

20.03.2020

## RESTRUCTURING

### CORONA-CRISIS-COMPLIANCE – CURRENT OBLIGATIONS TO ACT, LIABILITY RISKS AND RECOMMENDATIONS

The coronavirus and the government measures taken in response to this are threatening the existence of many companies despite the government assistance measures that have been adopted (“protective shield for employees and companies”) and the announced partial [suspension of the obligations to file for insolvency](#).

In this situation, the managing directors and management board members of all affected companies must act immediately. Otherwise, there is a danger of incurring considerable liability risks.

All measures necessary to safeguard the existence of the company must be taken...

- › Liquidity planning must be continuously adapted to the changing circumstances. The liquidity situation and expected liquidity development must be monitored.
- › Suitable measures must be taken to safeguard liquidity.
- › To this end, it may also be necessary to check what government assistance may be available. It is necessary to apply for this in good time. Our experts from the “[State Aid](#)” team will be happy to advise you on this.

...obligations to file for insolvency must be monitored and this monitoring must be adequately documented...

The announced suspension of the obligation to file for insolvency up to the end of September 2020 will not result in companies generally not being obliged to file for insolvency during this period. The obligation to file for insolvency is instead only partially restricted:

*“A precondition should be that the reason for insolvency is based on the effects of the corona epidemic and that there are reasonable prospects of reorganisation based on an application for public assistance or serious financing or reorganisation negotiations by the party obliged to file for insolvency.” (Press release from the Federal Ministry of Justice and Consumer Protection of 16 March 2020)*

- › Whether these conditions are met must be checked and continuously monitored.
- › If the conditions for suspending the obligation to file for insolvency are met, the outcome of this check and the monitoring must be documented.

....insolvency petitions, where applicable, must be filed in good time and proper preparations for the proceedings must be carried out....

- › If the conditions for suspension of the obligation to file for insolvency are not (or no longer) met, an insolvency petition must be filed without undue delay, but at the latest within three weeks.
- › Adequate preparations must be carried out with sufficient lead time for any insolvency proceedings that cannot be avoided (“Plan B”).

... otherwise managing directors and management board members run the risk of incurring far-reaching criminal

## **and civil liability**

The managing directors and management board members might have to demonstrate and prove that the conditions for suspending the obligation to file for insolvency have been met or that insolvency petitions were filed in good time. It is therefore extremely important that documentation be started early and updated continuously. Should it not be possible to demonstrate the above in the case of subsequent insolvency, managing directors and management board members are in danger of incurring considerable criminal and civil liability risks.

In addition, it must be ensured (even if the obligation to file for insolvency is restricted) that no other legal obligations are violated (during the crisis) which could lead to criminal or civil liability. This includes, among other things, avoiding fraudulent representation vis-à-vis contractual partners to obtain a contract and complying with tax obligations.

## **Summary**

The obligations to act are manifold and complex and the liability risks are enormous. Without professional help, violations of the obligations to act and liability risks can hardly be avoided. Please contact us should you require assistance in this regard.

## EXPERTISE

**Compliance & Investigations**

**Corona Pandemic**

**Restructuring**

## EXPERTS

**Dr. Andreas Spahlinger**

**Dr. Matthias Tresselt**