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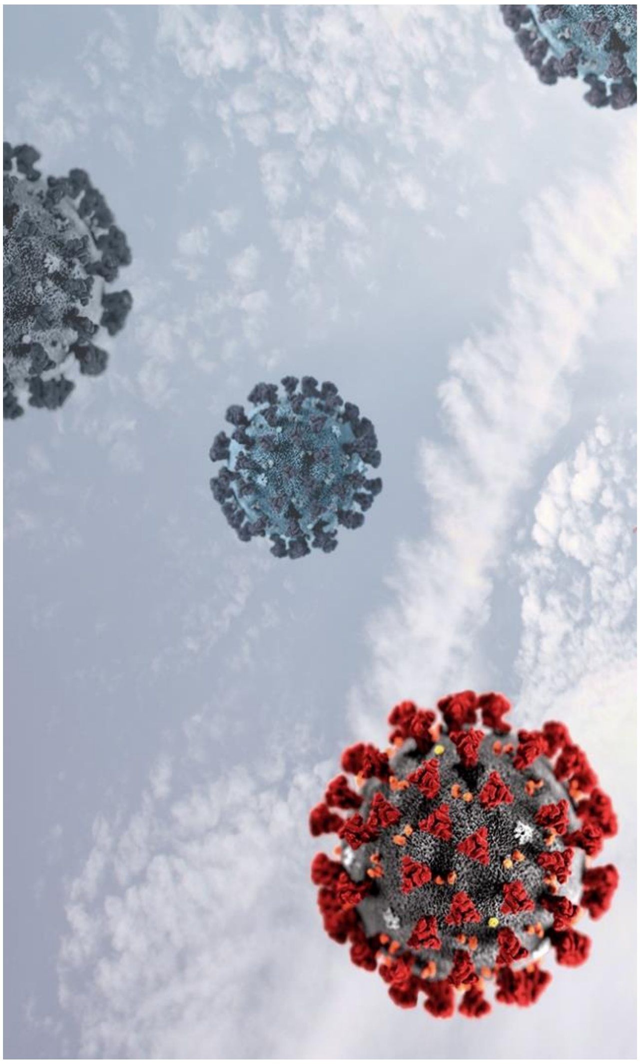
Royal Decree-Law 25/2020: main legal consequences for businesses

Legal flash

July 6, 2020

The Official Gazette of the Spanish State of July 6, 2020, published Royal Decree-Law 25/2020, of July 3, on urgent measures to drive economic recovery and employment ("*RDL 25/2020*"), which came into force on July 7.



In this legal flash, we analyze the main consequences for businesses arising from the exceptional measures approved by RDL 25/2020, of which we highlight the following:

- Financial support for companies: new guarantee facility to cover financing of investments, new support fund for the solvency of strategic companies and reinforcement of international trade transactions.
- Measures in the tourism sector: moratorium on mortgage-backed loans, new financing facility for digital transformation and innovation projects and extension of allowances for permanent seasonal workers.
- Measures in the automotive sector: establishment of bases for the program known as "Plan Renove 2020" (2020 Renew Plan).
- Suspension of shareholders' exit right in the case of failure to distribute dividends established in article 348 bis Spanish Companies Act until December 31, 2020.

FINANCIAL SUPPORT FOR COMPANIES

RDL 25/2020 complements the different measures (mainly employment related) adopted recently, extending the financial support mechanisms to the production sector. The objective is to ensure liquidity of the system and to boost investment in production and the adaptation of companies, providing solvency support to strategic companies. We highlight the following measures:

- **New guarantee facility to cover the financing of investments**

  A new facility of state guarantees is created to cover the financing granted by supervised financial institutions to companies and self-employed workers, with the objective of financing investments.

  The facility is for a maximum of €40 billion and will be available until December 31, 2020.

  As in the case of the guarantee facilities provided under RDL 8/2020, the applicable conditions and the requirements to be eligible for the new facility will be established in the resolutions of the Council of Ministers that release the amounts of the new facility.

- **Creation of a solvency support fund for strategic companies**

  A solvency support fund is created for the recapitalization of strategic companies, with an initial amount of €10 billion.

  The fund will be managed—through the state-owned industrial holding company (“SEPI”)—by the newly created management committee to support the solvency of strategic companies.

  The fund will provide temporary public aid to strategic companies that request this aid, in form of subordinated debt, equity and t other capital instruments.

  The functioning, applicable conditions and requirements to be eligible for the funding will be established by a resolution of the Council of Ministers.

  The recapitalization transactions must follow the regulations on European Union State aid, particularly the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, particularly in line with the amendment established in the *Communication from the (EU) Commission of May 8*.

- **Reinforcing international trade transactions**
  Listed companies will have access to the special public guarantee facility from the Spanish Export Credit Insurance Company (CESCE), approved under RDL 8/2020. These companies can benefit from up to a maximum of 35% of the facility amount.

  The Fund for Foreign Investment Operations (FIEX), managed by COFIDES, is reinforced with its amount being increased from €10 million to €100 million in 2020.

MEASURES IN THE TOURISM SECTOR

RDL 25/2020 introduces measures to boost and support the tourism sector, of which we highlight the following:

- **Legal moratorium for mortgage-backed loans**

  At the request of mortgage debtors, the financial institutions will grant a moratorium of up to 12 months on the repayment of the principal of loans signed before the declaration of the state of emergency, secured by mortgage on property used for the tourism business in Spain.

  This measure is aimed at companies and self-employed worked in the tourism sector ([established in a list of codes by the Spanish National Classification of Economic Activities, "CNAE"), with registered office in Spain that have financial difficulties as a result of the COVID-19 crisis and that would not have declared insolvency before the declaration of the state of emergency.

  Financial difficulties are considered to exist for the purpose of this measure when the mortgage debtors had, on an average for the months of March to May, 2020, experienced a reduction of income or billing of at least 40% of the average of the same months in 2019.

  Excluded from this measure are loans in default before January 1, 2020, or that had already benefitted from a legal moratorium (under *RDL 8/2020*), a sectoral moratorium (under *RDL 19/2020*) or a moratorium by agreement since the start of the state of emergency (unless there is a waiver in the case of a moratorium by agreement). However, if the term of these legal moratoriums and moratoriums by agreement is under 12 months, a new moratorium can be implemented for the term remaining to complete the 12 months.

  The moratorium, which will be extended to the guarantors, will apply to installments due and unpaid since January 1, 2020, and can be implemented through (i) a redistribution of the installments (without changing the term or altering the interest), or (ii) an extension of the maturity date.

If the mortgaged property is leased, the beneficiary of the moratorium must also grant the tenant a moratorium on the rent payment of at least 70% of the amount of the debt moratorium (unless a different agreement is reached). If the financial difficulties defined earlier only affect the tenant, the tenant could urge the mortgage debtor to request the debt moratorium, so as to obtain the moratorium on the rent payment.

Applications for moratorium can be submitted until the date established in the *Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis* (currently until September 30, 2020).

Implementing the moratorium will require formalizing a novation of the loan and registering it with the property registry with effects, if applicable, against other registered creditors.

The regulation establishes a 50% allowance on the notarial and registry fees arising from the formalizing and registering of the novation of the mortgage-backed loan, and an exemption from the stamp duty tax.

Companies requesting this moratorium will not be entitled to distribute dividends, receive refunds of capital, re-purchase own shares or benefit from any other form of capital remuneration until the moratorium has ended.

There is a regime for liability for any damage and expenses arising in cases in which the debtor inappropriately benefits from the moratorium and a supervisory and sanctioning regime for the creditor institution under the case of the Bank of Spain.

Introduction of "Sustainable Tourism Plans at Destinations"

RDL 25/2020 creates the instrument known as "Sustainable Tourism Plans at Destinations" (*Planes de Sostenibilidad Turística en Destinos*) to provide, on behalf of the Secretary of State for Tourism, support for investment in actions seeking to boost the development of tourist destinations to increase their sustainability.

Those plans will follow the program approved by a sectoral conference based on the proposals submitted annually by the local entities that will carry out the actions outlined in those plans.

New facility for innovating and digitally transforming the tourism sector

RDL 25/2020 regulates the bases of a financing facility, in the form of reimbursable loans, for up to €216 million, for companies and self-employed workers in the tourism sector affected by the COVID-19 crisis, to finance digital transformation and innovation projects in Spain.

This measure must follow the regulation on European Union State aid, including the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak adopted by *Communication from the European Commission of April 3* and the Resolutions of the Government Delegated Committee for Economic Affairs dated March 26 and April 17, 2020, approving the notification to the European Commission of the temporary national framework.

Eligible borrowers

Eligible borrowers for this state facility are companies and self-employed workers that meet the following requirements:

- they must belong to the tourism sector, established in the list of Spanish National Classification of Economic Activities (CNAE) indicated in RDL 25/2020;
- have an equity capital the equivalent of 33% of the total equity and liabilities;
- meet their obligations to submit accounts to the commercial registry and to settle company tax; and
- meet the tax and social security obligations.

Excluded as beneficiaries of the facility are companies and self-employed workers that are:

- declared insolvent or in which any of the circumstances indicated in *article 13.2 of General Act 38/2003, of November 17, on Subsidies* concur,
- considered an "undertaking in difficulty" (in line with the definition in article 2, section 18 of *Commission Regulation (EU) No. 651/2014, of June 17, 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty*),
- are in default of payments of other loans and advance payments granted against the state general budget, or
- subject to a recovery order in relation to an aid that the European Commission declared illegal and incompatible with the internal market.

Eligible projects, actions and expenses

RDL 25/2020 establishes the two following category of eligible projects, with details for each one of the actions they must involve:

- projects promoting digital transformation, and
- projects for research, development and innovation in the tourism sector.

The expenses arising from the eligible projects and actions, corresponding to the period between February 1 and December 31, 2020, that fit the categories established in the regulation and which we summarize below, can be financed:

- staff expenses;
- costs of instruments and non-inventory material;
- costs of contractual research, technical knowledge and patents; and
- additional overheads aimed at protecting, through intellectual and industrial property, the intangible assets obtained during the project development.

The following expenses cannot be financed:

- expenses arising from company acquisitions or other corporate merger transactions, or from the creation of aggregate-purchase or common-service cooperatives or associations;
- indirect taxes that can be recovered or compensated; and
- expenses arising from the deferred payment of investments and other concepts; investments in land, premises and civil works; deployment costs of infrastructures for providing services; investments financed through a financial lease; and expenses for developing and disseminating a project.

Applications and processing of loans

The loans will be granted on a competitive basis (*article 22.1 of the General Subsidy Act* and *Implementing regulation approved by Royal Decree 887/2006, of July 21*), and the law provides ample regulation.

The Spanish Ministry for Industry, Commerce and Tourism will call for applications, and the Secretary of State for Tourism will handle processing and decisions, as well as granting the loans and following up on the financed actions.

Processing will be online for all stages of the procedure, at the Ministry for Industry, Commerce and Tourism's electronic office (*https://sede.serviciosmin.gob.es*).

The deadline for submitting applications will start the day after the publication of the call for applications in the Official Gazette of the Spanish State and will end one month later.

The maximum deadline for resolving the procedure and sending notification is six months from the publication of the call for applications in the Official Gazette of the Spanish State.

The regulation specifies the documents to be submitted with the application for aid, including financial, tax and corporate information, a descriptive report of the project and information relating to the obtaining of other public aid.

It also indicates the assessment criteria through a points system to order the applications by preference.

During processing of the loan's award, the applicant must deposit a guarantee of 20% of the loan requested with the Spanish Government Depositary in the category "guarantees provided by credit institutions and mutual guarantee associations," in line with the depositary's rules. This guarantee will be accountable for meeting the conditions established in the regulation and will be released when the carrying out of a finance action has been proved (through documentary justification in the three months after the action has finished).

The loans will be disbursed in one payment.

Financial conditions

The loans will have a maximum repayment term of six years, with a grace period of three years, and annual installments of equal amounts.

A rising interest rate will apply to the loans (see table below), which will be paid annually together with the capital (once the grace period has expired):

Beneficiary	Interest year 1 (%)	Interest years 2 and 3 (%)	Interest years 4, 5 and 6 (%)
SMEs	0.1	0.19	0.69
Large companies	0.19	0.69	1.69

Amount to be financed

The amount to be financed is subject to the following restrictions:
- The minimum amount that can be financed is €50,000.
- The amount cannot be (i) more than 75% of the project's budget, or (ii) more than 80% considering other public funds granted to the same project.
- The amount cannot be five times greater than the last equity capital.
- The amount cannot exceed €800,000, or be more than double the amount of annual salary costs, or more than 25% of the total business volume, corresponding to 2019.

Noncompliance regime

The regulation establishes a noncompliance regime, including reimbursements and sanctions. Parties that do not meet the requirements established in the bases of the regulation will have to return the amount received plus default interest.

EMPLOYMENT MEASURES

For permanent seasonal workers in the previously restricted tourism sector that work between July and October 2020, a 50% allowance applies to employer social security contributions for common contingencies, as well as for the joint collection concepts of unemployment, the salary guarantee fund and professional training of those workers.

The allowances will be applied by the General Treasury of Social Security at the company's request and will be compatible with exemptions on employer social security contributions (particularly those established in *RDL 24/2020*).

MEASURES IN THE AUTOMOTIVE SECTOR

RDL 25/2020 establishes precise bases for granting aid to implement the program known as "PLAN RENOVE 2020" to help renew the vehicle pool, which the Spanish government presented on June 15.

The aim of the plan is to promote the replacement of the oldest and worst polluting vehicles with new low-emission vehicles and with all the technology currently available: electric vehicles, hybrid vehicles, hydrogen-fuel-cell vehicles, combustion engine vehicles, LPG-based cars and natural gas vehicles.

SUSPENSION OF SHAREHOLDERS' EXIT RIGHT

To reinforce companies' solvency to handle the economic recovery, the shareholders' exit right in the case of failure to distribute dividend established in *article 348bis of the Spanish Companies Act* is suspended until December 31, 2020.

CUATRECASAS TASK FORCE

At Cuatrecasas, we are working non-stop to provide our clients with legal advice on everything related to the COVID-19 crisis, and we are available to give immediate answers in all legal matters.

Our Knowledge and Innovation Team continues to manage our collective knowledge in the most efficient way during these uncertain times to provide top-quality, innovative legal advice to our clients in all matters related to this crisis.

For more details, contact Cuatrecasas or visit our *website*.