

LEGAL UPDATE

COVID-19

DEFERRALS OF REPAYMENTS
OF LOANS
AND
OTHER CREDIT INSTRUMENTS



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COVID-19 DEFERRALS OF REPAYMENTS OF LOANS AND OTHER CREDIT INSTRUMENTS

“SECOND AID” TO CITIZENS, FIRMS AND SELF-EMPLOYEED INDIVIDUALS

Since the beginning of COVID-19 outbreak, the deferrals of loan repayments and other repayments (such as leasing payments, etc.) had been provided by credit institutions or other financial institutions voluntarily, upon their negotiations with debtors, upon their discretion and within the formal process for approval of deferred repayments with a potential future negative effect on the credit score of the debtor.

Following the discussions between the Government of the Slovak Republic, the National Bank of Slovakia, the commercial banks and other financial institutions on measures regarding deferrals of repayments of loans and other credit instruments during the coronavirus SARS-CoV-2 pandemic, on 7 April 2020, the National Council of the Slovak Republic adopted Act No. 75/2020 Coll. amending 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 Act became effective on 9 April 2020 and sets forth the legislative framework for the deferrals of repayments of loans and other credit instruments for consumers, SMEs and self-employed individuals.

The below described regulation of the deferrals of repayments shall apply during the “**period of pandemic**” which means the period from 12 March 2020, when the Government of the Slovak Republic declared an emergency situation due to COVID-19 in the territory of the Slovak Republic, until the end of the calendar month in which the emergency situation is revoked.

Deferral of the repayments of housing loans and consumer credits provided to consumers and deferral of the repayments of loans provided to SMEs and self-employed individuals

- **Creditors obliged to provide the repayment deferrals** are the following:
 - (a) the banks established and having registered seat in the Slovak Republic;
 - (b) the branch offices of foreign banks established in Slovakia - *[NOTE: this obligation is not explicitly imposed on foreign banks not having a branch office in Slovakia and providing their services on a cross border basis];*
 - (c) the non-banking creditors providing loans to consumers under a separate license for provision of consumer credit granted by the National Bank of Slovakia; and
 - (d) the creditors who provide, as a part of their business activities, the loans to SMEs and self-employed persons under the loan/credit agreements.

- **Eligible debtors** are:
 - (a) consumers - natural persons not acting within the scope of their enterprise or occupation with regard to:
 - (i) Repayments of principal and of interests from housing loan agreements (under Act No. 90/2016 Coll.) or under loan agreements serving similar purpose;
 - (ii) Repayments of principal and of interests from consumer loans which include all kinds of loans provided to consumers including financial lease, deferred payment of purchase price and other similar arrangements (and excluding e.g. certain consumer loans below EUR 100 or above EUR 75,000, consumer loans

secured by a pledge over immovable assets, the overdraft facility that has to be repaid under one (1) month, short-term credit that has to be repaid in a time period less than three (3) months, etc.¹);

(iii) Repayments under guarantees provided by consumers regarding the contracts (i) and (ii) above;

(b) 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 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) and self-employed natural persons with regard to:

(i) Repayments of principal and of interests from loan agreements with SMEs and self-employed individuals except for loans provided in the form of an overdraft on a current account or in the form of a loan provided through a payment card; and

(ii) Repayments under guarantees provided by SMEs and self-employed individuals regarding the contracts under (i) above.

- **Request for the repayment deferral.** The repayment deferral is provided only upon a request of the eligible debtor submitted to one of the above stated creditors with requisites as stated in the annex to the Act (https://www.slov-lex.sk/pravne-predpisy/prilohy/SK/ZZ/2020/75/20200409_5233190-4.pdf). The eligible debtor shall submit the request for the repayment deferral during the period of pandemic. The request for the repayment deferral may be submitted:

(a) in case of consumers in a paper form or by means of long-distance communication; and

(b) in case of SMEs and self-employed individuals in a written form (e.g. in paper form or via electronic means signed by an electronic signature, signed by the person authorised to duly act on behalf of SMEs and/or a self-employed individual).

- **Procedure of approval.** Within 30 days from the date of the submission of the request of the repayment deferral, the creditor is obliged to inform the debtor whether

(a) the creditor approved the repayment deferral; or

(b) the creditor has not approved the repayment deferral; or

(c) the request for the repayment deferral does not contain the required requisites and must be supplemented as specified by the creditor.

If the creditor has not approved the repayment deferral, the creditor is obliged to justify this decision. If the creditor fails to inform the debtor within the above time period, the repayment deferral shall be deemed granted under the Act. *[NOTE: The later seems to be the reason why banks overloaded with applications for repayment deferrals tend to respond in cases of denied repayment deferrals firstly, since for the rest of the granted deferrals they can rely on the mentioned mandatory assumption.]*

¹ For the definition of the consumer credit, please see Section 1 of Act 129/2010 Coll. (<https://www.nbs.sk/img/Documents/Legislativa/BasicActs/A129-2010.pdf>).

- **Circumstances in which the creditor is not obligated to provide the repayment deferral** are the following:
 - (a) the debtor has been in delay with the loan repayment, for which he requests the repayment deferral, for more than 30 days before submitting the request for the deferral;
 - (b) as of 29 February 2020, the debtor was in a delay for more than 30 days with the repayment of an instalment in the amount of at least EUR 100 on another loan provided by the same creditor;
 - (c) as of the date of submission of the request for the repayment deferral, the debtor was in a default of an obligor pursuant to Article 178 of the Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms²;
 - (d) the request for the repayment deferral is not duly filled-in; or
 - (e) the request for the repayment deferral does not contain the requisites according to the template set out in the annex to the Act.

- **Time period of the repayment deferrals** is as follows:
 - (a) Banks and branch offices of foreign banks should provide the repayment deferrals to consumers, SMEs as well as to self-employed individuals for a period stipulated in the request of the eligible debtor, up to a maximum period of nine (9) months of the deferral. The request for the repayment deferral may be submitted by the eligible debtor only once during the time of the pandemic and therefore, the debtors should consider carefully at what time and in what extend to ask for the deferral. *[NOTE: According to the publicly available information, the vast majority of requests for the repayment deferrals already filed to the banks by the debtors is for the maximum 9-month period of the deferral, while the number of the requests for the repayment deferrals asking to for three months deferral or even shorter period is rather negligible.]*
 - (b) Non-banking creditors holding the license to provide consumer loans should provide the repayment deferral to consumers for a period stipulated in the request of the eligible debtor, up to a maximum period of three (3) months of the deferral; they should allow the deferral for a maximum of a further three (3) months if the debtor-consumer notifies them so at the latest before the expiry of the original deferral period.
 - (c) Non-banking creditors who provide loans to SMEs and self-employed persons as a part of their business activities (e.g. non-banking providers of financial lease and other credit facilities) should provide the repayment deferral for a period stipulated in the request of the eligible debtor, up to a maximum of three (3) months of the deferral; they should allow the deferral for a maximum of further three (3) months if the debtor notifies them so at the latest before the expiry of the original deferral period.

The time period of the repayment deferral provided during the pandemic should not terminate with the end of the time period of pandemic, but will continue until the expiry of the time period of the granted deferral even after the pandemic.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1589224126334&uri=CELEX%3A32013R0575>

- **Effects of the repayment deferral.** Following the repayment deferral, the following regime shall apply in the relationship between the creditor and the debtor:

 - (a) The deferral constitutes an amendment to the respective loan agreement between the creditor and the debtor without any need for producing and signing a separate written amendment document.
 - (b) By granting the repayment deferral by the creditor, the effects of the debtor's delay do not occur to the extent of the deferred performance.
 - (c) The creditor may not demand payment of the entire loan during the repayment deferral; this is without prejudice to other circumstances not related to the repayment deferral itself.
 - (d) The rights and obligations of persons providing security for the creditor's claim under or in connection with the loan agreement or other persons deriving rights and obligations under the loan agreement should not be affected. The consent of the persons providing the security to the loan is, however, not required in connection with the repayment deferral.

- **No impact of the repayment deferral on a credit score of the debtor.** The repayment deferral should not be regarded as an indication of the default of an obligor/debtor and should not worsen the credit score of the debtor. *[NOTE: Although such repayment deferrals should be technically marked as "Covid-19" only and they should have no formal impact on the future credit score of a debtor (as stated in the Act), according to the inside information from the banking sector that became public, the fact that the debtor asked for a repayment deferral within the regime of the Act will likely remain in internal files of the bank and it cannot be excluded that, in practical terms, it may be taken into account by the bank later in the future, e.g. when (re)fixing the interest rate or providing further credits or loans to the debtor. Such practises of the banks would likely be contrary to the Act and it would be the role of the National Bank of Slovakia to perform supervision over such violations. Therefore, if the consumers suspect that their repayment deferral under the Act in fact had some negative consequences on their relationship with the bank, it cannot be excluded that they could file a complaint with the National Bank of Slovakia and/or even consider a court action.]*

- **Interest during the period of the deferral.** Debtors are obligated to pay the interest rate also for the time period for which they were granted a repayment deferral. The unpaid interest for the period of the repayment deferral should be allocated by the creditor to the remaining repayments of the loan due after the expiry of the loan repayment deferral period, unless otherwise agreed with the debtor.

- **Repayment of the principal after the period of the deferral.** Solely due to the repayment deferral, the total amount of the loan (the principal) cannot be increased. There is no explicit provision in the Act on how the principal should be repaid and accordingly, in our view, the creditor and the debtor may agree on one of the following: (i) the deferred repayments will be postponed to the end of the loan term and thus prolong the original term by the time of such a deferral or (ii) the deferred repayments will increase the subsequent instalments/payments after the repayment deferral period without prolongation of the original term or (iii) the combination of the two.

- **Voluntary repayment during the time of the repayment deferral.** The repayment deferral must not prevent the debtor from a possibility to start repaying the

loan or its part or to repay it prematurely even during the period of the deferral. The debtor who has submitted a request for the deferral of repayments should notify the creditor of his/her intention to repay the loan or part thereof, thereby terminating the deferral.

- **Insurance as an alternative solution to the repayment deferral.** In case of insured loans, an alternative to the repayment deferral may be e.g. taking insurance in case the loan is insured and the default due to losing income or employment is regarded and agreed as an insurance event. In some situations, and for some debtors, the use of the insurance instead of the repayment deferral under the Act is a more suitable option and the debtors should consider it. *[NOTE: Currently, some banks proactively advise their clients/debtors on this option and recommend how this alternative solution can be practically used.]*
- **Effects of the loan repayment deferral on related insurance payments.** If the loan insurance payments are paid together with the loan repayments and if the debtor who submitted the request for the repayment deferral is obliged to pay the insurance payments during the deferral, the creditor informs such a debtor about the method and amount of this insurance payment.
- **Administrative fees and further conditions for repayment deferral.** In connection with the deferral of repayments and the related change of the consumer contract, the creditor may not:
 - (a) require any additional credit security;
 - (b) demand payment of fees, reimbursement of costs or other remuneration, except for the interest for the deferral period; and
 - (c) introduce additional conditions for the deferral.
- **Effects on the repayment deferrals voluntarily provided by the creditor prior to the effectiveness of the Act.** A debtor who has already submitted a request for a deferral of repayments during the period of pandemic, however, before the date of effectiveness of this Act, can also request the repayment deferral under the regime of the Act. If the creditor allows the repayment deferral on the basis of a request for the repayment deferral submitted by the debtor under the Act and cancels the previous repayment deferral on the basis of the previous request submitted before the effectiveness of the Act, then the maximum period of the repayment deferral under the Act should be counted from the first unpaid instalment the maturity of which occurred after the date of submission of the first request for the repayment deferral (i.e. the request submitted during the period of pandemic, but before the date of effectiveness of the Act).
- **Loans agreed with a “maturity at the request of the creditor”.** If the loan has been agreed with a “maturity at the request of the creditor” with SMEs and self-employed persons, based on the Act, the creditor cannot ask the debtor to repay the loan during the period of pandemic.

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This legal update was prepared and posted on 19 May 2020, it is not a legal advice and provides only a brief summary of key information concerning the repayment deferrals of loans and other credit instruments under the Act.