

NOTES ON ROYAL DECREE-LAW 16/2020, OF 28 APRIL, REGARDING PROCEDURAL AND ORGANIZATIONAL MEASURES TO PREVENT COVID-19 IN THE AREA OF THE ADMINISTRATION OF JUSTICE

On April 28, 2020, the first procedural reform was made to meet the challenge posed by COVID-19 to the Administration of Justice. To this end, the Royal Decree-Law is divided into three chapters; the first dedicated to procedural measures; the second with regard to measures in the field of bankruptcy and corporate; and the third in relation to measures of an organizational and technological nature. We now turn to a summary of the most significant ones.

Chapter I. Measures of a procedural nature.

1. Enabling days in August 2020

Days 11 to 31 August 2020 are declared working days, except Saturdays, Sundays and bank holidays, and they have taken the necessary measures with regard to vacations of the civil servants of the Administration of Justice.

2. Calculation of procedural deadlines and extension of the time limit for appeal

The terms and deadlines suspended by the application of the declaration of the state of alarm shall be recalculated from the beginning, the first day of the calculation being therefore the next working day following that on which the suspension of the corresponding procedure ceases to have effect, while the deadlines for appeals against decisions terminating the procedure notified during the suspension of deadlines or within twenty working days following the lifting of such suspension shall be extended by a period equal to that laid down for their announcement, preparation, formalization or lodging.

3. Special and summary procedure in family cases (Articles 3, 4 and 5 of the Royal Decree-Law)

A new special and summary procedure is established for family cases, based on the outline of “Juicio Verbal” (a shorter procedure).

This proceeding will be applied to matters relating to the reestablishment of balance in the system of shared visits or custody when the imbalance is caused by the measures adopted because of the COVID-19; the causes relating to the modification of definitive measures on the burdens of marriage, economic pensions between spouses and maintenance recognized for the children of the article 774 LEC, when the revision is based on the variation of socioeconomic circumstances due to the COVID-19 crisis; those that seek the establishment or revision of maintenance, when such claims are based on the substantial variation of the economic circumstances of the relative obliged to provide such maintenance because of the COVID-19.

The competence of the mentioned cases will correspond to the court that has initially decided on the measures to be modified, and in case of requesting the establishment of the maintenance obligation, the court resulting from the application of article 769.3 LEC in relation to article 50 LEC will be competent.

Within those proceedings, the claim and defense shall comply with the content and form of the ordinary trial. In the case of requesting the modification of definitive family measures or the provision of maintenance, the claim must be accompanied by documentary evidence that the unemployment benefit is being received, that the activity has been stopped or that income has been reduced. This will be followed by a hearing within ten working days from the admission of the claim, although an attempt to reach a settlement may be made beforehand, and in cases where the balance in the visiting arrangements has been restored, the minor children may be heard.

The hearing will be held in much the same way as the "Juicio Verbal", where, after the initial interventions of the parties and the taking of evidences, the judge may (but does not have to) grant a turn for oral conclusions.

The decision, whether it is a judgment or an order, may be given orally, and may be appealed, unless it will be declared definitive if, after the decision has been given orally, the parties are present and express their decision not to appeal.

4. Processing of the challenge to temporary employment regulation proceedings (ERTE) referred to in Article 23 of Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures to deal with the economic and social impact of COVID-19 (Article 6 Royal Decree-Law).

The ERTE will be processed according to the procedural modality of collective conflict when it affects more than five workers.

5. Preferential treatment of certain procedures (Article 7 Royal Decree-Law)

The following matters will be given preferential treatment until December 31, 2020:

- a) In family law, proceedings or cases of voluntary jurisdiction in which the measures referred to in article 158 of the Civil Code are taken, as well as the special and summary procedure provided for in articles 3 to 5 of this Royal Decree-Law.
- b) In the civil order, the lack of recognition by the creditor entity of the legal moratorium on mortgages and leases, as well as the bankruptcy proceedings of debtors who are natural persons and who do not have the status of entrepreneurs.
- c) In the contentious-administrative judicial order, appeals against the refusal of aid and measures legally provided for in relation to the present health crisis.
- d) In the social jurisdictional order, the processes for dismissal or contract termination, those derived from the recoverable paid leave; the procedures for the application of the MECUIDA plan; the procedures for the individual, collective or ex officio challenge of the ERTE due to force majeure or productivity reduction due to the COVID-19 and those that are substantiated to make effective the distance working modality or the adaptation of the working conditions.

Chapter II. Measures in the field of bankruptcy and corporate law

6. Modification of the bankruptcy agreement. (Art. 8 Royal Decree-Law)

The possibility of submitting a proposal to amend the bankruptcy agreement is envisaged within one year of the declaration of the state of alert, which will be processed according to the same rules applied to the approval of the original agreement.

The bidder will be notified, but no applications for breach of the agreement made in the six months following the declaration of the state of alert will be accepted for processing. In the three months following the deadline, the bidder may present his proposal for the modification of the agreement.

7. Postponement of the duty to request the opening of the liquidation phase (Article 9 Royal Decree-Law).

The duty of the debtor to request the liquidation of the assets in legal cases is postponed to one year from the declaration of the state of alert, provided that the debtor submits a proposal for the modification of the agreement and this is admitted for processing within this period.

8. Refinancing agreements (Article 10 Royal Decree-Law)

It is allowed to apply for a new refinancing agreement even if one year has not passed since the application for approval of the existing agreement. In the event of default, requests for a declaration of default will be notified to the debtor, but will not be admitted for processing, within six months of the declaration of the state of alert. After this period the debtor will have one month to inform the judge of the start of negotiations for the modification of the agreement in force.

9. Special arrangements for applications for a declaration of insolvency. (Article 11 Royal Decree-Law)

The obligation to declare insolvency proceedings of the debtor who is in a state of insolvency is suspended until 31 December 2020, nor will any necessary applications for insolvency proceedings be accepted until that date.

10. Financing and payments by persons especially related to the debtor. (Article 12 Royal Decree-Law)

The condition of ordinary is given to the credits derived from credits granted or in which had been subrogated those that legally have the condition of persons specially related to the debtor within the insolvency proceedings declared in the two years following the declaration of the state of alarm.

11. Challenging the inventory and the list of creditors. (Article 13 Royal Decree-Law)

From the entry into force of this Royal Decree-Law, in the incidents that are initiated to resolve the challenges to the inventory and the list of creditors, the only admissible means of evidence will be documentary and expert evidence, without the need for a hearing unless the judge of the bankruptcy proceeding decides otherwise, the lack of a response to the claim being considered as an acquiescence with the exception of creditors under public law.

12. Preferential treatment. (Article 14 Royal Decree-Law)

For one year since the declaration of the state of alarm, preference will be given to the preferential processing of bankruptcy incidents in labor matters; actions aimed at the disposal of productive units; proposals for agreements or modifications of those that are in the period of compliance; bankruptcy incidents regarding the reintegration of the active mass; the admission for processing of the request for approval of a refinancing agreement or the modification of the one in force; the adoption of precautionary measures and, in general, any other measures that, in the opinion of the bankruptcy judge, may contribute to the maintenance and conservation of the assets and rights.

13. Disposal of the active mass (Article 15 Royal Decree-Law)

Imposition of the extra-judicial auction of the active mass in the bids declared within the year following the declaration of the state of alarm, the sale of the entire company or productive units that could be sold by means of judicial auction is excepted.

14. Approval of the liquidation plan. (Article 16 Royal Decree-Law)

The approval of the settlement plan is expedited.

15. Expediting the processing of the out-of-court settlement agreement. (Article 17 Royal Decree-Law)

During the year following the declaration of the state of alarm, the extrajudicial settlement of payments will be considered to have been attempted by the debtor without

success, if it is accredited that there have been two failures of acceptance of the bankruptcy mediator to be appointed, for the purposes of initiating consecutive bankruptcy, notifying the Court.

16. Suspension of the cause of dissolution for losses. (Article 18 Royal Decree).

Losses for the year 2020 will not be taken into account to determine the concurrence of cause for dissolution.

Chapter III Organizational and technological measures

17. Holding of procedural acts through telematic presence (Article 19 Royal Decree-Law)

Up to three months after the end of the state of alarm, the acts of trial, appearances, statements and hearings and, in general, all procedural acts, shall be carried out preferably by means of telematic presence, provided that the Courts, Tribunals and Public Prosecutors' Offices have at their disposal the necessary technical means to do so, the presence of the accused being necessary in criminal trials for serious crimes

18. Personal appearance at other procedural acts. (Articles 20, 21, 22 and 23 Royal Decree-Law)

Up to three months after the state of alarm is raised, public access to oral proceedings will be restricted, examinations for medical-forensic reports may be based solely on documentation, the use of gowns in the courtroom will be dispensed, and the public at the courts and prosecutor's office will be attended, except in essential cases, by telephone and e-mail.

19. Judicial organization measures. (Articles 24, 25, 26, 27, and 28 Royal Decree-Law)

It is established that the courts that are pending to start operating and the judges of territorial assignment may only deal with procedures regarding the COVID-19, making

the assignment of Justice Administration Lawyers and other civil servants more flexible to guarantee the correct provision of the service.

Up to three months after the end of the state of alarm, **morning and afternoon shifts** will be established in all jurisdictional services.

20. Extension of time limits in the area of the Civil Registry. (First additional provision of the Royal Decree-Law)

The deadline for the celebration of the marriage in which the decision to grant the marriage was taken is extended to one year from the end of the state of alarm.

Up to three months from the end of the state of alarm, the deadline for birth registration is extended to five days.