

Mannheim/Frankfurt/Munich, 27 March 2020



**Law
on the Mitigation of the Consequences
of the COVID-19-Pandemic in Civil, Insolvency and Criminal Procedure Law
dated 27 March 2020**

The German Parliament has resolved the following law:

Article 1

Law

on the temporary suspension of the insolvency application obligation and on the limitation of officers' liability in the case of an insolvency due to the COVID-19-Pandemic (COVID-19-Insolvency Suspension Law – COVInsAG)

Section 1

**Suspension of the Insolvency
Application Obligation**

The obligation to file a request for the opening of insolvency proceedings under section 15a of the Insolvency Statute and under section 42 subsection 2 of the Civil Code is suspended until 30 September 2020. This shall not apply insofar as the grounds for insolvency are not based upon the spreading of the SARS-CoV-2-virus (COVID-19 pandemic) or if no prospects exist to eliminate an existing insolvency. If the debtor was not insolvent as of 31 December 2019, it will be presumed that the grounds for insolvency are based on the consequences of the COVID-19-pandemic and prospects exist to overcome an existing insolvency. If the debtor is a natural person, section 290 subsection 1 number 4 of the Insolvency Statute shall apply provided that no refusal of discharge of residual debt shall be based on the fact of a delay in the opening of the insolvency proceedings between 1 March 2020 and 30 September 2020. Sentences 2 and 3 shall apply accordingly.

Section 2

Consequences of the suspension

- (1) Insofar as according to section 1 the obligation to file a request for the opening of insolvency proceedings has been suspended,

1. payments which are made in the proper course of business, in particular such payments, which are required for the continuation or resumption of the business operations or are necessary for the implementation of a restructuring concept, shall be considered as being made with the due care of a prudent businessman within the meaning of section 64 of the Limited Liability Companies Act, of section 92 of the Stock Corporation Act, of section 130a subsection 1 sentence 2, also in conjunction with section 177a sentence 1 of the Commercial Code and of section 99 sentence 2 of the Cooperatives Act;
 2. the repayment until 30 September 2023 of a new loan granted within the suspension period as well as the provision of guarantees to secure such loans shall not be deemed to be disadvantageous to the creditors; this shall also apply for the repayment of shareholders loans and payments upon claims out of transactions which have the economic effect of such a loan, however not with regard to securities provided for these; section 39 subsection 1 No. 5 and section 44a of the Insolvency Act shall insofar not apply in insolvency proceedings over the assets of the debtor which are applied for until 30 September 2023;
 3. the granting of credits and securities in the suspension period shall not be deemed a contribution contrary to public policy leading to a delay in the filing of insolvency proceedings;
 4. transactions which grant or facilitate the other party a security or satisfaction which such party was in this kind and at this time entitled to, are not contestable in the later insolvency proceedings; this shall not apply if it was known to the other party that the restructuring and financing measures of the debtor are not suitable to avoid the arisen insolvency. The same shall apply for
 - a) performances other than that those owed rendered in lieu of the performance due, or new obligations rendered for the purpose of satisfying the performance due;
 - b) payments by a third party rendered upon the instruction of the debtor;
 - c) the provision of a different security than initially agreed upon insofar as it is not more valuable;
 - d) the shortening of payment periods and
 - e) the granting of payment facilities.
- (2) Section 1 No. 2, 3 and 4 shall also apply for entrepreneurs which are not obliged to make a filing as well as for debtors which are neither insolvent nor overindebted.
- (3) Section 1 No. 2 and 3 shall also apply in the case of loans which have been granted by the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau) and its financing partners or from other institutions in the context of state aid programs established by reason of the COVID-19-pandemic even if the loan has been granted or security has been provided after the suspension period, and without limitation for their repayment.

Section 3

Grounds for the opening of insolvency proceedings in the case of creditor requests

For creditor requests for insolvency proceedings between 28 March 2020 and 28 June 2020, the opening of insolvency proceedings shall require that the grounds already existed on 1 March 2020.

Section 4

Delegated legislation

The Federal Ministry of Justice and Consumer Protection shall be authorized to, by legislative decree without the consent of the Federal Council, extend the suspension of the insolvency application obligation pursuant to section 1 and the provisions on the grounds for the opening of insolvency proceedings in the case of creditor requests pursuant to section 3 until 31 March 2021 at the latest, if this is warranted pursuant to continued demand for publicly available funds, continuing financing difficulties or other circumstances.

Article 2

Law on Measures in Company, Cooperative, Associations, Foundations and Ownership of Apartments and the Permanent Residential Right Acts to combat the effects of the COVID-19-pandemic

Section 1

Stock Corporations; Partnerships limited by shares; European companies (SE); Mutual insurance associations

- (1) The decisions on the participation of the stockholders in the general meeting by electronic communication pursuant to section 118 subsection 1 sentence 2 of the Stock Corporation Act (electronic participation), the cast of votes by means of electronic communication pursuant to section 118 subsection 2 of the Stock Corporation Act (postal vote), the attendance of members of the supervisory board by means of video and audio transmission pursuant to section 118 subsection 3 sentence 2 of the Stock Corporation Act and the allowance of video and audio transmission pursuant to section 118 subsection 4 of the Stock Corporation Act may also be resolved upon by the management board of the company without authorization by the by-laws or the rules of procedure.
- (2) The management board may decide that the meeting take place without physical presence of the stockholders or their authorized representative as a virtual meeting, insofar as
 1. the video and audio transmission takes place during the entire meeting,
 2. the exercise of voting rights of the stockholders by electronic communication (postal vote or electronic participation) as well as the granting of a power of attorney is possible,
 3. the stockholders have the right to ask questions through electronic communication,
 4. the stockholders who have exercised their voting right pursuant to No. 2, are in deviation from section 245 No. 1 of the Stock Corporation Act and under waiver of the requirement to appear in the general meeting granted the possibility to reject a resolution of the general meeting.

The management board shall at its own due and free discretion decide which questions it will answer; it may also require that questions must be submitted at the latest two days before the meeting by means of electronic communication.

- (3) In deviation from section 123 subsection 1 sentence 1 and subsection 2 sentence 5 of the Stock Corporation Act, the management board may decide that the general meeting will at the latest be convened on the 21. day before the day of the general meeting. In deviation from section 123 subsection 4 sentence 2 of the Stock Corporation Act, the proof of the shares held in companies listed on the stock exchange shall refer to the twelfth day before the general meeting and in the case of bearer shares of the company shall be received at the latest by the fourth day before the general meeting at the address specified in the invitation convening the general meeting, insofar as the management board has not foreseen a shorter period for the receipt of proof with the company; diverging provisions in the by-laws shall remain inapplicable. In the case of an invitation convening the general meeting with a shorter time period pursuant to sentence 1 the notification pursuant to section 125 subsection 1 sentence 1 of the Stock Corporation Act shall take place at the latest twelve days before the meeting and the notification pursuant to section 125 subsection 2 of the Stock Corporation Act shall take place to those registered in the share register on the twelfth day before the general meeting. In deviation from section 122 subsection 2 of the Stock Corporation Act, any demands for amendment in the foregoing case must be received by the company at least 14 days before the general meeting.
- (4) In deviation from section 59 subsection 1 of the Stock Corporation Act, the management board can without authorization in the by-laws decide to make an interim payment towards the net income pursuant to section 59 subsection 2 of the Stock Corporation Act to the stockholders. Sentence 1 shall apply accordingly for an interim payment on the payment of compensation (section 304 of the Stock Corporation Act) to external shareholders in the case of an inter-company agreement.
- (5) The management board can decide that the general meeting convenes within the financial year in deviation of section 175 subsection 1 sentence 2 of the Stock Corporation Act.
- (6) The decisions of the management board pursuant to sections 1 to 5 require the consent of the supervisory board. In deviation from section 108 subsection 4 of the Stock Corporation Act, the supervisory board may pass a resolution on its consent irrespective of the provisions

in the by-laws or the rules of procedure without physical presence of its members in writing, by telephone or by comparable means.

- (7) An action for avoidance of a resolution of the general meeting can notwithstanding the provisions of section 243 subsection 3 No. 1 of the Stock Corporation Act also not be based on violations of section 118 subsection 1 sentences 3 to 5, subsection 2 sentences 2 or subsection 4 of the Stock Corporation Act, the violation of form requirements for notifications pursuant to section 125 of the Stock Corporation Act as well as not on a violation of subsection 2, except in the case that intent of the company can be proven.
- (8) For companies organized in the legal form of a partnership limited by shares, the foregoing subsections shall apply accordingly. For a European company pursuant to Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1), as most recently amended by Council Regulation (EU) No. 517/2013 (OJ L 158, 10.6.2013, p. 1), the subsections 1 to 7 with the exception of subsection 5 shall apply accordingly. In a company pursuant to section 20 of the Law governing the implementation of the SE of 22 December 2014 (BGBl. I p. 3675), which was most recently amended by article 9 of the Law of 12 December 2019 (BGBl. I p. 2637) (Companies with monistic system), the decisions pursuant to the subsections 1 to 4 shall be made by the administrative organ; subsection 6 shall not apply to such a company.
- (9) Subsections 1 and 2, subsections 3 sentence 1 and 3 as well as subsections 4 to 7 shall apply accordingly to mutual insurance associations within the meaning of the Insurance Supervision Act.

Section 2 Limited Liability Companies

In deviation from section 48 subsection 2 of the Limited Liability Companies Act, resolutions of the shareholders may also be passed by the shareholders in text form or by written submission of votes also without the consent of all shareholders.

Section 3 Cooperatives

- (1) In deviation from section 43 subsection 7 sentence 1 of the Cooperatives Act, resolutions of its members may also be passed in writing or electronically if this is not explicitly provided for in the by-laws. The management board in this case must ensure that the minutes pursuant to section 47 of the Cooperatives Act includes a register of the members which participated in the resolution. For each member which participated in the resolution, the type of voting must be recorded. An action for avoidance of a resolution of the general meeting can notwithstanding the provisions of section 51 subsection 1 and 2 of the Cooperatives Act not be based on a violation of the law or the membership rights which are due to technical disruptions in connection with the resolution pursuant to sentence 1, except in the case the cooperative can be accused of intent or gross negligence.
- (2) In deviation from section 46 subsection 1 sentence 1 of the Cooperatives Act, the convocation may take place on the internet on the website of the cooperative or by direct contact through text form.
- (3) In deviation from section 48 subsection 1 sentence 1 of the Law on Cooperatives the approval of the annual financial statements may also be resolved by the supervisory board.
- (4) The management board of a cooperative may, with the consent of the supervisory board, pursuant to its due discretion make an interim payment on a payment of the credit to be expected when apportioning assets and liabilities of a departing member or on an expected dividend payment to a member; section 59 subsection 2 of the Stock Corporation Act shall apply accordingly.
- (5) A member of the management board or the supervisory board of a cooperative shall remain in office even after expiry of his/her term of office until the appointment of his/her successor in office. The number of members of the management board or the supervisory board of a cooperative may be below the minimum number provided by law or by the by-laws.

- (6) Meetings of the management board or the supervisory board of a cooperative as well as joint meetings of the management and the supervisory board can also take place without provisions providing for such in the by-laws or rules of procedure by circular procedure in text form or as a video or audio conference.

Section 4
Transformation Law

In deviation from section 17 subsection 2 sentence 4 of the Transformation Act, it shall suffice for the permissibility of the entry, if a balance sheet is provided which references a cut-off date at the maximum twelve months preceding the date of application.

Section 5
Associations and Foundations

- (1) A member of the management of an association or a foundation shall remain in office even after expiry of his term until his/her dismissal or until an appointment of his/her successor in office.
- (2) In deviation from section 32 subsection 1 sentence 1 of the Civil Code the board may without authorization by the by-laws enable the association members to
 1. participate in the general meeting without physical presence at the place of the meeting and exercise member rights by electronic means or
 2. without participation in the general meeting cast their votes prior to the conduction of the meeting in writing.
- (3) In deviation from section 32 subsection 2 of the Civil Code, a resolution without a meeting of the members shall be effective if all members were involved, until the date set by the association at least half of the members have cast their vote in text form and the resolution was passed with the required majority.

Section 6
Community of Apartment Owners

- (1) The administrator within the meaning of the Law on the Ownership of Apartments and the Permanent Residential Rights last appointed shall remain in office until his/her dismissal or until the appointment of a new administrator.
- (2) The last financial plan resolved upon by the apartment owners shall continue to apply until the resolution of a new financial plan.

Section 7
Transitional Provisions

- (1) Section 1 shall only apply to general meetings and initial payments on the profits which take place in the year 2020.
- (2) Section 2 shall only apply to shareholders meetings and resolutions which take place in the year 2020.
- (3) Section 3 subsection 1 and 2 shall apply to general and representative meetings which take place in the year 2020, section 3 subsection 3 shall apply to the determination of annual financial statements which take place in the year 2020, section 3 subsection 4 shall apply to initial payments which take place in the year 2020, section 3 subsection 5 shall apply to appointments of management or supervisory board members expiring in the year 2020 and section 3 subsection 6 shall apply to meetings of the management or supervisory board of an cooperative or their joint meetings which take place in the year 2020.
- (4) Section 4 shall only apply to applications which are made in the year 2020.
- (5) Section 5 shall only apply to appointments of association or foundation management members expiring in the year 2020 and members meetings taking place in the year 2020.

Section 8
Delegated legislation

The Federal Ministry of Justice and Consumer Protection shall be authorized to, by legislative decree without the consent of the Federal Council, extend the application of sections 1 to 5 pursuant to section 7 until at the latest 31 December 2021, insofar as this is warranted due to ongoing effects of the COVID-19-pandemic in the Federal Republic of Germany.

Article 3

Changes to the Introductory Act
on Criminal Procedure

Section 10 of the Introductory Act on Criminal Procedure in the version published in the Federal Law Gazette Part III, outline number 312-1, which was most recently amended by Article 2 of the Law of 20 November 2019 (BGBl. p. 1724), shall read as follows:

“Section 10

Suspension of the interruption periods due to measures to prevent infectious diseases

- (1) Regardless of the duration of the main hearing, the interruption periods set out in section 229 subsection 1 and 2 of the Criminal Procedure Code shall be suspended as long as the main hearing cannot be carried out due to measures to prevent the spread of infections with the SARS-CoV-2-virus (COVID-19-pandemic), at the longest however for two months; these periods shall end at the earliest ten days after expiry of the suspension. The begin and end of the suspension shall be determined by non-appealable ruling of the court.
- (2) Section 1 shall apply accordingly for the period set out in section 268 subsection 3 sentence 2 of the Criminal Procedure Code for the pronouncement of judgment.”

Article 4

Further change to the Introductory Act
on Criminal Procedure

Section 10 of the Introductory Act on Criminal Procedure in the version published in the Federal Law Gazette Part III, outline number 312-1, which was most recently amended by Article 3 of this law, is repealed.

Article 5

Changes to the Introductory Act
to the Civil Code

Article 240 of the Introductory Act to the Civil Code in the version published on 21 September 1994 (BGBl. I p. 2494; 1997 I p. 1061), which was last modified by Article 2 of the law of 19 March 2020 (BGBl. I p. 541), shall read as follows:

“Article 240

Contractual provisions due to the COVID-19-pandemic

Section 1
Moratorium

- (1) A consumer shall have the right to refuse performance for the fulfillment of a claim which stands in connection with a consumer contract, which is a continuing obligation and was concluded before 8 March 2020 until 30 June 2020 insofar as the consumer, as a result of circumstances which are due to the spread of infections with the SARS-CoV-2-virus (COVID-

19-pandemic), is not able to perform without endangering his/her livelihood or the reasonable livelihood of his/her dependant family members. The right of the debtor to refuse performance exists with regard to all substantial continuing obligations. Substantial continuing obligations are those which are necessary to cover services for a reasonable existence.

- (2) A microenterprise within the meaning of the Commission Recommendation of 6 May 2003 2003/361/EC concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20.5.2003, p. 36) has the right to refuse performance for the fulfillment of a claim which stands in connection with a contract, which is a continuing obligation and was concluded before 8 March 2020 until 30 June 2020 insofar as a result of circumstances which are due to the COVID-19-pandemic,
 1. it is impossible for the enterprise to perform
 2. the enterprise is unable to perform without the enterprise endangering the economic foundation of its operations.

The right to refuse performance exists with regard to all substantial continuing obligations. Continuing obligations are those which are necessary to cover services for a reasonable continuation of its operations.

- (3) Subsection 1 shall not apply if the exercise of the right to refuse performance cannot be reasonably expected to be accepted by the creditor, as the non-performance would in turn endanger the economic foundation of his/her operations. Section 2 shall not apply, if the exercise of the right to refuse performance cannot be reasonably expected to be accepted by the creditor, as the non-performance would endanger his/her reasonable livelihood or the reasonable livelihood of his/her dependant family members or the economic foundation of his/her operations. If the right to refuse performance is excluded pursuant to sentences 1 or 2, the debtor shall have a termination right.
- (4) The subsections 1 and 2 shall further not apply in connection
 1. with lease and usufructuary lease agreements pursuant to section 2, with loan contracts as well as
 2. with employment claims.
- (5) Any agreement deviating from subsections 1 and 2 to the detriment of the debtor is ineffective.

Section 2 Restriction on the termination of lease and usufructuary lease agreements

- (1) The lessor may not terminate a lease agreement relating to leases of plots of land or premises solely for the reason that the lessee in the time period between 1 April 2020 and 30 June 2020 despite the rent being due does not make payment, insofar as the failure to make payment is due to the effects of the COVID-19-pandemic. The connection between the COVID-19-pandemic and the non-payment shall be demonstrated. Other termination rights shall remain unaffected.
- (2) Any agreement deviating from subsection 1 to the detriment of the lessee is ineffective.
- (3) Subsections 1 and 2 shall apply accordingly to usufructuary lease agreements.
- (4) Subsections 1 through 3 shall only apply until 30 June 2022.

Section 3 Provisions on credit rights

- (1) For consumer credit agreements which were concluded before 15 March 2020, it shall apply that claims of the lender to repayment, interest or regular payments which become due between 1 April 2020 and 30 June 2020 shall, from the date of their becoming due, be deferred for a period of three months, if the consumer has due to exceptional circumstances resulting from the spread of the COVID-19-pandemic, a shortfall in revenue which leads to that the performance due cannot be reasonably expected of him/her. Performance can in particular not be reasonably expected if his/her reasonable livelihood or the reasonable livelihood of his/her dependant family members is endangered. The consumer is entitled to continue to fulfill his/her contractual payments at the performance dates originally foreseen. Insofar as

he/she continues to make payments as contractually agreed, a deferral as provided for in sentence 1 shall not be considered to have taken place.

- (2) The contractual parties may conclude agreements deviating from subsection 1, in particular regarding partial payments, changes to interest and repayments or debt rescheduling.
- (3) Terminations of the borrower due to payment delays, due to significant deterioration in the financial situation of the consumer or the value of a security provided for the loan shall in the case of subsection 1 be excluded for the period of the deferral. Any agreement deviating to the detriment of the consumer shall be ineffective.
- (4) The lender shall offer the consumer a consultation with regard to the possibility of a consensual solution and with regard to possible assistance. For this, means of remote communication may also be used.
- (5) Insofar as a consensual solution for the period after 30 June 2020 is not reached, the contract period shall be extended by three months. The respective due date of the performance due under the contract shall be extended by this period. The lender shall provide the consumer with a copy of the agreement, in which the changes to the agreement agreed upon or in which the changes to the agreement which result from sentence 1 as well as from subsection 1 sentence 1 are taken into account.
- (6) Subsections 1 to 5 shall not apply insofar as a deferral or the exclusion of the termination right cannot reasonably be expected from the lender, taking into account all circumstances of the individual case including the changes in general life circumstances caused by the COVID-19-pandemic.
- (7) Subsections 1 to 6 shall apply accordingly for the adjustment of advancements and the recourse between joint debtors pursuant to section 426 of the Civil Code.
- (8) The Federal Government is authorized to change by legislative decree with the consent of the Federal Parliament and without the consent of the Federal Council the scope of application of subsections 1 to 7 and in particular include microenterprises within the meaning of article 2 subsection 3 of the Annex of the Commission Recommendation of 6 May 2003 2003/361/EC relating to the definition of micro, small and medium-sized enterprises.

Section 4 Delegated legislation

- (1) The Federal Government is authorized to, by way of legislative decree without the consent of the Federal Council
 1. to extend the period of refusal of performance pursuant to section 1 until 30 September 2020 at the latest,
 2. to extend the termination restriction in section 2 subsections 1 and 3 to outstanding payments which become due in the time period between 1 July 2020 to 30 September 2020 at the latest,
 3. to extend the time period in section 3 subsection 1 until 30 September 2020 and the extension of the contract period set out in section 3 subsection 5 until a maximum of twelve months,
 if it is to be expected that social life, the commercial activity of a large number of enterprises or the employment of a large number of people remains to be impaired by the COVID-19-pandemic to a considerable extent.
- (2) The Federal Government is authorized to change by legislative decree with the consent of the Federal Parliament and without the consent of the Federal Council the time periods set out in Section 1 beyond 30 September 2020 insofar as the impairments continue to exist after entry into force of the legislative decree pursuant to subsection 1."

Article 6 Entry into force, Expiry

- (1) Article 1 shall enter into force with effect as of 1 March 2020.
- (2) Article 2 shall enter into force on the day after its promulgation and shall expire upon the end of the day of 31 December 2021.

- (3) Article 3 shall enter into force on the day after its promulgation.
- (4) Article 4 shall enter into force on 27 March 2021.
- (5) Article 5 shall enter into force on 1 April 2020.
- (6) Article 240 of the Introductory Act to the Civil Code shall expire on 30 September 2022.

The translation of this law provided by [Kristina R. Lindenfeld](#), Rechtsanwältin and Senior Associate and [Dr. Martin Bürmann](#), Rechtsanwalt and Partner of the law firm RITTERSHAUS Rechtsanwälte Partnerschaftsgesellschaft mbB is solely a non-authoritative, convenience translation for its international clients and partner law firms.

The only binding version is the German version as publicized in the German Federal Law Gazette.

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