CLIFFORD CHANCE

CORONAVIRUS: SUPPORT MEASURES TO HELP SPANISH COMPANIES IN NEED

The recent outbreak of COVID-19 is a major economic shock to the global economy. Against this background, the European Commission has released a State aid Temporary Framework that allows EU governments to put in place support measures to help businesses affected by the coronavirus outbreak. In Spain, the Government has adopted a multi-billion euro package of such measures, parts of which have already been approved by the Commission under European State aid rules.

Key issues

- The European Commission has adopted a State aid Temporary Framework to enable Member States to support the economy in the context of the COVID-19.
- The Spanish Government has adopted a multi-billion euro package of measures to support Spanish businesses through State guaranteed loans, credit lines and other relief.
- Two guarantee schemes and two framework schemes notified by the Spanish Government have already been cleared by the European Commission under the Temporary Framework.

1. INTRODUCTION

The outbreak of the coronavirus ("**COVID-19**") is causing a major economic shock, with disruption to global supply chains, volatility in financial markets, upsets in consumer demand and negative impact in key sectors such as travel and tourism. The European Union ("**EU**") and its Member States are taking measures to mitigate the consequences of this pandemic.

One possibility is to grant State aid. The European Commission ("**Commission**") has adopted a Temporary Framework that facilitates the granting of State aid by EU Member States to support businesses that are affected by the economic impact of COVID-19, in compliance with EU regulations on State aid.

2. SPANISH SUPPORT MEASURES

On 14 March, the Spanish Government declared a state of emergency to manage the health crisis caused by COVID-19 (Royal Decree 463/2020). In addition, a number of social and economic measures were adopted to lend support to companies in addressing the economic impact of COVID-19 (see Royal Decrees-Laws –"**RDL**" - 7/2920, 8/2020, 11/2020, 14/2020 and 15/2020). What follows is a summary of the main measures approved by the Spanish central Government with this aim. Further support measures have been adopted by regional and local governments and additional measures could still be put in place.

1. State-guaranteed loans

According to RDL 8/2020, the Ministry of Economy and Digital Transformation will provide guarantees, for a maximum amount of EUR 100 billion, to financing granted by credit institutions, electronic money institutions and payment institutions to businesses and self-employed persons to meet their obligations arising, among others, from the management of invoices, working capital requirements, expiration dates of financial or tax obligations or any other cash needs.

On 24 March 2020, the Council of Ministers approved the conditions and requisites for a **first tranche** consisting of a EUR 20 billion guarantee, 50% of which will be reserved to secure loans for SMEs and self-employed persons not in a situation of default at 31 December 2019 or in insolvency proceedings at 17 March 2020. The guarantees will be managed by Spain's Official Credit Institute (*Instituto de Crédito Oficial* (**ICO**)), with the cooperation of financial institutions. The scheme establishes a risk-sharing mechanism between the public sector (through the ICO) and the private financial institutions. Beneficiaries (SMEs, self-employees and large undertakings, all registered in Spain) may apply for guarantees for loans or any other kind of financing transactions formalised or renewed after 17 March 2020 and up to 30 September 2020 (subject to further extensions by the Government, always in accordance with State aid rules and thus not beyond 31 December 2020 according to the Temporary Framework discussed below).

The guarantee will secure up to 80% of new loans and renewals of transactions requested by SMEs and the self-employed. For the rest of companies, the guarantee will cover up to 70% of the new loan granted and up to 60% of renewals. The guarantee issued will be valid for the same term as that of the loan granted, up to a maximum of five years. For underlying loans not exceeding EUR 1.5 million, the requirements of the State aid *de minimis* Block Exemption Regulation will apply. Above EUR 1.5 million, the amount of the guaranteed loan shall not exceed the limits established in the Temporary Framework discussed below. The cost of the guarantee, of between 20 and 120 basis points, will be assumed by the financial institutions.

Financial institutions undertake to maintain the costs of new loans and renewals benefitting from these guarantees in line with the costs applied prior to the start of the COVID-19 crisis. They also commit to maintain the limits of the lines of credit granted to all clients, at least until 20 September 2020, and in particular for those clients whose loans are guaranteed.

Additionally, on 10 April 2020, the Spanish Government approved the activation of the **second tranche** of guarantees for businesses and self-employed persons for a further EUR 20 billion. The new tranche is to be used entirely to secure transactions by SMEs and self-employed persons and it maintains the same characteristics and processing method as the initial tranche. In order to ensure that SMEs and self-employed persons are the true beneficiaries of these guarantees, it furthermore expressly establishes that the loan price for clients benefiting from the guarantee must generally be lower than the price of the loans and other transactions for the same type of client who cannot benefit from such guarantee. This measure also prohibits companies from marketing other products or services together with the secured loan and from making the granting of the secured loan subject to taking out those other products or services.

A **third tranche** of guarantees was approved by the Spanish Government on 5 May 2020. Upon its activation, EUR 20 billion will be available to secure loans to SMEs, self-employed persons and large companies (EUR 10 billion of which will be reserved for SMEs and the self-employed); EUR 4 billion to cover promissory notes in the Alternative Fixed Income Market (MARF) and EUR 500 million to reinforce re-guarantees granted by Compañía Española de Reafianzamiento, SME, S.A. (CERSA). The approval of these guarantees underpins their beneficiary companies' obligation to use the financing obtained to cover their liquidity needs; it cannot be used for the distribution of dividends.

2. Credit availability through the ICO

RDL 8/2020 increases the borrowing limit set for Spain's Official Credit Institute by EUR 10 billion; this greater availability of ICO credit facilities is designed to help finance businesses and self-employed persons.

3. Tax measures

RDL 8/2020 generally suspends the deadline for tax debt payments until 30 April. In addition, for tax debts assessed after the date of the approval of RDL 8/2020, the deadline for payment obligations (or fulfilment of tax formalities) is extended until 20 May.

Additionally, RDL 11/2020 grants a payment deferral of the customs and tax debt corresponding to customs declarations filed between the date of entry into force of such Royal Decree and 30 May 2020, both inclusive, provided that the amount of the debt to be deferred exceeds EUR 100. This provision only applies to those taxpayers whose trading volume was below EUR 6,010,121.04 in 2019. The deferral is for 6 months and no default interest will be due during the first three months of such period.

RDL 14/2020, in turn, establishes, regarding the competencies of the Spanish Tax Authorities, an extension of the deadlines for the filing and payment of tax returns and self-assessments for those taxpayers whose trading volume was below EUR 600,000 in 2019 and for which payment is due between the date of entry into force of such Royal Decree and 20 May 2020, until 20 May (or until 15 May 2020 if the method of payment chosen is direct debit from account).

Lastly, RDL 15/2020 includes a series of measures in relation to certain specific taxes, so as to allow healthcare materials to be supplied quickly and effectively and so that the calculation applicable to the tax settlements reflects the economic situation.

4. Exemption from Social Security contributions

RDL 8/2020 establishes an exemption for employers from making Social Security contributions on behalf of the company in the event of temporary collective dismissal procedures ("ERTEs") due to temporary force majeure as a result of Covid-19, during the period in which contracts are suspended or working hours are reduced, in the following cases:

- companies with fewer than 50 employees registered with the Social Security on 29 February 2020 will be exempt from payment of 100% of the company's contribution and from payment of joint tax quotas; and
- companies with 50 employees or more who are registered with the Social Security will be exempt from payment of 75% of the company's contribution and from payment of joint tax quotas.

5. Other measures to boost companies' liquidity

RDL 11/2020 establishes a series of measures designed to encourage economic activity, including flexibility measures and measures to boost companies' liquidity, to help reduce their costs:

- It authorises the ICEX, Spain's Foreign Trade Institute, to refund to those companies incurring expenses not recoverable this year or in future years, the fees paid to participate in trade fairs or other activities promoting international trade, which were announced by the company but have been cancelled, seriously curtailed or postponed by the organiser as a result of the COVID-19 pandemic.
- Those companies and self-employed persons who are borrowers of financial credits or loans from an Autonomous Community or Local Entity may request a deferral of the payment of the principal and/or interest due during the rest of 2020, provided they have had periods of inactivity, a significant decrease in their volume of sales, or supply disruptions in the value chain which hinder or prevent them from fulfilling payment.
- The Centre for the Development of Industrial Technology (CDTI) is included among those taxpayers authorised to facilitate granting aid and making contributions to the entire business sector (SMEs, medium capitalisation companies and large companies), in order to encourage business innovation in the fight against the pandemic and guarantee the proper functioning of Spain's corporate fabric at this time.
- In subsidy procedures, the orders and resolutions calling for and granting subsidies and public aid already issued when RD 463/2020 came into force may be amended to extend the deadlines for the performance of the subsidised activity and to justify and verify such performance, as the case may be, even if this was not included in the corresponding regulatory bases.

RDL 15/2020, in turn, includes a series of measures designed to improve the financing granted to companies, in light of the financial difficulties deriving from COVID-19, as follows:

- The Institute for the Diversification and Saving of Energy (IDAE) offers those beneficiaries of its subsidy and loan programmes who are affected by the COVID-19 crisis, the possibility of deferring the payment of their loans falling due between March and June 2020 (provided that certain conditions are met).
- It authorises the Insurance Compensation Consortium to accept, as reinsurance, the risks assumed by authorised private insurance companies to operate in the branches of credit and suretyship insurance, should they so request and provided they sign or accede to the corresponding agreement with such public corporate entity.

6. Liquidity measures to help the tourism sector

For businesses and self-employed persons who carry out tourism-related activities and have been seriously hit by COVID-19, RDL 7/2020 establishes the following measures:

- Stronger loan facility managed by the ICO, which is increased by EUR 200 million, in addition to the EUR 200 million initially earmarked to ameliorate the effects of the bankruptcy of Thomas Cook, in order to also cover companies and self-employed workers in the Spanish tourism sector (e.g. hotel activities, car and vehicle rental, taxi transport, restaurants, cultural, recreational and entertainment activities, amusement parks); and
- Possibility for companies active in the tourism, retail and hotel sectors to apply a discount of 50%, from 1 January 2020 to 31 December 2020, to the employer's Social Security contributions for general contingencies as well as to the jointly paid amounts corresponding to Unemployment, the Salary Guarantee Fund (FOGASA) and Professional Training, provided that the company generates productive activity in the months of February, March, April, May and June and keeps its employees on staff during such months, with permanent seasonal contracts.

In addition, RDL 11/2020 suspends interest and principal payments on loans granted by the Secretariat of State for Tourism for one year, with no application required.

7. Liquidity measures to help the self-employed and SMEs

RDL 7/2020 establishes the following measures:

- Possibility to defer certain tax debts for taxpayers with a trading volume below EUR 6,010,121.04 in 2019, provided that the debt does not exceed EUR 30,000 and falls within the jurisdiction of the State tax administration. No default interest will accrue during the first three months.
- Financial support to promote the liquidity of self-employed persons and SMEs, by deferring the repayment of loans received through the General Secretariat of Industry and Small and Medium Enterprises ("GSISME").

RDL 11/2020, meanwhile, includes the following additional measures:

- The requirements are loosened for the granting of loans by GSISME that were pending adjudication on the date that RD 463/2020 entered into force: (i) the guarantees to be provided by applicants may be presented after the adjudication of the loan and before it is paid out; (ii) beneficiaries of loans for industrial projects granted by GSISME are entitled to request modifications to the loan repayment schedule; and (iii) ranking criteria are included for the conditions to be met under GSISME's funding programmes.
- EUR 60 million are added to the budget of state entity CERSA's *Fondo de Provisiones Técnicas* or Technical Provisions Fund, which secures funding granted to SMEs under the guarantee system, in order to secure a greater number of transactions.

Lastly, RDL 15/2020 envisages a set of measures relating to leases, such as a moratorium on the payment of the rent on non-residential leases with large holders of real estate assets or temporary deferral of such payments when the lessor is not a large holder. These measures are available to self-employed persons and SMEs meeting certain conditions, which include (i) the suspension of their activity as a result of the declaration of the state of emergency and (ii) a decrease in their turnover, in the calendar month preceding the month in which the deferral is requested, of at least 75% with respect to their average monthly turnover in 2019 for the quarter in which that month falls.

8. Measures to help other sectors

RDL 11/2020 approves aid amounting to EUR 15 million to offset part of those costs of nationally broadcast digital terrestrial television service providers that arise from the obligation to maintain certain population coverage percentages for a period of six months.

In addition, RDL 15/2020 includes a large number of exceptional transitional measures relating to national ports, the aim of which is to mitigate the economic impact of the health crisis situation caused by Covid-19. These measures include reductions of fees for private use of public land and exemptions from operation fees (for holders of licences or authorisations that have suffered a significantly negative impact on their activities as a result of Covid-19); exemptions from vessel fees on vessels that are moored or anchored in port waters by order of the competent authorities as a result of the Covid-19 crisis; deferral of payment of harbour dues; and priority assignment of the 2020–2021 Interport Compensation Fund to port authorities that have recorded losses due to significant drops in passenger traffic, brought about by the application of the provisions restricting the movement of people to combat the Covid-19 crisis.

On 5 May 2020, a new RDL was approved which establishes the following measures to help persons working in the cultural sector: (i) artists will be able to apply for unemployment benefits, as an exception, (ii) those working in the performing arts (such as dancers, actors, circus performers and musicians) and cinema operators will have access to over EUR 51 million in State aid, specifically designed to provide financial assistance during the suspension of activity and scaling back of restrictions once the lockdown is eased; (iii) more support (EUR 5 million) is provided for the book sector and the fine arts; (iv) more incentives are provided for patronage activities and audiovisual production; (v) scholarships and grants for athletes based on their competition results have been extended; and (vi) EUR 76.4 million have been earmarked through a package of measures to help support the cultural sector during this heath crisis.

Also on 5 May 2020, a new EUR 70+ million aid package was approved, through a job training service and two grant processes to help businesses and youth accelerate their digitisation process and lessen the impact of the COVID-19 pandemic on their activities.

9. Monetary contributions for COVID-19 research

RDL 8/2020 provides for the granting of extraordinary loans (from EUR 150,000 to EUR 24 million) from the budget of the Ministry of Science and Innovation to companies dedicated to scientific and technical research in relation to the health emergency caused by COVID-19.

10. Export credit insurance

RDL 8/2020 approves the setting of a new insurance coverage of up to EUR 2 billion from the Internationalisation Risks Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*) for a period of six months from its entry into force. This new insurance policy can be used for all kinds of commercial operations, including within Spain. Funds will be available to Spanish SMEs and other non-listed large firms experiencing problems with cash flow or obtaining loans due to the impact of COVID 19, provided they are exporters or in the process of internationalisation (according to requirements set out in the emergency law).

3. APPROACH OF THE EUROPEAN COMMISSION

Certain support options fall outside the scope of EU State aid rules. This is the case for general measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers.

However, selective measures granting economic advantages to companies and financed through State resources amount to State aid under Article 107(1) of the Treaty on the Functioning of the European Union ("**TFEU**") and are subject to prior clearance by the Commission unless they are covered by block exemptions, such as *de minimis* aid.

In this context, the Commission has established a temporary framework to clear aid packages that are put in place by EU governments in response to the Covid-19 outbreak.

Special temporary framework

On 19 March, the Commission adopted a special State aid framework for the assessment of coronavirus-related aid measures (Communication on "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", the "Temporary Framework").

The Temporary Framework initially provided the following types of aid: (i) liquidity aid in the form of direct grants, selective tax advantages and advance payments; (ii) State guarantees on loans taken by companies from banks; (iii) subsidised public loans; and (iv) short -term export credit insurance. On 3 April, the Temporary Framework was extended to also include (i) additional forms of liquidity aid, such as equity, guarantees and loans; (ii) aid for Covid-19-relevant research and development; (iii) investment aid for testing and upscaling infrastructures that contribute to developing Covid-19-relevant products; (iv) investment aid for the production of Covid-19-relevant products; (v) aid in form of deferrals of tax and/or of social security contributions; and (vi) aid in form of wage subsidies for employees to avoid lay-offs during the Covid-19 outbreak.

The Temporary Framework clarifies that where the guarantees or subsidised loans are provided through banks or other financial institutions, any indirect advantages that arise for those institutions will be cleared along with those for the direct recipients. However, financial intermediaries will be expected to implement mechanisms to ensure that the advantages are passed on to the largest extent possible to the final beneficiaries.

The Temporary Framework, in force until 31 December 2020, includes a number of requirements that each aid type will need to fulfil in order to be cleared under its scope.

With some exceptions, the different types of aid foreseen in the Temporary Framework can be cumulated. Liquidity aid measures may be granted –for up to an overall limit of EUR 800,000 per undertaking. Aid under the Temporary

Framework can be combined as well with so-called *de minimis* aid (up to EUR 200,000 per undertaking over three financial years), thus bringing the aid per undertaking to a total of EUR 1 million. With the exception of the last two forms of aid listed above, aid cannot be granted to companies that were already in financial difficulty at 31 December 2019.

Further detail of the Temporary Framework can be found in our briefing "The European Commission's Coronavirus State Aid Framework", available here.

As announced by the Commission, clearances under the Temporary Framework are being issued extremely quickly, within days.

Other possibilities available

The Temporary Framework complements other possibilities already available to get clearance of State aid measures aimed at mitigating the socio-economic impact of the COVID-19 outbreak:

- Compensation measures for companies in sectors that have been hit particularly hard by COVI-19, such as transport, tourism and hospitality.
- Schemes to meet acute liquidity needs and support undertakings facing financial difficulties due to or aggravated by the COVID-19 outbreak that comply with the *"Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty"*. The Temporary Framework clarifies that Member States may compensate the damages directly caused by the COVID-19 outbreak to undertakings that have received aid under said Guidelines in the past 10 years.

4. COMMENT

The first EUR 20 billion guarantee tranche, approved by the Spanish Government on 24 March was cleared by the Commission on the same date under the Temporary Framework.

Since then, the Commission has also authorised two framework or "umbrella" schemes notified by the Spanish Government, which allow the different administrations (national, regional or local) to grant certain types of aid that meet the requirements of the Temporary Framework, thereby avoiding the need to notify each scheme individually: (i) a first framework scheme (cleared on 2 April), which allows liquidity aid to be granted in the form of direct subsidies, repayable advances, tax and payment advantages (with an approximate estimated budget of EUR 3.65 billion), guarantees on loans and subsidised loans; and (ii) a second framework scheme (cleared on 24 April), with an approximate estimated budget of EUR 3.5 billion, which allows aid to be granted for R&D in relation to COVID-19, investment for testing and upscaling infrastructures and for the development of products related to COVID-19, aid in the form of deferrals of the payment of taxes and Social Security contributions and aid in the form of wage subsidies to help avoid layoffs during the pandemic. Furthermore, the second framework scheme extends liquidity aid that can be granted under the first framework scheme, to aid in the form of guarantees, subsidised loans or support for capital.

Under the clearance decisions of these two framework schemes, aid described herein that falls under the corresponding categories and meets the requirements set out in the Temporary Framework, as well as other similar aid approved by the regional or local authorities (and within the estimated budgetary limits notified), can be granted without needing new clearance. This seems to be case of the second and third guarantee tranches approved by the Spanish Government.

Prior clearance will not be required for generally applicable measures, as the general suspension of deadlines for tax debt payments introduced by RDL 8/2020 seems to be, nor for aid falling under a block exemption, such as the *de minimis* exemption, which covers guarantees under the approved first tranche for loans of up to EUR 1.5 million.

Any aid falling outside the two scenarios above must be cleared by the Commission before it is provided. Failure to secure prior clearance can lead to aid recipients being required to pay it back, the legal validity of related contractual arrangements being called into question and of course further delays in adequately mitigating the impact of the exceptional circumstances of the coronavirus.

The Spanish Government will need to adapt its schemes to the compatibility requirements of the Temporary Framework or other applicable State aid frameworks, otherwise the Commission may require changes to be made before clearance is given.

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