

## SPAIN CORONAVIRUS: MORATORIUM ON MORTGAGE PAYMENTS

Spanish Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to address the economic and social impact of the COVID-19 virus ("**RDL 8/2020**"), establishes the application of a moratorium on the payment of mortgage loans for those debtors considered "economically vulnerable".

Subsequently, Royal Decree-Law 11/2020, of 31 March, on the adoption of supplementary social and economic measures to address COVID-19 ("**RDL 11/2020**"), extends the scope of application of these measures and clarifies certain aspects of RDL 8/2020.

### 1. WHAT DOES THE MORATORIUM ENTAIL?

RDL 8/2020 establishes the application of a moratorium on the payment of mortgage loans granted for the acquisition of first homes, with regard to those debtors who prove that they are in a situation of "financial vulnerability".

Through RDL 11/2020, the scope of this moratorium is extended to apply to mortgages taken out for the acquisition of:

- (i) real estate used for the economic activity carried out by businessperson and professionals who can prove that they are in an "economically vulnerable" situation, and
- (ii) housing other than the usual type in a rental situation and for which mortgagors who are individuals, owners and lessors of such housing units have ceased to receive the rental income, since the state of emergency was declared in Spain pursuant to Royal Decree 463/2020, of 14 March, or cease to receive such income until one month after the state of emergency (including any extensions) is lifted.

The term of the moratorium is three months; this term can be extended by resolution of Spain's Council of Ministers.

During the term of the moratorium:

- no amount will be due or payable (even partially) by the mortgagor<sup>1</sup>,
- no ordinary interest will accrue,
- no default interest will accrue,
- the acceleration of the mortgage in question will not be possible.

As for the mortgage's term, the final maturity date of the mortgage loan will be extended for as long as the moratorium lasts.

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<sup>1</sup> Royal Decree-Law 15/2020, of 21 April, on urgent supplementary measures to support the economy and employment indicates that the application of suspension of mortgage debts for a term of three months will not be subject to the terms of Act 5/2019, of 15 March, on real estate credit agreements ("**RECA**"). We understand that this provision refers to the fact that said three-month term cannot be taken into account for the purposes of fulfilment of the parameters for declaring early maturity pursuant to the RECA.

## 2. WHO CAN BENEFIT FROM THE MORATORIUM?

Those mortgagors who are in a situation of "financial vulnerability" will benefit, as will their guarantors and underwriters in the same terms as the former.

In the event that the guarantors, underwriters or non-debtor mortgagors should find themselves in a situation of "financial vulnerability", they may request that the debtor's assets be depleted, even when they have expressly waived the benefit of *excussion*.

## 3. WHO CAN BE CONSIDERED "FINANCIALLY VULNERABLE"?

Persons will be considered financially vulnerable in the following cumulative circumstances:

- a) Where a potential beneficiary becomes unemployed or, in the case of a businessperson or professional, suffers a substantive loss of income or a substantial drop in turnover of at least 40 %.
- b) Where the aggregate income of the members of the family unit<sup>2</sup> in the month preceding the request for a moratorium, does not exceed:
  - i. In general terms, the limit of three times the Spanish Monthly Public Income Indicator (IPREM)<sup>3</sup>.
  - ii. This limit will be increased by 0.1 times the IPREM for each dependent child in the family unit. The applicable increase for dependent children will be 0.15 times the IPREM for each child in single-parent families.
  - iii. This limit will be increased by 0.1 times the IPREM for each person over 65 years of age belonging to the family unit.
  - iv. In the event that any of the members of the family unit has a certified disability of more than 33 %, a situation of dependency or illness that renders him/her permanently unable to work, the limit envisaged in subsection i) will be four times the IPREM, notwithstanding cumulative increases for dependent children.
  - v. In the event the mortgagor is a person with cerebral palsy, a mental illness or intellectual disability, with a certified degree of disability equal to or greater than 33 %, or is a person with a certified physical or sensory disability equal to or greater than 65 %, as well as in cases of serious illness that renders the person or his/her caregiver unable to work, the limit envisaged in subsection i) will be five times the IPREM.
- c) Where the total mortgage payments for the assets constituting security for the mortgage loan to which the moratorium applies, plus basic expenses and utilities<sup>4</sup>, total 35 % or more of the net income earned by the members of the family unit on aggregate.
- d) Where, as a result of the health emergency, the family unit has undergone a significant change in its financial circumstances, in terms of the effort required to access housing<sup>5</sup>.

## 4. HOW CAN ONE APPLY FOR THE MORATORIUM?

The mortgagor seeking to benefit from the moratorium may apply for this measure as from the entry into force of RDL 8/2020 (i.e. 18 March 2020) and up to fifteen days after termination thereof<sup>6</sup>.

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2 The family unit will be considered to consist of the debtor, 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.

3 The monthly IPREM established for 2020 is 537.84 euros.

4 "Basic expenses and utilities" will mean the amount of the cost of the supply of electricity, gas, diesel oil for heating, running water, fixed and mobile telephony services and condominium of owners' fees. Only those utilities supplied to the family unit's usual place of residence will be considered as such.

5 A significant change in financial circumstances will be considered to have occurred when the effort on family income represented by the total mortgage burden, understood to be the sum of the mortgage payments for all real estate securing the mortgage loan to which the moratorium applies, has increased by at least 1.3 times.

6 If this is taken to mean calendar days, the deadline for applying for the moratorium will be 3 May 2020. It seems reasonable to believe that this deadline will be extended by means of subsequent Royal Decrees, depending on whether the state of emergency continues.

To apply, the mortgagor must inform the mortgagee and provide documentation proving that it is in a situation of financial vulnerability, as described above.

Given the difficulty in obtaining certain documentation as a result of the restrictions on movement under the state of emergency, RDL 11/2020 permits the borrower to present a "*declaración responsable*" (statement of compliance) explaining how it meets the established requirements for being entitled to benefit from the moratorium and listing the reasons in relation to the consequences of the COVID-19 pandemic that prevent it from submitting the documentation required. Any documents not submitted at the time must be submitted within one month after the state of emergency ends.

Once the moratorium application has been received, the lender must implement the measure within a period of fifteen days<sup>7</sup>.

No agreement between the parties or contractual novation is required in order for the suspension of contractual obligations to take effect. The moratorium will be effective from the time the debtor makes this request to the creditor by any means. Any novation of the mortgage loan that is necessary as a result of the moratorium must subsequently be formalised, once freedom of movement is re-established<sup>8</sup>. In this regard, Royal Decree-Law 15/2020, of 21 April, on urgent supplementary measures to support the economy and employment has specified that the obligation to formalise the moratorium is a unilateral obligation for the creditor.

## **5. ARE PROVISIONS ESTABLISHED TO DISCOURAGE THE SPURIOUS USE OF THIS MEASURE?**

Yes they are. Any mortgagor benefitting from this measure without meeting the prerequisites will be liable for any loss and damage caused, as well as the expenses incurred in applying the moratorium, together with any other liabilities which may derive as a result.

## **6. DO LENDERS NEED TO INFORM THE BANK OF SPAIN OF THE GRANTING OF MORATORIA?**

RDL 11/2020 establishes that lender entities *supervised by the Bank of Spain* must present, each business day, the following information regarding the previous business day:

- a) Number of moratorium applications presented by debtors.
- b) Number of moratoriums granted.
- c) Number of beneficiaries of the moratorium, grouped, on the one hand, by debtors and guarantors and, on the other hand, by self-employed persons and wage-earners.
- d) Number of mortgages for which payment has been suspended.
- e) Outstanding balance pending repayment for which payment has been suspended.
- f) Spanish Activities Code (CNAE) for the activity carried out by the debtor.

## **7. WHAT ACCOUNTING IMPACT DOES THIS MEASURE HAVE ON FINANCIAL INSTITUTIONS?**

Once the moratorium is granted, financial institutions must notify the Bank of Spain so that the moratorium is not included for accounting purposes in the calculation of provisions for risk.

<sup>7</sup> Upon presenting its moratorium application, the mortgagor will cease to be in default for all effects and purposes.

<sup>8</sup> The notarial and registry fees arising when formalising and registering the mortgage moratorium and when formalising and registering the novation of the mortgage must in any event be paid by the creditor, reduced by 50 %, as follows:

- a) The fee for the execution of deeds will be that corresponding to deeds for the novation of mortgages, established in 1.1. f) of Annex I of Royal Decree 1426/1989, dated 17 November, approving Notaries' fees, reduced by 50 %, with no amount being due after the fifth sheet of the original and copy, whether a legitimised or unofficial copy. The minimum fee will be 30 euros and the maximum fee 75 euros.
- b) The registration fee will be that corresponding to amendments and novations established in Article 2.1.g) of Annex I of Royal Decree 1427/1989, dated 17 November, approving the Registrars' fees, reduced by 50 %. The minimum fee will be 24 euros and the maximum fee 50 euros.

## CONTACTS



**Iñigo Villoria**  
Partner

**T** +31 91 590 94 03  
**E** inigo.villoria  
@cliffordchance.com



**Alexandra Borrallo**  
Senior Lawyer

**T** +31 91 590 94 06  
**E** alexandra.borrallo  
@cliffordchance.com



**Laura del Campo**  
Lawyer

**T** +34 91 590 94 79  
**E** laura.delcampo  
@cliffordchance.com

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Clifford Chance, Paseo de la Castellana 110,  
28046 Madrid, Spain

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