

COVID-19 Response: Spain

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Finance / Loan Schemes

Non-performing mortgage loans and loans not secured by a mortgage

- ▶ Banks (and other creditors) are being asked to extend payment terms of (a) mortgage loans over (i) main dwellings when the debtor is subject to economic hardship situation (vulnerabilidad económica) (ii) properties owned by entrepreneurs used to carry out their activity and who have suffer a material profit loss arising from the COVID- 19 crisis (i.e., a loss of at least 40% of their total billing) and (iii) rented dwellings other than the main dwelling's in case the mortgage debtor, owner and landlord, has ceased to receive the rent since the entry into force of the state of emergency, and up to a month since it is lifted and (b) loans and financial leasing transactions not secured by a mortgage taken out by individuals undergoing any circumstance of economic vulnerability

- ▶ NPL creditors of Spanish individual debtors of the non-performing mortgage
- ▶ Until 29 September 2020

Approved by Royal Decree 8/2020 of 17 March and modified by Royal Decree 11/2020 of 31 March

Royal Decree 19/2020

The solvency support fund

- ▶ A solvency fund has been created for the recapitalization of strategic companies, with an initial amount of €10 billion. The fund will be managed through the state-owned industrial holding company ("SPI"), by the newly created management committee to support the solvency of strategic companies
- ▶ The fund will provide public temporary support to the strategic companies that apply for it: granting profit participative loans, subordinated debt, shares subscription or other capital instruments

- ▶ Strategic companies

Royal Decree 25/2020

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Finance / Loan Schemes

Guarantees to be granted by the Ministry of Economic Affairs and Digital Transformation for bank financing

- ▶ Up to €100 billion of guarantees for banks providing additional financing to businesses to cover liquidity needs. To be coordinated by the Instituto de Crédito Oficial (ICO) public bank
- ▶ Three tranches have been released: (i) first tranche as of €20 billion (50% of the total amounts is being granted to SMEs and self-employed and the remaining 50% to large companies) (ii) second tranche as of €20 billion (100% to be granted to SMEs and self-employed) (iii) €24,500 million (€10,000 millions is being granted to SMEs and self-employed, €10,000 millions to large companies, €4,000 million is for the benefit of issuers of commercial paper and €500 million is addressed to CERSA) (iv) a fourth tranche amounting to €20,000 million (entirely for the benefit of SMEs and self-employed) and (v) a fifth tranche amounting to €15,000 million (€7.500 million to be made available for SMEs and self-employed, €5,000 million for the rest of the companies, €2.500 millions for self-employed workers of the tourism sector and €500 million for acquisition and financial or operating lease of vehicles of inland transport for professional use by companies)
- ▶ The guarantee will cover partially the amount of the operations, as follows:
 1. 80% of the new loans and refinancing of operations requested by self-employed and SMEs. In the case of large companies, the guarantee will cover 70% of the new loans and 60% of the refinancing operation
 2. 70% of the amount of the issue of commercial paper
 3. 80% if the facility is addressed to CERSA
- ▶ Those transactions over €50 million will require an independent approval from the ICO
- ▶ For more information on this guarantee line please visit [this link](#)

- ▶ Loans, renewal of loans and other type of financing granted or renewed after 17 March 2020 and until December 31, 2020, including promissory notes registered in the AIAF (*Mercado de Renta Fija de la Asociación de Intermediarios de Activos Financieros*) and the MARF (*Mercado Alternativo de Renta Fija*) and CERSA — Not applicable to the cancelation and early repayment of existing debts. The financing can not be used to pay dividends
- ▶ Borrowers must be domiciled in Spain, affected by the COVID-19 crisis and (i) not under a insolvency proceeding, insolvent as for 17 March 2020 or listed under public default record (CIRBE) as for 31 December 2019 and (ii) for loans over €1.5 million not in under an “undertaking in difficulty” (i.e., crisis situation) according to the EU commission’s regulation 651/2018. For issue of commercial paper, it is also required that the issuer had traded a program of commercial paper in MARF before April 21
- ▶ Financial institutions shall be registered and supervised by the Bank of Spain (or CNMV in its case), and therefore, the financing could not be provided by foreign funds
- ▶ Maximum amount: for transactions exceeding €1.5 million, the maximum secured amount cannot exceed either (a) two times the total employment costs, including salaries and social security contributions, or (b) 25% of total turnover. In duly justified cases, financing may cover up to 12 months of liquidity needs of the borrower

- First tranche approved on 25 March
- Second tranche approved on 10 April
- Modified by Royal Decree 15/2020 of 21 April (as updated on 19 September 2020)
- Third tranche approved on 6 May.

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Finance / Loan Schemes

ICO – general

- ▶ Up to €10 billion financing to be made available, either directly to large companies or through Spanish banks for SMEs or self-employed workers. To be implemented through the ICO's current facilities and pursuant to ICO's normal proceedings. Most common guarantee line capped at €12.5 million per year and per company and repayment periods between 1 to 20 years (with the option of a three-year grace period)

- ▶ Companies and self-employed workers that carry out their activity in Spain, regardless of (i) the location of their corporate and tax registered address and (ii) the shareholders' nationality
- ▶ For more information about this credit supplemented please [this link](#)

17 March

ICO – tourism sector

- ▶ Up to €400 million to be made available to businesses in the tourism sector. Capped at €500,000 per company per year with a fixed 1.5% interest and terms of 1-4 years (+1 year grace)

- ▶ Companies and self-employed workers operating in the tourism sector with registered office in Spain

From 17 March. Funds now exhausted.

Credit supplement by CERSA

- ▶ Up to €60 million to be made available to SMEs and self-employed workers by the Spanish Refinancing Company (*Compañía española de refinanciamiento "CERSA"*) through the "Small and Medium-Sized Enterprises Support Program"
- ▶ For more information about this credit supplement please visit [this link](#). Additionally, see the legal flash drafted by Cuatrecasas which develops the abovementioned financial aids in Spain at [this link](#)

- ▶ SMEs and self-employed workers

Approved by Royal Decree 11/2020 of 31 March

Return of the irrecoverable expenditure by ICEX:

- ▶ ICEX España Exportación is authorized to return irrecoverable expenditure to companies that have paid such expenses to take part in the international promotion activities when such activated have been cancelled, severely affected or postponed due to the COVID-19 crisis

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Finance / Loan Schemes

Insurance coverage facility charged to the Internationalization Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*)

- ▶ Up to €2 billion
- ▶ During a period of six months from 17 March 2020
- ▶ Not compatible with the ICO's guarantee

- ▶ Companies that fulfill least one of the following two requirements (i) having an international business, as appearing in the most recent financial information available, representing at least 33% of their turnover, or (ii) carrying out export transactions on a regular basis

17 March

Guarantee facility for investments

- ▶ This facility is for a maximum of €40 billion and will be available until 31 December 2020. A first tranche of €8 billion (€5 billion to be allocated to SMEs and self-employed) has been released.
- ▶ To be coordinated by the Instituto de Crédito Oficial (ICO) public bank
- ▶ The purpose is to cover needs arising from new investments and the payment of ordinary expenses and those arising from new investments
- ▶ The guarantee will partially cover the amount of the operations, as follows:
 1. 80% of the new loans and refinancing of operations requested by self-employed and SMEs
 2. 70% of the amount of the operations requested by the rest of the companies

- ▶ Type of financing benefiting from this guarantee is very broad including new loans and other type of financing. Excluding (i) payment of dividends and (ii) refinancing, restructuring, renegotiation or renewal of existing loans or cancellation on early repayments or financing to any kind of debtors. The loans shall be granted after 29 July 2020
- ▶ Maximum amount and borrowers eligibility: it applies the regulation of the ICO guarantee (slide 161 above)

Approved by Royal Decree 25/2020

Deferral of interest for loans granted by the public administrations sector

- ▶ A deferred payment of principal or interest that should have been paid within the remaining months of 2020 may be requested by companies and self-employed workers that have been granted a loan by the public administration sector (i.e., by the authorities of autonomous regions and those local authorities that belong to the public administrations)

- ▶ Companies and self-employed workers that have been granted a loan by the public administration sector

Approved by Royal Decree 11/2020 of 31 March

Facility for innovating and digitally transforming the tourism sector

- ▶ Financing facility in the form of reimbursable loans, for up to €216 million, for companies and self-employed in the tourism sector affected by COVID-19

- ▶ Companies and self-employed involved in the tourism sector that meet the obligations of RDL 15/2020

Approved by Royal Decree 25/2020

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WHEN?

Tax

Deferral of tax payments for self-employed workers and SMEs*

- ▶ Companies may defer tax debts incurred between March 13 and May 30 for a period of six months
- ▶ No interest on late payment for the first three months - maximum amount of the tax debt to defer is limited to €30,000
- ▶ Includes tax debts arising from VAT, withholdings and installment payment for corporate income tax

Corporate Income Tax (*Impuesto de Sociedades*)

- ▶ Installment payments on account corresponding to financial years starting as of 1 January 2020 for companies (i) with a business volume not exceeding €600,000 and (ii) with net turnover lower than €6m in financial tax year 2019

- ▶ Companies with turnover not exceeding €6,010,121.04 in year 2019
- ▶ **Large companies** to maintain the current tax regulation – Spanish Government to decide on the potential extension of this measure to other companies affected by COVID-19

Approved by Royal Decree 7/2020 of 12 March

COVID-19 Response: Spain

GOVERNMENT MEASURES FOR BUSINESSES

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WHEN?

Employment

Temporary redundancy scheme (ERTE)

- ▶ Since the beginning of the COVID-19 outbreak, employers were able to suspend employment or reduce working hours using simplified administrative proceedings, due to a force majeure situation directly resulting from the COVID-19 outbreak or related containment measures, as well as due to business reasons resulting from COVID-19
- ▶ Companies affected by new health risk mitigation measures (adopted from 1 October 2020) can also apply for an ERTE on the grounds of force majeure when their activity is being prevented or limited
- ▶ Companies do not have to pay employees' salaries (or can pay proportionally to the reduced working hours) but certain companies are exempted from paying social security contributions (the possibility to apply these exemptions and their amounts depend on the type of ERTE, the company's activity and the number of employees of the company)
- ▶ Government will pay unemployment benefit to the employees
- ▶ The ERTes on the grounds of force majeure can be extended until 31 January 2021. ERTes due to business reasons resulting from COVID-19 may be extended by mutual agreement within a consultation period

All companies exposed to COVID-19

Approved by Royal Decree 8/2020 of 17 March (as updated on September 30, 2020) and RDL 24/2020 of 26 June, RDL 30/2020 of 29 September

COVID-19 Response: Spain

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Employment

Exemption of social security contributions: Companies that meet certain requirements may apply to the General Treasury of Social Security for exemptions to the payment of social security contributions while the ERTE is in force

Safeguard of jobs: Once the company starts benefiting from exemptions on social security contributions it will be subject to a six-month commitment to maintain jobs. If a previous safeguard of jobs applied, the start date of the new six-month commitment to maintain jobs will be the date on which the previous six-month commitment ceases to be in force. Breach of the safeguard will result in the need to return all unpaid contributions, plus interests and surcharges

- ▶ Approved by Royal Decree 8/2020 of 17 March and RDL 24/2020 of June 26 RDL 30/2020 of 29 September
- ▶ ERTE of companies that belong to a sector “seriously affected by the pandemic”: from 75% to 85% of the contribution of all employees
- ▶ ERTEs on the grounds of force majeure in case of a new outbreak/activity being prevented by new measures: from 90% to 100% of the contribution of employees on ERTE
- ▶ ERTEs on the grounds of force majeure due to the activity being restricted by new measures: from 70% to 100% of the contribution of employees on ERTE

The exemptions on SS contributions depends on (i) the type of ERTE, (ii) the company’s activity, (iii) the number of employees and (iv) the contribution month (from October, 2020 to January, 2021). Each scenario must be analyzed on a case by case basis

Approved by Royal Decree 8/2020 of 17 March
 Royal Decree 16/2020 of 13 May
 RDL 24/2020 of 26 June
 RDL 30/2020 of 29 September

Moratorium on Social Security contributions

- ▶ After RDL 24/2020, companies cannot request a six-month period moratorium or a deferred payment of Social Security debts

N/A

Approved by Royal Decree 11/2020 of 31 March
 RDL 24/2020 of 26 June

COVID-19 Response: Spain

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WHEN?

Other

Prohibition of paying dividends

- ▶ Companies subject to an ERTE based on force majeure are not allowed to pay dividends for such financial year (i.e., 2020), unless they pay (in advance) the amount corresponding to the exemption of social security contribution.

- ▶ Not applicable to companies with less than 50 employees as of 29 February 2020

Live

COVID-19 Response: Spain (Continued)

Other Considerations

Insolvency laws

Certain other measures have been introduced in the context of Spain's insolvency regime to grant debtors more time to renegotiate debts and to protect directors from undue liability:

- ▶ Insolvent debtor's obligation to file for insolvency has been suspended until 31 December 2020. Spanish 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
- ▶ 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 14 March 2021
- ▶ Improved treatment of financing by "inside parties" or "closely related parties" (*personas especialmente relacionadas*) in proceedings filed until 14 March 2022
- ▶ As regards the obligation to director's duty 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

Additionally, the Spanish Royal Legislative Decree 1/2020, of 5 May, has approved the Spanish Recast Insolvency Act, which will be in force from 1 September 2020

Restriction on foreign investments

Prior governmental approval will be required for direct investments made during this exceptional period (exact term to be defined by government) by (i) residents in countries outside the EU and the EFTA or (ii) residents of the EU and the EFTA when a non-resident holds, has ultimately direct or indirect control of over 25% of the company's share capital or its voting rights, or when, through any other means, it exercises direct or indirect control over the investor, provided that:

- ▶ the investment is made in certain strategic sectors affecting public order, public security or public health: critical infrastructures (physical or virtual), such as energy, transport, healthcare, telecom, media, data processing/storage, aerospace, defense, electoral, financial, sensitive facilities and key land/real estate; critical technologies and dual-use goods (AI, robotics, cybersecurity, nanotechnologies, etc.), supply of fundamental inputs (energy, raw materials, food security), IT, media; or
- ▶ any of the following conditions is met: (i) direct or indirect control of the investor by a third country government (ii) investor's participation in any of the aforesaid strategic sectors in another Member State; or (iii) there is an existing administrative or court proceeding against the investor for criminal or unlawful activities in another Member State

COVID-19 Response: Spain (Continued)

Other Considerations (Continued)

Restriction on foreign investments (continued)

- ▶ A temporary fast track / simplified process has been included (to be concluded in a period of c.30 / 45 days) for the approval of (i) “ongoing transactions” where the parties may prove by any means that there is binding offer or agreement with a price that was fixed (or capable of being determined) before 18 March 2020 or (ii) transactions with a value between €1 million and €5 million
- ▶ Investments for a value under €1 million would not require prior approval

Prohibition of dismissal and termination

Force majeure and economic, technical, organizational and production grounds arising from COVID-19 outbreak do not justify employment contracts termination / dismissal

- ▶ Applicable until 31 January 2021
- ▶ The burden of proof is on the companies, who must justify that the dismissal/ termination of the employment agreement is due to structural reasons not arising from the COVID-19 outbreak
- ▶ In cases where the investment derives from a tax haven and exceeds 50% of the Spanish company’s share capital, a prior declaration must be submitted, in addition to the one submitted within one month following the transaction

Tenancy measures

- ▶ Suspension of eviction processes due to rent payment default in favor of tenants in a situation of vulnerability due to COVID-19. Duration of six months (as from 2 April 2020)
- ▶ Extraordinary extension for up to six months (on the same terms) of leases ending between 2 April 2020 and the end of the two months following the finalization of the current state of emergency
- ▶ Automatic extension/moratorium on rent payments in favor of vulnerable tenants when the landlord is a public company / agency or a large residential real estate owner (i.e., companies or individuals owning more than 10 urban buildings or with a built-up area of over 1500 m²), or leases corresponding to the Social Housing Fund. Landlords to choose between (i) 50% rent abatement while the state of emergency is in force or (ii) deferment of all rent payments (for the same period). The deferred amounts shall be payable over a minimum period of three years, interest free
- ▶ Temporary financing program put in place by the government in cooperation with financial entities, which may cover up to six months of rent. – Applicable to landlords that are not a public company / agency or a large residential real estate owner and when the parties have not reach an agreement on rent postponement or abatements

COVID-19 Response: Spain (Continued)

Other Considerations (Continued)

Moratorium on rent from leases for properties other than main dwellings

- ▶ Legitimacy: SMEs complying with the limits determined by law (among others, total of assets below €4m) and self employed
- ▶ In case the landlord is a large residential real estate owner, the tenant may request a moratorium in the rent payments (to be requested within the term of 1 month from 23 April 2020) that will cover the period until the state of emergency is lifted
- ▶ In case the landlord is not a large residential real estate owner, and if the parties have not agreed on a reduction of the rent, the tenant may request an extraordinary moratorium period – terms and conditions to be agreed by the parties. The parties may dispose of the legal deposit in order to pay (totally or partially) the corresponding monthly rent. In such case, the tenant shall return the legal deposit in the period of 1 year
- ▶ Companies and self-employed workers in the tourism sector that are lessees of mortgage properties related to the same sector are entitled to a moratorium on rents of at least 70%
- ▶ No enforcement period for tax debtors which have been granted with the government backed schemes

- ▶ No enforcement period for tax debts arising from assessments and self-assessments with filing and payment deadlines between 20 April 2020 and 30 May 2020
- ▶ The tax debt shall be paid once the government backed schemes are granted or, at the latest, up to one month from the filing deadline

Moratorium by agreement

A new three-month moratorium on financial debt is introduced, the so called “moratorium by agreement”, applicable for agreements reached between a debtor and a financial institution that are subject to the provision of sectorial framework agreements between financial institutions through their associations (those entered into between Spanish Confederation of Saving Banks (CECA) and the Spanish Banking Association (AEB))

Note:

The measures described above were in place as of **26 October 2020**. Updates and additional government measures are expected.