

New measures related to the leasing of business premises and the eviction of vulnerable households

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On 23 December 2020, Royal Decree-law 35/2020, of 22 December, on urgent measures to support the tourism, hotel and catering and commercial sectors and in the area of taxation (“RDL 35/2020”); and Royal Decree-law 37/2020, of 22 December, on urgent measures to deal with situations of social and economic vulnerability in the area of housing and transport (“RDL 37/2020”) were published in the Official Journal of Spain..

Both Royal Decrees contain important new developments in the field of real estate. In particular, RDL 35/2020 includes a series of measures affecting commercial lease agreements; while RDL 37/2020 contains new protection measures for vulnerable households facing proceedings for eviction from their habitual residence.

We summarise below the real estate-related measures in both Royal Decrees:

RDL 35/2020

Part I of RDL 35/2020 lays down a series of measures to reduce the fixed rental costs borne by the self-employed and SMEs, as a result of the foreseeable lack or reduction of income during the period of the ‘state of alarm’.

What do these measures consist of?

Two cases are distinguished depending on who the lessor is:

- a) If the lessor is a public limited company or a public corporation, or a large holder (understood as a natural or legal person who owns more than 10 urban properties, excluding lumber rooms or garages, or a built area of more than 1,500 square meters):

In this case, in the absence of agreement between the parties, the lessee may choose to request one of the following alternatives from the lessor before 31 January 2021:

- (i) A 50% reduction in rent for the duration of the state of alarm declared by Royal Decree 926/2020 of 25 October (“RD 926/2020”) and its extensions, which may be extended to the following months up to a maximum of four months, or
- (ii) moratorium on the payment of rent for the same period referred to in the previous paragraph, without penalty or accrual of interest. The deferred payment of rent may be made during a period of two years from the end of the moratorium, and always within the term of the lease agreement or any of its extensions.

The lessor must expressly inform the lessee of his decision within seven working days of the lessee’s request being submitted to him by a reliable means. The chosen measure will be applied automatically from the next rental payment. In the absence of an express reply from the lessor within the time limit, the measure requested by the lessee will be applied.

- b) Other lessors:

The lessee may request from the lessor, before 31 January 2021, a temporary and extraordinary postponement in the payment of the rent, provided that the parties have not voluntarily agreed on a moratorium or reduction of rent.

Exclusively within the framework of this possible agreement, the parties may freely dispose of the legal deposit for the lease, which may be used for the total or partial payment of one or more monthly instalments of the rental income. If the legal deposit is totally or partially drawn down on, the lessee must replace the amount of the deposit within one year of the conclusion of the agreement or within the remaining term of the lease agreement if this term is less than one year.

Which lessees can benefit from these measures?

Self-employed workers and SMEs.

What requirements must self-employed workers and SMEs meet in order to benefit from the measures?

- In the case of self-employed workers, they must have joined and registered with the Social Security or, where appropriate, with one of the Special Scheme (Class) for Self-Employed Workers' substitute mutual insurance companies.
- In the case of SMEs, they must not exceed the limits established in Article 257(1) of the Companies Act, i.e.:
 - The total of asset items does not exceed 4 million euros.
 - The net annual turnover does not exceed 8 million euros.
 - The average number of workers does not exceed 50.
- The self-employed and SMEs must meet the following additional requirements:
 - It must be a non-residential lease in accordance with the provisions of the Urban Leases Act, or a lease and operation agreement. In any of these cases, the lease of the premises must be attached to the lessee's business activity.
 - The lessee's business activity has been suspended as a consequence of the entry into force of RD 926/2020, or by orders issued by the competent authority. Or in the event that the lessee's business activity is not directly suspended by virtue of the provisions of the aforementioned RD 926/2020, proof must be provided of a reduction of at least 75% in the turnover of the month prior to that in which the deferment or reduction of the rent is requested, in relation to the average monthly turnover of the same quarter of the previous year.

How do you prove that you have met the requirements?

- The suspension of the business activity will be proven by a certificate issued by the Tax Agency, or, as the case may be, on the basis of the declaration of cessation of business declared by the interested party.

- The reduction in activity will initially be proven by the presentation of a statement of compliance in which the lessee states that his monthly turnover has been reduced by at least 75% in relation to the average monthly turnover for the same quarter of the previous year. However, when the lessor requires it, the lessee will have to show its accounts to the lessor to prove the reduction in business activity.

What happens if the lessee applies these measures improperly?

A lessee who has benefited from these rent reduction measures or moratoriums, without fulfilling the requirements for them, will be liable for any harm that may have been caused, as well as for all the expenses generated by the application of these exceptional measures, without prejudice to other liability the lessee's conduct may give rise to.

Do the measures apply in the case of a lessor that is the subject of insolvency proceedings?

No. These measures do not apply if the lessor is subject to insolvency proceedings, or if as a result of their application the lessor is likely to become insolvent or is facing imminent or current insolvency.

When did it come into force?

On 24 December 2020, that is, the day after its publication in the Official Journal of Spain.

RDL 37/2020

Part I of RDL 37/2020 contains new protection measures for vulnerable households facing proceedings for eviction from their habitual residence. These measures supplement and modify those adopted by Royal Decree-law 11/2020 of 31 March ("RDL 11/2020").

The measures are mainly the following:

- a) Suspension during the state of alarm of tenant evictions and dispossessions in the case of economically vulnerable people without alternative housing.

In the case of oral trials that deal with claims for rent or money owed by a lessee, or the expiry of the term of the lease, that seek to recover possession of the property, the lessee may file a motion with the court for an extraordinary stay of the eviction or dispossession on the grounds of being in a situation of economic vulnerability that makes it impossible for the lessee to find alternative housing for himself/herself and the people with whom he/she lives. The lessee must prove that he/she is in a situation of economic vulnerability.

The written submissions of the lessee and, where appropriate, the lessor, will be sent to the social services department so that they can issue a report assessing the lessee's and, where

appropriate, the lessor's vulnerability and identifying the measures to be applied by the competent authority.

The judge, in view of the documentation presented and the report of the social services department, will issue a ruling staying the dispossession if he/she considers that the situation of economic vulnerability is proven and, if appropriate, that the vulnerability of the lessor should not prevail.

The stay of the dispossession will be lifted on the first of the following dates (i) when the competent authority informs the Court that the measures provided for in the social services department's report have been taken to facilitate a housing solution for the lessee, or (ii) on the date when the state of alarm ends.

- b) Stay, during the state of alarm, of evictions and possessions in respect of economically vulnerable people living in a dwelling without a right to.

The judge will have the power to stay the dispossession of a vulnerable person who lives in a dwelling without a right to, until the end of the state of alarm, provided that the following requirements are met:

- The dwelling must belong to a legal person or a natural person who owns more than ten dwellings.
- The non-entitled occupant must be in a situation of dependency, be a victim of gender violence, or have a dependent or minor in his/her care.
- The non-entitled occupant must prove that he/she is in a situation of economic vulnerability by laying before the Court the documentation set out in RDL 11/2020. The Court will send all the documentation to the competent social services department so that it can issue a report assessing the situation of vulnerability.

Once the above circumstances have been proven, the judge will take the decision to stay or not the dispossession, after assessing the specific case, taking into account, inter alia, the following circumstances:

- The circumstances relating to whether the entry or stay in the property responds to a situation of extreme need. For the purpose of analysing the state of need, the above-mentioned report from the social services department will be properly assessed.
- The circumstances relating to the cooperation of the dwelling's inhabitants with the competent authorities in the search for solutions for alternative housing that would satisfy their right to decent housing.

- The proceedings cannot be stayed if the entry or stay in the dwelling has taken place in a case covered by RDL 37/2020, such as: when it is the habitual residence or second home of a natural person, when the entry or stay in the dwelling is the result of a criminal offence, when there are indications that illegal activities are being carried out in the dwelling, when the entry into the dwelling takes place after RDL 37/2020 comes into force, etc.

c) Right of lessors and owners to claim compensation

RDL 37/2020 provides, in its second additional provision, that the lessors affected by the extraordinary stays provided for in paragraphs A) and B) above, will have the right to request financial compensation when the competent authority does not adopt within three months the measures indicated in the social services department's report to provide decent housing to the occupant.

In this case, the owners or lessors will have the right to request compensation, although, in the case provided for in section B) above, the owner must prove that financial harm has been caused as a result of the property being for sale or rent prior to entry into the property.

The compensation will consist of the average value that would lie for a home rental in the area where the property is located.

RDL 37/2020 came into force on 23 December 2020, the same day it was published in the Official Journal of Spain.