Client Alert | Banking / Corporate – Czech Republic

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

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The Czech Government has enacted a number of measures in order to provide businesses affected by the novel coronavirus ("COVID-19") pandemic with a package of emergency economic relief and financial assistance. The measures are designed to help Czech businesses through the dramatic short-term effects of COVID-19 and to ensure that businesses are in a good position to emerge strong when the most difficult period is over and the economy must recover. Measures include guarantee schemes from the Export Guarantee and Insurance Corporation as well as the Czech-Moravian Guarantee and Development Bank, support for business continuity and a tailored package of measures for businesses including a standstill period for their debts.

EGAP Guarantee Scheme (large export-oriented undertakings only)

Large export-oriented undertakings may receive support under the so-called 'COVID Plus' programme. Under this programme, the state-owned Export Guarantee and Insurance Corporation ("**EGAP**") will guarantee loans provided by commercial bank on the condition that the commercial bank applies for a guarantee, the relevant loan satisfies the eligibility criteria and the relevant undertaking is assigned with an acceptable internal rating by EGAP (the "**EGAP Guarantee**"). The Czech authorities estimate that the aggregate principal of loans under the EGAP Guarantee will not exceed CZK 142 billion (EUR 5.2 billion). Key details of the scheme are as follows:

- **Beneficiaries**: the EGAP Guarantee may cover a loan provided to any business undertaking incorporated or registered in the Czech Republic if:
  - export of goods and services constituted at least 20% of its 2019 revenues;
  - the group to which the business belongs had more than 250 employees in 2019;
  - its primary business is not transportation (including ground, air or water transportation), pipeline operations, accommodation, operation of travel agencies or reservation systems, casinos, gaming parlours or betting agencies;
  - it has not utilised any other public aid scheme in connection with the COVID-19 pandemic under which guarantees are provided or the interest under the same underlying loan is subsidised;
  - it was not in difficulty as of 31 December 2019 and provides an affidavit stating that it is experiencing a sudden liquidity shortage and that it was not insolvent as of 31 December 2019 and 12 March 2020.
- **Purpose**: the EGAP Guarantee can cover new and unused parts of existing loans provided for financing of operating expenses or working capital, for maintenance of business activities, or as investment loans (i.e. to finance expenses relating to innovations and improvement of an undertaking's production capabilities) and, with the prior consent of EGAP, also for a refinancing of the existing loans provided for such purposes.
- **Maximum guaranteed amount**: the maximum loan percentage of individual loans covered by the Portfolio Guarantee shall be equal to:
  - 80% of the loan principal in case the borrower is rated by EGAP on the rating scale as "B" or higher; and
  - 70% of the loan principal in case the borrower is is rated by EGAP on the rating scale as "B-".
- **Conditions**: the granting of a Guarantee is subject to the following conditions:

1.	Duration of programme	Eligible loans must be granted: ▪ from 1 July 2019 until 31 December 2020 for existing loans; and ▪ from 13 March 2020 until 31 December 2020 for new loans.
2.	Maturity	▪ Three year maturity for working capital loans ▪ Five year maturity for investment loans
3.	Maximum size	The maximum loan principal backed by the EGAP Guarantee cannot exceed CZK 2,000,000,000 per one group of economically connected persons and at the same time 25% of the beneficiary's 2019 income from sale of goods and provision of services.

4.	Margin caps	The margins charged by the commercial banks shall not exceed: ▪ 1.5% p.a. on loans provided for up to one year; ▪ 2.5% p.a. on loans provided for up to three years; and ▪ 3.5% p.a. on loans provided for up to five years.
5.	Supplier undertaking	The beneficiary must commit to pay its suppliers in a due and timely manner.
6.	Wages undertaking	The beneficiary must commit to pay wages of all employees in a due and timely manner.
7.	Payment of dividends and disposals	The beneficiary must commit not to, without a consent of the financing commercial bank, pay dividends or make any other distributions of profits, not to sell shares in other undertakings or any tangible or intangible fixed assets and not to encumber them with any third party right.

- **Commercial terms**: the all-in annual commissions payable by the borrower for the EGAP Guarantee shall be calculated on the basis of the EGAP rating of the beneficiary and the year of financing as follows:

	First year	Second and third year	Fourth and fifth year
B+ and higher	45 bps	90 bps	180 bps
B	60 bps	120 bps	200 bps
B-	114 bps	175 bps	219 bps

COVID III Guarantee Scheme (businesses up to 500 employees only)

In addition, the Czech-Moravian Guarantee and Development Bank (Českomoravská záruční a rozvojová banka, a.s.) ("**CMZRB**"), the Czech state-owned development bank, will provide a capped portfolio guarantee to commercial banks which will automatically cover individual loans in their portfolios if they meet certain eligibility criteria (the "**Portfolio Guarantee**"). This so-called 'COVID III' programme follows the already used up and significantly smaller COVID I and COVID II programmes.

As the Czech state does not automatically guarantee obligations of the CMZRB, a special law adopted on 6 May 2020[1] stipulates that the Czech state guarantees obligations of CMZRB related to the Portfolio Guarantee up to the total amount of CZK 150 billion (€5.4 billion equivalent) and further sets out key eligibility criteria of the beneficiaries and the loans. It is expected this will enable commercial banks to provide guaranteed loans up to the total amount of CZK 500 billion (€18 billion equivalent).

The scheme has been announced by CMZRB on 19 May and should be launched by individual commercial bank by the end of May. The key details of the scheme are as follows:

- **Beneficiaries**: the Portfolio Guarantee targets self-employed individuals and companies with registered seat in the Czech Republic and with up to 500 employees. Additional conditions include that the beneficiary was not an "undertaking in difficulty" (*podnik v obtížích*) as of 31 December 2019, was not in

[1] Act 228/2020 Coll.

default of more than 30 days with repayment of a debt to the lending bank as of 31 March 2020 and the lending bank found out and published the beneficiary's ultimate beneficial owner.

- **Purpose**: the Portfolio Guarantee targets new loans provided for the sole purpose of covering working capital requirements.
- **Maximum guaranteed amount**: the maximum loan percentage and amount of individual loans covered by the Portfolio Guarantee shall be equal to:
  - 90% of the loan principal for undertakings which employ up to 250 employees; and
  - 80% of the loan principal for undertakings which employ between 251 and 500 employees.

  However, a portfolio cap limiting the guarantee coverage only to 30% of the given loan portfolio of the lending bank applies.
- **Conditions**: the inclusion of a loan into the portfolio covered by the Portfolio Guarantee is subject to the following conditions:

1.	Duration of programme	Loans and credit facilities must be granted until 31 December 2020.
2.	Maturity	No earlier than 1 January 2021. If the loan maturity exceeds three years, the loan remains unguaranteed afterwards.
3.	Maximum size	The maximum loan principal backed by the guarantee is CZK 50 million and at the same time the higher of: ▪ 25% of the beneficiary's 2019 annual revenue; ▪ twice its 2019 employment cost, whereas with appropriate justification, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 12 months.

- **Process**: The aid is channeled through credit institutions, therefore beneficiaries can access the Portfolio Guarantee through any credit institution which applied to CMZRB to participate in the programme. All credit institutions authorized to conduct banking business in the Czech Republic can apply to participate in the program.

Standstill and Postponement Measures

The Czech Republic introduced certain additional important temporary measures adopted to limit the 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. The key features of those measures are summarized below:

Deferment of Loan Instalments

Borrowers including consumers, self-employed businesspeople and legal entities, may make use of a deferment of instalments on credit facilities and similar financial services until 31 October 2020 (or until 31 July 2020, with the choice being up to the borrower), by way of a unilateral notice to such effect to the lender. In this notice, the borrower simply needs to announce its intention to make use of the protection period because of the adverse economic consequences of the COVID-19 pandemic on the borrower. This will automatically result in the deferment of instalments, whereas the lender has no right to object to the deferment in any way (i.e. the opt-in principle applies).

One requirement is that the "deferred" loan must have been drawn prior to 26 March 2020. In the case of loans secured by real property (including mortgage loans), though, the drawdown need not necessarily have occurred before that date – it suffices that the loan agreement was concluded before 26 March 2020. The following financial products are, however, excluded from the deferment measure: overdraft credit, revolving credit, financial guarantees, leases of real property (which is the subject of a separate measure), hire-purchase and leasing arrangements, bonds, notes, and other financial instruments, as well as credit facilities with interest rate hedging, and finally, credits and loans with respect to which the borrower has been in default with their payment obligations for more than 30 days as of 26 March 2020.

During the protection period, no instalments on the loan principal need to be paid, and the final maturity of the loan is thus postponed (i.e. the deferred instalments are tacked onto the instalment plan after the originally agreed final due date). Legal entities will continue to pay interest and other fees as per the terms of the loan agreement during the protection period. Nor is interest being waived in the case of consumers, though for them, interest is being capped, and is made payable only after the end of the protection period. Fees and other non-interest yield accrued during the protection period (outside and above interest), as well as default interest and other penalties, do not accrue for consumers.

Legal entities that make use of the deferment of instalments must, during the deferral, refrain from disposing of assets that could be used to satisfy the lender – this is in reference to substantial changes to the composition of the borrower's property, the use or designated purpose of such property, or a not insignificant reduction of the property (through transactions known as asset stripping).

Restriction on Insolvency Petitions

Submitting insolvency petitions has been made subject to restrictions, both on the part of creditors and with respect to the obligation of debtors to file for insolvency themselves.

Creditors' petitions filed until 31 August 2020 are automatically ineffective. The obligation of debtors to file an insolvency petition if they find that they have become insolvent has been suspended for six months from the expiry (or abolition) of the government-mandated crisis or emergency measures. This does not apply to cases in which insolvency occurred already before the crisis measures were adopted, or if the insolvency is not prevailingly due to the circumstances related to the crisis measures (in that it is not these measures that make it impossible for the debtor to honor its financial obligations, or substantially hamper the discharge of such obligations). This suspension of the obligation of debtors to file for their insolvency lapses no later than on 31 December 2020, regardless of how long the crisis measures will remain in place.

Extraordinary Moratorium

Until 31 August 2020, debtors have the option to request the declaration of an extraordinary moratorium – i.e. to seek protection from the declaration of insolvency and from foreclosure and debt enforcement against its assets. In the request for the extraordinary moratorium, the debtor shall confirm that they were not insolvent as of 12 March 2020 (i.e. that they were not already insolvent at the time at which the state of emergency was declared and the related crisis measures were rolled out), because the extraordinary moratorium is specifically intended to mitigate the consequences of the said crisis measures. The extraordinary moratorium will only commence after the court decision in which it is declared has been published in the insolvency register. However, the court will review the pertinent request merely with respect to whether the formal requirements have been fulfilled. Unlike an "ordinary" moratorium, the extraordinary moratorium does not require creditors' consent. The extraordinary moratorium will last for three months, with an optional extension by another three months (though such extension is subject to approval by a majority of creditors).

For as long as the extraordinary moratorium lasts, the debtor is permitted to satisfy preferentially its obligations that arise during this moratorium and are directly related to preserving the enterprise as a going concern, i.e. these obligations enjoy priority over obligations with an earlier maturity date. Key suppliers are prohibited from withholding deliveries or continued performance under agreements with the debtor as long as the debtor fulfills its obligations under the moratorium towards them. Financing provided during the extraordinary moratorium in order to keep the debtor's business afloat enjoys a priority claim for satisfaction during the extraordinary moratorium (and during the insolvency proceedings that may follow).

The declaration of the extraordinary moratorium goes hand in hand with increased liability on the part of the debtor and its statutory bodies. As in the case of an ordinary moratorium, so in this case, the debtor must refrain from operations that would result in substantial changes to the composition of the debtor's property, the use or designated purpose of such property, or a not insignificant reduction of the property (asset stripping). The members of the debtor's statutory bodies are personally liable for the damage caused by a breach of obligations during the extraordinary moratorium or by false statements made in the petition for the declaration of such moratorium.

The extraordinary moratorium is in no way a replacement for an ordinary moratorium, of which debtors may avail themselves after the extraordinary moratorium has ended. Such an ordinary moratorium, however, requires the approval of a majority of creditors.

Other Related Measures

This package of measures in response to the COVID-19 pandemic also includes other steps and measures, a detailed description of which would go beyond the framework of this alert. Among them are tax deferments, a program called "Antivirus" designed to help employers bear the costs of continuing the employment of their staff, support programs in the form of statutory freezes of lease agreements that prevent the termination of leases on grounds of unpaid rent for the period from 12 March 2020 through 30 June 2020, waivers of various procedural time limits, or the extension of the performance deadlines for previously approved reorganization plans.

Conclusions

The Czech Government has introduced a series of urgent measures which are intended to support Czech companies that are negatively affected by COVID-19, but that are otherwise sound companies. The measures aims at tackling the outbreak and mitigating its effects on companies and the economy.

The economic measures have been adopted at a fast pace and the implementation of further measures continues to be discussed. We encourage our clients to consider the opportunities presented by the measures described above carefully, consulting with us as appropriate. Separately, Czech companies which meet the relevant credit rating requirements may also benefit from liquidity assistance via the European Central Bank ("**ECB**") Pandemic Emergency Purchase Programme ("**PEPP**"), pursuant to which the ECB may purchase bonds and commercial paper issued by European private and public sector entities. See our client alert https://www.whitecase.com/publications/alert/european-central-bank-launches-emergency-bond-buying-programme-response for further details.

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 Czech Republic has implemented urgent measures to support the liquidity of companies and ensure business continuity. The applicable measures are described and compared below.

<table>
<tr><th>Applicable Measures</th><th>Large corporates</th><th>SMEs</th></tr>
<tr><td>Eligible Beneficiary</td><td>All export-oriented enterprises incorporated or registered in the Czech Republic of more than 250 employees regardless of their shareholder structure</td><td>Self-employed individuals and companies with registered seat in the Czech Republic and up to 500 employees regardless of their shareholder structure, provided the ultimate beneficial owner is known</td></tr>
<tr><td>COVID Plus Guarantee Scheme</td><td>Type of guarantee: irrevocable and unconditional guarantee (finanční záruka)

Type of financing: loans provided by any credit institutions authorized to conduct banking business in the Czech Republic

Beneficiary: any business undertaking incorporated or registered in the Czech Republic if:
export of goods and services constituted at least 20% of its 2019 revenues;
the group to which the business belongs had more than 250 employees in 2019;
its primary business is not transportation (including ground, air or water transportation), pipeline operations, accommodation, operation of travel agencies or reservation systems, casinos, gaming parlours or betting agencies;
it has not utilised any other public aid scheme in connection with the COVID-19 pandemic under which guarantees are provided or the interest under the same underlying loan is subsidised;
it was not in difficulty as of 31 December 2019 and provides an affidavit stating that it is experiencing a sudden liquidity shortage and that it was not insolvent as of 31 December 2019 and 12 March 2020
Purpose of the financing: new and unused parts of existing loans provided for financing of operating expenses or working capital, for maintenance of business activities, or as investment loans (i.e. to finance expenses relating to innovations and improvement of an undertaking’s production capabilities) and, with the prior consent of EGAP, also for a refinancing of</td><td>Not available to SMEs.</td></tr>
</table>

	the existing loans provided for such purposes. Maximum guaranteed amount: (i) **80%** of the loan principal in case the borrower is rated by EGAP on the rating scale as “B” or higher; (ii) **70%** of the loan principal in case the borrower is is rated by EGAP on the rating scale as “B-”. Conditions 1. Duration of programme: Eligible loans must be granted: from 1 July 2019 until 31 December 2020 for existing loans; and from 13 March 2020 until 31 December 2020 for new loans. 2. *Maturity:* Three year maturity for working capital loans and five year maturity for investment loans; 3. *Maximum size*: maximum loan principal backed by the EGAP Guarantee cannot exceed CZK 2,000,000,000 per one group of economically connected persons and at the same time 25% of the beneficiary’s 2019 income from sale of goods and provision of services. 4. *Margin caps*: The margins charged by the commercial banks shall not exceed: 1.5% p.a. on loans provided for up to one year; 2.5% p.a. on loans provided for up to three years; and 3.5% p.a. on loans provided for up to five years. 5. *Supplier undertaking*: The beneficiary must commit to pay its suppliers in a due and timely manner. 6. *Wages undertaking*: The beneficiary must commit to pay wages of all employees in a due and timely manner. 7. *Payment of dividends and disposals*: The beneficiary must commit not to, without a consent of the financing commercial bank, pay dividends or make any other distributions of profits, not to sell shares in other undertakings or any tangible or intangible fixed assets and not to encumber them with any third party right. Economic conditions: all-in commission for	

	final beneficiaries rated “B+” and higher by EGAP: ▪ 45 bps during the first year ▪ 60 bps during the second and third year ▪ 114 bps during the fourth and fifth year. Economic conditions: all-in commission for final beneficiaries rated “B” and higher by EGAP: ▪ 90 bps during the first year ▪ 120 bps during the second and third year ▪ 175 bps during the fourth and fifth year. Economic conditions: all-in commission for final beneficiaries rated “B-“ and higher by EGAP: ▪ 180 bps during the first year ▪ 200 bps during the second and third year ▪ 219 bps during the fourth and fifth year.	
COVID III Guarantee Scheme	Not available to large corporates	Type of guarantee: guarantee (*ručení*) Type of financing: loans provided by any credit institutions authorized to conduct banking business in the Czech Republic Beneficiary: self-employed individuals and companies with registered seat in the Czech Republic and up to 500 employees. Additional conditions include that the beneficiary was not an “undertaking in difficulty” (*podnik v obtížích*) as of 31 December 2019, was not in default of more than 30 days with repayment of a debt to the lending bank as of 31 March 2020 and the lending bank found out and published the beneficiary’s ultimate beneficial owner Purpose of the financing: limited to coverage of working capital requirements. Maximum guaranteed amount: (i) **90%** of the loan principal for undertakings which employ up to 250 employees; (ii) **80%** of the loan principal for undertakings which employ between 251 and 500 employees; however, a portfolio cap limiting the guarantee coverage only to **30%** of the

		given loan portfolio of the credit institution applies. Conditions 1. Duration of programme: *Loans and credit facilities must be granted until 31 December 2020.* 2. *Loan maturity:*no earlier than 1 January 2021. If the loan maturity exceeds three years, the loan remains unguaranteed afterwards; 3. *Maximum size*: maximum loan principal backed by the guarantee is CZK 50 million and at the same time the higher of: (i) 25% of the beneficiary's 2019 annual revenue; (ii) twice its 2019 employment cost, whereas with appropriate justification, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 12 months; Economic conditions: all-in commission for final beneficiaries from 251 up to 500 employees equal to: ▪ 50 bps during the first year ▪ 100 bps during the second and third year Process: The aid is channeled through credit institutions, therefore beneficiaries can access the Portfolio Guarantee through any credit institution which applied to CMZRB to participate in the programme. All credit institutions authorized to conduct banking business in the Czech Republic can apply to participate in the program.
Deferment of Loan Instalments	Borrowers including consumers, self-employed businesspeople and legal entities, may make use of a deferment of instalments on credit facilities and similar financial services until 31 October 2020 (or until 31 July 2020, with the choice being up to the borrower), by way of a unilateral notice to such effect to the lender. One requirement is that the "deferred" loan must have been drawn prior to 26 March 2020. The following financial products are, however, excluded from the deferment measure: overdraft credit, revolving credit, financial guarantees, leases of real property (which is the subject of a separate measure), hire-purchase and leasing arrangements, bonds, notes, and other financial instruments, as well as credit facilities with interest rate hedging, and finally, credits and loans with respect to which the borrower has been in default with their payment obligations for more than 30 days as of 26 March 2020. Legal entities that make use of the deferment of instalments must, during the deferral, refrain from disposing of assets that could be used to satisfy the lender.	
Insolvency Related Measures	Restriction on Insolvency Petitions Submitting insolvency petitions has been made subject to restrictions, both on the part of creditors and with respect to the obligation of debtors to file for insolvency themselves.	

	Creditors' petitions filed until 31 August 2020 are automatically ineffective. The obligation of debtors to file an insolvency petition if they find that they have become insolvent has been suspended for six months from the expiry (or abolition) of the government-mandated crisis or emergency measures. Extraordinary Moratorium Until 31 August 2020, debtors have the option to request the declaration of an extraordinary moratorium – i.e. to seek protection from the declaration of insolvency and from foreclosure and debt enforcement against its assets. In the request for the extraordinary moratorium, the debtor shall confirm that they were not insolvent as of 12 March 2020 (i.e. that they were not already insolvent at the time at which the state of emergency was declared and the related crisis measures were rolled out), because the extraordinary moratorium is specifically intended to mitigate the consequences of the said crisis measures. For as long as the extraordinary moratorium lasts, the debtor is permitted to satisfy preferentially its obligations that arise during this moratorium and are directly related to preserving the enterprise as a going concern, i.e. these obligations enjoy priority over obligations with an earlier maturity date. Key suppliers are prohibited from withholding deliveries or continued performance under agreements with the debtor as long as the debtor fulfills its obligations under the moratorium towards them. Financing provided during the extraordinary moratorium in order to keep the debtor's business afloat enjoys a priority claim for satisfaction during the extraordinary moratorium (and during the insolvency proceedings that may follow).

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