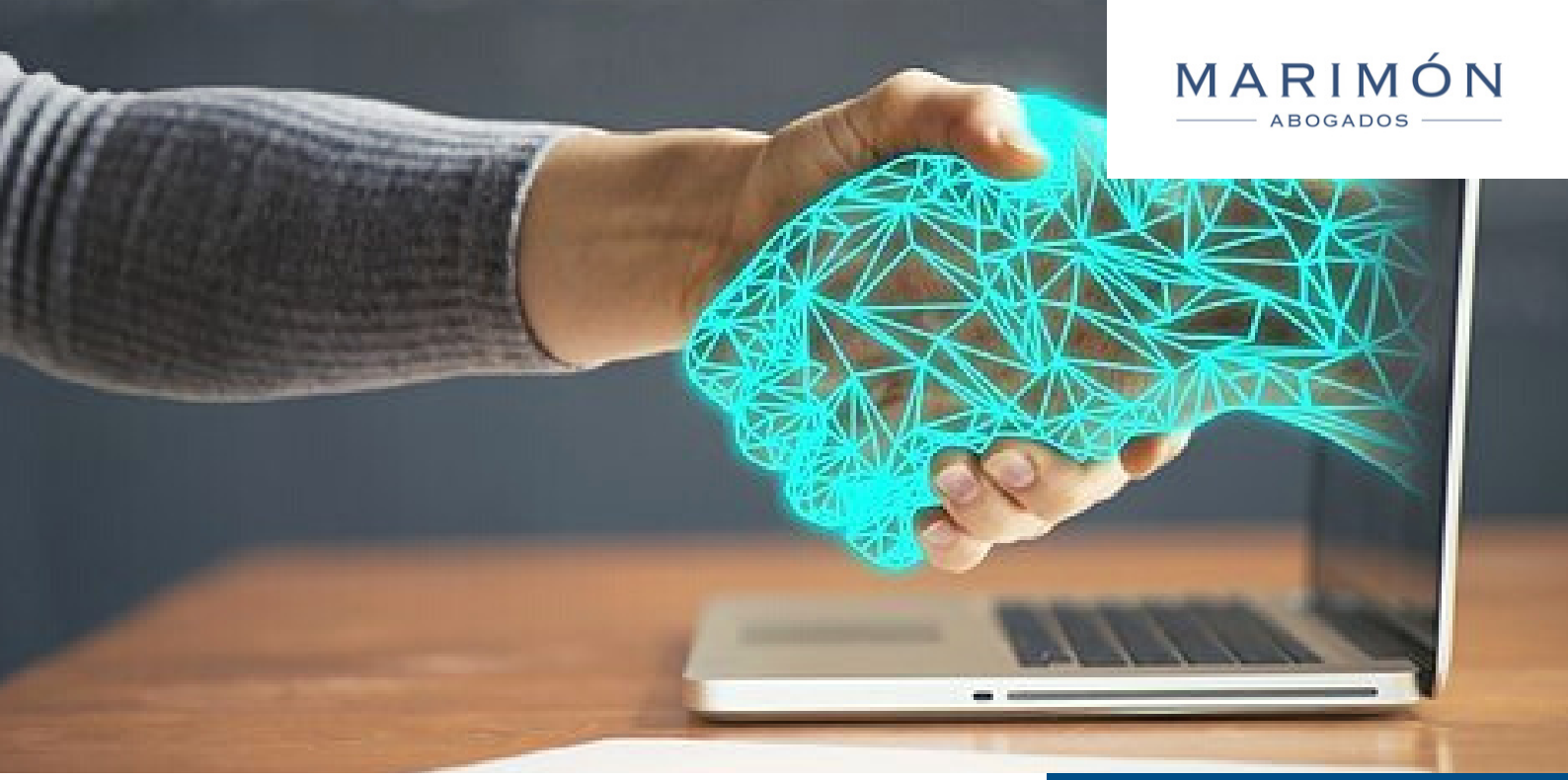

MARIMÓN
ABOGADOS

Royal Decree-Law 8/2020 of March 17, on urgent extraordinary measures to face the economic and social impact of the COVID-19

The COVID-19 pandemic is producing a global health and economic emergency. The Government has approved, by means of Royal Decree-Law 8/2020 of 17 March, on Extraordinary Emergency Measures to deal with the economic and social impact of COVID-19 (the "Royal Decree-Law" or "RD"), published in the Official State Gazette ("BOE") of 18 March 2020, a series of high-impact measures that have legal consequences in various areas.

We set out below what we consider to be the most relevant part of these measures insofar as they may significantly affect our clients. The following summary does not include all the measures approved, but only those we consider most relevant. We invite you to contact your trusted person at Marimón Abogados to analyse the impact that these measures have on your specific case.

II. Changes in Labour law:

The RD provides for a set of extraordinary measures in the field of employment with the aim of responding to the seriousness of the economic and employment situation.

It is important to note that each and every one of the measures detailed below are temporary and exceptional and are applicable to the entire national territory from the date of publication of the Royal Decree-Law in the BOE, i.e. from 18 March 2020.

It is also very important to point out the 6th Additional Provision of the regulation which states that the extraordinary measures in the field of employment provided for in the regulation are subject to the **commitment to maintain employment for six months from the resumption of the activity.**

A. Exceptional measures in relation to procedures for the temporary suspension of contracts and reduction of working hours due to force majeure:

This first set of measures (i) provides a concrete definition of what is meant by force majeure within the meaning of Article 47(3) of the Workers' Statute and (ii) establishes a set of particularities in the procedure for the temporary suspension of contracts and reduction of working hours on grounds of force majeure.

Provided that they are duly accredited, temporary suspensions of contracts and/or reductions in working hours that have their direct cause in losses of activity as a result of the COVID-19, including the declaration of the state of alarm, will be considered as coming from a situation of force majeure:

a) suspension or cancellation of activities,
b) temporary closure of public places,
c) restrictions on public transport and, in general, on the mobility of persons and/or goods,
d) lack of supplies which seriously impede the normal conduct of business; or
e) urgent and extraordinary situations due to the infection of the staff or the adoption of preventive isolation measures decreed by the Health Authority.

With regard to procedural specialities, the following should be noted:

i. The existence of a period of 5 days for the Labor Authority to issue a resolution from the receipt of the application submitted by the company.

ii. The optional nature - previously mandatory - of the request for the Labour Inspection report by the Labour Authority.

Another of the measures that will be applied in those cases of temporary suspension of contracts and reduction of working hours authorized on the basis of force majeure is that consisting of the exoneration of the companies from the payment of the company's social security contribution. This exemption will be 100% for companies with less than 50 employees on 29 February and 75% for companies with 50 or more employees on that date.

B. Exceptional measures in relation to procedures for the temporary suspension of contracts and reduction of working hours for productive, organisational and technical reasons:

With the same aim of speeding up procedures, a set of specialities are established in the procedure for the temporary suspension of contracts and reductions in working hours for productive, organisational and technical reasons, resulting in a simplification of the requirements laid down in Article 47 of the Workers' Statute.

The referred specialities consist of:

i. That the representative commission for the negotiation of the consultation period shall be integrated, preferably, by the most representative unions of the sector to which the company belongs and which have the legitimacy to form part of the negotiating commission of the applicable collective agreement. If it is not possible to form the previous representative commission, the referred commission shall be integrated by three workers of the company itself by virtue of the provisions of article 41.4 of the Workers' Statute. Likewise, in any of the above cases, the committee must be set up within 5 days.

ii. Reduce the consultation period to a maximum of 7 days.

iii. The optional nature of the request for the Labour and Social Security Inspectorate report by the Labour Authority, and the obligation to evacuate it within a non-renewable period of 7 days.

It should be noted that the specialities contained in sections i. and ii. will not be applicable to those employment regulation proceedings initiated or communicated before the entry into force of the Royal Decree-Law, i.e. initiated or communicated before 18 March 2020.

C. Extraordinary measures in the field of unemployment protection in application of the procedures referred to in paragraphs A and B:

With regard to unemployment protection, the Royal Decree-Law establishes a set of measures that will be applied in those cases in which companies have opted for the temporary suspension of contracts or the temporary reduction of working hours for organizational or productive reasons or due to force majeure. These measures consist of:

i. Recognition of the right to contributory unemployment benefit for workers affected by such temporary suspension or reduction of the working day without requiring them to make the minimum contribution period in order to receive the benefit.

ii. Not counting the time in which the unemployment benefit is received at the contributory level for the purpose of consuming the maximum periods of receipt of the said benefit.

It is also stressed that the above measures will apply to all the workers concerned, without prejudice to the fact that at the time the business decision was taken, these persons were either suspended from entitlement to unemployment benefit or did not have a minimum period of contribution to qualify for contributory benefit, or had not received previous unemployment benefit.

Therefore, a new right to contributory unemployment benefit is recognized, with certain special features regarding the amount and duration, consisting in that (i) for the calculation of the regulatory base of the benefit, the average of the bases of the last 180 days of contributions will be taken into account or, in its absence, the period of lesser time worked under the protection of the employment relationship affected by the circumstances, and (ii) the duration of the benefit will be extended until the end of the period of suspension of the employment contract or temporary reduction of the working day for which it is due.

In addition, the option is taken not to reduce the duration of the right to unemployment benefit in cases where the applications have been made after the deadline.

D. Extraordinary benefit for cessation of activity for those affected by the declaration of the state of alarm:

The Royal Decree-Law regulates an extraordinary benefit that may be received by all those self-employed workers (i) whose activities have been suspended by virtue of the provisions of the Royal Decree-Law declaring the state of alarm or (ii) when their turnover in the month prior to the application for the benefit has been reduced by 75% in relation to the average turnover of the previous six-month period.

It is important to note that the receipt of this benefit will be incompatible with any other benefit and will have a duration of one month, which may be extended until the last day of the month in which the alarm condition ends, in the event that this is extended and has a duration of more than one month.

Finally, it should be mentioned that the measures provided for in sections A, B, C and D will remain in force as long as the extraordinary situation resulting from COVID-19 is maintained.

E. Exceptional measures to facilitate teleworking:

Furthermore, the Royal Decree-Law imposes on companies the need to prioritise the adoption of alternative organisational systems that enable them to maintain their activity - mainly through teleworking - as opposed to reducing and/or ceasing activity, provided that this is technically and reasonably possible and if the adaptation effort to be made by the company is proportionate.

Likewise, with the aim of promoting and facilitating the provision of remote services in those sectors, companies or jobs in which this was not previously envisaged, the Royal Decree-Law provides that, exceptionally, the obligation to carry out a risk assessment (Article 16 of the Occupational Risk Prevention Act) will be understood to have been fulfilled through a self-assessment carried out voluntarily by the worker him/herself.

F. Right to adapt working conditions and reduce working hours due to exceptional care circumstances related to COVID-19:

Finally, a particular and specific regulation is established for both the right to reduce the working day and the right to adapt it, aimed at ensuring the possibility of workers being able to take time off work when faced with the need to attend to their dependents.

Firstly, it specifies that employees who can prove the existence of a duty of care with regard to their spouse or partner, as well as with regard to relatives by blood up to the second degree of the worker, will have the right to access the adaptation and/or reduction of the working day under the special terms provided for in the Royal Decree-Law only in the event of exceptional circumstances related to the COVID-19.

The Royal Decree-Law itself clarifies that the aforementioned exceptional circumstances will be understood to apply in the following three situations:

i. When the presence of the worker is necessary to care for any of the aforementioned persons who, for reasons of age, illness or disability, require direct personal care as a result of the COVID-19.

ii. When there are decisions adopted by government authorities related to the COVID-19 that involve the closure of educational centers or of any other nature that provide care or attention to the person in need of them.

iii. When the person who until now had been in charge of the direct care or assistance of the persons mentioned above could no longer do so for justified reasons related to the COVID-19.

Specifically, and with respect to the right to adapt the working day, the following qualifications are established:

i. The initial specification of the adaptation of the working day is the responsibility of the worker, and it must be justified, reasonable and proportionate, while taking into account both the specific care needs that the worker himself must provide - which he must duly accredit - and the organizational needs of the company.

ii. The company and the worker must make every effort to reach an agreement.

iii. It is specified that the right to adapt the working day may consist of changing the shift, altering the timetable, applying a flexible timetable, a split or continuous working day, changing the workplace, changing functions, changing the way the work is done, including teleworking, or any other change in conditions that is available in the company and that can be implemented in a reasonable and proportionate way.

As regards the right to a reduction in the working day, the provisions of Article 37.6 and 37.7 shall mainly apply, with the following particularities:

i. It must be communicated to the company 24 hours in advance.

ii. No minimum or maximum percentage of the working day shall be applicable, and it may even reach one hundred percent of the working day.

iii. The requirement set forth in Article 37.6 ET, consisting of the fact that the family member requiring attention and care does not carry out a paid activity, shall not be taken into account.

Finally, the Royal Decree-Law provides for the possibility that those workers who are already enjoying an adaptation or reduction of the working day due to the care of children or family members, or any of the conciliation rights provided for in the labour law, may temporarily waive them or modify the terms of their enjoyment, provided that the exceptional circumstances specified above are met, and it is presumed that, unless there is evidence to the contrary, the request is justified, reasonable and proportionate.

III.Measures in the field of taxation

Suspension of deadlines in the field of taxation:

The main measures taken are as follows:

i. The approved regulations establish a specific framework for time extensions in the tax area. This implies an exception to the general rule of general suspension of administrative deadlines approved in Royal Decree 463/2020, amended in this sense by RD 465/2020 of 17 March 2020.

ii. The most relevant consequence is that tax returns, including information returns, must continue to be filed normally. Consequently, the payment obligations within the legal deadlines foreseen in relation to tax self-assessments (VAT, Income Tax, IRNR etc...) remain unchanged. The only nuance to be made is the possibility of deferral without interest for three months for companies with a turnover of less than 6,010,121.04 euros approved by Royal Decree Law 7/2020.

iii. The payment deadlines for debts already settled by the Administration, for debts in execution, for deadlines due to debt deferral agreements or fractioning or for auction procedures carried out by AEAT are extended until the 30th of April of 2020. In the event that such settlements or agreements to divide debts are notified from now on, their term is extended until the 20th of May, unless the legal term expires at a later date, which in this case prevails.

iv. The deadlines for attending to requests, seizure procedures, requests for information, opening of the procedure for allegations already communicated as of 18th of March are extended until 30th of April. In the event that they are communicated from now on, the period for answering them is extended until the 20th of May, unless the legal period expires at a later date, which in this case prevails.

v. The taxpayer can, in any case, reply to the tax demands with full validity.

vi. In the case of compulsory proceedings, property guarantees will not be enforced until the 30th of April.

vii. The period from the 18th of March to the 30th of April shall not be counted for the purposes of the maximum duration of tax proceedings, nor shall it have any effect on the prescription or expiry of such proceedings.

viii. In the area of economic-administrative appeals and claims, the period for their filing is extended and will begin to be counted as from the 30th of April. The rule does not clarify whether, in addition to referring to cases of tax acts that are notified from now on, it is also applicable to those that have already been notified and where the period for filing them has not yet expired on 18 March. We must understand that the deadline for filing would be extended to 30 April in these cases, but the rule is not explicit on this point.

ix. Similar measures are established in relation to procedures related to the General Directorate of Cadastre.

IV. Changes in Corporate law

The Royal Decree-Law introduces various measures in the field of corporate law, mainly aimed at avoiding the paralysis of the companies' governing bodies and at extending the deadline for compliance with certain obligations, such as those relating to the annual accounts. Among these, the following are noteworthy:

i. Telematic sessions: although the Articles of Association do not provide for this possibility, the meetings of the Board of Directors, or of the Committees, if any, may be held telematically during the period of the state of alarm, provided that video and sound are available. The venue shall be understood to be the registered office (domicile of the company).

ii. Although not set forth in the Company's Bylaws, resolutions of the Board of Directors or delegated bodies may be held in writing and without a meeting if so requested by the Chairman or two members of the Board of Directors. The resolution will be understood to have been taken at the company's registered office.

iii. The period for drawing up the annual accounts of the companies is suspended, which may be done up to 3 months after the alarm is lifted. If the accounts have already been drawn up, the deadline for auditing them is extended by two months from the end of the state of alert.

iv. The General Meeting of Shareholders must meet to approve the annual accounts within three months of the date on which the accounts were drawn up, even if that date was set in accordance with the above-mentioned extension of the deadline for drawing up the accounts.

v. The administrative body may modify the date of the call or cancel the meetings already called which are to be held during the state of alert period. In the event of disconnection, they must be called again within the month following the end of the said period.

vi. The Notary may also attend the meetings telematically.

vii. In the event of a cause for dissolution of the company before or during the warning period, the legal period for convening the general meeting that is to decide on the dissolution or on the adoption of alternative measures is suspended until the end of the warning period.

viii. If the legal or statutory cause for dissolution occurs during the alarm period, the directors are not liable for the company's debts incurred during that period.

The Royal Decree-Law includes other amendments, such as the suspension of the exercise of the right to separate members, or the reimbursement of their contribution to cooperative members. It also modifies various aspects of the functioning of the governing bodies of listed companies.

V. Bankruptcy law issues

The Insolvency Law establishes the obligation to present an application for insolvency proceedings within a period of 2 months from the date on which the situation of insolvency is known or should be known.

However, the Royal Decree-Law includes measures to interrupt this and other deadlines, so that the debtor who is in a state of insolvency is not obliged to apply for a declaration of bankruptcy and is not affected by the applications for bankruptcy submitted by the creditors.

Thus, on the one hand, the debtor is exempted from submitting the application for voluntary bankruptcy within the aforementioned two-month period, while the state of alert lasts. Likewise, no applications for bankruptcy proceedings will be accepted during the state of alert or during the two months following its completion. In addition, the applications for voluntary bankruptcy presented will be processed in preference to those of necessary bankruptcy even if the latter is of an earlier date.

During the state of alert, the debtor who has presented a communication to the Court of the beginning of the negotiations with the creditors to reach a refinancing agreement, a judicial payment agreement or to obtain the adhesion to a proposal (the so-called "pre-competition" of art. 5bis of the Insolvency Law), is not obliged to apply for the insolvency proceeding even if the term of said negotiation has expired (3 months from the communication to the Court plus 1 month to present the insolvency proceeding application).

VI. Mortgage moratory

Mortgage debt moratorium for the acquisition of a primary residence:

The Royal Decree-Law has approved measures to allow mortgage debtors who meet certain conditions to obtain a moratorium on the payment of the mortgage loan. In the following paragraphs we briefly explain the main features of the mechanism:

Beneficiaries:

Debtor, guarantor or guarantor who, on 18 March, is in one of the following situations of economic vulnerability:

i. becomes unemployed or, in the case of an entrepreneur or professional, suffers a substantial loss of income or a substantial drop in sales.

ii. the total income of the members of the family unit does not exceed, in the month prior to the application of the moratorium, in general, the limit of three times the monthly Public Indicator of Multiple Effects Income ("IPREM"). This limit shall be increased for each dependent, whether due to disability, minority or old age.

iii. That the mortgage payment, plus basic expenses and supplies, is greater than or equal to 35 percent of the net income received by all members of the family unit.

iv. That, as a result of the health emergency, the family unit has suffered a significant alteration in its economic circumstances in terms of efforts to access housing, in the following magnitudes:

(a) when the effort represented by the mortgage burden on household income has been multiplied by at least 1,3; or
(b) there has been a fall of at least 40 % in sales.

Procedure:
The moratorium is not granted ope-legis, but must be requested before 3 May (extendable), providing the supporting documentation foreseen in the Royal Decree-Law.

Once the request has been made, the creditor institution will proceed to implement it within a maximum period of 15 days, informing the Bank of Spain of the measure adopted and its duration for accounting purposes, as well as of the fact that it has not been included in the calculation of risk provisions.

Consequences:
The request for a moratorium will lead to the suspension of the mortgage debt during the period stipulated for it:

i. It will not be possible to demand the payment of the mortgage quota, nor of any of the concepts that compose it (capital or interests), neither completely, nor in a percentage.
ii. Nor will ordinary interest or moratoriums be accrued.
iii. Non-application of the early maturity clause.

Guarantors and sureties affected by the same circumstances that would allow them to qualify as beneficiaries of a mortgage moratorium if they were the principal debtor may claim the benefit of exemption from the bank, even if they have waived it.

If the moratorium were to take the form of a novation of the mortgage loan, the deed would be exempt from AJD.

VII. Liquidity guarantees to sustain economic activity

Guarantee of liquidity to sustain economic activity in the face of transitory difficulties resulting from the situation generated by COVID-19:

The Royal Decree-Law approves a line of guarantees for companies and self-employed workers to alleviate the economic effects of COVID-19, for a maximum amount of 100,000 million euros, but it leaves the establishment of the requirements to be met to obtain them for further regulatory development.

In this sense, the Royal Decree-Law approves:

i. An extension of the net debt limit of the Instituto de Crédito Oficial by 10 billion euros, in order to provide additional liquidity to companies, especially SMEs and the self-employed.

ii. On an extraordinary basis and for a period of 6 months from the entry into force of the Royal Decree-Law, the creation of an insurance coverage line of up to 2,000 million euros is authorized, to be charged to the Internationalization Risk Reserve Fund. The conditions for accessing this line are as follows:

(a) Working capital loans necessary for the exporting company are eligible, without the need for a direct link to one or more international contracts, provided that they respond to new financing needs and not to pre-crisis situations.

(b) The beneficiaries will be Spanish companies considered SMEs as defined in Annex I of Commission Regulation EU 651/2014, as well as other larger companies, provided that they are non-listed entities, in which the following circumstances apply:

- That they are internationalised companies or companies in the process of internationalisation, as they meet at least one of the following requirements:

- companies in which international business, as reflected in their latest available financial information, represents at least one third (33 %) of their turnover, or
- companies that are regular exporters (those companies that have regularly exported during the last four years according to the criteria established by the Secretary of State for Trade).

- That the company faces a liquidity problem or lack of access to financing as a result of the impact of the COVID-19 crisis on its economic activity.

(c) Those companies in a situation of bankruptcy or pre-bankruptcy are expressly excluded, as well as those companies with incidences of non-payment with public sector companies or debts with the Administration registered prior to December 31, 2019.

VIII. Suspension of the regime of liberalisation of certain direct investments in Spain

The Royal Decree-Law seeks to protect the ownership of Spanish companies in strategic sectors in the current situation created by COVID-19, especially in a situation where, as a result of the deteriorating economic scenario, they could become targets for cheap purchase by foreign investors.

Foreign direct investments in Spain are deemed to be those made by residents of countries outside the European Union and the European Free Trade Association when the investor holds a stake of 10% or more in the capital of the Spanish company, or when as a result of the transaction the investor has an effective holding in the management or control of the company.

Thus, foreign direct investments in Spain that are made in the sectors mentioned below and that affect public order, security and public health are subject to authorization:

a) Critical infrastructures, whether physical or virtual (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructures, and sensitive facilities), as well as real estate that is key to the use of such infrastructures

(b) Critical technologies and dual-use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies

(c) Supply of critical inputs, in particular energy (electricity and hydrocarbons sector), or those related to raw materials, as well as food security

(d) Sectors with access to or control over sensitive information, in particular personal data

(e) The media.

The regime of liberalization of foreign direct investment in Spain is also suspended in the following cases:

(a) If the foreign investor is directly or indirectly controlled by the government (including public bodies or the armed forces) of a third country.

(b) If the foreign investor has made investments or participated in activities in the sectors affecting security, public order and public health in another Member State.

(c) Whether administrative or judicial proceedings have been initiated against the foreign investor in another Member State or in the home State or in a third State for criminal or illegal activities

The Government may suspend the regime of liberalisation of foreign direct investment in Spain in those other sectors not covered above when they may affect public security, public order and public health. Investments carried out without the required prior authorisation will be invalid and without legal effect. The suspension will be in force until the Council of Ministers decides to lift it.

IX. Suspension of the expiration period of the registry entries

The second, third and fourth additional provisions of Royal Decree 463/2020, of 14 March, which declared the state of alert for the management of the health crisis situation caused by COVID-19, decreed the suspension of the administrative deadlines, procedural deadlines and the periods of prescription and expiry of any actions and rights.

This Decree, in order to fully safeguard citizens' rights, suspends, for the duration of the state of alert and, where appropriate, any extensions thereof, the expiry period of the registry entries until the necessary provisions can be made for the corresponding registration, extension or cancellation, and the calculation thereof shall be resumed on the day following the end of the state of alert or its extension.

X. Consumer rights measures

A. Guarantee in electronic communications services:

The Royal Decree-Law aims to ensure the possibilities of communication of persons, taking into account existing confinement measures. Thus, on the one hand, it obliges companies providing electronic communication services to maintain such services contracted by their customers on the date of the start of the alarm state, without being able to interrupt them, even if the corresponding contract provides otherwise, except in cases that affect the integrity and security of the networks and the services themselves.

Similarly, Telefónica de España, S.A.U., as the electronic communications service provider designated to provide the universal telecommunications service, must guarantee the provision of the elements that make up the universal telecommunications service and must maintain, as a minimum, the current set of beneficiaries, the quality of the provision of the set of services that make up the universal service, as well as the conditions under which it currently guarantees the affordability of the service. Thirdly, ongoing portability operations are suspended (except in exceptional cases), and companies are prohibited from carrying out extraordinary commercial campaigns to attract new electronic communications customers, if they entail the need for portability.

B. Extraordinary measures taken with regard to the return of goods:

By means of this Royal Decree Law, it is agreed to interrupt, during the validity of the State of Alarm or of its possible extensions, the terms for the return of the products bought by any modality, either in person or online.

Said interruption refers, therefore, to both the period that retailers have voluntarily established in the regime of exchanges and returns applicable to a product acquired in their physical establishment, as well as the period for the exercise of the right of withdrawal that is legally granted to consumers in distance sales.

Although this measure is justified in order to prevent consumers from travelling, given the terms used, it should be understood that the suspension also operates in those cases in which it is the trader himself who offers to collect the product from the consumer's home without the need for the consumer to travel.

XI. Measures in the field of administrative contracting

Article 34 of the Royal Decree-Law provides for a series of measures aimed at public sector contracts for services, supplies, works and concessions whose execution becomes impossible as a result of COVID-19 or measures adopted by the authorities.

These measures will also apply to contracts relating to the so-called "excluded sectors", but will not apply to the following service and supply contracts

i. Contracts for services or supplies in the health, pharmaceutical or other fields linked to the COVID-19 crisis.
ii. Contracts for security, cleaning or computer systems maintenance services.
iii. Contracts for services or supplies necessary to ensure the mobility and security of transport infrastructures and services.
iv. Contracts awarded by public entities that are listed on official markets and do not receive income from the General State Budget.

A. Service and supply contracts for successive deliveries:

In the case of public service and supply contracts for the provision of successive services, it is established that they will be suspended (although the first rule states that they will be automatically suspended from the moment the factual situation that prevents their provision arises and until it can be resumed following notification by the contracting authority) if the contractor submits a request to the contracting authority specifying this:

- the reasons why performance of the contract has become impossible;
- the staff, premises, vehicles, machinery, installations and equipment assigned to the execution of the contract at that time; and
- the reasons that make it impossible to employ the means in another contract.

These circumstances may be subject to subsequent verification by the Administration, and negative silence is expected within 5 calendar days.

In this case, only the following damages must be paid to the contractor.

(1) The salary expenses that the contractor would have effectively paid to the personnel who were assigned on the 14th of March of 2020 to the ordinary execution of the contract, during the period of suspension.

(2) Expenses for the maintenance of the definitive guarantee, relating to the period of suspension.

(3) Expenses for rental or maintenance costs of machinery, installations and equipment related to the period of suspension of the contract, directly assigned to the execution of the contract, provided that it is proven that they could not be used for other purposes during the suspension.

(4) The expenses corresponding to the insurance policies provided for in the specifications and linked to the object of the contract.

The provisions of the general regime for the suspension of administrative contracts will not be applicable to these suspensions, given that this includes, among other aspects, compensation of 3% of the service that should have been provided by the contractor during the period of suspension, and could be a cause for termination of the contract.

It is also envisaged that exceptional extension of the contract may be agreed when the contracting authority is unable to carry out a new contract for the same object.

B. Other service and supply contracts:

In the case of public service and supply contracts other than the above, provided that these have not lost their purpose as a result of the situation created, if the contractor is late but offers to comply if the deadline is extended, the contracting authority will grant it after receiving the corresponding reports, giving it a period that will be at least equal to the time lost for the aforementioned reason, unless the contractor requests a shorter one.

No penalties shall be imposed on the contractor or the contract shall be terminated.

In this case, the contractors will be entitled to the payment of additional salary expenses up to a maximum of 10 per cent of the initial contract price.

C. Construction Contracts:

In public construction contracts that have not been rendered null and void by COVID-19, the contractor may request suspension. This request must be answered within 5 calendar days, and if not, there will be negative silence.

The request must reflect the reasons why execution has become impossible; the personnel, premises, vehicles, machinery, installations and equipment assigned to the execution of the contract at that time; and the reasons why it is impossible for the contractor to use the means mentioned in another contract.

Nor does the general regime for the suspension of contracts apply here. In the case of works contracts where the deadline is set to expire from 14 March, and for the duration of the alarm state, the contractor may request an extension of the final delivery deadline provided that he offers performance if the initial deadline is extended.

Once the suspension or extension of the deadline has been agreed, only the following items will be compensated:

(1) The salary expenses actually paid by the contractor to the personnel assigned to the ordinary execution of the contract, during the period of suspension.

The salary expenses to be paid, in accordance with the VI General Collective Agreement for the Construction Sector 2017-2021, published on 26 September 2017, or equivalent agreements agreed in other areas of collective bargaining, shall be the base salary referred to in article 47.2.a of the collective agreement for the construction sector, the disability supplement in article 47.2.b of the aforementioned agreement, and the extraordinary bonuses in article 47.2.b, and holiday pay, or their respective equivalent items agreed in other collective agreements in the construction sector.

The expenses must correspond to the personnel indicated that was assigned to the execution before March 14 and continues to be assigned when it resumes.

(2) Expenses for maintenance of the definitive guarantee, relating to the period of suspension of the contract.

(3) Expenses for rental or maintenance costs of machinery, installations and equipment provided that the contractor accredits that these means could not be used for purposes other than the execution of the suspended contract and that their amount is less than the cost of the termination of such rental or maintenance contracts for machinery, installations and equipment.

(4) The expenses corresponding to the insurance policies provided for in the specifications and linked to the object of the contract that have been taken out by the contractor and are in force at the time of the suspension of the contract.

The indemnity requires the contractor to prove that the following conditions are met:

- That the main contractor, the subcontractors, suppliers and providers that he has contracted for the execution of the contract are up to date with the fulfilment of their labour and social obligations, as of 14 March 2020.
- That the main contractor is up to date with its payment obligations to its subcontractors and suppliers under the terms of Articles 216 and 217 of Law 9/2017 on Public Sector Contracts, as of March 14, 2020.

D. Concession contracts for works and services:

In the case of public contracts for works concessions and service concessions, the concessionaire shall be entitled to restore the economic equilibrium of the contract by extending its initial term by a maximum of 15 per cent or by amending the economic clauses in the contract, as appropriate.

This rebalancing requires their application and proof of the damage, and will compensate the concessionaires for the loss of income and the increase in costs incurred, including any additional salary expenses they may have actually paid, compared to those foreseen in the ordinary execution of the works or service concession contract during the period of the de facto situation created by COVID-19.

These estimates shall be made only if the contracting authority, at the request of the contractor, finds that it is impossible to perform the contract.

XII. Support to social services and social promotion

A. Social Services:

The Royal Decree-Law provides for the transfer of 300 million euros to the Autonomous Communities and Cities to meet extraordinary needs arising from COVID-19 by financing projects and labour contracts necessary for the development of the following benefits by such Communities and Cities, Councils and Municipalities: Reinforcement of local services (home help), increase and reinforcement of the operation of tele-assistance devices, home delivery of parasanitary services, reinforcement of homeless care devices, reinforcement of the staff of social services centres and residences, acquisition of prevention means, provision of aid to families (emergency situations or reinsertion) and reinforcement of other social assistance services.

The criteria for the distribution of this fund among the Autonomous Communities and Cities are established, with the population fund having the greatest weight (90%), followed by the area fund (5%).

Furthermore, the allocation of the surplus of local entities corresponding to 2019 is authorised to finance expenditure on social services and social promotion, including the services listed above.

B. Guarantee of basic supplies:

During the month following the entry into force of the Royal Decree (i.e. until 18 April 2020), suppliers of electricity, natural gas and water may not suspend the supply of consumers who are vulnerable, severely vulnerable or at risk of social exclusion (as defined in articles 3 and 4 of Royal Decree 897/2017).

The validity of the social bond is also extended until 15 September 2020 for those beneficiaries of the bond who were due to receive it before that date. The application of the systems for updating regulated prices for bottled or channelled liquefied petroleum gases (i.e. butane, propane) and natural gas is also suspended (with no express indication as to when).

For the former, the maximum prices set in January will remain in force; for the latter, the tariff of last resort set in December 2019 will remain in force.

MARIMÓN
ABOGADOS

Marimón Abogados is a law firm founded in 1931 that offers legal services in all areas of law and has offices in Barcelona, Madrid and Seville.

For further information, please get in touch with our lawyers, all the members of our law firm are available to assist you.

Barcelona -
Aribau, 185
08021
Tel.:+34 934 157 575

Madrid -
Paseo de Recoletos, 16
28001
Tel.: +34 913 100 456

Sevilla -
Balbino Marrón, 3
Planta 5ª-17
(Edificio Viapol)
41018
Tel.: +34 954 657 896

www.marimon-abogados.com