

# CERHA HEMPEL Legal Alert *State of Emergency in Romania II*

## Legislative Measures Applied During the State of Emergency, in the Context of COVID-19 Outbreak

In the context of the crisis generated by COVID-19 outbreak, the Romanian authorities have taken a number of measures, in an attempt to reduce or diminish the consequences, both economically and socially, certain enactments being adopted in this respect:

- Government Decision no. 217/2020 for the application of the provisions of Law no. 19/2020 regarding granting free days to parents for the supervision of children, in the situation of temporary closing of the educational units ("GD 217");
- Government Emergency Ordinance no. 29/2020 regarding certain economic and fiscal-budgetary measures ("GEO 29");
- Government Emergency Ordinance no. 30/2020 for amending and completing certain enactments, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of the coronavirus SARS-CoV-2 ("GEO 30");
- Presidential Decree no. 195/2020 regarding the establishment of the state of emergency on the Romanian territory ("Decree 195").

Among the measures adopted by the Romanian authorities under such enactments, we mention the following:

### 1. Economic and Social Measures:

- **measures in relation to employees, such as:**
- granting paid leave to one of the parents, due to suspension or temporary closure of educational units, with an allowance of 75% of the salary without exceeding 75% of the national average gross salary, under the

conditions set forth by the specific law and with certain restrictions. The sums paid by the employer shall be settled by the State within 60 days from the transmission of the complete documentation in electronic form (including proof of payment of the income tax and indemnity related contributions).

Such insertion incentive is granted both in case of suspension and termination of the employment agreement, as a result of temporary interruption of activity or emergency situation, in accordance with the law.

- covering from the unemployment insurance budget of the allowance due for the duration of the suspension of the employment agreement initiated by the employer during the state of emergency (i.e. technical unemployment; Romanian *somaj tehnic*), in amount of 75% of the base salary, without exceeding 75% of the national average gross salary (Lei 5,429 for 2020).

The following categories benefit from this facility: (i) employers who completely or partially interrupt the activity following the decisions of the authorities and hold the emergency situation certificate; (ii) employers who reduce their activity and who do not have the financial capacity to pay the salaries of their employees, for up to 75% of the employees with individual employment contracts active at the date of entry into force of the law - based on an affidavit stating a decrease of revenue by at least 25% compared to the average of January-February 2020 and that they do not have the financial capacity to pay the salaries; (iii) other professionals, who are employers but interrupted totally or partially their activity, benefit for an aid equal with the minimum gross salary; (iv) athletes who stopped their activity. The facility is granted upon express request of the interested employer/party and the payment thereof shall be performed within 30 days as of submission of the relevant documents.



For the indemnity granted by State, the employer shall determine, retain and pay the taxes, social and health contributions from the amounts cashed from the State budget. The term for declaration and payment thereof shall be 25th of the next month of which the payment from the state budget is done.

- **measures in relation to small and medium enterprises (SMEs) with regard to supplier and other type contracts, such as:**

- the deferral of payment for utility services - electricity, natural gas, water, telephone and internet services, as well as deferred payment of the rent for the registered office and secondary offices for the SMEs that have totally or partially interrupted their activity based on measures imposed by the authorities and that hold the emergency situation certificate. Such facility is also available to lawyers, public notaries, bailiffs, as well as for certain other categories, based on certain criteria which shall be established by the Government and under the fulfilment of certain conditions.
- the possibility of SMEs to invoke the force majeure for other ongoing agreements than the afore-mentioned however, only if their endeavours to negotiate the amendment of such agreements according to the new conditions resulting from the state of urgency prove unsuccessful. Endeavours to negotiate may be proven with documents transmitted between parties in any way, including electronic ones.

There is a legal presumption that force majeure exists in case of an unpredictable, absolutely infallible and unavoidable circumstance which results from an action of the public authorities in applying the measures imposed by the prevention and combatting

of the COVID-19 pandemic and which affects the activity of an SME. The negative impact on the SME's business has to be certified by an emergency situation certificate. The respective presumption may be overturned by any interested party by any means of evidence.

- **measures regarding financing:**

- providing by the State of guarantees for SMEs, covering up to 80% of the principal amounts borrowed in the form of one or more credit(s) for the realization of investments or credit lines for working capital granted by credit institutions. The maximum cumulative value of the financing granted to an SME for which the State offers such facility is capped at (i) Lei 10 million, with a sub-ceiling for the credit lines for working capital of Lei 5 million (without exceeding the average of the expenses related to the working capital of the last two fiscal years) and (ii) Lei 10 million for investment loans;
- providing by the State of guarantees for micro-enterprises (companies which, among others, employ up to ten employees and obtain a net turnover below EUR 2 million) for working capital credit lines of up to 90%, for a borrowed principal amount not exceeding Lei 500.000;
- providing by the State of guarantees for small businesses (companies which, among others, employ up to 50 employees and obtain a net turnover below EUR 10 million), for working capital credit lines can be up to 90% if the principal amounts borrowed is up to Lei 1 million (without exceeding the average of the expenses related to the working capital of the last two fiscal years).

In all cases, the credit interest is fully subsidized by the State for an initial period up to March 31, 2021 (which may be extended). The administration fees are also borne by the State.



## 2. Fiscal-budgetary and Other Measures in Relation to Authorities:

- **measures regarding local authorities:**

- the extension of the deadline for the payment of taxes on buildings, land and vehicles, until June 30, with the corresponding application of a 10% discount for full payment.

- **measures regarding other authorities, such as:**

- the extension of the deadline for notification of the restructuring intention as per the Government Ordinance no. 6/2019 for establishing of certain tax facilities, until 31.07.2020; the request for restructuring can be made until 31.10.2020;
- the suspension of interest and late payment penalties for the fiscal obligations due after the date of entry into force of the GEO 29, during the entire period of state of emergency as well as for a period of 30 days from its termination, whereas these obligations will not be considered as outstanding;
- the suspension or, if case, the non-commencement of enforced recovery of budgetary debts by garnishee order, with the exception of receivables established by rulings in penal matters (established before the state emergency);
- the maintaining of the validity of the documents issued by public authorities which expire during the state of emergency;
- the possibility of the beneficiaries of European funds affected by the measures provided in the Decree 195 to decide, together with the managing authorities/intermediary bodies, to suspend the financing contracts concluded according to the law;

- the capping of the claw back tax for the first quarter of 2020 at the level of the fourth quarter of 2019;
- the suspension of controls by the Territorial Labour Inspectorate during the state of emergency, except for checks regarding compliance with the provisions of the National Committee for Special Emergency Situations;
- the possibility of the taxpayers applying the advance payments systems for the income tax to pay the income tax for the first quarter of 2020 based on the real profit. The measure also applies to taxpayers who have a modified fiscal year and will remain valid throughout 2020 (for all quarters).
- the postponement of the deadline for submitting the UBO declaration, as per the Law no. 129/2019 on prevention and combating money laundering and terrorism financing, by 3 months after the cessation of the emergency state;
- the suspension for the duration of the state of emergency of the delay penalties in the execution of obligations arising from the contracts concluded by SMEs that have totally or partially interrupted their activity and that hold the emergency situation certificate with public authorities.

### For more information

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