

SPAIN. CORONAVIRUS: ROYAL DECREE-LAW 15/2020 – MEASURES AFFECTING NON-RESIDENTIAL LEASES

On 21 April 2020, the Spanish Council of Ministers approved Royal Decree-Law 15/2020 ("RDL 15/2020") adopting additional urgent economic and labour measures, which includes measures to reduce the economic burden of SMEs and self-employed persons, including measures applicable to non-residential leases associated with their businesses.

RDL 15/2020

As has been largely commented on, the approval of Spanish Royal Decree-Law 463/2020, of 14 March, declaring a state of emergency to manage the health crisis situation caused by the Covid-19 virus, has led to the application of a series of extraordinary and unprecedented measures in Spain. With Royal Decree-Law 11/2020, of 31 March, the Government addressed the impact of Covid-19 on vulnerable groups and their primary residence leases but nothing was legislated regarding a very pressing issue: the consequences of the state of emergency on non-residential leases devoted to business activities, the impact of which demanded an urgent legislative response. By virtue of RDL 15/2020, measures similar to those applied to the residential leases of vulnerable groups, i.e. a rent moratorium, will now apply to the businesses leases of Small and Medium-Sized Enterprises (SMEs) and the self-employed.

WHO ARE THESE MEASURES AIMED AT?

RDL 15/2020 limits access to the rent moratorium to those SMEs and self-employed persons whose economic capacity and consequent ability to pay the rent on their business premises has been considerably reduced by the cessation of a large part of Spain's economic activity due to the Covid-19 pandemic. Specifically, the following requirements must be met:

- a) Self-employed: Must have been affiliated and active upon the declaration of the state of emergency, as a self-employed person under one of the regimes indicated in RDL 15/2020 (i.e. Special Social Security regime for self-employed or autonomous workers; Special Social Security regime for sea workers or, where applicable,

Key issues

- The Spanish Government approved RDL 15/2020, on urgent supplementary economic and labour measures, on 21 April.
- A rent moratorium will apply to certain SMEs and self-employed persons in relation to non-residential leases associated with their business activities.
- The economic impact of Covid-19 must be proven in order to request the rent moratorium established under RDL 15/2020, which will apply differently, depending on whether or not the landlord: (i) is a large holder of housing or a public housing company, and (ii) meets all of the stipulated conditions.

one of the mutual insurance companies substituting the special regime for self-employed workers).

- b) SMEs: Must not exceed the limits established in Article 257.1 of the Spanish Companies Act. This provision could be interpreted in two different ways: (1) the entity must meet, during two consecutive financial years (at the end of each of them), two of the following three requirements; or (2) none of the following limits can be exceeded: a) the SME's total assets do not exceed EUR 4 million; b) its annual net turnover does not exceed EUR 8 million; c) the average number of employees employed during the year is less than 50.

RDL 15/2020 does not state whether the above also applies to the corporate group to which the tenant belongs.

- c) Both SMEs and self-employed: Must be in one of the following situations:
- i. Its business activity has been suspended as a result of the declaration of state of emergency.
 - ii. Its business activity has not been directly suspended as a result of the declaration of state of emergency but turnover for the month prior to the application for the rent moratorium was at least 75 % lower than the average monthly turnover for the same quarter of the previous year.

The tenant must prove the above-mentioned circumstances by presenting to the landlord the following:

- for the situation described in section (i) above, the cessation of activity certificate issued by the Spanish Tax Authorities (*Agencia Estatal de la Administración Tributaria*) or the competent body of the Autonomous Community; and
- for the situation described in section (ii) above, a signed statement (*declaración responsable*) declaring that, based on accounting information, monthly turnover has decreased by at least 75%. In any case, the tenant must provide the landlord with such accounting information upon the latter's request.

RENT MORATORIUM IN RELATION TO NON-RESIDENTIAL LEASES

Tenants who meet the above-mentioned requirements may request, within one (1) month of the entry into force of RDL 15/2020, a temporary extraordinary postponement of rent payments, provided that no agreement has already been reached with the landlord in this regard. Two (2) main scenarios are foreseen under RDL 15/2020, depending on the type of landlord:

1. If the landlord is a 'large holder' or a public housing company

If the landlord is a large holder of housing (*gran tenedor de viviendas*) (an individual or legal entity owning more than ten (10) urban residential properties, excluding garages and storage rooms, or a built-up area of more

than 1,500 sq.m.) or a public housing company, the tenant may request, and it will be automatically applied, a postponement of rent payments for the duration of the state of emergency, extendable on a monthly basis thereafter (for up to a maximum of four (4) months). It is not clear from the drafting of RDL 15/2020 whether the maximum four-month term applies to the duration of the state of emergency plus any applicable monthly extensions, or just to the monthly extensions.

The amounts of rent not paid during this period must be deferred with no penalty or interest for the tenant. The rent will be payable in instalments during the following two (2) years, provided that the lease agreement remains in force during that period. The date on which the two (2) years will begin to be counted is not clear from the drafting of RDL 15/2020; in our view, the two-year period will begin as from the end of the rent moratorium.

2. If the landlord is not a 'large holder' or a public housing company

If the landlord is not a large holder of housing or a public housing company, the tenant meeting the requirements indicated above may request a temporary and extraordinary postponement of the payment of the rent.

Whereas RDL 15/2020 establishes that the rent moratorium in the case of landlords that are large holders of housing or public housing companies is automatic and will have to be accepted by the landlord, the new legislation remains silent in the case of landlords that are not large holders of housing or public housing companies. Although it is not clear from the drafting of RDL 15/2020 whether or not this rent moratorium is compulsory for the landlord and automatic, it would be logical to assume that this is not an automatic measure but rather is subject to agreement by the parties. RDL 15/2020 also fails to specify the duration of the rent moratorium and the period during which the rent may be paid in instalments, in this scenario.

Statutory rent deposit: The parties may freely avail of the statutory rent deposit, which may be used to pay one or more monthly instalments in full or in part. In such case, the tenant must restore the amount of the rent deposit within one (1) year and, in any event, within the term of the lease agreement, if the remaining term is less than that.

PROVISIONS ESTABLISHED TO DISCOURAGE THE SPURIOUS USE OF THIS MEASURE

Any tenant benefiting 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.

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