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COVID-19: Latest developments on Swiss financial support measures

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Key takeaways

- The Federal Council resolved to request the Federal Assembly to double the total volume of federal bridging loans to a maximum of CHF 40 billion.
- The Cantonal Council of the canton of Zurich approved the cantonal bridging loan guarantee programme with a total volume of CHF 500 million.
- The Swiss National Bank issued an instruction sheet on its refinancing facility.
- FINMA released two new guidance documents (Guidance 02/2020 and Guidance 03/2020) on its newly introduced measures in connection with the COVID-19 crisis.

I. Update on the federal bridging loan guarantee programme

1. Chronology

On 26 March 2020, the announced programme for granting loans with joint and several guarantees to small and medium-sized enterprises (SMEs) came into force. It is based on Federal Council's ordinance on granting of credits with joint and several federal guarantees in response to the coronavirus (hereinafter also referred to as the "Ordinance"). The programme provides companies affected by the consequences of the coronavirus with guaranteed bridging loans of up to 10% of their turnover or a maximum of CHF 20 million. The coverage amounts to 100% for loans up to CHF 500,000 and to 85% for loans between CHF 500,000 and CHF 20 million (see legal update of 27 March 2020).

2. Increase of the total volume of bridging loans

Faced with the high demand, the Federal Council resolved at its meeting on 3 April 2020 to request the Federal Assembly to increase the total volume by CHF 20 billion to a maximum of CHF 40 billion. As of 2 April 2020, 76,034 bridging loans with an estimated total volume of CHF 14.3 billion had been concluded.

3. Anti-abuse measures

As a precautionary measure to prevent abuse, the Federal Council also decided to mandate the central office of the guarantee cooperatives to verify compliance of bridging loans with basic requirements and to check for multiple use of credits. Also, bridging loans are systematically checked by linking VAT and other data in order to verify the turnover figures provided. Finally, the Federal Department of Finance (FDF) has been instructed to submit possible options for tightening up the penal and/or liability provisions in the Ordinance.

II. Update on the bridging loan guarantee programme of the canton of Zurich

The financial support measures adopted by the Government Council of the canton of Zurich and approved retroactively by the Cantonal Council of the canton of Zurich on 30 March 2020 provide for a bridging loan guarantee programme with a total credit volume of CHF 500 million and 85% coverage. The programme was created for SMEs with up to around 250 employees and the main tax domicile in the canton of Zurich. It was designed as a subsidiary and supplementary measure to the federal programme. In particular, it should be used in cases of hardship, for example if an SME does not or only partially fulfils the criteria of the Ordinance or if the credits available under the federal programme are insufficient. In total, the amount secured by the Confederation and the canton may not exceed CHF 20 million per company. The interest rate corresponds to the rate applicable under the federal programme (currently 0.0% for loans up to CHF 500,000 and 0.5% for loans between CHF 500,000 and CHF 20 million).

III. Update on supplementary federal measures

1. Swiss National Bank

1.1. Refinancing facility

The SNB COVID-19 refinancing facility (CRF), introduced by the Swiss National Bank (SNB) shall enable banks to draw liquidity from the SNB in return for depositing collateral with the SNB. This collateral will be in the form of the guaranteed federal bridging loans or – at the discretion of the SNB – against other collateral it deems eligible. According to the SNB's instruction sheet, claims under the federal bridging loan programme are to be assigned in full to the SNB; in each case, only the guaranteed portion of the credit claim is considered to be the eligible amount. The interest rate will correspond to the SNB policy rate. The loan transaction will have no fixed term (with the SNB instead having a right to terminate upon 3 months' notice) and the bank will have the option to increase or decrease the size of the loan on a daily basis. The CRF is available to banks domiciled in Switzerland (including the Principality of Liechtenstein) that are connected to the SIC system. Thus, branches of foreign banks participating in the federal bridging loan programme are currently not entitled to make use of the CRF.

2. FINMA Guidance 02/2020

On 2 April 2020, FINMA released its Guidance 02/2020 in which it provides clarification and guidance on its newly introduced measures in connection with the COVID-19 crisis, namely:

2.1. Leverage ratio: Exclusion of central bank deposits

As a measure to supply liquidity to the real economy, FINMA temporarily allows banks to calculate the leverage ratio without deposits held at central banks. Thus, when calculating the leverage ratio in accordance with Article 46 of the Capital Adequacy Ordinance (CAO), deposits held at central banks in all currencies pursuant to margin nos. 5 and 7 of Annex 1 to FINMA Circular 2020/1 "Accounting – Banks" can currently be excluded. According to FINMA, this measure concerns approximately CHF 20 billion of Tier 1 capital, which will now be unrestricted and available. The capital freed up through this relief in the leverage ratio calculation may not be distributed. FINMA will reduce the capital relief for banks whose shareholders approved dividends or similar distributions relating to 2019 after 25 March 2020 by the amount of said distributions. FINMA also reserves the right to set further institution-specific limits on the permitted use of the released capital. This measure shall initially apply until 1 July 2020 with a possible extension if necessary.

2.2. Capital requirements for bridging loans

Another measure implemented by FINMA due to the COVID-19 crisis concerns the capital requirements for bridging loans. When calculating the minimum capital required, bridging loans provided by banks may be considered as credits guaranteed by the Confederation for the applicable level of coverage (i.e. 100% or 85%) and treated according to margin no. 311 of FINMA Circular 2017/7 "Credit risks – Banks". Thus, for 85% coverage, 15% of the claim is to be treated with the counterparty's risk weighting.

2.3. LCR calculation and CRF

A third FINMA COVID-19 measure allows for the inclusion of the CRF (see above) in the calculation of the liquidity coverage ratio (LCR). Thus, when determining the latter, no outflow has to be entered with respect to bridging loans for the part covered by the CRF. The CRF may be regarded as collateral with Level 1 high-quality liquid assets pursuant to margin no. 273 FINMA Circular 15/2 "Liquidity risks – Banks".

2.4. Exemptions relating to risk diversification

FINMA is also aware of the fact that increased margin payments to counterparties due to the COVID-19 crisis will cause the upper limit of 25% or 100% of Tier 1 capital as set out in Article 97 or 98 CAO to be exceeded. In order to grant banks more time to manage such positions, FINMA decided that the upper limit of 25% or 100% of Tier 1 capital as set out in Article 97 or 98 CAO may be exceeded temporarily to a certain extent as specified in Guidance 02/2020. This measure shall apply as of 31 March 2020 for cases where the upper limit is exceeded before 1 July 2020 and may be extended by FINMA if necessary.

2.5. IFRS 9

Finally, FINMA reminds banks applying the International Financial Reporting Standards (IFRS) to continue observing the requirements of IFRS 9 (expected credit loss approach). Furthermore, FINMA calls on the affected banks to take into account the "IFRS 9 and covid-19" document published by the IASB on 27 March 2020 and to make use of the flexibility provided by IFRS 9.

3. FINMA Guidance 03/2020

On 7 April 2020, FINMA published its second guidance with further simplifications for supervised institutions and certain clarifications regarding the banking sector. The simplifications concern the insurance sector and certain identification requirements under anti-money laundering regulation.

3.1. Insurance companies

FINMA is willing to approve requests from insurance companies for a temporary smoothing of the yield curves for various currencies, in order to reduce daily fluctuations of the Swiss Solvency Test (SST). In addition, FINMA is granting the insurance companies more time to submit their supervisory reporting to FINMA.

3.2. Simplified identification under the Anti-money Laundering Act

With regard to new openings of bank accounts that take place by 1 July 2020, FINMA is extending the 30-day period of Article 45 of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20) to 90 days if copies of identity documents are not authenticated. Furthermore, FINMA clarifies that with respect to the missing confirmation of authenticity, the COVID-19 crisis may be considered as an exceptional situation in the sense of Article 45 of the CDB 20, permitting new business relationships to be opened with a simple copy of an identity card in order not to interrupt the ordinary course of business.

3.3. Reduction of leverage ratio relief in the event of dividend distributions

With reference to Guidance 02/2020, FINMA now gives instructions on how to calculate the reduction of the leverage ratio relief for institutions required to perform such a reduction due to their dividend distributions.

3.4. Treatment of COVID-19 bridging loans in accounting and interest rate risk report

Finally, FINMA specifies the accounting treatment of COVID-19 bridging loans and their inclusion in the interest rate risk report.

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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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