

Act on mitigation of the consequences of the Covid 19 pandemic in civil, insolvency and criminal proceedings

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In order to further contain the economic consequences of the Corona crisis, the German government has already submitted a bill to this effect ("Act on mitigation of the consequences of the Covid 19 pandemic in civil, insolvency and criminal proceedings"). The law will be passed this week; some regulations will take retroactive effect from 1 March 2020f

Bill

The bill provides for the following regulations:

a) Protection of tenants: limitation of the termination of tenancies

In principle, the loss of rent in the case of two consecutive dates entitles the property owner to terminate the contract for good cause. Since the liquidity of companies and of private households is severely restricted due to the corona crisis, the aim is to prevent tenants affected by the corona crisis from "losing the rented property due to accumulated payment arrears".

The new regulation therefore provides for a termination restriction in favour of the tenants. Accordingly, the proprietor may not terminate a lease for land or premises if the tenant is unable to pay rent in the period from 1 April 2020 to 30 June 2020 and the non-performance is due to the effects of the Corona crisis.

However, the obligation of the tenants to pay the rent remains in force. Other rights of termination, for example due to own use or due to serious misconduct on the part of the tenant, shall also remain unaffected. Not included in this provision is also the possibility of terminating the leasebased on rent arrears that have arisen in an earlier period or will arise in a later period.

The restriction on termination ends on September 30, 2022.

b) Extension of the rights to refuse performance

In case a debtor is unable to fulfil his contractual obligations due to the Corona pandemic, he can now refuse or suspend payments without suffering any legal disadvantages. This is intended to relieve debtors whose income has been reduced or lost as a result of the pandemic, as well as companies that are unable to meet their performance obligations - for example, if their supply chain has broken down,

employees cannot or are not allowed to appear for work, or because their performance has been temporarily prohibited.

The extension of the rights to refuse performance is limited to performance under a contract concluded before 8 March 2020 and only if the debtor is unable to perform the service as a result of the corona pandemic or if the performance of the service would jeopardise its existence.

The Federal Government has based its decision on the assumption that the restrictions on economic activity can be gradually abolished in the second half of 2020 at the latest and that the debtor will be able to fulfil its obligations again successively in the course of the third quarter of 2020. The extension of the rights to refuse performance therefore ends for the time being on 30 September 2020.

c) Deferral for borrowers

Borrowers who are unable to settle their loan claims due to the Corona crisis are protected against termination for a transitional period. To this end, the draft law provides for a deferral of six months for claims of the lender for repayment, interest or redemption payments. The regulation only applies:

- for loan agreements concluded before 15 March 2020
- and claims due between 1 April 2020 and 30 June 2020.

Again, the prerequisite is that the borrower has lost his income as a result of the Corona crisis, which means that it is not reasonable to expect the borrower to provide the payments owed.

d) Extension of the deadline for conversions

In addition, the German Transformation Act will also be amended. Notwithstanding Section 17 para. 2 sentence 4 of the Conversion Act, in 2020 it is sufficient for the admissibility of the registration if the balance sheet was prepared on a reference date which is not more than twelve months prior to the application. This means that until the end of the year, the regular closing balance sheet as of December 31, 2019 can still be used as the basis for the commercial register application for conversions (merger, demerger or similar). Previously, an eight-month deadline applied here, so that the application must be filed by the end of August at the latest. This change in the law also has a tax effect, as the balance sheet date of the submitted balance sheet represents the tax transfer date. Thus, under certain conditions, conversions can still be carried back to 31 December 2019 for tax purposes until the end of 2020.

e) Suspension of the obligation to file for insolvency

Even if substantial state financial aid is intended to support the restructuring of companies that have fallen into financial difficulties as a result of the Corona crisis, it can only be effective if there are appropriate amendments to the existing insolvency law provisions. For this reason, the bill suspends the obligation to file for insolvency until 30 September 2020. However, this only applies if the insolvency results from the Corona pandemic or if there are prospects of eliminating an existing illiquidity.

If the debtor is not insolvent on 31 December 2019, it is assumed that the insolvency results from the Corona Pandemic and that there are prospects of eliminating an existing illiquidity.

f) Facilitating resolutions

In addition, the bill also provides for simplifications in order to pass the necessary resolutions and remain capable of acting in the event of continuing restrictions on the possibility of holding meetings. Therefore, substantial temporary reliefs will be created for holding of general meetings of the stock corporation (AG), partnership limited by shares (KGaA), European company (SE), general meetings and representative meetings of the cooperative and general meetings of associations.

The main aspects of the temporary relief for the AG, KGaA and SE include the possibility of

- online participation in the Annual General Meeting without a corresponding authorisation in the Articles of Association;
- an Annual General Meeting without being present and with limited possibilities of rescission;
- the shortening of the notice period to 21 days;
- the authorization for the Management Board to make advance payments on the net profit, even without a provision in the Articles of Association;
- holding an Annual General Meeting within the fiscal year (extension of the previous eight-month period).

For cooperatives and associations, temporary reliefs are also created for holding meetings without physical presence or for passing resolutions outside meetings (without corresponding provisions in the articles of association).

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