

On temporary non-legislative loan payment moratorium for legal entities

I. The context of the preparation of the moratorium

European Banking Authority has published guidelines EBA/GL/2020/02 “Guidelines on legislative and non-legislative moratoria on loan payments applied in the light of the COVID-19 crisis” (hereinafter – **the EBA Guidelines**).

The Financial and Capital Market Commission has informed the Finance Latvia Association that at this juncture there is no such industry wide non-legislative loan payment moratorium (hereinafter – **the Moratorium**) in place which meets the criteria set out in the EBA Guidelines.

The establishment of a comprehensive moratorium would set common, clear and publicly available criteria for loan principal repayment postponement (hereinafter – **the Grace period**).

Referring to the invitation from the European Banking Authority and the Financial and Capital Market Commission to evaluate the possibility to establish an industry wide non-legislative loan payment moratorium, and the offer to verify the compliance of such moratorium with the Guidelines, Finance Latvia Association proposes to its members and other financial institutions operating in Latvia to follow the principles laid out below.

This Moratorium is open to all credit institutions, their subsidiaries and branches operating in Latvia, and other participants of the Latvian lending market providing loans to legal entities may also choose to follow the Moratorium (hereinafter – **the financial institution**).

The Moratorium does not cover all legal entities and provides a threshold with regard to the total amount of liabilities, considering that large corporate entities and higher liabilities demand a more tailored approach.

By following this Moratorium financial institutions shall not exchange information, which could be classified as banking secrets or commercial secrets or which could be considered as sensitive and privileged information.

However, financial institutions are encouraged to be transparent and to inform the public about the total number of clients and total amount of loans which are granted the Grace period according to the Moratorium.

A financial institution that joins the Moratorium undertakes to provide the Financial and Capital Market Commission with the information requested in Paragraph 17 of the EBA Guidelines.

II. The financial institutions joining the Moratorium

A financial institution accepts the terms of the Moratorium by informing the Finance Latvia Association, the Financial and Capital Market Commission and Competition Council. In addition, the financial institution publishes relevant information about the Moratorium and the fact that it has selected to apply the Moratorium, indicating the scope of the application of the Moratorium.

A financial institution joining the Moratorium is required to select one or both of the product types to be covered by the Moratorium: loans and/or leasing.

III. The temporal applicability of the Moratorium

This Moratorium is issued for a limited period of time. The Moratorium shall enter into force on the day of its publication on the website of the Finance Latvia Association.

The Moratorium shall remain in force until the Association announces the end of the Moratorium or the financial institution publicly announces and informs the Association, the Financial and Capital Market Commission and Competition Council, that it withdraws from the Moratorium.

Without prejudice to the above, a client (an obligor) must apply before 12 June 2020 and the decision on the application of the Moratorium must be taken before 30 June 2020.

However, it is understood that the European Banking Authority may extend the period of application of the EBA Guidelines depending on the evolution of the current situation associated to the COVID-19 pandemic; in such case the duration of the Moratorium would be reconsidered.

IV. General principles

1. The Moratorium is announced in connection with the COVID-19 pandemic and is intended to address the resulting deterioration in client's financial condition.
2. A financial institution which joins this Moratorium undertakes to amend the schedules for the repayment of a loan principal for the period indicated in the Moratorium. (hereinafter the following is referred to as **the loans** if not stated otherwise) where the loan agreement provides principal payment in installments, including
 - a. all financing instruments for working capital with an obligatory decreasing utilization limit (except when an entire loan is repaid at the end of the period) and
 - b. leasing agreements which provide interim terms for repayment of the value of the leased asset (amortized loans).
3. A client is a legal entity (regardless whether the entity has legal personality or is an individual merchant within the meaning of The Commercial Law) in accordance with the terms of this Moratorium.

4. This Moratorium shall not apply to loan agreements without a fixed repayment schedule (including, credit line/limit, account overdraft limit, which does not have an obligatory decreasing utilization limit).
5. The Moratorium does not affect other conditions of the loan agreement unless the Moratorium states otherwise. When postponing the repayment of the principal of the loan under the terms of this Moratorium, any other conditions of the loan agreement shall not be amended except for the following:
 - a. interest rate adjustment in accordance with Paragraph 24 of the Preamble of the EBA Guidelines;
 - b. parties to the loan agreement may agree to extend the loan repayment term in order to reduce the monthly payment, but the extension should not be longer than the term of granted Grace period (i.e. number of the months);
 - c. clauses related to critical benchmarks in accordance with relevant EU Regulations and recommendations of ECB;
 - d. amendments related to state-sponsored guaranty or any other state or international financial institution sponsored measure regarding loans, working capital or liquidity in order to assist the legal entity to overcome distress caused by Covid-19. The obtaining or applying the said guarantee shall not be a prerequisite for granting the Grace period.
6. During the Grace period the financial institution may renounce the requirement to comply with specific contractual clauses (*financial covenants related to the profitability, e.g. DEBT/EBITDA, DSCR covenant, and except covenants which determine the utilisation of the funds, e.g. borrowing base covenants*) as far it is necessary for effectively granting and delivering the Grace period.
7. This Moratorium postpones the repayments of the principal of the loan in full or partly (upon on client's choosing) for a specific period of time. The client shall, during the Grace period, pay the interest, premium for insurance, and/or other fees set in the loan agreement.
8. The Moratorium shall not apply if a financial institution concludes that the application of the Moratorium is not economically justified, i.e., if the client's financial difficulties existed before 12 March 2020 and/or are insurmountable (the likelihood that the client will be able to meet its financial obligations is low).
9. The Moratorium shall not in any way be considered as an obstacle to:
 - a. commence any legal procedure prescribed by the law or signed agreement between the financial institution and the client (*including AML/CTF/CPF/TFS requirements*);
 - b. cancel the Grace period partly or in full in case the client breaches its obligations except those which are waived by this Moratorium, or the financial institution concludes that the client's financial situation has deteriorated to an extent that the loan is unlikely to be repaid;
 - c. at any time to provide better terms to clients or an individual approach outside the scope of the EBA Guidelines (the loan classification should be considered on a case-by-case basis).

10. This Moratorium shall automatically apply to loan repayment provisions applied by the financial institution to the client from 12 March 2020 until the entry into force of this Moratorium if the said provisions comply with the terms of this Moratorium.
11. The Grace period can be granted only once, and subsequent grace periods may be granted according to the policy of the financial institution and are outside the scope of the EBA Guidelines (*the loan classification should be considered on a case-by-case basis*). If the Grace period to the client has been granted from 12 March 2020 until the approval of Moratorium the financial institution, upon client's request, is entitled to amend the already granted Grace period (*if the client's case complies with the rules of the Moratorium*) according to this Moratorium.
12. The financial institution may charge a fee for processing client's application to acquire the Grace period and/or amend other conditions of the loan agreement that must be adjusted to grant and deliver the Grace period. If the fee is applied, it shall be reasonable and not exceed administrative costs for the processing the application.

V. Eligibility criteria

In addition to the General principles laid out above, the client is entitled to apply for the Grace period under this Moratorium if the following criteria is met:

- a. the loan is issued prior to the Moratorium;
- b. the type of the client's business activity is not gambling;
- c. equity capital of the legal entity (when applicable to the particular type of legal entity) at the end of the most recent completed financial year has been positive;
- d. the total amount of liabilities does not exceed EUR 5 000 000, calculated as outstanding debt plus all committed and undisbursed facilities (except accrued interest) of all loan agreements (including loan agreements indicated in clause 4 of this Moratorium) concluded between this legal entity (and other related person to a company within the meaning of The Commercial Law) and the financial institution (while operating in Latvia) granting the Grace period;
- e. for the past 12 months prior to 12 March 2020 it has no significant (more than 30 days) delay in the fulfilment of obligations (overdue liabilities) to the financial institution granting the Grace period;
- f. the client has not been notified about termination of the business relationship with the financial institution according to the AML/CTF/CPF/TFS regulation and/or the provisions of signed agreements between the client and the financial institution;
- g. the client has not informed the financial institution that the client has no intention to fulfil the loan agreement;
- h. prior to 12 March 2020 or the date on which the Grace period takes effect the client has not been declared insolvent/bankrupt or is not under legal restructuring or bankruptcy protection procedure;
- i. the client has indicated to the financial institution the COVID-19 pandemic related cause for the deterioration of the financial situation and upon the financial institution's request has provided evidence of the impact of the COVID-19 pandemic on the client's ability to fulfill the obligations and meet the criteria of the Moratorium;
- j. the client acts in good faith, which includes full and frank cooperation with the financial institution, and provision of accurate information to it;

- k. the client has undertaken a written obligation to the financial institution which states that during the Grace period and 6 months after the end of the Grace period not to make any payments to its shareholders, stakeholders, owners and/or persons related to them (including, but not limited to dividend payments, grants or repayments of loans).

VI. The Grace period

The Grace period is up to 6 months, upon the client's choosing.