Recent key developments in the area of Spanish financial regulation

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Royal Decree-law passing certain emergency measures in the economic and public health spheres (Royal Decree-law 6/2020, published in the *Official State Journal* on March 11th, 2020)

The Royal Decree-law introduces a number of economic measures, which in turn imply the amendment of the following laws:

- Law 1/2013 (of May 14th, 2013) on measures for reinforcing mortgage holder protection, debt restructurings and social rent:

    - The suspension of house foreclosures has been extended by a further four years to May 2024. The amendments clarify that the suspension is effective regardless of who stands to benefit from the foreclosure (natural or legal person) and not only when that party is the creditor or anyone acting on behalf of the creditor.

    - The universe of potential beneficiaries has been extended, adding single-parent households with just one minor in their care to the category of particularly vulnerable parties.

    - The threshold on maximum household income used as the reference for determining vulnerability as a function of the number of children and whether or not the household is a single-parent household has been increased.

- Royal Decree 84/2015 (of February 13th, 2015) implementing Spanish Law 10/2014 (of June 26th, 2014), on the regulation, supervision and solvency of credit institutions. The type of existing financial institutions that can apply for transformation into banks has been broadened to include, in addition to credit cooperatives and specialised lending institutions, securities firms, payment institutions and electronic money institutions.

- Law 9/2012 (November 14th, 2012) on the restructuring and resolution of credit institutions. With respect to the legal regime governing the management company for the assets deriving from bank restructuring, SAREB for its acronym in Spanish, credit institutions will not qualify for dissolution if their equity falls below one half of their share capital.

Royal Decree-law on extraordinary urgent measures for mitigating the economic and social impacts of COVID-19 (Royal Decree-law 8/2020, published in the *Official State Journal* on March 18th, 2020)

The key measures passed by means of this piece of legislation are:

1. Moratorium on payments for mortgages taken out to finance the acquisition of a primary residence:

    - Applicable to loan or credit agreements secured by real estate mortgages whose borrower or guarantor falls into one of the economically vulnerable categories defined in the legislation itself, namely:

        a. The mortgage holder has been made redundant or, if a business or freelancer, has sustained a substantial loss of income or drop in sales (of at least 40%).

b. The aggregate income of the members of the household unit does not exceed during the month prior to application for the moratorium the sum equivalent to three times the so-called multiple purpose public income indicator (IPREM for its acronym in Spanish). This figure is grossed up by a factor of 0.1 for each minor or person over the age of 65 in their care (0.15 per child in the case of single-parent households). However, the factor increases to 4 times in the case of disability, dependence or permanent incapacity to work of any member of the household unit and to 5 times in the case of certain instances of borrower disability.

c. Mortgage instalments that are equivalent to 35% or more of the aggregate after-tax income received by the members of the household unit.

d. The household unit, as a consequence of the health emergency, has experienced a change in economic circumstances vis-à-vis housing affordability.

- Borrowers can apply for a moratorium from the day after publication of the legislation and the banks have a deadline of two weeks to implement it. The banks will inform the Bank of Spain of any such developments so that the affected mortgages are not considered for provisioning purposes.

- The moratorium application will imply the suspension of the mortgage debt for the term stipulated and the waiving of the prepayment clause such that the lending institution may not enforce mortgage or related payments or levy ordinary or late payment interest.

- The legislation contemplates consequences for debtors who benefit from the moratorium without meeting the requirements or who purposely manipulate qualification for any of the grounds for 'economic vulnerability'.

2. Liquidity guarantee to keep businesses going:

   - The Ministry of Economic Affairs and Digital Transformation will provide guarantees for financing granted by credit institutions, specialised lending institutions, electronic money institutions and payment institutions. The maximum size of this scheme is 100 billion euros.

   - The limit on net borrowings allowed for Spain's Official Credit Institute, ICO for its acronym in Spanish, to facilitate the provision of additional liquidity to businesses, particularly SMEs and the self-employed, has been expanded by 10 billion euros. The provision of that liquidity will take the form of short-, medium and long-term ICO financing lines to be intermediated by the financial institutions, in keeping with their direct financing policies for larger-sized enterprises.

   - Farm owners who took on loans as a result of the consequences of the drought of 2017 are to be able to negotiate with their banks the extension of the repayment of those loans by up to one year (potentially a grace period).

3. Foreign direct investment in Spain: To prevent companies from outside of the European Union and the European Free Trade Association from taking advantage of the sharp corrections in share prices to take control of strategic businesses, the regime deregulating direct foreign investment in Spain has been suspended in certain sectors to the extent that an investment leads to the investor taking an ownership interest of 10% or implies the assumption of control. The above suspension applies to all other companies in certain instances, if the foreign investor is controlled directly or indirectly by a third country government.

4. Company measures:

   - During the state of emergency, even if not contemplated in their bylaws, the meetings of the governing bodies of associations, civil societies and corporate enterprises, the governing councils of cooperatives and the boards of trustees of foundations can be held via secure video call with real-time connections and sound and image for those attending remotely. Resolutions can be carried by written vote without the need for a meeting so long as the chairperson so decides and whenever at least two of their members so request. The same rules apply to meetings of steering committees and other compulsory or voluntary committees they may have set up.

- The legal deadline of three months for authorising the issue of financial statements and preparing management reports has been suspended.

- For listed companies, the legislation contemplates measures for holding annual general meetings remotely and extensions for the deadlines for publishing annual financial statements in 2020.

Royal Decree-law passing complementary emergency measures in the social and economic spheres (Royal Decree-law 11/2020, published in the *Official State Journal* on April 1st, 2020)

The key measures passed by means of this piece of legislation are:

1. Measures targeted at households and vulnerable groups:

   - Suspension of eviction proceedings and foreclosures for vulnerable households without residential alternatives.

   - Extraordinary extension of primary residence lease agreements for a maximum term of 6 months.

   - Establishment of measures for obtaining moratoriums on rent owed for economically vulnerable tenants in a primary residence, on the terms and conditions stipulated in the executive order itself.

   - Tenants in a primary residence who are economically vulnerable can ask their landlords, which may include a company, a public housing entity or an established lessor, for the temporary and extraordinary deferral of their rent if the parties have been unable to reach a voluntary agreement.

   - As for certification of the subjective conditions for benefitting from the moratorium, the law provides that if it is not possible to present a given document due to the state of emergency, an affidavit will suffice.

   - Approval of a guarantee line for state coverage of financing provided to socially and economically vulnerable tenants so that the banks can offer temporary financial assistance with repayment terms of up to six years, extendible for another four, free of all charges and interest for the applicant.

2. Mortgage moratorium:

- The scope of application of the moratorium has been expanded to include not only primary residences but also those properties affected by the economic activities carried out by business owners and professionals and residences other than the primary residence that are rented out and from which mortgage holders have ceased to collect rent (from the declaration of the state of emergency until one month after it ends).

- Definition of ‘economic vulnerability’ for the purposes of the mortgage moratorium and the non-mortgage financing arrangement:

  a. The potential beneficiary has been made redundant or, if a business or freelancer, sustained a loss of income or drop in turnover of at least 40%. The aggregate income of the members of the household unit has not changed from the earlier definition.

b. Total mortgage instalments on the properties in question plus charges and basic utilities are equivalent to 35% or more of the after-tax income received by the household unit on aggregate.

c. The household unit, as a consequence of the health emergency, has experienced a significant change in economic circumstances vis-à-vis housing affordability.

3 Non-mortgage moratorium:

- The temporary suspension of contractual obligations has been extended to any unsecured loan to the extent that the borrower is a natural person who qualifies as economically vulnerable.

- The economic vulnerability coverage has been expanded to include the suspension of obligations under non-mortgaged loans.

- Borrowers may apply to have their obligations under such loans suspended up until one month after the end of the state of emergency. Having applied for suspension and certified economic vulnerability, the lender must suspend all obligations immediately.

- As with the mortgage moratorium, effectiveness of the suspension does not require an agreement between the parties or the novation of the original agreement. However, if the credit or loan is secured by a registrable claim other than a mortgage or arranged under the so-called register of movable property instalment sales register, the extension of the repayment term implied by the suspension does have to be registered.

- Once the suspension has been applied, the lender must inform the Bank of Spain of its existence and duration. The balances due had the moratorium not been applied will not be considered in arrears. The suspension will apply for three months, with scope for extension via a resolution by the Spanish Cabinet.

- In the event of a contract novation by virtue of an agreement between the lender and borrower in order to modify aspects other than the suspension of obligations, the novation must reflect the suspension and the non-accrual of interest during the term thereof.

- At any rate, during the period of the state of emergency and until freedom of mobility has been fully restored, it will not be possible to place the above deeds on public record, a fact that will not negatively impact the automatic application of the moratorium.

- Suspension of the contractual obligations will take effect from application by the borrower to the lender, duly accompanied by the required documentation, by any means.

- During the term of the suspension agreement, the lender may not demand the payment of instalments (principal or interest), in part or in full. The lenders may not accrue any ordinary or late-payment interest.

- The date of maturity agreed in the contract shall be understood to be automatically extended as a result of the suspension by the duration thereof without modifying the rest of the agreed-upon terms and conditions.

4. Supervisory and penalty regime: Every working day, the lenders supervised by the Bank of Spain must send the latter certain information related to the preceding working day.

5. Other matters:

- Ability to draw on pension plans in the event of unemployment or business shutdown as a result of the health crisis:

During six months from the declaration of the state of emergency, pension plan holders may, exceptionally, monetise their vested rights in the following instances: (i) they find themselves out of work as a result of the furlough scheme; (ii) they are the owner of an establishment not allowed to open to the public; and, (iii) they are duly-registered self-employed individuals who have discontinued their activities.

- Amendment of Royal Decree-law 8/2020:
  - The scope of application of the mortgage moratorium is aligned with that established in Royal Decree-law 11/2020.
  - The amendments add specifications for applying the suspension: Agreement between the parties or a novation is not required for effectiveness but the deeds must be placed on public record and registered with the Property Registry.
  - If a novation is agreed, clauses addressing the suspension of the contractual obligations and non-accrual of interest must be added.
  - Establishment of a period of three months for the suspension of mortgage debt from application of the moratorium.
  - The lenders that are supervised by the Bank of Spain must send it the same information as is contemplated in Royal Decree-law 11/2020, adding the number of loans for which the borrower has asked to have the suspension legally certified.
  - The cost of raising the mortgage moratorium to public deed must be borne by the lender and will be subsidised by 50% in certain instances.
  - Additional extraordinary measures applicable to private-law legal persons and the workings of the governing bodies of listed companies.
  - The term of effectiveness of Royal Decree-law 8/2020 is one month after the end of effectiveness of the state of emergency, irrespective of the measures contemplated with a specific duration. Notwithstanding the foregoing, the term of effectiveness of the measures contemplated in Royal Decree-law 8/2020 can be extended by the Spanish government.
- Amendment of Law 19/2003: Suspension of the regime deregulating direct foreign investment in Spain.
- Amendment of Law 35/2003: Collective investment undertaking management companies are required to reinforce the liquidity of the portfolios under their management and the percentage invested in highly liquid assets. The Spanish securities market regulator (the CNMV) is allowing those same management companies to stipulate a notice period for redemptions from the portfolios under their management (not subject, however, to other constraints such as holding terms, minimum amounts or contemplation in the management rules).
- Amendment of Law 26/2013: Banking foundations pursuing divestment programmes as part of diversification strategies can choose to extend the deadline for meeting their disposal objectives by as much as two years. If they do so, the foundations must set up a reserve fund, to which they are obligated to contribute, every year for which the extension lasts, a sum equivalent to at least 50% of the amount received from investee credit institutions as a result of dividend distributions.

The measures contemplated in Royal Decree-law 11/2020 will remain in effect until one month after the end of the state of emergency. However, the measures contemplated for a specific timeframe will be bound by the latter. That said, the Spanish government can extend such measures via executive order.

Royal Decree-law on extraordinary complementary measures in support of the economy and jobs (Royal Decree-law 15/2020, published in the *Official State Journal* on April 22th, 2020)

The key economic measures passed include:

1. Economic and social measures:

   - Establishment of the terms of pension fund withdrawals.

   - In relation to the guarantee line for state coverage of financing provided to socially and economically vulnerable tenants as a consequence of COVID-19, the facility is capped at 1.2 billion euros.

2. Measures for reinforcing corporate financing:

   - Natural or legal persons who are tenants party to a lease agreement over a property for use other than as a residence may ask the lessor, which may constitute a company, a public housing entity or an established lessor, for a moratorium on the payment of rent within one month from the date of effectiveness of this piece of legislation. If the landlord does not fall into one of the above categories, the use of the security deposit as payment mechanism is permitted.

   - Application of the suspension on mortgage debt during the three-month period contemplated in Royal Decree-law 8/2020 will not be bound by the provisions of the Law regulating mortgage loan agreements.

   - The mortgage moratorium will be placed on public record unilaterally by the lender, as is the case with the moratorium on unsecured loans.

3. Amendment of Royal Decree-law 8/2020:

   - Expansion of the scope of the guarantee line to include CERSA (a public entity which provides guarantees for SMEs) and commercial paper programmes listed on the AIAF fixed-income exchange and the alternative fixed-income exchange.

   - Establishment of December 31st, 2020, as the deadline for awarding the guarantee line.

4. Amendment of Royal Decree-law 11/2020:

   - With respect to the qualification for economic vulnerability, specification that the members of the household unit are disabled must include a certified disability of a severity of 33% or higher.

   - Automatic application of the moratorium, regardless of whether the suspension has been formally arranged.

   - A rebate for 50% of notary fees for the novation of non-mortgage loans with a floor of 25 euros and a cap of 50 euros.