

March 2020

STANDSTILL MEASURES IN BULGARIA OVER CONSEQUENCES DUE TO PAYMENT DEFAULT

The Bulgarian parliament introduced a standstill period concerning the monetary and non-monetary consequences which arise from payment default under all type of contracts, among other measures in the Act on the measures and actions during the state of emergency, adopted on 20 and on 23 March 2020 in response to COVID-19 ("**State of Emergency Act**" or "**Act**"). The approved text is broader than the intended moratorium over the default interest under mortgage loans, which has led to public criticism of the potential effects of the Act and may trigger further amendments.

Scope:

The payments continue to be due. The State of Emergency Act disappplies only the consequences arising out of a delayed payment, including under lease and loan agreements. The act prohibits the creditors to accrue default interest, claim penalties or apply non-monetary consequences such as accelerating of due obligations, rescinding of the agreement or seizing of assets. It does not exhaust the measures that a creditor is prevented to undertake. The use of the deposits or demanding of the bank guarantees in the event of non- payment of lease instalments, claiming breach of the covenants or triggering insolvency under loan agreements are also standard monetary and non-monetary sanctions which in our opinion are banned as well.

Parties:

The standstill applies to all local debtors, which are private persons with legal capacity – i.e. individuals, companies, entrepreneurs – thus excluding only the public authorities if they are facing non-payment. It remains questionable whether the relief would depend on the jurisdiction where the creditor is incorporated. The Act's core goal is the protection of public interests and economically weaker parties in light of the extraordinary circumstances. As such, it could be argued that this provision represents an overriding mandatory rule that would apply to both local and foreign creditors, in case the debtor is located in Bulgaria.

Voluntarily vs. mandatory:

Voluntarily performance is permitted, and the debtors can continue servicing the debts. Businesses would need to factor in that they may face difficulties repaying the accumulated principal and contractual interests, which they have opted not to repay, once the temporarily prohibition on enforcement would be lifted.

Duration:

The standstill enters into force retroactively as of 13 March 2020 and will apply as long as the state of emergency is in force, currently set forth for 13 April 2020, but subject to possible extensions.

Effect:

The State of Emergency Act provides for relief from the sanctions which stem from late payments. Therefore, both the creditors and the debtors need to assess the consequences of the Act and the related measures within the context of the entire agreement and the applicable law. Typically, the risks from unforeseeable events are vested to the debtors. They may have obligations to notify the creditors for changes in the law or for such that may have material adverse effect that might be relevant in the present situation. While many of the businesses which are currently affected by the pandemic measures cannot justify non-payment due to force majeure, there are cases where suspension of payments on this ground can be validly invoked. Creditors would therefore need to balance the abovementioned risks from non-payment and the enforcement relief by negotiating in good faith appropriate remedies in light of these extraordinary circumstances.

For comments on claiming force majeure due to COVID-19 measures please refer to our separate note which is focused on this topic.

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For more information about our services, please contact:



Katerina Kraeva

Partner

katerina.kraeva@wolftheiss.com

T: +359 2 8613 700



Anna Rizova

Partner

anna.rizova@wolftheiss.com

T: +359 2 8613 700

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Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com