COVID-19 Response: Germany

GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Cutting Costs		
Reduced working hours compensation (*Kurzarbeitergeld*) - existing legal regime adapted for COVID-19: ► Certain employers may reduce the working hours of their employees and, simultaneously, their salaries ► Employees will receive 60% (67% if they have one or more children) of their net income for hours not worked and not paid for by the employer from the German Federal Labour Office (for each employee with a gross salary higher than €6,700 a month, the compensation is capped to the amount he would receive with a gross salary of €6,700) and the Federal Labour Office will reimburse 100% social security contributions in relation to hours not worked	Employers can only avail themselves of the regime if: ► certain agreements expressly enable the employer to cut working hours in times of crisis ► 10% or more of its employees are/will be affected Temporary/agency workers are included within the scheme	18 March 2020 (applies retrospectively from 1 March 2020 onwards)
Tax easements — new rules: ► Tax deferrals if collection would place significant hardship on company ► No enforcement measures and late payment penalties for companies directly affected by COVID-19 ► Adjustment of tax prepayments	TBD – likely all companies exposed to COVID-19	TBD – BMF decree expected this week
Enhancing Liquidity		
Kreditanstalt für Wiederaufbau ("KfW"), a German state owned development bank, will make loans available to businesses through a local bank or other credit institution - existing regime adapted for COVID-19: Risk will be assumed by KfW (up to 90% for SMEs, and up to 80% for bigger companies) for loans up to €1bn per company and will usually have the following terms: ► Term: min. 2 years and max. 5 years (for working capital) ► Credit support/covenants: Customary (to be negotiated with local bank) ► Interest rate: Between 1.0 - 2.12% ► Commitment fee: 0.15% /month on undrawn amounts	► Majority private owned; No eligibility thresholds, but preferred conditions for **SMEs** (less than 250 employees and annual turnover up to €50m or balance sheet sum of a maximum of €43m). ► On 31 December 2019: Undertaking "not in difficulty" (within the meaning of the General Blocking Exemption Regulation) and no known payment delays over 30 days, standstill agreements or covenant breaches ► At time of application: Reasonable prospect of company's liquidity status returning to "normal" status prior to COVID-19 crisis by 31 December 2019	23 March 2020

COVID-19 Response: Germany (Continued)

GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Enhancing Liquidity (continued)		
New temporary syndicated KfW loan program (approved by European Commission on 22 March 2020 until 31 December 2020) covering up to 80% per loan (but not more than 50% of total debt of a company) ▸ Term: Max. 6 years ▸ Risk participation: KfW will assume risk either by way of sub-participation or as syndicate partner (each on *pari passu* basis); alternatively KfW can refinance a syndicate partner directly ▸ Interest, repayment terms, costs and credit support: As per existing syndicate loan	▸ Majority private owned, with corporate seat in Germany or abroad; Undertaking must be in Germany ▸ **On 31 December 2019:** Undertaking "not in difficulty" (within the meaning of the General Blocking Exemption Regulation) and no known payment delays over 30 days, standstill agreements or covenant breaches ▸ **At time of application:** Reasonable prospect of company's liquidity status returning to "normal" status prior to COVID-19 crisis by 31 December 2019	23 March 2020
Federal state owned economic stability fund (*Wirtschaftsstabilisierungsfonds* – "WSF") that will provide guarantees and equity participations until 31 December 2021 to certain systemic companies. Applications are submitted to the Federal Ministry of Economics: ▸ **Guarantees** (up to €400bn in total) with a term of up to 60 months ▸ **Equity participations** of WSF in business directly via various instruments (e.g. company shares, convertible bonds or silent partnerships) if the federal state has an important interest to stabilise the business and there are no other more efficient ways to achieve the purpose of the equity participation. ▸ Further terms/ covenants (e.g. restrictions on the use of funds, dividend distributions, additional indebtedness and board remuneration) to be provided for in separate framework regulation ▸ Federal Ministry of Finance and Federal Ministry of Economics will also take into consideration: (i) Company's importance for German economy; (ii) urgency; (iii) implications on labour market and competition; and (iv) principles of sustainable use of funds.	**"Hard requirements":** ▸ Business fulfills at least 2 of the following 3 criteria (based on last 2 annual financial statements prior to 1 January 2020): (i) balance sheet total exceeds €43m; (ii) annual turnover exceeds €50m; and (iii) more than 249 employees; or ▸ Company within meaning of Section 55 German Foreign Trade and Payments Regulation, or companies of comparable importance to German economy or security **"Soft requirements"** ▸ Measure of last resort/ company has no other means for financing available ▸ Going concern perspective after COVID-19 crisis, and sound and prudent business policy ▸ No "undertaking in difficulty" (within the meaning of the General Blocking Exemption Regulation)	TBD

COVID-19 Response: Germany (Continued)

GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Enhancing Liquidity (continued)		
New temporary syndicated KfW loan program (approved by European Commission on 22 March 2020 until 31 December 2020) covering up to 80% per loan (but not more than 50% of total debt of a company) ▸ Term: Max. 6 years ▸ Risk participation: KfW will assume risk either by way of sub-participation or as syndicate partner (each on *pari passu* basis); alternatively KfW can refinance a syndicate partner directly ▸ Interest, repayment terms, costs and credit support: As per existing syndicate loan	▸ Majority private owned, with corporate seat in Germany or abroad; Undertaking must be in Germany ▸ **On 31 December 2019:** Undertaking “not in difficulty” (within the meaning of the General Blocking Exemption Regulation) and no known payment delays over 30 days, standstill agreements or covenant breaches ▸ **At time of application:** Reasonable prospect of company’s liquidity status returning to “normal” status prior to COVID-19 crisis by 31 December 2019	23 March 2020
Guarantee banks (*Bürgschaftsbanken*) are private development banks supported by the state that offer guarantees to businesses to be used as collateral in order to secure KfW loans or the third party loans / investments- existing regime adapted for COVID-19: ▸ Individual guarantee limit for each guarantee increased to €2.5bn (from €1.25m) ▸ Most of default risk ultimately lies with state through bank-to-bank guarantee	All SMEs that have no other means of securing financing – i.e. last resort. Other eligibility criteria dependent on issuing guarantee bank (e.g. might require company or project to be in a particular sector, industry and region in Germany)	Live
Large guarantee program - existing regime adapted for COVID-19: ▸ Lenders can apply for government guarantees in respect of certain loans ▸ Scheme for guarantees in excess of €2.5m ▸ Government will cover up to 80% of the risk	Company that has no other means of securing financing - i.e., last resort	Live
Export guarantees ▸ Can be increased quickly, should additional export cover	German export companies	Live

COVID-19 Response: Germany (Continued)

GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Directors' Duties		
► **Suspension of duty to file for insolvency** - until 30 September 2020 (extendable to 31 March 2021) ("**Suspension Period**") ► **Partial suspension of directors' duties** – for payments made during the Suspension Period in the ordinary course of business or in connection with implementing a restructuring plan	All Companies – unless (i) insolvency is not caused by effects of COVID-19; or (ii) no prospects of recovering from cash flow insolvency (rebuttable presumption that conditions are satisfied if debtor not cash flow insolvent on 31 December 2019)	TBD – would apply retrospectively from 1 March 2020 onwards
Other Temporary Relief		
► **Loans** – repayment and granting of credit support until 30 September 2023 not considered detrimental to creditors (no time limits for KfW loans), reducing claw-back risk ► **Shareholder loans** – as above, but excluding credit support. In addition, shareholder loans (but not credit support) not subject to equitable subordination. *Note – in both cases "new loans" requires fresh liquidity and excludes A&E, round payments or similar.* ► **Lender liability** – for loans and credit support (including prolongation of existing loans) not considered to be a contribution to any delayed insolvency filing that violates bonos mores. ► **No claw-back risk for certain congruent actions** (e.g., repaying loans, granting of credit support (including subsequent collateralisation) and payment reliefs) unless counterparty had positive knowledge of restructuring efforts not being suitable for resolving cash flow insolvency ► **Involuntary insolvency filings** (creditor filings) made within 3 months only permitted if reasons for insolvency existed prior to 1 March 2020 ► **Lease agreements** – no landlord termination right between 1 April 2020 – 30 June 2020 solely due to non-payment of rent (if inability to pay is caused by COVID-19)	All companies	TBD

COVID-19 Response: Germany (Continued)

Other

- This document only outlines the key federal measures proposed or in place on **24 March 2020**. For more detailed information about these measures or the action taken at state level, please refer to this deck.
- Directors' duties – There is a strict management liability in times of crisis and, although the German government is planning to suspend the duty to file for insolvency, under existing law directors need to file for insolvency within three weeks of the company becoming cash-flow insolvent and/or balance-sheet insolvent.