

ASPECTS REGARDING THE FACILITIES, DEFERRALS OR FLEXIBILITIES GRANTED IN THE CONTEXT OF COVID-19

Facilities and support program in favor of SMEs

A. Facilities

Throughout the state of emergency, **small and medium enterprises** that ceased operation either totally or partially based on the decisions issued by the authorities throughout the state of emergency and which hold the certificate for emergency situations issued by the Ministry of Economy, Energy and the Business Environment (which can be obtained based on a statement on own responsibility filed on the <http://prevenire.gov.ro/> platform) will benefit from the following facilities:

- **payment deferral for utilities services** (electricity, natural gas, water, telephone and internet services);
- **deferral of rent payment for the property used as registered office and secondary offices;**
- by derogation from other legal provisions, **in the agreements in progress** (other than those concerning utilities/registered office/secondary offices), **they can invoke force majeure**, BUT only after an attempt, proved by written documents served by the parties by any means (including electronic), to renegotiate the agreement;
- **non-imposition of delay penalties concerning the fulfillment of the obligations arising from agreements concluded with public authorities** throughout the state of emergency.

B. Program in support of SMEs

In the context of the state of emergency caused by the spread of the COVID-19 virus and, taking into account the major economic impact of the current situation on the environment, measures need to be taken in order to adjust the Program in support of small and medium enterprises - IMM INVEST ROMANIA (provided by Emergency Ordinance no. 110/2017 on the Program in support of small and medium enterprises - IMM INVEST ROMANIA), as follows:

- Eligible SMEs which can benefit from State aid originate from all sectors of activity, but must cumulatively meet, **at the date of filing the application**, the following eligibility criteria:
 - (a) they are micro-enterprises, small or medium enterprises according to Law no. 346/2004 on

stimulating the incorporation and development of small and medium enterprises;

- (b) they have not lost more than half of their share capital in the last two years and more than a quarter of this capital in the last 12 months, in the case of companies provided by Companies Law 31/1990 according to the latest financial statements they filed (*except for start-ups which have no financial statements filed*);
- (c) they are in none of the following situations: insolvency procedure, forced execution procedure initiated by tax bodies and/or other creditors, operational closure, winding-up, liquidation, special administration or arrangement with creditors and do not meet the criteria in the national legislation in order to be subject to an insolvency procedure at the creditors' request, according to the statement on own responsibility, filled out and signed by the beneficiary of the funding;
- (d) they are not involved in a litigation, as defendants, with the Ministry of Public Finance and/or with the credit institution;
- (e) do not have outstanding credits, including for leasing type of funding, in the last 6 months prior to December 31, 2019 or, if they have arrears, they fall within categories A, B, C in the database of the Central Credit Register;
- (f) they are not prohibited from issuing cheques as at December 31, 2019 and are not recorded with major incidents concerning promissory notes in the last 6 months prior to December 31, 2019 in the database of the Central Credit Register;
- (g) they provide the credit institution with collaterals which, in the case of investment credits, together with the State guarantee and the immovable and/or movable legal mortgage over the assets funded from the credit, cover at least 100% of the funding's value. For credits/credit lines for funding working capital, the movable legal mortgage over the credit balances of all accounts opened by the beneficiary with the credit institution, together with the State guarantee can be included in the structure of guarantees related to the credit;
- (h) the eligibility conditions of the credit institution are met;
- (i) they do not have outstanding tax liabilities or other budgetary receivables managed by the central tax body. In case they have such outstanding liabilities, the beneficiary undertakes to pay them out of the credit/credit line for the working capital granted under the program;
- (j) decisions for recovery of a State aid were not issued against them or, in case such decisions

were issued, they were enforced, according to the legal provisions in force;

- (k) they did not request other types of State aid for the same eligible costs;
- (l) they were not in difficulty, but they faced difficulties or encountered difficulties afterwards, due to the COVID-19 pandemic;
- (m) they file a written document whereby they undertake not to dismiss the existing personnel as of the entry into force of this emergency ordinance until December 31, 2020.

Small and medium enterprises active in the following sectors/domains **are not eligible** to receive guarantees under the program: gambling and betting activities, production or trade of weapons, munitions, explosives, tobacco, alcohol, substances under national control, narcotic and psychotropic plants, substances and preparations, investigation and protection activities.

- The credits for which the State grants guarantees fall within one of the following categories:
 - a) **credits for making investments and/or credits/credit lines for working capital**, amounting to **80% at most** of the investment value (interest, fees and bank charges excluded). **The maximum cumulated value of funding guaranteed by the State which may be granted to a beneficiary under such a facility is RON 10,000,000.** The maximum value of credits/credit lines for **funding working capital** amounts to **RON 5,000,000** and for **investment credits** it amounts to **RON 10,000,000**;
 - b) **credits/credit lines for funding the working capital** (interest, fees and bank charges excluded), amounting to **90% at most** granted to a micro-enterprise or to a small enterprise, **amounting to RON 500,000 at most for micro-enterprises** and **RON 1,000,000 at most for small enterprises**, respectively.

When granting any categories of guarantees mentioned above, one of the following **conditions** will be taken into account, namely that which represents **the highest value** out of: (i) double of the amount representing salary costs, including the mandatory social contributions due by the employer for the income from salaries and amounts similar to salaries, recorded in 2019. *In the case of enterprises incorporated after January 1, 2019, the maximum amount of the loan may not exceed the amount estimated for the first 2 years of operation;* or (ii) 25% of the beneficiary's net turnover in 2019, respectively the gross revenues or the annual standard income in the case of natural persons who obtain income from freelance activities, as applicable, according to the Single return on income

tax and social contributions due by natural persons, filed with the competent tax bodies for 2019; **or (iii)** a value which results from its needs for cash (including working capital costs/ investment costs), on condition that the beneficiary provides supporting documents, in which case the amount of the loan may not exceed the cash needs as at the granting date for the following 18 months. SMEs can cumulate the credits/credit lines for the financing of the working capital (letter b) with the credits for the realization of investments within the limit of 10,000,000 lei.

- SMEs operating in the sector of processing and trade of agricultural products and which have contracted loans/lines of credit for financing investments and/or financing working capital **may benefit from a grant, but not more than the equivalent in RON of EUR 800,000 per enterprise.**
- **The maximum duration of funding is 72 months in the case of investment credits and this period may not be extended, and 36 months in the case of credits/credit lines for working capital. Credits/credit lines for working capital may be extended by 36 months at most.** The duration of granted guarantees may not exceed 6 months. Risk fees will be charged for granted guarantees.
- The legal real estate and/or movable mortgages on the assets financed by credit, established in favor of the Romanian state, represented by the Ministry of Public Finance, and of the credit institution, will have the first rank for the entire validity period of the guarantee. payment of the guarantee by the credit institution. The formalities for registration, modification, renewal and cancellation of legal real estate and / or movable mortgages are performed by the credit institution, based on the guarantee contract.
- For 2020, the total ceiling of guarantees that can be granted is RON 15,000,000,000.

The legal basis for the above is represented by *Emergency Ordinance 42/2020 amending and supplementing Government Emergency Ordinance no. 110/2017 on the Program supporting small and medium enterprises - IMM INVEST ROMANIA, as well as approving the State aid scheme in support of the activity of SMEs in the context of the economic crisis generated by the COVID-19 pandemic, Deed from 2020 STATE AID SCHEME IN SUPPORT OF THE ACTIVITY OF SMEs IN THE CONTEXT OF THE ECONOMIC CRISIS GENERATED BY THE COVID-19 PANDEMIC, The Methodological Norms from 2020 for the application of the Government Emergency Ordinance no. 110/ on the Program supporting small and medium enterprises - IMM INVEST ROMANIA and Emergency Ordinance 29/2020 on economic, tax and budgetary*



measures and Decision 326/2020 on amending and supplementing Government Decision no. 282/2020 for the approval of the Methodological Norms for the application of the Government Emergency Ordinance no. 110/2017 on the Support Program for Small and Medium Enterprises - SME INVEST ROMANIA.

Mitel & Asociatii