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COVID-19 Legal Insights

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Approval of the rules regarding the granting of facilities in relation to the loans offered by credit institutions and non-bank financial institutions to certain categories of debtors

Decision No. 270/2020 for the approval of the Rules for the application of Government 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 on 6 April 2020 ("**Application Rules**").

1. General rules in applying for suspension

Debtors should send their applications for the suspension of payments of loan-related instalments, interest and fees to the creditors within 45 days as of the coming into force of GEO 37/2020 (30 March 2020), i.e. until 15 May 2020.

These applications must be accompanied by the documents and affidavits specified in the Application Rules for each category of debtors, as detailed below.

The period for which the suspension of loan-related payments may be requested is of 1 to 9 months, but not later than 31 December 2020. For mortgage loans granted to natural persons, the debtors may only opt for suspension once.

2. Loans for which suspension may be requested

Suspension is granted for loans meeting the following cumulative requirements:

- They were granted before or on 30 March 2020;
- The final maturity date of the instalment reimbursement obligations, as provided in the loan agreements, falls on or after 30 March 2020;

- The acceleration of the loans was not initiated before or on 30 March 2020;
- No overdue instalments on such loans are registered before or on 16 March 2020, or the debtors have paid such overdue amounts before applying for suspension.

The Application Rules do not bring any further clarifications as to the types of loans for which suspension may be requested. However, we note that the Application Rules refer to loans in general, which supports the interpretation that the stimulus measures are intended to apply to all types of loans granted by credit institutions/non-bank financial institutions, including the Romanian branches of foreign institutions.

3. Natural persons who may benefit from the suspension of payments

Individual debtors (i.e., natural persons) eligible for the suspension of payments under GEO 37/2020 should meet the following requirements:

- Debtors' revenues and/or their family's revenues were affected, directly or indirectly, by the serious situation generated by the COVID-19 pandemic, compared to the amount of such revenues before the state of emergency was declared;

and

- It is impossible for them to comply with their loan-related payment obligations, as a result of the occurrence of one/several of the following causes, without limitation: the debtor/his family members undergo technical unemployment due to their employer's business closure/slowdown, layoff of the debtor/his family members, reduction of debtor's/his family members' salary, the debtor is placed in institutional quarantine or self-isolation, the debtor becomes sick with COVID-19 and the like.

Debtor's family members are deemed to be the spouse, parents and children who are living and sharing the same household with the debtor.

The fulfilment of these requirements is proven by an affidavit signed by the debtor.

4. Legal entities that may benefit from the suspension of payments

Legal entities debtors meeting the following requirements are eligible for the suspension of payments under GEO 37/2020:

- Their revenues were directly or indirectly affected by the serious situation generated by the COVID-19 pandemic, compared to their revenues before the state of emergency was declared;
- It is impossible for them to comply with their loan-related payment obligations;
- They hold one of the state of emergency certificates attesting that: (1) they have interrupted their business in full or in part as an effect of the decisions issued by the competent public authorities under the law, during the state of emergency (SEC1); or (2) their revenues or

proceeds have dropped by at least 25% in March 2020 compared to their average revenues in January and February 2020 (SEC2)[1];

and

- They are not undergoing insolvency at the time they apply for the suspension of the loan repayment.

An affidavit and the state of emergency certificate are proofs that such requirements are met. The application for suspension is made by the legal representative of the legal entities.

5. Authorized natural persons, individual businesses and family businesses, as well as liberal professions and professions practiced under special laws may benefit from the suspension of payments

These persons should meet the following requirements:

- Their revenues have been directly or indirectly affected by the serious situation generated by the COVID-19 pandemic, compared to their revenues before the state of emergency was declared and it is impossible for them to comply with their loan-related payment obligations;
- Their business has been interrupted in full or in part as an effect of the decisions issued by the competent public authorities under the law, during the state of emergency, with the following consequences: declining sales market, lower number of employees, smaller number of suppliers, etc.;

and

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

An affidavit proves that these requirements are met.

6. Stimulus granted for mortgage loans contracted by natural persons

The suspension of debtor's obligation to pay the instalments of the mortgage loan is granted for all components of the mortgage loan: principal instalments, interest and fees. The extension of the contractual term will have effects as of the date when the debtor submits the application for suspension.

For "First Home" programs, the maximum credit term of 30-year may be extended by a period equal to the duration of the instalment payment suspension.

The interest accruing during the period of suspension represents a distinct and independent claim to be paid by the debtor, as of the next month after the end of the suspension period, in 60 equal monthly instalments for which no interest is owed. The reimbursement period of the interest rates

[1] For the procedure on 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

starts as of the first calendar day after the period of suspension of payment obligations for the due instalments.

The Application Rules provide for the procedure of issuance and performance, and for the features of the letters of guarantee for the payment obligations of the interest rates scheduled for these loans. State guarantees are granted and implemented in favour of the creditors under an agreement between FNGCIMM and the creditors. The latter may send applications for enforcement under the letters of guarantee only during the validity term thereof, and the claims resulting from the payment of the state guarantees, namely the amounts paid to the creditors under the letters of guarantee granted by FNGCIMM, are budgetary claims.

7. Stimulus applicable to the loans contracted by debtors, other than mortgage loans contracted by natural persons

For these loans, the interest corresponding to the suspension period is capitalized to the balance of the existing loan balance at the end of the suspension period.

The principal thus increased shall be paid in instalments until the new maturity of the loans or until the initial maturity in case of loan restructuring, as of the following month after the expiry of the suspension period, during the period left until the new maturity of the loans or until the initial maturity in case of loan restructuring.

8. Loan rescheduling methods (including for mortgage loans)

The Application Rules provide for two loan rescheduling methods: (i) loan rescheduling by extension of the initial term of the loan with the period when payment obligations were suspended, or (ii) loan restructuring, without exceeding the initial maturity date of the loan.

Thus, for natural persons, loan rescheduling by extending the loan maturity is possible only if they fall within the age limit provided in the creditor's loan granting regulations. For debtors for which the extension of the loan maturity exceeds the age limit as provided in such regulations, creditors are to restructure the loans so that the debtors would not exceed the age limit.

It is not clear whether other categories of debtors, such as legal entities or natural persons complying with the age limit, may opt for one of the two rescheduling methods. However, we deem that the wording of the Application Rules allows the interpretation that the debtors may, in their suspension application, opt for either the extension of the initial loan duration, or maintaining the initial maturity.

9. Formalities applicable to co-debtors and guarantors

The provisions related to the opposability of the loan agreement amendments to co-debtors and guarantors (including surety) are worded in a deficient manner, i.e., on the one hand it is provided that (i) the effects of the loan agreement amendment under GEO 37/2020 extend *ipso jure* on any co-debtors, guarantors, including surety; however, on the other hand (ii) such effects are binding on these categories of persons only with their prior consent.

Based on these provisions, the application for suspension should be accompanied or followed by proof that that the other obligors, co-debtors or guarantors gave their consent, in view of obtaining the approval of the application by the creditors.

We anticipate that this deficient wording will create difficulties in application and interpretation of the norms, if, for various reasons, the debtors cannot prove that such persons gave their consent.

10. Procedure for the approval of the application for suspension by the creditors

The decision to approve/reject the application for the suspension of the obligations to pay the instalments is issued by the creditor within 15 days as of receipt of the application. If an approval decision is issued, contractual clauses shall be amended as an effect of such approval, and no addenda need to be executed.

Creditors shall notify the amendments of the contractual clauses within 30 days as of receipt of the application both to the debtors and to the guarantors. The notification is made in hard copy or by e-mail, to the contact details provided in the loan agreement, or by another means of remote communication made available by the creditor, according to the option expressed by the debtor.

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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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