



Nestor Nestor Diculescu Kingston Petersen
ATTORNEYS & COUNSELORS

Legal & Tax

30^{years}
anniversary

COVID-19

Legal & Tax Resource Center

Certificates for Emergency Situations

April 2020

BUCHAREST

201 Barbu Vacarescu St., Globalworth Tower,
18th floor, District 2, Bucharest, 020276, Romania

T +40 21 201 1200, +40 31 225 3300
F +40 21 201 1210, +40 31 225 3310
E office@nndkp.ro, www.nndkp.ro

The ordinance proving a moratorium on loan installments has been enacted by the Government, and so has been competing legislation by Parliament, causing more instability. There are many uncertainties, the biggest being whether the Ordinance will remain in force at all - the Parliament has already adopted its replacement which is currently in its promulgation stage.

Please see our initial article [here](#) which provides a summary of the original government ordinance (which we will call the “**Moratorium Ordinance**”) and its recently published implementation norms (the “**Norms**”).

This now includes some comments on key differences as a result of the current form of the version adopted by Parliament (which we will call the “**Moratorium Law**”).

There were several aspects which the Moratorium Ordinance did not address which we believed could have resulted in several difficulties for both the banks and the companies. These are largely not addressed in the Moratorium Law either, which is in fact more succinct than its predecessor.

It remains advisable that the companies, as well as the banks should be mindful when it comes to applying such measures, especially with regard to the restructuring of credit agreements, due to the fact that:

- the postponement may apply to a limited number of companies - under the Moratorium Ordinance borrowers were eligible regardless of size provided they had to observed certain restrictive legal requirements (such as holding a state of emergency certificate); under the prospective Moratorium Law, only small and medium sized companies are eligible and no certificate is required as long as they declare a 15% decrease in revenue in the current month compared to the average of the last two months;
- companies with previous unpaid debts are not eligible – however if the Moratorium Law comes into force, such debts would need to be older than 90 days in order to render companies ineligible;
- changes to contracts may not be effective against co-debtors or third party guarantors – the Implementation Norms provide that prior consent of third parties is required in respect of debtors who are legal entities;
- the Moratorium Law includes provisions on banning enforcement procedures, the full scope of which remains unclear at this stage as the language is highly interpretable;
- the obligation to file for insolvency has not been suspended in either piece of legislation, as it has been in Germany, for example (there are, however, certain contractual solutions) and penalties are still accruing for different kinds of commercial obligations making way to a new wave of insolvencies;
- it is debatable whether the reimbursement of cross-border loans is covered by postponement measures currently in place.

Please also see our extended article available [here](#) with regard to the insolvency wave approaching.

NNDKP CONTACTS

For any questions, your contacts at NNDKP are available either by e-mail or telephone.

For the above aspects, please contact [Alina Radu](#) or [Valentin Voinescu](#).

Updates related to the impact of COVID-19 will be included on our [website](#) regularly, as the situation evolves.

www.nndkp.ro

Note: This document should not be copied, disclosed, distributed or reproduced, in whole or in part, without the prior written consent of Nestor Nestor Diculescu Kingston Petersen. The contents of this document is for information purposes only and should not be relied upon or construed as legal or other kind of advice

Note: This document should not be copied, disclosed, distributed or reproduced, in whole or in part, without the prior written consent of Nestor Nestor Diculescu Kingston Petersen. The contents of this document is for information purposes only and should not be relied upon or construed as legal or other kind of advice.