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German Tax and Legal News

COVID19: German Federal Cabinet launched a package of measures with law amendments

On March 23, 2020, the German Federal Cabinet launched a package of measures with amendments in various areas of law on the parliamentary path. For example, insolvency law is to be relaxed, a possibility to conduct meetings online created or and certain pay-ment obligations be deferred.

Background

In addition to representing a very serious threat to health, the COVID 19 pandemic poses a particular threat to entrepreneurs and tradespeople as well as employers and employees or even landlords and tenants. High losses and considerable damage have been recorded or are to be feared. The German federal and state governments have already reacted with immediate tax measures and extensive support programs.

When dealing with the pandemic and its consequences, numerous legal questions arise, the answers to which are not always easy in view of the novelty of the facts and which also cause a certain amount of uncertainty among market participants. Answers to these questions, as well as further measures to mitigate the economic consequences for market participants, are contained in the draft of a law to mitigate the consequences of the COVID 19 pandemic in civil, insolvency and criminal pro-cedure law, which was presented by the Fed-eral Government as a formulation aid for the government factions in the Bundestag on 23.03.2020.

On March 25, 2020, the Bundestag is to discuss the draft bill, which will then be submitted by the government factions, and supposed to adopt it on the same day. The Bundesrat will discuss this in a special session on 27.03.2020.

Draft Bill

Reorganization Law

- As regards mergers and demergers, the Bill provides that the closing date of the closing balance sheet of the transferring legal entity that will have to be submit-ted as part of the application for registration - which may now not be more than 8 months before the date of regis-tration, Section 17 para. 2 sentence 4 UmwG - can in the future be a date up to 12 months preceding the application.

Compulsory Presence Events

- Public limited liability companies, partnerships limited by shares, European Companies (SE) and mutual insurance companies shall temporarily benefit from various facilitations for holding general meetings using electronic means of distance communication. The regulations are to apply to all general meetings, i.e. both the ordinary annual general meeting and any extraordinary general meetings.
- Facilitations for the implementation of shareholder resolutions of the GmbH in text form are to be introduced. Forthwith, the consent of all shareholders will temporarily no longer be required.
- There will also be special regulations for cooperatives, which will make it possible to hold a "virtual" general or representative meeting. In addition, there are to be further facilitations in order to temporarily refrain from a physical presence in the course of business activities.
- Comparable facilitations shall also be available to associations and foundations.
- In the case of condominium owners' associations, a regulation will be introduced to the effect that, in the current situation, the previous manager will remain in office after the end of the term of office until a new manager is appointed. In addition, the last approved business plan is to continue to exist until a new business plan is adopted.

Tenancy and lease relationships

- Landlords shall be disallowed to give notice of termination to tenants solely due to rental debts stemming from the period from between April 1 and September 30, 2020.
- However, the obligation of the tenants to pay the rent will remain in force.

Consumer moratorium

- Consumers shall be given the right to until June 30, 2020 refuse to satisfy a claim arising from a consumer contract which is a continuing obligation and was concluded before March 8, 2020.
- Prerequisite: Due to the spread of COVID-19, the consumer is not able to make the payment without jeopardizing his or her reasonable livelihood or the reasonable livelihood of his or her dependants.
- The right to refuse performance exists in respect of all material continuing obligations
- Material continuing obligations are those which are necessary to cover services of general economic interest.
- The provision can be extended by statutory order if the impairments still exist.
- The regulation expires on September 30, 2022.

Loan agreements

- For consumer loan agreements concluded before March 15, 2020, the lender's claims for repayment, interest or principal payments due between April 1, 2020 and September 30, 2020 shall be deferred for a period of six months from the due date.
- Prerequisite: The consumer has lost income due to the COVID 19 pandemic, which makes it unreasonable to make the corresponding payment. In particular, the payment is not reasonable if a reasonable livelihood or the reasonable livelihood of the dependants is at risk.
- The connection between the COVID-19 pandemic and the loss of income is presumed.
- During the abovementioned period, the consumer is entitled to continue to make his contractual payments on the originally agreed service dates. As far as the payments continue to be made in accordance with the contract, the deferral is deemed not to have been granted.

Insolvency law

- The obligation to file an insolvency petition is to be suspended until September 30, 2020.
 - This suspension is not applicable apply if the grounds for insolvency are not induced by the consequences of the spread of COVID-19 or if there is no prospect of eliminating an existing insolvency.
 - If the debtor was not insolvent on December 31, 2019, it is assumed that the grounds for insolvency are based on the effects of the COVID 19 pandemic and there are prospects of eliminating an existing insolvency.
 - If the debtor is a natural person, section 290 (1) no. 4 of the InsO is to be applied with the proviso that no refusal of residual debt discharge can be based on the delay in the opening of the insolvency proceedings in the period between March 1, 2020 and September 30, 2020.
 - The regulation can be extended by statutory order until March 31, 2020 at the latest.
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