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INTERNATIONAL LAW FIRM

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Recent changes in emergency legislation

Part II

4. No consequences in case of late payment under credit agreements

One of the most controversial texts in the initial version of the Act was related to the ubiquitous and universal abolition of all sanctions for late payment (in the form of default interest and penalties) during the state of emergency. The said, naturally, may be expected to have only one effect, and that is full demoralization of both the debtors who are unable to fulfill their payment obligations, and the debtors unwilling to do so. This means that whoever, for one reason or another, would like to delay their payment, shall have the legal possibility to do so, without any consequences whatsoever. Logically, a question arises and that is if this provision aims to mitigate the situation of the Bulgarian citizens who are encountering difficulties due to financial or health reasons, then why it releases from all legal liability also persons who are not only in

no need of support, but are also ready to directly harm the interests of others and in this way contribute to the deepening of the economic crisis.

The lack of clear answer to this reasonable question led to the most essential change of the Act, namely the one of Art. 6. After the said amendment, the categories of private parties who are entitled to benefit from this exception (for the implementation of negative consequences in case of late payment of monetary obligations) were significantly narrowed. Apart from the categories of parties, the application scope of this provision was limited also with regard to the type of legal transactions. Therefore, it was adopted that during the state of emergency **no legal consequences for late payment shall be applicable to debtors under financing agreements**. Thus, in case the debtor fails to fulfil a **payment obligation under a credit agreement or other type of financing, including**



leasing, factoring, forfeiting etc., which has been provided by a bank or other type of financial institution within the meaning of Art. 3 of the Credit Institutions Act, **no default interests or penalties shall be due**, the creditor shall not be allowed to make use of acceleration clauses, the creditor shall not dispose of the right to unilaterally terminate the agreement due to default by the debtor, as well as no seizure of properties shall be allowed. The said provision also encompasses the cases when the receivables have been acquired by other banks or financial institutions or third parties.

By means of this amendment, the legislator has shifted the burden to the strongest part of the economy – the banking system, which shall have to bear the impact during the state of emergency.

5. The state bears part of the social security contributions under the 60/40 scheme

In the days following the adoption of the 60/40 state aid scheme, on the basis of transparent calculations, the business showed the state that it could not afford to accept its proposal under this form of support. The reason was justified not by the lack of desire, but rather by the logical argument that upon ceasing of all activity (for the most affected companies), the company shall not have enough funds needed to co-finance its respective part of the workers' remuneration, taxes and social security contributions. Thus, only less than 8% of the eligible employers have actually benefited from the measure since its introduction. Probably, these were even not the most affected companies, because the latter have proven mathematically that they do not have the resources needed to show solidarity with the state, and to preserve their most significant resource from mass redundancies, namely their workers. Within a few days, what we expected has happened and now there are more than 30,000 newly registered workers on the jobs market, which, in



turn, added more strain on the social system. The state has reduced its aid for up to 18 % of the payment due by the employer to the worker, according to certain calculations, instead of sharing the burden of paying unemployment benefits with the business, namely by providing stimulating in its amount and fair state aid to the business enterprises which have entirely or partially ceased their operation.

Thus, what was logical has now happened and by means of amending the Act, **the state has undertaken to pay also part of the social insurance contributions of the workers in companies, which have applied and have been approved for this measure.** More specifically, **the state shall transfer in favor of the employer not only 60 % of the insurable earnings of each worker, for whom compensation has been requested, but also the amount of 60% of the social security contributions which are usually at the expense of the employer.**

Additionally, the said amendment shall have a retroactive effect (ex tunc), i. e. as of the declaration of the state of emergency. However, the time limit for provision of the compensation remains unchanged – **compensation shall be paid for no more than 3 months, as of 13th March 2020.**

6. Amount of the unattachable¹ income and other adopted amendments

Unattachable income

It has been long necessary for the amount of the unattachable income to be aligned with the changed standard of life in the state, especially considering that this has already been made a few times in the past years with regard to the amount of the minimal salary, which, on its part, is supposed to reflect the threshold of social existence. Thus, pursuant to the Act, an amendment is adopted in the Tax and Social Insurance Procedure Code, concerning the **unattachable labor income,**

and the latter is raised from 250 BGN to 610 BGN.

Rental agreements with the state

As the business became aware of the need to renegotiate the terms of the rental agreements for commercial properties affected by the state of emergency, the Act reflected this possibility also in the legal relations in which the state is a landlord. In particular, the government, the ministers, as well as other executive bodies and municipal councils have been given the power to issue orders for the reduction of rent or use fees, as well as for the full and partial exemption thereof, for the benefit of physical persons or legal entities - tenants or users of real estate - state property or municipal property, who have terminated their employment or ceased their commercial activities due to the measures and restrictions imposed during the state of emergency. The conditions envisaged for the implementation of this measure reflect the specifics of the situation and provide a

generally sound basis for the re-negotiation of those relationships, which may also be significantly affected.

Return of prepayment by tour operators

Last but not least, a compensation procedure for **anceled trips** is regulated.

An issue where a balance of the interests is sought by the most affected sector of the economy – tourism, and those citizens who have made reservations before the crisis began, and who expect to receive back the funds invested in reservations that they would not have possibility to use.

There are two alternative options - a tour operator whose organized trip has been **anceled due to the state of emergency** has to offer a voucher to the customer for the amount paid - this is one option. The second option provides that, if the customer refuses to accept the voucher, **the tour operator shall reimburse all payments made by the consumer for the canceled trip within 1 month as of the**



termination of the state of emergency.

The question remains whether mass bankruptcies in the tour operators' sector will follow and whether many customers will be deprived of the opportunity to receive their repayments. In order to avoid such undesirable consequences, it may be necessary to tighten controls and deter those businesses that will abuse the law and "simulate" bankruptcy in order to avoid paying consumers the due amounts. What consumers expecting reimbursement can do at this stage is to keep in constant contact with the debtor entities, including to be as prepared as possible to seek their rights in court, in the event of adverse developments.

1Property that cannot be subject to enforcement

For more current topics related to the emergency legislation stipulating legal relations during the state of emergency, you can find information on our website:

www.penkov-markov.eu

Of course, you can reach us for additional information and assistance at: lawyers@penkov-markov.eu.

The above provides general information related to the adoption of the Measures and Actions during the State of Emergency Act and it is not exhaustive, whereas it serves only as a guide for interpreting the news as of April 8th, 2020.

The team of Penkov, Markov & Partners.

