and entertainment and the industrial and manufacturing sectors). This liquidity stress will worsen as the emergency situation continues.

Except for the Moratorium on mortgage debt payments and the consumer finance moratorium referred to in sections 7.1 and 7.2 above, which apply solely to vulnerable persons under the terms stipulated therein,
there is no moratorium for the duty of fulfilling obligations arising from financial contracts and other borrowing instruments. Under the current circumstances, numerous companies may encounter difficulties in honouring interest or repayment of debt payments provided for in the contract. Furthermore, financial contracts have a series of clauses that may be breached as a result of this situation, including MAC or MAE clauses, obligation to maintain certain financial ratios, cases of termination based on creditworthiness or causes of dissolution, cross-default clauses, etc. One of the consequences of a breach of the contracts is precisely the difficulty in disposing of the available credit pending drawdown, as creditor entities are entitled to deny drawdowns when there are maturity situations in the financial contract which may further aggravate liquidity problems.

In order to address this situation, RDL 8/2020 sets out different measures to foster liquidity, including mainly:

(A) **Government-backed guarantee scheme.** A Government-backed guarantee scheme has been created through which the Ministry of Economic Affairs and Digital Transformation can furnish guarantees to companies and the self-employed up to a maximum of EUR 100 billion, until 31 December 2020, in order to cover both the renewal of loans and new financing (the “Guarantee Line”). The conditions of the guarantees and the requirements to benefit from the Guarantee Line are set out in the resolutions of the Council of Ministers dated 24 March 2020, which establishes the terms applicable to a first tranche of up to EUR 20 billion, and 10 April 2020, which establishes the terms applicable to a second tranche of up to EUR 20 billion. These conditions are referred to in section 7.4.2 below.

(B) **Borrowing from the ICO.** The net borrowing capacity of the ICO provided in the National Budget Law has been increased by an additional amount of EUR 10 billion to provide liquidity to companies, in particular SMEs and the self-employed via the existing ICO guarantees. The ICO is expressly empowered to implement the measures necessary to expedite and extend the financing available. The measures will need to be further developed to confirm the conditions under which this type of financing will be available.

(C) **Extraordinary insurance coverage.** During a maximum term of six months from entry into effect of RDL 8/2020 the capacity of CESCE\(^9\) has been increased by EUR 2 billion to afford insurance coverage backed by the Internationalisation Risks Reserve Fund. This coverage is available for working capital loans acquired by the insurance company. Unlike the current regime, there does not have to be a connection with one or more export contracts, provided they address new financial needs and not situations preceding the crisis.

This coverage is available to SMEs (as defined in Annex I of EU Regulation 651/2014 of the Commission), together with other larger companies, provided (i) they are not listed; (ii) their international business represents at least a third of their turnover (in accordance with their latest financial reporting, without specifying whether it must be audited or not) or companies that have

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\(^9\) Compañía Española de Seguros de Crédito a la Exportación, Cía. De Seguros y Reaseguros (CESCE), S.M.E.
regularly exported during the past four years in accordance with the applicable requirements; (iii) have liquidity problems arising from COVID-19, and (iv) are not in an insolvency or pre-insolvency situation nor at risk of defaulting on debts with public sector companies or the administration. The exclusion of pre-insolvency proceedings (which are not defined) is not entirely compatible with the purpose of the law, which is precisely to assist companies in financial difficulties. This term should be interpreted restrictively, such that it includes solely the pre-insolvency situation established in article 5 bis of the Insolvency Law (the “IL”), but not the signing of the refinancing contract protected under article 71 bis of the IL or equivalent pursuant to the fourth additional provision of IL and provided that these situations were existing at the time the state of emergency was declared.

7.4.2 Guarantee Line

(A) Legal nature: Through the Guarantee Line, financial institutions that grant financing to companies and self-employed workers for the purposes established may benefit from the guarantees granted by the Ministry of Economic Affairs and Digital Transformation. This is aid in the form of a guarantee and therefore involves no direct financing from the State or the ICO. The financial institutions themselves are ultimately responsible for deciding whether or not to grant the financing, even though the ICO’s approval of the use of the Guarantee Line is required where this is expressly established.

The State guarantee is granted irrevocably, unconditionally, on first demand and with a waiver by the State of the benefit of prior prosecution. The guarantee covers the amount of principal which is unpaid by the client in each financial transaction, with the express exclusion of ordinary and default interests, commissions or other costs inherent to the transaction and any other concepts.

(B) Purpose: The purpose of the Guarantee Line is to cover new loans and other forms of financing and renewals granted by financial institutions to eligible companies and self-employed workers in order to meet financing needs arising, among other things, from the payment of salaries, supplies and providers invoices, working capital needs or other liquidity needs, including those arising from the maturity of financial or tax obligations, all with the ultimate aim of mitigating the economic effects of the COVID-19 health crisis and promoting the maintenance of employment.

By virtue of the amendments introduced by RDL 15/2020, the Guarantee Line can also be allocated to Compañía Española de Reafianzamiento, S.A. (CERSA) as well as to the promissory notes incorporated in the Fixed Income Market of the Association of Financial Assets Intermediaries (AIAF) and in the Alternative Fixed Income Market (MARF), promoting in this latter case the preservation of the liquidity sources provided by the capital markets and not only through the traditional banking channels.

It is also worth noting that, according to the ICO’s clarifications on its website, the guaranteed financing cannot be used to carry out “loan consolidation or restructuring” or for “cancellation or early termination of pre-existing debts”, in such a way that pre-existing debt cannot be restructured or refinanced, except when, as applicable, they refer to renewals of existing lines
already matured or serve to pay amounts due at their ordinary maturity date. This prohibition reflects the intention to leave out of the cover old money (dinero viejo) that does not correspond to financing granted to meet the liquidity needs arising as a result of the COVID-19 health crisis and is in line with the requirement that beneficiary companies, in order to benefit from the Guarantee Line, must not be in a situation of “insolvency or crisis”, as explained below.

(C) **Approved tranches of the Guarantee Line:** In the resolution of the Council of Ministers dated 24 March, a first tranche of EUR 20 billion (out of a total of EUR 100 billion) was approved, half of which (up to EUR 10 billion) will be apportioned for SMEs and self-employed workers and the other half to companies that do not qualify as SMEs. Likewise, in the resolution dated 10 April, the Council of Ministers approved a second tranche of the Guarantee Line for an additional amount of EUR 20 billion entirely for self-employed workers and SMEs.

(D) **Eligible financial institutions and distribution of the guarantees among them:** The Guarantee Line is only available to credit entities, financial institutions, electronic money entities and payment entities. They must be registered and supervised by the Bank of Spain and must have signed a framework agreement with ICO to participate in the Guarantee Line. Therefore, these guarantees are not available to entities other than those listed above, including direct lenders, which ultimately limits the financing options to which companies may resort. On the contrary, considering the purpose of the regulation is to promote liquidity, we believe that at least the branches of foreign financial institutions should be able to benefit from this regime, insofar as they were already operating in Spain under an equivalent level of supervision, provided that they sign the appropriate framework agreements with the ICO. Further confirmation on this will be needed in light of the Guarantee Line’s functioning in practice.

According to the clarifications made by the ICO on its website, the amount of each of the sub-tranches of the Guarantee Line will be distributed among the eligible financial institutions according to the market share that each of them had at the end of 2019 (calculating separately the share that each institution had in the market for granting credit to self-employed workers and SMEs, on the one hand, and in the market for granting credit to large companies, on the other, according to the information provided by the Bank of Spain). Eligible financial institutions that at the end of 2019 had no credit balance registered with the Bank of Spain with an aggregate share of 1% will also have access to this line.

From 30 April, with regards to the first tranche of the Guarantee Line, the guarantee amounts assigned and not used by the eligible entities which have subscribed an agreement with the ICO will be released and will be distributed among the rest of the entities that have exhausted their lines, proportionally to the amounts of the Guarantee Line used by such entities until that date.

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10 For the purposes of the Guarantee Line, in accordance with Article 2 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, SMEs are defined as undertakings with fewer than 250 employees and either an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million.
With regards to the second tranche of the Guarantee Line, the maximum amounts allocated to each of the financial entities will be in force until 30 June 2020. After that date, the guarantee amounts assigned and not used by the eligible entities will be distributed among the remaining entities in proportion to the amounts used by such entities until that date.

(E) **Beneficiaries**: All types of companies (whether SMEs or not) may benefit from the first tranche of the Guarantee Line while only SMEs and self-employed workers may benefit from the second tranche; in both cases, regardless of the sector in which they operate, although with varying degrees of coverage depending on their size. Beneficiaries of both tranches of the Guarantee Line must meet, among others, the following requirements:

(i) their registered office must be in Spain and they must have suffered the economic consequences of the COVID-19 health crisis;

(ii) as at 31 December 2019, they must not have defaulted on any payments according to the Bank of Spain’s Risk Information Centre (CIRBE for its Spanish acronym), with no materiality threshold or possibility of rectifying this situation prior to the application for the guarantee having been established as of today, which would seem reasonable;

(iii) they must not be involved in insolvency proceedings as at 17 March 2020, either because they have filed a declaration of insolvency or because the circumstances in article 2.4 of Law 22/2003 of 9 July on insolvency are met for creditors to apply for insolvency; and

(iv) where the Temporary Framework for State aid (see paragraph (F) below) applies, the applicant company must not be in a critical situation on 31 December 2019, according to the criteria laid down in article 2(18) of Commission Regulation No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market. Bear in mind that that this regulation includes situations of financial difficulty that go beyond the solvency thresholds established in the IL, including the fact that (i) the requirements for mandatory dissolution should equity fall below half of the share capital due to losses from previous years apply (with some exceptions for SMEs), (ii) the company has received “rescue aid” or “restructuring aid” and is still repaying the loan or is subject to a restructuring plan; or (iii) for companies other than SMEs, where during the previous two years the company’s debt/equity ratio was higher than 7.5 and the company’s interest coverage ratio, calculated on the basis of EBITDA, was below 1.0. These requirements would need to be analysed on a case-by-case basis and may make it difficult for companies that were already in financial difficulty before the COVID-19 health crisis to access this financing.

(F) **Eligible loans**: Loans and other financial assistance granted to recipients are eligible provided they have been formalised or renewed after 17 March 2020 and meet the purpose described above. Financing operations involving up to EUR 50 million that have been approved by the financial institution in accordance with its risk policies and banking practices will all be guaranteed, subject to subsequently verifying that they meet the relevant eligibility conditions. Above this threshold, financing operations will be guaranteed once ICO has checked, in addition to the...
financial institution's analysis, that the eligibility conditions have been fulfilled. All the procedures must, however, be carried out by the relevant financial institution.

**(G) Maximum loan amount per customer:** Different maximum amounts are established depending on the amount guaranteed and regardless of the sector involved. Specifically, for **loans over EUR 1.5 million**, considering all financing transactions granted to the same client by the entire group of financial entities (or loans for an amount below EUR 1.5 million in those cases where the de minimis regime is not applicable because the client has reached the corresponding limit or because the relevant principal amount is higher than the sectorial limit set forth above), the maximum amounts established in the European Commission's Temporary Framework related to state aids aimed at supporting the economy in the current context of COVID-19 outbreak, approved by the European Commission on 19 March 2020. The maximum amount established in such Framework for self-employed workers and for companies which qualify as SMEs as well as for companies which do not qualify as SMEs is as follows:

(i) for loans with a maturity date after 31 December 2020, the amount of the principal guaranteed by each client, in one or several transactions, for the entire group of financial entities must not exceed

   (a) twice the beneficiary’s annual wage bill of (including social security costs as well as the cost of personnel working at the company’s premises but are formally on the payroll of subcontractors) for 2019, or for the last available year. As to companies created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

   (b) 25% of the beneficiary’s total turnover in 2019; or

   (c) as duly justified and based on the beneficiary’s self-certification of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment it is granted for the next 18 months for SMEs and for the next 12 months for large companies;

(ii) for loans with a maturity date until 31 December 2020, the amount of the principal may exceed that laid down in the preceding point as duly justified and provided that the aid is proportional.

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13 Section 3.2. of Paragraph 25, subparagraphs (d) and (e) of the European Commission's Temporary Framework for State Aid approved on 19 March 2020.
(H) Maximum percentage of the Government-backed guarantee:
   (i) For self-employed workers and SMEs, the guarantee will cover 80% of new loans and renewals.
   (ii) For all other companies, the guarantee will cover 70% of new loans and 60% of renewals.

(I) Maximum maturity of the guarantee: The term of the guarantee issued will match the term of the financing operations up to a maximum of five years. However, the term of this type of financing is expected to be shorter.

(J) Cost/fees of the guarantee: Fees of between 20 and 120 basis points is established, depending on the amount guaranteed, the type of beneficiary company and the form of financing. Specifically:
   (i) The fees for guarantees granted on loans of up to EUR 1.5 million will be 20 basis points on the balance of the total amount guaranteed.
   (ii) The fees for guarantees granted to self-employed workers or SMEs for financing operations involving a nominal amount of more than EUR 1.5 million will be
      - 20 basis points per year for guarantees with a maturity date of up to one year.
      - 30 basis points per year for guarantees with a maturity date of more than one year and up to three years or less.
      - 80 basis points per year for guarantees with a maturity date of more than three years and up to five years.
   (iii) The fees for guarantees granted to companies that are not considered SMEs for new financing operations involving a nominal amount of more than EUR 1.5 million will be
      - 30 basis points per year for guarantees with a maturity date of up to one year.
      - 60 basis points per year for guarantees with a maturity date of more than one year and up to three years.
      - 120 basis points per year for guarantees with a maturity date of more than three years and up to five years.
   (iv) The fees for guarantees granted to companies that are not considered SMEs for the renewal of financing operations involving a nominal amount of more than EUR 1.5 million will be
      - 25 basis points per year for guarantees with a maturity date of up to one year.
      - 50 basis points per year for guarantees with a maturity date of more than one year and up to three years.
• 100 basis points per year for guarantees with a maturity date of more than three years and up to five years.

An additional management and administration flat fee of 0.05% is also established, which is calculated on the volume of the guaranteed portfolio and prorated over five years. With regards to credit lines the commission will be applied on the maximum credit amount, regardless of the withdrawn amount.

(K) **Period and method of applying for the guarantee:** Companies and self-employed persons may apply for the guarantee for their financing operations until 31 December 2020 through any eligible financial institution that has signed agreements with the ICO. The deadline may be extended, in accordance with EU State Aid rules, by resolution of the Council of Ministers.

(L) **Rights and obligations of financial institutions:**

The financial institution will decide to grant financing to a customer in accordance with its internal granting and risks procedures and policies. A number of specific obligations are imposed on financial institutions, of which the following are worth highlighting:

(i) The costs of new loans and renewals benefiting from these guarantees will remain in line with the costs charged before the start of the COVID-19 health crisis, taking into account the public guarantee and its coverage cost. Additionally, in relation to the guarantees granted as a result of the second tranche of the Guarantee Line, the Council of Ministers has specified that the cost of the loans benefiting from such guarantees will be, in general, lower than the cost of the loans and other transactions for the same category of clients which do not benefit from the state guarantee. The fulfilment of this requirement will be supervised by the ICO.

(ii) Financial institutions must maintain the limits on the working capital lines granted to all customers, and in particular to those whose loans are guaranteed, at least until 30 September 2020.

(iii) Financial institutions may not make the approval of loans conditional on the customer entering into a contract for any other service or product nor commercialise other products along with the loans covered by the guarantees.

As the line is subject to the EU State aid rules, financial institutions should be in a position to prove that they apply a procedure that ensures that the benefits are passed on, to the extent possible, to the end beneficiaries, for example, in the form of higher volumes of funding, portfolios with a higher degree of risk, lower guarantee requirements, lower guarantee premiums, lower interest rates, longer term or grace period for principal.

(M) **Implementation:** The legal implementation of the financing granted under the Guarantee Line must be analysed and adapted on a case-by-case basis. Special attention should be paid to those

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14 It should be noted that such commitment has not been extended, at least expressly, until 31 December 2020.
cases where the company has pre-existing debt that may include limits to additional indebtedness that should be waived. Likewise, the short time to implement financing operations may make it difficult to record them as senior debt to pre-existing debt.

Entities must ensure that the company applying for financing complies with the eligibility requirements and other conditions of the Guarantee Line, which will be particularly relevant in financing of up to EUR 50 million, for which granting the ICO will not analyse compliance with the eligibility conditions, but for which, in addition to requiring the relevant documentation, the financial institutions, which are responsible for this analysis, may request appropriate statements from the applicants.

(N) Other matters:

(i) These are pari passu guarantees, in which the State shares the risk with the financial institutions and losses are therefore allocated proportionally and on equal terms to the financial institution and the State.

(ii) The ICO has the authority, within the scope of its powers, and through the relevant bodies, to resolve any practical issues that may arise in connection with the implementation of the Guarantees Line and during the term of the financing operations.

(iii) The ICO has been instructed to establish the necessary provisions to implement the Guarantee Line in practice.

(iv) The ICO will update the Ministry of Economic Affairs and Digital Transformation every 15 days on the use of the Guarantee Line.

(v) No formalities other than the resolution of the Council of Ministers are required.

(vi) The Minister for Economic Affairs and Digital Transformation is empowered to take the necessary measures to ensure that the Guarantee Line is properly distributed among the financial institutions.
8. KEY BANKING REGULATORY-RELATED MEASURES

8.1 MEASURES ON CAPITAL CONSERVATION

8.1.1 Dividends and share buy-backs

On 27 March, the European Central Bank ("ECB") issued a recommendation on dividend distributions by credit institutions during the COVID-19 health crisis (ECB/2020/19), in which it proposed that, at least until 1 October 2020, credit institutions subject to its direct supervision refrain from paying dividends and from undertaking commitments to pay out dividends for financial years 2019 and 2020, and from carrying out share buy-backs aimed at remunerating shareholders. On the same date, the Bank of Spain extended this recommendation to the credit institutions subject to its direct supervision (less significant institutions).

In line with the above, on 31 March, the EBA issued a statement (Statement on dividends distribution, share buybacks and variable remuneration) to support the measures implemented by the ECB and other European supervisors, urging all institutions to follow such recommendations.

8.1.2 Variable pay of senior executives

Furthermore, in its statement of 31 March, the EBA urges the competent authorities to require supervised institutions to review their remuneration practices and policies in the light of the current situation. In particular, it calls for variable pay to be set at a conservative level by deferring it for a longer period and increasing the portion that should be paid out in shares.

8.2 MEASURES ON CAPITAL REQUIREMENTS RELIEF

8.2.1 Pillar 2

In accordance with the measures announced by the ECB on 12 March 2020, institutions are allowed to operate below the level of capital recommended pursuant to the Pillar 2 Guidance or P2G and the new rules on the composition of the Pillar 2 Requirement or P2R, that were initially scheduled to come into effect in January 2021, have been brought forward.

In addition, capital buffers (and in particular, the capital conservation buffer) are temporarily available, and, from 16 April 2020, the ECB allows institutions to reduce their capital requirements for market risk (adjustment of the qualitative market risk multiplier).

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15 Repealing its prior recommendation on dividend distribution policies of credit institutions during 2020 for financial year 2019 (ECB/2020/1).

16 It is also allowed to operate temporarily below the level of the liquidity coverage ratio (LCR).
8.2.2 Leverage ratio

On 28 April 2020, the European Commission17 announced the deferral for one year to 1 January 2023 of the leverage ratio buffer requirement applicable to global systemically important institutions (G-SIIs).

Additionally, the Covid Reform Proposal modifies the offsetting mechanism applicable to institutions that opted (with the prior temporal authorisation of the competent authority) to exclude the central bank reserves from their leverage ratio calculation.

8.2.3 Software

The latest revision of CRR excluded software assets not materially affected by a gone concern situation from capital deductions. The Covid Reform Proposal brings forward the date of application of the exemption to the date on which the regulatory technical standard (RTS) to be drafted by the EBA enters into force.

8.2.4 Transitional arrangements to mitigate the impact of IFRS 9 on capital

The European Commission has also proposed an extension of the current transitional arrangements to mitigate the impact of IFRS 9 provisions on regulatory capital by two years (until 2024). This would include in these transitional arrangements new credit losses provisions that institutions record in 2020 and 2021 for their financial assets that have not defaulted. The extension does not benefit however provisions incurred before 1 January 2020 as they are understood not to be related to the COVID-19 pandemic.

8.2.5 Prudential treatment of loans to pensioners, employees with a permanent contract, SMEs or infrastructures

The Covid Reform Proposal brings forward to June 2020 the date of application of the more favourable prudential treatment of loans backed by pensions or salaries that was introduced in CRR and due to become applicable on 28 June 2021.

It has also been proposed to advance to June 2020 the date of application of the reduction in the capital needs required to hold loans granted to SMEs or infrastructures-related exposures (the so-called SME and infrastructures supporting factor), that the CRR introduced in 2019.

17 On 28 April 2020, the European Commission adopted a new banking package to facilitate bank lending to households and businesses. This package will be implemented by amending the CRR (Regulation 575/2013) and it is expected to enter into force in June this year (the “Covid Reform Proposal”).
8.3 Amendments on Classification and Credit Risk Coverage

8.3.1 Impact of the moratoria

In recent weeks both the EBA and the Bank of Spain have issued several communications and recommendations\(^{18}\) giving guidelines for the classification and coverage of loans affected by certain moratoria (the "Guidelines").

According to the Guidelines, loans that benefit from "eligible" moratoria will not be automatically classified as refinanced or restructured loans (forborne exposure) nor will the suspension of payments be taken into account for the purpose of determining the default or will it automatically entail a significant increase in the risk associated with that credit (with the consequent increase in the level of coverage required).

For the purposes of these Guidelines, moratoria that meet the following six conditions should be considered "eligible":

(i) The moratorium was launched in response to the COVID-19 health crisis. It must be announced and applied before 30 June 2020 (in principle, however, this deadline can be revised).

(ii) The moratorium is based on the law (public or legislative moratorium) or on a private initiative (non-legislative or private moratorium); in the latter case, it should be promoted on a sectorial basis either by associations representing the industry (such as the AEB or CECA, in Spain) or by a broad and representative group of entities acting in a coordinated manner (individual initiatives seem a priori to be ruled out). Private moratoriums can coexist with legislative moratoriums.

(iii) The moratorium is offered to a large group of predefined obligors based on broad criteria, with no individual assessment of their creditworthiness.

(iv) The moratorium applies only changes to the schedule of payments for a predefined limited period of time, not to other terms and conditions of the loans.

(v) The moratorium offers the same conditions to all exposures subject to the moratorium, even if it must be voluntary for obligors.

(vi) The moratorium does not apply to new loan contracts granted after the date when the moratorium was announced (new loans).

8.3.2 Other recommendations to mitigate pro-cyclicality

Furthermore, the ECB recommends that all credit institutions avoid pro-cyclical assumptions in their models for determining provisions and that those institutions that have not yet done so should opt for the transitional measures in IFRS 9.

\(^{18}\) In particular, the communications of 25 March and 30 March 2020 from the EBA and the Bank of Spain respectively; the Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis (EBA/GL/2020/02) of 2 April 2020; and the Q&A published by the Bank of Spain on 3 April 2020.
8.4 OTHER REGULATORY CONCESSIONS

8.4.1 Reporting

In the Statement on supervisory reporting and Pillar 3 disclosures in light of COVID-19 published by the EBA on 31 March, it was announced that, in general, the deadlines for institutions to submit periodic supervisory data and information (supervisory reporting) are extended by one month, with three exceptions:

(i) The funding plans, which had already been extended by two months in the EBA statement of 25 March (EBA provides clarity to banks and consumers on the application of the prudential framework in light of COVID-19 measures).

(ii) Information on the liquidity coverage ratio (LCR), which regularity remains the same.

(iii) Reporting for resolution planning purposes, which regularity and deadlines remain the same.

8.4.2 Stress testing

On 12 March 2020, the EBA issued the statement on actions to mitigate the impact of COVID-19 on the EU banking sector which included postponing this year’s stress tests until 2021 in order to allow banks to prioritise their continuity.
9. REAL ESTATE MATTERS

9.1 MEASURES APPROVED BY RDL 11/2020 ON LEASES FOR MAIN RESIDENCE

The measures provided for in RDL 11/2020 regarding leases for main residence introduced by RDL 11/2020 to assist persons in a state of vulnerability due to the COVID-19 health crisis, which will be developed by the Government, entered into force on 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 guide, it is worth noting that RDL 11/2020 has modified 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 main residence leases”. This programme aims to alleviate the financial burden on lessees who lease their main residence and face one of the situations of vulnerability included in the programme itself (which will cover, at the very least, those referred to in section 9.1.1(A) below) to help them pay the rent or repay any financial aid to which they may have 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.

9.1.1 Vulnerable persons

(A) Requirements

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

(i) The person who is legally obliged to pay the rent becomes unemployed, is laid off due to an ERTE 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\(^\text{19}\), or other similar circumstances involving a reduction of the total income of the family unit\(^\text{20}\) 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”):\(^\text{21}\)

\(^{19}\) 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 Authority” is one of the documents required to evidence the grounds of vulnerability of self-employed workers.

\(^{20}\) 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.

\(^{21}\) In 2020, the monthly IPREM is EUR 537.84 (http://www.iprem.com.es/2020.html).
• 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;

• 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) 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

• five times the IPREM (i.e. EUR 2,689.20 per month) 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.

(ii) The rent, plus basic expenses and supplies, 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 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 state of vulnerability, lessees must provide their lessor with the documents set out in RDL 11/2020. However, if the applicant is unable to provide any of the documents, he or she may instead provide a statement of compliance that includes the reasons – which must be related to the COVID-19 health crisis – why he or she is unable to provide the 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.

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22 RDL11/2020 expressly mentions the increase of the IPREM in the case of dependant children. However, we cannot categorically confirm that the increase also applies to each member of a family unit over the age of 65.

23 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.

24 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 homeowners association expenses (comunidades de propietarios), as long as they are borne by the lessees.
9.1.2 Protection measures for families and vulnerable persons

(A) 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 social services (servicios sociales) take the appropriate measures to care for the housing needs of the evicted lessee. The suspension must not exceed six months as 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 9.1.1(A) 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).

(B) Exceptional extensions for lease of housing

As a general rule, lessees will 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 RDL11/2020 and the two months following the end of the state of emergency.

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

(C) Moratoriums or write-offs for large property owners and public housing companies or entities

Within three months 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.

25 Social services (servicios sociales) 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 (servicios sociales) as to the length of the suspension (and not on the decision of the court hearing the case).

26 Even when they are not in a state of vulnerability as described in section 8.1.1(A) above.

27 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.

28 The fourth additional provision of RDL 16/2020 has extended this term from one month (as originally set out in RDL 11/2020) to three months.
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 while the state of emergency is in effect or for 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. However, if the lessees benefit from the economic aid referred to in section 9.1.2(E), the moratorium will be ended on the first monthly payment in which the aid can be used.

(D) 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 9.1.2(C) 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 start 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 9.1.2(E) below.

(E) State guarantee line for bank financing of lessees

A fully Government-backed guarantee line (línea de avalles) to finance lessees in a state of vulnerability due to the COVID-19 health crisis has been approved, for a maximum amount of EUR 1,200 million. 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.

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29 If the lease contract is shorter than three years, the rent amounts to be returned may be paid within a short period of time.
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.30

The Ministry of Transport, Mobility and the Urban Agenda and the ICO 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 by ministerial decree (Orden Ministerial), which will at the very least include the situations set out in section 9.1.1(A).

9.1.3 Consequences of improper use of the moratorium

As in the case of the Moratorium on debts arising from mortgage loans and the consumer finance moratorium referred to in section 7.1, RDL 11/2020 establishes the consequences of benefiting from the moratorium when the requirements set out in section 9.1.1(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 damage caused by their conduct. 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 put themselves or remain in a state of vulnerability in order to benefit from the exceptional measures provided for under RDL 11/2020.

9.2 MEASURES APPROVED BY RDL 115/2020 ON NON-RESIDENTIAL LEASES

RDL 15/2020 has approved a set of measures regarding non-residential leases introduced to support self-employed workers and small and medium-sized enterprises who have been forced to suspend their activities, or whose income has dropped significantly, as a result the COVID-19 health crisis, which will be developed by the Government. Such measures are in force as of 23 April 2020.

9.2.1 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 9.2.2 and 9.2.3 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

[30] 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).
appropriate, in one of the RETA’s substitute mutual insurance companies, on the date of the declaration of the state of emergency (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 the Capital Companies Law; and

(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 9.2.1(A), and nevertheless 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.

9.2.2 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 9.2.1(A) above, and whose lessor is a public housing company or

Article 257.1 of the Capital 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.
entity or a large property owner$^{32}$, 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.

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$^{33}$.

9.2.3 Rent negotiation 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 9.2.2 above. In this case, a lessee that meets the
requirements set out in section 9.2.1(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 leases$^{34}$, 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.

\[\text{Note:} \text{for} RDL 15/2020 \text{provides the same definition of large property owners as RDL 11/2020. That is, natural or legal persons who own (i) more than ten urban properties (excluding garages and storage rooms); or (ii) a constructed surface area of more than 1,500 m}^2.\]

\[\text{Note:} \text{If the lease is terminated within two years, the amounts to be returned in instalments could be concentrated in a shorter period of time.}\]

\[\text{Note:} \text{It would seem reasonable to assume that the deposit could be used to pay rent even if the lessor is a large property owner referred to in section 9.2.2 above, where the parties have agreed on more favourable measures for the lessee than those provided for in RDL 15/2020. However, this is not entirely clear from the wording of article 2.}\]
10. **INSOLVENCY MATTERS**

Since the declaration of the state of emergency, several measures have been implemented to address the consequences of the COVID-19 health crisis on insolvency law, as analysed in previous versions of this Guide.

RDL 16/2020, which entered into force on 30 April 2020, establishes new measures and modifies those previously implemented by RDL 8/2020. The following is a summary of the measures now in force following from the modifications introduced by RDL 16/2020.

Insolvency proceedings are no exception to the general stay of terms and judicial proceedings established in the State of Emergency RD covered in section 11 (*Procedural implications*).

However, by virtue of several resolutions handed down by the Ministry of Justice and the Permanent Commission of the General Council of the Judicial Power on 13 April, the electronic submission of motions (Lexnet) has been permitted since 15 April, as well as the processing of party motions initiating proceedings (e.g. a debtor’s motion requesting the declaration of insolvency proceedings, filings notifying the start of negotiations to the court under article 5 bis IL). Nevertheless, given that the general stay of proceedings remains in force, submitted motions and filings will only be processed until the point in time at which they result in a procedural action opening a specific court term that must be suspended while the state of emergency is in force. The potential technical complications that could result if the motions and filings exceed the system’s online file limitations should be analysed in view of the specific circumstances of each case.

10.1 **SUSPENSION OF THE OBLIGATION TO FILE AN INSOLVENCY PETITION**

In line with what other countries have done as a result of the COVID-19 health crisis, RDL 16/2020 has established that an insolvent debtor is not obliged to file an insolvency petition until 31 December 2020, even if the debtor has already filed the communication established in article 5 bis IL regarding the start of negotiations with creditors to reach any of the measures set out in such provision.

RDL 16/2020 also establishes that creditors’ requests seeking a declaration to open insolvency proceedings will not be admitted for processing until 31 December 2020. It also establishes that requests filed by the debtor prior to that date will be given priority, even if the creditors’ requests are filed before the debtor’s.

RDL 16/2020 has extended the deadlines already established in RDL 8/2020.

This measure is designed to give companies time to restructure their debt and obtain cash, as well as to avoid viable companies from having to file a declaration of insolvency.

Although a debtor is temporarily not obliged to file for insolvency during the abovementioned period (or to notify the insolvency court of the start of negotiations with creditors under article 5 bis IL), this can technically still be done and, thus, the debtor must assess the potential advantages of doing so in view of the circumstances of the case in order to, for example, benefit from the protection against
10.2 THE TREATMENT OF FINANCING PROVIDED BY “SPECIALY-RELATED” PERSONS

10.2.1 New money provided during the state of emergency

Credits resulting from financing provided by persons who are specially related to the debtor (e.g. shareholders who meet specific legal limits, managers, group companies) are, as a general rule, classified as subordinated claims in insolvency proceedings (article 92.5 IL).

In order to provide an incentive for specially-related persons to provide financing in the current circumstances, RDL 16/2020 establishes a temporary exception and sets out that credits deriving from “cash receipts from loans, credits or other analogous transactions” granted to the debtor “as from the declaration of the state of emergency” by specially-related persons, will rank as ordinary claims if insolvency proceedings are opened within two years following the declaration of the state of emergency (i.e. before 14 March 2022).

Likewise, ordinary and privileged credits of third parties to which specially-related persons subrogate as a consequence of payment of those debts in the name and representation of the debtor as from the declaration of the state of emergency will also rank as ordinary claims in any insolvency proceedings opened during the mentioned period.

According to the literal wording of this provision, given that the exception is made in relation to the date insolvency proceedings are opened and not in relation to the date of the financing, if the insolvency is ultimately opened after the statutory term, the general subordination ranking would apply.

10.2.2 Financing provided under an in-court creditors’ agreement previously approved or modified in accordance with RDL 16/2020

RDL 16/2020 establishes that if an already approved in-court creditors’ agreement (convenio de acreedores) is breached or modified (please see section 10.3.2) within two years following the declaration of the state of emergency (i.e. before 14 March 2022), the financing credits held by persons specially related to the debtor (including credits deriving from the payment of personal or in rem securities) will be considered post-insolvency claims (créditos contra la masa), provided that the maximum financing to be granted or the security posted is expressly established in the in-court creditors’ agreement or in its modification, as well as the identity specially-related liable person.

10.3 MODIFICATION OF A DEBTOR’S EXISTING AGREEMENTS WITH A NUMBER OF CREDITORS

10.3.1 Modification of court-approved refinancing agreements

The Explanatory Statements to RDL 16/2020 express the intention to temporarily allow debtors to file a new court-approval petition during the year following the declaration of the state of emergency, even if the one-term year limitation since the submission of the previous court-approval request established has not yet elapsed. Although article 10.1 RDL 16/2020 does not expressly set out that possibility, it can nevertheless be tacitly inferred given that it establishes that the debtor will be entitled to communicate to
the competent court that “it has initiated, or wishes to initiate, negotiations with creditors to modify the agreement in force or to reach another agreement, despite the one-year term since the previous court-approval request not having already elapsed”.

Likewise, RDL 16/2020 establishes that, if a declaration of non-compliance of an already court-approved refinancing agreement is requested within six months following the declaration of the state of emergency (i.e. until 14 September 2020), the debtor will be notified of those requests and will be entitled to notify the start of negotiations with the creditors to the court during the month following the end of the six-month term (i.e. until 14 October 2020).

If the debtor notifies the court the start of negotiations, applications for the declaration of non-compliance of existing court-approved refinancing will not be allowed to proceed until three months have elapsed since the notification to the court, and only if the debtor fails to reach during that term an agreement with creditors to either modify the existing refinancing agreement or to execute a new one.

10.3.2 Modification of existing in-court creditors’ agreements and stay of obligation to request liquidation due to impossibility of fulfilling in-court creditors’ agreement

RDL 16/2020 establishes that, during the year following the declaration of the state of emergency (i.e. until 14 March 2021), modifications can be proposed in connection with existing in-court creditors’ agreements that are currently pending fulfilment.

The proposal will be processed in writing (without an in-person creditors’ meeting) and in accordance with the rules and liability majorities that applied to the original in-court creditors’ agreement, irrespective of the nature of the modification.

Along with the proposal, the debtor must submit a list of (i) the claims subject to the in-court creditors’ agreement but not yet paid; and (ii) the obligations incurred post-in-court creditors’ agreement as well as a viability and a payment plan.

The modification of the creditors’ agreement will not affect credits accrued or incurred during the fulfilment of the in-court creditors’ agreement or privileged credits affected by the in-court creditors’ agreement, except if they vote in favour of, or expressly adhere to, the modification.

If creditors file applications to declare the non-compliance of the existing in-court creditors’ agreement before 14 September 2020, they will be treated as indicated above in connection with the declaration of non-compliance of court-approved refinancing agreements, although with some differences concerning the term to allow the application to proceed, which in this case would be extended to three months, during which the debtor will be allowed to submit the modification of the in-court creditors’ agreement referred to above.

Lastly, RDL 16/2020 postpones for one year from the declaration of the state of emergency the debtor’s obligation to apply for liquidation as soon as the debtor becomes aware of the impossibility of fulfilling the in-court creditors’ agreement or obligations subsequently assumed, provided that the debtor files the proposal for modification indicated above during that term. Likewise, the court will not issue the order
opening the liquidation phase during that term, even if the creditor proves the veracity of any of the facts that could justify the declaration of insolvency proceedings.

10.4 PROCEDURAL CHANGES AFFECTING INSOLVENCY PROCEEDINGS

Although section 11 expands on the general modifications introduced by RDL 16/2020 regarding procedural legislation, it is useful to highlight those that are most relevant in connection with insolvency proceedings.

The COVID-19 pandemic will undoubtedly test the capacity and resources of courts, especially those specialised in commercial and insolvency issues.

As such, RDL 16/2020 establishes a fast-track procedure for motions that aim to preserve business viability, asset-protection and recovery measures and labour measures.

RDL 16/2020 states that the following applications will be fast-tracked: court-approval of refinancing agreements; sale of business units as a going concern (which may be especially useful to expedite the implementation of pre-packs) or global sale of assets; and proposals or modifications of in-court creditors’ agreements.

Labour matters are also given priority, as are claw-back actions, interim measures and, generally, any other measures that the court deems may be beneficial to maintain and preserve assets and rights in connection with the insolvency proceedings.

In addition, RDL 16/2020 establishes specific measures to expedite proceedings. The possibility of having a hearing to challenge the receiver’s credit list is reduced, and measures have been implemented to speed up the approval of liquidation plans and the sale of assets within insolvency proceedings. The general rule regarding the sale of assets is that this should be done by extrajudicial auction, except for business units, for which the court will choose the most appropriate procedure (judicial or extrajudicial auction).
11. LITIGATION MATTERS

11.1 ORDINARY JURISDICTION

Following the worsening of the effects of the COVID-19 outbreak, both the General Council of the Judiciary and certain governing and jurisdictional bodies progressively approved different rules and resolutions affecting hearings, the course of procedural terms or other aspects of the operation of the courts, although confined to certain specific areas or processes.

Initially, the publication of the State of Emergency RD brought with it general rules for all courts, although the main measure was the suspension of procedural terms. Recently, RDL 16/2020 has also implemented measures, in some cases replacing and in others adding to those implemented by the State of Emergency RD, which purpose is to contribute both to gradually resume the ordinary activity of the courts, following the suspension imposed during the state of emergency, and to address the expected increase in litigation resulting from the pandemic.

The second additional provision of the State of Emergency RD, under the heading “stay of proceedings”, provides that “the terms are stayed and the time limits provided in procedural law are stayed and interrupted for all jurisdictions. This measure is therefore general and in effect as of the publication of RD 463/2020 (for those proceedings stayed due to any resolution prior to the declaration of the state of emergency the start date would be that contained in those prior resolutions). The stay also extends to hearings and trials, as stated by the General Council of the Judiciary in an order issued on 14 March 2020. As a result of the resolutions dated 28 March and 11 April 2020, the General Council of the Judiciary declared that the stay will be effective during the extensions of the state of emergency.

The additional provision itself contains certain logical exceptions, such as criminal habeas corpus proceedings, the proceedings of police courts or with a person arrested, protection orders and urgent measures regarding prison supervision or gender violence, together with other urgent investigative proceedings. Also excluded from the stay of proceedings are those relating to procedures for the protection of fundamental rights, collective conflict, non-voluntary placement in psychiatric facilities due to mental disorder or protection of minors. Lastly, in all proceedings, the court “may decide to carry out any judicial actions necessary to prevent irreparable harm to the legitimate rights and interests of the parties to the proceedings.” On 2 April, the General Council of the Judiciary announced that an action plan for the end of the state of emergency is being prepared, especially for the jurisdictions that are expected to be most active when that happens. According to the nineteenth additional provision of RDL 11/2020, it will essentially apply to the labour and administrative jurisdictions, as well as the commercial courts. A preparatory document of the action plan was published on April 7 with approximately a hundred of the proposed measures.

On April 13, with effects as from April 15, the limitations to file judicial writs by electronic means were lifted, without prejudice to the stay of the terms to file them.

Finally, RDL 16/2020 has introduced the following measures:
(A) Courts will not close during the full month of August 2020: article 1 of RDL 16/2020 declares that courts will not close between 11 and 31 August 2020. This measure excludes Saturdays, Sundays and public holidays, except when these days are deemed working days under procedural laws, such as in criminal investigations.

The above provision states that these days are deemed working days for the purposes of “all judicial proceedings, which in accordance with article 183 of Basic Law 6/1985 of 1 July on the judiciary, are considered urgent”. There may be some doubt as to whether courts will be open only to hear urgent proceedings, but it seems that the measure has been implemented to cover all proceedings, in accordance with Basic Law 6/1985 of 1 July of the judiciary ("LOPJ" for its Spanish acronym), which states that only urgent proceedings are heard during the month of August. In other words, for the purposes of article 183 of the LOPJ, all judicial proceedings during that period are now deemed urgent.

“Judicial proceedings” are understood to be those regulated in Book III of the LOPJ. Therefore, opening the courts in August may affect both the calculation of procedural deadlines and the possibility of holding hearings, appearances and taking evidence – without prejudice to the use of the latter possibility in practice in courts.

The deadlines will only be interrupted in 2020 between 1 and 10 August, both included.

(B) Calculation of procedural deadlines affected by the suspension derived from the state of emergency: RDL 16/2020 establishes that the terms and deadlines that would have been suspended under the state of emergency RD “will start from the beginning when they restart”. Therefore, the first day of the calculation is the next business day after that in which the suspension of the corresponding procedure ceases to have effect. This provision makes it unnecessary to calculate the individual deadlines in each of the suspended proceedings. This avoids both the inefficient use of human resources in the justice system, and the risk of calculation errors that could, in turn, result in further appeals to review decisions, with the undesirable effect of increasing the workload of the courts, which is precisely what the provisions aims to avoid.

(C) Extension of the time limit for appeal: The time limits to announce, prepare, formalise and lodge “appeals” against court rulings and other resolutions that, in accordance with procedural rules, end proceedings and that are notified while the suspension of terms is in effect, as well as those notified within 20 business days following the lifting of the suspension, are extended for a period equal to the period provided by law to announce, prepare, formalise and lodge appeals. This provision will not affect procedures that are exempted from suspension by the State of Emergency RD.

According to the wording of the rule, appeals against interlocutory decisions would be excluded from this rule, as they do not put an end to the process. Doubts may arise in relation to motions to dismiss decisions or orders which, by ending the process, are not subject to ordinary appeal.

35 As opposed to the initial provision of the State of Emergency RD which stated that the terms “resumed”.

Guide to different legal matters raised with regard to the health crisis caused by COVID-19. 1 May 2020 61/117
In principle, they do not seem to be included in the provision, as the motion to dismiss the decision is not, strictly speaking, an “appeal”.

(D) Preferential treatment to certain procedures: RDL 16/2020 establishes a list of cases that are to be given priority between the lifting of the suspension of deadlines due to the state of emergency and 31 December 2020.

Priority is in line with that provided for other proceedings in other procedural laws. An exception is made for certain labour procedures, listed in the second paragraph of article 7.2 of RDL 16/2020, which are given absolute priority, except in respect of proceedings for the protection of fundamental rights or public freedoms.

With regard to civil cases, priority will be given to processes derived from the non-recognition by the creditor entity of the legal moratorium on mortgages on main residence and properties linked to the business activities; those derived from claims may tenants due to the non-application of the legally established moratorium or the mandatory contract extension; and the insolvency proceedings of debtors who are individuals and not businesspersons which are heard by the courts of first instance.

This list of priority proceedings includes a specific provision on certain insolvency proceedings (article 14 of RDL 16/2020).

(E) Organisational and technological measures: Chapter III of RDL 16/2020 provides for measures aimed at extending health protection against the COVID-19 health crisis, by easing social distancing in court proceedings and even avoid being physically present in court to the extent possible. Many of these measures are limited in time, perhaps as a test of what the near future may hold for the justice system. The measures apply while the state of emergency – and its extensions, we presume – is in force and up to three months after it is lifted.

During this period, when the court is set up, all procedural steps including the trial, court appearances, statements and hearings, as well as court deliberations, will preferably be carried out electronically, provided that the courts, tribunals and public prosecutors’ offices have the necessary technical means at their disposal and except where the defendant’s physical presence is required given the serious nature of the crime being prosecuted.

Other limitations are established with regard to seating in courtrooms, medical-forensic examinations are to be based solely on medical documentation and legal professionals are exempt from having to use of court gowns.

Customer service in courts is also restricted, queries will be mainly handled online or by telephone, and a specific email address has been set up on the website of the various Territorial Management Offices of the Ministry of Justice (Gerencias Territoriales del Ministerio de Justicia) or those specified by the autonomous regions.

36 There are doubts as to what “electronic” or “distance” means are, and what technical means are “required for this purpose”. The more specific article 40 of RDL 8/2020, which mentions “video or telephone conferences”, may be referred to as a reference.
11.2 CONSTITUTIONAL COURT

By resolution of 16 March 2020, the Plenary Session of the Constitutional Court clarified that procedural and administrative proceedings before that Court are stayed for the duration of the state of emergency, although notices and appeals can be filed electronically and the Court can issue the decisions and interim measures it deems appropriate to guarantee the constitutional system and fundamental public rights and freedoms.

11.3 EUROPEAN COURTS

On 13 March 2020, both the Court of Justice of the European Union and the General Court issued statements indicating that, although only particularly urgent matters would be processed until further notice, the terms of all proceedings including those for appeal ran their course and would have to be abided by, notwithstanding the parties’ right to claim force majeure in specific proceedings. Oral hearings were stayed in any case until 27 May 2020.

New updates were posted on 30 March and 2 April. The Court of Justice declared that impending deadlines are extended for a month, except those relating to urgent procedures and deadlines for appeals, except in cases of force majeure, and hearings that were scheduled until 30 April 2020 have been adjourned until a later date. The General Court held that statutory time limits continue to apply, except for force majeure, and oral hearings scheduled until 15 May 2020 have been suspended.
12. ARBITRATION MATTERS

As regards arbitration, in the absence of provisions on the matter in RD 463/2020, the official recommendations and directives published by the arbitration courts should be followed together with what the parties agree or arbitration courts decide. The Court of Arbitration of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the International Centre for Settlement of Investment Disputes (ICSID), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the Court of Arbitration of Madrid (CAM for its Spanish acronym), the Spanish Court of Arbitration (CEA for its Spanish acronym) and the Civil and Commercial Court of Arbitration (CIMA for its Spanish acronym) have issued statements and decisions to stay proceedings and postpone evidentiary hearings. In our experience, parties are agreeing to suspend ongoing arbitration proceedings.
13. FOREIGN INVESTMENT RESTRICTIONS

The Government has introduced a new screening mechanism for certain investments by non-European Union ("EU") and non-European Free Trade Association ("EFTA") residents, based on public order, public health and public security reasons (the "Screening Mechanism"). Its regulation, initially enacted by the fourth final provision of RDL 8/2020, was modified by RDL 11/2020.

13.1 THE SCREENING MECHANISM

Whenever the acquiring entity is a non-EU and non-EFTA resident, even if the acquisition is carried out through legal entities incorporated in the EU, careful prior assessment of the potential need to undergo the Screening Mechanism is required given that the consequences of a breach of this mandatory regime are very serious. Breaches include rendering the transaction invalid and without any legal effect (until the required authorisation is obtained) and the imposition of substantial fines (up to the transaction value).

This is not a “Spain-only” matter, but a common trend across the EU. The Screening Mechanism implements in Spain the guidance issued by the European Commission in March 2020, which called upon Member States to “make full use already now of its foreign direct investment screening mechanisms to take fully into account the risks to critical health infrastructures, supply of critical inputs, and other critical sectors as envisaged in the EU legal framework”.

The Screening Mechanism aligns part of the Spanish foreign investment legal framework with Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union. Some provisions of Regulation (EU) 2019/452 – such as the list of sectors affecting public order and public security or the definition of State-owned companies and other similar investors – are mirrored in the regulations establishing the Screening Mechanism. That said, Regulation (EU) 2019/452 will not be applicable until 11 October 2020, and once it is in force, adjustments to the Screening Mechanism could be required to comply with EU mandatory standards.

The Screening Mechanism, as amended by RDL 11/2020, can be summarised as follows:

(A) Under the ordinary procedure, prior authorisation from the Council of Ministers is required to close foreign direct investments subject to it. The legal term to issue a decision is six months.

(B) On a transitional basis, until the Screening Mechanism is further developed, a fast-track 30-day procedure, which resolution is to be issued by a lower-tier authority (the General Directorate for International Trade and Investments – Dirección General de Comercio Internacional e Inversiones – based on a report by the Foreign Investment Board – Junta de Inversiones Exteriores –), applies for investments (i) agreed but not closed prior to 18 March 2020; and (ii) those below EUR 5 million. Investments below EUR 1 million are not subject to the Screening Mechanism.

(C) Under both the ordinary and fast-track procedures, the investment will be deemed unauthorised if the relevant authority does not respond to the authorisation request within the statutory term.
Details on the information and documents required to request an authorisation have not been issued yet.

13.2 Scope

For the purposes of the Screening Mechanism:

(A) Foreign investors are:
   (i) non-EU and non-EFTA residents; and
   (ii) EU or EFTA residents whose beneficial owners are non-EU and non-EFTA residents. This occurs when non-EU and non-EFTA residents ultimately possess or control, directly or indirectly, more than 25% of the share capital or voting rights of the investor, or otherwise exercise control, directly or indirectly, over the investor.

(B) Foreign direct investments include:
   (i) investments that result in a foreign investor reaching a stake of at least 10% of the share capital of a Spanish company; and
   (ii) any corporate transaction, business action or legal transaction which enables effective participation in the management or control of a Spanish company.

Not all foreign direct investments are subject to the Screening Mechanism, as this will depend on: (i) the sector in which the target carries out its business; and (ii) the personal circumstances of the foreign investor, regardless of the business of the target.

(A) Objective criteria: foreign direct investments in the following sectors are subject to the Screening Mechanism:
   (i) Critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure, meaning those included in Law 8/2011.
   (ii) Critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies.
   (iii) Supply of critical inputs, including energy or raw materials, as well as food security.
   (iv) Sectors with access to sensitive information, including personal data, or the ability to control such information. Every Spanish company processes personal data, however the law fails to establish which particular activity presents systemic risks in terms of security and public order.
   (v) Media.
(vi) Other sectors designated by the Spanish government from time to time that may affect public security, order or health (currently none).

(B) Subjective criteria: foreign direct investments by the following foreign investors are also subject to the Screening Mechanism, regardless of the business of the target:

(i) Investors directly or indirectly controlled by the government, including state bodies or armed forces, of a non-EU/EFTA country, applying the criteria set out in article 42 of the Spanish Commercial Code for the purposes of determining whether such control exists. The recitals of the first Royal Decree Law introducing the Screening Mechanism expressly refers to sovereign wealth funds as entities which investment would be subject to screening.

(ii) Investors that have already made an investment affecting national security, public order or public health in another EU Member State, including an investment in any of the abovementioned sectors.

(iii) Investors subject to ongoing judicial or administrative proceedings in another Member State or in the State of origin or in a third State for engaging in illegal or criminal activities.

13.3 CONSEQUENCES OF NOT UNDERGOING THE SCREENING MECHANISM

Gun-jumping the Screening Mechanism will render the transaction invalid and without any legal effect, until the required authorisation is obtained.

In addition, fines up to the value of the investment could be imposed.

13.4 FUTURE DEVELOPMENTS

The first package regulating the Screening Mechanism authorised the Spanish Council of Ministers to lift the Screening Mechanism. This authorisation was removed in the second package establishing the current terms of the Screening Mechanism.

Regulations issued by the Government should be approved to further develop the Screening Mechanism – in particular, to set the de minimis amount under which foreign direct investments are not subject to the Screening Mechanism (currently EUR 1 million, until these regulations are approved) –.

Even though the latest legislation on foreign direct investment has been passed during the current COVID-19 crisis, they might be expected to remain in force in the long term.

Since 11 October 2020, adjustments to adapt the Screening Mechanisms to implement Regulation (EU) 2019/452 might also be required.

As there are many open questions on how this new Screening Mechanism should be interpreted, it is advisable to be especially cautious, particularly as to the scope of the definition of beneficial ownership of EU or EFTA residents by non-EU and non-EFTA residents, the sectors subject to the Screening Mechanism, the definition of what effective participation in the management or control of a Spanish company means, the situation of foreign investments that already hold a shareholding interest of over 10% and who wish to increase it (or maintain it, through share capital increases with pre-emptive
subscription rights) and many others. To answer these questions, we will need to bear in mind, on the one hand, the principles and rules within which the new regulation is encompassed, and on the other, the intended purpose for the new Screening Mechanism to counteract “the real threat for listed Spanish companies” affected by the stock market slumps of the last few days of “acquisition operations (...) by foreign investors”, a threat that also affects “unlisted companies whose equity value is being diminished”.

14. SECURITIES MARKET MATTERS

14.1 ESMA GUIDELINES FOR FINANCIAL MARKET PARTICIPANTS

Following recent developments in the financial markets as a result of the situation created by COVID-19 and its expected impact on the economy and on the business and prospects of issuers of securities, on 11 March, the European Securities and Markets Authority (“ESMA”) published the following four recommendations for participants in financial markets:

(A) Market participants should all be ready to apply their contingency plans, including deployment of business continuity measures, to ensure operational continuity in line with regulatory obligations.

(B) Issuers of securities are reminded of their obligations regarding the disclosure of inside information established in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, and encouraged to disclose as soon as possible any relevant significant information concerning the impact of COVID-19 on their fundamentals, prospects or financial situation. This is particularly relevant, although not exclusively, for issuers who have published financial or business objectives which are now difficult to achieve as a result of the impact that COVID-19 has had on their activities or on the economy as a whole. In recent weeks, many issuers have communicated inside or other relevant information in this regard.

(C) In line with this, ESMA reminds issuers of securities that they should be transparent and report on the current and potential impact of COVID-19 on business activities in their 2019 year-end financial report or in their interim financial reporting disclosures. In both cases, to the extent possible, the information must be based on both a qualitative and quantitative assessment of their business activities, financial situation and economic performance.

Although market prices of listed securities already seem to be reflecting the impact of COVID-19 on issuers’ financial situation, issuers should assess whether the most recent data on the evolution of their businesses and their internal projections of the impact that COVID-19 could have on their outlook may constitute inside information, since it could limit the actions issuers can take regarding their own securities until the information is disclosed.

In relation to both aspects (need to adequately consider and reflect the impact of COVID-19 in annual financial reports and interim financial statements and the assessment of the need to disclose specific information in this regard as inside information), on 25 March, ESMA published additional guidelines and specific details, aimed particularly at credit institutions, on the presentation in financial statements of information on increased credit risks and expected losses in credit portfolios (taking into account any public guarantees that debtors may receive) in accordance with IFRS 9.

(D) Finally, ESMA has stressed that asset managers must continue to fulfil the requirements on risk management, and react accordingly.

Additionally, on 17 April 2020 ESMA updated its questions and answers document to provide guidance to issuers on the application of the ESMA Guidelines on Alternative Performance Measures in the context
of the COVID-19 pandemic. In this regard, ESMA acknowledged that, due to the impacts of the COVID-19 pandemic on issuers’ operations, issuers may decide to disclose new, or to adjust, alternative performance measures in *ad-hoc* disclosures published in accordance with the market abuse regulation.

Rather than adjusting existing alternative performance measures or including new alternative performance measures, ESMA urges issuers to improve their disclosures and include narrative information in their communication documents in order to explain how COVID-19 impacted and/or is expected to impact their operations and performance, the level of uncertainty and the measures adopted or expected to be adopted to address the COVID-19 outbreak. These explanations may include, where applicable, details on how the specific circumstances related to COVID-19 affected the assumptions and estimates used in the determination of inputs to alternative performance measures.

### 14.2 Deadlines for Publishing Financial Information and Other Information Tools

RDL 8/2020, anticipating the recommendation issued by the ESMA on 27 March regarding the deadlines for the submission of annual and half-yearly financial reports by issuers subject to national rules transposing Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (the "Transparency Directive"), has relaxed the deadlines for compliance with these obligations by issuers which home Member State is Spain for the purposes of the Transparency Directive. As regards issuers of securities incorporated in multilateral trading systems, the Alternative Stock Market (*Mercado Alternativo Bursátil*) has announced a similar measure, while in the Alternative Fixed Income Market (*Mercado Alternativo de Renta Fija*) the general deadlines established in RDL 8/2020 apply, all as set out below.

#### 14.2.1 Issuers of securities admitted to trading on regulated markets

Exceptionally in 2020, and pursuant to RDL 8/2020, the following applies to issuers whose home Member State is Spain and whose securities are listed on an EU regulated market:

- **(A)** They will have six months from the end of the financial year to comply with the obligation to publish and submit their annual financial report to the CNMV and the audit report of their annual accounts. In most cases, this period will expire on 30 June 2020.

  This period will also apply to the other reporting instruments which preparation and publication is linked to the drawing up of the issuer’s annual accounts, namely the statement of non-financial information, annual corporate governance report and annual report on directors’ remuneration.

- **(B)** They will have four months from the end of the relevant period to publish the half-yearly financial report and the interim management statements. For the issuers in general, this will mean that they will have until 30 July 2020 to publish the interim management statement for the first quarter and until 30 October 2020 to publish their half-yearly financial report for the first half of the year. As regards the third quarter interim management statement, since the four-month term for its filing ends after the end of the 2020 calendar year, to which these exceptional deadlines for the publication of periodic financial information apply, it would be more prudent to infer that the deadline for submitting this statement is 31 December 2020.
14.2.2 Issuers of securities admitted to trading on the MAB

As RDL 8/2020 does not apply to companies which shares are traded on any of the segments of the Alternative Stock Market ("MAB" for its Spanish acronym), on 18 March the MAB took the logical step of approving an equivalent measure to that of RDL 8/2020 for companies which shares are traded on any of its segments.

Thus, issuers of shares traded on the MAB may send their periodic annual information up to six months following the accounting closure of the financial year. In relation to the half-yearly financial information, the deadline for MAB issuers obliged to issue this type of report already coincides with that established for 2020 for issuers of securities admitted to trading on regulated markets.

14.2.3 Issuers of securities admitted to trading on the MARF

In relation to the Alternative Fixed Income Market ("MARF" for its Spanish acronym), as its rules provide that issuers of securities traded on this market must submit financial information as soon as it is available, no specific exceptional provision is necessary and the general rules in articles 40 and 41 of RDL 8/2020 apply (see sections 4.2 and 14.2.1), depending on the nature of the issuer.

14.3 TEMPORARY PROHIBITION ON TAKING UP OR INCREASING NET SHORT POSITIONS

The CNMV has banned transactions on securities and financial instruments that create or increase a net short position on Spanish shares listed on Spanish equity markets (including the Continuous Market (Mercado Continuo) and the Alternative Stock Market (Mercado Alternativo Bursátil)). This ban will apply from 17 March until 18 May 2020. The CNMV has also published a Q&A (last updated on 17 April 2020) on the most common doubts regarding this ban.

The ban applies to any transaction in relation to shares or indexes, including cash transactions, derivatives traded on equity markets or OTC derivatives, that creates a net short position or increases a pre-existing one, even if this occurs during the same operating day. The net short positions taken through derivatives prior to the ban coming into force are not affected.

The ban does not apply to the following: (i) market-making activities, provided that the entities have notified the competent authority and regardless of the country where they are domiciled, and (ii) the creation or increase of net short positions (a) when the investor who purchases a convertible bond has a neutral position (between the position in the variable income component of the convertible bond and the short position that is taken to cover that element), (b) when it is covered by an equivalent purchase in terms of the proportion of subscription rights, or (c) through derivative financial instruments on indexes or baskets of financial instruments that are not made up of a majority of shares to which the ban applies and provided that they are derivatives (such as futures or options) traded in a trading venue. The creation or increase of net short positions through ETFs is also allowed, provided the fund is not mostly made up of shares affected by the ban.

On the other hand, investors are not obliged to reduce their exposure if the net short position was taken before the temporary ban by the CNMV and is increased exclusively as a result of a change in volatility. Furthermore, these investors can roll over their short position in derivatives, provided that in doing so
does not increase the pre-existing net short position. By contrast, an investor with a long position through a derivative that hedges a short position on the shares subject to the ban must either maintain the long position and its coverage or undo both.

14.4 **OBLIGATION TO NOTIFY NET SHORT POSITIONS OF 0.1% OR ABOVE OF THE ISSUED SHARE CAPITAL**

ESMA has decided to temporarily require investors with net short positions in relation to the issued share capital of a company which shares are listed on an EU regulated market to notify the relevant national authority when the position reaches 0.1% or above of the issued share capital following the entry into force of the decision.

The measure applies directly, and therefore entailed the obligation of holders of the relevant net short positions to notify as from the close of trading on Monday, 16 March 2020. These temporary obligations apply to all natural or legal persons, regardless of their country of residence. However, the measures apply neither to shares listed on a regulated market when the main trading venue is located in a third country nor to market creations or stabilisation activities.

Nevertheless, this measure is impractical while the temporary prohibition to establish or increase net short positions on securities admitted to trading on the Spanish equity markets described above applies.
15. **PUBLIC LAW MATTERS**

15.1 **MEASURES TO BOLSTER THE NATIONAL HEALTH SYSTEM**

The main measure implemented by the State of Emergency RD to bolster the National Health System throughout Spain and ensure cohesion and equity in service delivery entails that all public health authorities, and civil servants, fall under the direct orders of the Minister of Health as necessary to protect persons, property and places, and they may be instructed to perform extraordinary services in terms of duration or type. This measure does not entail the suspension of regional autonomy, but rather that the regional and local public authorities will continue to manage, within the scope of their authority, the relevant health services, ensuring at all times their full availability and that adequate operation so as to comply with the instructions, orders or guidelines issued by the Ministry of Health. Military personnel and healthcare centres may also be used to bolster the National Health System.

With regard to private healthcare centres, services and establishments, these measures entail that the Minister of Health may exercise any powers necessary, either directly or through the regional authorities. The measures have been developed in various orders, including Order SND/232/2020 of 15 March, making available to the regional authorities private health centres and establishments, their staff and mutual insurance companies for work-related accidents to ensure adequate health care for the population or Order SND/275/2020 of 23 March empowering the regional authorities to requisition residential social service centres.

Section 18 *(Measures adopted in the pharmaceutical and health sectors)* elaborates on some of the main measures taken in this area.

15.2 **SUSPENSION OF ADMINISTRATIVE TERMS**

The third additional provision of the State of Emergency RD, modified by RD 465/2020, as a general rule, stays the terms and the processing of administrative proceedings (not relating to taxes or social security registration or contributions) in the public sector. However, it allows the authorities to implement organisational and processing measures to prevent serious harm to the rights of the interested parties, provided that they expressly agree with the measures or with not suspending the proceedings, even when there is no such risk. In addition, public sector entities may make a reasoned decision to continue with administrative proceedings regarding matters that are closely linked to the state of emergency, or which are essential to protect public interest or the basic operation of services, in which case the consent of the interested parties is not necessary. The suspended terms and proceedings will resume at such time as the state of emergency or any of its extensions ceases to be in force.

In accordance with the eighth additional provision of RDL 11/2020, the period to file administrative appeals or complaints in their stead is interrupted. This period accrued from the working day following the date on which the state of emergency ends, regardless of the time that has elapsed since the notification of the administrative act appealed or challenged before the state of emergency is declared. This provision will have no bearing on the effectiveness and enforceability of the administrative act appealed or challenged.
RDL 15/2020 included a relevant development on the above: it established that the special review appeal -available for the bidders of an awarding procedure- is still in force for all those awarding procedures in which the public sector entities made the reasoned decision to continue with administrative proceedings and could be filed according to general rules of Law 9/2017 of 8 November on public sector contracts ("LCSP" for its Spanish acronym). However, the standstill period triggered by the filing of this appeal is not mandatory.

15.3 PUBLIC SECTOR CONTRACTS

15.3.1 General principles

The exceptional scenario caused by COVID-19 has been addressed in the area of contracting by implementing extraordinary measures on an ad hoc basis, as described below, and the measures already provided by LCSP, such as the execution of emergency contracts (article 120) or the urgent processing of new procurement contracts by the contracting authority in the event of urgency (article 119). RDL 9/2020 specifically refers to article 120 LCSP for the implementation of any direct or indirect measure implemented by public authorities within the scope of the public sector to address the COVID-19 health crisis, based on the urgency of the situation.

It is also worth noting that some of the public sector contracts subject to LCSP are subject, in relation to their effects and termination, to private law, in such a way that section 3 of this Guide (Impact on contracts and contractual obligations) applies to them.

Where no extraordinary measures have been implemented, the appropriate rule regarding the nature of the contract will apply. For instance, the fact that no reference is made to the potential suspension of a certain type of administrative contract, does not mean that the general mechanisms in the LCSP (article 208) do not apply. This is also the case if the effects of force majeure in contract law have not been regulated ad hoc, since the absence of a provision in this respect does not mean that there is no right to compensation or to restore the economic balance of the contract. However, this would need to be analysed on a case-by-case basis, taking into account the terms and features of the contract, in order to determine whether compensation is appropriate by analogy, in application of public procurement law or civil law principles.

Besides the specific temporary measures, Royal Decree-Law 16/2020 has permanently amended paragraphs d) and f) of article 159.4 of LCSP on simplified competitive public procurement (procedimiento abierto simplificado). This amendment aims to promote the use of electronic means and avoid that proposals submitted by a tenderer be open in a public act (it revokes the express obligation to hold a public act to open tender proposals that contain the part of the offer assessed using the mathematic criteria provided in the specifications – whether enclosed in envelopes or submitted electronically –, when there is no express provision on the use of electronic means).
15.3.2 Measures to exclude contract procedure

The State of Emergency RD provides, amongst others, that the Minister of Health may issue orders to ensure market supply and the operation of production centre services affected by shortages; to intervene or temporarily occupy industries, factories, workshops, businesses or premises of any nature; and to temporarily seize all types goods and compel citizens to provide specific services when necessary. These measures may be adopted and imposed directly, without requiring the execution of the contracts provided in the public sector contracts law. The Minister of Transport, Mobility and Urban Agenda also has the power to adopt measures that may affect contracting and in particular, the suspension of contracts.

Besides, RDL 9/2020 adds flexibility with regard to budget monitoring and payments for emergency contracts (e.g. by allowing payments in advance in some cases, the LCSP guarantees can be waived or adjusted and, in some cases, the release of the necessary funds to meet the costs may be justified at a later stage).

RDL 9/2020 also regulates the procurement for contracts that have to be totally or partially signed or executed abroad. The Head of the Embassy or Permanent Representation – unless a Minister claims authority – may execute such contracts under the terms and conditions freely negotiated by the public authority and the foreign contractor, if absolutely essential to execute the contract. The financial regulation of these contracts is also made more flexible as funds may be disbursed into either Spanish or foreign accounts. The Ministry of Health is in charge of handling the financing side of the contract and it will be included in its budget. However, final payments may be made through Spanish representations abroad. The Minister of Health may also delegate the financial management to other bodies or entities, whether they report directly to the Ministry or otherwise. If essential according to the market situation and commercial exchanges of the country where the contract is executed, total or partial payments may be made before the services are rendered. The risk of altering the economic balance of the contract as a result of the abovementioned decisions, will be assumed by the State budget.

For the purposes of the emergency contracts, foreign contractors domiciled abroad are exempt from the obligation to use e-invoices from the moment RDL 9/2020 was enacted (28 March 2020) until the state of emergency, or any of its extensions, ends.

15.3.3 Measures on the suspension and readjustment of certain public sector contracts

(A) Basis

Article 34 of RDL 8/2020 includes specific rules on the suspension and rebalancing of major public sector contracts37.

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37 According to the wording in RDL 11/2020, public contracts are understood to be those that in accordance with their specifications, are subject to Law 9/2017 of 8 November on Public Sector Contracts; Royal Legislative Decree 3/2011 of 14 November approving the consolidated text of the Public Sector Contracts Law; Law 31/2007 of 30 October on procurement procedures in the sectors of water, energy, transport and postal services; Book I of Royal Decree-Law 3/2020 of 4 February on urgent measures by which various directives of the European Union in the field of public procurement are transposed into
Continuing-performance public contracts for services and supplies. Suspension of performance and extension of terminated contracts

Continuing-performance public contracts for services and supplies in effect upon entry into force of RDL 8/2020, which performance becomes impossible as a result of the COVID-19 outbreak or due to the measures implemented to address the pandemic, will be totally or partially suspended as of the occurrence preventing performance and until they can resume. This suspension only applies when the contracting authority, at the request of the contractor and within five calendar days, has become aware of the impossibility of performing the contract. Any such request by the contractor is to be deemed rejected by administrative silence if no resolution is issued in this regard. In this case, the awarding authority must pay the contractor the following damages suffered by the contractor during the suspension period, at the contractor’s request and provided that their existence, effects and amount have been duly evidenced by the contractor. The suspension does not entail the termination of the contract nor is it governed by the general provisions of the LCSP. The provision of services may be resumed when, once the circumstances or measures that prevented it have ceased and the contracting authority notifies the contractor of the end of the suspension. Further to the suspension, when, upon expiry of the term of the contract, no new contract has or was able to be executed so as to ensure continuity of the provision of services as a result of the stoppage of procurement procedures resulting from the provisions of the State of Emergency RD, the current contract may be extended for up to nine months regardless of the publication date of the new tender.

In case of suspension, the contracting authority must pay the contractor for the damage the latter actually suffers during the period of suspension, at its request and upon proving the existence, extent and amount of the damage in an itemised list contained in RDL 8/2020. This includes, among others, the salary expenses, including social security contributions, that the contractor would have paid to the personnel assigned on 14 March 2009 to the ordinary execution of the contract. As to personnel affected by the recoverable paid leave regulated in RDL 10/2020, the contracting authority will advance this amount on account of the hours that the staff need to recover. The contracting authority must also bear other costs such as expenses to maintain the final guarantee, rent or upkeep of the machinery, installations and equipment directly assigned to the execution of the contract, provided that the contractor proves that they could not be used for other purposes.

Non-continuing-performance public service and supply contracts or continuing-performance contracts which performance is not deemed impossible. Justified delay and extensions

In public service and supply contracts (including minor contracts), provided their original purpose has not been lost as a result of the factual situation created by the COVID-19, where the contractor incurs a delay in complying with the deadlines laid down in the contract as a result of

Spanish law; private insurance; pension plans and funds; of the tax scope and tax litigation; or Law 24/2011 of August 1 on public sector contracts in the areas of defense and security.
COVID-19 or the measures implemented to address the situation, at the request of the contractor and subject to a favourable report by the competent authority, an extension may be granted for an amount of time equal to the time lost for the abovementioned reasons, unless the contractor requests a shorter extension. Provided that the delay is not caused by the contractor, the authority cannot impose penalties or terminate the contract.

Contractors are entitled to receive a payment of additional salary costs that they have actually incurred as a result of time lost due to COVID-19, up to a maximum of 10% of the initial contract price. These costs will only be paid if the contractor formally requests them and evidences their actual existence, effects and amount.

RDL 8/2020 does not regulate supply or service contracts which original purpose has been lost as a result of the COVID-19 health crisis or those that have been breached due to defective performance as opposed to delay. The possibility of them being deemed terminated due to force majeure and the economic consequences of this would need to be analysed in accordance with the general criteria set out in section 15.3.1 above.

(D) Works contracts. Suspension of execution or extension of term

In relation to public works contracts in force when RDL 8/2020 was enacted or in those which in accordance with the works schedule or works plan are expected to be completed between 14 March, date of commencement of the state of emergency, and during the period of the state of emergency, compliance with which becomes impossible as a result of the situation caused by the COVID-19 outbreak, or the measures implemented and which initial purpose has not been lost, the contractor may request, respectively, the suspension of the contract or an extension, subject to the same provisions as continuing-performance supply and service contracts in section 15.3.3(B) above as regards procedure and compensation.

This provision contains some particularities with regard to the contracting authority assuming costs (express reference to General CBA VI for the construction sector 2017-2021, dated 26 September 2017, or equivalent agreements entered into in other areas of collective bargaining, for the personnel assigned to perform the contract before 14 March 2020 and who continue to be assigned to that contract when performance resumes). Besides, the right to compensation and damages with regard to works contracts will only be acknowledged when the principal contractor proves that the following conditions have been fulfilled as at 14 March 2020:

(a) That the principal contractor, any subcontractors, suppliers and providers contracted to perform the contract are in good standing regarding their labour and social security obligations.

(b) That the principal contractor is in good standing regarding its payment obligations to subcontractors and suppliers.

RDL 8/2020 does not regulate the situation where the initial purpose of the works contracts has been lost. Therefore, we must refer to the general criteria provided in section 15.3.1 above.
Works and services concession contracts. Restoring the economic balance of the contract

With regard to public works and services contracts in force upon the enactment of RDL 8/2020 and the circumstances caused by COVID-19 and the measures implemented to address them, the concessionaire has the right to restore the economic balance of the contract by, as may be applicable in each case, extending the initial term by up to 15% or by amending the economic terms of the contract. This restoring of the economic balance will compensate contractors for the loss of income and increase in costs incurred, which includes additional salary costs actually paid in respect of those established for the ordinary performance of works or services contracts while the situation continues.

The compensation will only be paid if the contractor formally requests it and evidences the existence, effects and amount of the costs, provided that the contracting authority, at the request of the contractor, deems that contract performance is impossible.

Since the purpose of article 34 is to regulate the suspension and extension or postponement of the time limit of certain public contracts because of the COVID-19 crisis, it is logically limited to providing the right to restore economic balance in the case of suspended concession contracts and does not regulate that right for concessions that can continue, but which economic and financial balance has been disrupted as a result of the COVID-19 health crisis or the measures implemented to address the situation. In our view, this lack of express provision should not be deemed to exclude the right to restore the balance in other concession contracts, to which the general public procurement rules, case law and principles on rebalancing will apply.

Contracts subject to regulations from excluded sectors

The measures in RDL 8/2020 also apply to contracts entered into by public authorities and in force upon entry into force of RDL 8/2020 and that are subject to Law 31/2007 of 30 October.

Expressly excluded contracts

None of the above, except for the mandatory extension described in section 15.3.3(B), applies to the following contracts:

(i) Healthcare or pharmaceutical or other types of service or supply contracts, which purpose relates to the COVID-19 health crisis.

(ii) Contracts for security, cleaning or IT systems maintenance services. In the case of service, security and cleaning contracts, total or partial suspension will be possible as explained in section 15.3.3(B).

38 Law 31/2007 of 30 October on contracting procedures in the water, energy, transport and postal services sectors or Book I of Royal Decree-Law 3/2020 of 4 February on urgent measures transposing into Spanish law various EU directives in the field of public procurement in certain sectors; pension plans and funds; taxation and tax litigation.
(iii) Service or supply contracts necessary to ensure mobility and the security of infrastructures and transport services.

(iv) Contracts awarded by public entities that are listed on official markets and are not financed in the General National Budget.

The reasons for excluding these contracts from the scope of the suspension is the need to maintain the performance of these contracts during the COVID-19 crisis. However, RDL 8/2020 does not deal with the issue of restoring the economic balance of these contracts (we should refer to the general rules, as noted in section 15.3.1).

15.3.4 Public procurement measures implemented by some regional authorities

The measures implemented by the central Government, as explained above, have been approved as basic standards and, as such, are applicable throughout Spain without prejudice to the authority of the regional authorities to approve their own rules supplementing and implementing basic rules. In this vein, some regional authorities have already passed public procurement regulations in response to the COVID-19 health crisis. Even though these regulations may be challenged for not being compliant with the basic rules passed by the central Government, given the current critical situation both the regional and local authorities are very likely to apply them.

The regional authority of Catalonia has passed three decree-laws (Decree-Law 6/2020 of 12 March; Decree-Law 7/2020 of 17 March; and Decree-Law 8/2020 of 24 March) implementing different measures. As of 14 March 2020, all contracts related to education centres are suspended (i.e. cleaning, monitoring or similar, school transport or sign language translation). This suspension applies until the education centres reopen. Additionally, in line with the central Government’s approach, Catalanian contracting authorities can opt to suspend a contract when its performance becomes impossible, it is a continuing-performance contract (contratos de prestación sucesiva) and the contract is linked to public facilities, such as cleaning, security and surveillance, maintenance, janitor or gardening services. Nevertheless, when the contracts are suspended either by law or at the discretion of the relevant public authority, the authority or contracting entity will have to pay the contractor damages and losses incurred while the contract is suspended, in accordance with article 34.1 of the State of Emergency RD. As regards the suspension of cleaning and security and surveillance contracts, the compensation provided in article 208 LCSP applies.

The regional authority of Navarra issued Provincial Decree-Law 2/2020 of March 25 to implement its own measures. It automatically suspends services and supplies continuing-performance contracts (contratos de prestación sucesiva) which performance becomes totally or partially impossible as a result of the COVID-19 health crisis or of the measures implemented by the public authorities to address the problem. The suspension will affect the part of the contract which performance becomes impossible and it will continue to be suspended until performance can be resumed. The term of the contracts will be extended when, due to the health crisis, a new tender procedure to award a new contract cannot be carried out. This extension will last until a new tender procedure can be carried out and in any event, the extension must last less than nine months. Navarra’s new piece of legislation also includes other
measures in relation to public contracts which in essence reproduce those implemented by RDL 8/2020. Finally, Provincial Decree-Law 2/2020 also applies to contracts in the fields of health and social services.

The regional authority of the Balearic Islands approved Decree-Law 4/2020 of 20 March, which only refers all new procurement related to the health crisis to emergency procedures and the State of Emergency RD. Decree-Law 1/2020 of 25 March approved by the regional authority of Aragon does the same. As do other regional authorities, such as those in the Basque Country or in Castilla-La Mancha, which have issued specific orders (e.g. Order 1/2020 of 16 March by the Basque Country’s Directorate for Heritage and Procurement on the effects of the suspension of terms and interruption of time limits in public sector contracting in the regional authority of the Basque Country).

15.4 Potential claims based on the state’s pecuniary liability

The declaration of the state of emergency and the measures that the public authorities are implementing may give rise to State liability.

In general, individuals may file claims for State liability for the damages or losses caused by the actions and regulations of the authorities, implemented in relation to the COVID-19 health crisis, when they entail an extraordinary and specific damage or detriment and it is not caused by reasons attributable to the individual. Article 3.2 of Basic Law 4/1981 of 1 June on states of emergency, exception and siege, which regulates this matter, refers to the general State regulations, that is, to articles 32 to 37 of Law 40/2015 of 1 October on the public sector regime – on substantive issues –, and articles 91 and 92 of Law 39/2015 of 1 October on the common administrative procedure of public authorities – in procedural issues –. The State could argue the existence of force majeure to break the causal link, which will require a specific analysis of the link between the damages suffered and the public authorities’ actions and regulations and the pandemic.
16. TRANSPORT AND SEAPORT MATTERS

16.1 INTERNATIONAL TRANSPORT

16.1.1 Internal borders: green lanes

One 24 March the European Commission issued the Communication 2020/C 96 I/01 on the implementation of the so-called “green lanes” to guarantee the supply of essential goods across the European Union. In this regard, the European Commission has requested the Member States to designate as “green lanes” all the border-crossings at internal borders connected to land (road and rail), sea and air transport so that the transit through these border-crossings does not exceed fifteen minutes, including the relevant checks and health screening. The European Commission has also established the need for Member States to temporarily suspend all types of road access restrictions in place in their territories (week-end bans, night bans, sectoral bans, etc.) to allow access for road freight transport.

Furthermore, in order to avoid contagion, the Commission has also advised drivers and transport companies to (i) send electronically and in advance the transport-related documents; and (ii) use gloves and sanitising gel in the event it is necessary to physically exchange documents.

16.1.2 Road transport

On 7 April, the European Council approved a significant amendment related to the transport sector entitled the “Mobility Package” with its implementation expected to take place by means of the publication of the relevant Directives and Regulations.

It is foreseeable that, among other aspects, the new rules will create a uniform legal framework for the use of electronic information during the freight transport. This would be an important step for the road transport sector against emergency situations as the one caused by the COVID-19 health crisis.

16.1.3 Connections Spain-Italy

Exceptional measures have been implemented to limit the spread of COVID-19 by banning direct flights and prohibiting the entry of passenger ships between Italy and Spain.

16.1.4 Trips from third countries to the European Union

The measures implemented by Order INT/270/2020 of 21 March, which establishes criteria for the application of a temporary restriction of non-essential trips from third countries to the EU and associated Schengen countries on public order and public health grounds, as a result of the COVID-19 health crisis, should be implemented in more detail.

The members of the European Council agreed on 17 March to apply a temporary restriction on non-essential travel from third countries to the EU and associated Schengen countries. In line with this agreement, Order INT/270/2020 and after this, Order INT/335/2020, deny entry into Spain on public order or public health grounds to any person from a third country unless they are: residents or holders of a long-term visa in the EU or associated Schengen countries, returning to their place of residence; cross-border workers; health workers travelling to work; personnel engaged in the transportation of goods and
necessary flight personnel; diplomats and similar officials; urgent reasons to travel, force majeure or genuine necessity. The borders of the Ceuta and Melilla enclaves have also been closed.

16.2 NATIONAL TRANSPORT

16.2.1 Passenger transport

According to the State of Emergency RD and with regard to all forms of transport, regardless of the competent public authority, the Minister of Transport, Mobility and Urban Agenda is authorised to issue the necessary acts and regulations within its remit to establish conditions for ordinary or extraordinary mobility services with a view to protecting persons, property and places. The acts, regulations and measures may be implemented ex officio or at the reasoned request of the competent regional or local authorities. No administrative procedure needs to be followed in this case.

The State of Emergency RD initially established a general reduction in the supply of public transport services of passengers by road, rail, air and sea by 50%, with some peculiarities. Local rail services, however, will continue to run as normal. Order TMA/273/2020 of 23 March, eventually reduced all passenger transport services by up to 70%, except again for local rail transport. The goal of this second reduction of the supply of passenger transport services is to make this supply equal to the maximum level of services that would normally be supplied during the week-ends.

Transport operators must make the necessary adjustments to comply with the established percentages as uniformly as possible between the different services they render and may propose any matters requiring interpretation or clarification to the Ministry of Transport, Mobility and Urban Agenda.

With regards to package trips, please see section 3.3.3 above.

16.2.2 Freight land transport

Pursuant to the State of Emergency RD, and as a consequence of the COVID-19 health crisis, the Minister of Transport, Mobility and Urban Agenda has issued several orders with different measures related to freight transport, all of them with the purpose of speeding up the transportation of goods and, in particular, those of basic necessity related to the health crisis. Among such measures, the following are especially worth mentioning:

- temporary exceptions to the mandatory driving and rest times of carriers;
- extension of the validity of essential fit for purpose certificates of railway personnel and driver qualification cards, which prove that the person fulfils the required professional standards, as well as certificates that cover the provision of maritime and air services;
- permission for two persons to be in the cabin of the vehicle where this is necessary to provide the transport service, provided that adequate protection measures are followed;
- opening of establishments that lease driverless vehicles for use by freight transporters, as well as the opening of repair and maintenance workshops;
specific conditions for the use of certain methods transport by land (in terms of respecting the minimum distance measures to avoid infection, limiting occupation to one third of the available seats);

specific conditions in terms of traffic and circulation of motor vehicles with the suspension of regulations to allow the circulation of specific vehicles such as ambulances, those that carry perishable goods or funeral services, among others; and

special measures for holders of the tachograph driver cards, both driver or company-related, which cannot be renewed due to the measures adopted during the state of emergency that affect the corresponding administrative authorities that issue these cards.

16.2.3 Connections peninsula-archipelago and transport between islands

A number of limitations and prohibitions have been established in connection with flights to and landings at the Autonomous Regions of the Canary Islands and Balearic Islands, as well as to the enclaves of Ceuta and Melilla. Likewise, specific measures have been implemented in connection with transport between islands.

In particular, the air transport service routes between Palma de Mallorca-Menorca and Palma de Mallorca-Ibiza during the state of emergency has been awarded to Air Europa upon fulfilling a number of conditions (which include a daily round-trip flight between these locations, the offer of 50% of the aircraft’s total capacity – which must have a minimum of fifty seats – and a final price per trip of EUR 60).

Additionally, the air transport service on certain air routes of the Canary Archipelago during the state of emergency has been awarded to the company Binter Canarias, S.A.

16.3 SEAPORT SECTOR

RDL 15/2020 has approved an aid package for the seaport sector that provides for savings of approximately EUR 100 million for companies operating in this market. Among the main measures, the Port Authorities (autoridades portuarias) have been empowered to:

Reduce the minimum traffic required for 2020. The reduction must be requested by the concessionaire, who must prove the decrease in activity caused by the outbreak of COVID-19;

Reduce the occupation fee (tasa de ocupación) up to 60% for passenger terminals and up to 20% for other concessions or authorisations, at the request of the concessionaire who must prove a significant negative impact on its activity caused by the outbreak of COVID-19.

Remove the lower limit of the activity fee for the year 2020 (tasa de actividad) established in article 188 b) 2.1 of the Consolidated Text of the Law on State Ports and Merchant Navy, subject to the prior request of the interested party and in order to fully justify the negative impact on its activity caused by the outbreak of COVID-19.

Temporarily reduce the vessel fee (tasa de buque) for (i) vessels that must remain moored or anchored in port waters as a result of an order by the competent authority due to the outbreak of
COVID-19; (ii) maritime service (*servicios marítimos*) vessels that cease to operate; (iii) port service (*servicios portuarios*) vessels; and (iv) vessels engaged in short sea shipping.

- Postpone the payment of port fees accrued between 13 March and 30 June 2020 inclusive, upon request from the interested party. The conditions for the deferment are as follows: (a) the maximum period will be six months; and (b) no interest on arrears will accrue and no security will be required in order to obtain the deferment.

In addition, through Decree-Law No 9/2020 of 15 April, the Autonomous Community of Andalusia approved a series of measures aimed at reducing the tax burden of seaport companies under the control of this Autonomous Community and promoting this sector once the COVID-19 outbreak is over.

By agreement of the Governing Council of 20 March 2020, the Government of the Balearic Islands agreed to grant an exemption to shipping companies of ro-ro passenger vessels and passenger vessels providing scheduled services (*servicios regulares*) from paying port taxes to ports under the jurisdiction of the Autonomous Community.
17. ENERGY SECTOR

The measures implemented to address the COVID-19 health crisis included some particularly important provisions for energy sector companies. Specifically, under the State of Emergency RD, the competent authorities by delegation are allowed to implement while the state of emergency lasts any measures to guarantee energy supply, petroleum products and natural gas. The critical operators of the essential services provided in Law 8/2011 of 28 April on the measures for the protection of critical infrastructures, must adopt the necessary measures to ensure they are able to provide their essential services. The main measures concerning the energy sector are summarised below.

17.1 ELECTRICITY SUPPLY

Article 7 of Law 24/2013 of 26 December on the electricity sector (“LSE” for its Spanish acronym) authorises the implementation, for a specific period of time, of the necessary measures to guarantee electricity supply in the following cases:

(A) There is a certain risk to the supply of electricity.

(B) There is a shortage of one or more primary sources of energy.

(C) Situations that could seriously endanger the physical integrity or safety of people, objects or facilities or the integrity of the electricity transmission or distribution networks, in which case the autonomous regions affected must be duly notified.

(D) Situations causing a significant reduction in the availability of production, transmission or distribution facilities or in the supply quality indices for reasons attributable to any of them.

The measures that the Government may implement to address the above situations may include, amongst others, the following:

(A) Temporary restrictions or modifications to the electricity market as established in article 25 of the LSE or the dispatch of the existing generation in the isolated electricity systems.

(B) Direct operation of generation, transport and distribution facilities.

(C) Establishment of special obligations concerning security reserves of primary sources for electricity production.

(D) Limitation, temporary modification or suspension of the rights established in article 26 of the LSE for renewable energy, cogeneration and waste-to-energy producers.

(E) Modification of the general conditions for supply regularity in general or for specific categories of consumers.

(F) Limitation, temporary modification or suspension of third parties rights and guaranteed access to networks.

(G) Limitation or assignment of primary energy sources to electricity producers.
Any other measures as may be recommended by international bodies of which Spain is a member or that arise in accordance with the treaties to which Spain is a party.

In the above scenarios, the Government will establish the remuneration regime applicable to the activities affected by the measures implemented, and will at all times guarantee a balanced distribution of costs.

When the measures implemented affect only one autonomous region, the latter should be consulted.

17.2 SUPPLY OF PETROLEUM PRODUCTS

In order to ensure the supply of petroleum products, pursuant to article 49 of Law 34/1998 of 7 October on the hydrocarbons sector ("LSH" for its Spanish acronym), one or more of the following measures may be implemented, within the scope, for the term and subject to the exceptions provided:

(A) Maximum speed limits for vehicles on public roads.

(B) Limits on the circulation of any type of vehicles.

(C) Limits on vessel navigation and aircraft flights.

(D) Limits on when (i.e. timetables and days) petroleum products suppliers can open.

(E) Application of rules of intervention to minimum security reserves.

(F) Limitations on or allocation of supplies to consumers of all types of petroleum products and restrictions on their use.

(G) Imposing an obligation on hydrocarbon exploitation concession holders to supply products for national consumption.

(H) Other measures recommended by international organisations of which Spain is a member, or that arise by applying treaties to which Spain is a party or a signatory that establish similar measures.

The remuneration regime applicable to the activities affected by the measures implemented will be established and a balanced distribution of costs will in any event be guaranteed.

17.3 NATURAL GAS SUPPLY

With regard to natural gas supply, pursuant to article 101 of the LSH, measures can be implemented in two cases: (i) when there is an emergency; and (ii) in the event of a shortage or threat to the safety of persons, objects, facilities or to the network integrity. In emergency situations, conditions may be implemented for those responsible for their maintenance to have access to strategic reserves of natural gas. In situations of shortages or danger, subject to the scope, term and exceptions to be determined, amongst others, one or more of the following measures may be implemented:

(A) Temporarily limit or modification of the gas market.

(B) Special obligations concerning minimum natural gas security reserves.

(C) Temporarily suspend or modify rights of access.
Modify the general conditions on supply regularity in general or referring to specific categories of consumers.

Make sales of natural gas for consumption abroad subject to administrative authorisation.

Other measures recommended by international organisations of which Spain is a member or that result from applying treaties to which it is a party.

The remuneration regime applicable to the activities affected by the measures implemented will be established and a balanced distribution of costs will in any event be guaranteed.

17.4 **PROHIBITION TO CUT ELECTRICITY, NATURAL GAS OR WATER SUPPLIES TO VULNERABLE CONSUMERS**

RDL 8/2020 implements a temporary prohibition to cut electricity, natural gas and water supplies to “consumers who are classed as vulnerable, especially vulnerable or at risk of social exclusion” for one month as of 18 March 2020.

The concepts of vulnerable, especially vulnerable or at risk of social exclusion consumers are defined in general terms for the electricity sector in articles 3 and 4 of Royal Decree 897/2017 of 6 October which governs the concept of vulnerable consumer, the discount rate and other measures to protect domestic consumers (“RD 897/2017”). RDL 8/2020 extends the concept of “vulnerable consumer” “especially vulnerable consumer” and “consumer at risk of social exclusion” initially provided for domestic electricity consumers, to consumers of natural gas and domestic water supplies.

17.5 **AUTOMATIC EXTENSION OF THE BENEFITS APPLICABLE TO BENEFICIARIES OF THE DISCOUNT RATE**

Article 4.2 of RDL 8/2020 establishes an automatic extension of the electricity discount rate until 15 September 2020 for all beneficiaries for whom it expires prior to that date, by application of article 9.2 of RD 897/2017. In general, the electricity discount rate is a discount of between 25% or 40% in accordance with the cases provided in RD 897/2017 applicable to the Volunteer Price for Small Consumers (“PVPC” for its Spanish acronym) for vulnerable consumers who meet the regulatory requirements. The discount rate is financed by the parent of the groups of companies providing electricity commercialisation operations or by the companies commercialising electricity themselves when they do not form part of any corporate group (articles 45.4 and 53.4.k) of the LSE and article 13 of RD 897/2017).

17.6 **SUSPENSION OF THE MECHANISM TO REVIEW THE REGULATED PRICE OF BOTTLED LIQUEFIED PETROLEUM GAS (LPG) AND THE LAST RESORT TARIFF OF NATURAL GAS**

In order to avoid any rise in prices or regulated tariffs for certain energy products, article 4.3 of RDL 8/2020 suspends, as of 18 March 2020, the following review mechanisms of regulated prices:

(A) With regard to the mechanism to automatically set maximum, pre-tax sale prices of bottled LPG, the following measures are implemented:

   (i) For the following three two-monthly periods, the effects of articles 3.5 and 6 of Order IET/389/2015 of 5 March, which reviews the mechanism of automatic pre-tax maximum price setting of bottled LPG and modifies the automatic setting of pre-tax sales tariffs of piped LPG for the following three two-monthly periods (“Order IET/389/2015”).
(ii) During this suspension period, the maximum prices provided in the Resolution dated 14 January 2020 of the Directorate General of Energy Policy and Mining, which publishes the maximum, pre-tax sale prices of bottled LPG, in bottles with a load of 8 kg or more but less than 20 kg, excluding mixed bottles for the use of LPG as fuel.

(B) With regard to the last resort tariff for natural gas, the following measures are implemented:

(i) For the next two quarters, the effects of articles 10 and section 2 of the sole additional provision of Order ITC/1660/2009 of 22 June, which sets forth the method for calculating the last resort tariff for natural gas, are suspended.

(ii) During this suspension the maximum prices set out in the Resolution of 23 December 2019 of the Directorate General of Energy Policy and Mining, which publishes the last resort tariff of natural gas, apply.

17.7 SUSPENSION OF THE DEMAND-SIDE INTERRUPTION MANAGEMENT SERVICE FOR ECONOMIC REASONS OWING TO THE COVID-19 OUTBREAK

Order SND/260/2020 of 19 March suspends the demand-side interruption service for economic reasons owing to the COVID-19 outbreak. As such, as long as the state of emergency is in force, Red Eléctrica de España, S.A., as system operator, will not activate the demand-side interruption management service for the economic reasons referred to in article 8 of Order IET/2013/2013 of 31 October, which regulates the auction procedure for the allocation of the demand-side management service.

17.8 EXTENSION OF THE PERIOD OF THE PERMITS FOR ACCESS AND CONNECTION OF ELECTRICITY GENERATORS TO THE TRANSPORT AND DISTRIBUTION NETWORK

The fifth additional provision of RDL 11/2020 modifies the eighth transitional provision of Law 24/2013 to extend the period of validity of the access and connection permits to the transmission or distribution network for generation facilities granted before the entry into force of Law 24/2013.

The eighth transitional provision of Law 24/2013 established that access and connection permits for generation facilities would expire if, by 31 March 2020, they had not obtained the start-up document.

RDL 11/2020 extends this period by two months from the date of termination of the state of emergency. To this end, the suspension of procedural and administrative time limits established in the RD State of Emergency will not apply.
18. MEASURES ADOPTED IN THE PHARMACEUTICAL AND HEALTH SECTOR

The measures implemented to address the COVID-19 health crisis and that affect the pharmaceutical and health sectors are provided below.

18.1 REINFORCEMENT OF THE SNS

In order to reinforce the National Health System ("SNS" for its Spanish acronym), article 12 of the State of Emergency RD states the following: (i) all health authorities in Spain now report directly to the Ministry of Health; (ii) the Ministry of Health has been given powers to take all actions necessary to ensure cohesion and impartiality in the provision of health services through regional and local authorities; (iii) measures can be implemented to ensure an optimal distribution of technical and personnel resources throughout Spain; and (iv) all privately owned healthcare centres, services and establishments must comply with orders from the Ministry of Health when required to reinforce the SNS.

18.2 ENSURING THE SUPPLY OF NECESSARY GOODS AND SERVICES

Most of the measures implemented in relation to the pharmaceutical and health sectors are designed to guarantee the continuous availability of essential products.

18.2.1 General measures

Article 13 of the State of Emergency RD authorises the Ministry of Health to: (i) issue the necessary orders to ensure the supply of the market and the operation of manufacturing centres; (ii) temporarily take control of and occupy all types of plants, factories, workshops, businesses and establishments, including privately owned healthcare centres, services and establishments, as well as those used for pharmaceutical activities (excluding private domiciles); and (iii) temporarily seize any type of goods and compel individuals to assist with these activities.

Prior to the publication of the State of Emergency RD, Royal Decree-Law 6/2020 of 10 March implementing urgent measures in the economic field and for the protection of public health, also introduced measures to ensure the supply and availability of essential products that are not considered medicines or medical devices; for example, biocide products and disinfectant products, and some types of personal protective equipment (PPE).

18.2.2 Specific measures

The following are some of the measures adopted with regard to ensuring supply:

(A) Manufacturing and importing companies must inform the Ministry of Health of their stock and capacity to produce or import items such as PPEs, invasive mechanical ventilation devices, diagnostic kits and chlorhexidine (Order SND/233/2020).

(B) Autonomous regions and public and private hospitals must report to the Ministry of Health on their operating capacity and available resources (Order SND/234/2020, modified by Order SND/267/2020 and Order SND/352/2020).
The requirements to be met in order to sell, acquire and assess the fitness of facemasks and gowns during the COVID-19 pandemic have been made more flexible (Resolution of 20 March 2020 of the Secretary General for Industry and Small and Medium Enterprises; and Order SND/326/2020).

Specific obligations have been imposed on manufacturers and holders of marketing authorisations for certain essential drugs to report on stock levels, supplies and delivery forecasts and to guarantee their manufacture and supply (Order SND/276/2020, modified by Order SND/353/2020).

Restrictions on the distribution of all stocks of hydroxychloroquine/chloroquine have been imposed (AEMPS report of 23 March 2020).

Restrictions on the export of PPEs outside the EU have been imposed (Commission Implementing Regulation (EU) 2020/402).

Restrictions on the distribution of all stocks of hydroxychloroquine/chloroquine have been imposed (AEMPS report of 23 March 2020).

Specific obligations have been imposed on manufacturers and holders of marketing authorisations for certain essential drugs to report on stock levels, supplies and delivery forecasts and to guarantee their manufacture and supply (Order SND/276/2020, modified by Order SND/353/2020).

Restrictions on the export of PPEs outside the EU have been imposed (Commission Implementing Regulation (EU) 2020/402).

The conditions for dispensing medicines at hospitals and for administering medicines for hospital use have been established, which include a limitation on the dispensing of medicinal products for hospital use to two months of treatment (except in the context of clinical trials) and exceptional measures to ensure medicinal products are available to non-hospitalised patients (Order SND/293/2020).

Privately owned diagnostic health establishments and their staff are now at the disposal of the Autonomous Regions; the price of COVID-19 diagnostic tests can be fixed in order to avoid abusive pricing; a prescription from a doctor is needed to carry out one of these tests, subject to the conditions and requirements established by the competent authority; and obligations have been imposed on public and private entities to inform the authorities about confirmed cases of COVID-19 and products acquired to diagnose or detect COVID-19 (Order SND/344/2020 and subsequent related regional regulations).

Among the many provisions approved by the autonomous regions, it is worth highlighting the regional protocols for home delivery of medicines and health products by pharmacies (Order of 26 March 2020 of the Department of Health and Families of Andalusia, Order 442/2020 of the Department of Health of Madrid).

18.3 ECONOMIC REINFORCEMENT MEASURES

Chapter I of the State of Emergency RD contains a series of measures to support the health sector financially and in particular to reinforce the financing of the regional health authorities.

RDL 7/2020 modifies article 94.3 of Legislative Royal Decree 1/2015 of 24 July to allow the Government to temporarily regulate the retail price of drugs, non-prescription medical products and other products necessary to protect human health. Within this legal framework, the Ministry of Health approved Order SND/354/2020 of 19 April, by which the Inter-Ministerial Commission on the Price of Medicines ("CIPM") was instructed to set the maximum retail price for the sale of these products. At its meeting on 21 April, the CIPM agreed to set the maximum retail price for surgical masks and for gels and hydroalcoholic
solutions authorized by the AEMPS (published by Resolution of 22 April 2020, of the General Directorate of the Common Services of the National Health System and Pharmacy).

18.4 DIGITAL-RELATED MEASURES

As established in section 22 (Digital and personal data protection implications), to which we refer for further details, the Spanish Data Protection Authority (“AEPD” for its Spanish acronym) has made public an opinion on the processing of personal data carried out by the multiple applications and other digital services launched to the market as a result of the COVID-19 health crisis. Following its publication, Order SND/297/2020 on several digital actions on health matters was issued. Order SND/297/2020 entrusts the Secretary of State for Digitalization and Artificial Intelligence, of the Ministry of Economic Affairs and Digital Transformation, with the development of several digital actions to manage the COVID-19 health crisis. The main measure is the urgent development of a “public” software application to support the management of the COVID-19 health crisis, without closing the door to private initiatives in this regard, as demonstrated by the setting up of a focal point for coordination of the assessment of other technological proposals by other bodies and entities.

18.5 OTHER MEASURES

(A) Service contracts or sanitary, pharmaceutical or other supply contracts which objects are linked to the COVID-19 health crisis are not affected by the extraordinary measures introduced by article 34 of RDL 8/2020 (described in section 15.3.3 above).

(B) Some measures to support research into COVID-19 (articles 36 and following of RDL 8/2020). These measures include direct subsidies for projects and research programmes.

(C) Agreements executed in the framework of managing the COVID-19 health crisis are exempt from certain administrative procedures (article 39 of RDL 8/2020).

(D) The AEMPS published a number recommendations on 17 March 2020 aimed at the pharmaceutical manufacturing and distribution sectors, in particular concerning the contingency plans to be adopted.

(E) On 16 March 2020, the AEMPS also published a number of recommendations aimed at preserving ongoing clinical trials and seeking to mitigate the impact of COVID-19. Clinical trials for drugs designed to treat or prevent COVID-19 infections are to be given priority.

(F) The sixth additional provision of RDL 13/2020 provides that the fees for certain procedures related to the COVID-19 health crisis (i.e. authorisation of non-profitable clinical trials, obtaining an operating licence for the manufacture of medical devices and authorisations for clinical research into medical devices) will not be payable.

Foreign investment restrictions referred to in section 13 (Foreign investment restrictions) include investments in the health and biotechnology sectors, and sectors that have access to sensitive information (fourth final provision of RDL 8/2020).
19. GAMBLING SECTOR MEASURES

19.1 RESTRICTION ON COMMERCIAL COMMUNICATIONS BY ENTITIES THAT CONDUCT REGULATED GAMBLING ACTIVITIES

Article 37 of RDL 11/2020 establishes a series of restricting measures on commercial communications of entities that carry out a gaming activity regulated by Law 13/2011 of 27 May on gambling (the “Gambling Law”), in the context of the COVID-19 health crisis. These measures apply to all entities that engage in any of the gambling activities regulated in the Gambling Law (article 3), including online gambling.

With regard to restricted commercial communications, RDL 11/2020 uses a very broad definition, considering as such “any form of advertising activity disseminated by any means or medium, intended to promote, directly or indirectly, gambling activities defined in the Gambling Law, or the entities that carry them out”.

Two prohibitions are implemented:

(A) Commercial communications that, implicitly or explicitly, refer to the exceptional situation caused by the COVID-19 health crisis or encourage gambling in that context are banned. This ban will be in force during the period set by the twelfth final provision of the RDL 11/2020 (until one month after the end of the state of emergency is declared).

(B) Companies in the gambling business may not carry out the following actions:

(i) Promotional activities that attract new customers or encourage loyalty if they involve moneys, bonuses, rebates, discounts, gifts of bets or games, multipliers or prizes or any other similar mechanism.

(ii) Commercials in audiovisual communication services referred to in article 2.2 of Law 7/2010 of 31 March on general audiovisual communication (“LGCA” for its Spanish acronym) – including on-demand services – where such communications are distinct and independent. These communications can still be shown between 1 a.m. and 5 a.m.

(iii) Commercial communications in video sharing service providers through platforms as defined in Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (“Directive 2018/1808”), which has not yet been transposed into Spanish law. Again, these communications can be shown between 1 a.m. and 5 a.m.

(iv) Commercial communications in information society services (including social networks, emails or other equivalent media).

These prohibitions apply while the state of emergency is in effect.
19.2 NON-COMPLIANCE

Not complying with the above obligations is a serious breach of the Gambling Law (article 40). According to article 42 of the Law, serious infringements may be punished by the National Gaming Commission with fines ranging from EUR 100,000 to EUR 1 million and the suspension from doing business in Spain for a maximum period of six months. These sanctions will be adjusted according to different criteria: the nature of the personal rights concerned, the volume of transactions, the profits obtained, the degree of intention, whether the wrongdoer has reoffended, damage caused, and any other circumstance to determine the degree of unlawfulness and liability. Likewise, if the liability of the offender or the unlawfulness of the act qualifies for moderation, the penalty imposed will be that in the scale for the immediately less serious infringement.
20. INTELLECTUAL PROPERTY MATTERS

20.1 SPANISH PATENT AND TRADEMARK OFFICE

On 16 March 2020 the Director of the Spanish Patent and Trademark Office (the “SPTO”) issued a resolution on the execution of RD 463/2020 on time limits in administrative proceedings (the “Resolution”), which suspends administrative proceedings managed by the SPTO and the limitation periods regarding any actions or rights to be exercised before the SPTO. The Resolution clarifies that any automatic communications or notifications issued by the SPTO that refer to time limits will not be applicable and the provisions set out in RD 463/2020 and the Resolution take precedence.

Aside from the suspension of the terms and time limits, the Resolution clarifies that the SPTO will continue to provide electronic services as usual through its website (sede electrónica). Consequently, trademark, design, utility model and patents applications will continue to be processed through this channel, as well as any other proceedings necessary (e.g. renewals, service of digital access to priority documents in the case of patents, etc.)

Finally, the Resolution clarifies that the SPTO is considering adopting exceptional measures for the organisation and direction of certain procedures within industrial property proceedings so that they can continue, provided that these (i) prevent serious damage to the rights and interests of the interested parties, and (ii) can be agreed upon. In the event that cases fulfilling these requirements are identified, these procedures may be carried out so long as, public-interest factors, as well as the continuity of public services provided by the SPTO, are taken into account. Information on the adoption of these procedures will be provided through the publication of the corresponding Resolution of the Director of the SPTO.

20.2 EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

The Executive Director of the European Union Intellectual Property Office (the “EUIPO”) issued on 16 March 2020 its Decision No. EX-20-3. (the “Decision”). By virtue of this Decision, all time limits expiring between 9 March 2020 and 30 April 2020 (both inclusive) that affect parties in proceedings before the EUIPO relating to trademark and design matters are extended until 4 May 2020 (the first working day after 1 May 2020).

The Decision has been clarified by the EUIPO itself, warning, among other matters, that the extension of time limits granted is effective immediately, since it derives directly from the Decision — consequently, affected parties are not required to file a request to the EUIPO for the extension of the time limit to take effect. Hence, the immediate effect of the extension also implies that users whose time limits are affected will not be informed about the extension by means of individual communications. However, in the event that a communication from the EUIPO does not adhere to the given extension, the EUIPO will immediately issue a rectification either ex officio or following a written request from the user indicating the file number concerned.

Nevertheless, if the parties are in a position to meet either the original or extended deadline and decide to comply with their procedural obligations during that period, proceedings will continue as normal and any documents filed will be examined in the usual manner.
Finally, the Decision exclusively affects proceedings before the EUIPO. Therefore time limits which relate to proceedings conducted before other authorities are not covered by the extension (e.g. time limits related to bringing an action before the General Court against decisions of the EUIPO’s boards of appeal). Likewise, measures have been implemented to ensure an uninterrupted service for users. Trademark and design applications will continue to be received, examined and published, and the EUIPO will continue to send communications and set deadlines. Bulletins will continue to be published as usual.
21. COMPETITION LAW

21.1 STATE AID

21.1.1 Initial situation

EU Member States, including Spain through RDL 8/2020, have announced urgent measures to address the economic impact of COVID-19. These measures must comply with EU regulations on State aid and may require prior approval by the European Commission, in accordance with articles 107 and following of the Treaty on the Functioning of the European Union ("TFEU").

Even in times of crisis, it is important that potential beneficiaries of State aid verify that any funds are legitimate before receiving them. For up to ten years from the date the aid is granted, the European Commission may order the repayment of State aid that is not compatible with the TFEU and has not been previously approved.

21.1.2 Measures that require the European Commission’s prior approval

Not every State measure will require the European Commission’s prior approval. Some of the measures that have been implemented, which are to apply without distinction to all sectors of the economy (e.g. wage subsidies, or the suspension of corporation tax or VAT payments or social security contributions), or direct payments to consumers (e.g. for services that have been cancelled), are generally not regulated by State aid rules.

The measures that do constitute State aid are those that apply to specific industry sectors, either by law (they only apply to one industry sector) or de facto (in practice they only benefit companies in a given sector or which are in a special situation that constitutes an exception to the general regulation). As a general rule, these measures must be notified in advance to European Commission for its approval.

However, the European Commission’s express prior authorisation is not required if the measures fall within the scope of existing exempting regulations and do not exceed the limits laid down in them (e.g. de minimis aid, R&D or aid to SMEs). Thus, for example, the Guarantee Line approved by RDL 8/2020 for self-employed workers and SMEs has been structured as de minimis aid (see section 7.4.2 above).

21.1.3 European temporary framework for State aid

On 19 March 2020, the European Commission approved a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak39 ("Framework"). The Framework entered into force immediately and will remain in force until 31 December 2020. It envisages several types of aid that Member States may offer:

(A) Direct grants, selective tax benefits and advance payments: Member States can grant aid up to EUR 800,000 per “undertaking” (not per individual company or subsidiary) to meet its urgent liquidity needs.

State guarantees for bank loans granted to undertakings: Member States may offer public guarantees to ensure that banks continue lending to clients that need funding. Guarantee premiums are set at a minimum level, distinguishing between SMEs and larger companies, and on the basis of their duration. Spain has approved, in application of this Framework, the first section of the Guarantee Line applicable to non-SMEs (see section 7.4.2 above) and has structured the aid to SMEs as \textit{de minimis} aid.

Subsidised public loans to undertakings: Member States will also be able to grant loans to undertakings with reduced interest rates that enable them to cover their immediate capital and investment needs. The Framework sets a basic interest rate that Member States can adjust. The loan contract cannot exceed six years.

Short-term export credit insurance: the Framework provides for increased flexibility in how Member States can prove that, in a given country, marketable risks are not covered by private insurance companies, enabling Member States to offer short-term export credit insurance if needed.

It is worth noting that the Framework expressly indicates that this aid is \textit{aimed directly at undertakings} and that banks must limit their activity to channelling it to undertakings. Accordingly, any aid granted to financial institutions falls outside the scope of the Framework and is subject to the ordinary State aid procedures.

Member States must notify the European Commission in advance of the measures they intend to implement in applying the Framework, although, as long as they comply with the Framework’s requirements, the measures will be considered to be compatible with the internal market. In practice, this means that the approval for the aid is being issued within a very short time as from the date of notification, having already approved more than thirty aid schemes since the announcement of the frame.\textsuperscript{40}

Under this Framework, the European Commission has approved the first tranche of the Guarantee Line of EUR 20 billion described in section 7.4.2 above notified by Spain, as well as a second aid programme for the self-employed workers, SMEs and large companies. This second programme concerns other measures provided for in the Framework such as direct grants, repayable advances, tax advantages and payment facilities or soft loans, which may be granted by any Spanish national, regional or local authority within the scope of the Framework as well as the remaining of the Guarantee Line.

On 3 April 2020, the European Commission extended the Framework to include other types of measures aimed at: (i) facilitating research and development related to COVID-19; (ii) improving and creating testing facilities; and (iii) creating additional capacity to manufacture products required to address the COVID-19 health crisis (e.g. medicines, sanitary materials, disinfectants or medical equipment). Aid is also provided in the form of tax deferrals or suspension of social security contributions, and wage subsidies to workers. The latter measures will only constitute State aid if they target specific sectors, types of companies or

\textsuperscript{40} The European Commission has provided an email address and telephone number for Member States to submit notifications regarding COVID-19 aid. The European Commission has already approved more than 50 measures.
regions. Spain announced a second aid programme that widens the scope of the measures that could be adopted to cover all the possibilities contemplated under the first amendment of the Framework, that has already been authorised. The European Commission is currently consulting Member States on a proposal to further expand the Framework to recapitalisation measures.

21.2 MERGER CONTROL

The State of Emergency RD establishes the suspension of all administrative deadlines while it is in force. The procedural deadlines to adopt and notify merger-control decisions in the context of ongoing proceedings are therefore suspended and the Council of the National Markets and Competition Commission (the “CNMC”) is no longer under an obligation to adopt a decision within the normal terms. Similarly, parties to those proceedings are no longer under an obligation to respond to requests for information when the deadline to respond had not expired on or before 14 March 2020 and, accordingly, cannot be sanctioned by the CNMC for failing to respond during the term of the State of Emergency RD. However, paragraph 3 of the third additional provision of the State of Emergency RD provides that the CNMC may adopt organisation and investigation measures to avoid serious harm to the rights and interests of the parties to proceedings, as long as the parties agree to them. In practice, based on this provision and at the request of the interested parties, the CNMC is ordering the continuance of proceedings that clearly do not pose any competition concerns and that, consequently, do not require consultations with third parties such as competitors, clients or suppliers, and may therefore be handled swiftly.

On its part, the European Commission has published a communication in which it requests parties to delay merger notifications, as long as this is feasible. It justifies this request by stating that it may encounter difficulties in collecting information from third parties during this period and that it may face restrictions in terms of accessing information and databases due to the measures implemented to encourage teleworking.

21.3 SANCTION PROCEEDINGS – COOPERATION BETWEEN UNDERTAKINGS AND DEADLINES

The CNMC has warned undertakings that it does not consider that the current crisis means, in general, that they can infringe the rules on agreements between undertakings or abuse dominant positions. In fact, the CNMC has intensified its vigilance of possible abuses or practices that could hinder the supply, or increase the price, of products that are considered essential to protect the health of consumers. In particular, the CNMC has opened preliminary investigations in the following cases: (i) requests by financial entities of additional guarantees or acquisition of products in order to provide State-sponsored loans granted to address the COVID-19 crisis; (ii) prices charged by funeral companies; (iii) substantial increases in prices of healthcare products, such as sanitising gels and raw materials to produce them.

41 https://ec.europa.eu/competition/mergers/news.html
However, the CNMC, in the same way as other competition authorities, has also demonstrated a certain degree of understanding in light of the exceptional situation caused by the COVID-19 outbreak. A recent joint communication by the European Commission and Member States’ national competition authorities states that competition authorities intend to be as flexible as possible when assessing temporary cooperation agreements between businesses that concern the supply and distribution of scarce consumer products and which generate efficiencies that avoid supply shortages.\(^{42}\) They have gone so far as to indicate that they have no intention of intervening in these cases and are willing to respond to consultations and offer informal guidance on projects that facilitate the production and supply of essential products. In this regard, the European Commission published on 8 April 2020 a temporary framework offering guidance to undertakings that enter into cooperation agreements in emergency situations related to the COVID-19 health crisis.\(^{43}\) This temporary framework is mainly aimed at pharmaceutical companies. The European Commission has also temporarily reinstated the possibility of notifying horizontal agreements in order to obtain a comfort letter that assesses the agreement’s compatibility with antitrust rules.

The maximum deadline for the CNMC to conclude sanction proceedings has been automatically suspended, as have procedures or requests that had not concluded on or before 14 March 2020, such as responses to requests for information or submissions of written observations regarding statements of objections or decision proposals.


22. DIGITAL AND PERSONAL DATA PROTECTION IMPLICATIONS

The health crisis has led a large number of companies operating in Spain to consider the need to collect and process, as an exception, personal data on the health of employees, clients, suppliers or other third parties, fundamentally with a view to putting in place systems to control the spread of the virus and to comply with the law on occupational health and safety. The processing of such data is subject not only to the general rules on data protection, including the General Data Protection Regulation (EU Regulation 2016/679 or “GDPR”) and Basic Law 3/2018 on the Protection of Personal Data and Guarantee of Digital Rights (“LOPDGDD” for its Spanish acronym), but also to a series of additional restrictions and guarantees created given the particularly sensitive nature of health data.

In order to provide guidelines on the legality of processing health data by authorities and companies when managing the health crisis, the AEPD published on 12 March 2019, which was followed by a set of practical questions and answers44, a legal report regarding the processing of personal data in Spain including health data, with regard to which the following is especially worth highlighting:

(A) The GDPR acknowledges both the public interest and the preservation of vital interests as the grounds for data processing. The AEPD notes that protecting vital interests refers not only to the protection of the relevant data subject but also the vital interests of third parties. These legal grounds allow data processing without the data subject’s consent.

(B) When handling of the health crisis also requires the processing of health data which, as we note, is subject to additional restrictions, the AEPD acknowledges that such processing may be legal in the following cases:

(i) When necessary to comply with obligations regarding labour law and company security and protection. Here, the AEPD notes that the information sought by the company “must meet the principle of proportionality and be limited to enquiring about visits to countries with a high prevalence of the virus and within the timeframe of incubation of the disease, the past two weeks, or whether they suffer from any symptoms of the disease. The use of extensive and detailed health questionnaires or those including non-disease related questions would be contrary to the principle of data minimisation.” Also analysed is the legality of other specific proactive measures being implemented by some companies (e.g. taking workers’ temperatures). Furthermore, the AEPD underlines the employee’s duty to report to the employer any suspicions of having been in contact with the virus so as to safeguard the health of other workers.

(ii) When covered by other causes acknowledged in article 9 of the GDPR, such as public interest regarding public health (e.g. protection against serious cross-border threats to health) or for medical diagnoses. The report notes that public health protection has been attributed by law to the competent health authorities and therefore they can implement such

protective measures. The data controllers (i.e. the companies) must follow the instructions of the authorities, even when this entails processing data related to personal health.

Even though the processing of health data may be justified, it is noted that even within the context of the health crisis, data processing must comply with the requirements established in the GDPR and LOPDGDD, including the principles of transparency, limitation of purpose, accuracy and minimisation.

More recently, on 20 April 2020, the European Data Protection Board (EDPB) issued a statement confirming the AEPD’s position above. The EDPB sets out that the lawful basis to carry out medical checks on employees should be the existence of a national legal obligation – such as local health and safety rules – that require such checks, rather than the employees’ consent.

COVID-19 Apps. Lastly, the Spanish DPA has published on its website an opinion regarding the several apps and digital services that are currently being launched, both in the private and public sectors, asking citizens to provide personal information, mainly relating to their health and geolocation, under the justification of the COVID-19 health crisis. The Spanish DPA points out the following:

(A) the purposes for which the data can be processed are only those related to the control of the epidemic based on public interest and the protection of vital interests (e.g. self-assessment apps developed by public authorities or statistics of aggregated geolocation data to provide maps of areas with higher or lower risk.)

(B) the data that can be collected are only those that the competent public authorities consider proportionate or necessary and can only be provided by persons over sixteen; and

(C) the data may be processed only by the public authorities competent to act pursuant to the declaration of the state of emergency.

If the apps or websites are offered by private parties, there is no lawful basis or the legitimate grounds as mentioned above (namely, public interest and protection of vital interests) and the AEPD advises citizens to take special care to know by whom, for what purpose and under which guarantees their personal data will be processed.

Finally, it is worth mentioning recent order SND/297/2020 of 27 March, which entrusts the Secretary of State for Digitalization and Artificial Intelligence, of the Ministry of Economic Affairs and Digital Transformation, with the development of several digital actions to manage the COVID-19 health crisis. These measures include the urgent development of a "public" computer application to support and manage the COVID-19 health crisis. This application will allow users (i) to self-assess their health status based on the medical symptoms they report against the probability of being infected by COVID-19, (ii) to

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provide users with information about COVID-19 and (iii) to provide users with practical advice and recommendations based on the assessment. This, at the same time, will ease the workload of the public emergency services.

The application will also allow geolocation to understand population movements to monitor the health-related resources in each province.

Other actions include the creation of a WhatsApp channel from which a chatbot delivers official information to citizens' queries, the creation of an informative website, or the commissioning of an analysis of people's mobility in the days before and during confinement by crossing data from mobile operators in an aggregate and anonymous manner.
ANNEX 1

TAX MEASURES TO ADDRESS THE SOCIAL AND ECONOMIC IMPACT OF THE COVID-19 HEALTH CRISIS

(RDL 8/2020)

(RDL 11/2020)

(CUSTOMS-RELATED MEASURES)
1. SUSPENSION OF TERMS FOR TAXES (ARTICLE 33 RDL 8/2020)

The measures described below also affect any ongoing procedures on the date of entry into force of RDL 8/2020 (as per its third transitory provision).

These measures have been modified by the first additional provision of RDL 15/2020. After its entry into force, the terms are generally suspended until 30 May 2020.

1.1. EXTENSION OF DEADLINES TO BE COMPLIED WITH BY THE TAXPAYER (SECTIONS 1, 2 AND 3)

(A) Extension of the deadline to pay tax debts resulting from assessments made by the tax authorities until 30 May 2020:

(i) for terms commencing prior to 18 March 2020 and not expired on that date; and
(ii) when notice of payment is made as of 18 March 2020, unless the deadline provided as a general rule is longer (in general, when notice is made as of 15 April 2020), in which case the latter applies.

The same rules apply to the deadlines and instalments of deferrals and instalment agreements granted.

(B) Extension of the deadline to answer requests, attachment proceedings and requests for tax information and to make representations upon commencement of this process or hearing, issued in procedures for the application of taxes, penalties or declaration of invalidity, return of undue income, rectification of material errors and revocation, until 30 May 2020:

(i) for terms commencing prior to 18 March 2020 and not expired on that date; and
(ii) when notified as of 18 March 2020, unless the deadline provided as a general rule is longer, in which case the latter applies.

This rule does not affect the delaine to file economic-administrative claims.

It seems that taxpayers can waive the extension of the deadline insofar as, if they were to meet the requirement or request for information or were to submit pleadings without expressly reserving the right to extend the deadline, the formality would be deemed fulfilled.

(C) Lastly, in enforcement proceedings, the deadline to pay the tax debt during the enforcement period following notice of the court order, is extended until 30 May 2020:

(i) for terms commencing prior to 18 March 2020 and not expired on that date; and

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47 Provided in article 62.2 of the General Tax Law.
48 Provided in article 62.5 of the General Tax Law.
when notified as of 18 March 2020 unless the term provided as a general rule is longer (which is generally the case for court orders notified as of 15 May 2020), in which case the latter applies.

The same extension applies to the deadlines provided for bids at an auction and those relating to awards and payment.49

By virtue of the Eighth Final Provision of RDL 15/2020, in the auctions celebrated by the Spanish Tax Agency through the Auctions Portal of the Spanish Tax Agency of the Official Spanish Gazette, bidders may request the annulment of their bids and the release of the deposits. Furthermore, bidders and awardees of auctions in which the tender submission stage has ended, and provided that the notice of award has not been issued and no purchase public deed has been granted by 18 March 2020, will have the right to the refund of the deposit and, where appropriate, to the price of the auction paid, when they request so. In this case, the loss of the deposit regulated in article 104.bis, letter f) of the general regulations on collection will not be applicable.

1.2. Interruption of Deadlines in Actions of the AEAT (Sections 1, in Fine and 5)

RDL 8/2020 provides for an interruption of the deadlines for actions taken by the tax authority by establishing that the period between 2020 and 30 May 2020 is excluded from the maximum duration of proceedings applicable to taxes, penalties and review. This rule on the non-accrual of terms applies solely to AEAT proceedings and not to those handled by regional and local tax authorities.

The provision would appear to entail an interruption of administrative proceedings insofar as during this period the authority can move forward with, order and perform essential formalities.

Within administrative enforcement proceedings, guarantees that affect real estate will not be enforced from 18 March to 30 May 2020.

1.3. Interruption of the Limitation and Expiry Terms (Sections 6 and 7, Paragraph 1)

The period between 18 March 2020 and 30 May 2020 will not be taken into account for the calculation of limitation periods of rights and tax actions or of expiry periods. The generality of the provision seems to suggest that it applies to any limitation periods not expired upon the commencement of this term regardless of the term remaining (i.e. even though the term is not due to expire for several years).

In addition, for the sole purpose of calculating the limitation periods in economic-administrative appeals for review, the resolutions ending such appeals for review will be deemed notified when an attempt to provide notice of the resolution is proven between 18 March 2020 and 30 May 2020.

49 Article 104.2 and 104 bis of the general regulations on collection.

50 Article 66 of the General Tax Law.
1.4. TERMS FOR FILING APPEALS AND CLAIMS (SECTION 7, PARAGRAPH 2)

The time limit for filing appeals or economic-administrative claims vis-à-vis tax notices and to appeal by administrative channels against resolutions issued in economic-administrative proceedings will not commence until the period between 18 March 2020 and 30 May 2020 ends or until notice is given51, if the latter occurs after to such date.

The Royal Decree-Law 8/2020 does not expressly include appeal times commencing prior to its entry into force. Although the third transitory provision expressly provides that measures implemented affect proceedings commencing prior to its entry into force, it is advisable for appeals or claims to be brought within the original deadline.

1.5. AUTONOMY OF TERMS ESTABLISHED IN CUSTOMS LEGISLATION (SECTION 4)

The information set out in the preceding sub-sections is understood to be without prejudice to the specific provisions in customs legislation on making allegations and complying with requests.

1.6. SPECIFIC RULES FOR THE REAL ESTATE TAX REGISTER (SECTION 8)

(A) The time limits to answer demands for payment and requests for information from the Directorate General of the Real Estate Tax Register are extended until 30 May 2020:

(i) for those which term to reply has not expired as at 18 March 2020 are extended until 30 April 2020; and

(ii) for the opening of pleadings or hearing stages notified as at 18 March 2020 by the Directorate General of the Real Estate Tax Register, unless the term provided by law is longer, in which case the latter applies.

Similarly to the procedures mentioned in section 1.1(B) above, should the taxpayer respond to the request for information or were to submit allegations, the formality would be deemed fulfilled.

(B) The period between 18 March 2020 and 30 May 2020 is not taken into account for the calculation of the maximum duration of proceedings initiated ex officio, although the authority may move forward with, order and perform essential formalities.

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51 Under the terms of section 3 of Chapter II of Title III of the General Tax Law.
2. MEASURES APPROVED BY RDL 11/2020

2.1. SUSPENSION OF TAX-RELATED TERMS OF THE REGIONAL AND LOCAL AUTHORITIES

Article 33 of RDL 8/2020 applies to the actions, formalities and procedures governed by the provisions of the GLT and its implementing regulations and carried out and processed by the regional and local tax authorities, and will also apply, in relation to the latter, to the actions, formalities and procedures regulated in the restated text of the Royal Legislative Decree 2/2004 of 5 March on the law regulating local tax authorities (“TRLHL”).

The above also applies to proceedings initiated before the entry into force of RDL 8/2020 (18 March 2020).

2.2. EXTENSION OF THE TERM FOR FILING APPEALS

From the entry into force of RD 463/2020 (14 March 2020) until 30 May 2020, the period to file economic and administrative appeals governed by Law 58/2003 of 17 December on general taxation (“LGT”) and its implementing regulations will commence on 30 May 2020.52

The above applies both in cases where the one-month period for appeal has begun to run from the day following the notification of the contested act or resolution and the period had not ended on 13 March 2020, and in cases where the administrative act or resolution that being appealed or challenged has not yet been notified.

The measure applies to appeals for reversal and claims that, in the area of tax, are regulated by the TRLHL.

2.3. APPLICATION OF RDL 8/2020 TO SPECIFIC PROCEDURES AND ACTS

(A) The period from the entry into force of RD 463/2020 (14 March 2020) until 30 May 202053 will not be taken into account for the purpose of the maximum duration of the period to enforce the resolutions of tax appeal boards.

(B) During this period, the limitation period and prescription of any actions and rights provided for in the tax regulations are suspended.

(C) The two preceding measures apply to procedures, actions and formalities governed by the provisions of the LGT and its implementing regulations and carried out and processed by the AEAT, the Ministry of Finance (e.g. the tax appeal boards) or the regional and local tax authorities, as well as, in the case of the latter, those governed by the TRLHL.

(D) Article 33 of RDL 8/2020 on tax debts applies to other public resources.

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52 Term modified by the First Additional Provision of RDL 15/2020.
53 Term modified by the First Additional Provision of RDL 15/2020.
3. MEASURES RELATED TO CUSTOMS APPROVED BY THE SPANISH GOVERNMENT AND THE EUROPEAN UNION

3.1. FUNCTIONING OF THE CUSTOMS

In general terms, during the State of Emergency the customs clearance, both physical and documentary, will continue to operate according to the current legislation and procedures, as established in the Information Note of the Spanish tax authorities dated 16 March.54

Other functions and tasks of the different Delegations will be performed remotely with distance means. In this context, different alternatives are provided for face-to-face procedures: scanned copies of the guarantees could be filed for their admission and registration, the ATA carnets will be electronically signed with a CSV, the sealing in transit shall be replaced by a detailed description of the goods and EUR 1 certificates will be issued later.

A contingency plan with minimum services has been approved, which can be consulted here.

3.2. TERMS IN CUSTOMS PROCEDURES

The terms to adopt decisions in relation to the application of the customs legislation set out in the Union Customs Code (“UCC”) has not been affected by the deferral of tax terms approved by the Spanish Government.

Nevertheless, the Spanish tax authorities consider that the terms to meet requirements or information requests, as well as the terms of sanctioning procedures in customs matter laid down in the General Tax Law have been extended until 30 May 2020 (art. 33 of the RDL 8/2020):55

(i) for terms initiated before 18 March 2020 and not yet ended on such date; and
(ii) for those initiated as of 18 March 2020, unless the one granted in the general regulations is higher, in which case the latter will be applicable.

The term to bring actions and claims have been also extended according to the Eighth Additional Provision of the RDL 11/2020: these terms shall start to run as of 30 May 2020, both in the case where the term has already initiated, but not yet ended on 13 April 2020, and where the relevant administrative act or resolution that may be appealed has not yet been notified on said date.

3.3. PAYMENT OF THE CUSTOMS

The term of payment of the customs has not been affected by the terms deferral approved by the Spanish Government, which will continue to be generally a 10 days term (art. 108 UCC).

54 Priority will be given, in any case, to perishable goods, medicines and sanitary products, other basic necessities and those needed for the maintenance of the production chains, assuring the compliance of the security and citizen protection requirements.

55 Term modified by the First Additional Provision of RDL 15/2020.
Exceptionally and although the customs legislation does not provide such possibility, article 52 of RDL 11/2020 dated 31 March has established a general deferral of the payment corresponding to customs declarations, as follows:

(i) the deferral affects to customs and tax debts corresponding to customs declarations presented from 2 April 2020 until 30 May 2020, both inclusive,

(ii) it is limited to the recipients of imported goods with an operating volume that does not exceed EUR 6,010,121.04 in 2019 and provided that the amount of the debt to be deferred is between EUR 100 and EUR 30,000, excluding expressly the imported VAT that shall be paid in the VAT return.

(iii) the guarantee provided for the release of goods will be effective for the deferral. The guarantee will be affected to the payment of the relevant customs and tax debt until the full compliance and completion of the deferral granted, although the customs authorities may not require the guarantee when they believe, based the debtor’s situation, that this would create serious economic or social difficulties, in accordance with article 112 (3) of the UCC.

Taxpayers shall request the deferral in the relevant declaration and the deferment period will be six months from the end of the relevant period for payment and no default interest will accrue during the first three months of the deferment.

Out of this special case, there is still the possibility of a deferment of 30 days (art. 111 UCC), providing guarantees, and other payment facilities, including the guarantee waiver in cases where the granting of a guarantee would create serious economic or social difficulties (art. 112 UCC).

3.4. IMPORT AND EXPORT OF MEDICAL EQUIPMENT


The application of these benefits is subject to certain requirements, in particular:

(i) that are imported for free circulation by, or on behalf of, state organisations, including state entities, public bodies and other bodies governed by public law, or by, on or behalf of, organisations authorised by the competent authorities of the Member States.

(ii) that are put to one of the following uses:

   (a) its free distribution, by the bodies and organisations referred, to people affected or at risk by the COVID-19, or to those who are involved in the fight against the outbreak of the disease,

   (b) the free availability to the people affected or at risk by the COVID-19, or to those who are involved in the fight against the outbreak of the disease, while the goods are still owned by the bodies and organisations referred.
that these goods are not material for the reconstruction of the consequences of the disaster and the imported goods are not assigned, sold or leased (except to those entities that can also benefit from the duty-free market access and put the goods to the same uses) without payment of duties and VAT\textsuperscript{56}.

In addition, the import of goods for free circulation by, or on behalf of, aid agencies in case of disaster to cover their needs during the period in which they provide relief to the people affected or at risk by COVID-19 or to those involved in the fight against the outbreak, are also admitted to benefit from the duty-free market access and VAT exemption.

These tax benefits will be applicable to imports carried out from 30 January to 31 July 2020.

Moreover, in relation to imports of specific products, the 0\% VAT rate implemented by RDL 15/2020 applies.

Furthermore, the European Commission has established in its recent Guidance on Customs issues related to the COVID-19 emergency that the present exceptional situation shall be considered as a “disaster” for the purposes of the customs legislation. Therefore, all goods brought to the customs territory of the Union to counter the effects of the disaster (e.g., an ambulance) should be eligible to be declared for temporary admission with total relief from import duty (art. 221 of the Commission Delegated Regulation (EU) 2015/2446).

The Spanish Tax Authority has published an informative communication on the taxation on imports of materials for victims of disasters, which covers practical issues regarding the application of the tax benefits (NIGA 13/2020).

Lastly, a licence is still required to export specific protection equipment (excluding some countries), a simplified list of which was provided by the European Commission on 24 April. The measure will be in force for 30 days (Commission Implementing Regulation (EU) 2020/568).

\* \* \* 

ANNEX 2

CONTACT LAWYERS
Guide to different legal matters raised with regard to the health crisis caused by COVID-19. 1 May 2020

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