

# The Royal Decree-Law 15/2020 of 21 April and the moratorium provided for business leases

23 April 2020

## 1. What is this new regulation about?

The crisis caused by the so-called COVID-19 virus 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 several other regulations containing legal and economic measures to confront this pandemic crisis.

The last piece from the Spanish Government is Royal Decree-law 15/2020, of 21 April ([RDL 15/2020](#)), which contains, among others, some measures in the field of non-residential leases aimed at reducing the costs supported by those SMEs (*Small and Medium Enterprises*) and self-employed tenants specially affected by the corona crisis. RDL 15/2020 was published on 22 April and enters into force on 23 April 2020.

This note briefly summarizes the extraordinary measures set out in this Royal Decree-law with an impact on non-residential leases (including commercial and office leases, hotels, etc.), which focus primarily on a postponement of rent payments.

## 2. Who is a large holder landlord vs ordinary landlord?

RDL 15/2020 provides different treatment to those leases that have been entered into with a landlord qualifying as a "large holder" (or a public housing company) and those which have been signed with landlords who do not hold such condition.

For these purposes, a [large holder landlord](#) shall be deemed as a natural or legal person owning more than 10 urban properties, excluding garages and storage rooms, or a property with built surface area of more than 1,500 sq. m.

### 2.1 Non-residential leases (or business lease agreements) with large holder landlords or public housing companies

SMEs or self-employed tenants who meet some requirements outlined below will be entitled to require the landlord to postpone rent payments for as long as the state of alarm Government declaration remains in effect (as it may be extended by the Spanish Government). Once the state of alarm is over, this moratorium can be extended on a monthly basis up to a maximum of 4 months, if the postponement during the state of alarm is insufficient in relation to the impact caused by the COVID-19 on the tenant. The landlord will be obliged to accept this measure provided that no agreement has already been reached between the parties on a postponement or reduction of the rent.

This moratorium does not entitle the landlord to claim for penalties or apply any delay interest.

The tenant will be obliged to pay the postponed amounts through partial payments to be made over the next 2 years and always within the term of the lease or its extensions (payment mechanism to be agreed upon by the parties).

### 2.2 Other non-residential leases (or business lease agreements)

RDL 15/2020 states that the tenants (provided that, again, they are SMEs or self-employed tenants who meet some requirements outlined below) will be allowed to request a temporary and extraordinary postponement of rent payments, provided that such postponement or a rent reduction has not already been agreed by both parties.

Please note that the decree is not clear about the terms of this postponement and if the landlord will be obliged to accept this proposal. In addition, in any of the cases contemplated in RDL 15/2020, it is unclear if the postponement of rent payments will also include other amounts assimilated to rent (and therefore passed on to the tenant), such as common expenses, fees and taxes, etc.

On the other hand, the parties may agree to use the rental deposit to pay (in whole or in part) any monthly instalment, with the obligation of the tenant to return the relevant amounts within the term of 1 year as from the date of such agreement or within the remaining term of the lease, if this is less than 1 year.

## 3. Which tenants qualify to request a moratorium?

Only SMEs and self-employed people will be allowed to request a moratorium of rent payments if they comply with some requirements:

- 3.1 The self-employed people
  - a) They should be affiliated to the social security system as a self-employed person.
  - b) Their activity should have been suspended as a result of the entry into force of RD 463/2020, or by any subsequent order issued by the competent authorities afterwards.
  - c) In the event that the activity has not been suspended, the turnover of the calendar month prior to that to which the postponement is requested must have decreased by, at least, 75 per cent in relation to the average monthly turnover of the relevant quarter in the previous year.

### 3.2 The SMEs

In addition to the requirements set forth in paragraphs (b) and (c) above for self-employed people, SMEs should also meet, for the last two consecutive financial years (at the closing date of each financial year), at least, 2 of the following requirements:

- a) the company's assets do not exceed 4M €;
- b) the net annual turnover does not exceed 8M €; and
- c) the average number of employees during the financial year does not exceed 50.

## 4. When can this moratorium be applied for?

These measures will enter into force as from 23 April 2020 and could be requested to the landlord by the relevant tenant within one month as from that date.

Tenants shall evidence that they meet the above requirements by presenting the documentation provided for in RDL 15/2020.

## 5. Some initial observations/conclusions

- a) This is the first step taken by the Spanish Government to provide some economic measures affecting non-residential leases and providing benefits to tenants, albeit this is **really** limited in scope (**only available to** some SMEs and self-employed people) and time (maximum 4 months).
- b) Those tenants who have already reached an agreement on a postponement of rent payments or a rent reduction will not be entitled to request the postponement set forth in RDL 15/2020.
- c) It is unclear whether those SMEs and self-employed people who do not meet these requirements will be able to take legal actions to obtain a temporary change in the terms and conditions of their leases to deal with this pandemic situation.
- d) Although RDL 15/2020 talks about measures to reduce the operational costs of SMEs and self-employed people, the possibility of deferring rent payments will only benefit some SMEs and self-employed persons and only if they are tenants under a lease agreement. The landlords do not benefit of any measure in this context.

Contact us for any analysis of your particular case and the impact that RDL 15/2020 may have on your business.

Stay strong. We're all in this together.

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