



REAL ESTATE CONSIDERATIONS REGARDING THE:

- **RDL 10/2020 of 29 March regulating recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19**
- **RDL 11/2020 of 1 April adopting additional urgent measures in the social and economic field to deal with COVID-19**

2 April 2020

INTRODUCTION

Following the declaration of the state of alarm throughout the national territory for an initial period of fifteen days, approved by Royal Decree 463/2020 of 14 March and extended for another period of fifteen days by Royal Decree 476/2020 of 27 March, on 29 March and yesterday, RDL 10/2020 of 29 March ("RDL 10/2020") and RDL 11/2020 of 1 April ("RDL 11/2020") were approved.

In this sense, from the Department of Real Estate/Finance-Real Estate/Promotion and Construction of ONTIER, through this bulletin (the "Bulletin"), we want to analyze those measures that could be relevant from the perspective of the real estate/financial sector.

In relation to previous regulations, we refer to Bulletins I and II already sent.

MEASURES INCLUDED IN ROYAL DECREE 10/2020

- The RD obliges all employed workers (not including self-employed workers) who were outside the scope of RDL 463/2020 of 17 March (which declared the State of Alarm and decreed the closure of non-essential business activities) to take recoverable paid leave (a concept not provided for in labour legislation, but which essentially means that the worker is absent from work with the right to remuneration);
- The RD does not affect: (i) workers in the minimum essential services, or those in their production chain; (ii) those who were already in ERTES; (iii) those who had their contracts legally suspended or on temporary disability leave; or (iv) those who were already teleworking; and

MEASURES INCLUDED IN ROYAL DECREE 11/2020

- By way of exception (Article 4 RD), the companies affected by the RD may, if necessary, have shifts in the work centres that are essential to maintain the activity at a minimum. This article refers to those parts of the work that cannot be done from home and that are essential for the running of the company.
- Once the suspension of the procedural deadlines is lifted due to the termination of the State of Alarm, and provided that the tenant is in a situation of economic vulnerability (article 5 RDL 11/2020), extraordinary suspension of the launching act for a maximum period of SIX months (from 01/04) until the adoption of social services measures.

REAL ESTATE IMPLICATIONS OF ROYAL DECREE 10/2020

- Although Royal Decree Law 463/2020 did not directly affect, as far as containment measures are concerned, those activities that are not commercial (offices, logistics, industry), the entry into force of the RD has meant, since 31 March, due to the 24-hour moratorium granted, according to the 3rd WD of the RD that all workers, in general, involved in all activities (except those that are essential/impossible to perform and those mentioned in the second point above) must take a recoverable paid leave. The exception is set out in Article 4 of the RD, which establishes shifts or the minimum number of staff required to maintain the activity of the company, but which must be used in exceptional circumstances.
- The above essentially means that all companies (except those with essential/necessary activities under RD 463/2020) either close their business premises (by legal imposition of the aforementioned Royal Decree) or their workers cannot go to their work centre (offices, industries, logistics, etc. by imposition of RD 10/2020) except for a minimum number of staff or shift work that is essential to maintain the activity.
- As regards offices, as we have stated in the previous point, given the impossibility of workers going to their workplaces in general, it could be understood that there is no point in opening them, except as provided for in article 4 of the aforementioned Royal Decree, as a minimum number of staff or shifts that are essential to maintain the activity
- With the entry into force of the RD, we understand that although a legal closure of non-essential/essential activity (offices) is not decreed, it does occur de facto, since workers must take a recoverable paid leave, and the 3rd WD of the RD provides a moratorium for the closure of 24h, 30 March, so the same legal approaches that were being applied to commercials could be applied (force majeure, rebus sic stantibus).
- For those rental contracts for habitual residence whose period of forced extension (article 9.1 LAU) or tacit extension (article 10.1 LAU) ends from the entry into force of RDL 11/2020 and until TWO months after the termination of the State of Alarm, the tenant may request an extraordinary extension of SIX months, under the same terms and conditions as the rental contract. It is established that the extension must be accepted by the lessor.
- Tenants who are in a situation of economic vulnerability (Article 5 RDL 11/2020) may, within one month of the entry into force of RDL 11/2020, request the temporary and extraordinary postponement of the rent to landlords considered "large holders" (more than 10 urban properties or a combined surface area of more than 1,500 m2) in one of the following ways:
 - A 50% reduction in rent from the State of Alarm and with a maximum limit of FOUR monthly payments; or
 - A moratorium on the payment of rent applied for the duration of the alarm state, with a limit of FOUR monthly payments, pro rata for at least the following THREE years or until the end of the contract if its duration is less.
- Tenants may be granted transitional financial assistance (that provided for in Article 9 of the RDL), in which case the moratorium on payment of the rent will be lifted.
- Who are the people in a situation of vulnerability to the effects of renting?:
 - Unemployed, affected by an ERTE or persons with reduced working hours for care, not reaching the following income of the family unit in the month prior to the application: (i) limit of three times the IPREM; (ii) the previous margin will be increased by 0.1 times the IPREM for each child, and for each person over 65 years of age; (iii) for each person with disability over 33%, 4 times the IPREM or 5 times the IPREM with cerebral/mental paralysis; and
 - When the rent, plus rental expenses and supplies is more than 35% of the net income of the family unit.
 - Excluded from the concept of vulnerability are tenants, or persons in their family unit, who owned or used a house

(1) Mortgage and non-mortgage loan moratorium.

- Who are the people who are vulnerable to the effects of mortgage and non-mortgage loan moratoria?:
 - Unemployment or, if you are an employer, you suffer a loss of income or turnover of at least 40%;
 - That the total income of the members of the family unit does not exceed, in the month prior to the application: (i) the limit of three times the IPREM; (ii) the previous margin will be increased by 0.1 times the IPREM for each child, and for each person over 65; (iii) for each person with a disability over 33%, 4 times the IPREM or 5 times the IPREM with cerebral/mental paralysis;
 - That the total of the mortgage payments on the property (article 19 RDL11/2020) plus the basic expenses and supplies be equal to or greater than 35% of the net income of the entire family unit; and
 - Significant alteration of the economic circumstances of the family unit (equivalent to the total effort of the mortgage charge, which is the sum of the mortgage payments on the property) multiplied by 1.3.
- If the tenant is unable to provide any documentation necessary to prove the vulnerability, he may substitute a statement of responsibility for that documentation, and must in any case complete that documentation one month after the termination of the State of Alarm.
- Tenants who, having benefited from the moratorium, do not ultimately meet the required vulnerability requirements, shall be liable for the minimum amount they would have benefited from.
- What happens to tenants who, in a situation of vulnerability, have a counterpart in a landlord who is not considered a "large holder"?
 - They may also apply to the lessor for a rent rebate/cancellation;
 - If the application is rejected by the lessor, the lessee will be entitled to the transitional financing aid program provided for in RDL 11/2020.
- A Social Assistance Program will be established, a line of State guarantees with the ICO, for a period of up to 14 years, so that
 - Banks may offer transitional financing aid, with a repayment period of up to SIX years (plus FOUR extensions) without interest or charges; and
 - This aid can be applied to the payment of income, up to a maximum of SIX monthly payments.
- Through a Ministerial Order, a new rental aid program will be incorporated into the State Housing Plan 2018-2021 (through direct award to tenants) with a maximum aid of up to 900 euros/month and up to 100% of the principal and interest of the loan to pay the rent. Each Autonomous Community will determine each aid.
- Through a Ministerial Order, an increase in the public housing stock will be established, through aid for the bodies and public administrations that had the previous objective.
- As with the submission of documentation for financially vulnerable tenants, if the debtor is unable to submit any documentation necessary to substantiate the vulnerability, he may substitute a statement of liability for such documentation and must in any event complete such documentation one month after the termination of the State of Alert.
- The properties affected by this situation are as follows:
 - Main residence
 - Properties affected by the economic activity of article 16.1 of RDL 11/2020.
 - Dwellings other than the usual dwelling in which the owner, a natural person, has ceased to receive rental income since the entry into force of the State of Alarm and up to ONE month after its termination.
- In relation to the obligations derived from the credit contracts without mortgage guarantee, the debtors in situation of economic vulnerability will be able to request the suspension of those up to ONE month from the validity of the State of Alarm:
 - It does not require agreement between the parties, but is automatically applicable; and
 - For a duration of THREE months, which may be extended by the Council of Ministers.
- The guarantors and sureties of the principal debtor may oppose to the creditor the exhaustion of assets of the principal debtor (subsidiary liability even if otherwise agreed).

(2) Consumer Protection Measures

- If, as a result of measures taken by the State of Alarm, contracts concluded by consumers and users (purchase of goods or provision of services), including those of a successive nature, prove impossible to fulfil, the consumer and user shall be entitled to terminate the contract for a period of 14 days.
- If, after a period of 60 days, no agreement has been reached between the parties, the entrepreneur must return the amounts to the consumer, except for duly itemised and proportionate costs.
- In the case of contracts for the provision of successive services, the service-providing undertaking may offer options for subsequent recovery of the service and only if the consumer is unable or unwilling to accept such recovery shall the amounts already paid be refunded for the part of the service not provided for that reason or, with the consumer's acceptance, shall the amount resulting from future payments to be charged for the provision of the service be reduced. Likewise, the service provider will refrain from presenting new monthly payments until the service can be provided normally.

REAL ESTATE IMPLICATIONS OF ROYAL DECREE 11/2020

- For the purposes of housing leases, for property holders (only those lessors who were considered "large holders") the rule obliges them to notify their tenants (in a situation of economic vulnerability):
 - A 50% reduction in rent from the State of Alarm and with a maximum limit of FOUR monthly payments; or
 - A moratorium on rent payments for the duration of the alarm state, with a limit of FOUR monthly payments, pro rata for at least the next THREE years or until the end of the contract if its duration is less.
- There is a legal vacuum in RDL 11/2020 in that there is no mention of what the legal consequences would be, for "large holder" lessors, of not making the above notifications. However, these solutions will cease to be applicable once the lessees are able to obtain transitional financing aid. In this respect, our recommendation would be for landlords to include this circumstance in the relevant amending addenda, and the obligation/confirmation of the tenant to have requested them.
- Taking into account the possibility that the tenant could present a substitute responsible statement, we recommend that the owners verify previously this compliance, as well as to establish quantified penalties in the amending addenda, for the cases of presentation of the responsible statements that are not faithful to the mentioned situation of vulnerability.
- Those financial institutions that had granted mortgage and non-mortgage loans to economically vulnerable debtors will be subject to the moratorium of RDL 8/2020 and the present 11/2020 respectively.
- As with the above-mentioned leasing measures, we recommend that the financial institution monitor the debtor, in order to verify that it meets the requirements of economic vulnerability.
- If the debtor presents a responsible declaration, we recommend that the owners previously verify this compliance, as well as establish quantified penalties in the modifying deeds that are greater than the subsidized amount, for the cases of presentation of the responsible declarations that are not faithful to the situation of vulnerability mentioned.

- Consumer and user protection measures are very generic and may cause some legal uncertainty. The above-mentioned deadlines seem unrealistic to us, as the 60 days of negotiations could exceed the period of validity of the State of Alarm and, therefore, the impossibility could disappear.
- On the basis of the above, it would be reasonable to either reach a favorable agreement within the 60-day period mentioned above, or to confirm that, after the expiry of that period, the impossibility has been remedied.
- As part of the measures aimed at vulnerable families and groups, in the procedural sphere the possibility has been regulated of suspending, on an extraordinary basis, eviction procedures and the launch of housing rental contracts, when the tenant is in a situation of supervening social or economic vulnerability as a result of the COVID-19, which makes it impossible for her to find alternative housing for herself and the people with whom she lives.
- To this end, the tenant must file the corresponding application with the Court, accrediting the situation of economic vulnerability. The Lawyer of the Administration of Justice will inform the competent social services and, if such circumstances arise, will decree the suspension until the measures that the social services consider appropriate are adopted for a maximum period of six months from the entry into force of the Royal Decree-Law, that is, from April 2, 2020.
- If this extraordinary suspension affects a lessor who is also in a situation of vulnerability and proves such a circumstance, the Lawyer of the Administration of Justice will also communicate it to the social services in order to evaluate the term of the suspension and the social protection measures to be adopted.

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