

A few considerations on the Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by the COVID-19, in relation to the real estate sector

1. INTRODUCTION

The crisis caused by the so-called COVID-19 virus has led the Spanish Government to declare the state of alarm in the whole country through the publication of Royal Decree 463/2020 of 14 March (“RD 463/2020”), which has been followed by a royal decree-law published on 17 March 2020 (“RDL 8/2020”) implementing certain economic measures in order to confront this pandemic crisis.

Please note that, according to RD 463/2020, the initial duration of the state of alarm will be 15 calendar days, calculated from March 14, but this term could be extended with the prior authorization of the Parliament.

This memo will briefly summarize the main terms and conditions set out in these state of alarm royal decrees which may have an impact on the Spanish real estate sector.

2. PRINCIPAL MEASURES AFFECTING THE REAL ESTATE SECTOR

2.1 New construction or refurbishment works

Article 10.1 of RD 463/2020 sets forth the power of the competent authority to suspend any activity or establishment that, in the opinion of such authority,

may represent a risk of contagion. This implies the possibility of stopping all new construction and refurbishment works in progress.

In this regard, please note that cities like Barcelona have already approved specific resolutions paralyzing all existing public works except for those strictly necessary for the security of the citizens. Regarding other private works being carried out in the city, they will only be allowed in case that the anti-contagious health measures established by the World Health Organization and Spanish health authorities are taken.

In case of public works, please note that RDL 8/2020 includes some measures to compensate contractors for the losses they may suffer as a result of the suspension of these works (salaries, insurance policies, lease of the necessary machinery, etc.).

2.2 Shopping centres/retail assets

Article 10.1 of RD 463/2020 also establishes the suspension of the opening to the public of retail premises, except for (i) food, drink and basic necessities establishments; (ii) pharmaceutical and health establishments, veterinary clinics, opticians and those establishments devoted to the sale of orthopaedic and hygienic products; (iii) newspaper/magazine stores; (iv) petrol stations; (v) tobacco stores; (vi) establishments devoted to the sale of technological and telecommunications equipment; (vii) establishments devoted to the sale of pet food;

(viii) e-commerce; (ix) dry-cleaning and laundry services; and (x) home hairdressing. The opening to the public of cultural, sports and leisure facilities is also suspended.

According to the above, shopping centres will be obliged to adapt the provision of their common services (security, accesses, parking, etc.) taking into account the closure of a significant part of their commercial activities and surface areas.

2.3 Logistics assets

According to Article 14.1 of RD 463/2020, the Transport, Mobility and Urban Agenda Minister will be authorized, without prior administrative procedure, to take and implement the relevant decisions regarding transport and mobility services in order to guarantee the right protection of people, goods and places.

Even though these decisions could have an important impact on several industries, it should be specially taken into account in connection with the operation of logistics assets.

2.4 Acquisition of real estate assets

The fourth additional provision of RD 463/2020 states the suspension of the expiration and prescription periods of any actions and rights during the period of validity of the state of alarm and, where appropriate, any extensions that may be approved.

This measure will have a clear impact not only regarding the exercise of the relevant actions that the parties may have against each other, but also regarding those agreements that may contain a term or deadline for the exercise of certain rights such as pre-emption, purchase option or early termination rights, which are very usual in the context of real estate transactions. This will be the case of a large number of asset acquisitions, lease agreements, financial leases, etc.

The term set forth by the applicable law for the filing of a lawsuit or the one agreed by the parties for the exercise of the relevant right, should be suspended for the whole period during which the state of alarm remains in force.

2.5 Urban planning

The third additional provision of RD 463/2020 states that all terms and deadlines set forth by the applicable regulations for the processing and approval procedures of the Spanish public sector entities will be also interrupted.

The calculation of these terms will be resumed at the moment that RD 463/2020 or, if applicable, the relevant extensions that may be approved with the necessary majority in Congress, lose their validity.

This measure will have a timing impact in all those transactions in which:



(a) the obtainment of a license by any of the parties is expressly regulated (for example, construction agreements, forward purchase agreements, licenses to be obtained by the tenants under the relevant lease agreement, etc.); or

(b) the approval of a planning instrument (specific modifications to a Master Plan, special plans, re-allotment projects, urbanization projects, etc.) prior to a sale, or the management of a change of use is an important part of the transaction’s structure.

2.6 Hotel industry

In exercise of the powers granted to him by RD 463/2020, on 19 March 2020, the Minister of Health issued an order suspending the opening to the public of all hotels and similar accommodation throughout the country until the end of the state of alarm. The closure of these establishments must take place as soon as they run out of customers and, at the latest, 7 days after the entry into force of this order (19 March 2020).

As an exception to the above, those tourist establishments that at the time of the declaration of the state of alarm had customers staying on a stable and seasonal basis, may remain open to the public, provided that the clients have all necessary

infrastructures to carry out all basic necessity activities set forth in RD 463/2020.

Finally, please note that, in order to mitigate the negative effects of the COVID-19 crisis and before the declaration of the state of alarm, the Spanish government made available to hotel and tourist companies the line of financing (increased by an additional amount of 200 million euros) specifically created to alleviate the effects of the bankruptcy of Thomas Cook.

3. CONCLUSION

These are a few of the specific measures directly affecting the real estate industry and real estate transactions as a consequence of the state of alarm declaration. The Government will react in the forthcoming days with additional measures with the aim to containing the spread of the COVID19. We will report on these new measures.

Please do not hesitate to contact us for any further study of your particular case and the impact that these royal decrees may have on it.

Stay strong. We’re all in this together.

Contacts



Emilio Gómez
Partner
T +34 91 349 82 72
emilio.gomez@hoganlovells.com



Miguel Ferre
Sr. Associate
T +34 91 349 80 06
miguel.ferre@hoganlovells.com

www.hoganlovells.com

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