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COVID-19 Legal Insights



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1. **Emergency Ordinance No. 37/2020 on the granting of facilities in relation to the loans granted by credit institutions and non-bank financial institutions to certain categories of debtors (“GEO 37/2020”)**

Facilities regarding the repayment of loans granted by credit institutions and non-bank financial institutions to certain categories of debtors

Emergency Ordinance No. 37/2020 on the granting of facilities in relation to the loans granted by credit institutions and non-bank financial institutions to certain categories of debtors (“GEO 37/2020”) was published in the Official Journal of Romania on 30 March 2020.

GEO 37/2020 grants certain facilities regarding the repayment of loans granted by credit institutions and non-bank financial institutions to certain categories of debtors: repayment of loan instalments may be suspended for a period of up to 9 months, but not later than 31 December 2020.

1. Who are the beneficiaries?

The beneficiaries of the provisions of GEO 37/2020 are the following categories of debtors:

- Individual debtors (i.e., natural persons);
- Debtors that are legal persons, authorized natural persons, individual businesses and family businesses, except for credit institutions, if they meet the requirements provided in GEO 37/2020, namely:
 - (1) They suspend their operations in full or in part as an effect of the decisions issued by the competent public authorities and they hold a state of emergency certificate (SEC1), or (2) they hold a state of emergency certificate attesting that their revenue dropped by at least 25% in March 2020 compared to their average revenue in January and February 2020 (SEC2)¹; and

¹ On the procedure for the issuance of state of emergency certificates, see http://www.tuca.ro/web/pdf/en/Legal_Alert_COVID_19_Emergency_Situation_Certificates_How_to_obtain_them_and_what_are_their_legal_effects_Tuca_Zbarcea_Asociatii_26_March_2020.pdf.

- They are not insolvent when they apply for the suspension of the loan repayment.

2. Which are the requirements for the suspension to be applicable?

In order for the suspension to be applicable the following requirements should be met:

- The debtors' revenue was directly or indirectly affected by the serious situation generated by the COVID-19 pandemic;
- The loans were granted before the date when GEO 37/2020 came into force, they are not due and the creditor has not accelerated the loans;
- The debtor had no overdue payments on these loans by 16 March 2020 (i.e., the date when the state of emergency was declared in Romania) or, if it had, the debtor has paid them before applying for the suspension;
- The debtor should apply for suspension within no more than 45 days as of the date when GEO 37/2020 comes into force.

3. Which are the types of loans for which suspension of repayment may be requested?

The suspension is applicable to all types of loans granted by credit institutions/non-bank financial institutions, including Romanian branches of foreign institutions, such as: consumer loans, mortgage loans, including First Home loans, financial lease contracts, overdraft, investment loans or other types of loans.

Operational lease contracts, supplier credits granted by business partners or intragroup shareholder loans do not fall within the scope of GEO 37/2020.

4. What are the effects of suspension?

Debtors may apply for the suspension of loan instalment repayment (i.e., principal, interests and fees) for a period of at least 1 month and of no more than 9 months (but not later than 31 December 2020). Loan maturity is extended by a term equal to the period of suspension.

During the period of suspension, interest shall accrue for the amounts due the repayment of which is suspended. As a rule, for all loan categories except for mortgage loans contracted by natural persons, such interest is capitalized to the balance of the existing loan at the end of the period of suspension.

Capitalization of interest means that the loan balance will be increased by the amount of such interest, and, starting with the date the period of suspension ceases, the debtors will pay loan instalments (i.e., principal, interests and fees) calculated by reference to the loan thus increased.

For mortgage loans contracted by natural persons, the interest accruing during the period of suspension will be a distinct debt for which no additional interest is paid. Debtors will pay this debt distinctly, in equal instalments for a 60-month period. Payment of such interest is 100% guaranteed by the State. If debtors fail to pay these instalments when due, creditors may enforce the state

guarantee, and the amounts thus paid become debts to the national budget falling within the scope of the Tax Procedure Code.

5. How is the suspension obtained?

To benefit from the suspension of loan instalments, debtors should send an application for suspension to their creditors, usually in hard copy (e.g., a letter which may be sent by mail, courier or submitted to the bank office) or by email.

The creditor will analyse the application and will approve it by reference to the conditions provided in the rules for the application of GEO 37/2020; these rules have not been published yet, but are expected to be approved within 15 days as of the coming into force of GEO 37/2020.

Importantly, the suspension will apply as of the date the debtor submitted the application for suspension, even if such application is approved only later.

In our opinion, debtors for which the facility is conditional on obtaining a SEC1 or SEC2 should apply for suspension even before they have obtained such certificates, and submit the certificates later, given that SEC1 and SEC2 cannot yet be obtained. For these debtors as well, the period of suspension should start running as of the date when they submit the application, once the documentation is complete with the state of emergency certificate.

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Editors

COVID-19 - Legal Insights is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To be up to date with the news in these matters, you may access the resources available at the following link: <http://www.tuca.ro/covid-19/>



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