

COVID-19: SUSPENSION OF OBLIGATIONS UNDER LOAN AGREEMENTS IN GERMANY

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Both the German federal government and various German federal states are pushing ahead with packages of measures to mitigate the as-yet-unforeseeable economic consequences of the COVID-19 pandemic.

This client information is intended to provide you with an overview of the legislation passed to amend German law with respect to obligations under existing loan agreements.

For consumer loan agreements concluded before 15 March 2020, the lender's claims for repayment, interest, or principal payments due between 1 April 2020 and 30 June 2020 shall be deferred for a period of three months from the due date if the consumer suffers a loss of income as a result of the extraordinary circumstances caused by the spread of the COVID-19 pandemic that make it unreasonable to expect him to perform the service owed.¹ Cancellations by the lender due to default of payment or due to a significant deterioration in the financial conditions of the consumer or the value of a security provided for the loan are excluded until the expiry of the deferral.²

Companies do not currently benefit from this possibility to suspend performance obligations as the abovementioned regulations only apply to *consumer loan agreements*. However, the federal government is authorised by law to extend the scope of application to other borrower groups, in particular to microenterprises and small- and medium-sized enterprises, with the consent of the German Parliament (Bundestag) (however, the consent of the Bundesrat, the legislative body representing the federal states, is not required) by means of a legislative decree (Rechtsverordnung).

To date, the federal government has neither issued such a legal ordinance nor announced any such intention.

At present, therefore, the only option available to companies is to contractually agree upon concrete measures with their financing partners on their own initiative to bridge any liquidity needs, such as deferring interest and/or redemption payments. In this context, it should, in particular, be examined and ensured that the conclusion of deferral agreements does not have any negative impacts on other contractual relationships of the company (in particular, so-called cross-default provisions should be observed).

FOOTNOTES

¹ Art. 240 Introduction Code of German Civil Code (EGBGB), § 3 para. 1 sentence 1 COVID-19 Pandemic Act.

² Art. 240 EGBGB, § 3 para. 3 sentence 1 COVID-19-Pandemic Law.

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