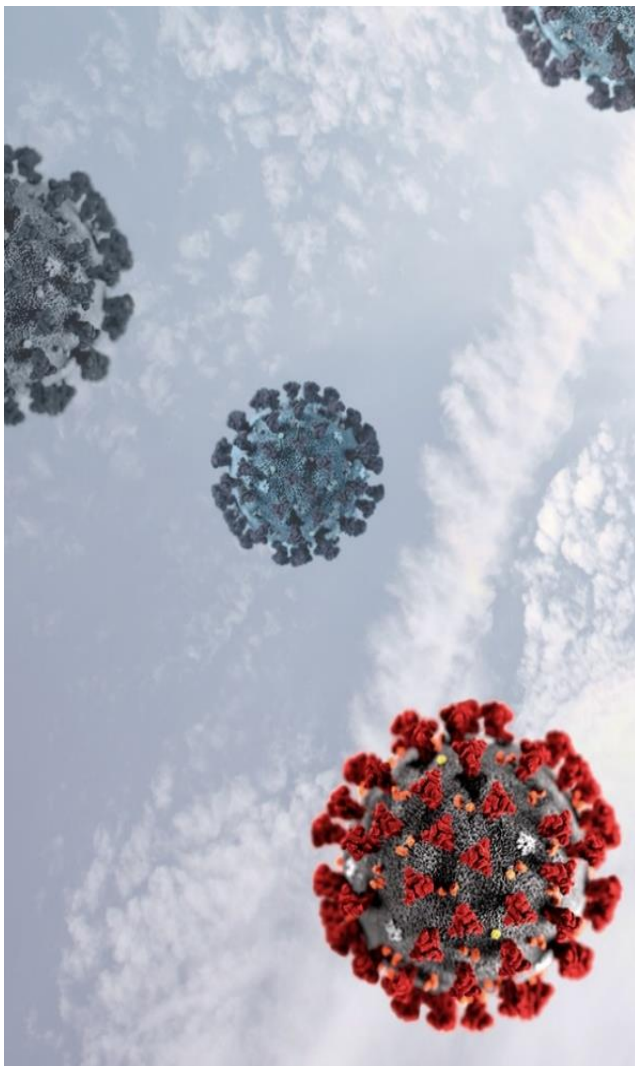

Balearic Islands: New decree law for economic recovery

Legal Flash

May 2020

On May 13, 2020, the Balearic Islands government approved *Decree Law 8/2020, on urgent extraordinary measures to boost economic activity and streamline procedures carried out by Balearic Islands public administrations to mitigate the effects of the public health crisis caused by COVID-19* (Official Gazette of the Balearic Islands (BOIB) no. 84, May 15, 2020)



Key aspects

- > An exceptional regime based on a statement of compliance procedure has been established for certain construction works on urban land until the end of 2021. Not applicable, among others, to new construction.
- > Built-up areas of tourism establishments may be increased by 15% through upgrade projects until the end of 2021.
- > Provision for converting and changing the use of certain tourism establishments and non-residential buildings.
- > The location of certain "renewable energy" installations on rural land will not count when calculating the percentage of land occupancy.
- > Certain types of construction works (e.g., building, repairs, and demolitions) will be allowed during the 2020 tourist season.
- > No new holiday rentals of residential dwellings (single-family homes included) will be allowed within the city limits of Palma until December 31, 2021.
- > Tax benefits for 2020 have been established for port taxes and gaming, and the advance payment of tax on tourist accommodation has been canceled.
- > Stricter fines are imposed on recreational craft rentals.



Introduction

Decree Law 8/2020 establishes measures to streamline and expedite administrative procedures, foster social safeguards, and stimulate investment to counteract the economic slowdown caused by COVID-19. The adopted measures aim to boost key sectors such as construction, renewable energy, and research and development, based on a model designed to reduce tourism accommodation capacity and protect rural land, while allowing building in urban areas. Below is an overview of the most relevant measures adopted under this decree affecting foreign investors and anyone with interests in the Balearic Islands.

Administrative procedures involving urban planning and business activities to be streamlined and expedited

➤ **Statements of compliance for certain urban construction projects will be accepted temporarily**

Until December 31, 2021, developers of construction projects and facilities can submit statements of compliance instead of applying for a building permit to carry out any of the works specified in article 146 of Act 12/2017, of December 29, the Balearic Island Urban Planning Act (“Act 12/2017”) as long as the buildings or installations (i) have been built in urban areas, (ii) are compliant with urban zoning standards (i.e., are not outside planning regulations), and (iii) are not built in the coastal protection easement zone. Statements of compliance will not be valid for complete demolition works; work on properties that have cultural interest or on listed properties; works specified in article 11.4 of Royal Legislative Decree 7/2015 of October 30, approving the consolidated text of the Land Act (e.g., land parceling, **new construction**, earth moving works), or other works for which a building permit or advance notification is required under state sector-specific regulations.

To benefit from these measures, developers that are completely refurbishing buildings must agree to enhance the energy efficiency of the buildings and to put in water-saving systems.

A statement of compliance may only be filed for a given building or housing project every six months.

A statement of compliance will not cover intended urban construction work unless the supporting documents required for each individual case under Decree Law 8/2020 are submitted at the same time. Statements of compliance must be submitted with the corresponding authorization or preliminary assessment when so required by applicable sector-specific regulations. If these regulations prevent developers from obtaining these



authorizations or assessments themselves, the competent local agency concerned will request them. In this case, any work included in the statement of compliance cannot be started until the developer has been notified that the assessment or authorization in question has been issued.

Statements of compliance for works involving the installation or renovation of permanent business activities or shared infrastructures linked to those activities must comply with legislation on activities.

Any provisions laid down in Decree Law 8/2020 on statements of compliance will not affect regulations on construction completion, first occupancy, or building or facility use. In these cases, Act 12/2017 will continue to apply, and any formalities, licenses and certificates required under it must be completed or obtained.

> **Certified review of documents to expedite procedures to obtain urban planning permits**

To obviate the verification process usually applied to documents attached to applications for permits, before submitting the application, developers may obtain a certificate substantiating their review by official professional associations or other public law entities approved by the city council.

> **Streamlined access regime and performance of activities**

Amendments to Act 7/2013 of November 26, have implemented measures to streamline procedures for starting up new businesses, and renovating or refurbishing existing businesses. A clear distinction is made between activities that require construction work, which must comply with urban planning ordinances and procedures, as established under town planning legislation, and activities that do not involve building work, subject to provisions under Act 7/2013.

> **Expedited execution of projects for building road and railway passenger transportation networks**

Measures to expedite projects of this kind have been implemented to reduce the time required to obtain a permit. Measures to combat unlicensed operators in the transportation sector have also been introduced, and the Roads Act (*Ley de Carreteras*) has been amended to streamline procedures and take environmental and passenger protection factors into account to make it easier to prevent building code violations.



Incentives to upgrade tourism establishments and foster private investment in the tourism industry, and other sector-related measures

> Projects to renovate tourism establishments to improve services and facilities

The refurbishment of tourism facilities is currently regulated under Additional Provision Three of Balearic Islands Act 6/2007, of July 31, amending Act 8/2012 of July 19, on tourism in the Balearic Islands. In the case of these projects, the built-up areas may be increased by 15%, compared to the previous 10%, over lawfully constructed premises or over current authorized limits, if larger. The requirement to pay the local authorities 5% of the material execution budget at the time of application remains unchanged.

This enlargement will only be available for applications submitted before December 31, 2021, for existing legal tourism accommodation facilities, tourist residences, bars and restaurants, and entertainment, recreation, sports, culture, or amusement facilities (already registered on the tourism establishment register on August 1, 2017). Also, the renovations (i) must aim to reduce seasonal dependence, expand into new segments, or improve product or service offerings; (ii) cannot result in the higher consumption of drinking water or energy; (iii) must enhance quality, environmental sustainability, safety, or accessibility; and (iv) must include the installation of electric charging stations in at least 50% of the parking spaces in their parking lots. Enlargement is also conditional on not increasing hotel beds or raising building height except to install elevators or other equipment, or to level off rooftops or bring them into compliance with standards.

The possibility of enlargement set out in this provision is not available to establishments that have already undergone renovation or remodeling, as provided under the regional enabling legislation, up to the limits set by Decree Law 8/2020.

Statement of compliance system regulated under this decree law will also apply to renovation projects of this kind.

> Conversion and change of use

Tourism establishments located in overcrowded tourist areas, or located elsewhere (rural areas excepted) that closed down permanently and administratively registered as such before May 13, 2020, may be converted into subsidized public housing, long-term care or assisted living facilities (whether public or private) or administrative centers (preferably for scientific development and research). The change of use is conditional on comprehensive refurbishment or rebuilding of the premises, as the case may be. The establishment's owner must pay the competent local authority 5% of the value of the material execution budget to



comprehensively refurbish or rebuild the premises that will be converted as a monetization charge for assignment of urban use.

This change of use provision will also apply to obsolete buildings for commercial or non-tourist accommodation use located in overcrowded tourist areas.

Change of use will in all cases be conditional on a favorable preliminary assessment by the city council of the place where the establishment or premises are located, and on approval by the competent public authority.

Hotel beds corresponding to lodgings that close down after May 13, 2020, and file for change of use will not be listed in the pool of hotel beds specified under article 91 of Act 8/2012, and will not be eligible for assignment to third parties in any way.

> **Construction during the 2020 summer season**

As an exception to limitations on construction work carried out in the summer provided under any current regional, island, or local regulations, building, refurbishment, repair, and demolition work will be permitted during the 2020 tourist season. However, the Formentera Island Council may issue ordinances establishing limitations.

> **Rentals of holiday residences**

No statements of compliance for new holiday rentals of residential dwellings within the city limits of Palma may be filed until December 31, 2021.

> **Tax on tourist accommodation**

Advance payment of the tax on tourist accommodation by tourism establishments in September of each year has been canceled for 2020. Instead, the deadline for filing the self-assessment and paying the tax due for the whole 2020 tax year has been pushed back until January 2021. Tourists will continue to be charged this tax.

> **Unchanged classification of tourism establishments, self-assessment, and hotel bed capacity**

Offsetting the requirements prescribed under tourism regulations may be used as a basis for granting tourism establishments and the establishments specified in Additional Provision Eight of Act 8/2012 waivers to enable them to keep their tourism classification.

The deadline to meet the self-assessment requirements laid down in Decree 20/2011, of March 18, on Category Classifications for Tourism Accommodation Establishments has been canceled. In any event, tourism establishments must identify themselves under the category



under which they should be classified; otherwise, the authorities may act on their own to reclassify any establishments that do not fulfill this requirement.

The method to calculate bed capacity for new or enlarged establishments has been amended.

Regulations governing the change of use of establishments that have permanently closed have been implemented, and all provisions allowing potential reopening have been repealed.

Tourism inspectors have been granted authority not to identify themselves during inspections and to purchase goods and services to gather evidence.

The method to calculate accommodation unit capacity under section 87.9 of Decree 20/2015, of April 17, has been amended.

> **Tourist misconduct**

Publicly available alcohol vending machines have been banned to safeguard the quality of tourism and avoid misconduct by tourists.

> **Collective transportation to Cabrera**

Administrative collective transportation permits to the Cabrera National Park have been extended until December 31, 2020.

Renewable energy installations on rural land

- > Act 10/2019 has been amended so that "renewable energy" installations (and any necessary auxiliary and supporting equipment) installed on rural land will not count when calculating the percentage of land occupancy.

As set out in the act, this applies to systems for producing electricity from renewable energy sources and to renewable technology-based self-consumption installations for generating electricity.



Fines imposed on recreational craft rentals

- Act 2/2015, of February 27, on Fines for Maritime, Nautical, and Underwater (Sporting and Recreational) Activities in the Balearic Islands, and Decree 21/2017, of May 5, regulating recreational craft and vessel rentals have been amended as follows:
 - Changes have been made to the rules regulating minor violations of recreational craft rentals, including minor infractions such as advertising craft rentals without having submitted a statement of compliance or non-compliance with rental requirements, and advertising craft rentals without stating the registration number issued by the autonomous region.
 - Changes have been made to the rules regulating serious violations of recreational craft rentals, including serious infractions such as advertising and hiring out these services under a false registration number or hiring out boats that do not comply with rental requirements.
 - Minimum and maximum fines for minor, serious, and very serious infringements have all been raised.
 - A reporting requirement has been included for any supervening non-compliance of rental activity requirements, which would entail removal from the Balearic Island Register of Recreational Boats and Watercraft.

Strategic public passenger transportation infrastructure

- The following have been listed as strategic public passenger transportation infrastructures in the Balearic Islands: (i) fixed infrastructures installed by transportation businesses or entities that use natural gas as the main fuel for their fleets; (ii) infrastructures (e.g., pipelines) needed to transport natural gas to supply points; (iii) service stations that sell natural gas; (iv) public infrastructures for supplying electricity to power vehicles; and (v) stops used by scheduled public passenger transportation by road.

Strategic public passenger transportation infrastructures have been classified as investments having regional interest and are thus considered priority investments by government authorities in charge of implementing or authorizing that infrastructure.



Budgetary, tax, and wealth measures

- Tax benefits for 2020 have been introduced in relation to (i) port taxes in the Balearic Islands, and (ii) taxes on class B machines for playing games of luck, betting, and games of chance, and class C machines for playing recreational games and games of chance, plus the tax on the tourist accommodation mentioned above.

Changes to regulations

- Decree Law 8/2020 has amended a series of regional regulations by repealing or changing existing provisions or adding new provisions regarding:
 - **Urban planning**
 - **Tourism**
 - **Business activities**
 - **Environment**
 - **Transportation and roads**
 - **Industry and energy**
 - **Budget and the public treasury**
 - **Civil service**
 - **Social, youth, and disability services**

For additional information, please contact Cuatrecasas.

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