Recommendation 6/2017. (V.30.) of the Magyar Nemzeti Bank
on the negotiated restructuring process of claims against co-financed corporate borrowers

I. Purpose and scope of the Recommendation

The high proportion of non-performing corporate loans is a serious burden for the Hungarian banking system, has a negative impact on the lending activities and exposure of the lenders and results in long-lasting uncertainty for both lenders and borrowers.

It is a priority aim of Magyar Nemzeti Bank (hereinafter, the "MNB") to help to restore the solvency of borrowers, in order to reduce non-performing exposures while ensuring the continuity of their business, to contribute to reducing the share of non-performing corporate exposures and to prevent the recurrence of the later development of a portfolio similar in size and composition. In this Recommendation, the MNB summarises the behaviours and the good practices it expects the lenders to comply with in order to achieve the above aims.

In order to reduce the ratio of the non-performing corporate portfolio, the MNB attaches great importance to constructive and good faith cooperation among lenders, and between lenders and borrowers. Accordingly, this Recommendation provides guidance and a framework for the process of negotiated restructuring, the success of which can help avoid generally prolonged, costly judicial enforcement proceedings. Providing a framework, the Recommendation primarily aims to outline the principles. However, compliance with these principles during the restructuring process may occur in various specific ways, taking into account all of the circumstances of the particular case, the proposals of the advisors and the information obtained in the course of due diligence. Therefore, the MNB does not expect the lenders to apply equally the provisions of the Recommendation to the restructuring process in all cases. Thus, the Recommendation does not create a general compliance obligation for the institutional lenders in their legal relations with borrowers or *inter se*.

This Recommendation sets out the proposals of the MNB concerning the negotiated restructuring process in relation to claims against co-financed corporate borrowers. Nevertheless, the MNB suggests that the addressees apply these in their proceedings falling outside of the scope of this Recommendation, in order to make their own restructuring process more effective, observing the sectoral rules and the specific aspects of the activity. The MNB suggests that lenders also apply this Recommendation in proceedings aimed at the enforcement of collateral, during which the amendment of the agreement does not include any special discount, but covers only the enforcement of the collateral on the basis of a compromise.

This Recommendation is addressed to:

a) credit institutions and financial enterprises pursuant to Act CCXXXVII of 2013 on credit institutions and financial enterprises,
b) investment firms under Act CXXXVIII of 2007 on investment firms and commodity dealers and on the Regulations Governing their Activities , as well as the rules of activities to be performed by them, and
c) insurance and reinsurance undertakings entitled to enter into credit insurance contracts under Act LXXXVIII of 2014 on insurance activity,

(hereinafter collectively referred to as "institutional lenders").

The supervisory requirements set out in this Recommendation apply to claims against co-financed corporate borrowers:

a) claims arising from co-financing, which qualify as a non-performing exposure under Article 5 of MNB Decree 39/2016. (X. 11.) on prudential requirements concerning non-performing exposures and

restructured claims (hereinafter referred to as "MNB Decree 39/2016. (X. 11.)") and the total amount of which (either separately or, in the case of co-financing provided to various members of a client group, including all the claims against the members of the client group collectively) exceeds HUF 1 billion or, in the case of a claim denominated in a currency other than HUF, HUF 1 billion converted at the official foreign exchange rate published by the MNB;

b) the co-financed corporate borrower has financial difficulties and the total amount of the autonomous liabilities of the borrower respectively the members of the client group to several institutional lenders exceeds HUF 1 billion or, in the case of a claim denominated in a currency other than HUF, HUF 1 billion converted at the official foreign exchange rate published by the MNB;

c) the claims under point a) and b) derive from purchase or insurance of claims, or

d) the claims are outstanding in relation to financial services, investment services, insurance or reinsurance activities or as that of an institutional lender against any borrower or any member of a client group in respect of which the claim under point a) or b) is outstanding.

The MNB does not expect the implementation of this Recommendation with respect to co-financed corporate borrowers falling under the scope hereof where, upon the starting date of the application hereof, there is active, mutual communication in progress between the borrower and the institutional lenders aimed at the restructuring of the contract, or there is another debt adjustment procedure based on the law against the borrower. The requirements drawn up in this Recommendation are also not applicable, if the borrower is considered as non-cooperating, as defined in Article 2, or the negotiated debt adjustment procedure based on this Recommendation has been completed but has not succeeded, or the restructuring was successfully completed but the borrower has repeatedly initiated restructuring before the closing of the agreement. The MNB also does not expect application of this Recommendation, if the liabilities to lenders who are not subject to this Recommendation represent the majority of the liabilities which are non-performing or are expected to become non-performing in the near future, either in terms of the amount or of the liabilities that rank more favourable in terms of the collaterals within the total liabilities of the borrower or the client group concerned to domestic institutional lenders and institutional lenders domiciled in EEA Member States or third countries.

II. Interpretative provisions

1. For the purposes of this Recommendation:

1.1. "*Restructuring process*" means the voluntary restructuring process between the co-financed corporate borrower and the institutional lender, outside the legal debt adjustment procedure, which aims to create the claim defined in Articles 8 to 11 of MNB Decree 39/2016. (X. 11.) as a result;

1.2. "*Restructuring college"* means the college facilitating a consensus-based agreement or, in the case of cooperating co-financed corporate borrowers, the body established to facilitate the relationship among the institutional lenders *inter se* and the relationship between the institutional lenders and the borrower;

1.3. *"Unbiased person"* means any person who is not involved in the matters concerning the claim, hence is capable of independently assessing the information;

1.4. *"Co-financed corporate borrower"* means a business association or entity considered as such under the foreign law applicable to it, to which several institutional lenders provided co-financing or against which several institutional lenders have autonomous claims, including business associations that provided any collateral in relation to the above financing or claim;

1.5. *"Collateral"* means any lien, suretyship or guarantee created by a document produced in relation to the claim or based on legal regulation, which secures the repayment of the claim or recovery of the claims of the institution in relation to the relevant claim in any other manner (that is, other than in the manner stipulated in the original contract), as well as any legal arrangement or contract serving as collateral (including collection rights, options and assignment for collateral purposes);

1.6. "*Independent advisor"* means, depending on the particular case, the independent advisor assigned by the institutional lenders or the co-financed corporate borrower, who contributes to the successful and timely arrangement of the negotiated debt adjustment procedure;

1.7. *"Independent business due diligence"* means the examination of the business or the trading and financial position of the borrower or its client group by an independent advisor based on objective assessment, which can include the use of stress tests, commercial and market position analysis, profit and cash flow estimates, the evaluation of the business and financial strategies, as well as financial, legal and tax due diligence;

1.8. *"Moratorium"* means the negotiated de facto transitional period or the transitional period based on subsequent agreement, if any, during which the institutional lenders refrain from initiating any legal debt adjustment proceedings against the co-financed corporate borrower or taking any measures to enforce any claim or any collateral granted in favour of such borrowers;

1.9. *"Legal debt adjustment proceedings"* means execution proceedings (including the enforcement of the collateral by extrajudicial means), bankruptcy proceedings, forced cancellation proceedings, litigation, arbitration, insolvency or liquidation proceedings, but excludes payment warrant proceedings;

1.10. *"Documents produced in relation to a claim"* means any document that:

a) Creates a claim,
b) Records the conditions of the claim,
c) Creates or modifies a collateral securing the claim,
d) Contains appraisals related to the collateral,
e) Lays down the rules of the procedures related to the claim or those of certain legal relationships relating to the claim (e.g. agreement between the lenders, agreement on subordination),
f) Creates a hedge or other risk mitigation (e.g. insurance) transaction in order to manage any interest, exchange or other risk with respect to the claim,
g) Contains any statement, certificate, remission of claim or liability, waiver or statement made, concluded or issued in relation to the claim, and
h) Has materiality similar to those above with respect to the claim in terms of the relationship of the co-financed corporate borrower and the institutional lenders or the institutional lenders *inter se*.

1.11. *"Non-performing exposure"* has the meaning stated in Section 5 of MNB Decree 39/2016. (X. 11.);

1.12. "*Financial difficulty"* means any situation that substantially and persistently prevents the borrower from fulfilling its financial commitments in accordance with the original terms and conditions either currently or actually or likely in the near future (e.g. a threat of insolvency);

1.13. *"Co-financing"* means the term under MNB Decree 40/2016. (X. 11.) on client and partner qualification and the prudential requirements of collateral appraisal (hereafter referred to as "MNB Decree 40/2016. (X. 11.)");

1.14. *"Client group"* has the meaning stated in MNB Decree 40/2016. (X. 11.).

III. General provisions

2. In applying this Recommendation, a co-financed borrower is considered non-cooperating, which
   a) does not notify its institutional lenders of the details of its financial difficulties in a timely manner, especially if it faces a threat of insolvency,
   b) refuses contact on at least two occasions in provable manner, or fails to respond to the request of any institutional lender (it is also considered a refusal of contact if the borrower has received the relevant letters but did not respond to them),
   c) refuses to supply to the institutional lenders relevant information necessary for the status assessment that is not available to them in order to draw up the assessment or develop options for a solution, or deliberately supplies false information to the institutional lenders during the negotiated debt adjustment process,
   d) rejects the options for a solution proposed by the institutional lenders without offering any realistic or acceptable alternative proposal,
   e) disposes of any assets which are a part of the collateral to any third party or any institutional lender not involved in the restructuring process or encumbers the same without the consent of the institutional lenders during the negotiated debt adjustment process (except where this is done in the course of ordinary business and there is no relevant restriction in the documents produced in relation to the claim or the moratorium),
   f) breaches the contract on the moratorium or the agreement on the negotiated debt adjustment,
   g) breaches any of the provisions of any document produced in relation to the claim, the fulfilment of which is feasible despite the financial difficulty and the fulfilment of which has not been waived by the institutional lenders or the obligation for the fulfilment of which has not been renounced by institutional lenders,
   h) fails to give any of the institutional lenders an authorisation made in a public document or a private document with full probative force to the effect that the institutional lender may transfer the information under Article 11 to the other institutional lenders, or
   i) the borrower concerned or any other client that is not considered to be a part of the borrower's client group but is affiliated with the borrower in terms of ownership or management has satisfied any of points a) to h) during any earlier credit relationship and, on that basis, the majority of the institutional lenders concluded, observing all the circumstances of the case, that the cooperation under this Recommendation would cause a larger risk in terms of the protection of their interests than the lack of it.

3. The MNB expects the application of this Recommendation within the framework of the relevant legislation in force. The application of the Recommendation may not result in any violation of the legislation in force, in particular the rules concerning legal debt adjustment proceedings, competition control or data protection.

IV. Role of independent advisors

4. The MNB considers it a good practice for the institutional lenders to involve independent external advisors to facilitate cooperation between the parties and the subsequent agreement, e.g. financial consultants, legal advisors, tax advisors, negotiation experts or financial restructuring experts, as the case may be. Institutional lenders are also advised to encourage the co-financed corporate borrower to use the services of an independent advisor.
5. The MNB suggests that the advisor assisting the institutional lenders in the process of finding a negotiated solution should be a person who is familiar with the market environment affected by the given co-financing and has experience related to restructuring. The MNB recommends that such advisor should not be a

person who has previously participated in the conclusion of the contracts underlying the claims against the co-financed corporate borrower or has otherwise previously advised the institutional lender or lenders in connection with the claims in questions.

6. In taking a decision to involve an independent advisor, it should be reasonable to balance the ratio of the costs of engaging the independent advisors to the benefits that can be achieved.
7. The MNB considers it a good practice, which can also promote cooperation between the parties and a subsequent successful arrangement, if the institutional lenders assign or recommend the same advisor, who is engaged by the co-financed corporate borrower. This is without prejudice to the right of each institutional lender to engage an advisor of its own to represent its interests, however, it is recommended that the advisors cooperate in such a situation in order to coordinate the interests of the individual institutional lenders.
8. Unless the institutional lenders and the co-financed corporate borrower have agreed otherwise, it would be reasonable if the costs arising from the involvement of independent advisors are borne by the party that engaged the independent advisor. Unless otherwise agreed, the costs related to the joint advisor of the institutional lenders should be allocated between the institutional lenders represented by the advisor pro rata to the claims of the lenders or their exposure at the time of the engagement or taking into account any other considerations, such as the extent of the lender's exposure, risk-tolerance or the priority of satisfaction.
9. MNB considers it a good practice that, if using an independent advisor by the co-financed corporate borrower is justified, the institutional lenders allow the corporate borrower to separate the sources intended to cover the reasonable costs related to the independent advisor during the procedure.
10. If, based on the documents produced in relation to the claim, the costs of the institutional lenders relevant to the independent advisors are not a part of the claims secured by the collateral, it is recommended that the institutional lenders take action to settle the same during the restructuring process. Where the fees of the independent advisors are advanced by one or more institutional lenders based on an agreement, it is recommended that they be given a security for the reimbursement of the costs.

V. Coordination mechanisms supporting the cooperation of the institutional lenders *inter se* and between the institutional lenders and the co-financed corporate borrower

11. Unless the documents produced in relation to the claims against the co-financed corporate borrower provide otherwise, the MNB expects the institutional lenders to inform the other institutional lenders without delay upon becoming aware of any actual or expected financial difficulties of the co-financed corporate borrower, following prior notice to the borrower, and expects the borrower to notify the lenders of any expected financial difficulty within 8 days. In order to do that, the MNB suggests that the institutional lenders provide for the possibility to share information constituting banking secrets among the institutional lenders in the context of the contract made *inter se* respectively with the co-financed corporate borrower. In the absence thereof, institutional lenders are suggested to immediately request the co-financed corporate borrower to incorporate the possibility of disclosing the banking secrets relevant to it in a public document or a private document with full probative force, or to give authorisation to do so.
12. Once the institutional lenders have informed one another about the existing or expected financial difficulties of the co-financed corporate borrower, the MNB expects them to examine the need to set up a restructuring college on the basis of the available information. The primary objective of a restructuring college is to ensure efficient information sharing among the institutional lenders *inter se* and between institutional lenders and the co-financed corporate borrower, to coordinate the activity of the institutional lenders and their communication with the borrower, to provide a venue for dispute settlement and, if

applicable, to give instructions to and coordinate the joint advisors of the institutional lenders. Therefore, setting up a restructuring college is considered a good practice by the MNB in all cases where justified by the financing complexity of the borrower or the client group, the large number of institutional lenders, the difference of the institutional lenders or the types of financing they provide, the number of jurisdictions concerned by the financing or similar circumstances.

13. If a restructuring college is organised, the MNB proposes to develop rules of procedure, which contain the rules governing the implementation of the cooperation and at least the following:
    a) the means and details of communication and information sharing among the institutional lenders, between the institutional lenders and the co-financed corporate borrower and, if independent advisors are involved, between the institutional lenders and the independent advisors;
    b) the decision-making powers, including the scope of issues that require mandatory consultation among the institutional lenders or, for example, the number of votes necessary to establish the college or there is a need to organise several restructuring colleges by the classes of lenders or based on other criteria;
    c) the main steps and the time frame of the decision-making process;
    d) the sharing of the costs and fees incurred, if any.
14. The MNB considers it a good practice to appoint, within the restructuring college, an institutional lender in a leadership role, which provides for the coordination of the functioning of the college and communication with the co-financed corporate borrower. Unless otherwise agreed, it is recommended that the leadership role in the restructuring college is filled by the institutional lender with the largest exposure in terms of the amount or the institutional lender that intends to provide additional financing in the context of restructuring. Where the restructuring process involves several co-financed corporate borrowers, it is also proposed that the institutional lenders initiate the appointment of a person on the borrowers' side who, if holding an appropriate authorisation for representation, is responsible for the implementation of the restructuring as the primary contact on behalf of the co-financed by corporate borrowers or, in the absence of such, one contact person should be appointed for each borrower.
15. Even in the absence of setting up a restructuring college, the institutional lenders are expected to comply with point a) of Article 13, except where the rules formulated therein are included in the documents produced in relation to the claim with respect to all the institutional lenders affected by the restructuring process.
16. The MNB considers it a good practice if the members of the restructuring college or, in the absence of such, the institutional lenders:
    a) compare and coordinate their assessments and due diligence processes and, if they consider it necessary, the independent business due diligence and their decision-making processes;
    b) inform the other institutional lenders in due time about the key information in all stages of the negotiated procedure;
    c) inform each other about the status of the measures taken by them and the evolution of the status of the financial situation of the co-financed corporate borrowers (if it can be presumed that it is not available to the rest of the institutional lenders and an authorisation to that effect is held);
    d) where a joint advisor is engaged, apply jointly approved principles to take the decision on the appointment of the independent advisor who is holding the appropriate permits, professional experience and reputation;
    e) pay particular attention to avoid sharing information sensitive from the competition law point of view between the institutional lenders or indirectly through the advisors of the institutional lenders. If they consider it necessary, they should create a group of unbiased persons to provide information including an independent summary evaluation;

f) inform each other without delay if they intend to unilaterally open a legal debt adjustment procedure or if their interest involving the claims has been transferred or they have enforced the collateral in another way, or if the risk or the amount of the claim has reduced.

VI. Communication between co-financed corporate borrowers and institutional lenders

17. The MNB considers it particularly important that, in the case of financial difficulty, the co-financed corporate borrower and the institutional lenders establish contact as soon as possible and maintain the relationship throughout the process.
18. For the sake of the completeness of information sharing, it should be ensured that when the institutional lender(s) become aware that the co-financed corporate borrower(s) is(are) facing financial difficulties, contact is made with respect to all borrowers and lenders unless the borrower(s) have already contacted the institutional lender(s).
19. Where possible, the details related to communication should be specified in the documents produced in relation to the claim or, if a restructuring college is established, in the rules of procedure drawn up under Article 13. The MNB considers it important that a contact person is appointed by the institutional lenders also in the absence of setting up a restructuring college, as it makes communication between the partners significantly faster and more effective. For this reason, the MNB considers it a good practice if the institutional lenders propose to the co-financed corporate borrowers to do likewise and appoint a contact person for the sake of smooth cooperation.
20. The MNB considers it reasonable that the institutional lenders act in their contacting and communication with the co-financed borrowers or the contact persons so that the occurrence thereof can be subsequently demonstrated.
21. The MNB expects the institutional lenders to make available to the co-financed corporate borrower all the information that facilitates the fulfilment of the obligations.
22. The MNB considers it justified that the institutional lenders provide the key information to the co-financed borrower(s) or its(their) contact person(s) in all stages of the negotiated procedure (such as the start of providing the de facto moratorium).

VII. Internal regulatory elements of the negotiated debt adjustment procedure

23. The MNB considers it a good practice if the institutional lenders develop the detailed rules of the negotiated debt adjustment procedure in a stand-alone policy or as a part of another internal regulation (e.g. credit risk management regulation, claims management regulation), adjusted to the specifics of their internal functioning and strategy concerning non-performing corporate credits, by defining at least the following:
    a) The tools and criteria that help explore the solvency or potential financial difficulties of the co-financed corporate borrowers and the factors that make non-performance probable, in order to identify any potential problems as soon as possible;
    b) Investigation of the financial difficulty notified by the co-financed corporate borrower or otherwise discovered by the institutional lender and the methods and time limits developed to verify the information provided;
    c) Process of informing the other institutional lenders and the other borrowers involved about the investigation of the financial difficulty notified by the co-financed corporate borrower or otherwise discovered by the institutional lender;
    d) The order and method of managing and recording the information supplied to the institutional lenders during the negotiated debt adjustment procedure;

e) The rules of communication with the stakeholders, including the form of contacting and communication;
f) Internal departments in the organisation of the institutional lender responsible for carrying out the negotiated debt adjustment procedure, as well as the responsibilities;
g) Processes and organisational solutions of the institutional lender to restore the solvency of the co-financed corporate borrower;
h) Tools assisting the cooperation of the co-financed corporate borrowers facing financial difficulties, in particular the provision of all information to the borrower(s), including a description and the main steps of the process of the negotiated debt adjustment procedure, the parties concerned therein, as well as the benefits of the procedure;
i) If a restructuring college is established, details of participating or taking a leadership role in the restructuring college;
j) Content elements of the documents produced in relation to the claim whose regulation the institutional lender considers justified where co-financing is provided, including the cooperation and decision-making process of the lenders providing the co-financing, communication and delivery, the possible sharing and bearing of the costs, the selection of advisors and the need to regulate the disposal of co-financed participations, as well as a summary of the aspects of the institutional lender related to the same.

VIII. De facto moratorium

24. The MNB considers the de facto moratorium as a temporary behaviour, during which the institutional lenders providing co-financing falling under the scope of this Recommendation basically refrain from initiating legal debt adjustment proceedings against the co-financed corporate borrower or taking any steps to enforce any claim or collateral provided in favour of such lenders by observing the provisions of Article 26. During the de facto moratorium, any security deposit, right to setoff, collection right, assignment for collateral purposes, option or any other similar right of the institutional lenders over financial instruments may be enforced only exceptionally and in justified cases as a last resort, in order to reduce an imminent or potentially inevitable loss, while keeping each other informed. The MNB expects that the institutional lenders, who do not participate in providing the de facto moratorium for justified reasons, also inform the other institutional lenders in the same way about taking any of the actions mentioned above, which is otherwise not expected during the de facto moratorium, but the taking of which cannot be foregone by such institutional lenders.
25. In addition to stimulating cooperation, the de facto moratorium also aims to allow the co-financed corporate borrower and the institutional lenders to assess the situation, including the possible need for providing a negotiated moratorium. In the case of an imminent threat of insolvency, it should be reasonable, having taken into account all the circumstances of the case, to state either in the notice on the de facto moratorium or otherwise during the process that the institutional lenders providing the de facto moratorium consider the moratorium as being in their best interest subject to the specific terms and conditions, if any.

    In order to promote cooperation between the institutional lenders and the co-financed corporate borrowers, the MNB considers it a good practice that the institutional lenders grant a de facto moratorium to the borrower until the restructuring measure. Institutional lenders should make a decision on providing the de facto moratorium and the start thereof as soon as possible and, if possible, immediately after the date:

a) when the co-financed corporate borrower notifies the institutional lenders of its financial difficulties, whether actual or expected in the near future, or
b) where the institutional lender becomes aware of the occurrence of the financial difficulties of the co-financed corporate borrower other than from that borrower and contacts the co-financed corporate borrower in order to have a negotiated debt adjustment, when the co-financed corporate borrower commits to the negotiated debt adjustment procedure.

26. If the institutional lenders or any part thereof grant a de facto moratorium to the co-financed corporate borrower, the co-financed corporate borrower must be notified of the fact, duration and consequences thereof in a provable and retrievable way in accordance with Article 20. Granting the de facto moratorium does not in itself mean that the co-financed corporate borrower becomes exempt from the payment of the instalments due, but the institutional lender(s) may supplement the de facto moratorium with such a measure. In the event of such supplementation, it should be reasonable to make the moratorium or the exemption from paying the instalment due subject to proportional conditions and deadlines in order to protect the interests of the institutional lenders and facilitate the cooperation of the co-financed corporate borrower.
27. The MNB expects that the de facto moratorium should last for the shortest possible duration. If the parties wish to subsequently maintain the de facto moratorium, it is recommended to enter the conditions thereof in an agreement, observing the principles set out in Section IX.
28. The MNB considers it a good practice if the de facto moratorium terminates on the earliest of the occurrence of the following dates:
    a) When the negotiated restructuring between the institutional lenders and the co-financed corporate borrower enters into force;
    b) When the co-financed corporate borrower becomes a non-cooperating borrower;
    c) When the co-financed corporate borrower is able to prove to the lenders in a satisfactory manner that it does not have financial difficulties that would jeopardise the performance of the co-financed claims;
    d) When the institutional lenders holding more than 50% of the relevant claims against the co-financed corporate borrower conclude on the basis of the status assessment that, in their well-founded opinion, a negotiated restructuring process is not feasible or would not offer substantial benefits as compared to the legal debt adjustment procedure;
    e) When the formal deadline for the conclusion of the contract on the moratorium or the deadline for the negotiated restructuring process expired unsuccessfully, based on all of the circumstances of the case taken into account by the institutional lenders, provided that the co-financed corporate borrower has been informed of the deadline and the institutional lenders have not extended such deadline;
    f) Due to external circumstances, immediate action is required by the institutional lenders to protect their interests (including, if the lenders are required to join the given procedure on the basis of applicable law), provided that proper communication with each other and coordinated action are required from the institutional lenders in this situation as well;
    g) Any of the lenders initiates a legal debt adjustment procedure against the co-financed corporate borrower or enforces the collateral.

IX. Negotiated moratorium[1]

[1] The MNB is ready to review and, if it considers it necessary, supplement this Article of the Recommendation in relation to the point of superseniority following the national implementation of the European Union Directives.

29. If an agreement is made between the institutional lenders and the co-financed corporate borrower on the moratorium (hereinafter referred to as a "negotiated moratorium"), such agreement should contain at least the following:
    a) An indication of the subject of the contract;
    b) A description of the parties;
    c) Determination of the duration of the moratorium, fixing the starting date and the expiry;
    d) The possibility of extending the duration of the moratorium and the necessary decision-making rules;
    e) The amount of the claim(s) confirmed by the institutional lenders and the co-financed corporate borrower;
    f) Stipulation of the terms of the moratorium, including the determination of the rights and the obligations of the institutional lenders and the co-financed corporate borrower during the moratorium, in particular:
        fa) An agreement on measures which are not permitted or are limited during the moratorium, for example because such measures require the consent of a specific proportion of the other institutional lenders;
        fb) An agreement to take measures that are permitted under certain conditions;
    g) Settlement of issues concerning confidentiality and confidential information.

30. The MNB considers it a good practice if the institutional lenders procure that the owners of the borrower support the negotiated moratorium even in such a way that these owners also sign the contract, in particular if it is foreseen that the parties plan to convert debt into equity as a part of the restructuring or the institutional lenders count upon the participation of the owners in connection with the provision of bridging financing.
31. Unless it is an obstacle to the implementation of a successful restructuring, it is recommended that the fact that the negotiated moratorium is not signed by all the lenders not be considered a reason for exclusion. The MNB considers it a good practice if the institutional lenders endeavour to obtain the support of as many lenders as possible for the negotiated moratorium. The MNB also considers it a good practice if, for the purposes above, the institutional lenders, acting by the types of lenders, elaborate possible alternatives in order to try to approximate their possibly diverging interests due to their positions. For example, in order to support an institutional lender holding an insurance for the risks linked to the exposure, it should be reasonable to consider making an agreement between the lenders to manage the costs of extending the insurance as a bridging loan.
32. The MNB expects that the contract on the moratorium contains the consent of the co-financed corporate borrower to share the information on its financial situation and the performance of the claim(s) between the contracting parties and, if applicable, their independent advisors, where such consent is not available yet to the institutional lenders during the search for solutions. During the negotiated moratorium, the institutional lenders should examine in detail, together with the advisors, the financial situation of the co-financed corporate borrower and any other relevant conditions affecting the performance of the claim(s). The purpose of this examination is to draw up a report, on the basis of which the institutional lenders may be able to elaborate proposals for solutions and review the proposed solutions submitted by the co-financed corporate borrower in order to reach a negotiated debt adjustment.

X. Bridging financing

33. Where bridging financing is provided, the MNB considers it a good practice if the institutional lenders take into account not only the costs of operation in the narrow sense, but also examine the possibility of including the due and payable public debts of the co-financed corporate borrower in the financing objectives, for example, in order to prevent that the enforcement thereof compromises the effectiveness

of the restructuring process. If an agreement to that effect is reached, it is recommended that the institutional lenders cooperate to the extent possible to mitigate the risk of the institutional lender participating in such financing.

34. The MNB considers it a good practice if the institutional lenders invite the co-financed corporate borrower to submit proposals during the moratorium for ensuring the continuation of its business after the moratorium and to provide regular information on its financial situation.
35. Where financing for bridging or other similar purposes is provided, it is appropriate to ensure that the provisions of the moratorium do not violate the liability towards any institutional lender not involved in the restructuring process, or if there is any threat thereof, it is recommended to obtain the express consent of such lender. MNB considers it a good practice if the institutional lenders communicate with each other also for this purpose and each of them facilitates the success of the restructuring by consenting, without undue delay, to restructuring measures that otherwise do not impinge upon its interests or increase its exposure.
36. It is recommended to maintain the moratorium as long as a decision is made on the negotiated moratorium and its terms and conditions or the failure thereof.

XI. Search for solutions

37. The MNB proposes that the institutional lenders elaborate proposals for the financial commitments (restructuring) taking into account the information appearing in the report illustrating the financial situation of the co-financed corporate borrower and other relevant circumstances affecting the performance of the claim, as well as the proposed solutions offered by the borrower. In developing the proposals, it is appropriate to assess *inter alia* the scale of the existing claim, the reasons for the financial difficulties and the debtor's current and future financial situation. The MNB considers it a good practice if, following the development of the proposed (restructuring) solutions, the institutional lenders consider whether the allowances in Article 9 of MNB Decree 39/2016. (X. 11.) are applicable. In order to avoid that the duration of the de facto moratorium is too long, the MNB also considers it a good practice if the negotiated moratorium does not necessarily include all the details and the conditions of the restructuring planned to be implemented, which will be developed by the parties during the negotiated moratorium.
38. In order to facilitate smooth cooperation and a search for solutions between the institutional lenders and the co-financed corporate borrower, it is reasonable to appoint individuals who are responsible for the development of the negotiated debt adjustment and it is also advised to set in advance a deadline for drawing up the proposed solutions and the milestones of the preparation process.
39. The MNB considers the restructuring of outstanding claims against the co-financed corporate borrower an efficient solution if the business continuity of the co-financed corporate borrower is expected to be restored by means of the restructuring process and the borrower is expected to be able to perform all its payment obligations that will be outstanding after the settlement.
40. If the provision of a new bridging facility arises as a part of the restructuring process, it is suggested to include as many institutional lenders in the financing as possible in order to distribute the risks.
41. The MNB expects that the institutional lenders examine the need for cancelling any unused credit lines of the co-financed corporate borrower, as well as the following:
    a) Closing or cancelling such positions on derivatives and the accounting thereof from the remaining credit line or through conversion into a credit;
    b) Reaching an agreement on the sale of assets not required for safe operations and an agreement on using the proceeds from the same or any cash otherwise available for the fulfilment of the claim or involvement in the bridging financing.

XII. Closing provisions

42. Pursuant to point i) of Section 13 (2) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank, this Recommendation is a regulatory tool that is non-binding for the supervised entities.
43. The MNB will monitor and assess compliance with this Recommendation with respect to the organisations supervised by it in the context of its examination and monitoring activities, in accordance with the general European supervisory practice. The MNB is planning to order, by means of an official resolution, an extraordinary data service after one year after the starting date of the application of this Recommendation in order to assess the experience from the implementation of this Recommendation.
44. The MNB calls the attention to the fact that institutional lenders may incorporate the contents of this Recommendation into their internal regulations. In this case, the institutional lender is entitled to state that its internal regulations comply with the relevant recommendation issued by the MNB. If an institutional lender intends to include only certain parts of this Recommendation in its internal regulations, reference to this Recommendation should be avoided or applied only in respect of the parts of the Recommendations used.
45. The MNB expects the institutions concerned to apply this recommendation from the 180th day after publication.

Dr György Matolcsy
Governor of the Magyar Nemzeti Bank

Annex 1 to Recommendation .../2017. (… …) number of the MNB

Main steps of the negotiated restructuring process of claims against jointly financed corporate borrowers