

RSM Alert

Spanish Government urgent and extraordinary measures to counteract the economic and social impact of COVID-19

Royal Decree Law 8/2020

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EMPLOYMENT MEASURES

1. NEW MEASURES WITH RESPECT TO EMPLOYMENT LAYOFFS (ERES) AND TEMPORARY LAYOFFS (REGULACIONES TEMPORALES DE EMPLEO OR ERTES) DUE TO FORCE MAJEURE:

FORCE MAJEURE

This situation has its direct cause in the loss of activity due to the COVID-19, including the declaration of a state of emergency, which entails:

- The suspension or cancellation of activities;
- Temporary closure of premises where people gather;
- Restrictions on public transportation and in general movement of persons and/or goods;
- Lack of utilities that seriously impedes the ordinary conduct of activities from continuing;
- Urgent and extraordinary situations due to the infection of the workforce or the adoption of preventive isolation measures decreed by the health authorities, which are duly evidenced.

SPECIAL PROVISIONS WITH RESPECT TO THE PROCEDURE OF TEMPORARY LAYOFFS (ERTES)

- The procedure will be commenced with an application by the company, accompanied by a report linking the loss of activity to the consequences of COVID-19, as well as the relevant documentary evidence.
- The company must notify its application to the employees and submit the report and the documentary evidence, if any, to the employee's representatives.
- The labor authority must issue a decision within five days
- The resolution of the Labor Authority should be limited to verifying the existence, where appropriate, of the force majeure invoked by the company.
- Once force majeure has been proved, it is the company's decision to implement measures to suspend contracts or

reduce working hours, which will take effect from the date of the triggering event of force majeure.

EFFECTS ON SOCIAL CONTRIBUTIONS

With respect to ERTes due to force majeure related to COVID-19, the Social Security General Treasury will exempt the company from the obligation to pay social contributions in respect of its employees registered in the Social Security at February 2, 2020, as follows:

- If the company has less than 50 registered employees, a 100% exemption will apply.
- If the company has more than 50 registered employees the obligation to pay contributions will cover 75% of the social security contributions.

For workers, this period is considered as effectively contributed for all purposes.

2. NEW MEASURES FOR ERTES DUE TO ECONOMIC, TECHNICAL, ORGANIZATIONAL AND PRODUCTION-RELATED GROUNDS.

- The representative committee must be created within the non-extendable time period of 5 days.
- The representative committee will be made up of the labor unions with the highest membership in the sector and with the right to form part of the negotiating committee of the applicable collective labor agreement.
- If it cannot be assembled by the union representatives, the committee will be made up of three workers from the company, chosen according to the provisions set forth in the Workers' Statute.
- The consultation period must not exceed a maximum of seven days.
- The report of the Labor Authorities becomes optional and, if issued, it can take longer than seven days.

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3. UNEMPLOYMENT BENEFIT IN THE CASE OF ERTES BASED ON EXTRAORDINARY CIRCUMSTANCES DEFINED BY ROYAL DECREE-LAW

- The right to the contributory unemployment benefit shall be recognized even if workers have not met the minimum contribution period required for such purpose.
- The time during which the contributory unemployment benefit is received for these reasons will not be included for the purposes of determining completion of the established maximum periods for receiving benefits.
- The requirements for the extraordinary benefit due to cessation of activity have also been made more flexible.
- The period during which the benefit can be perceived will be extended until the end of the period of suspension of the employment contract or temporary reduction of working hours brings cause.
- Exceptionally and due to the closure of employment offices, the late submission of applications of new or renewal of unemployment benefits established by law shall not imply the reduction of the term of the right to perceive the corresponding benefit.

4. IMPORTANT NOTE applicable to ERE and ERTE

A reason of safeguarding employment is established, consisting of the company's commitment to maintain employment during the period of six months as from the date of resuming the activity.

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TAX MEASURES

1. SUSPENSION OF TAX DEADLINES

- a) They are hereby suspended until 30 April 2020 the deadlines that have not expired as of March 18, 2020:
- Debt payments resulting from tax settlements made by the Administration and distraint orders.
 - Maturities of adjournments and splits granted.
 - Auctions and adjudications of goods.
 - Tax procedures:
 - Care requirements,
 - Attachment proceedings
 - Requests for information with tax significance,
 - Formulation of arguments in the process of hearings,
 - Procedures for application of taxes, penalties or declarations of nullity
 - Recovery of sums paid and correction of errors and revocation materials.
 - Execution of guarantees that fall on real estate in distraint proceedings.
- b) Deadlines communicated from March 18, 2020 are suspended until May 20, 2020:
- Debt payments resulting from tax settlements made by the Administration and distraint orders.
 - Maturities of adjournments and splits granted.
 - Auctions and adjudications of goods.
 - Tax procedures:
 - Care requirements, or attachment proceedings,
 - Requests for information with tax significance, or
 - Opening acts allegations or hearing procedures.
- c) If the taxpayer attends to the requirement or requests for information with tax significance or submits his/her arguments, the procedure shall be deemed fulfilled.
- d) The period from March 18, 2020 until April 30, 2020 will not count for the purposes of the application of time limits for the payment of taxes and the calculation of penalties processed by the Tax Agency.
- e) The period from 18 March, 2020 to April 30, 2020 will not count for the purposes of limitation or expiry.
- f) Resolutions of appeals and administrative economic claims will be deemed notified when an attempted notification be credited between March 18, 2020 and April 30, 2020.
- g) The deadline for filing resources or economic-administrative claims against tax acts and to appeal administrative decisions given in economic and administrative proceedings will not start until April 30, 2020 or until notification occurs after that date.
- h) The terms of the General Directorate of the Cadastre are extended until:
- April 30, 2020 regarding requirements and requests for information that are in term response to date of March 18, 2020.
 - May 20, 2020 for the opening acts pending hearing of allegations or communications from the March 18, 2020.

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MEASURES IN THE COMMERCIAL LAW FIELD (1)

1. COMMERCIAL ASPECTS: Interrupting the deadline for returning products during the term of alarm.

- During the term of the state of alarm and its possible extensions, deadlines are interrupted for the return of products purchased by any means, either face-to-face or online.

2. FOREIGN INVESTMENT: Suspension of the regime of liberalization of certain foreign direct investment in Spain

- the regime of liberalization of foreign direct investment in Spain, affecting public safety and public health, subjecting them to prior authorization is suspended by public order.
- Foreign direct investment in Spain is deemed to be that which is made from countries outside the European Union and the European Free Trade Zone when:
 - (a) the investor's shareholding reaches or exceeds 10% of the share capital of the Spanish company, or
 - (b) as a result of the investment, the investor effectively participates in the management or control of the company.
- Specifically:
 - **sectors**
 - o Energy infrastructure, transport, water, sanitary, communications, media, processing or data storage, aerospace, defence, electoral or financial
 - o Critical technologies and dual-use products, including artificial intelligence, robotics, semiconductors, cyber security, aerospace technology, defence, energy storage, quantum and nuclear, as well as nanotechnologies and biotechnologies
 - o Key input supply, in particular energy, or those related to raw materials and food security;

- o Sectors with access to sensitive information, including personal data, or control capability such information
- o Media
- o In general, other sectors not covered above, where they may affect public safety, public order and public health.

• Other cases:

- o If the foreign investor is controlled directly or indirectly by the government, including public bodies or the armed forces of a third country
- o If the foreign investor has invested or participated in activities in the areas affecting security, public order and public health in another Member State
- o If an administrative or judicial proceeding starts against foreign investors in another Member State or in the State of origin or in a third State relating to the exercise of criminal and illegal activities.

3. BOARDS OF DIRECTORS: Celebration of the Board of Directors and Delegated Committees of unlisted corporations

- Videoconferencing. Meetings of the Board of Directors as well as any of the delegated committees may be held by videoconference provided to ensure the authenticity and bilateral or plurilateral real-time connection with image and sound assistants in remote, although the Bylaws do not expressly provide for them.
- Sessions in writing without a meeting may be adopted by a written vote without a meeting whenever decided by the chairman and shall be adopted when requested, by at least two members of the Board.
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MEASURES IN THE CORPORATE LAW FIELD (2)

4. FORMULATION, AUDIT AND APPROVAL OF STATUTORY ACCOUNTS (CCAA) BY THE ANNUAL GENERAL MEETING

- **FORMULATION CCAA** The deadline of three months for the formulation of annual accounts is suspended and will be re-established at a date 3 months after the end of the state of alarm.
- **AUDIT of CCAA:** If at March 14, 2020, the Statutory Accounts of the previous year have already been formulated, the deadline for verification, if the audit is mandatory, is extended for 2 months starting from the date of on which the state of alarm ends. If the Statutory Accounts have not been formulated by the said date, the audit will be completed within 2 months of the date of formulation.
- **ORDINARY GENERAL MEETING:** The Board to approve the accounts for the previous year must be held within three months of the deadline for preparing the financial statements.
- **GENERAL MEETINGS SCHEDULED BEFORE March14, 2020:** to be held after that date:
 - o the location and time scheduled for holding the meeting may be changed or revoke the agreement call by notice published with a minimum of forty-eight hours on the website of the company and if the company does not have a website, in the "official Gazette of the State".
 - o In case of revocation of the agreement call, the board must proceed to reconvening within the month following the date on which the state of alarm finishes.

Annual Accounts	Term
Prepared by the Board of Directors	<ul style="list-style-type: none">• 3 months from the end of the alarm.
Audit (If applicable)	<ul style="list-style-type: none">• If the accounts have already been formulated: 2 months from the end of the state of alarm.• If you the accounts have not been formulated: 2 months from the formulation.
Ordinary General Meeting	<ul style="list-style-type: none">• If it has not been called: within 3 months of formulation.• If it has been called: The Board may change the place and time or revoke the agreement in advance, with a minimum of 48-hours' notice on the company website, or by publication in the BOE.

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MEASURES IN THE CORPORATE LAW FIELD (3)

5. OTHER MEASURES APPLICABLE TO UNLISTED CORPORATIONS

- **Directors' liability for corporate debts in cases of dissolution:** If legal or statutory cause of dissolution had occurred during the state of alarm, Directors will not respond for debts incurred in that period.
- **Deadline for the agreement call for dissolution:** For the case that, before the declaration of the alarm state or during its term, legal or statutory cause of dissolution happen, the deadline for the dissolution of the company and the legal convening period for the administrative body to call for the general meeting of partners in order to adopt the agreement of dissolution of the company, or the agreements that have as their object to enervate its cause, are suspended until the end of the state of alarm.
- **Dissolution for having fulfilled the duration:** full dissolution will not occur within two months from the end of the state of alarm.
- **Right to separation** Even if there is a legal or statutory cause, shareholders may not exercise the right to separation until the end of the alarm state and its extensions.

6. EXTRAORDINARY MEASURES APPLICABLE TO THE OPERATION OF THE GOVERNING BODIES OF LISTED COMPANIES.

Exceptionally, during 2020 the following measures shall apply to companies with securities admitted to trading on a regulated market in the European Union:

- **Annual financial report and audit report of annual accounts.** The obligation to publish and submit its annual financial report to the CNMV and the audit report of annual accounts, may be met up to 6 months from the closing of the fiscal year. That period is extended to 4 months for publication of the interim management statement and the annual financial report.
- **Celebration of Boards of Directors and Audit Committee.** Meetings of the Board of Directors and Audit Committee may be authorized by electronic means.

- **General Board.** The regulation on certain aspects related to the convocation, attendance, celebration and vote at the General Meetings is being temporarily changed. The Ordinary General Meeting of shareholders will be held within the first ten months of the fiscal year.

7. TERM OF THE DUTY OF APPLICATION OF INSOLVENCY

- **Obligation to apply arrangement with creditors:**
 - During the State of Alarm, the debtor who is insolvent will not have the duty to apply for bankruptcy.
 - Nor shall have the duty to apply for the declaration of insolvency, and during the state of alarm, the debtor who would had informed the competent court for the declaration of insolvency, or initiated negotiations with creditors to reach a refinancing agreement or a settlement agreement for extra-judicial payments, or to obtain adhesions to an early proposal for agreement, although the deadlines prescribed in the fifth paragraph of article 5 bis of the Spanish Insolvency Law 22/2003 of 9 December July.
- **Compulsory insolvency:**
 - The judges will not admit admissible tender applications which have been submitted during the state of alarm until two months after the end of the state of alarm.
- **Mandatory insolvency:**
 - If an application for voluntary bankruptcy has been submitted, it will be admissible, preferably, albeit later date.

8. SUSPENSION OF THE EXPIRATION TERM OF REGISTRATION DURING THE TERM OF ROYAL DECREE OF STATEMENT ALARM STATUS.

- The expiration period prescribed for the presentation of preventive annotations, and marginal notes or any other registry entries into the Mercantile Registry subject to cancellation by the passage of time, is interrupted.
- The calculation of the time limits shall be renewed on the day after the end of the alarm state or its extension.

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MEASURES TO PROTECT VULNERABLE PEOPLE DEFERRAL ON MORTGAGE PAYMENTS

1. PAYMENT DEFERRAL ON MORTGAGE LOANS FOR HABITUAL HOME

- **Application:** Mortgage debt moratorium for the acquisition of the residence of vulnerable people. Economic vulnerability is deemed to exist when:
 - a) the mortgagor who is unemployed or being an entrepreneur or professional undergoes a substantial loss of income or substantial decline in sales.
 - b) Broadly speaking, when the total income of a family unit does not exceed:
 - i) 1,613.61 Euros (IPREME x 3) - 2,151.48 Euros (IPREME x4) in cases where the family includes a member with a disability above 33%, or has a dependency or permanent disability and 2,689.35 (IPREME x5) in the event that the mortgagor has cerebral palsy with mental illness or intellectual disability above 33%.
 - ii) the mortgage payment, plus expenses and basic supplements exceeds 35% of total income perceived by the family; and
 - iii) the family has seen a significant change in economic circumstances pursuant to the provisions of the RDL.
- **beneficiaries:** Debtors, bailors, guarantors and mortgagees not debtors, who may require the entity to first use up the assets of the principal debtor before the secured debt is claimed to them. Which a priori implies that the clause waiving the benefits of division and order exclusion usually established in the writings of credit and loans are voided. However, it is necessary to analyse how this will be applied.
- **requirements:** Provide all documents stipulated:

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- Certificate of being unemployed or, where applicable, cessation of business or professional activity (Form 036)
- Family Book and current municipal registration certificate,
- Declaration of incapacity, dependency or permanent disability to work
- Certificate of ownership of assets
- Declaration responsible for the debtor
- **Term:** maximum period of 15 days after the end of the term of this RDL. Expiry date.
- The expiration date has special relevance, After these 15 days the moratorium may not be requested and therefore the debtor cannot qualify for mortgage benefits under this RDL, it is also important to provide the documentation laid down by this RDL. However, the effects are immediate, ie from the submission of the application - if requirements are met - the clause does not apply for early termination of the contract of mortgage loan or mortgage installments or any of the concepts that comprise (maturity of principal or interest payments), in full, or a percentage. Nor evidently either late-payment interest will accrue.
- **Penalties:** Measures taken in the RDL are intended to apply immediately, upon application by the debtor, however, it should be noted that the RDL Article 16 provides that the debtor who had benefited from the moratorium measures without complying with the requirements or who painfully met the requirements of vulnerability will be liable for damages caused.

It is therefore very important to take advice well before starting any procedure and ensure, not only that the requirements are met, but also all the necessary documentation for communication to the creditor can be provided.

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