

Insolvency Relief, Loans, Moratorium, Cash & Co. - German Parliament Package Alleviates Corona Fallout

In times of lockdowns, shelter orders, curfews and other restrictions to fight COVID-19 (corona), falling income of businesses, employees and consumers meets continuing payment obligations and fixed costs. In an effort to stem a perceived flood of bankruptcies and to alleviate liquidity problems for companies and individuals, with almost unanimous approval in both Houses of Parliament, today Germany has adopted a broad package to suspend insolvency filings and claw-back claims, encourage bridging finance and business continuation measures, defer certain debt, and provide direct financial aid measures.

Main elements:

- **Insolvency filings relief:** Corona distressed companies (and individuals) do not need to file for insolvency during the insolvency relief period 1 March 2020 - 30 September 2020.
 - The said exemption does not apply if there are no prospects of overcoming an illiquidity situation (for example, the government has announced that businesses are expected to apply for government financial assistance, conduct serious negotiations of bridging loans or pursue other reasonable restructuring/financing measures).
 - Where the said exemption applies, the law also excludes **director liability** for ordinary course payments during the insolvency relief period.
 - Insolvency filings instigated by creditors are suspended until 30 June 2020 (unless basis of filing would be insolvency situation before 1 March 2020).
- **Bridging loans** and **shareholder loans** granted during the insolvency relief period and other actions to continue the business will receive protection against **avoidance / claw-back** in future insolvency situations, in particular as regards
 - repayment of eligible loans, if payback occurs by 30 September 2023 (no payback time limit condition applies where the loans were granted under eligible government financial assistance programmes), and
 - certain performance measures and arrangements with creditors, suppliers, customers and lessors to allow continuation of business relationships.

Related Capabilities

- Corporate Governance & Compliance
- Mergers & Acquisitions
- Europe

- **Real estate leases respite:** Leases cannot be terminated based on default of payment for rentals for the respite period 1 April – 30 June 2020 (applies to both business premises and housing leases).
- **Moratorium** on payment obligations of **consumers and micro enterprises** under material necessary **long-term contracts** such as electricity and telecommunications contracts; payment is deferred until 30 June 2020.
 - Eligible enterprises are those which employ fewer than 10 persons and whose annual turnover and/or balance sheet total does not exceed EUR 2 million.
 - Apparently outstanding payments do not carry interest.
 - If the moratorium were unreasonable for and jeopardised the economic fundamentals of the other party (provider), the moratorium would not apply but the debtor would have the right to terminate the contract.
- **Consumer loans respite:** Loan payments due by consumer during the period 1 April - 30 June 2020 can be deferred for 3 months.
 - The term/duration of loan agreements is automatically extended by the respite period (3 months), unless the parties agree on other arrangements, such as increased instalments, to allow the consumer to catch up with payment of the deferred outstanding instalments.
- **Causal link:** The above relief measures, in principle, require a causal link with the corona crisis. Affected parties must be able to demonstrate that the relevant economic difficulties were caused by circumstances relating to COVID-19. How that will work in practice, appears somewhat unclear, but supposedly courts would take a generous approach when parties invoke the relief excuses and exemptions. The suspension of **insolvency** filing obligations is more straight forward, as the law **presumes** that the corona crisis caused the economic difficulties (and that there are sufficient prospects of overcoming an illiquidity situation) if the debtor was not insolvent as of 31 December 2019 (which presumably can be easily demonstrated via year end financials).
- **Virtual shareholder meetings** are allowed by law in 2020 regardless of provisions in articles, bylaws, statutes, etc.
- **And, of course, cash and other financial aid measures:** As so many other countries, the German government has promised significant sums to address business liquidity problems and citizens' needs. The German Parliament (with today's approval of the second House) has approved an increase of corona related budget facilities by **EUR 156 billion**. Measures include
 - cheap loans and loan guarantees
 - tax deferrals and reduced tax prepayments
 - government coverage of big part of continued employee pay under reduced working hours arrangements options ("Kurzarbeit").

Details remain to be seen, for example, how the loan programme will work out in practice: in most cases rules require commercial banks to shoulder a part of the loan risks, which critics say might result in less cash being made available than the federal government expects. Additional aid measures are being provided at local State and city level.

The German government hopes the relief measures will provide the affected parties with sufficient breathing space and survival tools to get things back in order as and when the

corona crisis subsidies. Since the duration of the crisis is uncertain, the relief package laws allow the government to extend certain measures for limited periods should this prove to be become necessary.

Additional or refining measures are being contemplated as things proceed, so – as elsewhere - close monitoring is the call of the days and weeks to come.

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