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Stand: Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht vom 27. März 2020 (BGBl. I S. 569)

Version information: Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law of 27 March 2020 (Federal Law Gazette I, p. 569)

## **Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law**

**of 27 March 2020**

The Bundestag has adopted the following Act:

### **Article 1**

#### **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)**

### **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.

### **Article 2**

#### **Act Concerning Measures Under the Law of Companies, Cooperative Societies, Associations, Foundations and Commonhold Property to Combat the Effects of the COVID-19 Pandemic**

### **Section 1**

#### **Stock corporations; public partly limited partnerships; European companies (SEs); mutual insurance companies**

(1) Decisions concerning the right of shareholders to participate in the general meeting by means of electronic communication in accordance with section 118 (1) sentence 2 of the Stock Corporation Act (*Aktiengesetz*) (electronic participation), to exercise the right to cast

their vote by means of electronic communication in accordance with section 118 (2) of the Stock Corporation Act (postal vote), the participation of members of the supervisory board by means of audio and video transmission in accordance with section 118 (3) sentence 2 of the Stock Corporation Act and provision for the general meeting to be broadcast by means of audio and video transmission in accordance with section 118 (4) of the Stock Corporation Act may be taken by the company's management board even without authority being granted therefor under the by-laws or rules of procedure.

(2) The management board may decide that the general meeting is to be held in the form of a virtual general meeting without the need for shareholders or their authorised representatives to be physically present, provided that

1. the broadcast by means of audio and video transmission encompasses the entire general meeting,
2. provision is made for shareholders to exercise their voting right by means of electronic communication (postal vote or electronic participation) and to grant a power of attorney,
3. shareholders are given the opportunity to ask questions by means of electronic communication,
4. shareholders who exercise their voting right in accordance with no. 2 are afforded the possibility of objecting to a resolution adopted by the general meeting by way of derogation from section 245 no. 1 of the Stock Corporation Act, the need to be physically present at the general meeting thus being waived.

The management board decides at its duty-bound, free discretion which questions it wishes to respond to; it may also stipulate that questions must be submitted by means of electronic communication no later than two days prior to the meeting.

(3) By way of derogation from section 123 (1) sentence 1 and (2) sentence 5 of the Stock Corporation Act, the management board may decide to convene the general meeting no later than the 21st day prior to the day of the general meeting. By way of derogation from section 123 (4) sentence 2 of the Stock Corporation Act, proof of shares held in companies listed on the stock exchange must refer to the start of the 12th day prior to the general meeting and must, in the case of bearer shares of the company, be sent to the address stated in the invitation convening the general meeting to arrive there no later than four days prior to the general meeting, unless the management board makes provision in its invitation convening the general meeting for a shorter period within which the company must be in receipt of that proof; deviating determinations made in the by-laws are irrelevant. Where an invitation convening a general meeting stipulates a shorter period than that set out in sentence 1, the notification referred to in section 125 (1) sentence 1 of the Stock Corporation Act must be made no later than 12 days prior to the general meeting and the notification referred to in section 125 (2) of the Stock Corporation Act must be made to the entity entered in the share register before the start of the 12th day prior to the general meeting. By way of derogation from section 122 (2) of the Stock Corporation Act, the company must, in the aforementioned case, be in receipt of any demands for amendments no later than 14 days prior to the general meeting.

(4) By way of derogation from section 59 (1) of the Stock Corporation Act, the management board may decide, even without being granted authority therefor under the by-laws, to make an interim payment towards the net income to shareholders pursuant to section 59 (2) of the Stock Corporation Act. Sentence 1 applies accordingly to an interim payment towards the payment of compensation (section 304 of the Stock Corporation Act) made to external shareholders under an inter-company agreement.

(5) The management board may decide, by way of derogation from section 175 (1) sentence 2 of the Stock Corporation Act, that the general meeting is to be held in the course of the financial year.

(6) The decisions of the management board as referred to in subsections (1) to (5) require the consent of the supervisory board. By way of derogation from section 108 (4) of the Stock Corporation Act, the supervisory board may pass resolutions pertaining to its consent in writing, by telephone or by other comparable forms, regardless of the rules set out in the by-laws or rules of procedure and without the need for its members to be physically present.

(7) Notwithstanding the rule set out in section 243 (3) no. 1 of the Stock Corporation Act, an action for avoidance of a resolution adopted by the general meeting may also not rely on breaches of section 118 (1) sentences 3 to 5, (2) sentence 2 or (4) of the Stock Corporation Act, on a breach of formal requirements in respect of notifications in accordance with section 125 of the Stock Corporation Act nor on a breach of subsection (2), unless the company can be proven to have acted with intent.

(8) Subsections (1) to (7) apply accordingly to companies established in the form of a public partly limited partnership (*Kommanditgesellschaft auf Aktien*). Subsections (1) to (7), with the exception of subsection (5), apply accordingly to European companies within the meaning of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1), as last amended by Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p. 1). The decisions referred to in subsections (1) to (4) are taken by the administrative board in the case of a company established in accordance with section 20 of the Act Implementing Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (*SE-Ausführungsgesetz*) of 22 December 2004 (Federal Law Gazette I, p. 3675), as last amended by Article 9 of the Act of 12 December 2019 (Federal Law Gazette I, p. 2637), (company with a one-tier system); subsection (6) does not apply to such companies.

(9) Subsections (1) and (2), subsection (3) sentences 1 and 3, and subsections (4) to (7) apply accordingly to mutual insurance companies within the meaning of section 171 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).

## **Section 2**

### **Limited liability companies**

By way of derogation from section 48 (2) of the Limited Liability Companies Act (*Gesetz betreffend Gesellschaften mit beschränkter Haftung*), shareholder resolutions may be taken, in text form or by submitting votes in writing, even without the consent of all the shareholders.

## **Section 3**

### **Cooperative societies**

(1) By way of derogation from section 43 (7) sentence 1 of the Cooperative Societies Act (*Genossenschaftsgesetz*), member resolutions may be passed in writing or electronically even where explicit provision has not been made therefor in the statutes. In such cases, the board of directors must ensure that a list of the members who were involved in passing the resolution is included with the transcript required under section 47 of the Cooperative Societies Act. The manner in which each member was involved in passing the resolution must be indicated. Notwithstanding the rules set out in section 51 (1) and (2) of the Cooperative Societies Act, an action for avoidance of a resolution adopted by the general meeting may not rely on a breach of this Act or of members' rights which are due to technical faults arising in connection with the passing of the resolution in accordance with sentence 1, unless the cooperative society can be accused of having acted with intent or gross negligence.

(2) By way of derogation from section 46 (1) sentence 1 of the Cooperative Societies Act, the notice calling a general meeting may be made via the Internet on the cooperative society's website or by direct notification in text form.

(3) By way of derogation from section 48 (1) sentence 1 of the Cooperative Societies Act, the annual accounts may also be adopted by the supervisory board.

(4) The cooperative society's board of directors may, at its duty-bound discretion and with the supervisory board's consent, make an interim payment towards a prospective

disbursement of the credit balance from the redemption of retired members' shares or make a prospective dividend payment to a member; section 59 (2) of the Stock Corporation Act applies accordingly.

(5) Members of a cooperative society's board of directors or supervisory board remain in office even after the end of their term of office until such time as their successor has been appointed. The number of members of the board of directors or of the supervisory board may fall below the minimum number required by law or the statutes.

(6) Meetings of a cooperative society's board of directors or supervisory board and joint meetings of the board of directors and of the supervisory board may be held even without any provision therefor in the statutes or rules of procedure by way of circular in text form or by way of telephone or video conference.

#### **Section 4** **Law of transformations**

By way of derogation from section 17 (2) sentence 4 of the Transformation Act (*Umwandlungsgesetz*), it is sufficient, for the register entry to be permissible, for the balance sheet to have been prepared as per a cut-off date preceding the application for entry in the register by no more than 12 months.

#### **Section 5** **Associations and foundations**

(1) Members of the board of an association or of a foundation remain in office even after the end of their term of office until such time as they are withdrawn from office or their successor has been appointed.

(2) By way of derogation from section 32 (1) sentence 1 of the Civil Code (*Bürgerliches Gesetzbuch*), the board may, even without authority being granted therefor under the articles of association, also enable members of the association

1. to participate in the general meeting without being physically present at the meeting and to exercise their membership rights by means of electronic communication or

2. to cast their vote in writing before the general meeting is held without participating in the general meeting itself.

(3) By way of derogation from section 32 (2) of the Civil Code, a resolution is valid without a meeting of the members of an association if all the members were involved, at least half of the members cast their vote in text form by a date set by the association and the resolution was passed by the required majority.

#### **Section 6** **Commonhold associations**

(1) The last administrator within the meaning of the Commonhold Property Act (*Wohnungseigentumsgesetz*) to be appointed remains in office until such time as he or she is withdrawn from office or a new administrator has been appointed.

(2) The last business plan to have been adopted by the owners in a commonhold association continues to be valid until a new business plan has been adopted.

#### **Section 7** **Transitional regulations**

(1) Section 1 only applies to general meetings held and interim payments towards the net income made in 2020.

(2) Section 2 only applies to shareholder meetings held and resolutions passed in 2020.

(3) Section 3 (1) and (2) applies to general meetings and meetings of representatives held in 2020, section 3 (3) to annual accounts adopted in 2020, section 3 (4) to interim payments made in 2020, section 3 (5) to the terms of office of board or supervisory board members

which expire in 2020, and section 3 (6) to meetings of the cooperative society's board of directors or supervisory board or their joint meetings held in 2020.

(4) Section 4 only applies to register entries made in 2020.

(5) Section 5 only applies to the terms of office of members of the board of an association or of a foundation which expire in 2020 and to meetings of the members held in 2020.

### **Section 8**

#### **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 application of sections 1 to 5 pursuant to section 7 until no later than 31 December 2021 if this appears necessary on account of the continued impact of the COVID-19 pandemic in the Federal Republic of Germany.

### **Article 3**

#### **Amendment to the Introductory Act to the Code of Criminal Procedure**

Section 10 of the Introductory Act to the Code of Criminal Procedure (*Einführungsgesetz zur Strafprozeßordnung*) as consolidated and published in the Federal Law Gazette III, Index No. 312-1, as last amended by Article 2 of the Act of 20 November 2019 (Federal Law Gazette I, p. 1724), reads as follows:

#### **“Section 10**

##### **Suspension of periods of interruption due to interventions to prevent infections**

(1) Regardless of the duration of the main hearing, the running of the periods of interruption referred to in section 229 (1) and (2) of the Code of Criminal Procedure

(*Strafprozeßordnung*) is suspended for as long as the main hearing cannot be conducted on account of interventions to prevent the multiplication of infections caused by the SARS-CoV-2 virus (COVID-19 pandemic), but for no longer than two months; these periods expire no earlier than 10 days after the suspension has ended. The court determines the commencement and end date of the suspension in an incontestable decision.

(2) Subsection (1) applies accordingly to the period for the pronouncement of judgment as set in section 268 (3) sentence 2 of the Code of Criminal Procedure.”

### **Article 4**

#### **Further Amendment to the Introductory Act to the Code of Criminal Procedure as at 27 March 2021**

Section 10 of the Introductory Act to the Code of Criminal Procedure (*Einführungsgesetz zur Strafprozeßordnung*) as consolidated and published in the Federal Law Gazette III, Index No. 312-1, as last amended by Article 3 of this Act, is repealed.

### **Article 5**

#### **Amendment to the Introductory Act to the Civil Code**

Article 240 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) as published on 21 September 1994 (Federal Law Gazette I, p. 2494; 1997 I, p. 1061), as last amended by Article 3 of the Act of 21 December 2019 (Federal Law Gazette I, p. 2911), reads as follows:

#### **“Article 240**

##### **Contractual rules occasioned by the COVID-19 pandemic**

#### **Section 1**

##### **Moratorium**

(1) Consumers are entitled to refuse performance, until no later than 30 June 2020, of a claim in connection with a consumer contract which is a continuous obligation and which was concluded before 8 March 2020 where, as a consequence of circumstances which can be attributed to the multiplication of infections caused by the SARS-CoV-2 virus (COVID-19 pandemic), they would not be able to render performance without endangering their own

decent livelihood or that of their dependants. The right to refuse performance applies to all essential continuous obligations. Continuous obligations are 'essential' if they are necessary so that consumers are adequately supplied with services of general interest.

(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, 20.5.2003, p. 36) is entitled to refuse performance, until no later than 30 June 2020, of a claim in connection with contract which was concluded before 8 March 2020 where, as a consequence of circumstances which can be attributed to the COVID-19 pandemic,

1. the enterprise is unable to render performance or
2. the enterprise would not be able to render performance without endangering the economic foundations of its business undertaking.

The right to refuse performance applies to all essential continuous obligations. Continuous obligations are 'essential' if they are necessary to ensure a supply of services which is adequate to continue the business undertaking.

(3) Subsection (1) does not apply if it is, in turn, unreasonable to expect the creditor to accept the exercise of the right to refuse performance because non-performance would endanger the economic foundations of his or her business undertaking. Subsection (2) does not apply if it is unreasonable to expect the creditor to accept the exercise of the right to refuse performance because non-performance would endanger his or her own decent livelihood or that of his or her dependants or the economic foundations of his or her business undertaking. Where the right to refuse performance under sentence 1 or 2 is ruled out, the debtor has the right to terminate the contract.

(4) Further, subsections (1) and (2) do not apply in connection with

1. leases and usufructuary leases pursuant to section 2, loan agreements and
2. entitlements under labour law.

(5) Derogations from subsections (1) and (2) which are prejudicial to the debtor are not permissible.

## **Section 2**

### **Restrictions on the termination of leases and usufructuary leases**

(1) Landlords are not permitted to terminate leases for land or premises merely on the ground that the tenant does not make a rental payment in the period from 1 April 2020 to 30 June 2020 despite its being due, insofar as non-payment is due to the effects of the COVID-19 pandemic. The link between the COVID-19 pandemic and non-payment must be satisfactorily demonstrated. Other rights of termination remain unaffected.

(2) Derogations from subsection (1) which are prejudicial to the lessee are not permissible.

(3) Subsections (1) and (2) apply accordingly to usufructuary leases.

(4) Subsections (1) to (3) only apply until 30 June 2022.

## **Section 3**

### **Rules relating to the law concerning loans**

(1) As regards consumer loan agreements which were concluded before 15 March 2020, claims on the part of the lender to repayment and payments of interest or of the principal which are due in the period from 1 April 2020 to 30 June 2020 are granted a deferral of payment for a period of three months as from the due date if the consumer suffers a loss of revenue due to the extraordinary circumstances which have arisen as a consequence of the spread of the COVID-19 pandemic which means that it is unreasonable to expect the consumer to make the contractually agreed payment. Performance is, in particular, unreasonable if the consumer's own decent livelihood or that of his or her dependants is endangered thereby. During the period referred to in sentence 1, consumers may continue making payments on the originally agreed due dates. Where consumers continue to make

payments as contractually agreed, the deferral of payment set out in sentence 1 is deemed not to apply.

(2) The contracting parties are permitted to make arrangements which deviate from subsection (1), in particular concerning possible part payments, adjustments to repayments of interest or of the principal, or debt restructuring.

(3) Terminations of agreements on the part of the lender on account of a default in payment, due to a significant worsening of the consumer's financial circumstances or the value of the security rendered for the loan are ruled out in the case of subsection (1) up until the end of the period of deferral of payment. Derogations which are prejudicial to the consumer are not permissible.

(4) The lender is to offer the consumer a meeting to discuss the possibility of reaching an agreement and possible support measures. Means of distance communication may also be used to that end.

(5) Where no agreement can be reached for the period after 30 June 2020, the contract term is extended by three months. The due dates in respect of contractual performance are deferred for the duration of that period. The lender is to make a copy of the contract which incorporates the agreed contractual changes or the contractual changes resulting from sentence 1 and from subsection (1) sentence 1 available to the consumer.

(6) Subsections (1) to (5) do not apply if it is unreasonable to expect the lender to accept the deferral of payment or the preclusion of termination of the agreement after giving due consideration to all the circumstances of the individual case, including the changes to the general circumstances of life brought about by the COVID-19 pandemic.

(7) Subsections (1) to (6) apply accordingly to the adjustment of payments and recourse among joint and several debtors pursuant to section 426 of the Civil Code (*Bürgerliches Gesetzbuch*).

(8) The Federal Government is authorised, by way of statutory instrument requiring the approval of the Bundestag and not requiring the approval of the Bundesrat, to amend the group of persons to whom subsections (1) to (7) apply and, in particular, to include in their scope of application 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.

#### **Section 4**

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

(1) The Federal Government is authorised, by way of statutory instrument not requiring the approval of the Bundesrat,

1. to extend the duration of the right to refuse performance pursuant to section 1 until no later than 30 September 2020,

2. to extend the restriction as to terminations set out in section 2 (1) and (3) to outstanding payments arising in the period from 1 July 2020 and no later than 30 September 2020,

3. to extend the period set out in section 3 (1) until 30 September 2020 and the extension of the contract term set out in section 3 (5) to up to 12 months

where it is to be expected that social life, the economic activity of a large number of enterprises or the gainful employment of a large number of persons will continue to be significantly adversely affected as a consequence of the COVID-19 pandemic.

(2) The Federal Government is authorised, by way of statutory instrument requiring the approval of the Bundestag and not requiring the approval of the Bundesrat, to extend the periods set out in subsection (1) beyond 30 September 2020 if the adverse effects continue to exist even after the statutory instrument referred to in subsection (1) has entered into force."



**Article 6**  
**Entry into force, expiry**

- (1) Article 1 enters into force with effect from 1 March 2020.
- (2) Article 2 enters into force on the day following promulgation and ceases to have effect upon the expiry of 31 December 2021.
- (3) Article 3 enters into force on the day following promulgation.
- (4) Article 4 enters into force on 27 March 2021.
- (5) Article 5 enters into force on 1 April 2020.
- (6) Article 240 of the Introductory Act to the Civil Code ceases to have effect on 30 September 2022.