

LEGAL UPDATE

COVID-19

**GUARANTEES
FOR BANK LOANS
AND
LOAN INTEREST
BONIFICATIONS
AS FINANCIAL AID
TO SMEs**

**EXTRAORDINARY
MEASURES
IN FINANCIAL MARKET
SUPERVISION**

COVID-19 GUARANTEES FOR BANK LOANS AND LOAN INTEREST BONIFICATIONS AS A FINANCIAL AID PROVIDED TO SMEs BY THE STATE

EXTRAORDINARY MEASURES IN FINANCIAL MARKET SUPERVISION

On 2 April 2020, the National Council of the Slovak Republic adopted Act on certain extraordinary measures in the area of finance in relation to the spread of dangerous contagious human disease COVID-19 (the “Act”). The Act shall be published in the Collection of Laws of the Slovak Republic in the coming days and shall become effective at the date of its publication in the Collection of Laws of the Slovak Republic.

The Act stipulates, inter alia, the conditions for providing financial aid to small and medium-sized enterprises (“SMEs”) by the Ministry of Finance of the Slovak Republic in order to help maintain operations and employment in SMEs during the adverse period caused by the coronavirus SARS-CoV-2 pandemic.

The Act also stipulates certain extraordinary measures in the financial market supervision.

This legal alert was prepared on 3 April 2020 based on the finally adopted text of the Act, as published by the National Council of the Slovak Republic.

A. GUARANTEES FOR BANK LOANS AND LOAN INTEREST BONIFICATIONS

AS FINANCIAL AID FOR SUPPORT OF MAINTENANCE OF OPERATION IN SMEs

The financial aid under the Act can be provided to SMEs in the form of:

- a guarantee for the bank loan provided to the SME by the Bank (as defined below) (the “guarantee”); and/or
- a repayment of an interest on the loan provided to the SME by the Bank (the “interest bonification”).

The Act does not exclude the provision of both forms of the financial aid simultaneously in relation to the same bank loan of the SME.

It is the Ministry of Finance of the Slovak Republic (the “Ministry of Finance”) who provides this financial aid to SMEs via Export-Import Bank of the Slovak Republic (https://www.eximbanka.sk/en/english.html?page_id=93) and Slovak Guarantee and Development Bank, a.s. (<https://www.szrb.sk/>) (the “Bank(s)”) as intermediaries. The financial aid is provided under the terms of the agreement concluded between the Ministry of Finance and the Bank providing the guarantee and under the terms of the Act and the act on state budget for the respective calendar year.

The financial aid is designated only for SMEs as defined in Annex I to the Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. The category of SMEs is thus made up of enterprises (self-employed individuals or legal entities) which employ fewer than 250

persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

According to the reasoning report to the Act, when the Ministry of Finance declares the impact of the Act on public finances, it states that the aggregate amount of loans provided to SMEs for which the guarantee will be undertaken and/or for which the interest bonification will be provided via the Banks may not exceed EUR 50 million [which, however, is in contrast with the originally publicly announced monthly volume of bank guarantees to SMEs in the amount of EUR 500 million notified within the First Aid package of economic measures].

1. Guarantee for the Bank Loan

Loans to which the guarantees may apply. The guarantee under the Act can be provided to a bank loan provided to the SME by one of the Banks under a loan agreement concluded between the SME and the Bank directly.

Content of the guarantee. The guarantee is the obligation of the Ministry of Finance towards the SME to satisfy its obligation under the loan agreement concluded between the SME and the Bank if the SME fails to do so. If the SME fails to repay its loan to the Bank under its loan agreement with the Bank and the Ministry of Finance fulfils an obligation under the guarantee to the Bank, the Ministry of Finance will have a claim against such SME to the extent of this payment (the “guarantee claim”). The SME is obliged to repay to the Ministry of Finance the guarantee claim together with the interest accrued pursuant to the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

The Act explicitly states that the guarantee is not a state guarantee under Act No. 386/2002 Coll. on State Debt and State Guarantees, as amended. Similarly, the Act explicitly states that provisions of the Slovak Civil Code¹ and the Slovak Commercial Code² on guarantees shall not apply to the guarantee under the Act, either.

Recipients. The guarantee may be provided to a SME if, at the date of signing of the loan agreement with the Bank:

- the SME is not a person who is authorized to mediate employment for remuneration³ or agency of temporary employment⁴;
- the SME does not have any outstanding liabilities towards the Social Insurance Agency on social insurance premiums or contribution for old-age pension savings overdue for more than 180 days;
- the SME does not have any outstanding liabilities towards the health insurance company regarding the compulsory public health insurance overdue for more than 180 days;
- no bankruptcy or restructuring proceedings was initiated against the SME; and
- the SME meets other conditions specified by the Bank.

¹ Act No. 40/1964 Coll., the Civil Code, as amended

² Act No. 513/1991 Coll., the Commercial Code, as amended

³ Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act) as amended

⁴ Section 29 of Act No. 5/2004 Coll. on employment services and on a change and supplement of particular laws, as amended

Limits on the financial aid. The guarantee as a financial aid instrument is subject to de minimis thresholds for the state aid as stated by the EU law.⁵

Monitoring. The Bank shall evaluate and verify (at the time of providing the guarantee as well as later on) whether the SME fulfils the conditions under which the guarantee was provided⁶. To this end, the SME is obliged to cooperate with the Bank.

Control by the Ministry of Finance. The Ministry of Finance shall control whether the conditions for providing the guarantee to the SME are complied with within the activity of the Bank. If there are any deficiencies identified in the Bank's activities in terms of non-compliance with the conditions for providing the guarantee, the Ministry of Finance may impose on the Bank a fine of up to a double amount of the loan for which such a guarantee was granted, depending on the gravity of the infringement and the duration of the defective situation.

2. Interest Bonification

Loans to which interest bonifications may apply. The interest bonification may be provided to a loan provided to the SME by the Bank under a loan agreement concluded between the SME and the Bank directly.

Recipients. An interest bonification may be provided to a SME from the state budget if:

- the SME maintains the employment level originally specified in the loan agreement for the period specified in the loan agreement concluded between the Bank and the SME; and
- at the end of the period specified in the loan agreement concluded between the Bank and the SME, the SME will not have any outstanding liabilities towards the Social Insurance Agency on social insurance premiums or contribution for old-age pension savings or outstanding liabilities towards the health insurance company regarding the compulsory public health insurance in excess of the amount originally specified in the loan agreement.

Limits on the financial aid. The interest bonification as a financial aid instrument is subject to de minimis thresholds for the state aid as stated by the EU law.⁷

Monitoring. The Bank shall evaluate and verify at the time of providing the guarantee as well as later on) whether the SME fulfils the conditions under which the interest bonification was provided⁸. To this end, the SME is obliged to cooperate with the Bank.

⁵ Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid; Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector

⁶ The conditions are stipulated by (i) the Act and the act on state budget for a respective calendar year, (ii) the Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, (iii) the Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, (iv) the contract concluded between the Bank and the Ministry of Finance, and (v) the loan agreement concluded between the Bank and the SME.

⁷ Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid; Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector

⁸ The conditions are stipulated by (i) the Act and the act on state budget for a respective year, (ii) the Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, (iii) the Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the

Control by the Ministry of Finance. The Ministry of Finance shall control whether the conditions for providing the interest bonification to the SME are complied with within the activity of the Bank. If there are any deficiencies identified in the Bank's activities in terms of non-compliance with the conditions for providing the interest bonification, the Ministry of Finance can impose on the Bank an obligation to return to the state budget the amount of the interest bonification that was provided to the SME as an unjustified financial aid.

B. EXTRAORDINARY MEASURES IN THE FINANCIAL MARKET SUPERVISION

- The National Bank of Slovakia (the “NBS”) as a local regulator for the financial market can interrupt the proceedings pending before the NBS if the circumstances related to the period of the coronavirus SARS-CoV-2 pandemic hinder due hearing and decision of the matter in such a proceeding. Proceedings can be interrupted repeatedly, however, no longer than until the end of the pandemic.
- The NBS can prolong the deadlines applicable to the acts and obligations that should be taken or fulfilled by the NBS under special laws if the circumstances related to the period of the pandemic hinder the NBS from meeting such deadlines. The NBS shall notify the respective subjects accordingly. Such deadlines may be prolonged repeatedly, however, they expire at the latest on 30th calendar day following the end of the pandemic.
- If the deadline for the acts and obligations that should be taken or fulfilled by the NBS is less than 30 calendar days and the time period has not expired by the date of the effectiveness of the Act, the deadline is automatically prolonged to 30 calendar days and expire at the latest on 30th calendar day from the end of pandemic. Such deadline can further be prolonged as described above.
- The NBS may extend deadlines for acts or obligations of the supervised entities or other entities under the laws governing the financial market, if circumstances related to the period of the pandemic prevent them from meeting such deadlines, and that even repeatedly. The extended deadlines shall expire not later than 30th calendar day following the end of the pandemic, or, for serious reasons, the NBS may extend the deadlines so that they expire at the latest on 60th calendar day after the end of the pandemic. The NBS may do so upon a reasoned request of the supervised entity or of its own motion. The NBS shall notify the respective subjects accordingly.
- The submissions to the NBS and their attachments may be filed via electronic means signed by a qualified electronic signature even if an original or certified copy of the document is required. Instead of the electronic form, the NBS may request the delivery of attachments in a form as stated by law. Within 30 calendar days following the end of pandemic, the attachments shall be supplemented to the NBS in the form as otherwise stated by law. If an entity breaches the obligation under the preceding sentence or an entity submits to the NBS via electronic means and within this extraordinary regime the documents that are adjusted, forged or otherwise modified, the NBS may impose on such an entity a fine up to EUR 500,000. The

Functioning of the European Union to de minimis aid in the agriculture sector, (iv) the contract concluded between the Bank and the Ministry of Finance, and (v) the loan agreement concluded between the Bank and the SME.

NBS may, apart from the imposition of the said fine, upon its own motion, also cancel a decision issued based on such adjusted document, counterfeit or otherwise modified documents and in such a case, any act conducted on the basis of such a cancelled decision shall be deemed invalid by the operation of law. This all is without prejudice to the competence of the NBS to forgive submission of the original or certified copy of the document upon a request of the supervised entity and enable its submission via electronic means.

In this legal alert, we are not addressing all other extraordinary measures in the area of finance in relation to the spread of dangerous contagious human disease COVID-19 also covered by the Act.

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We follow current legislative developments and we will continuously publish relevant updates on the above information (and also on other legislative changes and interesting legal topics). This legal alert was prepared on 3 April 2020 and posted on 6 April 2020.