

THE FEDERAL COUNCIL ADOPTED THE ORDINANCE ON INSOLVENCY MEASURES TO COMBAT THE CORONA CRISIS

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The ordinance of the Federal Council dated 16 April 2020 (COVID-19-Ordinance Insolvency) enters into force on 20 April 2020. The Federal Council, by taking targeted measures, intends to prevent bankruptcies due to Corona. On the one hand, the ordinance states a temporary relief from the obligation to submit a notice of insolvency. On the other hand, the possibility of a temporary and unbureaucratic so called COVID-19 moratorium for small and medium-sized enterprises (SMEs) shall be introduced. The common denominator in both regulations is the temporary nature and the pursuit of the objective to prevent those companies from bankruptcy, which experience liquidity difficulties only because of the Corona crisis.

Those companies, which were in good-standing, which means not overindebted, by 31 December 2019 and which have the prospect that the over-indebtedness can be resolved after the Corona crisis, shall be released from the duty to submit a notice of insolvency. As a concrete date for the prospect to remedy the over-indebtedness, the ordinance sets forth the 31 December 2020. The respective resolution of the board of directors must be substantiated in writing and documented. The audit of the interim balance sheet can be omitted.

If there is no prospect to remedy the over-indebtedness, it nevertheless can be applied for debt-restructuring moratorium according to the existing legal provisions. Though, the respective provisions were slightly eased on a temporary basis. The debt-restructuring moratorium application must not be filed together with a provisional recovery plan. Therefore, the examination of the financial restructuring ability is waived by the probate court. Furthermore, the total duration of the debt-restructuring moratorium may last for temporary six instead of four months.

The new instrument of the COVID-19 moratorium grants the SMEs a temporary deferment of three months by a rapid and unbureaucratic procedure without providing a recovery plan. It is assumed that the company was not over-indebted by 31 December 2019 or that subordinations in the full extent of the over-indebtedness exist. The COVID-19 moratorium can be extended once for another three months. The company, which claim the right of the COVID-19 moratorium, must set forth its financial situation

plausibly and substantiate it to the best of its ability. The probate court decides immediately upon the COVID-19 moratorium. The submission of the application for COVID-19 moratorium fulfils the legal obligations to submit a notice of insolvency. Generally, no administrator will be appointed. The granting and renewal of the COVID-19 moratorium will be publicly published and shall be communicated accordingly.

Any claims arising before the approval of the moratorium are subject to the COVID-19 moratorium. Exceptions are made for claims of the first class pursuant to article 219 para. 4 of the Debt Enforcement and Bankruptcy Act, i.e. wage claims and alimony demands. Claims, which are subject to the moratorium, may not be paid. In case the debtor undertakes to do so anyway, the probate court may initiate bankruptcy proceedings ex officio. The rights of the creditors shall be limited to the effect that for claims, which are subject to the COVID-19 moratorium, neither compulsory executions may be initiated nor continued and seizure and other precautionary measures are excluded. The debtor may continue his business activity, but may not perform any legal actions, which may affect the legitimate interests of the creditors or privilege a few creditors above others. In addition, restrictions apply with regard to the disposal or the pledge of the noncurrent assets by the debtor.