



COVID-19: New law to prescribe moratorium, mandatory reduction of default interest and changes to insolvency law

2 April 2020

A new bill currently being debated by the Austrian parliament is set to introduce a variety of amendments to Austrian law, ranging from a moratorium on consumer/microenterprise loans, to a mandatory reduction of default interest, to certain changes in insolvency law. It may also – at least for now – do away with the requirement for physical meetings with notaries.

Health warning: The bill – which is expected to be passed during this weekend – may be subject to further amendments during the legislative process. Below is an outline of some of the key-issues which are currently being considered:

Moratorium on consumer/microenterprise loans

Loans granted to a consumer or a microenterprise (which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2m) which have been entered into prior to 15 March 2020 will be subject to a moratorium, if:

1. the consumer has suffered a loss of income due to the COVID-19 crisis as a result of which it cannot be expected to continue the debt service (e.g. because his/her reasonable maintenance would be threatened); or
2. the microenterprise is unable to continue its debt service or cannot be expected to continue its debt service without compromising the economic basis of its business as a result of the COVID-19 crisis.

The moratorium extends to any payments under the relevant loans (including principal and interest) which would otherwise fall due between 1 April 2020 and 30 June 2020. Any such payments are deferred for a period of 3 months from the original due date. Where the borrower has provided security in connection with a relevant loan for a limited period (only), such period will automatically be extended so that the lender will have the same time for enforcement after the secured obligation has fallen due which it would have had in the absence of a moratorium.

The borrower may continue to pay during the moratorium if it wishes to do so and may agree with the lender on different terms (noting that the loan will be automatically extended for 3 months if no agreement can be reached for the time after 30 June 2020). The lender may not terminate the loan on the grounds of non-payment or a material adverse change during the term of the moratorium.

No default interest in excess of 4%

Where a party under a contract (including B2B) entered into prior to 1 April 2020 fails to make a payment which falls due between 1 April 2020 and 30 June 2020 due to a

Your Team

Friedrich Jergitsch
Partner, GT Finance
T +43 1 51515 118
E friedrich.jergitsch@freshfields.com

Florian Klimscha
Partner, GT Finance
T +43 1 51515 122
E florian.klimscha@freshfields.com

Mathias Lehner
Principal Associate, GT Finance
T +43 1 51515 682
E mathias.lehner@freshfields.com

material impairment of its economic capacity as a result of the COVID-19 crisis, the other party may not claim contractually agreed default interest in excess of 4%. Further, such party would not be required to pay out-of-court enforcement costs.

No agreed penalties

Where a party under a contract (including B2B) entered into prior to 1 April 2020 defaults on an obligation due to a material impairment of its economic capacity as a result of the COVID-19 crisis or due to performance being impossible as a result of the (currently prevailing) restrictions on trading, the other party may not claim a contractually agreed penalty, irrespective of whether it was stipulated to apply irrespective of the obligor's fault or not.

No requirement to file for insolvency due to over-indebtedness during COVID-19 crisis

Where a company becomes over-indebted (*insolvenzrechtlich überschuldet*) after this new emergency law enters into force (i.e. presumably this weekend), the company (and its directors, respectively) will not be required to file for insolvency on the grounds of over-indebtedness (only) until 30 June 2020. As long as the company is not unable to pay its debts when they fall due (*zahlungsunfähig*), creditors may also not file for insolvency of the debtor on the grounds of over-indebtedness during this time.

If the company is still over-indebted after 30 June 2020, the directors will need to file for insolvency no later than the earlier of (i) the date falling 60 days after 30 June 2020 or (ii) the date falling 120 days after the date on which the company became over-indebted.

Restrictions on claw-back of short-work (Kurzarbeit) related loan repayments

In situations in which a bridge loan has been granted for the purposes of pre-funding short work measures (*Kurzarbeit*) in connection with COVID-19 during the period of time in which the obligation of the borrower to file for insolvency based on over-indebtedness has been deferred (see above) and is subsequently repaid immediately after receipt of the short-work payments from the Austrian labour service agency (*AMS*), the bridge loan will not be subject to claw-back in accordance with s.31 of the Austrian insolvency code, provided (i) the loan is unsecured and (ii) the lender was not aware of the borrower's inability to pay (*Zahlungsunfähigkeit*).

No repayment restriction for certain capital-substituting shareholder loans

Unsecured shareholder loans with a maximum maturity of 120 days granted and disbursed until 30 June 2020 will not be subject to a repayment restriction under the Austrian capital substitution act (*EKEG*), even when they would otherwise qualify for the purposes of *EKEG*.

Notarial deeds and certification

Where a notarial deed (*Notariatsakt*) or a certification (*öffentliche Beglaubigung*) is required in connection with a transaction, a statement or a factual matter of legal relevance, notaries may use electronic communication to perform their services.

This amendment – which applies until 31 December 2020 – effectively eliminates the requirement of a physical meeting with the notary (which was previously available connection with the incorporation of private limited liability companies only).

Deferral of regulatory notification, filing and information requirements

Deadlines for notification, filing, publication or other information requirements provided for in most financial regulatory laws applicable in Austria (see s.2 para 1 to 4 of the Financial market authority act – *FMABG*) may be extended by the Austrian financial market authority (*FMA*) upon substantiated request by an addressee. The *FMA* may order a general extension of certain deadlines by way of adopting a regulation. The *FMA*'s discretion also applies where the relevant deadline is provided for in EU legislation, provided the *FMA* is the competent national authority under EU law.

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