

## **NOTE ON ROYAL DECREE-LAW 15/2020 OF 21 APRIL ON URGENT SUPPLEMENTARY MEASURES TO SUPPORT THE ECONOMY AND EMPLOYMENT (“B.O.E.” 22<sup>ND</sup> APRIL 2020)**

### ***1.- MEASURES IN THE FIELD OF LEASING***

The self-employed workers and small and mid-sized enterprises (SMEs) that are tenants of buildings intended for (i) use other than as housing or (ii) industry, which meet the requirements set out below, may request from the lessor if and to the extent that the latter is a public housing company or entity or a large holder, a deferment on the payment of rental income. Such deferment must be accepted by the lessor unless the parties had previously come to an agreement in relation to the postponement of the payment of the rental income or a reduction in its amount, in which case the provisions of such prior agreement will apply (art. 1).

The requirements to be met by the beneficiaries<sup>1</sup> of this deferment on the payment of rental income are as follows (article 3):

- 1. Leasing agreement of a building where a self-employed worker develops its economic activities:**
  - a) The self-employed worker must be affiliated to and registered with the RETA on the date of declaration of the state of alarm (14/03/20) or, where applicable, any of the RETA’s substitute Mutuality.
  - b) The activity of the self-employed worker was suspended as a result of the declaration of the state of alarm or by orders issued by the competent authorities.
  - c) In the event that the activity of the self-employed worker is not directly suspended, it must give evidence of a reduction of at least 75 per cent in the turnover of the calendar month prior to the month in which the deferment is requested, in relation to the average monthly turnover of the quarter to which that month belongs referring to the previous year.
  
- 2. Leasing agreement of a building where a SME develops its economic activities:**
  - a) The SME must not exceed the limits set out in Article 257.1 of the Companies Act what means that for two consecutive financial years at least two of the following circumstances are not exceeded: (i) that the total of the asset items does not exceed four million euros; (ii) that the

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<sup>1</sup> If any tenant makes use of the measures of this regulation without meeting the legal requirements, it will be responsible for all the damages caused by such action, without prejudice to the responsibilities of any other kind which such unfair conduct same may give rise to (art. 5).

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net amount of its annual turnover does not exceed eight million euros; and/or (iii) that the average number of employees does not exceed fifty.

- a) The activity of the SME was suspended as a result of the declaration of the state of alarm or by orders issued by the competent authorities.
- b) In the event that the activity of the SME is not directly suspended, it must give evidence of a reduction of at least 75 per cent in the turnover of the calendar month prior to the month in which the deferment is requested, in relation to the average monthly turnover of the quarter to which that month belongs referring to the previous year.

Any individual or legal entity that owns more than 10 urban properties, excluding garages and storage rooms, or a constructed area of more than 1,500 m<sup>2</sup> shall be deemed as a “large holder”.

The deferment on the payment of rental income must be requested by the tenant within one month counted from 23<sup>rd</sup> April 2020 -the date of entry into force of this Royal Decree-Law- and shall be in force whilst the state of alarm and its extensions last and, if necessary, shall also be extended on a monthly basis, but in no event shall they exceed four (4) months.

The deferment on the payment of rental income will automatically come into force the month following that on which the request was made by the tenant and will not entail any liquidated damages for the latter, nor will it imply the accrual of delay interests or any other type of interests. The unpaid rental income will be pro-rated within a maximum period of two (2) years once the deferment had ended, unless the duration of the contract -and, if applicable, of its extensions- terminates earlier, in which case the proration will be made taking into account the remaining duration of the contract and/or its extensions.

The self-employed workers and SMEs that meet the requirements set out above may also apply for the deferment on the payment of rental income where the lessor is not a public housing company or entity or a large holder, although in this case the lessor is not obliged to accept the proposal (Art. 2), as is the case otherwise. The deferment on the payment of rental income cannot be requested, however, if the parties have previously come to an agreement for the postponement of payment and/or reduction of the rental income.

In the event that the landlord and tenant negotiate the deferment and/or reduction of the rental income, they may set forth, within the framework of such agreement, the free disposal of the legal deposit laid down in Article 36 of the Urban Rentals Acts (LAU), so that its amount may be used for the total or partial payment of one or more monthly instalments. It should be noted, however, that in this case the tenant must return the amount of the legal deposit within one year counted from execution of this agreement or within the remaining period of validity of the leasing contract -or its extension- should this period be shorter than one year.

The self-employed workers and SMEs must prove that they do meet the requirements which entitle them to ask for the deferment on the payment of rental income by providing the following documentation (art. 4):

- a) The reduction in activity shall be proved by submitting a responsible statement in which, based on accounting and income and expenditure information, the applicant states that it has

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suffered a reduction in monthly invoicing by at least 75 per cent in relation to the average monthly invoicing corresponding to the same quarter of the previous year<sup>2</sup>.

- b) The suspension of activity shall be evidenced by a certificate issued by the AEAT -or the competent body of the Autonomous Region- on the basis of the declaration of cessation of activity submitted by the interested party.

22<sup>nd</sup> April 2020

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<sup>2</sup> If the lessor requires it, the tenant will have to grant the lessor with access to his books so that the latter can check out the reduction in activity.

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