Client Alert | Banking / Corporate - Slovak Republic

Slovak Government Financial Assistance Measures to Address Adverse Effects of COVID-19

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On 2 April 2020 the Slovak Parliament adopted Act No. 67/2020 Coll. on certain emergency financial measures in relation to the spread of the dangerous contagious human disease COVID-19 ("Act 67/2020"), which provides a framework for provision of financial assistance designed to help businesses survive the dramatic short term effects of the COVID-19 pandemic including guarantee and interest subsidy schemes for SMEs. Those measures are complemented by measures introduced by the so-called Lex Corona (Act 62/2020) which sets forth certain standstill obligations and insolvency protection measures and job preservation measures implemented by various other acts.

Overview of Financial Aid Measures under Act 67/2020 (SMEs Only)

The Act 67/2020 introduces a legislative framework for provision of financial aid to support the maintenance of operations of SMEs during the COVID-19 pandemic. Such financial aid is to be provided by the Slovak Ministry of Finance (the "**MoF**") in the form of (i) guarantees for loans provided by the Export - Import Bank of the Slovak Republic ("**EXIMBANKA SR**") and the Slovak Guarantee and Development Bank (the "**SGDB**"); or (ii) the payment of (a portion of) interest on a loan provided by EXIMBANKA SR or the SGDB. The measures are aimed at SMEs[1] only.

According to the original information, the total amount of bank guarantees provided by the Slovak Government as financial assistance should be EUR 500 million per month, but only the guarantee schemes described below representing a minor portion of the aforementioned amount have been implemented so far.

Although the details of the guarantee scheme and conditions of the loans to be provided by the aforementioned banks have not yet been published (the publication is expected in the coming days) save for framework conditions of EXIMBANKA SR loans mentioned below, we provide below an overview of the main conditions of the scheme as currently available:

- eligible beneficiaries shall be SMEs subject to the following additional conditions - the beneficiary (i) does not hold a license for remunerated employment mediation and is not an agency for temporary employment; (ii) is not in arrears with the payment of social security, mandatory old-age pension saving scheme or health insurance contributions for more than 180 days; (iii) is not subject to bankruptcy or restructuring proceedings; and (iv) complies with other conditions that may be stipulated by EXIMBANKA SR or the SGDB;

- the aggregate amount of loans for which the guarantee may be provided and/or for which interest subsidy may be provided through EXIMBANKA SR and the SGDB may not exceed EUR 50,000,000. The maximum portfolio guarantee is 51% (i.e., EUR 25,500,000);

- the interest payment subsidy is expected to be in the amount of up to 4% of the interest agreed in the loan agreement with EXIMBANKA SR or the SGDB, whereas the receipt of such a subsidy will be conditional upon (i) maintaining the job preservation criteria defined in the loan agreement for the period defined in the loan agreement and (ii) meeting maximum social and health security payment arrears criteria defined in the loan agreement;

- in the event that the MoF will need to perform under the provided guarantee, the borrower will be obliged to repay the funds paid by the MoF to the MoF with applicable interest.

Based on the information published by EXIMBANKA SR, the loan product to be provided within the aforementioned scheme will be a bridge operating loan of up to EUR 500,000, but not exceeding 50% of the total 2019 turnover of the SME. The maturity of the operating loan shall be three years, with a deferred repayment of the principal and interest for 12 months from the date of drawdown. The borrower will be allowed to use the loan for the following purposes: (i) the financing of operating costs, (ii) investments in tangible or intangible assets related to the maintenance of operations and employment as well as the payment of contributions to the Social Insurance Agency, health insurance companies, tax authorities and customs authorities.

The details on loans to be provided within the aforementioned scheme by the SGDB have not yet been published.

The commercial loan instalment postponement measures for SMEs introduced by the Act 67/2020, are summarized separately below.

[1] Pursuant to Article 2, par. 1of Annex 1 of Commission Regulation (EU) No 651/2014 of 17 June 2014, the category of micro, small and medium-sized enterprises ('SMEs') includes enterprises 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.

The SIH Guarantee Scheme (SMEs only)

The Slovak MoF and Slovak Investment Holding, a. s. ("**SIH**"), have introduced the 'SIH Anti-Corona Guarantee' scheme ("**SIH Guarantee**").

The SIH Guarantee consists of a portfolio guarantee for financial institutions providing commercial loans to SMEs and an interest subsidy of up to 4% for enterprises that manage to preserve existing jobs. The total amount of funds currently allocated to the SIH Guarantee is EUR 38 million, but an increase in the overall volume of funds allocated to this financial instrument is expected. Aid under the SIH Guarantee scheme is currently granted in accordance with the general staid aid *de minimis* conditions, i.e., the aid may not exceed the applicable maximum *de minimis* thresholds (although the available documents still refer to a EUR 200,000 threshold, it has recently been increased by the European Commission to EUR 800,000 and, therefore, the documents might likely be amended to reflect the new thresholds).

Currently, the MoF and SIH are in the process of identification of financial institutions that will take part in the SIH Guarantee scheme.

The main features of the SIH Anti-Corona Guarantee scheme are as follows:

- **Beneficiaries**: the aid may be requested by any type of SME whose registered office is in Slovakia and which performs its activities in Slovakia which (i) is not classified as an "undertaking in difficulty" (*podnik v ťažkostiach*) under EU Directive No. 2013/34 and under EU Commission Communication No. 2014/C 249/01 (Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty); (ii) is not classified in the highest credit risk rating category (according to internal credit ratings of a financial institution); and (iii) does not operate in the fisheries and aquaculture sector or in the primary production of agricultural products (the aid may also not be provided with respect to export activities and certain further minor limitations may apply).
- **Purpose**: the SIH Guarantee is designed to enable commercial banks to extend bridging loans with favourable-terms to SMEs, topped up by an interest rate subsidy for those enterprises which manage to keep their staffing levels unchanged and to help them overcome financial difficulties caused by the ongoing situation.
- **Maximum guaranteed amount:** 80% guarantee for individual loans with principal amount of up to EUR 1,180,000, up to 50% of the portfolio subject to guarantee (guarantee limit).
- **Conditions**: the granting of the SIH Guarantee is subject to the following conditions:

1.	Minimum and maximum maturity:	▪ Min. 3 years (36 months) including postponement of instalments (12 months with respect to revolving credits). ▪ Max. 4 years (48 months) including postponement of instalments.
2.	Interest subsidy parameters	▪ max 4% p. a. (not applicable for revolving loans)
3.	Postponement of principal and interest instalments	▪ 12 months from the first utilisation of the loan (not applicable for revolving loans)

4.	Interest rate reduction	In the first step, the standard interest rate must be lowered by reducing the bank's margin by 50% due to the guarantee provided. Consequently, the interest rate thus determined will be additionally lowered by an interest subsidy of up to 4% p. a., but only up to a final interest rate of 0%.
5.	Job security undertaking	In order to benefit from the interest reduction, the beneficiary must maintain the average level of employment of regular employees in comparison with the previous situation for 12 months from the date of the first loan. The eligibility for an interest rate reduction is also conditional upon meeting maximum social and health security payment arrears and outstanding liability thresholds specified in the guarantee/loan agreement.
6.	Provision / increase / guarantee / early repayment fee	▪ 0%. Other fees are subject to the standard fee tariffs of the relevant financial institution.
7.	Eligible purposes for funding by the guaranteed loans	▪ the acquisition of tangible and intangible assets related to the retention or increase of jobs, including the transfer of ownership in enterprises and ancillary working capital (provided that such transfer is between independent investors); ▪ working capital related to (i) retention or increase of jobs and creation, strengthening or expansion of a new or existing activity of the SME, (ii) maintaining or increasing the number of jobs vis-à-vis disadvantaged social groups and to implement socially oriented measures, or (iii) to support SMEs with limited access to capital in events beyond their the control; ▪ the loans **may not** be used to refinance existing indebtedness or interest from bonds, to finance operations/investments which were physically terminated or fully implemented prior to the submission of the loan application and for other specific purposes mentioned in the scheme conditions

- **Commercial terms**: Based on the available information, the provision of guarantees will be free of charge and the financial institutions/banks shall not charge any fees for the provision/increase/guarantee/early repayment of the loan. Other fees are subject to standard fee tariffs of the bank.

- **Process**: It is expected that the SMEs will apply for the provision of guaranteed loans directly at the financial institution included in the scheme by SIH. Such a financial institution will then be responsible for assessment whether the applicant is eligible for a guaranteed loan and shall provide assistance under this scheme.

Standstill and Postponement Measures

Both the Act 67/2020 and the Lex Corona (Act 62/2020) set forth certain additional important temporary measures adopted to limit negative consequences of the COVID-19 situation on businesses including multiple standstill and postponement measures as well as anticipated introduction of a temporary insolvency protection scheme by way of amending the Lex Corona. The key features of those measures are summarized below:

Postponement of Loan Repayment (applicable to SMEs and natural persons – entrepreneurs only)

The possibility of postponement of loan repayment for the SMEs and natural persons – entrepreneurs is set forth by the Act 67/2020 subject to the following conditions:

- The creditor (bank) shall, at the request of the borrower submitted within the pandemic period, grant a postponement of repayment for a period specified in the request which may not be longer than nine months from the due date of the next outstanding installment. The borrower may request deferral of repayment of the same loan during the pandemic period not more than once;
- The postponement of the repayment by a creditor which is not a bank may be granted for up to three months and extended by a maximum of three additional months upon the borrower's request;
- The creditors may refuse to grant the postponement, in particular, if the applicant is in delay with the repayment of the loan subject to the postponement request for more than 30 calendar days as of the date of delivery of the application or if the debtor is in default of at least EUR 100 with respect to another loan with the same creditor as of 29 February 2020 as well as under other specified circumstances;
- The postponement of the repayment shall not affect the borrower's credit standing and the unpaid interest shall be paid within increased instalments upon the lapse of the postponement period, unless agreed otherwise. The creditors may not request additional security, the payment of additional fees or make the postponement conditional upon additional conditions;

The postponement regime is not applicable to credits in the form of overdrafts of current accounts or credits provided via credit cards.

The postponement of instalments and/or other adjustments of credit conditions for large corporates will most likely not be introduced by a legislative measure but will need to be agreed with the financing banks on a bilateral basis.

Suspension of limitation and prescription periods and prohibition of auctions and other forms of public monetization of assets, enforcement proceedings via sale of real estate and exercise of rights of lien until 30 April 2020

Lex Corona introduced the following protective measures applicable to all legal subjects (not just SMEs):

- suspension of limitation and prescription periods in private law until 30 April 2020. The periods that ended between 12 March 2020 and 27 March 2020 shall not expire earlier than thirty days after 27 March 2020;
- until 30 April 2020, auctioneers, bailiffs and trustees are prohibited from conducting auctions, entrusting the sale of property to auctioneer, organizing bidding processes or other competitive processes to sell property. Any method of monetization of a debtor's assets mentioned above made between the effective date of the Lex Corona and 30 April 2020 shall be invalid;
- until 30 April 2020, bailiffs are prohibited from carrying out enforcement proceedings through the sale of real estate and liens may not be exercised (acts aimed at exercising liens between 27 March 2020 and 30 April 2020 shall be ineffective);

- the period for the filing of a bankruptcy petition by the debtor due to overindebtedness has been extended from 30 days to 60 days for the situations in which a debtor becomes insolvent from 12 March 2020 to 30 April 2020.

Since the Lex Corona became effective on 27 March 2020, it cannot be excluded that the aforementioned periods may be further extended in the coming days.

Introduction of a specific insolvency protection scheme under draft amendment to Lex Corona (Act 62/2020)

On 14 April 2020, the Slovak Government approved the draft amendment to the Lex Corona (Act 62/2020) which will need to be approved by the Slovak parliament (and may be thus subject to certain modifications). The draft amendment aims at the introduction of a specific temporary opt-in insolvency protection scheme for businesses facing problems resulting from the COVID-19 situation. Its main features are outlined below:

- the scheme will be applicable to any eligible applicants (not just SMEs) i.e., entrepreneurs with a registered office or registered place of business (in the case of natural persons – entrepreneurs) in Slovakia holding a valid business authorization before 12 March 2020 and who have not been insolvent (in Slovak: *v úpadku*) as of 12 March 2020, except for financial institutions (such as banks, insurance companies, health insurance companies, payment institutions or securities brokers);

- the temporary insolvency protection will be granted upon the issuance of the confirmation of the locally competent court based on the submission of a written request submitted by the applicant;

- the granting of the protection shall have *inter alia* the following main effects: (i) suspension of the proceedings on the creditors' petitions for the bankruptcy of a protected entrepreneur filed after 12 March 2020; (ii) suspension of obligation on the side of the protected entrepreneur and persons obliged to file for bankruptcy on its behalf (e.g., directors) to file a petition for bankruptcy for the duration of temporary protection; (iii) suspension of enforcement proceedings initiated after 12 March 2020; (iv) standstill on the enforcement of liens over enterprises, movable assets, receivables or other assets belonging to the protected entrepreneur's enterprise and/or the setting off of the protected entrepreneur's receivables that arose after the temporary protection has been granted against receivables of related undertakings that arose prior to the granting of protection; (v) standstill on terminations or withdrawals from agreements concluded with the protected entrepreneur for delayed performance occurring before granting of temporary protection; (vi) imposition of obligation not to pay out dividends or other own funds or make non-negligible changes in the structure of assets; and (vii) cashless loans and similar transactions provided to the protected entrepreneur during the term of temporary protection and immediately related to the maintenance of its business (i.e., primarily applicable to related-party funding) shall not be subject to the state of crisis regime under the Slovak Commercial Code (e.g., subject to repayment prohibition) and shall not be regarded as subordinated within the bankruptcy proceedings (however, the security with respect to such funding will not be recognized within bankruptcy proceedings);

- temporary protection shall expire on (i) 1 October 2020; or (ii) 31 December 2020 at the latest (the extension is subject to decision of the Slovak Government), unless terminated earlier based on the request of the applicant or a decision of the court.

Measures aimed at supporting business continuity

In addition to the aforementioned financial aid and standstill/postponement measures, the Slovak Government has passed multiple other measures for the support of businesses and employment, in particular, in employment and tax areas, including *inter alia* the postponement of the deadlines for the filing of tax returns and the deadlines for the payment of taxes, the possibility to request an adjustment of advance income tax payments, the deferral of social security and health insurance contributions for employers/entrepreneurs who have recorded a drop of 40% or more in their turnover, and the introduction of compensation schemes for (i) employers who maintain job positions during the declared state of crisis despite the fact that their operational activities were interrupted or limited under the decision of the Slovak Public Health Authority (contribution in the amount of 80% of the employee's average earnings (capped at EUR 1,100 per employee per month)) and (ii) employers and individual self-employed persons who were not obliged to close their operations but experience a reduction in revenues (as compared to the same period last year or last year's average revenues) and despite this fact maintain job positions (contributions range from EUR 180 per employee/self-employed person per month (for a reduction of revenues by at least 20%) to EUR 540 per employee/self-employed person per month (for a reduction of revenues by at least 80%)) (the limits of subsidy per undertaking under item (ii) to be further specified).

The Slovak Government plans to introduce a specific state-subsidized "Kurzarbeit" scheme in the coming days, according to which employers that cannot assign work to their employees as a result of the COVID-19 situation (including as a result of a drop in activities) will be entitled to receive a state subsidy corresponding to 80% of the average wage of an employee (or another amount agreed in a collective bargaining agreement) that would otherwise be payable by the employer itself for the time during which the employee cannot perform work up to the maximum amount of EUR 880 (a combination of the "Kurzarbeit" scheme and contribution under item (ii) above will not be possible).

Conclusion

The aforementioned measures and, in particular, the measures adopted under Act 67/2020 and Lex Corona, contain a series of urgent measures which are intended to support Slovak companies through legislative acts and state-backed institutions cooperating closely with the private sector.

The economic measures have been adopted at a fast pace and the implementation of further measures is anticipated shortly as outlined above. It is also expected that the implementation acts for some of the measures described above (in particular, with respect to state guarantee-backed loans to be provided by EXIMBANKA SR and the SGDB) will also be adopted shortly. We encourage our clients to consider the opportunities presented above carefully, and to consult with us as appropriate.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly. We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a global response team.

For useful information on COVID-19, please consult the Coronavirus section of www.whitecase.com.

Annex I

The “Lex Corona” and the Act 67/2020 include urgent measures to support the liquidity of companies and ensure business continuity. The applicable measures are described and compared below.

Applicable Measures	Large corporates	SMEs
Eligible Beneficiary	All enterprises registered in Slovakia regardless of their shareholder structure.	SMEs registered in Slovakia regardless of their shareholder structure.
Financial Aid Measures under Act 67/2020 (EXIMBANKA SR and SGDB)	Not available to large corporates	Type of financial aid: guarantees for loans and the payment of (a portion of) interest on loans provided by designated state-backed banks - EXIMBANKA SR and SGDB Beneficiary: any SME enterprise that (i) does not hold a license for remunerated employment mediation and is not an agency for temporary employment; (ii) is not in arrears with payment of social security, mandatory pension or health insurance contributions for more than 180 days; (iii) is not subject to bankruptcy or restructuring proceedings; and (iv) complies with other conditions that may be stipulated by EXIMBANKA SR or the SGDB Limits: aggregate amount of guaranteed loans shall not exceed EUR 50,000,000 with maximum portfolio guarantee: 51% (EUR 25,500,000) Interest payment subsidy: expected in the amount of up to 4% of the interest agreed in the loan agreement with EXIMBANKA SR or the SGDB; conditions of interest subsidy: (i) maintenance of the job preservation criteria defined in the loan agreement for the period defined in the loan agreement, and (ii) meeting maximum social and health security payment arrears criteria defined in the loan agreement Repayment: if the Slovak MoF will need to perform under the provided guarantees, the borrowers will be obliged to repay the funds paid by the MoF to the MoF with applicable interest. **Draft EXIMBANKA SR loan conditions**: Amount: up to EUR 500,000, but not exceeding 50% of the total 2019 turnover of the SME Maturity: three years, with a deferred repayment of principal and interest for 12 months from the date of drawdown Purpose of financing: limited to the financing of operating costs, investments in assets related to the maintenance of operations and employment as well as the payment of contributions to the

		state authorities **SGDB**: the details on loans provided within the aforementioned scheme by the SGDB are yet to be published.
SIH Guarantee Scheme	Not available to large corporates	Type of financial aid: guarantees for loans and the payment of (a portion of) interest on a loan provided by commercial bank participating in the scheme for specified eligible purposes including acquisition of assets related to the retention or increase of jobs or financing of working capital related expansion of a new or existing activity of the SME (the loans may not be used, in particular, to refinance existing indebtedness or interest from bonds or to finance operations/investments which were physically terminated or fully implemented prior to the submission of the loan application) Beneficiary: any SME which (i) is not classified as an "undertaking in difficulty" (*podnik v ťažkostiach*); (ii) is not classified in the highest credit risk rating category; and (iii) does not operate in the fisheries and aquaculture sector or in the primary production of agricultural products (or otherwise exempted) Purpose of the financing: enabling commercial banks to extend bridging loans with favourable-terms to SMEs and to help them overcome financial difficulties Maximum guaranteed amount**:** 80% guarantee for individual loans with principal amount up to EUR 1,180,000 with guarantee limit up to 50% of the portfolio subject to guarantee. Conditions 1. *Minimum and maximum maturity:* Min. 3 years (36 months, 12 months – revolving loans) and max. 4 years (48 months); including postponement of instalments 2. *Interest subsidy parameters*: max 4% p. a. (not applicable for revolving loans) 3. *Postponement of principal and interest instalments*: 12 months from the first utilisation of the loan (not applicable for revolving loans) *4. Interest rate reduction mechanism:* standard interest rate must first be lowered by reducing the bank's margin by 50% due to the guarantee provided; consequently, the interest rate will be additionally lowered by an interest subsidy of up to 4% p. a., but only up to a final interest rate of 0%. 5. *Job Security Undertaking*: (i) maintenance of

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<td>the average level of employment of regular employees in comparison with the previous situation for 12 months from the date of the first loan; the eligibility for an interest rate reduction is also conditional upon meeting maximum social and health security payment arrears and outstanding liability thresholds specified in the guarantee/loan agreement;

6. Provision/increase/guarantee/early repayment fee: 0%, other fees are subject to the standard fee tariffs.

Commercial terms: based on the available information, the provision of guarantees will be free of charge and the financial institutions/banks shall not charge any fees for the provision/increase/guarantee/early repayment of the loan.

Process: the SMEs will apply for the provision of guaranteed loans directly at the financial institution/bank responsible for assessment whether the applicant is eligible for aid.</td>
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<tr>
<td rowspan="2">Standstill and postponement</td>
<td>Statutory regime of postponement of repayment of loans provided by commercial banks/other creditors is not available to large corporates but may be agreed on bilateral basis</td>
<td>Postponement of commercial loan repayment under Act 67/2020 is available for SMEs and natural persons – entrepreneurs under the following conditions

• submission of borrower’s request within the pandemic period;

• maximum postponement up to nine months from the due date of the next outstanding instalment (banks) or up to six months (other creditors);

• creditors may not request additional security, the payment of additional fees or make the postponement conditional upon additional conditions.</td>
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<tr>
<td colspan="2">The following main suspension/standstill measures under Lex Corona apply to large corporates and SMEs: (i) suspension of limitation and prescription periods in private law until 30 April 2020; (ii) auctioneers, bailiffs and trustees are prohibited from conducting auctions, entrusting the sale of property to auctioneer, organizing bidding processes or other competitive processes to sell property until 30 April 2020; (iii) until 30 April 2020 bailiffs are prohibited from carrying out enforcement proceedings through the sale of real estate and liens may not be exercised (acts aimed at exercising liens between 27 March 2020 and 30 April 2020 shall be ineffective); and (iv) the period for the filing of a bankruptcy petition by the debtor due to overindebtedness has been extended from 30 days to 60 days for the situations in which a debtor becomes insolvent from 12 March 2020 to 30 April 2020.</td>
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<td>Insolvency protection scheme</td>
<td colspan="2">Beneficiary: entrepreneurs (large corporates as well as SMEs) with (i) a registered office or registered place of business in Slovakia holding valid business authorization before 12 March 2020, and (ii) who have not been insolvent as of 12 March 2020, except for financial institutions (such as banks, insurance companies, health insurance companies, payment institutions or securities brokers)</td>
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	Process: the temporary insolvency protection will be granted upon the issuance of the confirmation of the locally competent court based on the submission of a written request submitted by the applicant Main effects of protection: • suspension of the proceedings on the creditors' petitions for the bankruptcy of a protected entrepreneur filed after 12 March 2020; • suspension of obligation on the side of the protected entrepreneur and persons obliged to file for bankruptcy on its behalf (e.g., directors) to file a petition for bankruptcy; • suspension of enforcement proceedings initiated after 12 March 2020; • standstill on the enforcement of liens over enterprises, movable assets, receivables or other assets belonging to the protected entrepreneur's enterprise and/or the setting off the protected entrepreneur's receivables that arose after the temporary protection has been granted against receivables of related undertakings that arose prior to the granting of the protection; • standstill on terminations or withdrawals from agreements concluded with the protected entrepreneur for delayed performance occurring before granting of temporary protection; • imposition of obligation not to pay out dividends or other own funds or make non-negligible changes in the structure of assets; • cashless loans and similar transactions provided to the protected entrepreneur during the term of temporary protection and immediately related to the maintenance of its business shall not be (i) subject to the state of crisis regime under the Slovak Commercial Code, and (ii) regarded as subordinated within the bankruptcy proceedings (however, the security with respect to such funding will not be recognized within bankruptcy proceedings) Expiration of protection: (i) 1 October 2020; or (ii) 31 December 2020 at the latest (if extended by the decision of the Slovak Government) unless terminated earlier (request of the applicant/a decision of the court)