

LEGAL UPDATE

COVID-19

A NEW BIG GUARANTEE SCHEME

FOR SMEs & LARGE ENTERPRISES

GUARANTEES FOR BANK LOANS

AND

REMISSIONS OF GUARANTEE PREMIUMS

COVID-19 A NEW BIG GUARANTEE SCHEME UNDER TEMPORARY FRAMEWORK FOR STATE AID ADOPTED BY THE EC TO SUPPORT THE ECONOMY IN COVID-19 OUTBREAK

GUARANTEES FOR BANK LOANS AND REMISSIONS OF GUARANTEE PREMIUMS AS FINANCIAL AID MEASURES TO SUPPORT LIQUIDITY OF SMEs AND LARGE ENTERPRISES DURING COVID-19 OUTBREAK

In order to facilitate the access of SMEs as well as large enterprises to bridging financing, i.e. to facilitate the access to financial liquidity, on 13 May 2020, the National Council of the Slovak Republic adopted an amendment (the “Amendment”) to Act No. 67/2020 Coll. on certain extraordinary measures in the area of finance in relation to the spread of dangerous contagious human disease COVID-19 (the “Act”).

The Amendment to the Act introduces so called “BIG GUARANTEE SCHEME” designed to mitigate the impact of the COVID-19 outbreak on the businesses in Slovakia.

The Amendment to 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.

This legal update was prepared on 14 May 2020 based on the finally adopted text of the Amendment to the Act, as published by the National Council of the Slovak Republic, while also using publicly available information as of 14 May 2020 (mainly as officially published by Slovak Investment Holding, a.s.).

A. PURPOSE AND SCOPE OF THE AID

Purpose. The aim of the financial aid measures is to facilitate the access to the financial liquidity for all kinds of enterprises (SMEs as well as large enterprises) by providing public guarantees for the loans provided by commercial banks and remission of the guarantee premiums. The financial aid applies only to the loans aiming at obtaining operational (COVID-19 crisis bridging) liquidity for SMEs and large enterprises and therefore, any other kinds of loans (e.g. investment or project financing) are excluded from the aid under this scheme.

Legal basis and framework. The financial aid is provided in accordance and within the framework of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (TF COVID-19)¹. Comprehensive rules for the provision of financial aid will be regulated in the state aid scheme, as it follows from the State Aid Act (Act No. 358/2015 Coll.)² and the state aid scheme will be notified to the EC.

Time frame. The financial aid under this scheme should be provided by 31 December 2020 (in accordance with the TF COVID-19).

Amount of financing available. According to publicly available information (mainly as officially published by Slovak Investment Holding, a.s.), within this financial aid under this scheme, approx. EUR 500 mil. each month should be made available to SMEs and large enterprises in Slovakia.

¹ For more information please see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001 or https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_2nd_amendment_temporary_framework_en.pdf.

² <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/358/20160101> (available only in Slovak language)

Relationship with previous forms of financial aid measures & instruments. In the previous weeks, the Government of the Slovak Republic introduced several other programs and financial aid measures and instruments in order to help SMEs. These previous programs were provided under *de minimis* rules. This financial aid under the TF COVID-19 should be also available to the enterprises that used the previous aid programs and previous financial assistance measures. Also, this time, financial aid under the BIG GUARANTEE SCHEME is available to all enterprises, regardless of *de minimis* rules.

B. FORMS OF THE FINANCIAL AID

Forms of the financial aid. The financial aid under the Amendment to the Act can be provided to SMEs and large enterprises in the form of:

- a **guarantee for the bank loan** provided to a SME or a large enterprise by the Bank (as defined below) (the “bank guarantee”); and/or
- a **remission of the guarantee premium** (the “remission of guarantee premium”).

Providers of the aid. The financial aid in the form of the bank guarantee and the remissions of guarantee premiums will be provided by the following providers of the financial aid (the “Providers”):

- (a) **Export-Import Bank of the Slovak Republic** (https://www.eximbanka.sk/en/english.html?page_id=93). Bank guarantees should be provided to loans exceeding EUR 2 mil. and that up to 80% of the amount of the loan. These bank guarantees should be financed from the state budget from the very start of the scheme; and
- (b) the funds managed by the company **Slovak Investment Holding, a.s.** (<https://www.sih.sk/en/>). Bank guarantees should be provided to loans in the amount up to EUR 2 mil. and that up to 90% of the amount of the loan. These bank guarantees should be primarily financed from the EU funds and only subsequently from the state budget.

Role of the state. The Ministry of Finance of the Slovak Republic (the “Ministry of Finance”) will *ex lege* (by the operation of law) unconditionally and irrevocably guarantee the obligations of the Providers arising in connection with the provided bank guarantees. The precise conditions of such a guarantee by the Ministry of Finance for the obligations of the Providers arising in connection with the provided bank guarantees will be specified in more detail in the agreement concluded between the Ministry of Finance and the respective Provider

Role of the commercial banks. The financial aid under the BIG GUARANTEE SCHEME is provided by the Providers, however, via commercial banks, i.e. the commercial banks will provide the loan to which the Providers will provide a bank guarantee. For purposes of this scheme, by the commercial banks (the “Banks”) the following credit institutions shall be understood:

- (a) the banks having their registered seat in the Slovak Republic, and
- (b) the branch offices of foreign banks (i.e., the foreign banks conducting the banking activities in the Slovak Republic on a cross-border basis without establishing a branch office in the Slovak Republic are not included in the scheme).

The Providers will conclude the agreement with the Banks specifying the details of these financial aid measures.

1. Bank Guarantee

Provider of the bank guarantee. As mentioned above, the bank guarantees will be provided by the Providers (please see above also the details on to which amount the guarantee will be provided by which of the Providers).

Loans to which the bank guarantees apply. The bank guarantees provided by the Providers should apply to the loans provided by the Banks to SMEs or large enterprises for the purposes of obtaining operational (COVID-19 crisis bridging) liquidity (i.e. loans for other purpose, such as new investments, are not covered by the financial aid measures under this BIG GUARANTEE SCHEME). The repayment of such a loan will thus be secured by the bank guarantee provided to the Bank by the Provider which should make the financing easily available and affordable to a greater number of SMEs and large enterprises.

Content of the bank guarantee. The bank guarantee to be provided by the Providers shall be subject to the standard rules applicable to bank guarantees under Sections 313 to 322 and Section 762 of the Commercial Code. Also, Articles 213 and 214 of the Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 shall apply to such bank guarantee. Further, the Providers will conclude a separate agreement with each individual commercial bank specifying further conditions of the provision of bank guarantees under this scheme.

Recipients. The bank guarantee may be provided if, before the first drawing of the loan, but no later than within 30 days of the conclusion of the loan agreement between the Bank and the SME/large enterprise, the Bank can reliably determine that:

- the SME/large enterprise is not a person who is authorized to mediate employment for remuneration³ or agency of temporary employment⁴;
- the SME/large enterprise 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 90 days;
- the SME/large enterprise does not have any outstanding liabilities towards the health insurance company regarding the compulsory public health insurance overdue for more than 90 days;
- no bankruptcy or restructuring proceedings was initiated against the SME/large enterprise; and
- the SME/large enterprise meets other conditions specified by the Bank.

For purposes of the evaluation of fulfilment of the above conditions, the SME/large enterprise should provide the documents requested by the Bank to the Bank.

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

2. Remissions of Guarantee Premiums

Provider of the remissions of guarantee premiums. The remissions of the guarantee premiums will be provided by the Providers and will lead to the remission of the guarantee premiums that SMEs/large enterprises making use of the bank guarantees would otherwise have to pay to the Providers.

Guarantee premiums to which the remission applies. The guarantee premiums that may be remitted are those that should be otherwise provided/paid for the bank guarantees described in 1. above to the Providers.

Recipients. The guarantee premium may be remitted to the SME/large enterprise only if the SME/large enterprise maintains the level of employment specified in the loan agreement concluded between the Bank and the SME/large enterprise and that during the period specified in the loan agreement. In such case, the guarantee premium is to be covered by the Provider. In practical terms, if the SME/large enterprise does not succeed in maintaining the level of employment specified in the loan agreement concluded with the Bank, the guarantee premium will need to be paid by such SME/large enterprise, however, all this without any effect on the bank guarantee already granted.

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This legal update is not a legal advice and provides only a brief summary of key information concerning the principles of operation of the financial aid measures under the BIG GUARANTEE SCHEME as adopted under the Amendment to the Act.

This legal update was prepared on 14 May 2020 and posted on 15 May 2020. We follow further current developments and will continuously publish relevant updates on the above information (and also on other legislative changes and interesting legal topics).