

*Measures regarding  
Litigation law adopted  
with the approval of  
Royal Decree Law  
16/2020 of 28th April*

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With the approval of Royal Decree 463/2020, of 14th March, which declared the state of alarm for the management of the health crisis situation caused by COVID-19 ("Royal Decree 463/2020"), among many other issues, the suspension of terms and deadlines was enacted, for those court proceedings that were not "essential" to guarantee the fundamental rights of citizens.

In order to reactivate the normal functioning of the Courts and Tribunals, to ensure a swift handling for all suspended law suits, to avoid the collapse of the Administration of Justice with the significant increase in litigation that is expected as a direct consequence of the state of alarm and to offer measures that guarantee the safety distance in the development of court activity, the Council of Ministers has passed a Royal Decree Law that establishes various procedural and organisational measures to this effect: Royal Decree Law 16/2020, of 28th April, on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice ("Royal Decree Law 16/2020").

Without aiming to be exhaustive, below we highlight the main novelties included in Royal Decree Law 16/2020 for civil proceedings related to Business law:

**a) Procedural activity in the month of August (Article 1):**

The days 11th to 31st August 2020 (except Saturdays, Sundays and public holidays) are declared as working days for all procedural actions.

**b) Resumption of the calculation of suspended procedural terms (Article 2.1):**

The terms and procedural deadlines that have been suspended in Royal Decree 463/2020 will be reset from the beginning, counting from the moment the suspension will have ceased to have effect.

No mention is made to the effects that the termination of the suspension agreed in Royal Decree 463/2020 will have on the prescription and limitation (which had also been suspended by that decree).

The absence of a mention in Royal Decree Law 16/2020 in this regard should lead to the conclusion that, unless subsequently regulated, the terms for limitation and prescription should be understood as being merely interrupted, without it being possible to restart their calculation when the suspension is lifted, which, moreover, seemed to be obligatory.

**c) Extension of the term for appealing against Court decisions notified during the state of alert (Article 2.2):**

The term for lodging an appeal against judicial decisions that have been notified while the suspension of the procedural terms, enacted by Royal Decree 463/2020, is in force, as well as against judicial decisions notified within twenty working days as from the lifting of the suspension, will be extended by a term equal to that foreseen for this purpose.

Although there does not seem to be a logical reason for this, a clear difference has resulted between court decisions that have been notified before the declaration of the state of alert (which will simply have the “ordinary” term for lodging an appeal once the suspension is lifted) and court decisions that have been notified during and immediately after the state of alert (which will have twice the term for lodging an appeal).

d) The contesting of procedures for temporary employment regulation (ERTEs) shall be dealt with in accordance with the procedure established for collective disputes (Article 6):

Claims that may be filed related to suspensions and reductions of working hours adopted in application of the provisions contained in Article 23 of Royal Decree-Law 8/2020, of 17 March (the ERTes for objective causes), provided that the measures affect more than five workers, shall be processed in accordance with the procedural modality of collective disputes.

The representative commission of employees, provided for in the employment legislation passed to mitigate the effects of COVID-19, is entitled by law to contest the adoption of temporary employment regulation measures.

e) Preferential dispatching of certain procedures in civil matters (Article 7):

Pursuant to Royal Decree-Law 16/2020 until 31st December 2020 the following procedures shall be processed in a preferential manner:

In the civil jurisdiction:

i. The law suits derived from the lack of recognition by the lending entity of the legal moratorium on home mortgages and on mortgages on real estate property dedicated to economic activity.

No specific procedure for this type of claim has been enacted to date. Consequently, we cannot rule out the possibility of disparities in the interpretation regarding the application of preference when, as can be expected, the moratorium is asserted by the respondent in the defence plea or even in a counterclaim.

ii. Law suits arising from any claims that may be brought by tenants on the basis of the landlord's failure to apply the legally prescribed moratorium or mandatory extension of the lease.

In the same sense as in the previous case, it is unclear whether the preferential treatment will extend to those lease-related law suits in which the non-application of the moratorium or lease-extension is brought up by the defendant in the defence plea or in a counterclaim, which, again, seems very likely.

iii. Bankruptcy proceedings of debtors who are natural persons and who do not have the status of entrepreneurs.

It is striking that no priority has been foreseen to the bankruptcy proceedings of one of the groups that have undoubtedly been most affected during the state of alert: the self-employed.

**In the contentious-administrative order:**

i. Appeals against acts and resolutions of public authorities that refuse to grant the aids foreseen to alleviate the economic effects of COVID-19.

**In the social jurisdiction:**

i. Law suits for dismissal or termination of contract.

ii. Those law suits arising from the procedure relating to the recovery of working hours not rendered during the recoverable paid leave provided for in Royal Decree Law 10/2020.

iii. The law suits for application of the MECUIDA plan in Article 6 of Royal Decree Law 8/2020.

iv. The law suits for any individual, collective or ex officio contesting of temporary employment regulation measures on the grounds stipulated in Royal Decree Law 8/2020.

v. Those law suits that are brought forward to make effective the modality of work from the home office or the adaptation of the working conditions foreseen in the Royal Decree Law 8/2020 itself.

Neither the order of priority between these judicial proceedings, nor the extent of this preference in relation to the rest of the proceedings, is established. The absence of such clarifications may result in the processing of the remaining court cases being significantly delayed until 2021 if the volume of proceedings declared to be preferential is very high.

**f) Adoption of bankruptcy and corporate measures (Articles 8 to 18):**

Given the great importance of the measures adopted regarding insolvency matters, they have been addressed in a specific newsletter from us: *Urgent Measures regarding Insolvency matters approved in Royal Decree Law 16/2020*.

**g) Holding of procedural acts by means of telematic presence (Article 19):**

As far as possible, Royal Decree Law 16/2020 encourages the telematic holding of all procedural acts, except in the criminal jurisdiction order in which the physical presence of the accused will be necessary in trials for serious crimes.

**h) Creation of judicial bodies related with COVID-19 (Article 24):**

The Ministry of Justice may transform the judicial bodies that are pending to enter into operation into judicial bodies that deal exclusively with procedures associated with COVID-19.

This is not the first time that specialised courts have been set up when an increase in litigation is anticipated or occurs in certain areas, as was the case, with satisfactory results, with the creation of the courts specialising in abusive mortgage loan terms.

However, the practical effectiveness of the measure may be limited if, as we have mentioned, in many cases the application of the special rules issued on the occasion of the current crisis is raised by the defendant in the defence plea or by counterclaim, when it is no longer possible to refer the law suit to the specialised court.

In conclusion, this is a heterogeneous set of measures which, without prejudice to the doubts that have been set forth, may be useful for facilitating the resumption of the judicial activity. However, additional measures of greater impact would have been desirable, in line with those that were proposed by the different legal operators involved in the Administration of Justice - simplification of procedures, establishment of special procedures for litigious matters directly arising from the current health crisis.



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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.

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