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Tax & Legal

Legal

Subsidies

Special Edition

Obsah

Legal

Submission of applications under the Antivirus Programme

Lex COVID – crisis measures in insolvency law

Lex COVID – special measures concerning legal persons

Subsidies

Loan guarantees for large enterprises – COVID plus guarantee programme

Applications accepted for guaranteed loans under COVID II programme

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Submission of applications under the Antivirus Programme

The Ministry of Labour and Social Affairs (MLSA) updated its Antivirus Programme manual for employers. It describes in more detail the criteria for the entitlement of employers to aid through compensation of some wage expenses to employers.



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In the manual, the MLSA notes that it is desirable to compensate employers for all kinds of impediments to work that arose due to COVID-19 pandemic and emergency measures of the public health protection authorities and governmental emergency resolutions. Compensation includes a contribution to the partial payment of wage compensation belonging to an employee for the period of impediment to work and the corresponding amount of social security premiums, as well as a contribution to the statutory unemployment and health insurance premiums for both employees and employers. Employers should be entitled to the partial compensation of these expenditures in the amount of 80% or 60% depending on whether the employee falls under Regime A (compulsory restriction of business based on the emergency measure and quarantine) or Regime B (related economic difficulties) of the Antivirus Programme. Multiple types of impediments to work can be combined by one employer.

An application for the compensation of the above described expenditures may be submitted by all employers who have at least one of their workers employed within an employment relationship, participate in sickness and pension insurance and also fall under requirements of the Antivirus Programme regimes A or B. For the time being, the Labour Office of the Czech Republic (LO CR), as the implementer of the programme, will grant entitlements arising for the period starting the day of declaration of the emergency, i.e. from 12 March 2020 to the end of April 2020. LO CR will grant the contribution only provided that the employer has actually paid the wage compensations to the employees and duly paid all mandatory levies.

Another condition for granting the contribution is that the employees concerned are neither laid-off, (excepting lay-off notices for breaches of the employee's obligations under Section 52 (g) and (h) of the Labour Code), nor in a notice period when the employer submits the respective application. For agency workers, their employment relationship must have been agreed before the date of the declaration of emergency, i.e. before 12 March 2020, and must continue for the entire duration of the Antivirus programme. At the same time, the manual specifies that the compensation does not apply to employees working under any of the agreements on work performed outside employment law relationship.

The ministry’s manual also provides a list of circumstances under which compensation will not be granted. This involves, e.g., situations where the employer-applicant is in liquidation or in bankruptcy proceedings, has received another contribution from the LO CR or has been levied a fine for allowing the performance of illegal work in

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accordance with Section 5 (e), Article 3 of the Employment Act (i.e. allowing foreigners to work without a residence permit) within three years before the date of the application's submission.

Applications will be submitted through a web application created specifically for this contribution. To submit the application, the employer will need a data-box or an email account with an advanced electronic signature. Once the application has been filled-in, a contribution agreement will automatically be generated. This will be considered concluded once the agreement has been signed by the LO CR and delivered back to the employer. After the payroll closing date for the relevant calendar month, the employer shall submit to the Labour Office a statement of the paid wage compensations, including mandatory levies. The LO CR in turn will electronically send a question to the Czech Social Security Administration to determine whether the workers to which the employer is claiming the contribution are indeed the entity's employees. After verification, the Labour Office will pay the contribution to the employer's account. Employers are liable to provide true and accurate data. Any incorrectly completed applications will be cancelled and returned to the submitter for correction.

The ministry's manual points out that compliance with labour law regulations and requirements for payment of the contribution will be subject to widespread inspections by the Labour Office in cooperation with the State Labour Inspection Office (SUIP). Intentional misuse of contributions may be classified as a criminal offense. Breaches of the written agreement's terms and conditions may result in the obligation to repay the contribution and may be referred to the ☒nancial authority for the suspected infringement of budgetary discipline. At the same time, it may also be subject to inspection and possible sanctions imposed by the SUIP. However, the manual also specifies that a possible misstatement of an impediment to work does not constitute a breach of the contribution agreement and will therefore not necessarily require repayment should such wage compensation have already been paid to the employee. The web application for the submission of applications will be launched as of 6 April 2020.

Finally, please note that the manual has been drawn up for informative purposes only and is continuously being updated by the Ministry of Labour and Social Affairs. We are continuing to monitor the situation and will inform you about any changes.

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Legal

Lex COVID – crisis measures in insolvency law

The government has approved a draft bill introducing, among other things, special measures to mitigate the insolvency law-related effects of the coronavirus pandemic. The objective of these measures is to avert the risks of mass insolvencies and to prevent the backlog of insolvency petitions in courts.



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The government expects that many still functioning companies will run into unexpected and temporary insolvency due to the current pandemic and related crisis measures. At the same time, it assumes that if these companies are given time and leniency to weather the current crisis that has come about through no fault of theirs, they will possibly get back on their feet and resume their business activity after the end of all restrictions. It is precisely this possibility that the proposed special measures in insolvency law should bring them:

- **Temporary abolition of the obligation to file a debtor's insolvency petition**. However, this measure does not apply to debtors whose bankruptcy occurred before the adoption of emergency measures, or whose bankruptcy was mainly caused by reasons other than the pandemic. The measure has been proposed for a period of up to six months after the end of the emergency measures, but no later than 31 December 2020.
- **Temporary prohibition to file creditors' insolvency petitions.** The bill should cease to be effective on 31 August 2020. During this broad measure's effectiveness, creditors will not be able to open insolvency proceedings at all, even concerning claims not related to the pandemic. Creditors' insolvency petitions will not even be published in the insolvency register. However, the bill does not prevent creditors from exercising their rights in other ways, such as by offsetting claims, enforcing collateral rights, bringing suits in classic court proceedings, or initiating enforcement.
- **Introduction of an extraordinary claims moratorium.** Debtors whose economic difficulties have been caused by emergency measures may file an application for an extraordinary moratorium with the insolvency court prior to 31 August 2020. The main difference from an ordinary moratorium is that it is not necessary to prove the creditors' consent to most of the claims. If the formal conditions, including an affidavit stating that the moratorium is needed due to emergency measures, are met, the court should allow it. Debtor will thus be able to focus on saving their company for a period of three to six months, paying only those payments that are immediately necessary for its operation.

The bill should be discussed by the chamber of deputies on 7 April 2020 and is expected to be approved without substantial changes. It can be assumed that the proposed measures will enable companies to better cope with the current crisis and will contribute to a relaunch of the economy.

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Lex COVID – special measures concerning legal persons

The declaration of emergency, closures of borders and related measures can make it impossible for some business corporations to hold meetings of their bodies, unless such situations have been envisaged in their memorandum of association. However, the chamber of deputies is about to discuss Lex COVID, a bill which, among other things, should address this situation.



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According to the bill, each body of a legal entity could make decisions either using technical means (e.g. by videoconference) or in writing outside the meeting (per rollam), regardless of whether the memorandum of association permits, regulates or prohibits it. However, other requirements on per rollam decision-making laid down by law or by memorandum of association would still have to be respected and not be circumvented in this way. If the law or the company's memorandum of association does not stipulate such decision-making requirements, the statutory body would determine them in case of the supreme body, in case of another body such another body. These requirements would have to be notified to the members of the body sufficiently in advance before such decision-making.

Furthermore, the bill regulates the expiration of the terms of office of an elected corporate body's members, introducing a certain period of protection before the standard decision-making mechanisms of legal entities are able to operate again. If the term of office of an elected body's member expires during the ongoing state of emergency, their term of office will automatically be extended by three months after the expiry of the emergency measures. The same should apply if the term of office expires within one month after the end of the emergency measures. Should the member expressly oppose the extension of the term of office, the term of office shall not be extended.

If an elected body maintains at least half of its members, then that body could elect/appoint substitute members for the period until the next meeting of the body competent to elect/appoint them, even if the memorandum of association does not permit so. If a company's memorandum of association does not contain such a regulation, the adoption of such a decision would require the consent of all current members of the body.

If this draft bill is adopted, it can make some corporate operations during the state of emergency easier for companies that were not able to react in time by respectively modifying their memorandum of association or whose members may be abroad or for other reasons cannot physically participate in the meetings. At the same time, ambiguities in the law's practical application should be expected.

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Loan guarantees for large enterprises – COVID plus guarantee programme

In cooperation with the Ministry of Industry and Trade and the Export Guarantee and Insurance Corporation (EGAP), the Ministry of Finance is preparing a programme to mitigate the impact of the coronavirus crisis on large export firms and manufacturers. The aim of the programme is to strengthen the liquidity of export-oriented enterprises.



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Aid should be provided like in the COVID II programme in the form of loan guarantees, but this time for large enterprises over 250 employees. Guarantees should be provided for the operating and investment loans of exporters and producers. To obtain a guarantee from EGAP, the following condition must be met:

In 2019, the exporter's revenue from the exports of goods and services must have amounted to at least 20% of their total revenue from products, services, and sales.

For working capital loans, a guarantee will be granted for a maximum period of three years; while investment loans should be guaranteed for a maximum period of five years. The minimum guaranteed loan amount will be CZK 5 million, with 25% of the exporter's total annual revenue from products and services for 2019 set as the maximum amount of the guaranteed loan. The EGAP guarantee should be up to 80% of the loan principal. More detailed information should be published in the following days.

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Subsidies

Applications accepted for guaranteed loans under COVID II programme

Applications for COVID II guaranteed loans are being accepted since Thursday, 2 April 2020. More detailed information on how to apply for this aid has also been published.



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The programme will accept applications gradually, always with an allocation of CZK 1.5 billion for each round. After a round's capacity has been reached, the relevant round will be closed and the next round will be announced 10 business days after the end of the previous round. This procedure will be repeated until all funds to be allocated have been exhausted. According to the Czech-Moravian Guarantee and Development Bank (ČMZRB), five billion Czech crowns have been set aside for allocation under this programme.

Entities in the territory of the City of Prague cannot apply for COVID II aid. Representatives of the ČMZRB, the Ministry of Industry and Trade and the City of Prague are currently negotiating aid and its conditions for Prague-based entities. We will inform you about the results.

To receive aid under COVID II, **it is first necessary to apply for a loan from one of the commercial banks** that have joined the COVID II programme. A list of cooperating banks is available on the ČMZRB website. The duration of the process of obtaining the loan depends on the speed of the respective bank's lending process. Only after the loan has been pre-approved, aid under COVID II can be applied for and should be processed within a few business days.
An aid application under COVID II must contain:

1. A duly completed official application form in the required format containing information on the applicant, the characteristics of the project and the guaranteed loan, affidavits, information on the protection of personal data, etc.
2. A duly completed PCX project appendix in the required format, containing an overview of the estimated costs to which the loan and guarantee will be applied and a brief description of the project.
3. A copy of the loan agreement stating the ČMZRB bank guarantee as required security or a ACX appendix completed by the relevant bank and describing the terms and conditions of the loan to be provided.

Completed application packages must be submitted electronically via ePodatelna. To speed up the approval of the guarantee, it is recommended to submit additional attachments, e.g. a DCX appendix (declaration to de minimis aid), MSP appendix (statement on the enterprise's size), an ID appendix (legal entity identification), and the entity's last two yearly financial statements in their original format.

Within one year from signing the guarantee contract, ČMZRB will request information on the implementation of the project (i.e. confirmation of operating expenses paid from the guaranteed loan). Only one guarantee can be granted for one project. **Other applications for aid for other projects can be submitted no earlier than six months after the date of submission of the previous application.**

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The total amount of the aid to cover interest will depend on the guaranteed loan drawn down to cover the operating costs. The financial aid will be paid retrospectively after the bank confirms that the applicant has paid interest. However, applicants will not have to submit this confirmation to ČMZRB, everything should be automatically handled by ČMZRB and the relevant bank.

Contributions shall not exceed:

- 30% and max. CZK 150,000 for guaranteed loans of up to CZK 500,000
- 20% and max. CZK 200,000 for guaranteed loans between CZK 500,000 and CZK 1 million
- 15% and max. CZK 1 million for guaranteed loans between CZK 1 million and CZK 15 million.

Widespread demand for COVID II aid is expected, hence we recommend submitting applications as soon as possible.

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