

1. Government policy responses

1.1 New legislation

Within one working week, between 23 March 2020 and 27 March 2020, six Bills addressing Covid-19 related challenges were introduced in and adopted by the German Federal Diet (Deutscher Bundestag) and the Federal Council (Bundesrat), certified by the Federal President (Bundespräsident) and promulgated in the Federal Law Gazette (Bundesgesetzblatt, BGBl.). They are:

- a) 'Gesetz zur Errichtung eines Wirtschaftsstabilisierungsfonds' (Act to establish an economy stabilisation fund), BGBl. I 2020, 543;¹
- b) 'Gesetz über die Feststellung eines Nachtrags zum Bundeshaushaltsplan für das Haushaltsjahr 2020' (Act to adopt a supplement to the federal budget 2020), BGBl. I 2020, 556;²
- c) 'Gesetz zur Abmilderung der Folgen der Covid-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht' (Act to mitigate the consequences of the Covid-19 pandemic in the fields of civil law, insolvency law and criminal procedure), BGBl. I 2020, 569;³
- d) 'Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2' (Act to facilitate access to social security and regarding deployment and safeguarding of social services providers in times of corona virus SARS-CoV-2), BGBl. I 2020, 575;⁴
- e) 'Gesetz zum Ausgleich Covid-19 bedingter finanzieller Belastungen der Krankenhäuser und weiterer Gesundheitseinrichtungen' (Act to compensate hospitals and other health care facilities for financial burdens due to Covid-19), BGBl. I 2020, 580;⁵ and
- f) 'Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite' (Act to protect the general population in case of an epidemic of national relevance), BGBl. I 2020, 587.⁶

Obviously, the efficacy and sufficiency of these rushed measures will be closely monitored, and it is to be expected that there will be occasional amendments during the weeks and months to come. This chapter is very much a snapshot of a position that is likely to change.

Furthermore, the 16 federal states (Bundesländer) are responsible for the administration of the majority of the new provisions and, in particular, for processing most applications for loans, guarantees, grants, benefits, and so on, and they also have support and aid programmes of their own, so that certain differences between the states exist. These are not highlighted here.

1.2 Fiscal stimulus measures⁷

The main focus of the legislative measures at the federal level (see Section 1.1 above) is dealing with the

economic and financial fallout of the pandemic and the implemented shutdown and social-distancing orders and recommendations – healthcare as such, on the other hand, is primarily a state matter – for businesses of all sizes and private households. Recognising the Covid-19 crisis as a 'natural catastrophe or extraordinary emergency situation', the Federal Diet approved new indebtedness far beyond the ordinary constitutional limit (cf Art 115 GG [Grundgesetz – Basic Law]), namely up to EUR156 billion, in the supplementary federal budget. The Federal Government plans to spend up to EUR122.5 billion more than originally anticipated and expects the tax income for 2020 to fall short of earlier prognoses by roughly EUR33.5 billion.

The additional (actual) spending is aimed mostly at hospitals, other healthcare providers, micro, small and medium sized enterprises (MSMEs), and natural persons. In particular, up to EUR50 billion serves as 'immediate assistance' grants (Soforthilfe) for small businesses and self-employed persons that usually do not have easy access to loans, collateral, reserves or other sources of income. These grants consist of lump sum payments of up to EUR9,000 (up to five full-time employees or part-time equivalent) or up to EUR15,000 and are supposed to cover operating expenses for up to three months if the recipient otherwise faces economic difficulties. This programme involves as little red tape as possible, and the grants are processed relatively swiftly. Self-employed persons are also given easier and quicker access to basic income support (Grundsicherung) to help pay for living expenses and housing.

Both employers and employees benefit from an expansion of the short-time work (Kurzarbeit) scheme in case employers suffer from work shortages due to Covid 19, and working hours are thus reduced (to avoid terminations). In this case, employees are compensated in part for their net loss of income by the Federal Employment Agency (Bundesagentur für Arbeit). The prerequisites for this compensation claim have been eased.⁸

Both MSMEs and bigger companies have access to extensive loan programmes – the total amount of loans under these programmes is officially unlimited – supported by the Kreditanstalt für Wiederaufbau (KfW; the German development bank, literally Credit Association for Reconstruction). While private banks grant and handle the actual loans, the loans are backed by the KfW up to 80 per cent, 90 per cent or even 100 per cent of the loan amount depending on the specific KfW programme. Again, conditions have been eased, amounts have been raised, and red tape has been reduced dramatically.

To help big non-financial enterprises overcome temporary liquidity issues and to strengthen the equity base of big non-financial enterprises with a significant relevance for, inter alia, the economy, the infrastructure and the job market, the newly instituted economy stabilisation fund (Wirtschaftsstabilisierungsfonds) can issue guarantees (up to EUR400 billion in total for debts or liabilities established between 28 March 2020 and 31 December 2021) and provide mezzanine financing or equity (up to EUR100 billion in total). The size threshold requires – with possible exceptions – that, during the two full fiscal years prior to 2020, two of the following three criteria are met: a balance sheet total in excess of EUR43 million; turnover in excess of EUR50 million; and more than 249 employees. The fund's assistance is a last resort for enterprises without access to other financing sources, and it requires a clear going-concern perspective for the time after the Covid-19 crisis; the

1. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0543.pdf.

2. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0556.pdf.

3. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0569.pdf.

4. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0575.pdf.

5. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0580.pdf.

6. Available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s0587.pdf.

7. For an overview, see: <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Priority-Issues/Corona/2020-03-25-combating-the-corona-virus.html>.

8. For an overview, see: <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Priority-Issues/Corona/2020-03-24-protective-shield-short-time-work.html>.

respective enterprises must not have been 'firms in difficulty' (according to European Union terminology) on 31 December 2019. Extensive conditionality may be imposed on the enterprises to ensure prudent and sound management. The fund can also grant loans to the KfW to refinance its special programmes in reaction to the Covid-19 crisis (up to EUR100 billion in total).

2. Legislative reforms impacting on stakeholders dealing with companies in financial distress

2.1 Employees

The fiscal stimulus measures outlined above (see Section 1.2 above) and the temporary suspension of the duty to file for insolvency (see Section 3.1 below) are indirectly affecting the situation of employees as they are (in some cases explicitly) aiming at securing jobs and preventing mass terminations.

Other than that, the Covid-19 crisis has resulted in a multitude of legal questions – not specific to companies in financial distress – concerning the employer–employee relationship regarding, for example, home office solutions (including data protection), the consequences of lockdown, quarantine, the closure of schools and day-care facilities, short-time work, terminations, paid and unpaid time off, vacations, flexible work time, health and safety, and sick leave. However, at the time of writing, the legislator has not enacted any special provisions to address these labour law issues. The general rules and their interpretation by the courts are, apparently, regarded as sufficient to deal with the current situation – paired with a certain degree of common sense and compassion or kindness. The special rules regarding continuing obligations (see Section 2.3 below) explicitly do not apply to labour contracts.

As mentioned in Section 1.2 above, there are new or amended rules regarding social security, such as extended access to short-time work compensation (Kurzarbeitergeld) or basic income support.

2.2 Lenders

For existing ('old') consumer loans (concluded prior to 15 March 2020), all payments (principal and interest) coming due between 1 April 2020 and 30 June 2020 are – unless the parties agree otherwise – automatically deferred by three months if the borrower suffers income shortfalls due to the Covid-19 crisis rendering it unreasonable to expect punctual payment (Art 240 § 3 EGBGB [Einführungsgesetz zum Bürgerlichen Gesetzbuche – Introductory Act to the Civil Code], introduced by the Act mentioned in Section 1.1c above). In particular, this would be the case if the payment(s) jeopardised the borrower's or their dependants' livelihood. During the deferral period, the loan cannot be accelerated or terminated due to the borrower's non-payment (even of previous instalments), their financial situation or the devaluation of collateral. Should lender and borrower not reach a different agreement for the period from 1 July 2020, the loan period will be extended, and all future payments will be deferred by three months. However, these rules on the deferral of payments and restricted ability to terminate consumer loans do not apply in the exceptional case that they are unreasonable

for the lender (e.g. in the case of fraud or similar breaches by the borrower). The Federal Government may, by executive order, extend the scope of this provision to commercial borrowers – in particular microenterprises (according to European Union terminology) – as well as the timeframe and period of deferral.

Full or partial repayments of existing (old) loans – whether to consumers or enterprises – taking place between 1 March 2020 and 30 September 2020 (possibly 31 March 2021) may be (partially) exempt from avoidance in subsequent insolvency proceedings; the details are discussed in Section 3.3 below.

For new loans, private (bank) lenders to commercial borrowers may benefit from the stimulus measures discussed in Section 1.2 above, in particular the guarantees issued by the economy stabilisation fund and the KfW's loan programmes. However, all these guarantees and loans require the determination that the borrower's enterprise is (to differing degrees) viable. The lenders of loans backed by these and other (in particular state) fiscal stimulus measures do not risk liability for contributing to the delay of the borrower's insolvency as established under German law. This liability of lenders for damages under general tort law (§ 826 BGB [Bürgerliches Gesetzbuch – Civil Code]: intentional causation of damage contrary to public policy) is already limited to rare and exceptional cases but still acts as a practical obstacle to distressed lending. By law, it is now generally excluded for these loans provided the debtor meets the requirements for a suspension of the duty to file (see Section 3.1 below); in this case, collateralisation and repayments are also generally exempt from later avoidance.

Other than that, lenders of fresh money – including shareholders – during the period from 1 March 2020 to 30 September 2020 (or possibly to 31 March 2021) benefit from certain exemptions from transaction avoidance in subsequent insolvency proceedings. Such exemptions apply to repayments until 30 September 2023 and (with exceptions for certain shareholders and equivalent stakeholders) to collateralisation; the details are discussed in Section 3.3 below.

Finally, lenders and third-party providers of collateral for loans during the period from 1 March 2020 to 30 September 2020 (or possibly to 31 March 2021) – including prolongations and novations of old loans – are, for the most part, not risking being considered liable for contributing to the delay of the borrower's insolvency according to § 826 BGB as discussed above. See also Section 3.3 below.

2.3 Third parties

Third parties, especially suppliers and landlords, may benefit from certain provisions outlined in Section 2.2 above, and discussed in detail in Section 3.3 below, regarding transaction avoidance. They may, however, also be subject to a moratorium or to restrictions regarding their right of termination, as will now be explained.

The moratorium (Art 240 § 1 EGBGB, introduced by the Act mentioned in Section 1.1c above) only applies to consumer or microenterprise debtors and to their debts from or in connection with contracts for the performance of a continuing obligation regarding essential goods or services (such as water, electricity, gas, telecommunication, and insurance). It further requires that the underlying contract has been concluded before 8 March 2020, that the debtor's performance would endanger (in the case of consumer debtors)

the debtor's or their dependants' livelihood or (in the case of microenterprises) the enterprise's economic foundations, and that the debtor's precarious situation has been caused by the Covid-19 crisis. In this case, the debtor may refuse to perform (usually but not exclusively a refusal to pay) until 30 June 2020 (a date that may be extended by executive order) unless such a refusal is unreasonable from the creditor's perspective because it endangers the creditor's economic foundations or their (or their dependants') livelihood, in which case the debtor is permitted to terminate the contract (apparently without notice). The provision does not explicitly address the question whether the creditor has to perform their continuing obligations despite the debtor's temporary refusal – according to general rules (§ 320 BGB), this would usually not be the case – but the law's purpose and its focus on essential goods and services strongly indicate that the creditor still has to perform during that period by further supplying the debtor with the goods or services in question, thus increasing the creditor's exposure in a subsequent insolvency.

A special provision exists for rent contracts regarding (residential or commercial) real estate (Art 240 § 1 EGBGB, introduced by the Act mentioned in Section 1.1c above). Landlords are precluded from terminating such a rent contract based on the Covid-19-crisis-related non-payment of rent that falls due during the period from 1 April 2020 to 30 June 2020 (a date that may be extended by executive order). Terminations for other reasons remain possible. Different to the moratorium for essential goods and services as discussed in the preceding paragraph, this provision applies also to commercial tenants that are not microenterprises, but it leaves the obligation to pay rent (including its due date and enforceability) unaffected. There is, however, an ongoing discussion whether businesses forced to close their premises due to lockdown orders already have a right to reduce their rent for this time period under general rules, either because of a defect of the premises (§ 536 BGB) or because of the massive impact the Covid-19 crisis had on the foundations of the contract (§ 313 BGB) – it is likely that the courts will eventually have to rule on this question.

3. Legislative reforms for companies in financial distress

At the core of the legislative reforms specifically concerning debtors in financial distress is the 'Gesetz zur vorübergehenden Aussetzung der Insolvenzantragspflicht und zur Begrenzung der Organhaftung bei einer durch die Covid-19-Pandemie bedingten Insolvenz' (Act to temporarily suspend the duty to file and to limit the directors' and managers' liability in case of an insolvency caused by the Covid-19 pandemic), abbreviated 'CoVInsAG' and enacted as Art 1 of the act mentioned in Section 1.1c above.

3.1 Revision of obligations of directors

According to § 15a InsO (Insolvenzordnung – Insolvency Act) and § 42 BGB, the directors or liquidators (or, under rare circumstances, members of a supervisory board or shareholders) of corporations and certain limited liability companies have a duty to file for insolvency proceedings in case of illiquidity or over-indebtedness without undue delay, at the latest within three weeks. A negligent or intentional breach of this duty exposes them to civil and criminal liability. While (often severe) delays beyond the acceptable threshold are very common, the Covid-19 crisis could and would easily lead to an avalanche of petitions filed on behalf

of enterprises that are otherwise sound and viable and that are highly likely to recover, given time and support by fiscal stimulus measures. For this reason, the duty to file is usually the first insolvency law provision modified in times of crisis. During the 2008/2009 financial market crisis, the test for over-indebtedness was eased significantly (and has remained so ever since), and, in the aftermath of severe floods in 2013 and again in 2016, the duty to file was partially and temporarily suspended for affected enterprises.

So, it comes as no surprise that § 1 CoVInsAG suspends the duty to file until 30 September 2020 (a date that may be extended by executive order until 31 March 2021). This does not apply if either (a) the illiquidity or over-indebtedness has not been caused by the Covid-19 crisis or (b) there is no prospect of curing an existing insolvency. The law's wording already suggests that the suspension is the rule; this is further confirmed by a statutory presumption that neither of the two exceptions applies if the debtor was not already illiquid on 31 December 2019. While this presumption is rebuttable in theory, the legislative materials⁹ rightly state that it can only fulfil its purpose to relieve directors of uncertainties if the rebuttal only succeeds in obvious cases. The suspension of the duty to file leaves the debtor's right to file unaffected.

The suspension of the duty to file gives the debtor's management breathing space and time, for example, to apply for loans, guarantees, grants and so on, enter into negotiations with creditors and other stakeholders as well as investors, or plan and implement operative restructuring measures. However, this suspension alone is not necessarily sufficient to ensure the continuation of the business and the opportunity to cure illiquidity or over-indebtedness. For example, the directors of an illiquid or over-indebted GmbH (Gesellschaft mit beschränkter Haftung – German private limited liability company) making payments that are not compatible with the due care of a prudent businessperson have to compensate the company (or usually the insolvency estate) for any such payment (§ 64 GmbHG [Gesetz betreffend die Gesellschaften mit beschränkter Haftung – Limited Liability Companies Act]); similar provisions exist for other types of companies as well. In order to shield directors from potential liability under these provisions and to encourage them to keep the enterprise operative and afloat for the time during which the duty to file is suspended, payments in the ordinary course of business – and in particular those to maintain or restart business or to implement a restructuring concept – are (irrefutably) deemed compatible with the due care of a prudent businessperson (§ 2 subsection 1 no 1 CoVInsAG).

3.2 Adoption of any other pre-insolvency measures

German law does not currently (until implementation of the European Union Restructuring Directive) provide for any formal pre-insolvency proceedings or other designated pre-insolvency measures.¹⁰ The Covid-19 crisis has not changed this. However, the suspension of the duty to file (see Section 3.1 above) in principle gives ample room and time for informal workout attempts.

3.3 Changes to the insolvency process / avoidance issues

The most important change concerns the suspension of the directors' duty to file, as outlined in Section 3.1

9. Cf. BT-Drs. 19/18110, p. 22, available at <http://dip21.bundestag.de/dip21/btd/19/181/1918110.pdf>.

10. Cf. Paulus/Zenker, 'Contractualised Distress Resolution in the Shadow of the Law' – German National Report, p. 3-4, available at <https://www.codire.eu/wp-content/uploads/2019/03/German-National-Report-2.pdf>.

above. While, in practice, the majority of petitions to commence insolvency proceedings are filed by debtors, involuntary petitions filed by creditors are also possible (§ 14 InsO) and are mostly effected by social insurance carriers and tax authorities. To ensure that enterprises affected by the Covid-19 crisis are not blindsided by a swift creditor's petition, and that they have time to make use of the stimulus measures with the aim of avoiding insolvency proceedings, according to § 3 CoVInsAG, petitions by creditors filed between 28 March 2020 and 28 June 2020 (a date that may be extended by executive order) can only lead to the commencement of insolvency proceedings if the debtor was already illiquid or overindebted on 1 March 2020.

Apart from these adjustments regarding the petition and the provisions limiting the liability of directors (Section 3.1 above) and lenders (Section 2.2 above), the most significant changes concern transaction avoidance in subsequent insolvency proceedings according to §§ 129 et seq InsO. The provisions limiting liability and transaction avoidance (§ 2 CoVInsAG) are closely linked to the timeframe and the prerequisites of the suspension of the duty to file according to § 1 CoVInsAG – namely, there must be a causal connection between the Covid-19 crisis and the debtor's financial distress and the debtor must not be incurably illiquid. The presumption in the case that the debtor was not illiquid on 31 December 2019 also applies. Since, however, issues concerning lenders' liability and transaction avoidance may also occur regarding debtors generally not subject to the duty to file (such as solo entrepreneurs or general partnerships) and possibly also in the case that the debtor was not (yet) insolvent, the law clarifies that these provisions (§ 2 subsection 1 no 2, no 3 and no 4 CoVInsAG) also apply regardless of a duty to file that is actually suspended (§ 2 subsection 2 CoVInsAG).

Concerning transaction avoidance, the CoVInsAG introduces two new and temporary rules that appear remotely similar at first glance but are very different.

(1) The rule in § 2 subsection 1 no 2 CoVInsAG tries to attract 'fresh money' by strictly exempting any repayment of new loans (including e. g. credit on goods and including shareholder loans and equivalents as defined in § 39 subsection 1 no 5 and subsections 4 and 5 InsO) granted during the suspension period (1 March 2020 to 30 September 2020, extendable until 31 March 2021) from later transaction avoidance as long as the respective repayment takes place on or before 30 September 2023. The same applies to the collateralisation of such new loans (but in this case excluding shareholder loans and equivalents) during the suspension period. This exemption applies regardless of intentions, knowledge, prognosis, and proximity of the repayments to the subsequent insolvency and bars any and all grounds for transaction avoidance including the German equivalent of fraudulent conveyance (§ 133 InsO: intentional causation of a detriment to the creditors) and the special avoidability of the repayment of shareholder loans (§ 135 subsection 1 no 2 InsO). While the collateralisation of shareholder loans remains avoidable (in particular according to § 135 subsection 1 no 1 InsO), any repayment claim is treated as a regular insolvency claim and not as a subordinated claim according to § 39 subsection 1 no 5 InsO if the petition to commence insolvency proceedings is filed on or before 30 September 2023; also, § 44a InsO with its special treatment of third-party loans with shareholder collateral does not apply in this case. The legislator, thus, did not accord priority to fresh money claims (this excludes prolongations, novations, and similar constellations, including repaying old loans and granting new loans) – for instance, by elevating them

to claims against the future estate – but effectively ensured that any repayments received in time are safe and collateral can be realised (other than in the case of shareholder loans). This may incentivise fresh money creditors to vigorously enforce their claims to make the cut-off on 30 September 2023 or to take action prior to an imminent insolvency. Regarding loans granted by the KfW and its partner banks or by other institutions within the framework of governmental aid or stimulus measures, the exemption applies even if the loan was granted or the collateral was provided only after the suspension period and regardless of when the repayment takes place, § 2 subsection 3 CoVInsAG.

(2) Normally, actions (other than cash transactions, under § 142 InsO) granting or facilitating either security for or the satisfaction of a claim in accordance with a creditor's entitlement ('congruent coverages') are avoidable if they took place during the three months prior to the filing for insolvency (or after the filing) and if the creditor knew that the debtor was illiquid (or that a petition had been filed), under § 130 InsO. In many cases, actions of the debtor may also be avoidable for up to four years prior to the filing date according to § 133 InsO if both the debtor and the creditor knew that the debtor was illiquid. If the creditor was not entitled to the respective action ('incongruent coverages'), the scope of avoidance is even wider according to § 131 InsO and § 133 InsO. The legislator suggests¹¹ that the prolonged suspension of the duty to file according to § 1 CoVInsAG may lead to a situation where a creditor that is aware of the financial distress of the debtor terminates the business relationship and thus jeopardises its restructuring efforts. For this reason, congruent coverages as well as certain (enumerated) common incongruent coverages taking place during the suspension period are exempted from later avoidance unless the creditor knew at the time that the debtor's efforts to restructure and gain financing were not suitable to cure an actual illiquidity, under § 2 subsection 1 no 4 CoVInsAG. An ongoing business relationship (including credit for goods supplied) may in any case qualify for the fresh money exemption such that there appears little to no compelling reason for a creditor to end the business relationship at that point. The provision may, nevertheless, serve to encourage a creditor to work with the debtor.

4. Financial and regulatory measures

4.1 Financial sector measures (regulators)

The European Central Bank (ECB)¹² and the European Banking Authority¹³ are publishing extensive information online regarding the impact of the Covid-19 crisis on the regulatory framework for the financial sector and measures to adjust. Since these measures and information are not specific to Germany, they will not be discussed here.

Similarly, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) is publishing a regularly updated list of FAQs and answers online.¹⁴ Like the ECB, the BaFin has asked banks not to pay dividends or buy back shares at least until October 2020. The stress test for German Less Significant Institutions (LSIs) planned for 2021 will be postponed until 2022.

11. BT-Drs. 19/18110, p. 24, available at <http://dip21.bundestag.de/dip21/btd/19/181/1918110.pdf>.

12. Available at https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320_FAQs~a4ac38e3ef.en.html.

13. Available at <https://eba.europa.eu/eba-provides-clarity-banks-consumers-application-prudential-framework-light-covid-19-measures>.

14. Available at https://www.bafin.de/DE/Aufsicht/CoronaVirus/CoronaVirus_node.html and in a (less comprehensive) English version at https://www.bafin.de/EN/Aufsicht/CoronaVirus/CoronaVirus_node_en.html.

4.2 Measures regarding taxation

In a circular dated 19 March 2020,¹⁵ the Federal Ministry of Finance advises the tax authorities that tax subjects directly and substantially affected by the Covid-19 crisis can apply until 31 December 2020 for temporary and interest-free deferrals of tax payments due by that date and for the adjustment of income tax and corporation tax prepayments. Trade tax prepayments can also be adjusted on application.¹⁶ Enforcement measures for overdue taxes of directly and substantially affected tax subjects will be suspended until 31 December 2020, and late fees for the period from 19 March 2020 to 31 December 2020 will be waived.¹⁷

4.3 Accounting and auditing

The Institute of Public Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland – IDW) has published a number of guidelines concerning the impact of the Covid-19 crisis on accounting and auditing (concerning both the fiscal years 2019 and 2020), valuation of enterprises, and other matters.¹⁸

5. Specific measures for micro and small businesses (specifically sole proprietorships)

MSMEs, including solo entrepreneurs and freelancers, are one focus of the fiscal stimulus measures outlined in Section 1.2 above, in particular the immediate assistance grants. MSMEs may benefit from the protection against lease terminations, and microenterprises also from the moratorium on certain debts (see Section 2.3 above). It is also possible that the government may decide, by executive order, to include microenterprises in the scope of the loan deferral provision; see Section 2.2 above.

For natural persons, both consumers and entrepreneurs, § 1 CoVInsAG provides that a discharge of residual debt (§§ 286 et seq InsO) is not to be denied according to § 290 subsection 1 no 4 InsO for delaying the commencement of the insolvency proceedings, despite lack of prospect of an improvement in their economic situation because of a delay between 1 March 2020 and 30 September 2020 (a date that may be extended to 31 March 2021 by executive order). The same exceptions and presumption as for the suspension of the duty to file (see Section 3.1 above) apply.

6. Measures introduced by the courts to deal with increased insolvency cases

Social-distancing measures mean that often only core staff are present in the courthouse, and hearings and meetings are being rescheduled where possible. The suspension of the duty to file (see Section 3.1 above) and the limitation on involuntary petitions (see Section 3.3 above) will at least delay many petitions. We are not aware of current preparations (such as hiring and training initiatives and streamlining of procedures) for the expected future influx of petitions.

It is to be expected that insolvency courts will focus more on conducting the insolvency proceedings as written

proceedings (cf § 5 subsection 2 InsO) or to skip the report meeting (cf § 29 subsection 2 InsO). The InsO does not provide for remote meetings or hearings (with a possible limited exception according to § 4 InsO, § 128a ZPO [Zivilprozessordnung – Code of Civil Procedure]), and most courts are not equipped to facilitate them in any case.

7. Other pending reforms

To our knowledge, there are no other pending reforms at present. However, amendments and executive orders regarding the reforms described in this chapter, and building on them, are certainly to be expected.

15. Available at https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Weitere_Steuerthemen/Abgabenordnung/2020-03-19-steuerliche-massnahmen-zur-beruecksichtigung-der-auswirkungen-des-coronavirus.pdf?__blob=publicationFile&v=1.

16. Cf https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Steuerarten/Gewerbesteuer/2020-03-19-gewerbesteuerliche-massnahmen-zur-beruecksichtigung-der-auswirkungen-des-coronavirus-anlage.pdf?__blob=publicationFile&v=2.

17. For an overview of the tax-related measures, see: <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Priority-Issues/Corona/2020-03-20-Tax-measures-to-assist-businesses.html>.

18. Available at: <https://www.idw.de/idw/im-fokus/coronavirus>; part of these guidelines is available in an English translation here: <https://www.idw.de/blob/122914/8b4b3722606c025e741eb7ac59988ded/down-corona-englische-fassung-teil-1-und-2-data.pdf>.