



March 2020

Legal Impacts of COVID-19

Essential Regulations of the Act on Mitigating the Consequences of COVID-19 Pandemic in Civil Law, Corporate Law and Insolvency Law

In order to slow down the massive increase in SARS CoV-2 virus infections ("COVID-19 Pandemic"), in March 2020 German authorities ordered the closure of a large number of recreational, cultural, and childcare facilities, restaurants and retail stores, banned all public events, in some cases ordered quarantine. To mitigate and to compensate for the effects of the measures, the Federal Cabinet has submitted a draft of the **Act on Mitigating the Consequences of COVID-19** (COVID-19 Act), which is expected to be resolved by the Parliament shortly. In particular, changes are planned in the areas of civil law, company law and insolvency law.

1. Civil Law

Small enterprises and consumers will be granted a temporary right to refuse payment or fulfilment of other obligations under essential long-term contracts concluded before March 8, 2020, if the payment (or other fulfilment) compromised a reasonable livelihood for the consumer. Small enterprises are businesses with up to 9 employees and an annual turnover of up to two million euros. The purpose of this regulation is to prevent debtors from getting into default and claims for damages arising out of that. According to the explanatory memorandum to the Act, the right to refuse payment or performance shall not only apply to the primary obligations of consumers or small businesses, but also to secondary claims

(e. g. for damages or repayment) arising out of these. Default shall even be temporarily suspended upon exercise of this right to refuse performance if it had already occurred previously.

Rental and lease agreements shall not be considered essential long-term obligations in this context. However, in these cases the landlord's right to terminate the contract extraordinarily for late payment of rent payments for April to June 2020 is revoked, if the tenant can substantiate that there is a connection between his delay in payment and the COVID-19 Pandemic. With regard to employment contracts, consumers shall not be able to refuse performance.

Furthermore, under consumer loan agreements claims of the lender for repayment, interest and redemption that become due between April 01, 2020 and June 30, 2020 are deferred for three months from the respective due date if the debtor has lost income due to the COVID-19 Pandemic and the payment would compromise a reasonable livelihood. The law also authorizes the Federal Government to include small and medium-sized enterprises in this regulation in addition to consumers by statutory order if this seems reasonable. As a result, the lender may not terminate the agreement extraordinarily for delay in payment or a significant deterioration in the financial circumstances of the debtor. These provisions shall not apply if, taking into account all circumstances of the individual case, the

deferral and the exclusion of the right of termination cannot reasonably be expected of the lender. For the period after June 30, 2020, the parties shall find an amicable solution. Otherwise, the term of the agreement will be extended by three months.

2. Corporate Law

In order to enable companies to pass necessary resolutions despite the prohibition of meetings and thus to remain capable of acting, substantial temporary facilitations for the holding of general meetings and shareholders' meetings are being resolved, such as a statutory authorization to hold meetings online. Companies in the legal form of a limited liability company ("*GmbH*") are able to pass shareholder resolutions in text form or by written vote in the course of 2020 without the consent of all shareholders. For certain forms of associations, in particular the condominium owners' association ("*Wohnungseigentümergeinschaft*"), it was stipulated that the statutory bodies will initially continue to exist when their term of office expires and no meeting could yet be held to decide on the new appointment.

3. Insolvency Law

Under insolvency law, the possibility of creditors and in particular the manager's obligation to file for insolvency will be suspended in order to keep companies alive despite the loss of turnover and in order to enable refinancing them without being exposed to liability risks and rights of contestation under insolvency law ("*Anfechtungssprüche*"). The obligation to file for insolvency and the payment prohibitions under insolvency law will be suspended until

September 30, 2020. This does not apply, though, if the insolvency is not caused by the consequences of the COVID-19 Pandemic or if there is no prospect of eliminating an existing insolvency anyway. However, if the debtor was not insolvent on December 31, 2019, it is assumed that the insolvency is based on the effects of the COVID-19 Pandemic and that there are prospects of eliminating an existing insolvency. If managing directors make payments during this period in the ordinary course of business, their liability to repay these is waived.

Besides, the draft of the Act contains regulations to secure loans and repayments for these loans until September 2023, in case insolvency proceedings are nevertheless opened at a later date; in particular, instalment payments and securities for these loans cannot be reclaimed by way of contestation under insolvency law. This is intended to enable and promote the restructuring and refinancing of insolvent companies through new loans – from banks, shareholders and contractual partners.

Please do not hesitate to contact us should you have any questions in relation to the new legislation and any other questions that may arise due to the current threat from the COVID-19 Pandemic!

Stay well and safe!



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