

CORONAVIRUS OVERCOMING THE DIFFICULTIES

NEW LEGISLATION IN GERMANY DOWNSTREAM OF CORONAVIRUS

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While the measures against the spread of Coronavirus are well in force, Germany is already giving shape to legal mechanisms aimed at allaying the negative consequences of the social and economic shutdown.

On March 23, the Federal Cabinet enacted legislation to support and relieve the situation of hospitals, medical practitioners and healthcare institutions, especially in respect of loss of income and with the purpose to reduce bureaucratic obstacles ("*COVID19-Krankenhausentlastungsgesetz*"¹).

Furthermore, on March 25 the Bundestag passed a new law by procedure of urgency, the so-called "*Gesetz zur Abmilderung der Folgen der Covid-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht*"². The voting process needed to face a further challenge, given that a number of members, including Chancellor Angela Merkel, are under quarantine.

Taking the lead from the shutdown that now involves nearly the whole country, the law aims at granting financial relief for those who cannot comply with payment obligations. It deals with many different features, which are summarized below.

First, the law guarantees protection against the eviction of defaulting tenants. Overdue rents accrued from 01.04.2020 to 30.06.2020 will not constitute grounds for termination of the lease, if the default occurred in consequence of the COVID-19 pandemic. On the other hand, on-time payment obligations will remain effective. This applies to both private and commercial leases.

Second, a moratorium was introduced for debtors who cannot perform their obligations because of the effects of Coronavirus. For contracts concluded before March 8, payments and accessories can be delayed until June 30.

Borrowers, who are unable to pay interest as a consequence of COVID-19, can gain protection against default in the presence of delayed repayments until 6 months since the conclusion of the contract dating back to before March 15. Claims arising between 01.04.2020 and 30.06.2020 will be deferred.

¹ See <https://www.bundesregierung.de/breg-de/themen/coronavirus/covid19-krankenhaus-gesetz-1733614>.

² See <https://www.bundesregierung.de/breg-de/themen/coronavirus/regelungen-corona-1733380>;
<https://www.bundestag.de/dokumente/textarchiv/2020/kw13-de-corona-recht-688962>.

Moreover, aid for undertakings was provided. For entrepreneurs having become insolvent or financially distressed new insolvency rules will apply with a view to averting a huge wave of closures. This is achieved by suspending the obligation of filing for bankruptcy until September 30, provided the insolvency was a consequence of the Coronavirus crisis or some prospect of eliminating the state of illiquidity can be shown. The effects of Coronavirus will be presumed if the undertaking was solvent on December 31, 2019.

Besides, an extension of the suspension of criminal law proceedings for three months and ten days was introduced, and may be re-determined for up to one year, if a trial was interrupted due to measures taken to limit the spread of Coronavirus.

The first applications for aid have already been filed. A necessary requirement for a successful application will be a statutory declaration that the financial loss is caused by COVID-19.

To sum up, through these proposals the Federal Government is trying to react and find solutions for the problems that society will have to cope with in the very near future and probably for quite a long time.

Looking at the economic problems that Germany will have to face, a critical issue should be borne in mind. In fact, loosening legal requirements in order to simplify and accelerate proceedings involves a risk of abuse, as well as the problem of rounding up a huge number of public officers to examine and deal with the sheer volume of applications submitted. Also, while the quickness of aid is obviously a key-factor, high-speed decisions may result in a simplistic outcome. In any case, the problem is there and should be addressed under all the circumstances, albeit possibly in an imperfect way.

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