# UPDATE: GERMANY'S COVID-19 FINANCIAL SHIELD AND CHANGES TO CIVIL AND INSOLVENCY LAW

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**Germany has implemented measures to support businesses struggling from the effects of the COVID-19 epidemic. This includes a protective financial shield as well as changes to German civil and insolvency law. This article follows on from our previous analysis in light of the initial announcement by the Federal Government – see here.**

The measures to support businesses impacted the by the coronavirus pandemic recently announced by the German Federal Government have now been resolved with large majorities by the Federal Parliament (*Bundestag*) and the Federal Council (*Bundesrat*). There have, however, been some modifications to the previous announcement by the Federal Government.

The most important measure being taken for companies facing loss *of* revenue as a consequence of the coronavirus pandemic is the protective shield. Ministers have made it clear that there is no monetary limit to these programmes. At this stage, the Federal Government has expanded the scope of several existing programmes offered by the state-owned development bank *Kreditanstalt für Wiederaufbau* (KfW) to allow for such assistance. These programmes are available through a company's principle bank (*Hausbank*).

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In particular, the existing KfW programmes for existing businesses (*KfW Unternehmerkredit*) and for new businesses (*ERP Gründerkredit Universell*) has been expanded to cover businesses with a turnover of up to €2bn. These programmes allow for working capital and investment loans of up to €1bn which will be 80% guaranteed by KfW for larger companies (more than 250 employees or a turnover of more than €50m) and 90% guaranteed for smaller and medium-sized businesses. A business group may apply for loans up to €1bn. However, the loan amount is always limited to: (i) 25% of turnover; (ii) double wage costs paid in 2019; and (iii) current financing requirements for the next 18 months (for small and medium-sized companies) or 12 months (for larger companies); and (iv) 50% of existing total debt.

Furthermore, a fund for economic stability (*Wirtschaftsstabilisierungsfond*) has been implemented for larger companies with a balance sheet total (*Bilanzsumme*) of more than €43m sales revenues (*Umsatzerlöse*) of more than €50m and an annual average workforce of more than 249 employees. The fund's instruments include a guarantee framework of €400bn and a credit authorisation of €100bn.

The existing large guarantee programme (*Großbürgschaftsprogramm*), under which the federal and state governments co-operated to guarantee working capital and investments loans in structurally weak regions, will be expanded to other regions and allow for guarantees of more than €50m covering up to 80% of the loan amounts. In addition, there are export credit guarantee facilities in place to assist the export industry. The ministers also indicated that new programmes could be implemented to accommodate the impact on businesses of the coronavirus pandemic.

Furthermore, the German Parliament has passed a bill containing significant changes to, *inter alia*, German civil and insolvency law which have been approved by the Federal Council today (27/03/20). Insolvency law has been modified to reduce the risk of a personal liability of directors and to improve their ability to obtain funding and to maintain business relationships.

Generally, German insolvency law requires directors of companies to file for insolvency promptly and no later than 21 days of a company becoming illiquid or over-indebted (at the risk of a personal civil and criminal liability). This obligation has been suspended until the end of September 2020 (which may be extended until 31 March 2021 by ministerial order – hereinafter the "Suspension Period"). The suspension applies, unless an insolvency was not caused by the coronavirus-pandemic or there is no restructuring perspective. The new statute even contains a presumption that the insolvency of companies that were not illiquid on 31 December 2019 was caused by the coronavirus pandemic and that they can be restructured. On this basis, it will be important to document the liquidity of companies on 31 December 2019.

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This suspension of the filing requirements has a number of consequences:

- The personal liability of directors for conducting business after their company becomes insolvent is effectively removed as the new law assumes no negligence for all ordinary course transactions;
- The possibility of challenging loans granted during the Suspension Period, as well as security for such loans in a subsequent insolvency procedure, is removed as the new law assumes there is no disadvantage to the creditors. This privilege applies for all debt service until 30 September 2023. Loans granted during the Suspension Period will also not be deemed to be *contra bones mores* in view of a pending insolvency (*sittenwidrige Insolvenzverschleppung*). This should simplify restructuring processes, as it is likely that the scale of the restructuring analysis will be much reduced. In case loans were granted or supported by KfW under support programmes in connection to the coronavirus pandemic, the privilege also applies to loans granted after the lapse of the Suspension Period and for debt service received after September 2023; and
- The ability of insolvency administrators to challenge business transactions is further restricted.

Finally, the ability of creditors to file for insolvency is removed for three months (which period can also be extended until 31 March 2021 by ministerial order), unless the insolvency was in place on 1 March 2020.

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The German Parliament and Federal Council have also passed temporary changes to German civil law which essentially give greater protection to consumers (*Verbraucher*) and micro-businesses (*Kleinstunternehmer*) affected by the coronavirus epidemic regarding certain long-term contracts, including tenancy law (*Mietrecht*) and the law of loans (*Darlehensrecht*). It is important to note, however, that these new statutory provisions regarding loans only apply to consumers loans (*Verbraucherdarlehen*). Corporate borrowers will not benefit from this protection for the time being.

On a pan-European level, the European Investment Bank Group has announced that up to €40bn will potentially be available at short notice, which will be backed up by guarantees from the European Investment Bank Group and European Union budget. Details will be announced shortly.

Should you need assistance applying for liquidity loans or in insolvency-related matters please do not hesitate to contact Watson Farley & Williams. We gladly offer our support in these difficult times.

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