

# *Legal Status*

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1. Corporate / Commercial
2. Real Estate
3. Mexico Desk

# New warranty periods for the sale and purchase of goods, digital content, and services



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On 28 April 2021, Royal Decree-Law 7/2021, of 27 April, on the transposition of European Union directives in the areas of competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention, and repair of environmental damage, posting of workers in the provision of transnational services and consumer protection (hereinafter, "Royal Decree-Law 7/2021"), was published in the Official State Gazette (hereinafter, "Royal Decree-Law 7/2021").

The aforementioned regulation transposes multiple European Union directives and modifies regulations from different sectors. However, this article will focus on consumers in terms of the sale and purchase of consumer goods; that is, the transposition of Directive 2019/770 of the European Parliament and of the Council of 20 May 2019, on certain aspects concerning contracts for the supply of digital content and digital service, as well as Directive 2019/771 of the

European Parliament and of the Council of 20 May 2019, on certain aspects of contracts for the sale of goods.

It should be noted that Royal Decree-Law 7/2021 does not come into force until January 1, 2022, so that the provisions of Royal Legislative Decree 1/2007, of 16 November, which approves the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, will be applicable until then.

The most significant new features of Royal Decree-Law 7/2021 in the area of consumers and the sale and purchase of consumer goods are the following:

- i. On the minimum legal guarantee for goods and products: Royal Decree-Law 7/2021 extends the legal guarantees provided for the purchase of a good from two to three years and maintains those for digital products at two years.

The application of this Royal Decree-Law represents an important development in the field of consumer affairs with regard to contracts for the sale of goods and contracts for the supply of digital content and services.

Furthermore, the guarantee for second-hand products will be one year, instead of the six months provided for in the current regulations.

- ii. The Royal Decree-Law establishes a distinction between objective and subjective criteria in the sale and purchase of goods and the supply of digital content

or services in order to ascertain whether they are legal compliant. The subjective requirements include the following obligations:

1. Conform to the description, type of goods, quantity and quality and possess the functionality, compatibility, interoperability and other characteristics set out in the contract.
2. Be fit for the specific purposes for which the consumer or user needs them and which the consumer or user has made known to the entrepreneur at the latest at the time of conclusion of the contract, and for which the entrepreneur has expressed their acceptance.
3. Be delivered or supplied together with all accessories, instructions, including for installation or integration, and assistance to the consumer or user in the case of digital content as provided for in the contract.
4. Be supplied with updates, in the case of goods, or be updated, in the case of digital content or services, as provided for in the contract in both cases.

In the event of any lack of satisfaction, the consumer may ask the trader to remedy the problem by means of a declaration. The trader will therefore be obliged to replace or repair the product, or if both of the above are impossible, the consumer may request a price reduction or termination of the contract.

The time limit for the stating of dissatisfaction by the consumer is extended from two to three years from delivery.

As regards the burden of proof, it will be understood that the problem already existed in the product when it was delivered, if it appears within two years of delivery (for tangible products) or if it appears within one year of delivery, for digital content or services. In these cases, the product will benefit from the legal guarantee without the consumer or user having to prove anything, which represents a change with respect to the current regulation in which the existence of the problem must be proven.

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**“Royal Decree-Law 7/2021 extends the legal guarantees provided for the purchase of a good from two to three years and maintains those for digital products at two years.”**

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- iii. The limitation period in which the consumer can claim against the trader for their lack of satisfaction is now extended from three to five years from the original non-conformity claim.
- iv. Finally, the consumer shall be entitled to the availability of spare parts for the products purchased and technical service for a period of 10 years from the date on which the product ceases to be manufactured.

<b>Guarantees</b>	<b>Current law</b>	<b>Law from 01/2022</b>
Legal guarantee for goods purchased	2 years	3 years
Period for making a claim of dissatisfaction	3 years after the problem arises	5 years after the problem arises
Burden of proof to demonstrate the existence of the problem.	6 months	2 years
Spare parts availability after the product ceases to be produced	5 years	10 years

Therefore, any contract for the sale and purchase of goods and digital content or services entered after 1 January 2022 shall be affected by the application of this new consumer regulation.

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# The application of the *rebus sic stantibus* clause has been enacted after almost two years since the start of Covid-19



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The *rebus sic stantibus* clause has become highly popular over the last year as a consequence of the health crisis situation and the filing of numerous lawsuits for the modification or termination of contracts in application of this clause. Its application aims at mitigating the impact that this crisis has had on business premises following the mandatory closure and limitations of capacity, hours, and activity.

It is worth noting that the application of this legal figure is restrictive and exceptional. Thus, a court or tribunal admits the modification or termination of the contract only when there are exceptional circumstances and there is a serious prejudice to one of the parties.

## **Application of the *rebus sic stantibus* clause recognized in the law**

An example of the application of the *rebus sic stantibus* clause is seen in Law 13/2021, of October 1, amending Law 16/1987, of July 30, 1987, on Land Transport Management, which

in its Seventh Final Provision introduces the modification of contracts for the lease or assignment of business premises at airports managed by *Aeropuertos Españoles y Navegación Aérea* (AENA), the state-owned company that manages airports in Spain.

Consequently, the minimum guaranteed annual rent established in such contracts will be automatically reduced in direct proportion to the lower volume of passengers at the airport where the premises are located with respect to the volume of passengers that existed at that same airport in 2019, and AENA will not be required to pay a higher minimum rent. This reduction of the minimum rent will be applicable from June 2020, as well as in all subsequent years until the annual passenger volume of the airport is equal to that which existed in 2019. This provision is applicable to all lease or assignment of business premises contracts, even if the parties had previously reached different agreements or even if the payment had already been made.

Prior to this legislative modification, some courts, such as the Court of First Instance No. 4 of Palma de Mallorca, in its order 172/2021 of 30 July 2021, applied the *rebus sic stantibus* clause to modify the rents agreed with AENA in order to make the contract more reasonable and equitable with respect to the current circumstances.

## Application of the *rebus sic stantibus* clause recognized at Second Instance

Another example worth highlighting, given that it is the first time that a decision on the *rebus sic stantibus* clause of a Court of First Instance has been ratified, is found in the Judgment of the Provincial Court of Alava, Section 1, Judgment 536/2021 of June 30, 2021. The judgment issued by the Judge of First Instance partially upheld the lawsuit filed by the lessee against the lessor, in relation to the lease of business premises located in the Boulevard Shopping Center in Vitoria. The judge of First Instance considered that the *rebus sic stantibus* clause was applicable due to the substantial alteration in the balance of the provisions of the contract caused by the situation of the health crisis derived from Covid-19, which led to the declaration of the state of alarm, with the closure and subsequent limitations in the commercial activity.

The lease fixed the rent based on a percentage of 6% applicable to annual sales, with a minimum guaranteed rent of 2,530.32 euros per month, plus 284.89 euros for common expenses.

As the First Instance judge saw it, the obligation to pay the minimum guaranteed amount while the business was closed is too burdensome for the lessee, so it was agreed to reduce it by half. The First Instance judge understood that if this obligation to pay a minimum guaranteed rent as required by the lessee were totally eliminated, the entire loss would be transferred to the lessor, which

would not be fair. Along the same lines, the Provincial Court of Álava agreed that the damage caused by the pandemic should be distributed between the parties, thus ruling that the lease contract should be modified in the following sense:

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**“[...] a court or tribunal admits the modification or termination of the contract only when there are exceptional circumstances and there is a serious prejudice to one of the parties”**

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*“The monthly amount of the minimum guaranteed rent shall be reduced;*

*First, by 50% during the specific periods of obligatory closure to the public of the leased premises and/or the shopping centre in which it is located, and*

*Second, by 25% during the specific periods in which, without being obliged to close to the public, the leased premises and/or the shopping centre in which it is located, are necessarily affected by various and varied direct limitations, whether of capacity, opening hours and/or activity itself.*

*In both cases, when the corresponding prohibition and/or limitation was so agreed by a mandatory rule issued by the competent authority that was derived from a pandemic situation, whether the same occurs within or outside a declaration of a state of alarm”.*

*With this ruling, an equitable distribution of the imbalance is achieved and, therefore, the negative impact of the measures imposed during the state of alarm is shared by both parties."*

*In both cases, when the corresponding prohibition and/or limitation was so agreed by a mandatory rule issued by the competent authority that was derived from a pandemic situation, whether the same occurs within or outside a declaration of a state of alarm".*

A fair distribution of the imbalance is achieved with this ruling. Therefore, the negative impact of the measures imposed during the state of alarm is shared by both parties.

To conclude, it is worth noting that the application of the *rebus sic stantibus* clause in different types of contracts makes it clear that the consequences of the prohibitions and limitations of the pandemic can be extended to all economic sectors. Provided that the lessee can demonstrate an unfair imbalance caused by such prohibitions or limitations, judges may agree to modify the contracts in order to re-establish a balance between the parties' provisions.

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# Mexico becomes the leading Latin American investor in Spain



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The interest of Mexican investors in Spain has only but increased year after year. One of the reasons is the success of businessmen who have been operating their business in the country for some years.

Mexico is currently the second largest non-European investor in Spain, second only after The United States of America, and sixth overall.

Mexican investment in Spain over the last decade amounts to 26.5 billion euros. There are more than 700 companies with Mexican capital which maintain around 45,000 direct jobs.

The main sectors in which Mexicans invest in the Spanish market are:

- Leisure
- Restaurant Industry
- Real estate market
- Construction
- Food and beverages
- Transportation

The way in which these investments have been implemented ranges from, the total acquisition of existing companies to the purchase of part of the capital either directly or through the stock market. The opening of new companies to compete in the market has also been one of the formulas chosen to break into the Spanish market.

The list includes companies such as AMREST, with close to 2500 restaurant franchises in more than 25 countries. CINEMEX purchase of Yelmo Cinemas, with more than 400 movie theaters, is added to the participation of construction and real estate companies like FCC, Rehalia, or Inmobiliaria Colonial. Also worth noting is the acquisition of Avanza Bus by ADO Mobility.

Household brands like BIMBO and CEMEX have also been operating for years in Spain.

However, Mexican investment is not limited to these macro-companies; individuals and small company owners are an important part of the current flow of investment from Mexico.

This new wave of investment goes beyond the returns on investment and represents a search for social and financial security with the aim of operating in the framework of a solid currency such as the Euro along to doing business in an EU country.

This group of small investors, mostly individuals, look into the acquisition of one or more apartments, either with the purpose of having a second residence in Spain or to renovate and rent. The low interest rates on mortgage loans (around 1.4% versus 10.5% in

Mexico) are an additional attraction for the purchase of houses and apartments by Mexicans.

In view of all these conditions, it is to be expected that the flow of Mexican investment will be maintained and even exceed the current levels. This situation, together with Spanish investment in Mexico, will make Mexico a highly relevant player in commercial relations with Spain over this decade.

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