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Covid-19 coronavirus: Extension of the mortgage moratorium and adoption of a moratorium on personal and consumer loans in Spain

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On 1 April 2020 it has been published in the Spanish Official Gazette (Boletin Oficial del Estado) the Royal decree law 11/2020, dated 31 March, adopting additional urgent measures in the social and economic field to fight against Covid-19 (**RDL**), which constitutes the third set of economic measures passed by the Spanish Government over the last weeks.

The aim of RDL is, among others: (i) to clarify certain aspects of the mortgage moratorium set out in Royal decree law 8/2020, dated 17 March, on urgent and extraordinary measures to fight social and economic impact of Covid-19 (RDL 8/2020) (please see alert "Economic measures against Covid-19: moratorium on mortgage payment and on duty to file for insolvency"); and (ii) the adoption of a three-months moratorium on personal and consumer loans.

Mortgage moratorium

The main aspects of the mortgage moratorium set out in RDL 8/2020 that are now clarified are the following:

What is the term of the mortgage moratorium?

RDL provides that the term of the moratorium on mortgage payments is three months. Therefore during such term, payments under the affected mortgage loans will be suspended and lenders will not be able to trigger the events of default set out in the loan agreements. This clarifies one of the most controversial aspects of RDL 8/2020, which was silent on the term of the moratorium. The term of the mortgage moratorium may be extended by an agreement of the Spanish Council of Ministers.

It is worth noting that the three months term is the statutory term of the moratorium and therefore nothing would prevent the parties from agreeing a longer suspension period as certain Spanish financial entities are already doing.

Who may benefit from the mortgage moratorium?

Beneficiaries of the moratorium are expanded. The moratorium continues to apply to mortgage loans granted for the acquisition of a dwelling and whose debtor is in vulnerable situation, as a consequence of the Covid-19 crisis. The RDL clarifies some of the requirements that must be taken into account in order to prove the situation of vulnerability and also how to evidence it to the corresponding financial entity. In particular, the initial delivery of the required documents may be replaced by a written statement of the debtor (with the rest to be delivered after the end of the state of alarm).

RDL also extends the application of the moratorium to mortgage loans granted for the acquisition of:

• real estate properties which are linked to the economic activity carried out by professionals or businessmen who are in vulnerable situation as a consequence of the COVID-19; and

• rented dwellings which does not constitute the main residence of the debtor provided that the debtor has ceased to receive rental income since the entry into force of the state of alarm.

Does the adoption of the moratorium require the agreement of both the lender and the borrower?

No, the application of the moratorium on mortgage payment does not require the consent of the parties to the loan agreement. Therefore, the moratorium shall be automatically granted upon request by a debtor who is in vulnerable situation because of the Covid-19 crisis.

Does the moratorium imply an amendment (*novación*) to the loan agreement?

No, the application of the moratorium does not imply and amendment (novación) of the relevant loan agreement for its effectiveness, but it will need to be documented into a public deed (escritura pública) which must be registered with the competent Land Registry. The registration of the extension of the final term of the loan agreement with the competent Land Registry will be effective vis-a-vis other subsequent registered creditors even if they have not consented to such extension.

RDL also provides that it will not be possible to document the moratorium into a public deed until the state of alarm has ceased and the freedom of movement fully recovered, that said, the moratorium shall apply from the moment it is granted regardless the moment the public deed is formalised. The RDL does not foresee a time limit to document the moratorium in a public deed once the state of alarm has ceased.

Whenever the parties agree to novate the loan agreement to make any further amendments that do not relate to the suspension of the payments in application of the mortgage moratorium, the relevant amendment agreement shall also contain a reference to both the suspension of payments and of the accrual of interest triggered in application of the mortgage moratorium.

RDL 8/2020 already foresaw (and it has been clarified by RDL) an exemption on the payment of stamp duty for amendment agreements granted due to a moratorium. Notarial and registry fees will be borne in any case by the lenders who will benefit from a 50% reduction.

When the instalments affected by the moratorium shall be paid?

Instalments affected by the moratorium shall not be payable upon the end of the three-month moratorium and therefore the payment of the remaining instalments must be postponed for the same duration of the moratorium, which in light of the amendments made by the RDL to RDL 8/2020 would imply an extension of the final term of the loan agreement on the same duration.

What is the term of the measures contained in RDL 8/2020?

RDL also sets out that measures contained in RDL 8/2020 which do not have a specific term, shall be in force until one month after the end of the state of alarm, which is something that affects, among other, to the timeframe for the debtors to ask for the mortgage moratorium.

Moratorium on personal and consumer loans

The moratorium implies a temporary suspension of the contractual obligations derived from any personal and consumer loan or credit in place on the date the RDL comes into force and entered into by an individual who is in a vulnerable situation because of the Covid-19 crisis. While the moratorium is in force no principal or interests must be paid under the relevant loan or credit and no interests (either ordinary or default interests) shall be accrued. The suspension on the payment of interests will not apply to other debtors or agreements than those within the scope of the RDL.

What is the term of the moratorium?

The term of the moratorium is three months and may be extended by an agreement of the Spanish Council of Ministers.

What are the effects of the moratorium on the loan agreements?

Moratorium on personal and costumers loans will also imply an extension of the final maturity of these loans equivalent to the duration of the moratorium. Therefore, instalments affected by the moratorium shall not be payable upon the end of the three-month suspension and the remaining instalments must be postponed on the same duration of the moratorium.

It is not necessary to amend (novar) the relevant agreement for the effectiveness of the moratorium. However, if the parties agree to novate the loan agreement to make any amendments other than the suspension of the payments in application of the moratorium, the amendment agreement shall contain an express reference to both the suspension of payments and of the accrual of interest triggered by the application of the moratorium.

Who may benefit from the moratorium?

Alike the mortgage moratorium, this moratorium benefits both debtors and personal guarantors who are in a situation of vulnerability because of the Covid-19 crisis. Indeed, guarantors who can benefit from the moratorium will be entitled to request lenders to pursue and exhaust the main debtors' assets before claiming the secured debt from them, even in those cases where the relevant guarantor or security provider has expressly waived the excusion benefit foreseen in Spanish Civil Code.

For the purposes of this moratorium, the criteria to determine if a debtor is in a vulnerability situation as a result of the COVID 19 are the same as those foreseen for the beneficiaries of the mortgage moratorium:

1. that the potential beneficiary is unemployed or, in the case of enterpreneurs, is suffering a substantial loss in their income or a critical decrease of their sales (at least 40%);

2. that the aggregate amount of the family household income, in the month prior to the request of the moratorium, does not exceed three times (3) the public index on monthly income (*Indicador Público de Renta de Efectos Múltiples mensual*), which will be adjusted taking into account factors such as the number of descendants, single-parent families or disabilities, among others,

3. when the mortgage instalment (plus expenses and basic supplies) are equal to or higher that 35% of the net income of the family household; and

4. that, as a consequence of this health emergency the family household has suffered a significant adverse change (i.e. that the aggregate amount of the instalments in relation with the family household has increased by, at least, x1.3) of its economic situation affecting its access to a dwelling.

However, the following specialities apply:

• in case the relevant debtor also benefits from the mortgage moratorium, the economic effect of that moratorium will not be considered for calculating the amounts referred to in sections (3) and (4) above; and

• in case the potential beneficiary has not entered into a mortgage loan but must pay a regular rent in connection with its main residence and/or any other regular payment under a personal or consumer loan (or both) these aggregated amounts shall be used (instead of the mortgage loan instalments) for the purposes of calculating the amounts referred to in sections (3) and (4) above.

How is the moratorium implemented?

Debtors who qualify as beneficiaries of this moratorium can request lenders the application of the moratorium as from the date following the publication of the RDL (i.e. 2 April) and within a month following the end of the state of alarm. To that end, those requesting the moratorium must prove that they qualify as beneficiaries by providing the information foreseen to that effect in the RDL. In case it is not possible to provide any of the documents requested in the RDL, the delivery of such documents may be replaced by a written statement of the debtor justifying the reasons (Covid-19 crisis related) for not providing such documents. Once the state of alarm has ceased there is a one-month term to provide all the missing information.

Like the mortgage moratorium, the moratorium on personal and consumer loans (i) shall be automatically granted and applied by lenders upon its request by the relevant debtor and once the vulnerability situation has been proved; and (ii) it does not require an agreement between the parties or an amendment (novación) to the relevant loan. However, in case the relevant consumer or personal loan is secured by any kind of security (other than a mortgage) that requires for perfection the registration with a Public Registry, the extension of the term of the loan must be registered with the competent Public Registry. The impossibility of granting the relevant public document while the state of alarm is in force will not suspend the application of the moratorium.

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