

/ Act on mitigation of the consequences of the COVID-19 pandemic in civil, insolvency and criminal procedure law

On 25 March 2020, the lower house of the German federal parliament (*Bundestag*) has enacted the **Act on mitigation of the consequences of the COVID-19 pandemic in civil, insolvency and criminal procedure law** ([BT-Drs. 19/18110 – in German](#)) with the aim of further mitigating the negative effects of the COVID-19 pandemic on companies and private individuals. The vote of the parliament was based on a voting recommendation ([BT-Drs. 19/18129 - in German](#)) and a report ([BT-Drs. 19/18158 - in German](#)) issued by the committee for law and consumer protection. On 27 March 2020 the upper house of the German federal parliament (*Bundesrat*) decided not to oppose the act. The act provides for temporary adjustments to legal requirements in civil, insolvency and criminal procedure law in order to avoid hardship cases that would otherwise arise as a result of the COVID-19 pandemic.

The regulations accompany measures already initiated by the German federal and state governments in the areas of [financing](#), [employment law](#) and [tax law](#).

Overview

➤ [Insolvency law](#)

The obligation to file for insolvency is suspended until 30 September 2020 under certain conditions. For the duration of the suspension of the obligation to file for insolvency, the prohibition of payments is relaxed to such an extent that management is able to maintain orderly business operations. Lenders do not have to fear any liability for immoral involvement in any delayed filing for insolvency if new loans are granted during the suspension period. In the case of loans granted under government aid programmes during the COVID-19 pandemic, this also applies to loans granted after the suspension period ends. At the same time, insolvency claw-back rights are considerably restricted. This applies in particular to the repayment of new loans granted during the suspension period and the collateral provided to secure these loans during the suspension period, but also to congruent and certain incongruent performance in general, irrespective of the type of underlying contractual relationship.

➤ Civil law

Performance refusal rights are introduced in favour of consumers and microenterprises. The landlord's right to terminate a lease due to late payment of rent is restricted for both residential and commercial rentals. In the case of consumer loan agreements, statutory deferrals of interest and principal payments under certain circumstances and restrictions on the lender's ability to terminate the agreement apply.

➤ Corporate law

Temporary simplifications apply for the adoption of resolutions by the various bodies of corporations, cooperatives, associations and apartment owners' associations, so that the temporary restrictions on gatherings do not lead to these entities being unable to act. Especially, as regards public companies (AG, KGaA, SE), the possibility of holding completely virtual 2020 annual general meetings is established for the first time (for more detailed information see: '[Corona crisis as a legal challenge for the annual general meeting 2020](#)'). In addition, the extension of the period pursuant to section 17(2) German Transformation Act (*Umwandlungsgesetz* – UmwG) to twelve months is intended to prevent transformation measures from failing due to the fact that the balance sheet has been prepared as of an effective date which is more than eight months before the application for entry in the register.

➤ Criminal procedure law

The criminal courts are allowed to interrupt a trial for a maximum of three months and ten days if it cannot be held due to measures to prevent the spread of the SARS-CoV-2-virus.

Entering into force

The amendments regarding insolvency law enter into force with retro-active effect as of 1 March 2020. The amendments regarding civil law (including rental law and lending law) enter into force on 1 April 2020. The amendments regarding corporate law and criminal procedure law enter into force on the day after their promulgation.

Insolvency law

1. Suspension of the obligation to file for insolvency (section 1 of the COVID-19 Act on the Suspension of Insolvency (COVID-19-Insolvenzaussetzungsgesetz)) (the “Insolvency Suspension Act”)

- The obligation to file for insolvency is initially suspended **until 30 September 2020**. The period can be extended until 31 March 2021 by a regulation issued by the German Federal Ministry of Justice and Consumer Protection.
- However, the suspension of the obligation to file for insolvency does not apply if the overindebtedness (i.e. balance-sheet insolvency) or illiquidity (i.e. cash-flow insolvency) is not based on the consequences of the COVID-19 pandemic or if there are no prospects of remedying a company’s illiquidity/inability to pay its debts. The legislator accommodates debtors to the extent that the two conditions being met (**link between overindebtedness and the COVID-19 pandemic and the prospects of remedying the illiquidity**) is always presumed if the debtor was not illiquid on 31 December 2019.
- Debtors who invoke the suspension of the obligation to file a petition for the commencement of insolvency proceedings should therefore be prepared to demonstrate and prove that the company was not illiquid on 31 December 2019. Then the statutory presumption applies that the conditions for suspending the obligation to file a petition for the commencement of insolvency proceedings are met.
- Although the statutory presumption can be rebutted, according to the explanatory memorandum of the Act, a rebuttal of the presumption is only intended to come into consideration in cases where there is no doubt that the COVID-19 pandemic was the cause of the insolvency and that the existing insolvency could not be successfully remedied. The explanatory memorandum states that the highest requirements have to be placed on a rebuttal of the statutory presumption.

2. Emergency management (section 2(1) no. 1 Insolvency Suspension Act)

- For certain legal forms, the occurrence of illiquidity or overindebtedness does not only trigger the obligation to file for insolvency but also generally a ban on payments directed at the management which is subject to personal liability, unless the payments are absolutely necessary to maintain business operations. Thus the suspension of the obligation to file a petition for the commencement of insolvency proceedings alone is not sufficient to avoid cases of hardship due to the COVID-19 pandemic.

- In order to allow companies to continue their business operations, the Act therefore provides that for the duration of the suspension of the obligation to file for insolvency **payments made during the orderly course of business** are deemed as being compatible with the rules of emergency management (e.g. section 64 sentence 2 German Limited Liability Companies Act (*GmbH-Gesetz* – GmbHG) and section 92(2) sentence 2 German Stock Corporation Act (*Aktiengesetz* – AktG)). This applies especially to:
 - Payments serving to **maintain or resume business operations** and
 - Payments serving to **implement a restructuring concept** and, thus, to realign the business during a restructuring process.
- This means: To be able to benefit from the presumption of admissible payments in the context of emergency management, the management has to prove that
 - the conditions for the suspension of the obligation to file a petition for the commencement of insolvency proceedings under Article 1 section 1 of the Act have been met and
 - the payments are made in the orderly course of business.

3. Restrictions on claw-back rights during insolvency and the senior ranking of shareholder loans (section 2(1) no. 2 and 4 Insolvency Suspension Act)

a) (Shareholder) loans and related collateral security

- The repayment of loans granted during the suspension of the obligation to file for insolvency (including trade credits and other forms of performance on credit terms) and the provision of collateral to secure such loans during the suspension period are considered not to be detrimental to creditors and are therefore not subject to insolvency claw-back rights. However, this presumption only applies to (re)payments made by 30 September 2023 at the latest. In the case of loans granted within the context of government aid programmes in connection with the COVID-19 pandemic, the Act goes even further: Insofar, the privileged treatment under the law regarding insolvency claw-back rights also applies to those loans which have been granted or secured after the end of the suspension period, regardless of when they are repaid (section 2(3) Insolvency Suspension Act).

- Moreover, the privileged treatment under the law regarding insolvency claw-back rights only applies to new loans, but not to mere extensions, renewals or economically comparable situations.
- Shareholder loans also benefit from these rules, but not collateral which is granted to secure shareholder loans. In addition, the new shareholder loans made available during the suspension of the obligation to file for insolvency will not be subordinated in insolvency provided that the petition for the commencement of insolvency proceedings is submitted by 30 September 2023. Sections 39(1) no. 5 and 44a German Insolvency Code (*Insolvenzordnung* – InsO) do not apply in this respect.

b) Congruent and certain incongruent performance

- In addition to payments to lenders, payments to other contractual partners are also privileged under the law regarding insolvency claw-back rights provided that these payments are made during the suspension of the obligation to file for insolvency and the performance is congruent (i.e. the performance matches the debt).
- Apart from congruent performance, the following cases of incongruent performance (which are explicitly listed) are privileged, too:
 - performance instead of or on account of performance;
 - assignments of debt instead of cash payments;
 - payments by a third party at the instruction of the debtor;
 - granting of collateral security other than the collateral security originally agreed, provided that such collateral security is not more valuable;
 - shortening of payment terms and
 - granting of accommodations for payment.

However, any other actions qualifying as incongruent performance remain subject to claw-back rights.

- Furthermore, insolvency claw-back rights may still apply if the contractual partner was aware that the debtor's restructuring and financing efforts were not suitable to eliminate the insolvency. According to the explanatory memorandum of the Act, this presupposes positive knowledge on the part of the contractual partner and the obvious unsuitability of the efforts.

4. Mitigation of liability risks for lenders (section 2(1) no. 3 Insolvency Suspension Act)

- From the perspective of existing lenders of a distressed debtor, the granting of a new loan and its collateralisation is associated with the risk of invalidity according to section 138 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) and the risk of liability according to section 826 German Civil Code towards the debtor’s creditors due to intentional damage contrary to public policy (*Sittenwidrigkeit*), unless the granting of the loan is based on a restructuring concept that meets the requirements of the case law of the German Federal Court of Justice. In order to increase legal certainty for the lenders of new financing in this respect, the Act provides for the following:
- If a lender provides a new loan to a debtor **during the period of suspension of the obligation to file for insolvency** and allows collateral to be provided to secure this loan, these measures are **not to be regarded as a contribution to the delay in filing for insolvency which is contrary to public policy**. According to the explanatory memorandum of the Act these privileges will apply to new loans as well as to prolongations and novations.
- In the case of **loans** granted within the framework of **State aid programmes launched due to the COVID-19 pandemic**, the Act goes even further: Insofar, the privileged treatment also applies to those loans granted or secured **after the end of the suspension period**, irrespective of when they are repaid (section 2(3) Insolvency Suspension Act).
- In principle, these provisions are very welcome, since otherwise lenders might not be prepared to grant new loans, despite the guarantees promised by the German federal government and the states in view of the risks remaining under sections 138 and 826 of the German Civil Code.

5. Extension to debtors who are not obliged to file for insolvency and who are not insolvent (section 2(2) Insolvency Suspension Act)

- The provisions in sections 2(1) no. 2, 3 and 4 Insolvency Suspension Act not only apply to debtors who are obliged to file for insolvency, but also to insolvent debtors who are not subject to the obligation to file for insolvency and moreover even to those debtors who are not insolvent at all. This is intended to ensure that new financing is also made available to these debtors, that their contractual partners continue business relations with them and that uncertainties are avoided.

6. Petitions for insolvency filed by creditors (section 3 Insolvency Suspension Act)

- The Act restricts the possibility of a creditor to force the commencement of insolvency proceedings over a debtor's assets for a period of three months in order to protect the financially distressed debtor.
- Provided that the debtor was not already insolvent (i.e. illiquid or overindebted) on 1 March 2020, a creditor may not file for the commencement of insolvency proceedings if it files its insolvency petition with the insolvency court within three months of the date on which the Act to Mitigate the Consequences of the COVID-19 Pandemic in Civil, Insolvency and Criminal Procedure Law is promulgated.
- The period within which third-party petitions only have a prospect of success if insolvency already existed on 1 March 2020 can be extended by the German Federal Ministry of Justice and Consumer Protection to 31 March 2021 by issuing a regulation.

7. Retroactive effect (Article 6(1) of the Act)

- The provisions governing insolvency law apply retroactively from 1 March 2020.

8. Wording of the Act

Article 1

Act on the temporary suspension of the obligation to file for insolvency and limitation of directors' and officers' liability in the event of insolvency caused by the COVID-19 pandemic

(COVID-19 Insolvency Suspension Act - COVInsAG)

Section 1

Suspension of the obligation to file for insolvency

The obligation to file for insolvency pursuant to section 15a of the German Insolvency Code (*InsO*) and section 42(2) of the German Civil Code (*BGB*) is suspended until 30 September 2020. The suspension shall not apply if the insolvency is not caused by the effects of the spread of the SARS-CoV-2-Virus (COVID-19 pandemic) or if no prospect of remedying existing illiquidity (*Zahlungsunfähigkeit*) exists. If the debtor was not illiquid on 31 December 2019, it is presumed that the insolvency is caused by the effects of the COVID-19 pandemic and that a prospect of remedying existing illiquidity exists. If the debtor is a natural person, section 290(1) no. 4 of the German Insolvency Code shall apply with the proviso that no refusal of discharge of residual debt may be based on the delay

in commencing insolvency proceedings in the period from 1 March 2020 to 30 September 2020. The second and third sentences of this section apply accordingly.

Section 2

Consequences of the suspension

- (1) Insofar as the obligation to file for insolvency is suspended pursuant to section 1,
1. payments that are made during the orderly course of business, in particular payments that are made to maintain or resume business operations or to implement a restructuring concept, are deemed to be in line with the due care of a prudent manager faithfully complying with his duties within the meaning of the second sentence of section 64 of the German Limited Liability Companies Act (*GmbHG*), the second sentence of section 92(2) of the German Stock Corporation Act (*AktG*), the second sentence of section 130a(1), also in conjunction with the first sentence of section 177a of the German Commercial Code (*HGB*) and the second sentence of section 99 of the German Cooperatives Act (*GenG*);
 2. the repayment by 30 September 2023 of any new loan granted during the suspension period, and the granting of security in respect of such loans during the suspension period are deemed not to disadvantage creditors; this also applies to the repayment of shareholder loans and payments in respect of claims arising from legal acts that correspond economically to such a loan, but not to any security granted in respect of such loans or claims; section 39(1) no. 5 and section 44a of the German Insolvency Code do not apply in respect of insolvency proceedings relating to the debtor's assets that were filed for by 30 September 2023;
 3. the granting of credit and the taking of security is not to be regarded as being a contribution contrary to public policy (*sittenwidrig*) to delayed filing for insolvency;
 4. legal acts which have granted or enabled the other party security or satisfaction, to which the other party was entitled in such a form and at such time cannot be clawed back in subsequent insolvency proceedings; this does not apply if the other party was aware that the debtor's restructuring and financing efforts were not suitable to remedy existing illiquidity. This applies accordingly to
 - a) performance in lieu of performance or on account of performance;
 - b) payments by a third party at the behest of the debtor;
 - c) the granting of security other than the security originally agreed, if such security is not more valuable;

- d) the shortening of payment terms and
 - e) the granting of payment relief.
- (2) Numbers 2, 3 and 4 of paragraph (1) also apply to companies that are not under obligation to file for insolvency as well as debtors that are neither illiquid nor overindebted.
- (3) Numbers 2 and 3 of paragraph (1) apply to loans granted by the *Kreditanstalt für Wiederaufbau* (German state-owned development bank) and its financing partners or other institutions in the context of state financial support programmes due to the COVID-19 pandemic, even if the loan is granted or security is taken for such after the suspension period ends and for an unlimited period of time for their repayment.

Section 3

Commencement of proceedings based on the petition of a creditor

In the case of petitions filed for the commencement of insolvency proceedings by creditors between [insert: date in accordance with Article 6(3) of this Act] and [insert: date three months after the date in accordance with Article 6(3) of this Act], the commencement of insolvency proceedings requires that the reason for commencing insolvency proceedings already existed on 1 March 2020.

Section 4

Authorisation to issue regulations

The German Federal Ministry of Justice and Consumer Protection is authorised to extend the suspension of the obligation to file for insolvency pursuant to Section 1 and the provision on the reasons for commencing insolvency proceedings in the case of petitions filed by creditors pursuant to Section 3 until 31 March 2021 by issuing a regulation without the consent of the *Bundesrat* (upper house of German Federal Parliament) if this is necessary due to ongoing demand for available public aid, ongoing financing difficulties or other circumstances.

Civil law

1. Right of consumers and microenterprises to refuse performance

- The Act provides that consumers are given the right to refuse performance to fulfil a continuing obligation based on a consumer contract concluded before 8 March 2020 until 30 September 2020. The right to refuse performance requires that due to circumstances triggered by the COVID-19 pandemic the consumer is not able to

render the performance without jeopardising the reasonable livelihood of the consumer or their dependants.

- A corresponding provision is also provided for in favour of microenterprises. Microenterprises are enterprises that employ fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million. During the same period, microenterprises will have the right to refuse performance under continuing obligations entered into before 8 March 2020 if due to circumstances arising from the COVID-19 pandemic the enterprise is unable to do so or the rendering of the performance would jeopardise the economic basis of the business.
- For both consumers and microenterprises, the right to refuse performance extends only to material continuing obligations. For consumers, these are those which are necessary to cover requirements for services of public interest. For microenterprises, these are those which are necessary to cover requirements for services for the appropriate continuation of their business operations.
- Neither the consumer's nor the microenterprise's rights to refuse performance are unlimited. The consumer's right to refuse performance does not apply if (temporarily) not rendering performance is unreasonable from the creditor's point of view, since not rendering performance would jeopardise the economic basis of its business. The microenterprise's right to refuse performance does not apply if (temporarily) not rendering performance is unreasonable from the creditor's point of view, as this would jeopardise the creditor's or their dependants' reasonable livelihood or the economic basis of their business.
- If the consumer's or microenterprise's right to refuse performance is excluded because it is unreasonable for the creditor, the consumer or microenterprise has a right of termination.
- The moratorium does not cover rental, lease and loan agreements (the Act contains special provisions on this) and employment contracts.
- The moratorium is mandatory and cannot be deviated from by way of contractual provisions.

2. Protection against notice of termination under rental law

- The Act provides that tenants who do not pay their rent in the period from April to June 2020 due to the COVID-19 pandemic cannot have their rental agreements terminated due to these payment arrears.

- The tenant must provide credible evidence that their payment arrears are due to the effects of the COVID-19 pandemic. The period from April to June 2020 can be extended by issuing a regulation.
- However, unlike other payment obligations, for which there is even an extensive moratorium, the rent payment obligation as such remains in place and enforceable.
- It is possible to terminate the rental agreement again from July 2022 onwards due to the arrears accumulated during this period. Landlords are therefore exposed to the risk that tenants will not meet their rent payment obligations in the next few months and will only make these payments years later.
- The Act does not result in any changes or relief regarding further obligations of the parties, such as the landlord's construction obligations under forward rental agreements or the tenant's operating obligations. In this respect, relief can only result from the generally applicable statutory provisions, such as those relating to default, impossibility and disruption of the basis of the transaction.
- This provision cannot be deviated from to the detriment of the tenant.

3. Changes to lending law

- The Act provides for relief for borrowers in the case of consumer loan agreements concluded before 15 March 2020. Lender's claims for repayment, interest and principal payments due between 1 April 2020 and 30 June 2020 will be deferred for a period of three months if the consumer cannot reasonably be expected to make payment due to a COVID-19 pandemic-related loss of income. However, there is no presumption that the loss of income is due to the COVID-19 pandemic. The consumer must demonstrate and prove this.
- During the deferral period, the lender may not terminate the loan on the grounds of late payment, significant deterioration in financial circumstances or the value of collateral provided for the loan.
- The term of the loan agreement extends by a further three months if no amicable agreement is reached between the lender and the consumer for the period after 30 June 2020. The extension also has the effect that the relevant due date of the contractual performance is postponed by three months.

- The provisions outlined above do not, however, apply if the lender cannot reasonably be expected to grant a deferral or to exclude termination, taking into account all circumstances of the individual case.

4. Wording of the Act

Article 5

Amendment of the Introductory Act to the German Civil Code

Article 240 of the Introductory Act to the German Civil Code (*EGBGB*) in the version published on 21 September 1994 (Federal Law Gazette I, page 2494; 1997 I page 1061), last amended by Article 3 of the Act of 21 December 2019 (Federal Law Gazette I page 2911), is worded as follows:

“Article 240

Contractual arrangements due to the COVID-19 pandemic

Section 1

Moratorium

- (1) Consumers have the right to refuse performance to satisfy a claim arising in connection with a consumer contract that is a continuing obligation and was entered into before 8 March 2020 until 30 June 2020 if, due to circumstances caused by the spread of infections with the SARS-CoV-2 virus (COVID-19 pandemic), rendering the performance would not be possible without jeopardising their adequate livelihood or that of their dependants. The right to refuse performance exists with respect to all material continuing obligations. Material continuing obligations are those necessary to maintain an adequate level of basic services (*angemessene Daseinsvorsorge*).
- (2) A microenterprise within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20 May 2003, page 36) has the right to refuse performance to satisfy a claim arising in connection with a contract that is a continuing obligation and was entered into before 8 March 2020 until 30 June 2020 if, due to circumstances caused by the COVID-19 pandemic,
 1. the enterprise is unable to render the performance or

2. rendering the performance would not be possible for the enterprise without jeopardising the economic basis of its business.

The right to refuse performance exists with respect to all material continuing obligations. Material continuing obligations are those necessary to cover services for the appropriate continuation of their business operations.

- (3) Paragraph (1) does not apply if exercising the right to refuse performance is unreasonable for the creditor on its part, since not rendering performance would jeopardise the economic basis of its business. Paragraph (2) does not apply if exercising the right to refuse performance is unreasonable for the creditor on its part, since not rendering performance would jeopardise its adequate livelihood or that of its dependants or the economic basis of its business. If the right to refuse performance in accordance with the first and second sentences is excluded, the debtor has a right of termination.
- (4) Paragraphs (1) and (2) do not apply in connection with
 1. rental and lease agreements in accordance with section 2, loan agreements and
 2. claims under employment law.
- (5) Paragraphs (1) and (2) may not be deviated from to the detriment of the debtor.

Section 2

Restrictions on the termination of rental and lease agreements

- (1) The landlord may not terminate a rental agreement for land or premises solely on the ground that the tenant fails to pay the rent in the period from 1 April 2020 to 30 June 2020 despite the fact that it is due if the failure to pay is caused by the effects of the COVID-19 pandemic. The connection between the COVID-19 pandemic and non-payment must be demonstrated to the satisfaction of the court (*glaubhaft machen*). Other termination rights remain unaffected.
- (2) Paragraph (1) may not be deviated from to the detriment of the tenant.
- (3) Paragraphs (1) and (2) are to be applied accordingly to lease agreements.
- (4) Paragraphs (1) to (3) are only to be applied until 30 June 2022.

Section 3

Lending regulations

- (1) For consumer loan agreements entered into before 15 March 2020, the lender's claims for repayment, interest or principal payments which become due between 1 April 2020 and 30 June 2020 are deferred by three months from the date on which they become due if the consumer suffers a loss of income due to the extraordinary circumstances caused by the spread of the COVID-19 pandemic, making the rendering of the performance owed unreasonable for the debtor. It is in particular unreasonable for the debtor to render the performance if the adequate livelihood of the debtor or the debtor's dependants is jeopardised. The consumer is entitled to continue making contractual payments on the originally agreed payment dates in the period specified in the first sentence. If the consumer continues to make payments in accordance with the agreement, the deferral regulated by the first sentence is deemed not to have been granted.
- (2) The contracting parties may enter into agreements that deviate from paragraph (1), in particular on possible partial payments, adjustments to interest and principal payments or debt rescheduling.
- (3) In the cases specified in paragraph (1) and until the deferral period has expired, the lender may not terminate the loan on the grounds of late payment, significant deterioration in financial circumstances of the consumer or the value of collateral provided for the loan. This may not be deviated from at the expense of the consumer.
- (4) The lender should offer the consumer a discussion about the possibility of a mutual agreement and possible support measures. Remote means of communication may also be used for this purpose.
- (5) If a mutual agreement is not reached for the period after 30 June 2020, the term of the agreement is extended by three months. The relevant due date of the contractual payments shall be postponed by this period. The lender shall provide the consumer with a copy of the contract which takes into account the agreed contractual changes or the contractual changes arising from the first sentence and the first sentence of paragraph (1).
- (6) Paragraphs (1) to (5) do not apply if the deferral or the exclusion of the termination right is unreasonable for the lender, taking into account all circumstances of the individual case, including the changes in general living conditions caused by the COVID-19 pandemic.
- (7) Paragraphs (1) to (6) apply accordingly to settlement and recourse among joint and several debtors according to section 426 of the German Civil Code.
- (8) The federal government is authorised to amend the personal scope of paragraphs (1) to (7) by way of a regulation with the consent of the *Bundestag* (lower house of

German Federal Parliament) and without the consent of the *Bundesrat* (upper house of German Federal Parliament) and in particular to include microenterprises within the meaning of Article 2(3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises in the scope of application.

Section 4

Authorisation to issue regulations

- (1) The federal government is authorised by way of a regulation without the consent of the *Bundesrat* (upper house of German Federal Parliament)
 1. to extend the duration of the right to refuse performance under Section 1 until 30 September 2020 at the latest,
 2. to extend the restriction on termination under Section 2 paragraphs (1) and (3) to payment arrears which have arisen in the period from 1 July 2020 until 30 September 2020 at the latest,
 3. to extend the period referred to in Section 3(1) until 30 September 2020 and the extension of the contractual term provided for in Section 3(5) to up to twelve months,

if it is to be expected that social life, the economic activity of a large number of companies or the employment of a large number of people will continue to be significantly affected by the COVID-19 pandemic.

- (2) The federal government is authorised to extend the periods referred to in paragraph 1 beyond 30 September 2020 by way of a regulation with the consent of the *Bundestag* (lower house of German Federal Parliament) and without the consent of the *Bundesrat* (upper house of German Federal Parliament) if the adverse effects continue to exist after the entry into force of the regulation referred to in paragraph (1)."

Company, cooperative, association and home ownership law

1. Amendments regarding corporate law

As far as changes in company, cooperative, association and home ownership law provided for in the Act on mitigation of the consequences of the COVID-19 pandemic in civil, insolvency and criminal procedure law are concerned, we refer to our publication on this subject at ['Corona crisis as a legal challenge for the annual general meeting 2020'](#).

2. Wording of the Act

Article 2

Act on measures in company, cooperative, association, foundation and home ownership law to combat the effects of the COVID-19 pandemic

Section 1

Stock corporations; partnerships limited by shares (KGaA); European companies (SE); mutual insurance companies

- (1) Decisions regarding the participation of shareholders in the general meeting by means of electronic communication in accordance with the second sentence of section 118(1) of the German Stock Corporation Act (*AktG*) (electronic participation), voting by means of electronic communication in accordance with section 118(2) of the German Stock Corporation Act (postal vote), the participation of members of the supervisory board by means of video and audio transmission in accordance with the second sentence of section 118(3) of the German Stock Corporation Act and the authorisation of video and audio transmission in accordance with section 118(4) of the German Stock Corporation Act may be made by the management board of the company even without authorisation by the articles of association or rules of procedure.
- (2) The management board can decide that the meeting is held without the physical presence of the shareholders or their representatives as a virtual general meeting, provided
 1. the entire meeting is transmitted via audio and video,
 2. shareholders can vote via electronic communication (postal vote or electronic participation) and grant power of attorney,
 3. shareholders are granted the opportunity to ask questions electronically,
 4. shareholders who have exercised their voting rights in accordance with no. 2, in deviation from section 245 no. 1 of the German Stock Corporation Act and waiving the requirement to appear at the general meeting, are given the opportunity to object to a resolution of the general meeting.

The management board decides at its due and free discretion as to which questions it answers and how; it may also require that questions are to be submitted electronically no later than two days before the meeting.

- (3) By way of derogation from the first sentence of section 123(1) and the second sentence of section 123(5) of the German Stock Corporation Act, the management board may decide to convene the general meeting no later than the twenty-first day before the date of the meeting. By way of derogation from the second sentence of section 123(4) of the German Stock Corporation Act, in the case of listed companies, the evidence of share ownership must relate to the beginning of the twelfth day prior to the meeting and, in the case of bearer shares in the company, must be received at the address specified for this purpose in the invitation convening the meeting by no later than the fourth day prior to the general meeting, unless the management board specifies a shorter period for the receipt of the evidence by the company in the invitation convening the general meeting; any provisions of the articles of association to the contrary are irrelevant. If the meeting is convened with a shorter period of notice pursuant to the first sentence, the notice pursuant to the first sentence of section 125(1) of the German Stock Corporation Act must be given at the latest twelve days before the meeting and the notice pursuant to section 125(2) of the German Stock Corporation Act must be given to those entered in the share register at the beginning of the twelfth day before the general meeting. Contrary to section 122(2) of the German Stock Corporation Act, requests for additions to the agenda must be received by the company at least fourteen days prior to the meeting in the aforementioned case.
- (4) By way of derogation from section 59(1) of the German Stock Corporation Act, the management board can decide without authorisation by the articles of association to pay an interim dividend from the net income to shareholders in accordance with section 59(2) of the German Stock Corporation Act. The first sentence applies accordingly for any advance payment on the compensation payment (section 304 of the German Stock Corporation Act) to outside shareholders within the framework of an inter-company agreement.
- (5) The management board can decide by way of derogation from the second sentence of section 175(1) of the German Stock Corporation Act that the general meeting takes place within the financial year.
- (6) The decisions of the management board in accordance with paragraphs (1) to (5) require the consent of the supervisory board. By way of derogation from section 108(4) of the German Stock Corporation Act, the supervisory board may, notwithstanding the provisions of the articles of association or the rules of procedure, adopt the resolution on consent in writing, by telephone or in a comparable manner without the physical presence of the members.
- (7) Irrespective of the provision in section 243(3) no. 1 of the German Stock Corporation Act, an action for avoidance of a resolution adopted by the general

meeting may also not be based on breaches of the third to fifth sentence of section 118(1), the second sentence of section 118(2) or section 118(4) of the German Stock Corporation Act, the breach of the formal requirements placed on notifications in accordance with section 125 of the German Stock Corporation Act and not on any breach of paragraph (2), unless the company can be proven to have acted intentionally.

- (8) The above paragraphs shall apply accordingly to companies which have the legal form of a partnership limited by shares (*KGaA*). In the case of a European company under Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, page 1), as last amended by Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p. 1), paragraphs (1) to (7), with the exception of paragraph (5), shall apply accordingly. In a company in accordance with section 20 of the SE Implementation Act of 22 December 2004 (Federal Law Gazette I page 3675), which was last amended by Article 9 of the Act of 12 December 2019 (Federal Law Gazette I page 2637), (company with a one-tier system), the decisions in accordance with paragraphs (1) to (4) shall be taken by the administrative board; paragraph (6) shall not apply to such a company.
- (9) Paragraphs (1) and (2), the first and third sentences of paragraph (3) and paragraphs (4) to (7) shall apply accordingly to mutual insurance companies within the meaning of section 171 of the German Insurance Supervision Act (*VAG*).

Section 2

Limited liability companies

By way of derogation from section 48(2) of the German Limited Liability Companies Act (*GmbHG*), resolutions of the shareholders may be adopted in text form or by written casting of votes even without the consent of all shareholders.

Section 3

Cooperatives

- (1) By way of derogation from the first sentence of Section 43(7) of the German Cooperatives Act (*GenG*), resolutions of the members may also be passed in writing or electronically if this is not expressly permitted in the articles of association. In this case, the management board must ensure that the minutes pursuant to section 47 of the German Cooperatives Act are accompanied by a list of the members who participated in the adoption of the resolution. The type of voting must be noted for

each member who participated in the adoption of the resolution. Notwithstanding the provisions of Article 51(1) and (2) of the German Cooperatives Act, an action for avoidance of a resolution of the general meeting cannot be based on breaches of the law or of the rights of members which are due to technical faults in connection with the adoption of the resolution pursuant to the first sentence, unless the cooperative can be accused of intent or gross negligence.

- (2) By way of derogation from the first sentence of section 46(1) of the German Cooperatives Act, the meeting may be convened online on the cooperative's website or by direct notification in text form.
- (3) By way of derogation from the first sentence of section 48(1) of the German Cooperatives Act, the annual financial statements may also be adopted by the supervisory board.
- (4) With the consent of the supervisory board, the management board of a cooperative may, at its due discretion, make an advance payment on an expected credit balance payment of a retired member or an expected dividend payment to a member; section 59(2) of the German Stock Corporation Act (*AktG*) shall apply accordingly.
- (5) A member of the management board or the supervisory board of a cooperative remains in office even after expiry of his term of office until a successor is appointed. The number of members of the management board or the supervisory board of a cooperative may be less than the minimum number required by law or the articles of association.
- (6) Meetings of the management board or the supervisory board of a cooperative as well as joint meetings of the management board and the supervisory board may also be held by way of circular communication in text form or by telephone or video conference even without a basis in the articles of association or in the rules of procedure.

Section 4

Transformation regulations

By way of derogation from the fourth sentence of section 17(2) of the German Transformation Act (*UmwG*), it is sufficient for the admissibility of the registration if the balance sheet has been drawn up as of an effective date not more than twelve months prior to the application.

Section 5

Associations and foundations

- (1) A member of the management board of an association or foundation remains in office even after the expiry of his term of office until he is dismissed or until a successor is appointed.
- (2) By way of derogation from the first sentence of section 32(1) of the German Civil Code (*BGB*), the management board may enable members of the association even without authorisation based on the articles of association
 1. to participate in the general meeting without being physically present at the meeting location and to exercise membership rights by way of electronic communication or
 2. without participating in the general meeting, to cast their votes in writing before the general meeting is held.
- (3) By way of derogation from section 32(2) of the German Civil Code, a resolution is valid without a meeting of the members if all members have participated, at least half of the members have cast their votes in text form by the deadline set by the association and the resolution has been adopted with the required majority.

Section 6

Homeowners' associations

- (1) The most recently appointed property manager within the meaning of the German Apartment Owners Act (*WEG*) remains in office until he is dismissed or until a new property manager is appointed.
- (2) The most recent budget plan adopted by the homeowners remains valid and in place until a new budget plan is adopted.

Section 7

Transitional provisions

- (1) Section 1 only applies to general meetings or interim dividends from the net income that take place in 2020.
- (2) Section 2 only applies to shareholders' meetings and resolutions that take place or are adopted in 2020.

- (3) Section 3(1) and 3(2) shall apply to general meetings and meetings of representatives which take place in 2020, section 3(3) shall apply to annual financial statements adopted in 2020, section 3(3) shall apply to interim dividends paid in 2020, section 3(5) shall apply to appointments of members of the management board or supervisory board which expire in 2020 and section 3(6) shall apply to meetings of the management board or supervisory board of a cooperative or their joint meetings which take place in 2020.
- (4) Section 4 only apply to registrations filed in 2020.
- (5) Section 5 only applies to appointments of association or foundation management board members expiring in 2020 and members' meetings of associations that are held in 2020.

Section 8

Authorisation to issue regulations

The Federal Ministry of Justice and Consumer Protection is authorised to extend the validity of sections 1 to 5 in accordance with section 7 by way of a regulation without the consent of the *Bundesrat* (upper house of German Federal Parliament) until 31 December 2021 at the latest if this appears necessary due to the continuing effects of the COVID 19 pandemic in the Federal Republic of Germany.

Criminal procedure law

1. Interruption of criminal main hearing

In order to allow the continuation of many criminal proceedings interrupted by the COVID-19 pandemic and thus avoid the stay and complete retrial of these trials, an additional suspension of the interruption period of a main hearing is provided for. The aim is to allow criminal courts to interrupt the main hearing for a maximum of three months and ten days if the trial cannot be held due to measures taken to prevent the spread of the COVID-19 pandemic. The new suspension regulation applies for one year.

2. Wording of the Act

Article 3

Amendment to the Introductory Act to the Code of Criminal Procedure

Section 10 Introductory Act to the Code of Criminal Procedure in the amended version published in the Federal Law Gazette Part III, Section 312-1, most recently amended by Article 2 of the Act of 20 November 2019 (Federal Law Gazette I page 1724), is worded as follows:

‘Section 10

Suspension of the interruption periods due to infection protection measures

- (1) Irrespective of the duration of the main hearing, the course of the periods of interruption referred to in section 229(1) and (2) of the Code of Criminal Procedure (*StPO*) shall be suspended as long as the main trial cannot be held due to protective measures to prevent the spread of infections with the SARS CoV-2 virus (COVID 19 pandemic), but for no longer than two months; these periods shall end at the earliest ten days after the end of the suspension. The beginning and end of the suspension is determined by the court by a non-appealable decision.
- (2) Paragraph 1 applies accordingly to the period specified in the second sentence of section 268(3) of the Code of Criminal Procedure for the pronouncement of the judgment.’

Article 4

**Additional amendment to the Introductory Act to the Code of Criminal Procedure of
[insert date of entry into force: state day and month of promulgation of this Act and the
year of the first year following promulgation]**

Section 10 Introductory Act to the Code of Criminal Conduct in the amended version published in the Federal Law Gazette Part III, Section 312-1, most recently amended by Article 3 of this Act, is repealed.

Entering into force and expiry

Wording of the Act

ARTICLE 6

Entry into force, expiry

- (1) Article 1 shall enter into force on 1 March 2020.

- (2) Article 2 shall enter into force on the day following its promulgation and shall expire at the end of 31 December 2021.
- (3) Article 3 shall enter into force on the day following its promulgation.
- (4) Article 4 shall enter into force on ... [insert date of entry into force]: the day and month of promulgation of this Act and the year of the first year following promulgation].
- (5) Article 5 shall enter into force on 1 April 2020.
- (6) Article 240 of the Introductory Act to the German Civil Code shall expire on 30 September 2022.