COVID-19: Additional governmental measures and adjustments to insolvency law to further ease the financial impact on companies

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Key takeaways:

- **The Federal Office of Justice is analysing the impact of the coronavirus crisis on the judicial system and planning procedures and measures to further ease the financial impact of the crisis on companies beyond the current set of implemented measures.**
- **The Federal Office of Justice proposes a three-stage model, including relaxing the board of directors' reporting obligations in the event of imminent overindebtedness and implementing a new COVID-19 debt deferral possibility; measures which would give companies an opportunity to reorganise and adapt to the new situation.**
- **However, the three-stage model of the Federal Office of Justice is merely a proposal. It remains to be seen if, how and when implementation would take place.**

On 1 April 2020, the Federal Office of Justice published plans to implement additional measures and make last minute adjustments to Swiss insolvency legislation. These are currently subject to public consultation. The Federal Council is yet to make a decision on the plans.

The Federal Council already decided to extend the judicial holidays and to suspend time limits during the period from 21 March 2020 until 19 April 2020 (see our legal update of 26 March 2020) and to stop all debt enforcement actions from 19 March 2020 until 19 April 2020 (see our legal update of 20 March 2020).

The Federal Office of Justice is proposing to implement a three-stage model:

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1. Direct financial support measures by the federal government
2. Relaxing the reporting obligations in the event of imminent overindebtedness (Art. 725 paragraph 2 of the Swiss Code of Obligations (CO))
3. Introduction of a special deferral procedure for smaller companies (so-called COVID-19 deferral)

Direct financial support measures

Individual companies, partnerships or legal entities domiciled in Switzerland that suffer from liquidity bottlenecks as a result of the economic effects of the coronavirus crisis may take out a bridge loan under the federal or cantonal support program (see our Legal Update of 27 March 2020).

Relaxing the board of directors' reporting obligations in the event of imminent overindebtedness

According to current provisions in the CO (in particular Art. 725 paragraph 2 CO), where there is good cause to suspect overindebtedness, a company's board of directors is obliged to prepare an interim balance sheet (at going-concern and liquidation values) and to have this interim balance sheet audited by a licensed auditor. If the interim balance sheet shows that the claims of the company’s creditors are not covered by its assets, the board of directors must notify the court, unless certain creditors are willing to subordinate their claims.

The Federal Office of Justice’s proposal aims at temporarily releasing the board of directors from the obligation to have the interim balance sheet audited by a licensed auditor and to notify the court (even if overindebtedness has been established), provided that there is a long-term prospect of restructuring the company's financials and avoiding overindebtedness.

Although the temporary release of the board of directors' duty is not a restructuring measure, it provides the board of directors with more time to initiate the restructuring of the company.

COVID-19 deferral

As a third measure, the Federal Office of Justice proposes to implement a standardised procedure allowing smaller companies to quickly and easily defer the payment of debts (so-called COVID-19 deferral). The purpose of the COVID-19 deferral would be to give the companies an opportunity to reorganise and adapt to the new situation. The COVID-19 deferral would be in addition to the existing rules concerning debt restructuring moratorium/composition procedures. The rules for obtaining a COVID-19 deferral would, however, be similar to the composition procedure.

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No legal or tax advice

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