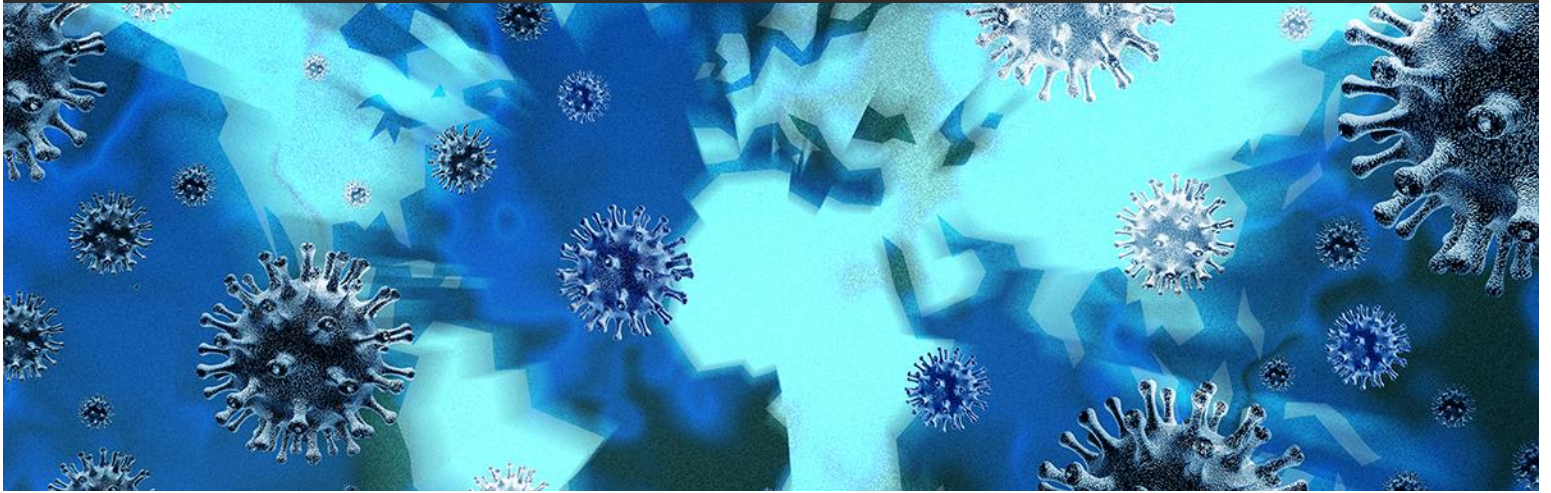


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



April 7, 2020

German Federal Legislative Package Issued to Mitigate Consequences of COVID-19 Pandemic

On 27 March 2020, a German law on further urgent measures to mitigate the economic consequences of the Coronavirus Disease (COVID-19) pandemic was passed. The measures include an emergency aid program for micro-enterprises, self-employed persons and freelancers of up to EUR 50 billion and an economic stabilization fund of EUR 600 billion, as well as a law to mitigate the consequences of the COVID-19 pandemic in civil law, insolvency law, and criminal proceedings.

The areas regulated in the new law concern:

- General contract law - Moratorium for consumers and micro-enterprises
- Landlord and tenant law - Temporary exclusion of termination in the event of late payment
- Insolvency law - suspension of the obligation to file for insolvency
- Corporate law - simplification of shareholder meetings and interim dividends
- Loan agreements - Temporary deferral for consumers
- Criminal procedural law - Facilitating the suspension of criminal proceedings

The contract law moratorium does not apply to employment contracts. For employment law FAQs, [see our summary here](#). In addition, tax reliefs are set forth in the [decree of the Federal Ministry of Finance of 19 March 2020](#) and the identical [decrees of the highest tax authorities of the federal states](#).

The main provisions of the parts on civil and insolvency law (excluding criminal procedural law) include:

General contract law - moratorium for consumers and micro-enterprises:

- Consumers may refuse performance (i.e., usually payments) under consumer contracts concluded before 8 March 2020 until 30 June 2020 if their own livelihood or that of their dependents would otherwise be at risk as a result of the COVID-19 pandemic.
- This also applies to so-called micro-enterprises (fewer than 10 employees and annual turnover or balance sheet below EUR 2 million) if they are unable to perform their obligations due to the COVID-19 pandemic or if their economic foundations would otherwise be jeopardized.
- This moratorium applies in each case only to continuous obligations for "essential services," i.e., those which are necessary to maintain an adequate livelihood (Daseinsvorsorge) or for the adequate continuation of the business, with the following exceptions: it does not apply to employment contracts (see above) or lease agreements and credit agreements, for which special regulations are introduced (see below).
- The newly created rights to refuse performance for consumers or micro-enterprises do not apply if this would in turn endanger the economic basis or livelihood of the other contracting party. In this case, the consumer or micro-enterprise may terminate the contract.
- The Federal Government is authorized to extend this moratorium by statutory order until 30 September 2020 if social life, economic activity, and employment continue to be significantly affected by the COVID-19 pandemic.

Landlord and tenant law - temporary exclusion of termination in the event of late payment:

- The landlord is not entitled to terminate a lease agreement solely on account of late payment by the tenant in the period from 1 April to 30 June 2020 if the delay is due to the effects of the COVID-19 pandemic. Termination for other reasons remains possible.
- The tenant must provide credible evidence of the connection between the COVID-19 pandemic and the delay in payment.
- The exclusion of termination is valid until 30 June 2022, i.e., if rental arrears from the period 1 April to 30 June 2020 are not settled by then, the contract may be terminated from July 2022 because of these arrears.
- The federal government is authorized to extend the rules by statutory order to rent arrears for the period 1 July 2020 to 30 September 2020 if social life, economic activity, and employment continue to be significantly affected by the COVID-19 pandemic.

Insolvency law - suspension of the obligation to file for insolvency:

- The statutory obligation to file for insolvency is suspended unless the insolvency is not due to the COVID-19 pandemic or there is no prospect of ending an existing inability to pay. It is assumed that these conditions for the suspension of the obligation to file for insolvency are met if the debtor was solvent at the end of 2019.

- Insolvency applications filed by creditors during a three-month period require that the reason for insolvency already existed on 1 March 2020. This moratorium applies regardless of whether the insolvency is related to the COVID-19 pandemic.
- The regulations limiting insolvency applications are flanked by further provisions so that, for example, payments made in the ordinary course of business during the period in which the obligation to file for insolvency is suspended will not constitute a breach of duty by the management. In addition, claw back rights in insolvency are restricted and the granting of credit and collateral during the period of suspension of the obligation to file for insolvency is facilitated. The following applies to shareholder loans granted during this period: in insolvency proceedings applied for by 30 September 2023, the statutory subordination of shareholder loans in insolvency is suspended.
- The amendments to insolvency law initially apply until 30 September 2020 but may be extended until 31 March 2021 by statutory order of the Federal Ministry of Justice and Consumer Protection. The restriction on the contestability under insolvency law of the repayment of loans and collateral granted during the suspension of the obligation to file for insolvency covers repayments up to 30 September 2023, whereby the financings/collateralisation by the German Bank for Reconstruction (*Kreditanstalt für Wiederaufbau*) and comparable development banks under state COVID-19 aid programs are given special privileges.

Corporate law - simplifications for shareholders' meetings and interim dividends:

- Annual general meetings of stock corporations (AG, KGaA, SE, and mutual insurance companies) can take place as pure online general meetings. This means that shareholders do not have to be able to participate physically. This will become possible even if the Articles of Association of the company do not provide for an online general meeting.
- The period for holding the Annual General Meeting is extended from eight to 12 months.
- The notice period for convening general meetings is shortened.
- The Management Board is given the opportunity to limit the shareholders' right to ask questions to those that have been submitted electronically two days before the Annual General Meeting.
- Interim dividends without a prior resolution of the Annual General Meeting are permissible also if this is not provided for in the company's Articles of Association.
- Shareholders' meetings of limited liability companies (GmbH) can pass resolutions in writing or in text form even if not all shareholders agree to this procedure.
- Similar facilitations as for the above-mentioned corporate forms are also created for cooperatives, associations and foundations (Genossenschaften, Vereine, Stiftungen), with differences in detail. In addition, for these as well as for condominium owners' associations, management boards or administrators shall remain in office until a successor is appointed.
- An extension of the deadline is introduced in the German Act on Mergers and other Transformations, so that the reporting date of the balance sheet which must be submitted for the transferring legal entity may be up to 12 (instead of the previous eight) months in the past.
- The corporate law regulations initially only apply in 2020, but the Federal Ministry of Justice and Consumer Protection can extend their validity until the end of 2021 by statutory order.

Loan agreements - temporary deferral for consumers:

- In consumer loan agreements concluded before 15 March 2020, interest and repayment of the principal amount shall not be due during the period 1 April to 30 June 2020 but shall be deferred for three months from the due date if performance of the agreement would be a severe hardship for the consumer due to a loss of income as a result of the effects of the COVID-19 pandemic.
- During this deferral period, terminations due to non-payment, or due to significant deterioration in the financial circumstances of the consumer or the value of a security are excluded.
- Unless the lender and consumer agree otherwise by 30 June 2020, the term of the loan shall be extended by three months and maturities of payment claims under the loan agreement shall be postponed accordingly.
- The provisions in favor of the consumer shall not apply if they would result in a severe hardship for the lender in the specific circumstances.
- The federal government is authorized to extend the personal scope of the regulations by statutory order, in particular to micro-enterprises, and to extend the deferral of payment claims under consumer loan agreements until 30 September 2020 and the term of the agreements up to 12 months if social life, economic activity and employment continue to be significantly impaired by the COVID-19 pandemic.

Parts of the law entered into force on 1 March 2020, with the remaining parts entering into force between 27 March and 1 April 2020.

This GT Alert is limited to non-U.S. matters and law.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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