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Current Developments on Liquidity Assistance During the Corona Pandemic

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The Corona pandemic and the measures of various state agencies to combat it have had increasingly strong negative effects on businesses in Germany and in other EU Member States. The EU, the German Federal Government and the German Federal States are therefore taking steps to quickly implement measures approved to date and to approve additional measures to support the economy.

This Update is not comprehensive and addresses only the most recent changes and measures adopted in a rapidly-evolving legal and legislative situation.

Please contact us if you have questions or require advice – our teams are available for you at any time.

I. Federal Government liquidity assistance

Last week the Federal Government specified and significantly expanded measures to make liquiditity assistance available:

- Federal Government economic stabilisation fund (WSF)
- Newly-designed KfW financing programmes
- Special measures for small businesses and independent sole proprietors

Federal Government economic stabilisation fund (WSF)

The Federal Government will introduce an economic stabilisation fund applying the "Soffin" model used in the 2009 financial crisis to rescue banks – this fund will have a scope of up to EUR 600 billion. The largest portion in the amount of EUR 400 billion is intended for use as state guarantees of the liabilities of debts of businesses to resolve liquidity shortages and to refinance the capital markets. The term of the guarantees and the liabilities secured by these may not exceed 60 months.

In addition, EUR 100 billion are planned for direct participations in businesses. An additional EUR 100 billion should be made available to KfW funds to offer loans to finance special programmes.

Newly-designed KfW financing programmes

In the context of its special programmes KfW has redesigned its existing programmes and created new ones to react to the Corona pandemic. These special programmes have already been approved by the European Comission after a review based on subsidies laws.

The terms for "KfW Business Loans" (for existing businesses) and the "ERP Founder Loans - Universal" (for businesses younger than 5 years) will be eased. For businesses that have been active on the market for at least 3 years, KfW is offering risk assumption guarantees (indemnifications) for up to 80 % of business funding loans provided by principal banks to large businesses (more than 250 employees, more than EUR 50 million in turnovers or more than EUR 43 million in balance sheet assets) and for up to 90 % to SME (fewer than 250 employees, less than EUR 50 million in turnovers or less than EUR 43 million in assets). These loans are also accessible for younger businesses that have been active on the market for less than 3 years, but KfW indemnification is not available here; the Federal Government is planning on approving further measures for founders and start-ups. An additional loan sum of up to EUR 1 billion can be disbursed per business group. The maximum loan volume is limited to 25 % of the annual turnover for 2019 or twice the wage costs for 2019 or the current financing needs for the next 18 months (for SME) or 12 months (for large businesses) or 50 % of the total debt of your business for loans exceeding EUR 25 million. We understand that this works according to the "most favoured principle".

KfW has implemented the special programme "Direct Investment in Consortium Financing" under which it participates in consortium financing for investments and operational costs for mid-size and large businesses. In doing so, KfW assumes 80 % of the risk, but up to a maximum of 50 % of total debts. The KfW risk amount assumed amounts to at least EUR 25 million and is limited to 25 % of annual turnovers for 2019 or twice the wage expenses for 2019 or current financing needs for the next 12 months. All of the banks participating in the consortium can be refinanced at their election. Here as well, we understand that this works according to the "most favoured principle".

KfW will waive any own risk analysis for loans of up to EUR 3 million – that risk analysis is undertaken by the principal company bank in order to speed things. Loans of up to EUR 10 million will be granted on the basis of a simplified analysis; the proof materials for such loans have been kept very simple.

These programmes are available for businesses that have experienced temporary disadvantages as a result of the Corona crisis. Specifically, that means that all businesses that were not in difficulty as of 31 December 2019 may apply for a loan. The definition of "businesses in difficulty" applies EU definitions, namely those under EU Directive No. 651/2014.

This assistance and these loans will be provided by the respective principal bank.

Special measures for small businesses and independent sole proprietors

The Federal Government will make available immediate assistance in the amount of EUR 50 billion for small businesses in all business sectors as well as sole proprietors and members of professions in order to secure their economic survival and to manage acute liquidity constrictions. These businesses will receive a one-time subsidy of up to EUR 15,000 for 3 months. The respective Federal States and/or districts are responsible for granting applications for this.

II. Measures at the EU level

The EU is increasing the financial resources available to the European Investment Bank (EIB) and the European Investment Fund (EIF) in order to use existing support programmes to counter liquidity problems experienced by SME and mid-cap businesses.

- The EIB group will use the EIF to make EUR 40 billion available in liquidity support for SME and mid-cap businesses by way of special guarantee systems and liquidity credit lines for banks and through purchasing programmes for asset-backed securities. This is aimed at indirectly stimulating lending.
- Expansion of the EIF programmes "InnovFin SME Guarantee" and "COSME Loan Guarantee Facility"

The EIF "InnovFin SME Guarantee" and "COSME Loan Guarantee Facility" programmes (which are supported by the European Fund for Strategic Investment – EFSI) are intended to provide about EUR 8 billion in financial support for SME and mid-cap businesses. The EU will be providing EUR 1 billion in guarantees from its budget for this.

These programmes will be provided through major banks. At the moment, the EIF is still working on designing the application forms.

III. Measures at the Federal State level

Most of Germany's Federal States have taken additional steps to provide liquidity for businesses; these extend beyond and supplement the meadures taken by the Federal Government. The Federal States have also – in part – introduced their own funds to support businesses.

IV. Supporting measures on the part of the Federal Government

These liquidity assistance measures are flanked by additional measures undertaken by the Federal Government. These are intended to ensure that affected businesses avoid payment difficulties due to the present exceptional circumstances and in spite of the public aid available. These plans contain the following provisions:

- Suspension of the duty to file for insolvency
- Prohibition against terminations benefiting commercial tenants
- Stay of payments under long-term contracts
- Stays in the context of loan agreements
- Stay of social insurance contributions (presently under the applicable regulations)

Corresponding legislation was approved by the Federal Cabinet on 23 March 2020, by the Federal Parliament on 25 March 2020 and by the Federal Senate on 27 March 2020. Hence, it will come into effect shortly.

Suspension of the duty to file for insolvency

The duty to file an application for the commencement of insolvency proceedungs under § 15a of the German Insolvency Act (InsO) has been suspended until 30 September 2020. This suspension does not apply where the grounds for insolvency are not based on the consequences of the spread of the SARS-CoV-2 virus (COVID-19 pandemic) or where there is no likelihood that existing illiquidity can be remedied. Where a debtor was not illiquid on 31 December 2019 it will be assumed that the grounds for insolvency are based on the effects of the COVID-19 pandemic and that it is likely that illiquidity can be resolved.

To the extent that the insolvency filing duty is suspended, payments that are made in the ordinary course of business (especially those that are made to maintain or recommence business operations or to implement a restructuring plan) are deemed to be made with the care of a prudent manager faithfully fulfiling his/her duties. Liability for these under § 64 of the German Limited Liability Companies Act (GmbHG), § 92 para. 2 sentence 2 of the German Stock Corporation Act (AktG), § 130a para. 1 sentence 2 of the German Commercial Code (HGB) and § 99 sentence 2 of the German Cooperatives Act (GenG) is therefore excluded. In addition, loans that are granted in this period are not regarded as being prejudicial to creditors or as a contribution to facilitate trading while insolvent (contrary to public policy).

These provisions may be extended to a maximum length of 31 March 2021 by a regulation issued by the Federal Ministry of Justice.

Prohibition against terminations to the benefit of commercial tenants

A landlord or lessor may not terminate a property lease solely on the grounds that the tenant failed to make lease payments in the period from 1 April 2020 to 30 June 2020 (in spite of such payments being due), provided that this failure results from the effects of the COVID-19 pandemic. The causality between the COVID-19 pandemic and the failure to make payment must be proven. This period may be extended until 30 September 2020.

Stay of payments under long-term contracts

Businesses with fewer than 10 employees and annual turnovers or an annual balance sheet sum that does not exceed EUR 2 million have the right to refuse to make payments under long-term contracts until 30 June 2020, provided that the contract was entered into prior to 8 March 2020 and provided that making payments would not be possible without endangering the payor's business basis due to circumstances resulting from the spread of infection with the SARS-CoV-2 virus (COVID-19 pandemic). The right to refuse to make payments is available with respect to all material long-term contracts, but is not available for lease, loan and employment agreements. This provision may be extended until 30 September 2020 by a regulation issued by the Federal Ministry of Justice.

Stays in the context of loan agreements

The Federal Government has additionally imposed a three-month stay (as of maturity) on repayments, interest and redemption claims payable between 1 April 2020 and 30 June 2020 under consumer loan agreements that were entered into prior to 15 March 2020, provided that the consumer has a loss of income as a result of the spread of the COVID-19 pandemic and such payments would be unreasonable under the circumstances. Terminations based on payment default are excluded for the length of the stay.

This stay may be extended to cover SME and may be extended to 30 September 2020 by a regulation issued by the Federal Ministry of Justice.

Stay of social insurance contributions

A legislative stay on making payments of social insurance contributions due to the Corona pandemic that was advocated for in part is not contained in the current legislative draft issued by the Federal Cabinet. The association of health insurers (*Krankenkassen-Spitzenverband*), however, confirmed that the state health insurance funds will grant a stay of social insurance contribution payments subject to application, initially for a maximum period of up to June. No collateral is required to be provided for this and interest will not accrue on the stayed amounts.

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