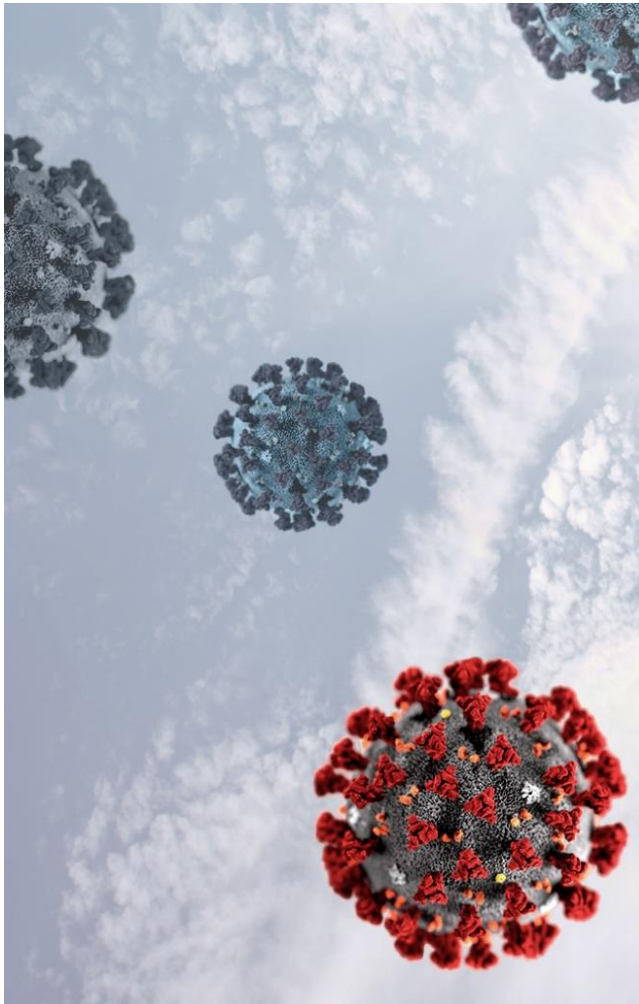

COVID-19: Key aspects for companies, financial institutions and funds

This document is intended to provide companies, financial institutions and funds with an overview and a clear perspective of the main measures implemented by the Spanish government to tackle the effects of COVID-19.

We will update it regularly as the situation evolves.

Updated: November 24, 2021



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- I. State of emergency
 - II. Employment and social security
 - III. Restrictions on foreign investment
 - IV. Corporate governance
 - V. Refinancing, insolvency and compulsory dissolution due to losses
 - VI. Financial aid
 - VII. Agreements
 - VIII. Public procurement
 - IX. Consumer sector
 - X. Tax measures
 - XI. Moratorium on debts
 - XII. Moratorium on rent
 - XIII. Judicial and administrative terms and priority of proceedings
 - XIV. Patronage
 - XV. State liability
 - XVI. Pension plans



STATE OF EMERGENCY

- > To tackle the healthcare emergency caused by COVID-19, the Spanish government declared a state of emergency affecting the whole Spanish territory on March 14, 2020, in Royal Decree 463/2020. This **first state of emergency** came to an end on June 21, 2020.
- > On October 25, 2020, the Spanish government once again declared a state of emergency (the “**second state of emergency**”) for the whole Spanish territory in Royal Decree 926/2020, which ended at 00:00 on May 9, 2021, according to the extension adopted by [Royal Decree 956/2020](#). Unlike the first state of emergency, this time the government has delegated to the autonomous regions decisions regarding the effective application of the following measures, as well as allowing them to adapt or suspend them in their respective jurisdictions depending on the epidemiological situation. The main measures for the second state of emergency were:
 - **Restrictions on the freedom of movement** at night, between 11 p.m. and 6 a.m., except to perform certain activities (e.g., buying essential items, attending medical centers, and going to work).
 - **Restrictions on entering and leaving the territory of any autonomous region or city, or smaller territorial unit**, with the exception of justified journeys for an approved reason (e.g., attending medical or educational centers, and professional obligations).
 - **Restrictions on gatherings of groups of people in public and private spaces** to a maximum of six people, unless they were members of the same household, and without prejudice to exceptions that may be created regarding premises, amenities, establishments open to the public, and work and institutional activities.
 - **Mandatory personal services**: autonomous regions may impose mandatory personal service on residents of their territory if their health and social care systems should require so to tackle the healthcare emergency.
- > **Once the state of alarm ended**, the health authorities could adopt exceptional measures provided for in ordinary legislation to contain and limit the impact of the health crisis caused by the pandemic. However, **measures restricting fundamental rights** that affect beneficiaries who are not individually identified will require judicial authorization or ratification by the National Court or the High Courts of Justice, depending on whether these measures are imposed at state or regional level.

To avoid diverging interpretations by the courts and to unify the law, [Royal Decree 8/2021](#) establishes that, from May 9, 2021, the Supreme Court can review by means of a cassation appeal the National Court’s and High Court of Justice’s decisions to authorize or ratify the above measures adopted by the health authorities through a preferential and summary proceedings.



EMPLOYMENT AND SOCIAL SECURITY

Continuity of ERTE on the grounds of COVID-19 currently in force

Automatic extension of ERTE on the grounds of *force majeure* until October 31, 2021

- > ERTE on the grounds of *force majeure* (“FM ERTE”) established under article 22 of Royal Decree-Law 8/2020 that have been implemented since the first state of emergency and extended successively, as well as those later resulting from constraints and restrictions, are automatically extended until October 31, 2021.
- > Companies can maintain this measure, within the same scope and without having to carry out any formalities before the labor authority. This will not affect any exemptions on contributions they may be entitled to.

Extension from November 1, 2021, until February 28, 2022: Obligation to request the extension of ERTE on the grounds of *force majeure*.

- > Companies must submit an extension request before October 15, 2021, attaching a list of the working hours or days that have been suspended or reduced in July, August and September 2021 for each employee, specifying the work center of each one.
- > The company can request the exemptions provided in RDL 18/2021, which only apply to social security contributions of employees whose employment agreement has been suspended or whose working hours have been reduced due to the FM ERTE.

Continuity of ERTE based on business (ETOP) grounds

- > Companies have until October 15, 2021, to file requests for the continuity beyond November 1, 2021, of ERTE based on economic, technical, organizational, or production (“ETOP”) grounds that were still in force on September 29, 2021. They must attach the following:
 - A list of the working hours or days that have been suspended or reduced in July, August and September 2021 for each employee, specifying the work center of each one.
 - A report of the workers’ representatives involved in the negotiating the ETOP ERTE.
- > The company can only claim an exemption if it transitioned from an FM ERTE to the ETOP ERTE it wishes to extend (art. 22 RDL 8/2020).

Resolution on the extension and monitoring by the labor inspectorate

- > The labor authority will transfer to the Labor and Social Security Inspectorate any extension requests, allowing the latter to carry out the corresponding inspection procedures.
- > The labor authority must reach a resolution on the extension of the ERTE within 10 business days from the request:
 - The request can only be approved, if the company has submitted it by the deadline, attaching the documents required. Therefore, it is not subject to any other requirements, such as the concurrence of cause.
 - The resolution can only be dismissed if the required documents have not been provided.



- If no resolution is issued within this term, the company can assume that the request has been approved through administrative silence.

Possibility of new COVID-related ERTE

New ERTE owing to constraints or restrictions

- > Companies affected by new public health risk mitigation measures adopted by the competent authorities between November 1, 2021, and February 28, 2022, can apply to the labor authority during that period for a COVID-related ERTE due to *force majeure*, constraints or restrictions.
- > The procedure to follow is set out in article 47.3 of the Workers Statute, on *force majeure*. In the absence of a resolution, it will be considered that the request has been approved through administrative silence.
- > In cases where, as a result of the public health risk mitigation measures being made more flexible or tougher, the *force majeure* goes from being a restriction to being considered a constraint or vice versa, the possibility provided under RDL 2/2020 allowing companies to manage the transition from one measure to the other themselves is maintained, and the change will be applied without any break in continuity.¹

New COVID-related ERTE based on ETOP grounds (previously FM ERTE)

- > Only companies that on October 31, 2021, are applying an FM ERTE and wish to change to an ETOP ERTE will be still be subject until February 28, 2022, to the procedural rules and special rules provided under article 23 of RDL 8/2020, with effects being retroactive from the date the FM ERTE ends.

New ERTE based on ETOP grounds

- > The procedural rules and special rules applicable to legal representatives provided under article 47 of the Workers Statute will apply.

Exemptions on social security contributions

- > Exemptions established under RDL 11/2021 for September are extended until October for companies entitled to those benefits.²

¹ That is, it will still be sufficient for the company to notify the change of situation, the date it will become effective, and the centers and employees affected to (i) the labor authority that approved the ERTE, which, in turn, will inform the Labor and Social Security Inspectorate (ITSS), for monitoring purposes; and (ii) the workers' legal representatives, also being required to submit a **statement of compliance** to the Spanish Social Security (TGSS).

² The right to these exemptions was granted to companies applying an FM ERTE that had been extended or an ETOP ERTE with exemptions that was still in force, the economic activity code (CNAE) of which is included in the list of sectors most severely affected by the health crisis, according to the Annex of RDL 11/2021. And companies still applying a previous FM ERTE due to a new outbreak, constraints or restrictions, or that have implemented a new ERTE before October 31, 2021, regardless of their CNAE. Note that exemptions were granted to (i) ETOP ERTE provided under art. 23 RDL 8/2020, prior to RDL 24/2020, or subsequently if they followed an FM ERTE provided under art. 22 RDL 8/2020; and (ii) ETOP ERTE provided under art. 23 RDL 8/2020 subsequent to RDL 30/2020, if they followed a previous FM ERTE provided under art. 22 RDL 8/2020, as long as the company's CNAE code is listed in the Annex of RDL 30/2020 or, if not listed, the company has been classified as being dependent on or belonging to the value chain under RDL 30/2020.



No. employees registered as of February 29, 2020	Workforce	FM ERTE UNDER ARTS. 22 AND 23 RDL 8/2020 (EXTENDED OR IN FORCE)	PREVIOUS OR NEW ERTE DUE TO CONSTRAINT	PREVIOUS OR NEW ERTE DUE TO RESTRICTION
		Oct. 2021	Oct. 2021	Oct. 2021
Fewer than 50	Returning to work from June 1, 2021, or from May 13, 2020 ³	95%	∅	∅
More than 50		85%	∅	∅
Fewer than 50	Contract suspended	70%	100%	75%
More than 50		60%	90%	65%

- > The following companies that have any of the following ERTE in force are entitled to exemptions on social security contributions corresponding to November and December 2021, and January and February 2022:
 - FM ERTE based on art. 22 RDL 8/2020 renewed until September 30, 2021, and belong to an ultraprotected sector listed in the Annex of RDL 2/2021.
 - ETOP ERTE that have transitioned from an FM ERTE under art. 22 RDL 8/2020 between June 1, 2021, and September 30, 2021, and belong to an ultraprotected sector listed in the Annex of RDL 2/2021.
 - ETOP ERTE that have transitioned from an FM ERTE under art. 22 RDL 8/2020 between January 27, 2021, and May 31, 2021, and belong to an ultraprotected sector listed in the Annex of RDL 2/2021.
 - ETOP ERTE that have transitioned from an FM ERTE under art. 22 RDL 8/2020 between September 30, 2020, and January 26, 2021, and belong to an ultraprotected sector listed in the Annex of RDL 2/2021.
 - ETOP ERTE under art. 23 RDL 8/2020, prior to RDL 24/2020, that were entitled to exemptions and belong to an ultraprotected sector listed in the Annex of RDL 2/2021.
 - ETOP ERTE that have transitioned from an ERTE FM under art. 22 RDL 8/2020 between October 1, 2021 and February 28, 2022, and are classified as being dependent on or belonging to the value chain of an ultraprotected sector.
 - FM ERTE due to constraints or restrictions in force on September 30, 2021, belonging to any sector.
 - New FM ERTE due to constraints or restrictions, or transiting from one to the other, authorized between October 1, 2021, and February 28, 2022, belonging to any sector.
- > Therefore, exemptions are still not granted to FM ERTE based on art. 22 RDL 8/2020 of companies that do not belong to an ultraprotected sector, or ETOP ERTE provided under art. 23 RDL 8/2020 that have not transitioned from a previous FM ERTE; and exemptions are no longer granted to FM ERTE of companies classified as being dependent on or

³ Date of entry into force of RDL 18/2020.



belonging to the value chain of a protected sector if they do not transition to an ETOP ERTE.

- > COVID-related ERTE are subject to a common requirement of documentary evidence to be able to benefit from the exceptions provided, having to submit online—within five days from the date on which the approval of extension request takes effect, whether through a resolution or administrative silence—a list of the employees (using the template provided in the Annex of the regulation) that, (i) in the case of an extended ERTE, must include employees that on September 30, 2021, were within the scope of the ERTE and will continue to be so during the extension; y (ii) in the case of a new FM ERTE due to constraints or restrictions, must include employees subject to the ERTE from the beginning.
- > This list must be resubmitted if any changes are made at a later date.

Increase in new exemptions with training activities

- > The percentage of the applicable exemption will depend on **three factors**:
 - o How the constraint or restriction affects the *force majeure* situation the company is in.
 - o Its workforce as of February 29, 2020.
 - o A new development, which takes into account whether each person affected by the ERTE has carried out training activities, except in the case of FM due to constraints.
- > Training activities can be carried out through any type of training program and in compliance with the system provided under Act 30/2015. Any activities proposed must be notified to the workers' representatives.
- > Companies have until June 30, 2022, to effectively provide training activities.
- > Training time must be at least 30 hours in companies with between 10 and 49 employees; and 40 hours in companies with 50 or more employees. The activities must be carried out while the ERTE is in force or during working hours, respecting rest periods and work-life balance rights.
- > The General Treasury of Social Security (“TGSS”) will inform the Public State Employment Service of the employees affected by the ERTE so that it can verify the training activities carried out.
- > If the training activities have not been carried out (unless for reasons attributable to the employee), the Labor and Social Security Inspectorate will initiate sanction proceedings and a liquidation process to recover unduly exempted contributions.
- > Also, the regulation increases credits for financing training activity programs: €425 per person in companies with 1 to 9 employees; €400 per person in companies with 10 to 49 employees; and €320 per person in companies with 50 or more employees.

Exemptions for previous FM ERTE, ETOP ERTE transitioning from a previous FM ERTE, and previous and new FM ERTE due to restrictions

- > The following companies can benefit from exemptions on social security contributions of employees whose employment agreement has been suspended or whose working hours have been reduced:



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- Companies belonging to an ultraprotected sector listed in the Annex of RDL 2/2021 and that have received approval of their request to extend an initial FM ERTE or to transition from a previous FM ERTE to an ETOP ERTE benefiting from these exemptions.
 - Companies belonging to any sector that have received approval of their request to extend an initial FM ERTE due to restrictions.
 - Companies that apply for a new FM ERTE due to restrictions (or transit from a previous, extended or new FM ERTE due to restrictions) based on new public health risk mitigation measures adopted between November 1, 2021, and February 28, 2022.
- > The new system and amounts of applicable exemptions in this case are provided in the table below:

Previous FM ERTE - transitioning ETOP ERTE - previous or new FM ERTE due to restrictions		
No. employees registered as of February 29, 2020	Offers training activities as provided under art. 3 RDL 18/2021	Exemption applicable from November 2021 to January 2022
Companies with 10 or more employees	No	40%
	Yes	80%
Companies with fewer than 10 employees	No	50%
	Yes	80%

Exemptions benefiting previous or new FM ERTE due to constraints

- > The following companies can benefit from exemptions on social security contributions of employees whose employment agreement has been suspended or whose working hours have been reduced:
- Companies belonging to any sector that have received approval of their request to extend an initial FM ERTE due to constraints.
 - Companies that apply for a new FM ERTE due to constraints (or transit from a previous, extended or new FM ERTE due to constraints) based on new public health risk mitigation measures adopted between November 1, 2021, and February 28, 2022.
- > The new system and amounts of applicable exemptions in this case are provided in the table below:

Previous or new FM ERTE due to constraints	
No. employees registered as of February 29, 2020	Exemption applicable from November 2021 to January 2022 during the closing period
Companies with 10 or more employees	100%
Companies with fewer than 10 employees	100%



Restrictions on dismissal are extended

Commitment to maintain jobs

- > Companies that have already benefited from exemptions or that will benefit from the new exemptions established until February 28, 2022, must maintain jobs in the terms below:
 - Companies with a commitment to maintain jobs that is still in force will still be bound to this commitment until the applicable six-month term has expired. It will be necessary to determine on a case-by-case basis when the calculation of this term should begin.
 - Companies applying for the exemptions on contributions provided under new RDL 18/2021 will be subject to a new six-month commitment to maintain jobs from the date on which they resume their activity.
 - If the company is already subject to a previous commitment, the new six-month commitment to maintain jobs will begin on the day following the end of the previous one.

Restrictions on dismissals on grounds related to COVID-19

- > Until February 28, 2022, companies cannot fairly terminate employment contracts based on business reasons that are protected by measures suspending employment contracts and reducing working hours as a result of the crisis caused by the COVID-19 pandemic.
- > Owing to interpretation doubts and judicial discrepancies arising from this rule, each case must be examined individually to determine the viability of the cause, as well as how the dismissal would be classed if the rule is breached.

Extension of other commercial and labor measures

Restrictions on dividend distribution

- > Restrictions are extended on the distribution of dividends. This affects companies that have benefited from an exemption on contributions within the framework of a COVID-related ERTE (whether on FM or ETOP grounds), and restrictions apply to dividends corresponding to the year in which the exemption was granted.
- > The interpretation of this regulation is complex and requires an in-depth analysis.
- > The TGSS will inform the tax authorities which companies have applied exemptions on social security contributions, and the tax authorities will inform the TGSS which companies have violated the prohibition on dividend distribution.

Length of temporary contracts

- > The suspension of the length of temporary contracts of workers affected by a COVID-related ERTE will still apply until February 28, 2022.

Overtime and outsourcing

- > The prohibition on overtime and outsourcing will still apply to any COVID-related ERTE in force.



MECUIDA Plan

- > Employees' right to request a special adjustment or reduction of working hours to deal with greater needs for work-life balance as a result of the health crisis (e.g., the confinement of dependent relatives) is extended until February 28, 2022.

Extension of exceptional unemployment protection

- > Until February 28, 2022, there is still no requirement as to a minimum contribution period to be eligible for unemployment benefits.
- > Also, as with the previous extension, the time during which unemployment benefits are received will count and will be considered used up (the former rule of "setting the counter to zero" no longer applies), except in the following cases:
 - When unemployment benefits are requested after January 1, 2027 (this date replaces the previous date set for October 1, 2026, thus extending social security cover).
 - When unemployment benefits are requested before January 1, 2023 (this date replaces the previous date set for January 31, 2022, thus extending social security cover) due to (i) the termination of a temporary contract, (ii) an individual or collective dismissal based on ETOP grounds, or (iii) any other dismissal alleged to be unfair.
- > Companies with an ERTE in force that have been authorized to extend it must submit a new collective request for unemployment benefits for employees included in that request within 15 business days from the date immediately following:
 - November 1, 2021; or
 - the date of notification of the labor authority's resolution authorizing the extension, or the date on which the certificate confirming approval through administrative silence is issued, if later than November 1, 2021; or
 - the date of notification of the labor authority's resolution authorizing the extension, or the date on which the certificate confirming approval through administrative silence is issued, in cases involving applications for new FM ERTE due to constraints or restrictions.
- > The amount of the unemployment benefits will still be determined by applying 70% to the regulatory basis until February 28, 2021, without prejudice to the application of the maximum and minimum amounts provided.
- > Exceptional unemployment benefits awarded to permanent seasonal workers⁴ under article 9 of Royal Decree-law 30/2020 are extended until February 28, 2022.

⁴ This exceptional benefit (amounting to 70% of the regulatory basis until February 28, 2022) will be granted to permanent seasonal workers (i) no longer affected by an ERTE because their employment period has come to an end; or (ii) that, despite not being subject to an ERTE during the last season, are unable to carry out their activity and are in a situation of legal unemployment (even if they are entitled to unemployment benefits); or (iii) who use up their unemployment benefits before February 28, 2022, and continue to be unemployed. For this benefit to be granted, the company must submit a collective request for unemployment benefits within 15 days from the date on which the situation of legal unemployment arose. The term of this exceptional benefit will expire on the day following date on which the seasonal activity ends or on which the benefits granted until February 28, 2022, are used up.



Common labor measures relating to activities in place or that have been resumed

- > On September 21, 2020, remote working ceased to be a preferable measure to tackle the pandemic, although companies can use it as a preventive measure when the nature of the activity allows this until the health crisis ends (article 7 of RDL 21/2020). In these cases, remote working will not be subject to the rights and obligations system established in RDL 28/2020, except as regards the means provided and reimbursement of expenses.
- > In any case, in their return-to-work plan, companies must include occupational risk prevention measures for employees who continue to provide services in the workplace (e.g., physical distancing; hygiene, cleaning and prevention measures; and supply of personal protection equipment) in compliance with the orders and guidelines issued by the authorities for each sector. Companies that do not adopt reasonable health and safety measures in the workplace may face criminal or administrative liability (fines and social security surcharges) and directors may face civil liability when damages occur.
- > Also, companies must have a contingency plan or operational protocol for COVID-19 infection covering company employees, contractor companies and self-employed workers, in coordination with the internal or external health and safety service.

For more details, see our Legal Flashes on [RDL 8/2020](#), [RDL 9/2020](#), [RDL 10/2020](#), [RDL 11/2020](#), [RDL 15/2020](#), [RDL 18/2020](#), [RDL 21/2020](#), [RDL 24/2020](#), [RDL 28/2020](#) (on remote working, [RDL 30/2020](#), [RDL 35/2020](#); [RDL 2/2021](#), and [RDL 18/2021](#), and our [Legal Flash](#) on social security benefits for companies, and our [Guidelines](#) on resuming business activity in Spain

RESTRICTIONS ON FOREIGN INVESTMENT

- > “Foreign direct investments” are now subject to previous authorization.
- > A simplified authorization system has been introduced for certain transactions that are under way and those valued between €1 and €5 million.
- > Investments under €1 million are exempt from this obligation.

“Foreign direct investment” means:

- > an investment made by (i) a non-EU/non-EFTA resident, or (ii) an EU/EFTA resident where the beneficial owner is a non-resident;
- > one of the above investors acquires a share of at least 10% in the Spanish company’s capital or acquires control of that company under article 7.2 of the Spanish Antitrust Law.

In either scenario:

- > The investment affects one of “Spain’s strategic sectors.”
- > The investor (i) is controlled by a third-country government; (ii) participates in sectors affecting the public order, public security, and public health of another Member State; or (iii) there is a serious risk that it exercises criminal or unlawful activities affecting the public order, public security, and public health in Spain.



Provisionally, between November 19, 2020, and December 31, 2022, “foreign direct investment” also means an investment made:

- > by (i) an EU/EFTA resident in a country other than Spain or (ii) a Spanish resident where the beneficial owner is an EU/EFTA resident; and
- > in a company in one of Spain’s strategic sectors that is either (i) a listed company or (ii) a non-listed company where the investment value exceeds €500 million.

For more details, see our Legal Flash on [Foreign Investment in Spain: key aspects](#).

CORPORATE GOVERNANCE

- > Until December 31, 2021, and even if not expressly provided in the corporate bylaws, public and private limited companies (*sociedades anónimas y sociedades limitadas*) may hold partners meetings online.
- > Also, until December 31, 2021, (i) board of directors meetings can be held online, and (ii) the board of directors may pass resolutions in writing without holding a meeting if so decided by the chairperson or requested by two members (without requiring the consent of all board members).
- > Shareholders’ right of separation due to failure to distribute dividends was suspended until December 31, 2020.
- > Several laws have limited the dividend distribution of companies that have implemented an ERTE or have benefited from certain public financial aid approved by the Spanish government. Thus, before approving any dividend distribution among shareholders, it is advisable to ascertain whether any restrictions apply.

REFINANCING, INSOLVENCY AND COMPULSORY DISSOLUTION DUE TO LOSSES

- > Insolvent debtors’ obligation to file for insolvency has been suspended until June 30, 2022.
- > Court-sanctioned refinancing agreements can be amended, even if a year has not elapsed since the previous approval.
- > The obligation of debtors undergoing insolvency to file a request for liquidation if they are unable to fulfill the composition agreement approved to facilitate amendments (the so-called *reconvenio*) has been suspended until December 31, 2021.
- > In proceedings filed until March 14, 2022, financing granted by closely related parties (*personas especialmente relacionadas*) or financing in which they have been subrogated after paying (in both cases, after March 14, 2020) would not be subordinated, but rather considered preferential or ordinary claims, as applicable.
- > Preference is given to certain procedural issues, such as the acquisition of production units.
- > As regards the obligation to wind up due to qualifying losses, losses corresponding to 2020 and 2021 will not be taken into account to ascertain whether the company has grounds for dissolution. Moreover, the assessment of the grounds for dissolution due to qualifying losses can only be carried out on determining the financial result of 2022.



- > To foster fundraising through capital markets, from March 18, 2021, to December 31, 2022, listed companies and companies that have shares admitted to trading on BME Growth may use a new short-form prospectus, the EU Recovery Prospectus, for secondary issuances of shares.

For more details, see our Legal Flashes on [RDL 16/2020](#), [Act 3/2020](#), [RDL 34/2020](#) and [RDL 5/2020](#).

FINANCIAL AID

We highlight the main financial aid measures approved by the Spanish government in response to the pandemic.

- > COVID-19 direct aid facility, allotted €7 billion, with a purpose-determined nature that must be used to pay debt and payment to suppliers and other financial or non-financial creditors, along with fixed costs incurred between March 1, 2020 and September 30, 2021.
- > ICO (Spanish State Finance Agency) guarantee facilities granted for companies and self-employed workers (i) under RDL 8/2020 for up to €100 billion (guarantees will be granted for certain financing transactions formalized or refinanced from March 18, 2020) and (ii) under RDL 25/2020 for up to €40 billion (guarantees will be granted for financing investments formalized from July 29, 2020).
- > Public facility, allotted €3 billion, to reduce the outstanding principal of financial debt of companies and self-employed workers guaranteed by the state, within the framework of debt renegotiation agreements between debtors and the crediting financial institutions.
- > Financing facility in the form of reimbursable loans for up to €216 million, granted to companies and self-employed workers in the tourism sector to finance digital transformation and innovation projects.
- > Exceptional and temporary regime (2021-2022) to facilitate the concession by the local tax authorities of deferrals of payments and the implementation of installment payments plans, with guarantee waiver, for public non-tax debts, arising from aids or loans granted by the General State Administration.
- > Solvency support fund 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") and will provide public temporary support to the strategic companies.
- > Company recapitalization fund for businesses affected by COVID-19, allocated €1 billion, managed by the Spanish Development Finance Institution ("COFIDES") to give temporary public aid to strengthen the solvency of medium-sized enterprises.
- > CESCE internationalization insurance coverage facility for up to € 1 billion for Spanish companies operating in the sphere of internationalization affected by the COVID-19 crisis, whose activity has been affected by the COVID-19 crisis.

AGREEMENTS

- > The outbreak of COVID-19 and subsequent measures adopted by the authorities are tantamount to a case of *force majeure*. Depending on the circumstances, this may (i) discharge parties from contractual liability for breach, (ii) release parties from having to fulfill their obligations, or (iii) allow performance to be postponed if the effect of the *force*



majeure is temporary. These potential consequences must be analyzed on a case-by-case basis, considering the nature of the obligational relationship, the wording of the contract, and the measures adopted by the authorities in each specific area (e.g., main residence lease agreements).

- > If the individual circumstances of the case do not qualify as *force majeure*, the parties may consider the possibility of renegotiating the agreement affected by the unexpected disruptions that have upset the financial balance between the contracting parties, making performance by one to the other unduly burdensome.
- > In practice, parties are advised to (i) act in good faith, (ii) notify the other parties of any outbreak-related contingency that could potentially prevent performance of the contractual obligations, and (iii) seek, through amicable negotiation, a solution satisfactory to all parties involved.
- > In the case of lease contracts, the government has passed specific legislation applicable to tenants in a situation of vulnerability.

For more details, see our Legal Flash on [Contracts and coronavirus: initial considerations under Spanish law](#).

PUBLIC PROCUREMENT

- > **Reopening of public tenders.** RD 463/2020, declaring the first state of emergency, established the general suspension of the deadlines and terms of administrative procedures. In the context of public procurement, this suspension affected tenders already in progress and prevented new tenders from being issued, with some specific exceptions. However, under RDL 17/2020, the suspension affecting deadlines for public procurement procedures was lifted from May 7, 2020, and new contracting procedures were allowed to begin, as long as they were processed electronically.
- > **Mechanisms for compensating the effects of COVID-19.** As regards public contracts already in effect when the first state of emergency was declared, several mechanisms have been established for contracts that were affected or unable to be performed due to the situation caused by COVID-19.

Specifically, subject to several requirements, the provisions enable (i) the possibility of requesting the suspension of successive service and supply agreements; (ii) the extension of the deadline for the initial enforcement or the extension of public contracts for supply and services other than those mentioned previously; and (iii) the suspension or extension of deadlines for works contracts. In these cases, the contractor may be entitled to receive compensation for the suspension or extension period for certain items and subject to certain conditions.

Moreover, as regards public contracts for the concession of works and the concession of services, subject to certain conditions, reestablishing the economic and financial balance of contracts is now possible by extending the initial length of the contract by up to 15%, or by amending the financial clauses of the contract.

In the case of (i) public service management contracts for regular passenger transport on general-purpose roads under state jurisdiction; (ii) concession contracts for building, maintaining and operating toll roads; (iii) concessions for conserving and operating first-generation highways; and (iv) concession contracts for service areas of the state highway



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network, [RDL 26/2020](#) develops and applies the provisions in section 4 of article 34 of RDL 8/2020 establish the criteria and procedure for financially rebalancing the mentioned contracts. Regarding the concession contracts mentioned, it is not possible to apply the general rules on damage due to *force majeure* or on restoration of the financial balance that may apply to the contract.

- > **Urgent processing:** Also, several measures have been implemented to facilitate the urgent processing of public sector contracts necessary to face the impact of COVID-19.

For more details, see our Legal Flashes on [RDL 8/2020](#) and [RDL 17/2020](#).

CONSUMER SECTOR

- > As regards purchase agreements and services agreements that have been impossible to perform, consumers and users are entitled to terminate any agreement they have entered into within 14 days from the date on which performance became impossible. Termination will be effective if, within 60 days from the request for contractual termination, the parties are unable to agree on a proposal for the review of the agreement.

For more details, see our Legal Flash on [RDL 11/2020](#).

TAX MEASURES

- > General deadlines for submitting and paying self-assessments for taxes managed by the Spanish government have not been suspended (e.g., VAT, and withholding tax and payments on account for personal income tax and corporation tax), except for the measures for small and medium enterprises and self-employed workers explained below.
- > Likewise, companies subject to corporate income tax must submit their self-assessments for this tax within 25 calendar days following the six months after the close of the tax period. Therefore, companies whose tax year coincides with calendar year had to file their self-assessment of the tax year 2019 by July 27 this year (because July 25 fell on a Saturday). However, in view of the deadlines to draw up and approve the annual accounts for 2019 and the possibility that these companies may not have approved the annual accounts by the given deadline (July 27), an exceptional deadline has been set, giving them until November 30 to file a second self-assessment of corporate income tax. This second self-assessment must be submitted if the annual accounts approved at a later date reflect information and amounts that do not coincide with the previously filed self-assessment.
- > In the context of corporate income tax and, specifically, as regards payments on account of the tax year 2020, there is now the option to apply the ongoing taxable base method in the case of taxpayers with a net amount of turnover lower than €6 million and that, in principle, should have determined their payments on account according to the full tax payable from a previous year method. This exceptional option thus allows taxpayers to apply this method after the deadline established under the Tax Act. Depending on the type of taxpayer, this option will become effective from the first fractioned payment in 2020, or from the one made in October.
- > The measures adopted affect small and medium enterprises and certain self-employed workers. For taxpayers with a business volume for VAT purposes not exceeding €600,000 in 2019, tax filing and payment deadlines in the period between April 15, 2020 and May 20,



2020 were extended to May 20, 2020. If payment was made by direct debit, filing periods were extended to May 15, 2020. However, this excludes taxpayers that apply the tax regime for corporate groups for the purposes of corporate income tax or VAT. A payment deferment regime has also been approved for taxes (up to €30,000), provided that the debtor's business volume did not exceed €6,010,121.04 in the previous year, and for self-assessments that have to be submitted and paid in the period between March 14, 2020 and May 30, 2020 and also in the period between April 1, 2021, and April 30, 2021.

- > Most autonomous regions extended the deadlines for submitting and paying tax self-assessment regarding taxes within the scope of their tax jurisdiction (e.g., transfer tax and stamp duty).
- > The terms of tax-related administrative procedures were extended under RDL 8/2020 and 11/2020 (to April 30 and May 20, 2020), and later, under RDL 15/2020, to May 30, 2020.
- > Deeds of novation of mortgage loans and credits to purchase a main residence formalized within the framework of the moratorium on the payment of mortgage debt are exempt from the gradual payment of notarial documents under the documented legal acts category of transfer tax and stamp duty. Also, public deeds executed for legal moratoriums and moratoriums by agreement, agreed under RDL 8/2020, 11/2020, 19/2020, 25/2020, and 26/2020 will be exempt from the mentioned gradual payment.
- > An exemption is granted to electricity and natural gas retailers, and to distributors of manufactured gases and piped liquefied petroleum gases, from the obligation to assess VAT and excise taxes on electricity and on hydrocarbons, relating to invoices with suspended payment at the request of the customer (self-employed workers and SMEs).
- > A 0% VAT rate will apply to the deliveries of goods, imports and intra-Community acquisitions of certain health care materials whose recipients are public law entities, clinics, hospital centers or entities of a social nature, carried out between April 23, 2020, and December 31, 2021. The list of healthcare materials is included in the annex of RDL 7/2021.
- > As a complement to the above, the deliveries of goods, imports and intra-Community acquisitions of disposable surgical masks, accrued between November 19, 2020, and December 31, 2021, and whose recipients are different from those mentioned above, will apply a 4% VAT rate (instead of 21%).
- > In addition, the 0% VAT rate is also applicable to deliveries, imports and intra-community acquisitions, accrued between December 24, 2020 and December 31, 2022, of medical materials for the in vitro diagnosis of SARS-CoV-2 and vaccines against SARS-CoV-2, as well as the provision of transport, storage, and distribution services related to these two medical goods.
- > Under a permanent (not temporary) provision, a reduced 4% tax rate is now applicable to books, newspapers and magazines provided electronically.
- > Tax credits for activities related to the film industry have been improved.
- > For tax periods beginning in 2020 and 2021, the minimum period necessary from the expiration of the credit to the date of the accrual of the tax has been reduced (from 6 months) to 3 months to consider deductible losses due to impairment of the credits for possible insolvencies of debtors. This measure is applicable exclusively to companies with net amount of turnover in the previous year of less than €10 million and, therefore, meet the requirements to apply the regime of small-sized entities in Corporate Income Tax.



For more details, see our legal flashes on [RDL 8/2020](#), [RDL 11/2020](#), [RDL 15/2020](#), [RDL 17/2020](#), [RDL 19/2020](#), [RDL 34/2020](#), [RDL 35/2020](#) and the legal flash [on indirect taxation of imports, acquisitions and donations of health care](#).

MORATORIUM ON DEBTS

On March 30, 2021, the application period expired to request the different types of moratorium on financial debts explained below:

- > Individuals undergoing any circumstances of economic vulnerability defined by law were eligible to request a moratorium from their creditors to pay the principal without any interest accruing on loans and credits secured by a mortgage (mortgage-backed legal moratorium) and those not secured by a mortgage (non-mortgage-backed legal moratorium), in the terms set out in RDL 8/2020 and RDL 11/2020, respectively. For more details, see our Legal Flash on [RDL 11/2020](#).
- > As a complement to the “legal moratorium,” RDL 19/2020 introduced the so-called “conventional moratorium,” establishing a special system for agreements reached between a debtor and a financial institution that are subject to the provisions of sectorial framework agreements between financial institutions through their representative associations (e.g., those entered into between the Spanish Confederation of Savings Banks and the Spanish Banking Association in April 2020). For more details, see our Legal Flash on [RDL 19/2020](#).
- > Companies and self-employed workers in the tourism sector undergoing financial difficulties resulting from the COVID-19 crisis were entitled to a moratorium on the repayment of the principal of mortgage loans on property used for the tourism business, in the terms set out in RDL 25/2020. For more details, see our Legal Flash on [RDL 25/2020](#).
- > Companies and self-employed workers whose activity involves public passenger transportation or the transport of goods and that are undergoing financial difficulties resulting from the COVID-19 crisis were entitled to a moratorium on the repayment of the principal of loans, leasing and renting of public-transport passenger buses and goods vehicles, in the terms set out in RDL 26/2020.

RDL 3/2021 established a maximum nine-month period for all types of moratoriums on any financing.

MORATORIUM ON RENT

Several exceptional measures have been adopted by the Spanish government relating to leases, as explained below.

- > Eviction and foreclosure procedures (i) due to rental arrears subject to the 1994 Spanish Urban Leases Act (“LAU”) affecting vulnerable households with no alternative housing options, as well as (ii) regarding people inhabiting a dwelling without any legal right to do so (provided that they are dependents, they care for dependents or minors, or they are victims of gender violence; they are in a vulnerable situation; and the dwelling belongs to a legal entity or individual that owns more than ten properties), (iii) have been suspended until February 28, 2022.
- > Exceptional extension of up to six months for main residence lease agreements subject to the 1994 LAU that are due to expire before February 28, 2022, included. This does not apply



in cases where the lessor and the lessee have reached a different agreement or where lessors have given notification of their need to use the property as a permanent residence for themselves or their relatives.

- > Lessees of main residence agreements subject to the 1994 LAU who are in a situation of vulnerability have until February 28, 2022, to request a 50% reduction on the rental fee or a moratorium on paying rent, allowing payments in installments over at least three years, if the lessor is a company or public entity providing housing, or a large housing asset holder (an individual or legal entity owning over 10 urban properties, excluding parking lots and storage spaces, or a built surface area of over 1,500 m²). This also applies to leases corresponding to the Social Housing Fund. If the lessor did not fall into one of these categories, lessees in a situation of vulnerability were still able to request a moratorium, although the deadline has now expired; in this case, if the lessor did not accept any agreement, the lessee could access the temporary financing schemes regulated under RDL 11/2020.
- > Self-employed workers and SMEs that are lessees under non-residential or non-industrial lease agreements, the lessors of which are a company or public entity, or a large property holder may request (i) a 50% reduction on the rental fee for the duration of the second state of emergency and its extensions, and for up to the following four months; or (ii) a moratorium on paying rent during the same period, allowing payments in installments over two years. The lessor must notify the lessee of its decision within seven days following the request. If the lessor does not fall into one of these categories, it is not obliged to accept a moratorium, although the law provides that the parties can agree to use the deposit to fully or partially cover some monthly payments and tax incentives to encourage lessors that are individuals to reduce the rent. The deadline to request the application of these measures expired on January 31, 2021.
- > Until March 30, 2021, the lessee—whether a company or self-employed worker—belonging to the tourism sector, with regard to a mortgaged property in which a tourism business is conducted, could request a moratorium on the rent payment of at least 70% of the amount of the mortgage moratorium granted to the lessor under RDL 25/2020, even if the lessor was not undergoing the financial difficulties stipulated to be able to benefit from the moratorium on the mortgage.

Landlords and owners of a dwelling affected by the suspension of eviction and foreclosure procedures referred to in the first bullet point of this section will have the right to request compensation in certain circumstances until March 31, 2022. RD 401/2021 regulates the application procedure.

For more details, see our Legal Flashes on [RDL 11/2020](#), [RDL 15/2020](#), [RDL 25/2020](#), [RDL 35/2020](#), [RDL 37/2020](#) and [RD 401/2021](#).

JUDICIAL AND ADMINISTRATIVE DEADLINES AND PRIORITY OF PROCEEDINGS

- > When the first state of emergency was declared, judicial and administrative periods and deadlines were suspended, except for urgent matters and certain specific matters such as social security and tax. Prescription and limitation periods were also suspended.
- > The suspension of judicial periods is lifted from June 4, 2020, and the periods are computed in full from the beginning. Also, the periods to announce, prepare, perfect or file an appeal



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against rulings and other resolutions that end proceedings will be doubled, as long as they are notified during the suspension period, or within 20 business days following the date on which the suspension is lifted, and were suspended owing to the declaration of the first state of emergency.

- > The suspension of prescription and limitation periods have been lifted from June 4, 2020, and the period runs again from that date for the remaining period.
- > The suspension of administrative deadlines is lifted from June 1, 2020, and the period runs from that date for the remaining period. However, the deadline to file an appeal in administrative proceedings that may have unfavorable or burdensome effects on the party concerned will be calculated from the first business day after the first state of emergency ends.
- > Act 3/2020 (resulting from RDL 16/2020) specifies certain cases and judicial proceedings in civil courts, judicial-review courts and labor courts that will be given preference from the lifting of the suspension of periods indicated in RD 463/2020. This preference will last until December 31, 2020.

For more details, see our Legal Flashes on [RDL 11/2020](#) and [RDL 16/2020](#).

PATRONAGE

- > Monetary or in-kind donations—making it possible to hire medical staff or support staff for research teams; handle biological samples; purchase face masks, protective screens or screening kits; or cover consumables requirements, for example—given to a beneficiary of the patronage for the purposes of Act 49/2002 (e.g., the state, autonomous regions or foundations) will entitle donors to a tax incentive. Thus, companies making these donations will be entitled to apply a 35% deduction to their corporation tax due after adjusting the expense as non-deductible.
- > Likewise, these companies may also choose to cooperate with a beneficiary of the patronage for the purposes of Act 49/2002 through a business collaboration agreement to fight COVID-19, and receive publicity of their support in exchange.
- > Additionally, through the “expenses on general-interest activities” tax incentive, a company may consider as tax deductible expenses for the purposes of its corporation tax any amounts allocated to a project that the company carries out directly to fight COVID-19.
- > Finally, tax deductions for individuals has been increased by 5 percentage points.

For more details, see our legal flash [Patronage and the battle against coronavirus: main tax incentives](#).

STATE LIABILITY

- > The measures of suspension or restrictions imposed on certain business activities as a result of the declaration of the state of emergency provide grounds to analyze the scope of the potential liability of the state.
- > Measures adopted due to the state of emergency are imposed on all citizens to safeguard and protect the community’s right to life and health, which means there is a legal obligation



to comply with them. However, public burdens must be assumed based on the principle of equality. Therefore, compensation must be provided for damages that involve a unique sacrifice for a particular sector or company, imposed in the interest of the community, being greater than the general sacrifice imposed on all citizens and economic operators.

For more details, see our legal flash on [State liability and COVID-19: key aspects](#).

PENSION PLANS

Until September 14, 2020, one measure allowed early entitlement to vested rights in **pension plans and other social welfare systems**. This measure was aimed at (i) employees that were legally unemployed, (ii) entrepreneurs that owned establishments that were not allowed to open to the public, and (iii) self-employed workers that could not carry out their activity or whose activity had decreased significantly due to the COVID-19 crisis.

RDL 15/2020 also regulated this exceptional liquidity option: (i) the maximum amounts that could be requested; (ii) the documents the interested party had to submit to the pension fund management company or to the insurance company, as appropriate; and (iii) the deadlines by which these requests had to be addressed.

For more details, see our Legal Flashes on [RDL 11/2020](#), [RDL 15/2020](#) and [RDL 16/2020](#).

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