

## LEGAL ALERT



## FINANCIAL AND BANKING MEASURES APPROVED IN THE CONTEXT OF COVID - 19 PANDEMIC

### 1. A MUCH REQUIRED GOVERNMENT INTERVENTION

As expected, the Romanian Government introduced additional measures to mitigate the negative effects of the COVID - 19 outbreak, which lead to certain debtors being negatively affected, small and medium-sized enterprises and other legal entities facing a severe lack of liquidity, and individuals seeing an abrupt decrease in their income. Thus, on 30 March 2020, the Romanian Government adopted Emergency Ordinance no. 37 on certain facilities for loans granted by credit institutions and non-banking financial institutions to certain categories of debtors ("GEO 37/2020"), published in the Official Gazette, Part I, no. 261 of 30 March 2020.

GEO 37/2020 took into account the position of the National Bank of Romania which confirmed that lenders - credit institutions (banks) and non-banking financial institutions - may permit delays in the repayment of the loans by the individuals affected by the COVID-19 pandemic, without applying National Bank of Romania Regulation No. 17/2012 on certain lending conditions, as regards the level of indebtedness, the loan-to-value limit and the maximum maturity of consumer credits. Since the banks built up capital buffers, the National Bank of Romania decided to allow the credit institutions to temporarily use these capital buffers up to a date that to be subsequently communicated, subject to complying with the relevant legal requirements.

### 2. WHICH DEBTORS MAY QUALIFY FOR THE GEO 37/2020 BENEFITS?

- individuals;
- authorized individuals, individual enterprises, family enterprises, functioning according to the Government

Emergency Ordinance no. 44 /2008 on the performance of economic activities by authorized individuals, individual enterprises and family enterprises ("GEO 44/2008");

- liberal professions and those exercised under special laws, irrespective of the professional form;
- legal entities under loan agreements and leasing agreements, except the credit institutions as regulated by the Government Emergency Ordinance no. 99/2006 ("GEO 99/2006").

### 3. WHICH TYPES OF LOANS AND LENDERS ARE SUBJECT TO GEO 37/2020?

#### A. LOANS

- consumer loans under as per loan agreements regulated by Emergency Government Ordinance no. 50/2010 on consumer credit agreements ("GEO 50/2010");
- mortgage loans, namely: (i) loans granted to individuals with a mortgage on a real estate property, as well as loans involving a right related to a real estate property, as regulated by Emergency Government Ordinance no. 52/2016 on consumer real estate loan agreements ("GEO 52/2016"), and (ii) loans granted to individuals within the Prima Casa program, as approved by Government Ordinance no. 60/2009;
- loans granted to the legal entities, including the loans granted under leasing agreements under the Government Ordinance 51/1997 regarding leasing operations and leasing entities ("GO 51/1997");

## B. LENDERS

- credit institutions, as defined by GEO 99/2006;
- non-banking financial institutions, as defined by Law no. 93/2009 on non-banking financial institutions;
- branches of foreign credit institutions and financial non-banking institutions which carry out their activities in Romania.

## 4. MAIN PROVISIONS AND MEASURES

### A. THE TEMPORARY SUSPENSION OF PAYMENT OBLIGATIONS UPON THE DEBTOR REQUEST

- GEO 37/2020 sets forth that the payment obligation for the principal installments, accrued interest and charges under the loans detailed in Point 3 (a) above are suspended at the request of the debtors, for a period of up to nine months, but no later than 31 December 2020. The debtors may thus opt to request the payment obligation suspension for a period from one to nine months.

However, wording in GEO 37/2020 also refers to a lender review and approval of the suspension request, according to the implementing legislation which is to be prepared and approved by the Government within 15 days from the publication of GEO 37/2020. While the wording is not optimal, it may only be read as in the lenders having a right to reject the suspension request only if the debtor fails to qualify for such suspension, for instance in case it fails to submit prerequisite documentation such as the state of emergency certificate issued by the Ministry of Economy, Energy and Business Environment.

- The maximum credit period under lenders' rules may thus be exceeded with a period equal to the suspension period of the payment obligation, which is of maximum nine months.
- The extension of the contractual term is effective as of the communication date of the suspension request sent to the lenders, but only for the requests approved by them.
- In case of the debtors for whom the extension of the credit maturity exceeds the age limit provided in the lenders' rules, the latter shall proceed to restructure the loans with the observance of the age limit.
- The loans are automatically amended by the effect of GEO 37/2020, without the need to conclude amendments. Within 30 days as of the receipt of the debtor's request, the lender must notify the debtors the contractual clauses amended for implementing GEO 37/2020.
- There are, however, excluded loans:
  - Loans which have not reached maturity or were not accelerated by the lenders at the time of GEO 37/2020 entry into force, 30 March 2020.
  - Loans which registered not arrears at the date when the state of emergency was established in Romania (i.e. 16 March 2020) or, if arrears were actually registered, they have been paid by the debtors by the time of their request to suspend the payments under such loans.

### B. QUALIFYING DEBTOR CONDITIONS UNDER GEO 37/2020

- Under GEO 37/2020 only the debtors whose income is affected directly or indirectly by the severe situation generated by the COVID-19 pandemic may benefit from the suspension of the loans repayment. Implementing legislation shall be prepared and approved by the Government within 15 days from the publication of GEO 37/2020.
- GEO 37/2020 establishes special conditions applicable to all debtors, other than individuals. Specifically, the qualifying debtors (a) must fully or partially interrupt their activity pursuant to the decisions of the relevant public authorities, for the duration of the declared emergency state, and hold a state of emergency certificate issued by the Ministry of Economy, Energy and Business Environment, or (b) hold a state of emergency certificate issued by the Ministry of Economy, Energy and Business Environment, attesting, based on the debtors' affidavits, a decrease in their income or proceeds of at least 25% for March 2020 as compared to the average income or proceeds for January and February 2020 or the full or partial interruption of their activity as a result of the relevant public authority decision, for the duration of the declared emergency state.

Further, the debtor must not be insolvent on the date of the loan repayment suspension request, according to the information available on the website of the National Trade Registry Office.

### C. THE PAYMENT SUSPENSION PROCEDURE

- In order to benefit from the loan repayment suspension, a debtor must submit a request to its lender, by mail or electronic mail, to the contact details indicated under the relevant loan, or through another remote communication channel provided by the lender.
- If a debtor cannot send the suspension request by mail, electronic mail or otherwise (by remote communication channel provided by the lender), then such debtor may submit a verbal request, by phone, at the phone line assigned for this purpose by the lender, as announced by the latter on its website. Lenders have the obligation to record the calls including verbal requests for suspension of the loan repayment obligation.
- A debtor must submit the repayment suspension request no later than 45 days from the entry into force of GEO 37/2020. Thus, the deadline for the suspension request is 15 May 2020.

### D. INTEREST CAPITALIZATION EXCEPT FOR MORTGAGE LOANS

- The interest for the amounts due whose payment is suspended is capitalized and thus added to the credit (principal) balance at the end of the suspension period. Thus, the revised principal repayments are spread over until the new maturity of the loan following the suspension period.
- However, the interest is not capitalized in the case of the mortgage loans granted to individuals. In such case, the interest accrued during the suspension period is calculated according to the loan, and represents a standalone and independent receivable in relation to the other debtor obligations under the loan.

- This standalone and independent receivable bears no interest and its payment is spread over 60 equal monthly installments, starting the month immediately following the end of the suspension period and is guaranteed by the State as detailed below.

#### E. STATE GUARANTEE FOR INTEREST REPAYMENT BY INDIVIDUAL DEBTORS

- The interest applicable to mortgage loans granted to individuals amounts to a standalone and independent receivable, and is 100% secured by the Romanian State through the Ministry of Public Finance ("MPF").
- MFP authorizes the National Credit Guarantee Fund for Small and Medium Enterprises ("Guarantee Fund") to issue letters of guarantee in the name and on behalf of the State in favor of the lenders, based on guarantee agreements to be concluded between the Guarantee Fund and the lenders according to a template to be approved through by means of a MFP order to be issued within a 15 days from the GEO 37/2020 entry into force. The validity of the letters of guarantee is of maximum five years.

- Each lender must communicate to the Guarantee Fund, on its own liability, the total amount of the guarantee commitment, specifically the cumulated interest due by the debtors under GEO 37/2020, as resulting from the sixty-month interest payment schedule.
- In case of debtor default, subsequent execution of the guarantee and payment by the MFP, the Guarantee Fund prepares a debt instrument identifying the payment obligations of the individuals benefiting from the suspension measure. The debt instrument is a writ of execution. The relevant receivables resulting from the execution of the state guarantees under GEO 37/2020 are recovered from the debtors by the National Agency for Fiscal Administration and the collected amounts become state budget revenues.
- If a debtor fails to pay a receivables resulting from the execution of the guarantee letters on the due date, the debtor shall owe accessory tax liabilities calculated and communicated by the National Agency for Fiscal Administration.



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