

COVID-19: Federal Council implements additional measures and adjustments to insolvency legislation

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On 16 April 2020, the Federal Council implemented the measures aiming at preventing corona-related bankruptcies. The measures come into force on 20 April 2020 and are limited to six months.

At its meeting on 16 April 2020, the Federal Council implemented the measures proposed by the Federal Department of Justice and Police and amended the corresponding provisions in the Swiss insolvency legislation (see also our Legal Updates of [3 April 2020](#) and [9 April 2020](#)).

The ordinance, which was passed by the Federal Council on 16 April 2020 and will enter into force on 20 April 2020, particularly includes temporary relief with regard to the reporting obligations in the event of imminent overindebtedness (Art. 725 paragraph 2 of the Swiss Code of Obligations) and the implementation of a special COVID-19 moratorium for smaller companies. In addition, the Federal Council has taken measures to maintain the operation of the justice system. The measures are limited to a period of six months.

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), a company's board of directors is obliged to notify the bankruptcy court immediately in the event of imminent overindebtedness. The Federal Council has temporarily eased these reporting requirements moderately for companies that were financially healthy at the end of 2019 and where there is a prospect that the overindebtedness can be overcome after the corona crisis. The relaxing of the reporting obligation is linked to two conditions:

- The company must not already have been overindebted on 31 December 2019.
- There must be a prospect that the overindebtedness can be remedied by 31 December 2020.

The board of directors must provide adequate justification and documentation for its decision not to notify the bankruptcy court despite overindebtedness.

COVID-19 moratorium

The purpose of the newly implemented COVID-19 moratorium is to provide companies in corona-related liquidity bottlenecks with a simple procedure to obtain temporary relief for payment obligations. The prerequisite for a COVID-19 moratorium is that the company was not overindebted at the end of 2019. The initial term for the COVID-19 moratorium is three months and may be extended for a further three months.

Measures to maintain the operation of the justice system

On 16 April 2020, the Federal Council further specified the use of video and telephone conferences in civil procedures. This clarification serves in particular to guarantee the protection of personal data and data security as well as to ensure the documentation obligation of courts.

With respect to debt enforcement procedures, the Federal Council decided to temporarily suspend certain formal requirements in the service of documents (e.g. payment orders). For example, in certain cases, service is valid without explicit confirmation of receipt, provided that proof of delivery is provided (e.g. by means of "A-Post-Plus").

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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