Real Estate Tax Services News
Keeping you informed

Germany – March 2020

German government releases draft bill to mitigate economic disruption from COVID-19 pandemic

In brief

The German government has released a draft bill targeted at mitigating the economic fallout from the ongoing coronavirus (COVID-19) pandemic. In particular, the bill seeks to relax requirements in German insolvency, tenancy, company and consumer law to increase flexibility for businesses as they try to mitigate the operational and financial disruption created by the crisis.

Draft bill to mitigate impact of COVID-19 Pandemic

On 23 March 2020, the German Federal Cabinet issued draft legislation to introduce a range of measures aimed at alleviating the economic strain the COVID-19 pandemic is creating for businesses.

The proposed bill would ultimately relax requirements in several areas to prevent businesses facing short-term liquidity challenges from unnecessarily entering into insolvency, as measures introduced to slow the outbreak create significant operational disruption.

With approval targeted for this week, the draft bill is anticipated to take effect at the end of March with the main changes relevant to the real estate industry as follows:

- Deferral of obligations in long-term contracts for consumers and small businesses
- Protection for tenants in default against termination of lease agreements
- Moratorium regarding consumer loan agreements

Deferral of obligations in long-term contracts

The draft bill proposes that there be a deferral of obligations under long-term contracts entered into by consumers or small businesses ("*Kleinstunternehmen*") before 8 March 2020 to 30 June 2020, of which the performance, as a result of the COVID-19 pandemic, would not be possible without significantly jeopardising the ongoing operations of the business. This deferral will only apply to long-term contracts under which the services are considered as essential (e.g. necessary for the continuation of the business). Separate rules would also apply to lease and loan agreements.

Limitation on the termination of lease agreements

According to the draft bill, landlords of residential or commercial property will not be entitled to terminate the lease agreement if the tenant is unable to make rental payments in the period from April to June 2020 as a result of the COVID-19 pandemic. The tenant will be required to demonstrate that the non-payment is caused by the COVID-19 pandemic. This exception shall apply until the end of September 2022, by which point the affected tenants must have settled the outstanding rent in arrears.

The draft does not explicitly state whether and to what extent the tenant's payment obligation is to be reduced due to a defect of the leased premises or according to the principles of frustration of contract ("*Störung der Geschäftsgrundlage*"), for example where there are official closure orders.

Moratorium regarding consumer loan agreements

For consumer loan agreements concluded before 15 March 2020, a six-month moratorium shall apply to payments due between April and September 2020, where the consumer suffers a loss of revenue caused by the COVID-19 pandemic and it would consequently be unreasonable to expect the loan payments to be made. Terminations in this respect should be excluded until 30 September 2020.

Under the proposals, the moratorium should not apply to companies. However, it remains subject to discussion whether the moratorium will be extended, particularly in respect of small businesses ("*Kleinstunternehmen*").

The legislation would also enable the German government to extend the aforementioned regulations until 31 March 2021 or, in the case of loan agreements, to extend the contract term to 12 months.

Relaxation of requirements under insolvency law for short term insolvency

Among others, the changes if implemented in their current form would reduce the requirements for businesses to file for insolvency up until 30 September 2020 where the insolvency is either a result of the COVID-19 pandemic or the business otherwise has a chance to become solvent in this timeframe. For this purpose, it will generally be sufficient if a business can demonstrate it was in a solvent position at 31 December 2019.

To protect creditors, it will nonetheless remain possible for these to petition for insolvency where the conditions for insolvency were in existence at 1 March 2020.

Increased flexibility under German company law

In recognition of the social distancing measures introduced to slow the outbreak, the bill proposes changes are introduced that would allow companies to continue to operate their governance procedures during the crisis.

Specifically, the proposed changes would remove the requirement for physical attendance of general meetings for public limited companies ("*Aktiengesellschaften*") and enable these to hold general meetings online, provided specific requirements around video conferencing are met.

There is also a proposal to relax consents required for the resolutions of private limited companies, so that these can be made without consulting all shareholders or otherwise through ratification via written votes.

Our view

The COVID-19 pandemic is continuing to create unprecedented disruption for businesses as global governments introduce increasingly strict measures to slow the virus outbreak. As the associated financial consequences materialise, businesses will need to take a holistic approach in managing their liquidity pressures to avoid insolvency.

If implemented as proposed, businesses should look to make use of the increased flexibility brought about by the changes (and similar changes in other territories) to manage the challenges created by the crisis as well as understanding the position of their customers as reliefs are introduced.

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