

New regulations to mitigate consequences of the COVID 19 pandemic in Germany

German Parliament has passed a new law on 25 March 2020 which inter alia aims at giving companies affected by the COVID 19 pandemic time to apply for state aid and liquidity support as well as to conduct necessary restructuring and/or financing negotiations. Such companies shall not be forced to file for insolvency without having had a chance to get the economic effects of the COVID 19 pandemic under control. The insolvency law related measures will enter into effect (retroactively) on 1 March 2020.

1. Suspension of the obligation to file for insolvency until 30 September 2020

The **obligation** of a company's management **to file for insolvency** in case of illiquidity (*Zahlungsunfähigkeit*) or over-indebtedness (*Überschuldung*) will in general be **suspended until** (for the time being) **30 September 2020**. No suspension will be available, if the insolvency did not result from the COVID 19 pandemic or if there are no reasonable prospects that the company's illiquidity can be eliminated until 30 September 2020. For companies which have not been illiquid on 31 December 2019 it will be assumed (such assumption being rebuttable only in exceptional cases) that the insolvency was caused by the COVID 19 pandemic and that there are reasonable prospects for eliminating illiquidity.

2. Exclusion or limitation of the right of creditors to file for insolvency

A third party's application for the opening of insolvency proceedings will only be admissible if the debtor was insolvent before 1 March 2020.

3. Lifting of payment prohibitions in the event of insolvency

Generally the management is personally liable for payments which are made after the company has become illiquid or over-indebted. Such "payment prohibitions" will be lifted as far as

- the obligation to file for insolvency is suspended (see above); and
- the payments serve to maintain and resume business operations or to implement a restructuring plan.

4. Changes with regard to claw-back rules, the provision of restructuring loans and shareholder loans

In order to remove uncertainties from creditors as regards providing restructuring loans and continuing further business relations with their contractual partners, the following additional measures have been implemented:

- As far as **new loans** are concerned which have been granted within the suspension period (i.e. until 30 September 2020) the provision of collateral and the repayment of such loans until 30 September 2023 will not be subject to claw-back law.
- The same applies for the repayment of **newly granted shareholder loans**. For such new shareholder loans the statutory subordination will be lifted if an insolvency filing has been made until 30 September 2023.
- Granting **restructuring loans** to companies affected by the COVID 19 pandemic will not be regarded as immoral lending or delaying the company's insolvency.
- **Congruent and certain incongruent transactions** which are carried out during the

suspension period will not be subject to claw-back law, unless the other party knew that the debtor's financing or restructuring efforts were not suitable to eliminate the debtor's illiquidity.

5. Further reliefs for debtors

Among other measures the new law also includes further protective provisions, in particular for consumers and microenterprises which will come into effect on 1 April 2020:

- **Lease agreements may not be terminated** by the landlord due to a payment default occurring between 1 April and 30 June 2020, if the payment default results from the COVID 19 pandemic. The tenant will be required to provide prima facie evidence for the interconnection of his default and the pandemic.
- Under certain conditions consumers/microenterprises are granted a right to refuse performance of essential contracts (not including lease, loan and employment agreements) which have been entered into before 8 March 2020 if they are unable to perform the contracts due to the COVID 19 pandemic. Performance can be refused until 30 June 2020.
- Under certain conditions a lender's claims for payment of principal and interest under a consumer loan agreement which has been entered into prior to 15 March 2020 may be deferred for 3 months if it cannot be expected from the consumer to make the payments due to the COVID 19 pandemic. This rule applies for claims which become due between 1 April and 30 June 2020.

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