

Legal Status in Spain

JULY 9, 20

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1. Real Estate

Real Estate

Panorama of Real Estate investment in Spain in the “new normality” context

The State of Alarm, decreed by the executive branch on March 14, 2020 as a result of the health crisis caused by SARS-CoV-2 (“Coronavirus”), was lifted on June 21, 2020. Although there are still some restrictions in force, it is now possible to resume most activities in a normal way, a stage that has been called the “new normality”.

What are the consequences for investment in the real estate sector?

Up until the coronavirus crisis, the real estate sector was very active, due to very low interest rates plus financial markets at historic highs and also to the emergence of business opportunities linked to coworking, offices, hotels and nursing homes or student residences; to the point that there was talk of a new real estate bubble.

The economic slowdown generated by the Coronavirus crisis has changed the market. While a recovery is beginning to be noticed, it will be U-shaped and will take some time. Currently, disinvestments in different sectors are foreseen. According to “La Vanguardia” newspaper, a third of the sales in progress in offices and logistics have been affected, and this percentage reaches 68% of the sales of hotels and 76% of shopping centres. Other projections mention that there will most likely be a significant increase in unemployment. For all these reasons, and due to individual and especially companies’ need for liquidity, a reduction in demand and an increase in supply are expected, with the consequent fall in property prices. For investors, this may involve investment opportunities, especially in the office sector.

The “new normality” and its changes in terms of working practices also have consequences on the real estate market. For example, it is believed that the development of teleworking will bring with it an increase in demand for coworking spaces.

On the other hand, institutional investors (investment funds, SOCIMIs or REITs) do not seem to be too affected by the latest events. A survey of investors in Spain by the real estate consultancy Cushman & Wakefield (75% foreign capital and 25% local capital) reveals that there are approximately 40 billion euros available for investment in Spain. According to Cushman & Wakefield, 90% of the investors are still active in Spain and 60% would already be in a position to formalize letters of intent for the acquisition of real estate assets. With regard to investors’ perception of risk, 33% of those consulted stated that they would re-evaluate their risk profile due to the Coronavirus crisis, while the majority (51%) would maintain their investment strategy. Only 16% stated that they are studying different types of assets.

As for future prospects, 63% of the investors consulted believe that the market in general will recover its normal activity within the next 18 months.

Finally, specialists think that there will be investment opportunities, not only in real estate, but also in real estate debt, with returns that can reach or exceed 20%. This is due to the fact that, although the Spanish government is offering aid, refinancing and moratoriums with very convenient conditions, the debts will remain outstanding and these aids will also have to be paid, which will generate a greater demand for financing in this sector.

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2. Tourism

Tourism

Package holiday cancellation claim

Royal Decree-Law 11/2020 of March 31, 2020 introduced a special rule specifically relating to the cancellation of package holidays as a result of the health crisis. This rule established that in the event of cancellation, the traveller could opt for a voucher for the value of the corresponding refund, to be used within a period of one year from the end of the State of Alarm, or choose to terminate the contract and obtain a refund of what had been paid, although in this case the organizer or retailer would only be obliged to return the amount received in turn from the suppliers of the package holiday services.

This rule has been modified and simplified by Royal Decree Law 21/2020 of June 9, 2020. At present, that rule simply provides that the organizer or retailer can offer the above-mentioned voucher, and that the customer can accept it. The reference to the customer being able to terminate the contract and be refunded based on the extent to which the organizer or retailer recovers it from the service providers has been removed.

This change responds to the European Commission Recommendation 2020/648 on vouchers offered to travellers as an alternative to reimbursement.

With this amendment, the special rule is largely reduced in scope and only stipulates that the organizer or retailer can offer the voucher, but that the passenger is not obliged to accept it. As a result, it is necessary to look at what happens in the event of the passenger not accepting the voucher and claims a refund of the money paid for the cancelled journey.

Article 160 of the Law for the Defence of Consumers and Users establishes that at any time prior to the start of the trip, the traveller can terminate the package holiday contract, in which case the organizer or retailer can demand the payment of a penalty; but if such cancellation is made due to unavoidable and extraordinary circumstances at the destination that significantly affect the trip, then there will be no penalty and a full refund must be made.

Similarly, it stipulates that the organizer or retailer can cancel the trip due to unavoidable and extraordinary circumstances, and must refund the money paid, but without additional compensation.

Under this rule the refund shall be in full, without any reference to whether the organizer of the trip is refunded by the service providers of the package holiday. This is to the benefit of the traveller and to the detriment of the tour operator, given that the traveller can claim full reimbursement and the tour operator cannot make the excuse that he has had unreimbursed expenses from his service providers.

The special rule created during the State of Alarm amended this in order to help tour operators by obliging them to reimburse only what they had not spent or what suppliers returned; this favoured the acceptance of the voucher by the traveller. But, as previously mentioned, this special rule has been amended and no longer regulates the reimbursement, so the general law applies and it must be made in full.

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3. Energy

Energy

Will Royal Decree Law 23/2020 of June 23 facilitate the end of speculation on electricity grid connection points?

On 24 June 2020, Royal Decree Law 23/2020 of June 23 (“RDL 23/2020”) was published in the BOE (Spanish State Gazette). By virtue of this Decree Law, among other things, a series of criteria has been established to order access and connection to the electricity network, with the main aim of putting an end to the current speculation on grid connection points.

RDL 23/2020 has for the most part been welcomed by the sector, since in recent times many technically and economically viable electricity generation projects have not been able to be developed due to the difficulties in obtaining connection to the electricity grid, a barrier that is largely due to the speculative activities centered on the aforementioned connection points.

Under the terms of RDL 23/2020, holders of access permits for electricity generation facilities who have obtained such permits after December 27, 2013, and before the entry into force of RDL 23/2020, must demonstrate compliance with certain development objectives within the established time periods, otherwise the access permits and, where applicable, the access and connection permits granted, will automatically expire and the competent body will be empowered to enforce the economic guarantees deposited with the application for the connection point. Similarly, holders of access permits obtained after the entry into force of RDL 23/2020 must comply with the established development objectives.

Based on the above, the holders of electricity generation project rights under development must pay special attention to the requirements of their contracts and, if applicable, the EPCs that they have signed and verify whether the terms agreed upon in said contracts comply with the deadlines set forth in RDL 23/2020, otherwise it would be advisable to review and adapt them to the new regulations.

In conclusion, it seems that RDL 23/2020 could limit current speculative practices on connection points to the electricity grid, although it will be necessary to see how the market behaves in the coming months to determine whether the upward trend in connection point requests continues or whether RDL 23/2020 will mark a turning point.

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