

## Spanish government takes emergency measures to tackle the social and economic impact of the COVID-19 outbreak

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The Spanish government has approved Royal Decree-law 8/2020 of 17 March 2020, which contains a package of economic, social and other measures intended to minimise the consequences of the crisis caused by the COVID-19 pandemic and the state of emergency in Spain

The government is pursuing three aims: (i) to give greater protection to workers, families and vulnerable people; (ii) support businesses in continuing to operate and keeping people in their jobs; and (iii) reinforcing efforts to combat the virus.

We highlight the main measures below, by area.

### Employment

#### > Priority for working from home

Employers are required to introduce systems to keep operating by alternative means, specifically by enabling employees to work from home wherever possible and if the effort of adaptation necessary is proportionate. On an exceptional basis, employers will be considered to have completed the required occupational health and safety assessments through a self-assessment done voluntarily by the employee. SMEs will have access to loans to buy the necessary equipment.

Working from home must be given priority over temporary closures or reductions in business activity.

#### > Work/life balance

Employees that need to take care of others due to the exceptional lockdown measures to prevent the spread of COVID-19 are entitled to ask to change and/or reduce their working day.

Workers can ask to work different times or for changes to any other aspect of working conditions whereby they are still able to perform their care duties (flexi-time, changes of shift, of workplace, in the form of service etc.). Employees wishing to reduce their working day, with the proportionate reduction in salary, must inform employers 24 hours in advance and can reduce their hours to zero if necessary, provided this is justified, reasonable and proportionate in view of the company's situation.

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## > **Self-employed workers**

On an exceptional basis and provided they meet certain requirements, self-employed workers who are unable to make income due to the state of emergency or are particularly affected by the COVID-19 crisis are entitled to a special state benefit. This measure only applies for one month from the date the state of emergency was declared in Spain, or the last day of the month in which it ends, if it is extended for more than a month.

## > **Temporary lay-offs and short-time working**

- Downturns in business duly proven to be a direct result of COVID-19 will be considered as due to force majeure for the purposes of temporary lay-offs or short-time working measures by employers, subject to confirmation of the reason by employment authorities;
- The process is speeded up for employment authorities to approve reductive measures by businesses, due to force majeure and on economic, technical, organisational or production-related grounds;
- Workers subject to temporary lay-offs and short-time working measures are given more protection. Unemployment benefit will be available even where they have not made the necessary contributions. The time in which they receive benefits because of measures due to COVID-19 will not affect their future eligibility for those benefits.
- Where employers take temporary measures due to force majeure, they will be exempt from paying 75% of employers' social security contributions (100% for those with fewer than 50 workers), provided they commit to keeping people in their jobs for six months after business resumes.

## **Tax**

### > **Extended deadlines for certain tax processes**

Taxpayers have more time to complete certain processes relating to their taxes (mainly to respond to demands and submit appeals/statements within time limits in proceedings to collect taxes and penalties and in some cases for review).

### > **Tax payments**

Taxpayers are given more time to pay taxes assessed by the Spanish tax authorities (deadlines remain the same for those subject to self-assessment). This applies to early (with reductions) and maximum deadlines for payments, as well as deferred payments and instalments agreed before or during the state of emergency.

### > **Relevant dates (for application to the measures described above)**

In brief, there are two dates to be considered for the purposes of extended deadlines and due date for tax obligations:

- Deadlines and due dates that were not reached before the state of emergency are postponed to 30 April 2020,
- Deadlines and other due dates of which people are notified after the state of emergency began are extended to 30 May 2020, except where the standard time limit is longer, in which case this will apply.

### > **Other measures**

- The period from the start of the state of emergency to 30 April 2020
  - (i) Will not count for the purposes of the maximum duration of tax, penalty and review proceedings, though does not prevent these from starting; and
  - (ii) Will not count towards limitation periods for tax debts.

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- The time limit for appealing against tax decisions will not start to run until the end of this period (30 April 2020) or the date notified in the legally stated terms.

## Protection for the most vulnerable

### > **Guarantee of essential supplies (electricity, gas and water)**

- For one month from the entry into force of the Royal Decree-law, Spanish utilities suppliers cannot cut off electricity, gas or water to customers considered vulnerable or at risk of social exclusion, as defined by electricity regulations;
- The Spanish social tariff is automatically extended to 15 September 2020, for those recipients for whom the maximum two years under regulations expires before then; and
- The 'last resort' tariff for natural gas and liquefied petroleum gases (LPG) prices for the next six months are frozen.

### > **Moratorium on mortgage payments for habitual residence**

Moratorium on mortgage payments for habitual residence for borrowers experiencing difficulties in making mortgage payments as a result of the COVID-19 crisis (in the cases of economic vulnerability described in the emergency law: unemployment, substantial loss of income etc.). Those requesting a moratorium (who can do so up to 15 days after the measures end) will see no increase in their mortgage debt for the stipulated time and consequently lenders will be unable to demand early repayment under mortgage terms during that time.

During the moratorium, lenders cannot demand mortgage payments or any repayments of principal or interest. No interest or late payment interest will accrue. The same measures apply to guarantors and sureties of the main debtor, in respect of their habitual residence and with the same terms as for the mortgage borrower.

Guarantors, sureties and other mortgagors in situations of economic vulnerability can demand that lenders take recourse to all the main debtor's assets, notwithstanding the Spanish Standards of Lending Practice (Código de Buenas Prácticas) where applicable, before pursuing them for debt, even where they specifically waived guarantors' rights.

## To avoid cash flow problems

### > **Loan guarantees for businesses and the self-employed**

The Spanish Ministry for Economic Affairs and Digital Transformation will guarantee loans of up to €100 billion (including renewals) from credit institutions, credit finance establishments, electronic money institutions and payment institutions. This is to help businesses and self-employed workers cover their cash needs due to invoices, working capital, financial or tax debts due or other outgoings.

The Spanish government will stipulate the terms and conditions for its loan guarantees to start working immediately.

### > **Enlarged budget for state credit guarantees**

Spain's financial agency (ICO) is given an extra €10 billion to guarantee credit and loans to businesses, especially SMEs and self-employed workers.

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## > **Export insurance cover**

For six months, the government will give Spain's export credit agency (CESCE) an additional €2 billion to shore up the liquidity of the country's exporters, which 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 getting 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).

## **Telecom services**

A series of measures are aimed at ensuring that, for the duration of the state of emergency, Spanish citizens continue to receive telecommunications, electronic communications and broadband connectivity services, in at least the same conditions and with the same quality as before (to facilitate working from home, electronic correspondence between the public and with the authorities, and access to retail or leisure options, "in this situation of containment and reduced mobility" in which we find ourselves).

## **Public procurement**

### > **Services or supply contracts**

#### > **Ongoing services contracts**

Contractors can request the suspension of contracts for ongoing public services or supplies that have become impossible to perform because of the COVID-19 situation or measures taken by authorities, until these can be resumed (contracts cannot be terminated in these cases).

Once the situation has passed, contractors can seek payment from the authorities for damages incurred by reason of the suspension, with supporting evidence. The Royal Decree-law sets out a list of losses for which compensation may be payable (including contractors' salary costs paid during the period of suspension to all personnel ordinarily assigned to the contract, plus plant and machinery rental and maintenance costs). Suspension of the contract is not a cause for its termination.

Contracts of this kind that have expired with no replacement contract arranged can be extended until those are arranged.

#### > **Other contracts**

Regarding other supply and services contracts in place at the time the state of emergency began, contractors may request time extensions when facing delays in meeting deadlines, provided they offer to fulfil their contracts and those contracts have not lost their purpose as a result of the COVID-19 situation or the government's measures. No penalties should apply in this case, or contracts terminated.

Contracting authorities will grant these time extensions if they determine that the delay is attributable to the COVID-19 crisis (and not to the contractor). Contractors will also be entitled to payment of additional salary costs incurred due to time lost because of the crisis, up to a maximum of 10% of the original contract value, subject to request and supporting evidence.

### > **Works contracts**

For works contracts in force when the new emergency measures take effect, contractors have five calendar days after the situation occurs that prevents them from working (related to the COVID-19 situation or authorities' measures) to request the suspension of those contracts until work can resume, provided the work

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has not lost its purpose. If the due date for the work fell between 14 March and the end of the situation preventing work, an extension of the deadline can be requested within that period.

Once the situation has passed, contractors can seek payment from the authorities for damages described in the emergency law (including contractors' salary costs paid during the period of suspension to all personnel ordinarily assigned to the contract, plus plant and machinery rental and maintenance costs), with supporting evidence.

## > **Services and works concession contracts**

For contractors facing lower income and higher costs as a result of the COVID-19 situation and the government's measures, the economic balance of their contracts will be restored, as applicable in each case, by extending the initial duration of contracts by up to 15% or by changing their financial terms.

Concession holders will be compensated for possible additional costs they have had to pay including higher salary costs than would have been paid in the ordinary performance of the contract, while the COVID-19 crisis persists.

Contracting authorities will need to determine whether contracts have become impossible to perform due to the situation created by the COVID-19 pandemic.

Actual expenses will also have to be requested with supporting evidence.

## > **Excluded contracts**

Certain contracts (medical and pharmaceutical supplies, security etc. and any others related with the COVID-19 outbreak) are excluded from the relief measures.

## **Screening of foreign investment**

### > **Restrictions on foreign investment**

For the purposes of the new emergency measures, foreign direct investments (FDIs) are those made in Spain by investors resident in countries outside the EU and the European Free Trade Association, where these entail (a) gaining ownership of 10% or more of a Spanish company, or (b) taking control of a Spanish company's management.

The government has suspended the liberalisation of FDIs that meet either of the two following alternative criteria:

(a) **Due to the target sector for investment:** Investments in the following sectors (which affect public policy, public safety and public health) are subject to screening):

- Critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.
- Critical technologies and dual-use items: artificial intelligence, robotics, semi-conductors, cybersecurity, quantum technology, aerospace, defence, energy storage, nuclear technologies, nanotechnologies and biotechnologies;
- Supply of critical inputs, in particular energy, oil and gas, raw materials and food security;
- Sectors with access to sensitive information, in particular personal data, or the ability to control such information;

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- The media.

The Spanish government can extend these rules to other sectors wherever this may affect public security, public policy or public health.

(b) **Due to the nature of the investor:** Investments by the following are subject to screening (in any case and even if in sectors other than those mentioned):

- Foreign investors directly or indirectly controlled by the government (including state bodies, sovereign funds or the armed forces) of a third country;
- Foreign investors that have already invested or been involved in activities affecting security, public health or public policy in another Member State, and especially the sectors listed above;
- Foreign investors subject to administrative or judicial proceedings in another Member State or their home Member State or in a third country for engaging in illegal or criminal activities.

FDIs that meet any of the requirements described in (a) or (b) above would be subject to ex ante approval from the Spanish government.

Investments not approved are invalid and of no legal effect. It is possible to rectify this after the fact, though penalties may be imposed for failing to get approval beforehand. Failure to get approval is also an administrative infringement.

The suspension of liberalisation of FDIs will be in place until the Spanish government decides to lift it.

## Insolvency

### > Insolvency filings

While the state of emergency is in effect, debtors are not required to file for insolvency proceedings, even where they applied for protection for creditors under Spanish insolvency law (article 5 bis) and the stipulated negotiation period has elapsed. Creditors' petitions for compulsory liquidation will not be allowed until two months have passed after the state of emergency has ended, and debtors' own filings will be given priority, even if submitted later.

## Corporate regulations

### > Relaxation of requirements for adopting corporate resolutions

Boards and decision-makers can meet by video-conference, even where not provided for in their constitutional documents, or pass written resolutions if so decided by chairs or requested by two members. The same rule will apply to board committees and other required or voluntary committees. Meetings will be considered as being held at registered offices.

### > Drawing up and audit of financial statements

The deadline of three months to draw up financial statements and, where applicable, annual reports is postponed to three months after the state of emergency ends. Where statements have already been prepared, the deadline for these to be audited (where applicable) is extended for two months after the state of emergency ends.

## > **Shareholder approval of financial statements**

AGMs are to be held within the three months after the deadline for drawing up financial statements. Where the meeting has already been called, directors can change or cancel the notice by announcement to that effect at least 48 hours in advance on the company's website or the official state gazette (BOE). If the meeting is cancelled, directors must call a new AGM within the month after the state of emergency ends.

## > **Notarial records of meetings**

Where notaries have been asked to attend, they may use means of real-time electronic communication that properly ensure that they can perform their duties.

## > **Shareholders' rights to be bought out suspended**

Shareholders cannot demand to be bought out until the state of emergency ends, even where entitled to do so in accordance with the law or articles of association. In the case of cooperatives, repayments of contributions to members that leave during the state of emergency are postponed until six months after the state of emergency ends.

## > **Winding up of companies**

The automatic dissolution of companies due to the lapse of limits on their duration is postponed until two months after the state of emergency ends. In cases where they are required to be wound up by the law or articles of association, the statutory time limit for shareholders to take action is suspended until the state of emergency ends. If the cause for winding up occurred during the state of emergency, directors will not be personally liable for company debts from that period.

## > **Spanish companies register time limits suspended (submission entries, records of restrictions/charges, side-notes etc)**

Time limits will start to run again the day after the state of emergency ends.

## > **Spanish listed companies**

By way of exception, in 2020:

- Spanish listed companies can fulfil their obligation to publish and send their annual financial report to the CNMV and audit report on financial statements up to six months after the end of their financial year. This will be extended to four months for publication of interim management statements and half-yearly financial reports.
- AGMs can be held within the first 10 months of the financial year.
- In notices of AGMs, boards can provide the option of attending by electronic means and remote ballots, in the terms of articles 182, 189 and 521 of the Spanish Companies Act (Ley de Sociedades de Capital), and hold the meeting anywhere in Spain, even where there is no provision for these in articles of association.
- If the measures imposed by Spanish authorities prevent general meetings from being held at the stated location and it is not possible to announce an amendment: (i) if the meeting has been validly constituted in that location, shareholders can agree to continue that meeting at another location within the same province; and (ii) if the meeting cannot be held, notice can be issued of a rescheduled meeting with the same agenda and subject to the same publicity requirements, at least five days ahead of the scheduled meeting date.

In this case, boards can notify shareholders that the rescheduled meeting is to be held entirely by electronic means, i.e. without any shareholders or proxies attending in person. This is provided that they are given the possibility of taking part in the meeting in all these ways: (i) electronically; (ii) by appointing

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the chair of the meeting as their proxy by means of distance communication; and (iii) voting in advance by means of distance communication.

Directors can allow any of these forms of participation in meetings, even where not provided for in articles of association, provided there are reasonable guarantees that the person voting can be identified. Directors can also attend meetings, considered as held at registered offices.

For these purposes, board and audit committee decisions will be valid where adopted by video-conference or telephone conference call, even where articles of association contain no provision for this.

The new emergency measures are effective from 18 March and will remain in force for one month, except where stated otherwise. The Spanish government may decide to extend them.

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