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# Royal Decree-Law 16/2020: main legal consequences for businesses

Legal flash

April 29, 2020

The Spanish Council of Ministers has approved Royal Decree-Law 16/2020, of April 28, on measures affecting the administration of justice (“RDL 16/2020”). It enters into force on April 30.



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**This document analyzes the main consequences for businesses arising from the set of measures approved under RDL 16/2020:**

- Reset and extension of procedural deadlines
- Priority of certain judicial proceedings in civil courts, contentious administrative courts and labor courts
- Introduction of organizational measures in the administration of justice to speed up judicial proceedings
- Insolvency and corporate measures, including the suspension until December 31, 2020, of the obligation to file for insolvency proceedings; the possibility of amending court-sanctioned refinancing agreements; improved treatment of financing granted by “closely related parties;” and not taking into account losses corresponding to 2020 to ascertain whether the company has grounds for dissolution based on serious losses
- Other noteworthy measures: extension of the deadline to request a moratorium on paying rent to lease a main residence for lessees in a situation of vulnerability; technical improvements to public procurement procedures; and extension of exceptional circumstances enabling early entitlement to vested rights in social welfare systems



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## Procedural deadlines

- **August 11-31 will be considered business days.** August 11 to August 31 have been declared business days to carry out court proceedings. This does not include Saturdays, Sundays and public holidays, except those considered business days under procedural regulations.
- **Calculation of suspended terms and deadlines once the suspension has been lifted: reset.** In the case of procedural periods and deadlines that have been suspended under Royal Decree 463/2020 (“RD 463/2020”), declaring the state of emergency, these periods will be computed in full from the beginning once the state of emergency ends. Computation will start on the business day following the day on which the suspension is no longer effective. Under section 1 of Second Additional Provision of RD 463/2020, the suspension period will end when the state of emergency is lifted, unless an amendment is approved in the coming weeks.
- **Extended periods to file appeals.** The periods to announce, prepare, perfect or file an appeal against rulings and other resolutions that end proceedings notified during the suspension period, or within 20 business days following the date on which the suspension is lifted, will be extended by a period equal to the time provided to carry out these formalities under the corresponding regulations. The extension of these periods only affects proceedings the deadlines of which were suspended under RD 463/2020, declaring the state of emergency, and not those that were excluded from that suspension (e.g., collective dispute proceedings and certain proceedings related to the protection of fundamental rights).

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## Priority of proceedings

RDL 16/2020 specifies certain cases and proceedings 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. However, except for certain proceedings in labor courts, this preference will not override the preference given to other proceedings provided under procedural law. Below is a list of the main proceedings given preference under RDL 16/2020.



- In **civil** courts:
  - Proceedings involving lending entities' failure to acknowledge the legal moratorium on the payment of mortgage loans taken out to purchase a main residence or property used to carry out an economic activity.
  - Proceedings involving claims made by lessees owing to the failure to apply the moratorium provided by law or the mandatory extension of lease agreements.
  - Insolvency proceedings involving debtors that are individuals who are not considered entrepreneurs.
  
- In **contentious administrative** courts, appeals against acts and resolutions passed by public administrations involving the rejection of applications for aid and measures legally provided to mitigate the effects of COVID-19.
  
- In **labor** courts:
  1. Proceedings involving dismissal or termination of employment contracts.
  2. Proceedings resulting from the procedure to declare the obligation and way to recover working hours that were not fulfilled during the paid leave provided under Royal Decree-Law 10/2020, of March 29.
  3. Proceedings involving requests for the adjustment and reduction of working hours on the grounds of work-life balance related to COVID-19 ("MECUIDA scheme"), as provided under article 6 of Royal Decree-Law 8/2020, of March 17.
  4. Proceedings involving individual, collective or ex officio lawsuits filed against temporary redundancy plans ("ERTE") regulated under articles 22 and 23 of Royal Decree-Law 8/2020, of March 17.
  5. Proceedings brought to implement remote working or to adjust working conditions, as provided under article 5 of Royal Decree-Law 8/2020, of March 17.

The proceedings listed in numbers 3, 4 and 5 above will be **given preference over** any others filed with the given court, except those related to the protection of fundamental rights and public freedoms. The latter will be considered **urgent for all purposes**.

- Also, RDL 16/2020 specifies that lawsuits filed against temporary redundancy plans ("ERTE") based on objective grounds related to COVID-19 that are implemented under article 23 of RDL 8/2020, of March 17, will be processed as a collective dispute when they affect more than five employees. The representative committee that negotiated the ERTE is also granted standing to file the lawsuit, as provided under article 154 of Act 36/2011, of October 10, regulating the labor courts.



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## Organizational measures in the administration of justice

- RDL 16/2020 introduces organizational measures to speed up judicial proceedings. Thus, the following measures will be adopted while the state of emergency is in force and for three months after it is lifted:
  - All procedural acts (including court appearances, statements, hearings and trials, except trials related to serious crimes held in criminal courts, which require the defendant's physical presence) will preferably be carried out remotely, as long as the courts, tribunals and prosecutors' offices have the necessary means to do so. However, each court or tribunal must convene at its own seat.
  - Access of the public to courtrooms will depend on the characteristics of each one.
  - Enquiry services at all courts and prosecutors' offices will be provided over the phone or by email (or in person, with a valid appointment when attendance is required).
  - Morning and afternoon shifts will be set up for all services and courts.
  
- RDL 16/2020 also raises the possibility of establishing that courts pending approval will operate to function as courts dealing exclusively with proceedings related to COVID-19.

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## Insolvency and corporate measures

- **Insolvent debtors' obligation to file for insolvency has been suspended until December 31, 2020.** To foster voluntary insolvency proceedings, the courts will not process the mandatory applications for insolvency until this date, and if the applications for voluntary insolvency proceedings were submitted before this date, they will be prioritized.
  
- **Court-sanctioned refinancing agreements can be amended**, even if a year has not elapsed since the previous approval. Moreover, courts will not process applications for the non-performance of any court-sanctioned agreements approved in the six months following the declaration of the state of emergency, but will transfer these applications to the debtor, which can notify the courts of its intention to negotiate the amendment of the given agreement. If the debtor's notification is not given or



the amendment is not made within the three months following notification, the court will process the application for non-performance.

- **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 March 14, 2021.** Debtors that are unable to fulfill a composition agreement they have entered into are not obliged to file a request for liquidation (thus reopening the insolvency qualification that may result in directors' liability) provided they submit a proposal to amend the composition agreement, which will be approved under the same terms as the original agreement, regardless of the content of the amendments. Also, to foster amendments to composition agreements as opposed to liquidation, until September 14, 2020, courts will transfer to debtors any applications made by creditors to declare the non-performance of the agreement, and will not process them until three months (we assume that until December 14, 2020, even though RDL 16/2020 is not clear in this regard). If, within this term, the debtor submits a proposal to amend the composition agreement, priority will be given to processing this proposal.
  
- **Improved treatment of financing by “inside parties” or “closely related parties” (*personas especialmente relacionadas*).** This has improved in two ways: (i) in cases where liquidation begins due to the inability to perform the composition agreement, cash commitments in the composition agreement or amendment proposal will be considered claims against the insolvency estate, including those resulting from personal guarantees and security in rem that specify the identity of the liable person and the maximum amount (thus benefiting the financing of the insolvent party while the amendment is being discussed); and (ii) in proceedings filed within two years following the declaration of the state of emergency, financing granted by closely related parties or financing in which they have been subrogated after paying would not be subordinated, but rather considered ordinary credits.
  
- **To speed up the procedural processing,** (i) preference is given to written processing, without a hearing, of incidental insolvency proceedings, particularly to challenge the inventory or the provisional list of creditors; (ii) preference is given to certain issues, such as the acquisition of production units, amendments to composition agreements, and labor incidents; (iii) any auctions related to ongoing insolvency proceedings and declared in the year after the state of emergency is lifted will be held out of court; and (iv) the court must immediately approve liquidation plans submitted once the allegations period against it has elapsed.



- As regards the **obligation to wind up due to qualifying losses**, losses corresponding to 2020 will not be taken into account to ascertain whether the company has grounds for dissolution. Moreover, we assume that the assessment of the grounds for dissolution due to qualifying losses can only be carried out on determining the financial result of 2021 (i.e., in the case of companies whose financial year coincides with the calendar year, from January 1, 2022, the date on which the two-month term begins for directors to call the general shareholders meeting).

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## Other measures

### Extension of the deadline to request a moratorium on paying rent to lease a main residence for lessees in a situation of vulnerability

Lessees paying rent for a main residence, as provided under the 1994 Spanish Urban Lease Act, and who are in a situation of vulnerability, are granted an extension until July 2, 2020, to request a moratorium on paying rent in accordance with the system specified in Royal Decree-Law 11/2020 (see our [legal flash](#)).

### Public procurement: technical improvements

The Act on Public Sector Contracts has been amended to make technical improvements concerning the regulation of offers opened in simplified procedures, and effectively eliminates the requirement establishing that the envelopes needed to be opened at a public event, now allowing this to be carried out electronically.

### Extension of exceptional circumstances for early entitlement to vested rights in social welfare systems

The circumstances under which self-employed workers can enforce their entitlement to vested rights in social welfare systems have been broadened. The new circumstances have been added to those related to cessation of activity (see our legal flashes with further details on this measure: [RDL 11/2020](#) and [RDL 15/2020](#)). They apply to the groups listed below.

- Workers whose turnover corresponding to the calendar month prior to the month for which the request for entitlement is submitted has dropped by at least 75% with respect to the average turnover in the previous calendar semester.



- Seasonal workers belonging to the agriculture, fishing or shellfish industries, whose average turnover during the production season has dropped by at least 75% with respect to the average turnover during the same months in the previous season.
- Workers belong to the film making, television, performing arts, creative and literary arts sectors, and those dedicated to the management of entertainment venues, whose turnover corresponding to the calendar month prior to the month for which the request is submitted has dropped by at least 75% with respect to the average turnover in the previous 12 months.

## 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](#).

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