

LEGAL ALERT



NEW FACILITIES GRANTED BY THE ROMANIAN STATE TO SUPPORT SMES IN THE CONTEXT OF COVID-19 - IMM LEASING FOR EQUIPMENT AND MACHINERY -

CONTEXT

In support of the small and medium-sized enterprises ("SMEs") whose activity was considerably affected by the effects of the Covid-19 pandemic and which have a more difficult access to bank loans, the authorities approved a new program - IMM LEASING FOR EQUIPMENT AND MACHINERY ("IMM Leasing Program") in which SMEs may acquire equipment and machinery required for carrying out their business, in financial leasing, with guarantees granted by the Romanian State.

The IMM Leasing Program, the requirements imposed to SMEs so as to benefit from such facilities, the type of facilities, their guarantees, as well as the guarantees granted by the Romanian State, are provided for under Emergency Ordinance no. 118/2020 approving the Program support small and medium-sized enterprises "IMM LEASING FOR EQUIPMENT AND MACHINERY" ("GEO 118/2020"), whose summary is hereinafter described.

WHAT IS THE IMM LEASING PROGRAM AND WHAT DOES IT INCLUDE

- It is a multiannual program for fostering and stimulating the development of both SMEs and affiliated enterprises having a number equal to or exceeding 250 employees;
- The main goal of the program is granting by the state of certain loan guarantees namely granting to the non-banking financial institutions of annual guarantee ceilings for financial leasing funding, for the acquisition of new or second-hand movable assets required for carrying out the SMEs activity;
- It includes a guarantee mechanism based on which the Ministry of Public Finance is authorized to mandate the National Credit Guarantee Fund for SMEs ("FNCCIMM"), in order to issue guarantees in the name and on behalf of the Romanian State, in favor of financial leasing companies which will fund the eligible beneficiaries.

- **state guarantees** for funding granted by non-banking financial institutions for financial leasing, for the acquisition of new or second-hand movable assets (IT&C equipment and technology, machinery and technical equipment, vehicles for the transport of goods and persons, used for commercial purposes);
- **subsidies of the management fee and the risk fee**, in proportion of 100%;
- **interest subsidies** up to 50% for loans granted according to GEO 118/2020.

The facilities are granted based on a de minimis scheme, approved by Government Decision, with the observance of the domestic legal provisions on domestic procedures and the relevant EU provisions on state aid which will be adopted (the "Aid Scheme").

The characteristics of the movable assets which can be acquired in the IMM Leasing Program are established by means of the methodological rules implementing GEO 118/2020 which will be drafted by the Ministry of Finance within 30 days from the entry into force of GEO 118/2020 (i.e. from 24 July 2020) and shall be subject for Government's approval ("Implementation Rules").

LIMITS AND CEILINGS

The state shall guarantee:

- a maximum of 80% of the financing amount, excluding interest, fees and other expenses related to the financing granted, for the acquisition of IT&C equipment and technology in a financial leasing operation;
- a maximum of 60% of the financing amount, excluding interest, fees and other expenses related to the financing granted, for the acquisition of machinery and technical equipment, vehicles for the transport of goods and persons, used for commercial purposes in a financial leasing operation;
- The aggregate maximum amount of the state-guaranteed funding which can be granted to a single beneficiary in this program is RON 5,000,000.

WHICH ARE THE BENEFICIARIES OF THE PROGRAM IMM LEASING AND WHICH ARE THE QUALIFYING CRITERIA

The beneficiaries are the entities having the capacity as user or lessee in the financial leasing agreement concluded with the relevant financier, namely:

- economic operators, companies or cooperatives, agricultural companies, production agricultural cooperatives, authorized individuals, holders of individual enterprises or family enterprises, authorized according to the legal provisions in force*, non-profit associations or foundations undertaking economic activities, which fulfill the requirements for being classified as small and medium-sized enterprises, on a cumulative basis, as such requirements are provided for by Law no. 346/2004 on stimulating the establishment and development of small and medium-sized enterprises;
- the affiliated enterprises having a number equal to or exceeding 250 employees.

The characteristics of the affiliated undertakings will be established in the Implementation Rules.

The exempted entities/persons are those in the following sectors/industries:

- financial brokerage and insurance;
- real estate transactions;
- gambling and betting;
- production or trade of weapons, ammunition;
- explosives, tobacco, alcohol, except for wine and beer, nationally controlled substances, narcotic and psychotropic plants, substances and compounds;
- rental and lease activities;
- investigation and protection activities.

** According to Emergency Ordinance no. 44/2008 on the performance of economic activities by authorized individuals, individual enterprises and family enterprises, as further amended*

Cumulative conditions which must be fulfilled by the beneficiaries:

- not to be in difficulty according to chapter 2.2 of the European Commission Communication Guidelines on *state aid for rescuing and restructuring non-financial undertakings in difficulty*, published in the Official Journal of the European Union no. 249, series C, of 31 July 2014;
- not to be in a lawsuit as defendant against the Ministry of Public Finance and/or the financier;
- not to have outstanding loans, including for financial leasing, in the last six months or, if they have arrears in the database of the Credit Risk Central, such arrears to be classified in standard, under observation and below standard categories;
- not to be placed under the interdiction to issue promissory notes and not to register major incidents involving promissory notes in the last six months in the database of the Payment Incidents Central;
- to be eligible, according to the internal regulations of the financier;
- not to have active or suspended garnishments on the bank accounts;
- not to have outstanding tax liabilities and
- other tax and budgetary receivables, administered by the central tax authority.

TERM OF FUNDING AND REPAYMENT

- The maximum leasing period is 72 months, with the possibility to grant a grace period between 3 and 12 months;
- The period and manner to repay the funding are established by the financier, according to its internal rules.

ADVANCE PAYMENT AND REMAINING AMOUNT

- The advance paid by the user may range between 0% and maximum 20% of the purchase value of the funded asset, without VAT;
- The remaining amount ranges between 1% and maximum 20% of the purchase value of the funded asset, without VAT, and may be paid at the end of the leasing period or may be included in the installments during the performance of the financing agreement.

COLLATERALS

- The guarantees granted by the state in the IMM Leasing Program are secured with a legal movable mortgage over the movable assets owned by the financier and subject to the financial leasing, based on the guarantee agreement;
- The mortgages are established in favor of the Romanian State, represented by the Ministry of Public Finance, through FNGCMM, pro rata to the risk undertaken by the guarantor;
- The guarantee agreements whereby FNGCMM grants state guarantees are writs of execution and have the value of authenticated deeds.

In addition to the legal movable mortgage, the financiers may request from the beneficiary additional guarantees in the form of promissory notes, issued by the beneficiary up to the unsecured percentage, in accordance with their own financing rules and procedures.

If the financier approves amendments to the leasing agreement regarding the structure of the guarantees created, other than the state guarantee, by issuing and replacing the collaterals, the consent from FNGCMM will be required.

INSURING THE MOVABLE ASSETS SUBJECT TO FINANCING

- The financier is bound to conclude insurance policies for the movable assets subject to the financial leasing agreement, and the costs for their insurance will be borne by the beneficiary;
- The obligation to insure the movable assets subsists for the entire validity term of the state guarantee.

PAYMENT OF THE ENFORCING AMOUNT OF THE GUARANTEE IN CASE OF OCCURRENCE OF THE CREDIT RISK

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- GEO 118/2020 sets forth the applicable procedure for the state to recover the amounts paid, representing the enforcing value of the guarantee in case of occurrence of the credit risk;
- The amounts resulting from the payment of state guarantees will be paid to the financier by the Ministry of Public Finance based on supporting documents submitted by FNGCIMM and will be recovered from the beneficiary of the program, according to GEO 118/2020;
- The collaterals established pursuant to the guarantee agreement will be enforced by the competent tax authorities, and the amounts thus obtained will be distributed to the Romanian State, up to the unpaid receivable, whereas the difference will be repaid to the financier.

The IMM Leasing Program approved by GEO 118/2020 is to be implemented in accordance with the Implementation Rules for GEO 118/2020 and the Aid Scheme, which are still to be drafted and approved.

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