

Übersetzung durch Ute Reusch

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Stand: Gesetz zur vorübergehenden Aussetzung der Insolvenzantragspflicht und zur Begrenzung der Organhaftung bei einer durch die COVID-19-Pandemie bedingten Insolvenz (COVID-19-Insolvenzaussetzungsgesetz - COVInsAG) vom 27. März 2020 (BGBl. I S. 569)  
Version information: Act to Temporarily Suspend the Obligation to File for Insolvency and to Limit Directors' Liability in the Case of Insolvency Caused by the COVID-19 Pandemic (COVID-19-Insolvenzaussetzungsgesetz – COVInsAG) of 27 March 2020 (Federal Law Gazette I, p. 569)

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## **Act to Temporarily Suspend the Obligation to File for Insolvency and to Limit Directors' Liability in the Case of Insolvency Caused by the COVID-19 Pandemic (COVID-19-Insolvenzaussetzungsgesetz – COVInsAG)**

Act to Temporarily Suspend the Obligation to File for Insolvency and to Limit Directors' Liability in the Case of Insolvency Caused by the COVID-19 Pandemic (COVID-19-Insolvenzaussetzungsgesetz – COVInsAG) of 27 March 2020 (Federal Law Gazette I, p. 569)

### **Section 1**

#### **Suspension of the obligation to file a request**

The obligation to file a request for insolvency under section 15a of the Insolvency Code (*Insolvenzordnung*) and under section 42 (2) of the Civil Code (*Bürgerliches Gesetzbuch*) is suspended until 30 September 2020. This does not apply where the insolvency is not a consequence of the spread of the SARS-CoV-2 virus (COVID-19 pandemic) or where there are no prospects of remedying the insolvency. Where the debtor was not illiquid on 31 December 2019, it is assumed that the insolvency is a consequence of the COVID-19 pandemic and that there are prospects of remedying the insolvency. If the debtor is a natural person, section 290 (1) no. 4 of the Insolvency Code applies, with the proviso that the refusal to discharge residual debt may not rely on a delay in the opening of insolvency proceedings in the period from 1 March 2020 to 30 September 2020. Sentences 2 and 3 apply accordingly.

### **Section 2**

#### **Consequences of suspension**

(1) Where the obligation to file a request for insolvency has been suspended in accordance with section 1,

1. payments which are made in the ordinary course of business, in particular those payments which serve to maintain or resume business operations or to implement a restructuring concept, are deemed to be consistent with the due care of a prudent director within the meaning of section 64 sentence 2 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), section 92 (2) sentence 2 of the Stock Corporation Act (*Aktiengesetz*), section 130a (1) sentence 2, also in conjunction with section 177a sentence 1, of the Commercial Code

(*Handelsgesetzbuch*) and section 99 sentence 2 of the Cooperative Societies Act (*Genossenschaftsgesetz*);

2. repayment, up until 30 September 2023, of a new credit which was granted during the period of the suspension and the provision of collateral to secure such a credit during the period of the suspension is deemed not to constitute prejudice to creditors; this also applies to repayment of shareholder loans and payments based on claims resulting from legal acts which are equal, in economic terms, to such loans, but not to their collateralisation; section 39 (1) no. 5 and section 44a of the Insolvency Code do not apply to insolvency proceedings against the debtor's assets if the request was filed before 30 September 2023;

3. credit granted and collateral provided during the period of the suspension are not deemed to be contributing, *contra bonos mores*, to the delayed filing of a request for insolvency;

4. legal acts which granted or enabled the other party to obtain collateral or satisfaction to which such party was entitled in that manner and at that time may not be avoided in subsequent insolvency proceedings; this does not apply where the other party was aware that the debtor's efforts to restructure and finance the company were not suited to remedying the insolvency which occurred. This applies accordingly to

- a) payments in lieu of performance or on account of performance;
- b) payments by a third party at the debtor's instruction;
- c) the furnishing of collateral other than that which was originally agreed if it is not of greater value;
- d) the shortening of the time allowed for payment and
- e) the relaxation of payment terms.

(2) Subsection (1) nos. 2, 3 and 4 also applies to companies which are not obliged to file a request and to debtors which are neither illiquid nor overindebted.

(3) Subsection (1) nos. 2 and 3 applies to credit granted by the Kreditanstalt für Wiederaufbau and its finance partners or by other institutions under government aid programmes launched on account of the COVID-19 pandemic, even when the credit is granted or collateralised after the end of the period of the suspension and without a time limit as to its repayment.

### **Section 3**

#### **Reason to open insolvency proceedings in creditors' requests for insolvency**

In the case of requests to open insolvency proceedings which are filed by creditors in the period from 28 March 2020 to 28 June 2020, the opening of insolvency proceedings is conditional upon the reason to open insolvency proceedings having already existed prior to 1 March 2020.

### **Section 4**

#### **Authorisation to issue statutory instruments**

The Federal Ministry of Justice and Consumer Protection is authorised, by way of statutory instrument not requiring the approval of the Bundesrat, to extend the period of suspension of the obligation to file a request for insolvency under section 1 and the rules concerning the reason to open insolvency proceedings in creditors' requests for insolvency under section 3 until no later than 31 March 2021 if this appears necessary due to the continuing demand for available public aid, ongoing financing difficulties or other circumstances.