

Spanish regulations adopting urgent measures to respond to the economic impact of COVID-19, including Financial Measures to Support Spanish Companies

April 2020

Since the declaration of the State of Emergency in Spain on March 14 by means of Royal Decree 463/2020, restricting citizens' freedom of movement as well as inbound and outbound travelling, the by the Spanish Government had continuously being approving regulation to address the public health issues derived from the rapid escalation of the COVID-19 in Spain as well as to mitigate the economic consequences that may arise in connection thereof. The main pieces of regulation that had been passed had been:

- Royal Decree 463/2020 of 14 March declaring a state of emergency to address the COVID-19 health crisis, amended by Royal Decree 465/2020 of 17 March and Royal Decree 476/2020 of 27 March;
- Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to address the social and economic impact of COVID-19 ("RDL 8/2020");
- Royal Decree-Law 9/2020 of 27 March adopting supplementary labour-related measures to mitigate the effects of the COVID-19 health crisis;
- Royal Decree-Law 10/2020 of 29 March on recoverable paid leave for employees who do not provide essential services, in order to reduce

Yoko Takagi

Partner, Madrid
T +34 91 787 6320
yoko.takagi@whitecase.com

Reyes Carvajal

Associate, Madrid
T +34 91 787 6327
reyes.carvajal@whitecase.com

Domenica Salvador

Associate, Madrid
T +34 91 787 6377
domenica.salvador@whitecase.com

population mobility in the context of the fight against COVID-19.

This package contains a number of mechanisms aimed to relieve the financial difficulties faced by the citizens (especially vulnerable ones), self-employees, SMEs and other Spanish companies from the slowdown in the economy caused by COVID-19. Among the referred stimulus measures the Spanish Government has included a liquidity mechanism (mainly in the form of guarantees) as well as some temporary measures in the corporate and insolvency regulation, which we describe below.

Liquidity Mechanisms: Extraordinary Insurance Coverage¹

RDL 8/2020 has approved an extension of the insurance coverage of an existing export insurance program². Hence, the capacity of CESCE has been increased by EUR 2 billion to afford insurance coverage backed by the so-called Internationalisation Risks Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*).

- **Term:** Six months from entry into effect of RDL 8/2020.
- **Amount:** Increase by EUR 2 billion.
- **Eligible Assets:** Available for working capital loans required for exporting activities. No connection with one or more export contracts is required, provided they address new financial needs and not situations preceding the crisis.
- **Eligible Companies:** SMEs (as defined in Annex I of EU Regulation 651/2014 of the Commission), together with other larger companies, provided they comply with the following requirements: (i) they are not listed; (ii) their international business represents at least 1/3 of their turnover or companies that have regularly exported during the past four years; (iii) have liquidity problems arising from COVID-19; and (iv) are not in an insolvency or pre-insolvency situation nor at risk of defaulting on debts with public sector companies or the administration.
- **Coverage Limit:** Coverage of the credit risk will not exceed the limit established by the EU regulation with regards to state aids.
- **Issuer Entity:** Coverage will be granted by the *Compañía Española de Seguros de Crédito a la Exportación, S.A. Cía. de Seguros y Reaseguros (CESCE)*, S.M.E.
- **Decision Mechanisms:** Risk analysis of each transaction consistent with the current market conditions.
- **Extraordinary Coverage:** The State Risks Commission (*Comisión de Riesgos por Cuenta del Estado*) is authorized to cover all kinds of commercial operations, including national ones, whether they relate to the supply of goods, rendering of services, or others carried out by Spanish companies, to the extent they are part of the commercial strategy of these companies that operate in international markets.

¹ Article 31 of the RD-Law 8/2020 of 17 March.

² A separate overview of the specifics of each measure is contained in the Annex I below.

Liquidity Mechanisms: Spanish Government Guarantee Mechanism³

The Spanish Government – through the Ministry of Economic Affairs and Digital Transformation (*Ministerio de Asuntos Económicos y Transformación Digital*) - included in RDL 8/2020 a Spanish Government Guarantee scheme to provide guarantees to cover the financing granted by financial and credit institutions⁴ (among others) in favour of companies and self-employed persons (“**Spanish Guarantee Line**”)⁵.

This mechanism does not imply granting direct financing but a guarantee to secure such financing. The financial entities are the ones providing the additional financing to the beneficiaries that may be guaranteed by a guarantee under the Spanish Guarantee Line. The Official Institute of Credit (*Instituto de Crédito Oficial, “ICO”*)⁶.

The specifics of this mechanism has been approved by the Resolution of the Spanish Ministers Cabinet dated March 24, 2020⁷ which main terms and conditions are the following:

- **Purpose:** Obligations from eligible beneficiaries arising, among others, from payment of invoices, salaries, working capital requirements or other liquidity needs or payments in connection with due financial or tax obligations or any other cash needs that are due.
- **Term:** The term of the Spanish guarantee will have a term up to a maximum of 5 years.
- **Amount of Spanish Guarantee Line:** EUR 20.000 million (out of the EUR 100.000 million). The first half of the EUR 20.000 million (up to EUR 10.000 million) shall be for SMEs⁸ and self-employed and the second half shall be for other companies (not SMEs).
- **Eligible Financial Entities:** credit institutions, financial credit establishments, electronic money institutions and payment institutions. These shall be registered and supervised by the Bank of Spain (*Banco de España*) or the Spanish Securities Regulator (*Comisión Nacional del Mercado de Valores, CNMV*) which had agreed to participate and had entered into a framework agreement with the ICO.
- **Beneficiaries from the Spanish Guarantee Line:** Any kind of company (SME or not) that comply with the requirements hereunder, although the extent of the coverage may vary depending on the type of company:
 - Its corporate domicile is located in Spain;
 - Had been economically affect by the impact of COVID-19;
 - Is not as of 31 December 2019 in default as per the list published by the Risk Information Center of the Bank of Spain (*Central de Información de Riesgos del Banco de España*);
 - Is not declared insolvent as of March 17, 2020 or in an in a situation that a creditor may claim the opening of insolvency proceedings⁹;
 - Is not considered to be in a critical situation according to article 2 of the Commission Regulation No 651/2014 (which declared certain categories of aid compatible with the internal market), when the so-called Temporary Framework European Union Aids are applicable.
- **Eligible Loans:** Loans and other transactions entered by the beneficiaries provided that they have been entered into or amended after 17 March 2020. If the amount is below EUR 50 million the guarantee will be automatically approved to the extent approved by the financial institution. Above such amount ICO will need to check that the requirements are complied with.

³ Article 29 of the Royal Decree Law 8/2020 of 17 March, on urgent measures to cope with the economic and social impact of COVID-19 (*Real Decreto-ley 8/2020, de 17 de marzo de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19*).

⁴ A separate overview of the specifics of each measure is contained in the Annex I below.

⁵ *Línea para la cobertura por cuenta del Estado de la financiación otorgada por entidades financieras a empresas y autónomos.*

⁶ <https://www.ico.es/web/ico/sobre-ico>.

⁷ Agreement of the Council of Ministries held on 24 March 2020, approving the characteristics of the first section of the ICO guarantee line for companies and the self-employed, to alleviate the economic effects of the COVID-19 (https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4070).

⁸ Small and Medium companies, defined in the European Union Commission Regulation No 651/2014, Annex I.

⁹ As per article 2.4 of law 22/2003 of 9 July on insolvency.

-
- **Limits:** There are various limitations depending on the creditor and other circumstances which take into account the loan as well as the capacity of repayment of the creditor (wage bill, total turnover, *etc.*). There are also limitations as to the amount of guarantee which cannot exceed 80% of the new loans and renewals in the case of self-employees and SMEs and 70% of new loans and 60% of renewals for the remainder.
 - **Costs/fees:** Between 20 and 120 basis points depending on the creditor/beneficiary and the guaranteed amount.
 - **Deadline for the application of the Spanish Guarantee:** 30 September 2020. Note that the deadline may be extended in compliance with EU State Aid rules.

Legislative changes to mitigate the consequences of the Covid-19 with respect to specific corporate and insolvency matters

RDL 8/2020 includes a number of amendments to the current corporate and insolvency regulations to try to ease the challenges that the companies are facing to comply with its legal obligations as well as to facilitate the continuation of businesses that have or will become insolvent as a result of the COVID-19-pandemic or are experiencing economic difficulties. Changes introduced include *inter alia*:

- **Corporate Governance:** During state of emergency period, all types of companies, associations or foundations are allowed to hold sessions of their governing bodies by videoconference regardless whether their bylaws provide for that mechanism or not.
- **Annual Accounts:** The period of three months from the end of the fiscal year to draw up the annual accounts is suspended resuming after the end of the Emergency State.
- **Dissolution:** Although before or during the State of Emergency, a company is in a legal or statutory cause of dissolution, the term to call the meeting that must resolve on said dissolution by the corporate bodies is suspended until the end of the State of Emergency. Should the legal or statutory cause of dissolution had occurred during the State of Emergency, the directors shall not be liable for the debts during that period.
- **Suspension of Insolvency Filing Obligations:** Spanish Insolvency Law 22/2003, of 9 July requires directors to file for insolvency without undue delay. According to article 43 of RDL 8/2020, companies or individuals facing financial difficulties due to the current situation and that are in insolvency during the State of Emergency will not have the obligation to file for “*pre-insolvency*” (the mechanism referred to in article 5bis of the Spanish Insolvency Law), nor the directors of a company which is under an insolvency situation will have the obligation to request the insolvency declaration. The new regulation postpones the obligation to file for insolvency for two months after the end of the State of Emergency.
- **Delay of Creditor Filings:** During this period companies will also be protected from any petitions for the opening of mandatory insolvency proceedings filed by any of its creditors.
- **Priority in Insolvency Filings:** In case a company files for voluntary insolvency, although this filing has been made following a creditor’s filing, the voluntary insolvency filing made by the debtor will be admitted with preference from the creditor’s filing for insolvency.

Conclusions

The Spanish Government have put in place a number of financial and social measures to support Spanish companies.

We encourage our clients to consider the opportunities presented by this set of measures carefully, consulting with us as appropriate.

Separately, Spanish companies which meet the relevant credit rating requirements may also benefit from liquidity assistance via the European Central Bank (“**ECB**”) Pandemic Emergency Purchase Programme (“**PEPP**”), pursuant to which the ECB may purchase bonds and commercial paper issued by European private

and public sector entities. See our client alert <https://www.whitecase.com/publications/alert/european-central-bank-launches-emergency-bond-buying-programme-response> for further details.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly.

We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a [global response team](#).

We encourage our clients to verify with us, as appropriate, if and to what extent their group companies are entitled to receive Government support in these jurisdictions.

For useful information on COVID-19, please consult the [Coronavirus section of www.whitecase.com](#).

Annex I

The Extraordinary Insurance Coverage program and the Spanish Guarantee Mechanism include urgent measures to support the liquidity of companies and ensure business continuity. The applicable measures are described and compared below.

Applicable Measures	Large corporates	SMEs
<p>Extraordinary Insurance Coverage</p>	<p><u>Type of guarantee:</u> insurance coverage credit line of up to 20,000 million euros.</p> <p><u>Beneficiary:</u> non-listed large entities, which are not in an insolvency or pre-insolvency situation, nor at risk of default with public sector companies or the administration, which are:</p> <ol style="list-style-type: none"> 1. Internationalized companies or companies in the process of internationalization, meeting at least one of the following requirements: <ul style="list-style-type: none"> • A third (33%) of its turnover as per the last set of financials comes from international activities; or • Export companies that had carried out export activities for the last 4 years and comply with the requirements set out in this regard by the Secretary of State for Commerce (<i>Secretario de Estado de Comercio</i>)). 2. Companies that face liquidity problems or do not have access to financing, due to the impact of the COVID-19 crisis. <p><u>Purpose of the guarantee:</u> coverage available for working capital facilities that such require. This should cover new needs (as a result of the situation) and no situations preceding the crisis.</p> <p><u>Maximum guaranteed amount:</u>¹⁰ The maximum guaranteed amount shall be 80% of the credit. Coverage requests for which financial institutions request coverage percentages of less than 70% will be subject to express treatment, especially in those cases in which the insured amount is equal to or less than EUR 10 million.</p> <p>Coverage shall only extend to the principal amount and shall exclude interest and any other amounts.</p> <p>The coverage provided shall not exceed the limits provide for in the EU regulation regarding State aids.</p>	<p><u>Type of guarantee:</u> same.</p> <p><u>Beneficiary:</u> Spanish companies considered as Small and Medium-sized Companies according to the definition in Annex I of Commission Regulation EU 651/2014, which are not in an insolvency or pre-insolvency situation, nor at risk of default with public sector companies or the administration.</p> <p><u>Purpose of the guarantee:</u> same.</p> <p><u>Maximum guaranteed amount:</u> same.</p>

¹⁰ <https://www.cesce.es/sites/all/themes/cesce/Docs/DOCUMENTO%20EXPLICATIVO%20LINEA%20COVID%2019.pdf>; [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0320\(03\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0320(03)&from=ES)

	<p>Maximum amount of loans per customer for credits due after 12/31/2020:</p> <ul style="list-style-type: none"> a) The principal may not exceed twice the debtor's annual personnel cost expense in 2019, or the latest year available. For companies created after 1/1/2019, the credit must not exceed the estimated salary cost for the first two business years; or b) 25% of the debtor's total income in 2019; or c) With the appropriate justification (based on debtor's statements) on their liquidity needs, the amount of the credit can be increased to cover the needs of the next 12 months. <p>Maximum amount of loans per customer for credits due before 12/31/2020:</p> <ul style="list-style-type: none"> a) The principal amount of the credit may exceed the amount collected previously, provided that the aid is properly justified and the proportionality is maintained. <p><u>Term:</u> the line will be available for a period of 6 months after the declaration of the State of Emergency. The term of the loans shall be up to a maximum of 5 years since the granting of the Extraordinary Insurance coverage</p> <p><u>Cost of coverage:</u> depending on the size of the debtor and the duration of the coverage, the premiums established for these grants will be applied as per the Communication from the European Commission: Temporary Framework regarding aid measures aimed at supporting the economy in the context of the current COVID-19 outbreak.</p> <p>These premiums will be adapted to reflect the percentage of coverage applied, and will be applied to the sum insured. The premium will be the only cost of the coverage.</p> <p><u>Process:</u> Companies interested in requesting the Insurance Coverage line must contact the financial institution. Such institution shall be adhered to the program.</p> <p>CESCE will assess the coverage requests. In case of approval, CESCE will issue a coverage Policy in favor of the requesting financial entity. The financing entities will be responsible for the correct implementation of the credit and, where appropriate, its guarantees.</p> <p>Note that limits established to receive these aids, shall be taken into account in aggregate together with all the extraordinary aids received</p>	<p><u>Term:</u> same.</p> <p><u>Cost of coverage:</u> same.</p> <p><u>Process:</u> same.</p>
--	--	--

	<p>from the Spanish Government in relation to the COVID-19 crisis, and specifically, those granted by the ICO, so that if a company requests several of these aids, all the amounts or benefits received must be added to calculate the maximum limit.</p>	
Spanish Government Guarantee	<p><u>Type of guarantee:</u> <i>pari passu</i> guarantees, in which the State shares the risk with the financial institutions, therefore losses are allocated proportionally and on identical terms to the financial institutions and the State.</p> <p><u>Beneficiary:</u> any kind of company that complies with the following requirements:</p> <ul style="list-style-type: none"> - Its corporate domicile is in Spain; - Has been economically affected by the impact of Covid-19; - Is not as of 31 December 2019 in default as per the list published by the Risk Information Center of the Bank of Spain (<i>Central de Información de Riesgos del Banco de España</i>); - Is not declared insolvent as of March 17, 2020 or in an in a situation that a creditor may claim the opening of insolvency proceedings; - Is not considered to be in a critical situation according to article 2 of the Commission Regulation No 651/2014 (which declared certain categories of aid compatible with the internal market), when the so-called Temporary Framework European Union Aids are applicable. <p><u>Purpose of the guarantee:</u> to cover any form of financing granted by financial institutions, financial credit establishments, electronic money institutions and payment institutions for businesses and the self-employed, which were granted by financial institutions to the companies so they can meet financing needs or any obligation arising from, the payment of invoices, salaries, working capital requirements and any other liquidity needs or payments regarding due financial or tax obligations or any other cash needs that are due.</p> <p><u>Other Conditions:</u></p> <ul style="list-style-type: none"> - Term: The term of the Spanish guarantee will have the same term as the underlying credit and in any event a maximum of 5 years. - Amount of Spanish Guarantee Line: The second half of the EUR 20.000 million shall be for companies that are not considered SMEs. - Eligible Financial Entities: credit institutions, financial credit establishments, electronic money institutions and payment 	<p><u>Type of guarantee:</u> same.</p> <p><u>Beneficiary:</u> same.</p> <p><u>Purpose of the guarantee:</u> same.</p> <p><u>Other Conditions:</u></p> <ul style="list-style-type: none"> - Term: same. - Amount of Spanish Guarantee Line: The first half of the EUR 20.000 million shall be for SMEs and self-employed citizens.

	<p>institutions. These shall be registered and supervised by the Bank of Spain (<i>Banco de España</i>) or the Spanish Securities Regulator (<i>Comisión Nacional del Mercado de Valores, CNMV</i>) which had agreed to participate and had entered into a framework agreement with the ICO.</p> <ul style="list-style-type: none"> - Eligible Loans: loans and other transactions entered by the beneficiaries, provided that they have been entered into or amended after 17 March 2020. If the amount is below EUR 50 million, the guarantee will be automatically approved to the extent approved by the financial institution. Above such amount ICO will need to check that the requirements are complied with by the potential beneficiary. - Deadline for the application of the Spanish Guarantee: 30 September 2020 (note that the deadline may be extended) <p><u>Maximum guaranteed amount:</u> the amount of guarantee cannot exceed 70% of the new loans and 60% of the renewals.</p> <p><u>Process:</u> the financial institution shall be free to decide on facility (terms, etc.) in accordance with its internal procedures and policies (e.g. risk policies).</p> <p><u>Maximum cost of financing:</u> between 20 and 120 basis points depending on the creditor/beneficiary and the guaranteed amount.</p> <p><u>Other considerations:</u> according to the clarifications published by the ICO on its website, the guaranteed financing cannot be used to repay or cancel in advance pre-existing debt, so that no refinancing of pre-existing debt is possible, except for the payment of amounts due at ordinary maturity</p>	<ul style="list-style-type: none"> - Eligible Financial Entities: same. - Eligible Loans: same. - Deadline: same. <p><u>Maximum guaranteed amount:</u> the amount of guarantee cannot exceed 80% of the new loans and renewals.</p> <p><u>Process:</u> same.</p> <p><u>Maximum cost of financing:</u> same.</p> <p><u>Other considerations:</u> same.</p>
--	--	--

White & Case LLP
Pº de la Castellana, 7
Madrid
28046
T: +34 91 787 6300

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

© 2020 White & Case LLP