



HUTH DIETRICH HAHN

## The Response of the German Federal Government to COVID-19

### Introduction

The German government is resolutely and vigorously countering the economic effects of the corona virus. The Federal Minister of Finance, Olaf Scholz (SPD), and the Federal Minister of Economics and Energy, Peter Altmaier (CDU), have agreed on a far-reaching package of measures to protect jobs and support companies. The government has erected a “protective shield” for employees and companies. The aim is to provide companies and businesses with sufficient liquidity to enable them to get through the crisis well.

The Federal Government's central message is that there is enough money to combat the crisis and that the Federal Government will use these funds now. The Federal Government has repeatedly and firmly announced to take all necessary measures.

The conditions for a rapid stabilization of the German economy are in place. Precise, fast-acting immediate measures are being taken in response to the economic development caused by the corona virus in order to return the economy to its growth path as quickly as possible. This is being done in close coordination with the countries and with our European and international partners.

All these measures demonstrate the German Federal Government's determination to counteract the effects of the corona virus with economic and financial policy stimuli in order to prevent damage to employees and companies and to cushion the effects of the crisis. The full extent of the economic corona consequences is not yet foreseeable. If there are signs of a serious disruption to economic development, the Federal Government, in coordination with the federal states and the European partners, will deploy all available resources and consistently counteract this development.

The German Government also plans a “Marshal-plan” (a reference to US-General Marshal's plan for the reconstruction of Germany after WWII) for hard-hit EU members in particular Italy and Spain to restart their economy.

If you do have questions, please contact:

Oliver Foerster & Niklas Mirbach

[foerster@hdh.net](mailto:foerster@hdh.net) // [mirbach@hdh.net](mailto:mirbach@hdh.net)

Tel.: +49 40 415250

HUTH DIETRICH HAHN

Rechtsanwälte Partnerschaftsgesellschaft mbB

Neuer Jungfernstieg 17 20354 Hamburg

Tel.: +49 40 41 525 0 Fax: +49 40 41 525 111



## Measures in Insolvency Law

The obligation to file for insolvency for companies that suffer economic losses due to the novel SARS-CoV-2 virus has been suspended with retroactive effects as of March 1, 2020. Non-Eligible are all companies that are insolvent because of other reasons than the Coronavirus or if there is no prospect of eliminating an existing insolvency. However, if the company wasn't insolvent as per December 31, 2019, it is assumed that the insolvency maturity is based on the effects of the pandemic and that there are prospects of eliminating an existing insolvency.

Following the suspension of the obligation to file for insolvency, there has been liability relief created for managers for payments made after the company has become insolvent. All payments which serve to maintain, or resume operations are to be considered by way of an (irrefutable) fiction to be in principle compatible with the diligence of a prudent managing director.

For loans from lenders and their collateral, it is assumed that a repayment by 30.09.2023 is not disadvantageous to creditors within the meaning the Insolvency Code. It must be a new loan; i.e. new liquidity must be injected during the suspension period. Novation and extensions of old loans are not eligible.

For shareholder loans and equivalent claims, a different system applies: Only the re-payment of loans granted during the suspension period, which takes place up to 30.09.2023, is not considered to be disadvantageous to creditors. In contrast, collateralization of loans granted during the suspension period is still contestable without restriction. Again, it must be a new shareholder loan, i.e. new liquidity must be injected during the suspension period. In principle, only the loan term agreed for the first time is included. A prolongation is only recorded if it occurs during the suspension period. Novation and extensions of old loans and constellations that involve back and forth payments are not eligible. Not considered by the legislator were Cash pools; it is therefore unclear, whether the benefits of the law cover Cash pools, too.

Furthermore, for a three-month transition period between March 28, 2020 and June 28, 2020, the right of creditors to request the opening of insolvency proceedings has also been restricted, if the insolvency has not been occurred until March 1, 2020.



## Measures regarding the Legal Capacity of Companies, Cooperatives, Associations and Condominium Owners' Associations

Temporary possibilities have been created to enable affected associations to make necessary resolutions and remain capable of acting even if restrictions on the possibilities of assembly continue to exist.

For this purpose, substantial temporary facilitations for the holding of general meetings of the stock corporation (AG), partnership limited by shares (KGaA), the insurance association a. G. (VVaG) and the European Company (SE) as well as for shareholder meetings of the GmbH have been established.

Essential aspects for the AG, KGaA and SE are the possibility for the company's management board to enable online participation in the general meeting even without an authorization in the articles of association. In addition, for the first time in Germany, the possibility of a general meeting without physical attendance has also been created.

Furthermore, a reduction of the notice period for the invitation to the general meeting to 21 has been made possible and the management board has been enabled to make advance payments on the net retained profits even without a corresponding provision in the articles of association. In addition, the possibility of holding an annual general meeting within the fiscal year has been created, i.e. the previous eight-month period has been extended.

Since the virtual general meeting of stock corporations without the physical presence of shareholders in Germany is an absolute novelty, the bill largely excludes the risk of shareholder suits challenging the validity of the resolutions taken in such meetings in particular.

For cooperatives and associations, temporary relief has also been provided for the holding of meetings without physical presence or the adoption of resolutions outside meetings, even without corresponding provisions in the articles of association.

The regulations are to apply initially for the year 2020 and may be extended to the year 2021 by the Federal Ministry of Justice and Consumer Protection by way of ordinance.



## **Measures in Tenancy Law and Consumer Protection Law**

The Federal Government has also granted relief for tenants who are currently unable to meet their payment obligations due to the pandemic:

- Tenants of residential and commercial properties are protected against dismissal.
- Consumers and micro-enterprises will receive a deferral of payment or performance of certain ongoing obligations. This is intended in particular to ensure an uninterrupted supply of basic services, such as electricity and telecommunications services.
- In addition, consumers are granted a deferral of payment for loan agreements for at least three months.

### *Protection of tenants against dismissal*

For tenancies, the right of landlords to terminate tenancies have been restricted. This applies to both residential and commercial leases. Landlords are not allowed to terminate the lease for rent debts arising from the period between April 1, 2020 and June 30, 2020 if the rent debts are based on the effects of the COVID 19 pandemic. However, the obligation of tenants to pay the rent in due time remains in force. This applies accordingly to leases. The regulations initially apply until 30 June 2020 and may be extended under certain conditions.

### *Deferment of Payment for Consumers and Micro-enterprises*

In favor of consumers and micro-enterprises, the possibility of refusing performance is temporarily created for significant continuing obligations (e.g. telecommunication, utilities) entered into prior March 8, 2020 if they are currently unable to fulfil their obligations due to the consequences of the COVID 19 pandemic. This will ensure that those affected are not cut off from basic services such as electricity or telecommunications because they cannot meet their payment obligations due to the crisis. The law grants a right to refuse performance until June 30, 2020, which can be extended until September 30, 2020.

### *Deferment of Payment for Consumer Loan Agreements*

Payment obligations under consumer loan agreements due by 30 June 2020 are to be deferred by law by three months if the debtor is unable to pay as a result of the pandemic. If no amicable solution can be found between lender and consumer for the period after 30 June 2020, payments are to be resumed. However, in order to avoid having to pay the current and deferred instalments twice during a transitional period, the contract is extended by a total of three months. This means that even after the deferral has expired, the borrower will only have to continue paying one regular instalment per month. A cancellation of the loan is excluded in this respect.

These regulations also apply initially until 30 June 2020 and can be extended under certain conditions.



## **Economic Stabilization Fund**

- Program volume: Up to € 600 billion

The German Federal Government has launched a large-volume economic stabilization fund: With a volume of up to 600 billion euros, it cushions the economic impact of the pandemic on companies whose existence is of considerable importance for Germany as a business location or for the labor market. The Fund's support options also apply to system-relevant smaller companies and companies in the critical infrastructure sector. It is also intended to eliminate liquidity bottlenecks, support refinancing on the capital market and, above all, strengthen the capital base of companies. The Fund may also invest directly in companies for a limited period. The aim here is also to prevent a sell-off of German economic and industrial interests. The Federal Government is thus drawing on SoFFin - the Special Fund for Financial Market Stabilization - which has already functioned during the financial crisis.

The "Economic Stabilization Fund" consists of

- EUR 400 billion state guarantees for liabilities
- EUR 100 billion for direct state participation
- EUR 100 billion for refinancing by Kreditanstalt für Wiederaufbau (KfW – Germany's Reconstruction and Loan Corporation)



## Emergency Aid Program

- Program volume: Up to € 50 billion
- Emergency financial aid (taxable grants) for micro-enterprises from all economic sectors and self-employed persons and members of the liberal professions with up to 10 employees.
  - Up to € 9.000 one-off payment for 3 months for up to 5 employees (FTE)
  - Up to € 15.000 one-off payment for 3 months for up to 10 employees (FTE)
- If a landlord reduces the rent of a tenant, and if the reduction is at least 20 %, the landlord may make use of possibly not used-up parts of the grant for a further period of two months.
- Moreover, small entrepreneurs and self-employed persons do not usually have unemployment insurance. To ensure that their existence is not threatened, access to benefits under the Social Code Book II (SGB II), especially Unemployment Benefit Type II, is simplified. Among other things, a considerably simplified assets test applies here for six months. Expenses for accommodation and heating will be recognized in their actual amount for a period of six months from the date of application.

### *Objective:*

The grant is intended to secure the economic existence of the applicants and to bridge acute liquidity bottlenecks, among other things through ongoing operating costs such as rents, loans for operating premises, leasing rates, etc. (the grant is also complementary to the programs of the States)

### *Prerequisites:*

Economic difficulties as a result of Corona. Company must not have been in economic difficulties before March 2020. Damage occurred after 11 March 2020.

### *Application:*

Whenever possible: electronically; threat for existence or liquidity shortage due to Corona must be affirmed by the applicants.

### *Technical data:*

Provision of funds by the Federal Government; management by Federal Ministry of Economics, approval (processing of applications, payment and, if necessary, recovery of funds by States/Cities; legal basis: Federal Regulation Small Grants 2020. Cumulation with other aid in connection with the Corona pandemic, but also with other existing de minimis aid is in principle possible. Overcompensation is to pay back. This subsidy is taxable and will be taken into account in the tax assessment for income or corporation tax in the coming year.



## Tax-related Liquidity Assistance for Businesses

In order to improve companies' liquidity situation, the options for deferring tax payments and reducing prepayments will be enhanced, and enforcement rules will be adapted. Overall, businesses will be able to defer billions of euros in tax payments. The German Federal Ministry of Finance has already initiated the necessary coordination process with the *States*. The measures are described in detail below:

- It will be easier to grant tax deferrals. Revenue authorities will be able to defer taxes if their collection would lead to significant hardship. The revenue authorities will be instructed to not impose strict conditions in this respect. This will support taxpayers' liquidity, because the timing of tax payments will be delayed.
- It will be easier to adapt tax prepayments. As soon as it becomes clear that a taxpayer's income in the current year is expected to be lower than in the previous year, tax prepayments will be reduced in a swift and straightforward manner. This will improve the liquidity situation.
- Enforcement measures (e.g. attachment of bank accounts) and late-payment penalties will be waived until 31 December 2020 if the debtor of a pending tax payment is directly affected by the coronavirus.

With regard to taxes that are administered by the Customs Administration (e.g. energy duty and aviation tax), the Central Customs Authority (*Generalzolldirektion*) has been instructed to make appropriate concessions to taxpayers. The same applies to the Federal Central Tax Office (*Bundeszentralamt für Steuern*), which will proceed accordingly with regard to insurance tax and value added tax, which fall within its remit.



## Protective Shield for Businesses:

- Program volume: unlimited

The German Government has announced to protect businesses with new measures to provide liquidity, the volume of which is unlimited. Due to the high degree of uncertainty in the current situation, the German Government has very deliberately decided to not set any limits on the volume of these measures.

- Expansion of Existing Liquidity Assistance Programs:

In a first step, already existing liquidity assistance programs will be expanded to make it easier for companies to access cheap loans. This is intended to mobilize a large volume of liquidity-enhancing loans from commercial banks. To this end, the established instrument that loans which are offered by private banks are complemented by the Government will be extended and made available to a greater number of companies:

- Conditions for the program **“KfW-Unternehmerkredit”** (KfW Business Loan for Existing Companies) and the **“ERP-Gründerkredit-Universell”** (Start-up Loan for Companies less than 5 years old) will be loosened by raising the level of risk assumptions (indemnity) by the Government for operating loans and extending these instruments to large enterprises with a turnover of up to €2 billion (previously, the limit was €500 million). Higher risk assumptions of up to 80% for operating loans of up to €200 million will increase banks’ willingness to extend credit.
  - In the case of the program **“KfW Kredit für Wachstum”** (KfW loan for Growth), the program aimed at larger companies, the current turnover threshold of €2 billion will be raised to €5 billion. In future, these loans will take the form of syndicated loans and will not be restricted to projects in one particular field (in the past, only innovation and digitalization projects were eligible). Risk assumption will be increased to up to 70% (from 50%). This will improve larger companies’ access to syndicated loans.
  - For companies with a turnover of more than €5 billion, support will continue to be provided on a case-by-case basis.
- For **“Bürgschaftsbanken”** (Guarantee Banks), the guarantee limit will be doubled, to €2.5 million. The Federation will increase its risk share in guarantee banks by 10% to make it easier to shoulder risks, which are difficult to assess in times of crisis. The upper limit of 35% of operating resources in guarantee banks’ total exposure will be increased to 50%. To accelerate liquidity provision, the Federation is giving guarantee banks the freedom to make guarantee decisions up to €250,000 independently and within a period of three days.
  - The **“Großbürgschaftsprogramm”** (large guarantee program), which was previously limited to companies in structurally weak regions, will be opened up to companies in other regions, as well. In this program, the Federation covers operating loans and





investments with a surety requirement upwards of € 50 million and a guarantee rate of up to 80%.

- For companies that have temporarily got into serious financial difficulties because of the crisis and therefore do not have easy access to existing support programs, the Federal Government will launch additional special KfW programs. This will be achieved by increasing the KfW's risk tolerance in a way that is appropriate given the crisis. Risk assumptions for investment funds (indemnity) will be improved significantly and will total up to 80% in the case of operating resources and up to 90% in the case of investments. In addition, consortium structures will be offered for these companies.
- The German government will put the KfW in a position to fund these programs by making the necessary guarantee volumes available. This is not a problem, because the federal budget includes a guarantee framework of approximately €460 billion. If necessary, this can be increased by up to €93 billion at short notice.
- The “**KfW- Schnellkredit**” is supposed to provide fast loans for small and medium-sized enterprises. The criteria are that the small or medium-sized company (more than 10 employees and active on the market since at least 1 January 2019) has reported a profit in 2019 or on average over the last three years, an "immediate loan" will be granted with the following key points. The loan volume per company amounts to up to 3 months of sales in 2019, a maximum of € 800,000 for companies with an employee population of more than 50 employees, a maximum of € 500,000 for companies with an employee population of up to 50. The company must not have been in difficulty as of 31 December 2019 and must have an orderly economic situation at that time. The interest rate is currently 3% with a term of 10 years. The bank receives a **100% indemnity from KfW**, backed by a federal guarantee. The credit is granted without further credit risk assessment by the bank or KfW. This allows the loan to be approved quickly. The KfW fast credit can start after approval by the EU Commission.