

EMERGENCY ORDINANCE no.37/2020

on granting facilities for loans granted by credit institutions and non-banking financial institutions for certain categories of borrowers

Art. 1. For the purposes of this Emergency Ordinance, the terms below have the following meanings:

a) Lenders - credit institutions defined by the Government Emergency Ordinance no. 99/2006 regarding credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007, with the subsequent modifications and completions, and non-banking financial institutions defined by Law no. 93/2009 regarding non-banking financial institutions, as subsequently amended and supplemented, as well as branches of credit institutions and non-bank financial institutions abroad operating in the territory of Romania;

b) Debtors - natural persons, including authorized natural persons, individual enterprises and family businesses that function according to the Government Emergency Ordinance no. 44/2008 regarding the conduct of economic activities of to the authorized natural persons, the individual enterprises and the family businesses, the liberal professions and those that are exercised on the basis of special laws, regardless of the form of exercise of the profession and the legal persons in the credit contracts, respectively leasing, with the exception of the credit institutions defined according to the Government Emergency Ordinance no. 99/2006;

c) Letter of guarantee - the irrevocable and unconditional commitment by which the National Credit Guarantee Fund for Small and Medium Enterprises, hereinafter referred to as FNGCIMM, undertakes on behalf of the state to pay to the creditor the amounts representing deferred interest on the mortgage loans, contracted from the creditor by natural persons, who benefit from the facility of suspension of payments under the conditions of this emergency ordinance, for which FNGCIMM, under the mandate granted by the Ministry of Public Finance, gives a guarantee on behalf of the state under the agreement concluded with the creditor provided in letter a). The validity of the guarantee letter is of maximum 5 years;

d) guarantor - the state through the Ministry of Public Finance represented by F.N.G.C.I.M.M. for guarantees granted on behalf of the state;

e) State guarantee - express, unconditional and irrevocable commitment assumed by F.N.G.C.I.M.M., on behalf of the state, which covers the loss incurred by the creditor, as a result of the credit risk according to the letter of guarantee provided in letter c).

f) mortgage credit - credit granted by a creditor to a natural person debtor, guaranteed with a mortgage on a building and credit that implies a right related to a real estate, as they are regulated by the Emergency Ordinance no. 52/2016 regarding the credit contracts offered to the consumers for immovable property, as well as for the modification and completion of the Government Emergency Ordinance no. 50/2010 regarding credit agreements for consumers, as well as credits granted through the "First home" program, approved by the Government Emergency Ordinance no. 60/2009 regarding some measures for the implementation of the "First home" program, approved with modifications and completions by Law no. 368/2009, as subsequently amended and supplemented;

g) credit risk - the current or future risk of negatively affecting profits and capital as a result of non-fulfillment by the natural person borrowers of their obligations to reimburse the interest suspended on payment, related to the state guaranteed facility.

Article 2.

(1) By derogation from GEO no. 50/2010 regarding the credit agreements for consumers and from GEO no. 52/2016 regarding the credit contracts offered to consumers for real estate, as well as for the modification and completion of GEO no. 50/2010 regarding consumer credit agreements and of Government Ordinance no. 51/1997 regarding leasing operations and leasing companies, republished, the obligation to pay the installments related to the loans, representing capital rates, interest and commissions, granted to the debtors by the creditors until the date of entry into force of this emergency ordinance, is suspended at the request of the debtor with up to 9 months but not more than 31.12.2020.

(2) The maximum period of credit provided in the regulations of the creditors may be exceeded with a period equal to the duration of the suspension of the payment obligation.

(3) For natural person debtors for whom the extension of the maturity of the loans exceeds the age limit provided by the regulations of the creditors for granting the loans, the creditors proceed to the restructuring of the loans within the age limit.

(4) The provisions of this emergency ordinance benefit the borrowers who have concluded a contract for obtaining a credit that has not reached maturity and for which the creditor has not declared the anticipated maturity, prior to the entry into force of this emergency ordinance.

(5) The facility provided in par. (1) can be granted only for credits that do not register arrears on the date of establishing the state of emergency on the Romanian territory or the borrowers made the payment of these arrears until the date of the request of suspension of the payment obligation provided in par. (1).

(6) The measure provided in par. (1) is granted only to debtors whose incomes have been directly or indirectly affected by the serious situation generated by the COVID-19 pandemic, according to the implementing rules of the present emergency ordinance.

Article 3.

(1) In order to benefit from the suspension of the reimbursement of the rates, interest and commissions, the debtors send the creditors a request for this purpose, in letter or electronic mail, to the contact details specified in the credit agreement or through another communication channel at distance offered by the creditor, at the latest until the state of emergency on the Romanian territory ceases.

(2) In case the debtor cannot transmit the request through one of the means listed in par. (1), the latter may formulate it orally, by telephone, to a dedicated telephone number that will be announced by each lender on its website, in which case the lender has the obligation to record the call.

(3) The debtor may opt, by the request sent to the creditor, to suspend the obligation to pay the due installments related to the loans, representing capital rates, interest and commissions, for the period between 1 and 9 months, but not more than 31.12.2020.

(4) The creditor shall analyze the request and approve it in the conditions provided in the implementing rules of this emergency ordinance.

(5) The extension of the contractual term mentioned in art. 2 produces effects from the date of communication of the suspension request addressed to the creditors for the requests approved by the creditors.

Articel 4

(1) Interest due by debtors corresponding to the due amounts whose payment is suspended according to art. 2 is capitalized on the existing credit balance at the end of the suspension period. The capital thus increased shall be paid in installments for the remaining duration until the new maturity of the loans, after the period of suspension.

(2) By exception from the provisions of par. (1), for the mortgage loans contracted by natural persons the interest related to the period of suspension is calculated according to the provisions of the credit agreement and represents a distinct debt and independent in relation to the other obligations arising from the credit agreement. For this debt the interest rate is 0% and the payment by the debtor of this debt will be made in installments, in 60 equal monthly installments, starting with the immediate month following the end of the postponement period.

Art. 5.

(1) The Romanian State, through the Ministry of Public Finance, hereinafter referred to as the M.F.P., guarantees 100% the payment of the capitalized interest according to art. 4 al.(2) related to mortgage loans contracted by natural person borrowers.

(2) For the purpose provided in par. (1), by derogation from the provisions of the Government Emergency Ordinance no. 64/2007 regarding the public debt, approved with modifications and completions by Law no. 109/2008, as subsequently amended, M.F.P. is authorized to mandate FNGCIMM for issuing letters of guarantee on behalf of the state in favor of creditors. The granting and carrying out of state guarantees is made on the basis of a guarantee agreement concluded between the F.N.G.C.I.M.M. and creditors. The model of the guarantee agreement is approved by order of the Minister of Public Finance.

(3) Within 30 days after receiving the request, the creditor notifies the debtor the contractual clauses modified for the implementation of the provisions of this emergency ordinance.

(4) Each creditor communicates to FNGCIMM on his own responsibility the total value of the guarantee commitment resulting from the cumulation of the payment amounts according to the schedules of payment of the amounts representing interest due by the debtors according to paragraph. (1).

(5) After the payment of the value of the execution of the guarantee by the Ministry of Public Finance, FNGCIMM draws up a debt title by which the payment obligations of the natural persons benefiting from the facility provided in par. (1). Debt title becomes enforceable title according to the law.

(6) The source of payment of the guarantees granted by the FNGCIMM in the name and on the account of the state for the facility provided in par. (1) is the state budget, through the budget of the Ministry of Public Finance - General Actions, the title "Other transfers" code 55, par. "Amounts resulting from the execution of guarantees granted from the state budget" code 55.01.50.

(7) The receivables arising from the payment of the state guarantees granted under this article, respectively the amounts paid to the creditors based on the letters of guarantee, are budgetary debts and are recovered from the debtors by the competent fiscal bodies of the National Agency for Fiscal Administration, according to the provisions of the Law no. 207/2015 regarding the Fiscal Procedure Code, as subsequently amended and supplemented.

(8) The amounts collected according to par. (7) are revenues of the state budget.

(9) For non-payment at maturity of the obligations arising from the execution of the guarantee letters, the debtor owes ancillary fiscal obligations that are calculated and communicated by the competent fiscal bodies of the National Agency for Fiscal Administration, according to the provisions of Law no. 207/2015 regarding the Fiscal Procedure Code, as subsequently amended and supplemented.

Art. 6.

In order to benefit from the suspension of the repayment of rates, interest and commissions in accordance with the provisions of art.2 al.(1), the debtors defined in art. 1 lit. b), except the natural persons, must cumulatively fulfill the following conditions:

(a) to discontinue all or part of the activity as a result of the decisions made by the competent public authorities according to the law, during the period of emergency state decreed and hold the emergency certificate issued by the Ministry of Economy, Energy and Business Environment, based on the debtor's own declarations, by which the reduction of revenues or receipts by at least 25% in March 2020 compared to the average of January and February 2020 is stated or the partial or total interruption of the activity as a result of the decisions issued by the competent public authorities during the state of emergency declared;

(b) Is not insolvent at the date of requesting the suspension of the credit repayment, according to the information available on the website of the National Office of the Trade Register.

Art. 7 In the application of the present emergency ordinance, the MFP elaborates the implementing norms, which will be approved by Government decision within 15 days from the entry into force of this emergency ordinance.