CLIFFORD

CHANCE

CORONAVIRUS: MORATORIUM FOR NON-MORTGAGE LOANS OR CREDITS

The Official State Gazette of 1 April 2020 published Royal Decree-Law 11/2020, of 31 March, adopting supplementary urgent measures in the economic and social sphere to address COVID-19 (the "RDL 11/2020").

The measures include the application of a measure called "suspension" for obligations derived from non-mortgage loans or credits in which the borrower is a natural person who is financially vulnerable.

Key issues

- It envisages the granting of a suspension of non-mortgage loan obligations granted to debtors who are "financially vulnerable"
- The suspension lasts for three months.
- No instalments will be payable during the suspension and no interest will accrue.
- The suspension will apply to any kind of unsecured agreement provided the debtor meets the requirements to qualify as financially vulnerable.
- The institutions supervised by the Bank of Spain will supply information daily.
- Non-compliance with the applicable rules may give rise to administrative sanctions.

WHAT DOES SUSPENSION CONSIST OF?

RDL 11/2020 envisages granting suspension of obligations under non-mortgage loans or credits granted to borrowers who can show that they are "financially vulnerable" as this term is defined in RDL 11/2020.

During the term of suspension (three months, extendable by the Council of Ministers):

- no instalments, or any item included in the instalments, will be payable in full or in part; and
- no ordinary or default interest will accrue.

The final maturity of the loan or credit will be extended by the term of the suspension.

WHAT KIND OF LOANS OR CREDITS ARE ELIGIBLE FOR SUSPENSION?

Given that the law does not distinguish, provided that the subjective requirements are met, any kind of loan or credit that implies the payment of interest, fees or other expenses and/or full or partial repayment of the principal may benefit from the suspension envisaged in RDL 11/2020.

The purpose of the loan or credit is irrelevant (they do not need to be for consumer purposes). Neither is there a quantitative limit. RDL 11/2020 only requires that there not be a mortgage guarantee, although there may be other personal and/or in rem guarantees.

WHO BENEFITS FROM THE SUSPENSION?

Borrowers who are "financially vulnerable" with loans or credits that are not mortgage-secured, as well as guarantors and sureties in the same terms.

In the case of non-debtor guarantors, sureties who are financially vulnerable, they can require that the borrower's wealth be exhausted, even after having expressly waived the benefit of excussion.

WHO ARE CONSIDERED "FINANCIALLY VULNERABLE"?

RDL 11/2020 stipulates that borrowers are financially vulnerable in the following circumstances:

a) the borrower becomes unemployed or, in the case of a businessperson or professional, suffers a fall in income or turnover of at least 40%.

b) the income of the members of the family unit[1] as a whole do not exceed, in the month prior to the request for the moratorium:

- In general, the limit of three times the monthly Public Income Indicator (*Indicador Público de Renta de Efectos Múltiples* or IPREM[2]).
- This limit will be increased by 0.1 times the IPREM for each dependent child in the family unit. The increase applicable for dependent children will be 0.15 times the IPREM per child in the case of single-parent families.
- This limit will be increased by 0.1 times the IPREM for each person aged over 65 belonging to the family unit.
- In the event that any of the members of the family unit have a recognised disability of more than 33 per cent, a situation of dependency or illness that permanently prevents them from working, the limit envisaged in subsection i) will be four times the IPREM, notwithstanding accumulated increases for dependent children.
- In the event the borrower is a person with cerebral palsy, a mental illness or intellectual disability, with a certified degree of disability equal to or greater than 33 per cent, or is a person with a certified physical or sensory disability equal to or greater than 65 per cent, as well as in cases of certified serious illness that renders the person or his/her carer unable to work, the limit envisaged in subsection i) will be five times the IPREM.

c) The monthly instalments, regardless of whether or not the borrower benefits from the moratorium under RDL 8/2020, plus basic expenses and supplies[3], are greater than or equal to 35 per cent of the net income received by the members of the family unit as a whole. If the beneficiary does not have a mortgage loan, but has to pay a lease or a non-mortgage-secured loan, or both things, the amount of the mortgage instalments will be replaced by the sum of such amounts including the rent even if it has been the subject of a moratorium.

d) That, as a result of the health emergency, the family unit has undergone a significant alteration[4] of its financial circumstances in terms of the effort required to access housing.

---

[1] The family unit will be considered to consist of the borrower, his or her spouse (not legally separated) or common law partner (where this union has been registered) and their children, regardless of their age, who reside in the same home, including those related through adoption, guardianship or foster care and their (not legally separated) spouse or (registered) common law partner, who also reside in the home.

[2] The monthly IPREM established for 2020 is 537.84 euros.

[3] Basic supplies are understood to mean electricity, gas, fuel oil (for heating), water, fixed and mobile telephony and condominium expenses.

[4] A significant alteration of financial circumstances will be understood to have taken place when the effort represented by the mortgage burden on family income has been multiplied by at least 1.3.

WHAT IS THE APPLICATION PROCESS FOR THE MORATORIUM?

The application period for the moratorium opened upon entry into force of RDL 11/2020 (2 April 2020) and will close after one month has elapsed following the lifting of the state of emergency.

To apply, borrowers must provide documentary evidence of their financially vulnerable status to their creditors.

Upon receiving an application, the creditor will immediately suspend the obligations arising from the credit or loan agreement, effective as of the submission date of the application.

WHAT DOCUMENTATION DO BORROWERS HAVE TO SUBMIT WITH THEIR APPLICATION?

RDL 11/2020 lists the documentation that must be provided:

a) If unemployed, a certificate issued by the benefits management entity, indicating the monthly amount received as unemployment benefits or subsidies.

b) If self-employed but having declared the cessation of activities, a certificate issued by the Spanish Tax Agency or corresponding body of the Autonomous Region of residence in relation to the grounds for the applicant's declaration of cessation of activities.

c) Evidence relating to the applicant's household:

- Official Family Record Book (*Libro de familia*) confirming marriage, or document confirming registration as a common-law union.
- Certificate confirming registration of residence for the persons claiming to reside at the home, in reference to the submission date of the supporting documentation and the six preceding months.
- Declaration of disability, dependence or permanent incapacity for work.

d) Evidence relating to title deeds:

- Extract from the Land Registry's records department (*servicio de índices*) for each member of the household.
- Sale and purchase deeds of the applicant's main residence, rental property or property used for work.

f) Signed statement from the borrower(s) confirming fulfilment of the requirements to be considered financially vulnerable pursuant to RDL 11/2020.

Borrowers who are not able to produce any of the documents listed in points a) to e) can submit a signed statement in their place, explaining why the COVID-19 crisis makes it impossible to submit them. They will then have a month to produce such documents once the state of emergency has been lifted.

HAVE MEASURES BEEN TAKEN TO DISCOURAGE ILLEGITIMATE USE OF THIS MEASURE?

Yes: Article 26 RDL 11/2020 established that borrowers who benefit from this measure fraudulently will be subject to the provisions of Article 16 RDL 8/2020, i.e. they will have to pay for the damage caused and the costs involved in applying the suspension, along with any other liabilities that arise from their misconduct.

DO INSTITUTIONS SUPERVISED BY THE BANK OF SPAIN HAVE ANY ADDITIONAL OBLIGATIONS?

Yes: under RDL 11/2020, lenders subject to oversight by the Bank of Spain[5] must deliver, on each working day, the following information relating to the previous working day to the Bank of Spain:

a) number of suspension applications submitted by borrowers,

b) number of suspensions granted;

c) number of suspension beneficiaries, grouped into borrowers and guarantors as well as self-employed and employed persons;

d) number of loans with suspended payment;

e) outstanding balance on which payment has been suspended; and

f) Economic Activities Code ("CNAE") for the activity that each borrower was carrying out.

COULD INSTITUTIONS REGULATED BY THE BANK OF SPAIN BE SANCTIONED IF THEY BREACH THE PROVISIONS OF RDL/2020?

RDL 11/2020 establishes that the provisions of Articles 21 to 26 and 27.1 RDL 11/2020[6] will be considered rules on compliance and conduct. Consequently, the Bank of Spain is empowered to supervise their application, and breach thereof will give rise to the relevant administrative penalties in accordance with the provisions of Act 10/2014, of 26 June, on the regulation, supervision and solvency of credit entities.

---

[5] Our understanding is that the institutions referred to here are as follows: Spanish credit institutions; financial intermediaries payment institutions and electric money institutions. The Spanish branches of third-country credit institutions would also be included, along with, foreseeably – since this measure was adopted for the common good – , the branches of member states of the European Economic Area.

[6] These are the articles relating to the granting of the suspension of obligations arising from non-mortgage facility or loan agreements and the effects thereof on borrowers and guarantors, and to reporting obligations vis-à-vis the Bank of Spain.

CLIFFORD CHANCE

CONTACTS

María Luisa Alonso
Counsel
T +31 91 590 94 06
E marialuisa.alonso
@cliffordchance.com

Iñigo Villoria
Partner
T +31 91 590 94 03
E inigo.villoria
@cliffordchance.com

Alexandra Borrallo
Laywer
T +31 91 590 94 06
E alexandra.borrallo
@cliffordchance.com