C L I F F O R D
C H A N C E

SPAIN. CORONAVIRUS - A BREATH OF FRESH AIR FOR OPERATORS IN THE TOURISM SECTOR: THEIR MORTGAGE FINANCING TAKES A VACATION

The mortgage moratorium granted under the new Spanish Royal Decree will benefit companies and professionals resident in Spain with ties to the tourism sector and experiencing financial difficulties due to the COVID-19 pandemic.

Beneficiaries will be released from paying down the principal on their mortgage loans for a term of 12 months when these mortgages are on real estate used for tourism purposes and located in Spain.

This measure only applies to those mortgages that are subject to Spanish law.

Key issues

- It applies to mortgage loans subject to Spanish law granted to residents of Spain, on real estate used for activities in the tourism sector and located in Spain.
- It attempts to alleviate the situation of those mortgagors who have suffered a greater economic impact due to the pandemic.
- It does not apply to those mortgagors who failed to make their mortgage payments as of January 2020 and defaulted or were declared insolvent before the State of Emergency was declared in Spain.
- The moratorium's term will be for 12 months and it will also benefit the tenants of the properties in terms of their payment of the rent.
- The mortgage's ranking will be respected and the moratorium will be binding upon the guarantors of the operation.

CURRENT SITUATION OF THE TOURISM SECTOR IN SPAIN

Tourism is a strategic sector for Spain. According to data published by the Ministry of Industry, Trade and Tourism, this sector contributes 12.3% to Spain's GNP and generates 12.7% of the jobs in this country.

The restrictions on people's freedom of movement being established around the world and the fear of new outbreaks during this so-called "new normal" are hindering the recovery of an industry that has been devastated by the pandemic.

On 18 June 2020, Spain's President announced the adoption of a Plan to Boost Tourism that included a budget of more than 4.0 billion euros.

One measure was announced at the time, consisting of a moratorium on mortgage financing for companies with ties to the tourism sector, when the mortgages are guaranteed by real estate assets used for tourism-related activities.

Royal Decree-law 25/2020, of 3 July, on urgent measures to support the reactivation of the economy and employment, was approved last Friday and specifies the conditions of the moratorium in Articles 3 to 9 thereof.

WHAT ARE THE DETAILS OF THE MORATORIUM?

The moratorium will be for a maximum term of 12 months from its date of granting, with mortgagors being able to request it for a lesser period.

During this period, beneficiaries will only have to make interest payments, but not pay down the principal on the mortgage loans to which this measure applies.

The moratorium will apply to any mortgage instalment payments due and outstanding since 1 January 2020, which will then be considered "contingent" (i.e. not yet due).

When it comes time to update the mortgage repayment schedule, the Royal Decree offers two possible ways of doing this: (i) by redistributing the instalment payments without changing the maturity (the interest rate should be maintained), or (ii) by extending the maturity date[1].

As this measure implies a novation of the mortgage, the novation must be formalised according to the usual procedure and be recorded at the Land Registry. The notarial and registry fees involved must be borne by the lender, but these will be subsidised, in part. The provisions of the Real Estate Financing Act will not apply to this novation formalisation procedure.

The registration of the novation will not affect the mortgage's ranking (i.e. priority). It will furthermore be binding on the guarantors of the moratorium operation, regardless of whether they consent to it or not.

The rest of the contractual terms will remain unchanged.

WHO CAN BENEFIT?

Legal entities and self-employed persons having their registered address in Spain and are experiencing financial difficulties due to the COVID-19 pandemic. To benefit from the moratorium, they must demonstrate that their average income or turnover for the months March to May 2020 has decreased by at least 40 % compared to the same period in 2019.

The moratorium will apply to mortgages subject to Spanish law on real estate assets located in Spain that are used for tourism-related activities. For the purpose of this moratorium, such tourism-related activities will include hotels and similar activities, tourist accommodations and short-term lodgings, as well as travel agency activities.

The Royal Decree also states that the moratorium will apply to those tenants of the properties affected by the measure, in terms of their obligation to pay the rent. The beneficiary of the mortgage moratorium must, in turn, grant the tenant a moratorium on the payment of the rent, consisting of at least 70% of the mortgage moratorium amount.

More controversial is the reference in the Royal Decree to the possibility for tenants experiencing financial difficulties due to the pandemic to request that their landlord apply for the mortgage moratorium when the latter does not meet the financial requirements established in the Royal Decree, meaning that the landlord can apply for the mortgage moratorium to its own creditors, claiming and evidencing its tenants' financial problems.

How this Royal Decree will be interpreted in relation to mortgages granted on assets that are only partially used for tourism activities is still up in the air.

We will have to wait and see how the measure is specifically applied in practice.

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1 There is no indication, in this second option, as to whether interest payments would be maintained.

WHAT SITUATIONS ARE EXPRESSLY EXCLUDED?

The moratorium will not apply when the applicant has taken advantage of any other moratorium granted by the Government since the outbreak of the pandemic[2] or has agreed a moratorium with its financial providers since the State of Emergency began.

In relation to such other moratorium agreed voluntarily, Royal Decree-law 25/2020 recognises the ability of the mortgagor to voluntarily waive it in order to take advantage of the moratorium established by this new Royal Decree, if it sees fit.

Moreover, in the event that the moratorium which the mortgagor has opted for has a duration of less than 12 months, it will be able to take advantage of the new moratorium for the remaining period until the end of such term.

Mortgagors who have failed to make some or all of their mortgage payments since 1 January 2020 and who are in default (*mora*) when the Royal Decree entered into force, will not be eligible for the moratorium, nor will those affected by a declaration of insolvency predating that of the State of Emergency.

WHAT IS THE DEADLINE FOR PRESENTING APPLICATIONS?

Mortgagors qualifying as beneficiaries of the measure[3] will be able to present their application to their financial providers as of the entry into force of the Royal Decree (7 July 2020), until 30 September 2020 (the term may be extended depending on how the situation associated with the pandemic evolves).[4]

WHAT ARE THE SIDE EFFECTS OF OPTING FOR THE MEASURE?

Mortgagors or tenants who opt for this measure will not be able to distribute profits, make capital refunds, repurchase own shares or remunerate capital in any other form until the term of the moratorium has concluded.

In those cases in which the application is made at the request of the tenant (Article 7.2), this restrictive measure will only affect it (not the mortgagor).

WHAT ARE THE PENALTIES FOR THOSE TAKING UNDUE ADVANTAGE OF THE MEASURE OR WHO REFUSE TO GRANT THE MORATORIUM?

The Royal Decree states that, in the civil jurisdiction, mortgagors or tenants benefitting from the moratorium without meeting the requirements will have to pay indemnification for any damage caused and bear all expenses incurred in implementing the moratorium. It adds that this does not exclude liabilities that may arise in any other respect as a result of this conduct.

Meanwhile, the obligations established in the Royal Decree in relation to the moratorium are considered regulation and compliance rules under the Financial Institutions Regulation, Supervision and Solvency Act (*Ley 10/2014 de 26 de junio, de ordenación, supervisión y solvencia de las entidades de crédito*). As such, its penalty regime may be applied.

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2 The Royal Decree specifically excludes those financings availing of the moratoriums contained in Royal Decree 8/2020 of 17 March and Royal Decree 19/2020 of 26 May, which regulated the mortgage and non-mortgage moratoriums for people in a particularly vulnerable situation.

3 Either themselves or at the request of their tenants, pursuant to Article 7.2 of the Royal Decree.

4 The end of the term indicated in point 10 of the EBA/GL/2020/02 Guidelines on legislative and non-legislative moratoriums for refunds of loans applied in light of the COVID-19 crisis, in accordance with the amendments included in the Guidelines that amend the EBA/GL/2020/02 Guidelines of 25 June 2020.

CONTACTS

Iñigo Villoria
Partner

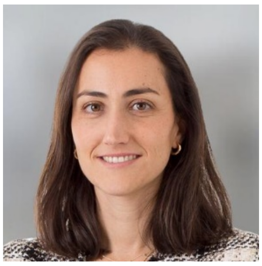
T +34 91 590 94 03
E inigo.villoria
@cliffordchance.com

Rodrigo Uría
Partner

T +31 91 590 94 08
E rodrigo.uria
@cliffordchance.com

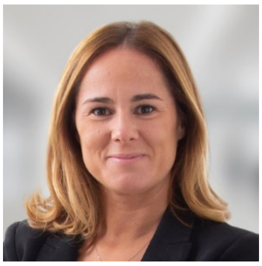
Eduardo García
Partner

T +34 91 590 94 11
E eduardo.garcia
@cliffordchance.com



Alexandra Borrallo
Senior associate

T +34 91 590 94 06
E alexandra.borrallo
@cliffordchance.com



Laura del Campo
Associete

T +34 91 590 94 52
E laura.delcampo
@cliffordchance.com