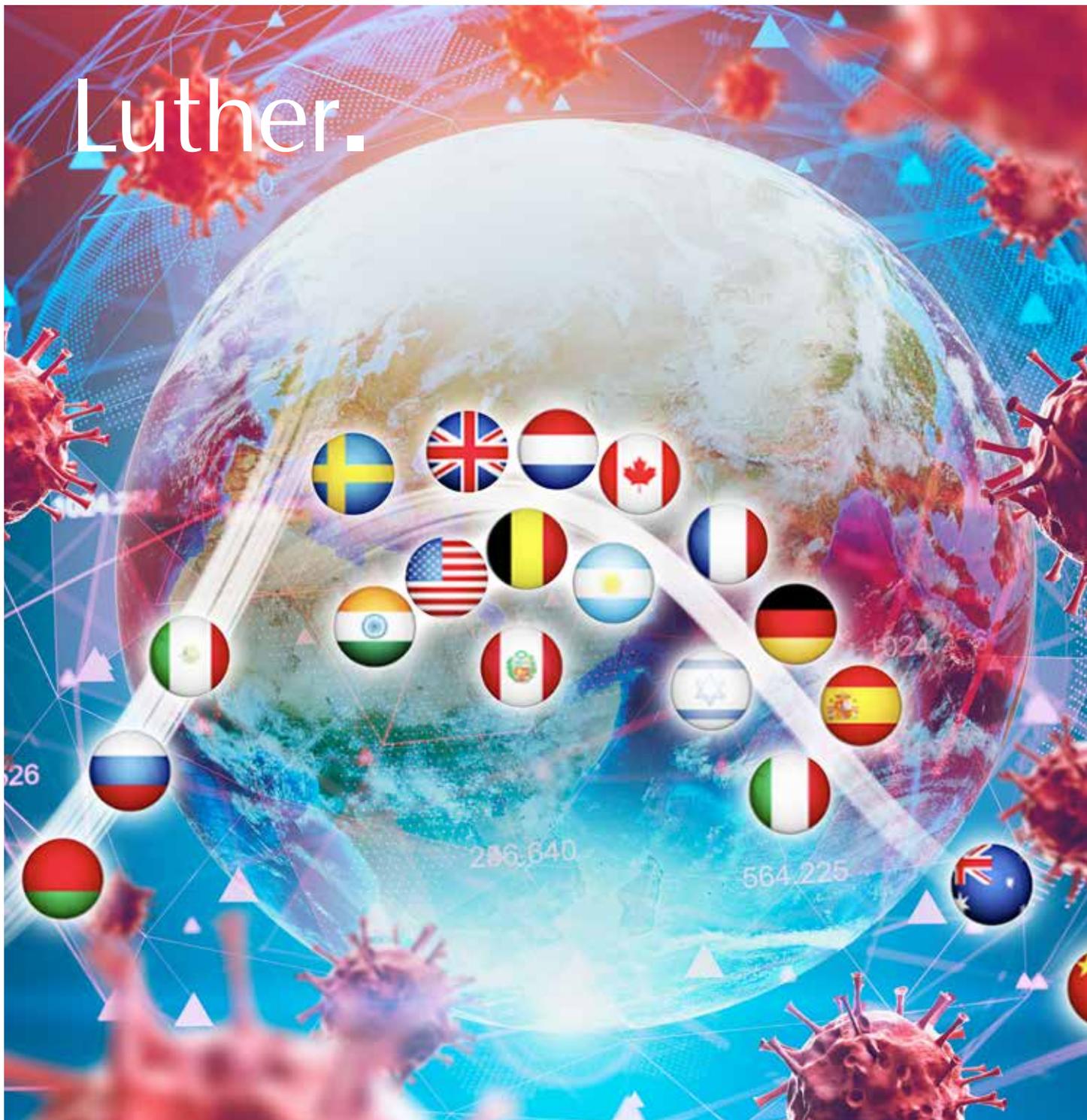


Luther.



# Newsletter Foreign Law & Investments

Q2 2020 Coronavirus Edition

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# Luther Corona Support

COVID-19 takes center stage in many of our current activities and it comes to no surprise that this edition of our Foreign Law & Investment Newsletter is looking at the international dimension of the pandemic. On the following pages, you will find articles about the global impact of the coronavirus; an overview on the force majeure requirements and related aspects from the perspective of German law as well as other civil and common law jurisdictions; and COVID-19 Country Reports with an overview about the current situation and important legal and regulatory developments in 18 major economies across the US, Europe and Asia.

The information in this newsletter is current as of the end of April 2020; given the dynamic nature of this subject, there are constant changes due to new legislation and other developments.

On our homepage you will find comprehensive, cross-sector information on the effects of COVID-19 in Germany and beyond. Please approach your direct contact person for all legal questions concerning the effects of COVID-19 you may have. You are also welcome to use our central e-mail address [corona-support@luther-lawfirm.com](mailto:corona-support@luther-lawfirm.com).

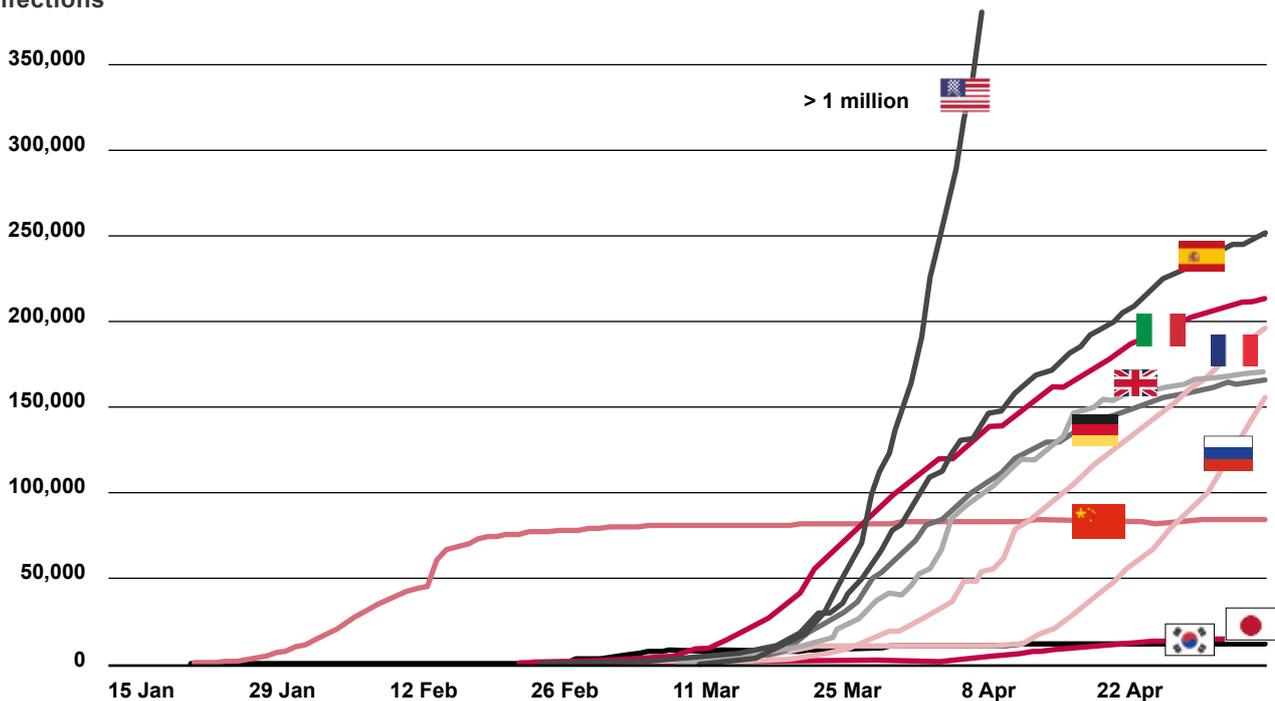
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<https://www.luther-lawfirm.com/en/competences/consulting-fields/detail/corona-virus-covid-19>



## Corona Curve in Selected Countries

Infections



Source: Statista, Johns Hopkins University

## Survey on COVID-19 and the International Automotive Industry

In close cooperation with our best friends network, we have compiled a comprehensive survey on legal measures taken in major “automotive economies”. This study provides our clients with an overview on instruments available to them in 12 jurisdictions to mitigate the foreseeable risks, including the US, Germany, China, Japan, South Korea, Mexico, Brasil, France, Italy, Spain, Czech Republic and Hungary. The study gives an insight into the COVID-19 impact on each of the respective national automotive industries, shows specific financial aid programmes being offered by governments and state authorities as well as legal changes resulting from the actual situation. Please contact Thomas Kuhnle ([thomas.kuhnle@luther-lawfirm.com](mailto:thomas.kuhnle@luther-lawfirm.com)) or Andreas Kloyer ([andreas.kloyer@luther-lawfirm.com](mailto:andreas.kloyer@luther-lawfirm.com)) for a copy of the survey.



## Corona and Data Protection

The constantly increasing number of infections requires appropriate prevention and defense measures by companies to shield employees, customers and visitors. Many protective measures to combat the coronavirus also involve the processing and/or dissemination of personal data, often sensitive health records. But there are limits regarding what is legally permissible and data protection principles (e.g. data minimisation and purpose limitation) must continue to be observed also in times of COVID-19. We summarize guidelines and statements released by German and other European supervisory authorities and address some of the frequently asked questions by companies struggling to adapt their crisis management to contain the corona pandemic while complying with data protection rules: <https://www.luther-lawfirm.com/en/newsroom/blog/detail/data-protection-in-times-of-the-covid-19-crisis>.

## Guidance for Businesses in Asia

Detailed information on COVID-19 government support measures, employment law and corporate compliance matters as well as supply chain and commercial contracts in Indonesia, Malaysia, Myanmar, Singapore, Thailand and India can be found in our guidance for businesses in Asia: <https://www.luther-lawfirm.com/en/newsroom/newsletter/detail/covid-19-guidance-for-businesses-in-asia>

## Interim Support in Asia

With increasing frequency we receive requests for short-term support for management tasks in subsidiaries in Asia. This is mainly due to the departure of senior expatriates in anticipation of a worsening of the situation, but also to the fact that their return is often not possible due to increasingly severe entry and exit restrictions. Our offices in Asia provide international investors and businesses with interim solutions in subsidiary management, controlling and communication on site in Singapore, Malaysia, Myanmar, Indonesia, Thailand, India and China. For an overview of those areas in which we typically provide support and for more information about our consulting services in Asia, please follow this link: <https://www.luther-lawfirm.com/en/newsroom/newsletter/detail/interim-support-in-subsiary-management-controlling-and-communications>

## TOP 10 Corona Topics in China

While many countries are still in the middle of the fight against the COVID-19 pandemic, the situation in China seems to be normalizing to some degree. Life within China is gradually getting back on track despite continuing restrictions. Our office in Shanghai and our China team in Germany have supported our clients, even during the weeks of restrictions since the Chinese spring festival, with the many questions which came over all of us in the course of the corona crisis. You can download a PDF on our homepage with the TOP 10 Corona Topics in China, summarizing the issues we and our clients have been intensively confronted with in recent weeks and which continue to play an important role in everyday working life in China: [https://www.luther-lawfirm.com/fileadmin/user\\_upload/PDF/Broschueren/China/LUTHER\\_TOP\\_10\\_Corona\\_Topics\\_in\\_China\\_EN.pdf](https://www.luther-lawfirm.com/fileadmin/user_upload/PDF/Broschueren/China/LUTHER_TOP_10_Corona_Topics_in_China_EN.pdf)

## LUTHER Corona Webinars

Joint Webinars with OAV German Asia-Pacific Business Network on China



Together with the OAV German Asia-Pacific Business Network, LUTHER professionals from Germany and China (Philip Lazare, LIAO Yuhui, Axel Braun, Dr SHEN Yuan, Maresa Hormes and Kerstin Groene) conducted two webinars on the labor and commercial law implications of the Coronavirus for companies operating in China. The webinars attracted several hundred participants and a host of questions from the audience. The first webinar **Coronavirus - labor and commercial law implications for companies operating in China** held on 11 February 2020 can be viewed here: <https://www.youtube.com/watch?v=2tr2xJRGFws>. The second webinar **Update Corona: Answers to legal and strategic questions from practice** held on 11 March 2020 can be found here: <https://www.youtube.com/watch?v=IT0EGeejt64>. If you would like to receive the presentations as PDF files (German version only), please send an email to Eva Koenig: [eva.koenig@luther-law-firm.com](mailto:eva.koenig@luther-law-firm.com).

## Handelsblatt Webinar (1) “Corona Infection of the Supply Chain”

On 2 April 2020, the webinar **Corona Infection of the Supply Chain** was hosted by the German business newspaper Handelsblatt. LUTHER partners Volker Steimle and Jens Heuer-James addressed the topic **Corona hits the supply**



**chain - How does our legal system distribute the risks?**

You can watch the webinar here: <https://veranstaltungen.handelsblatt.com/managing-corona/aufzeichnung-vertragsmanagement-supply-chain-wie-verteilt-unsere-rechtsordnung-die-risiken/>

## Handelsblatt Webinar (2) “End of the Lockdown - Supply Chain Under Stress”

What happens to the supply chains when the lockdown is over? How to avoid delivery delays, how to manage the quantity of orders? On 17 April 2020, as a continuation of our successful webinar **Corona Infection of the Supply Chain**, the German business newspaper Handelsblatt staged yet another webinar with LUTHER partners Volker Steimle and Jens Heuer-James on the subject **End of the Lockdown - Supply Chain under Stress**. You can watch the webinar here: <https://www.youtube.com/watch?v=XN3gOrLUvb8&feature=youtu.be>



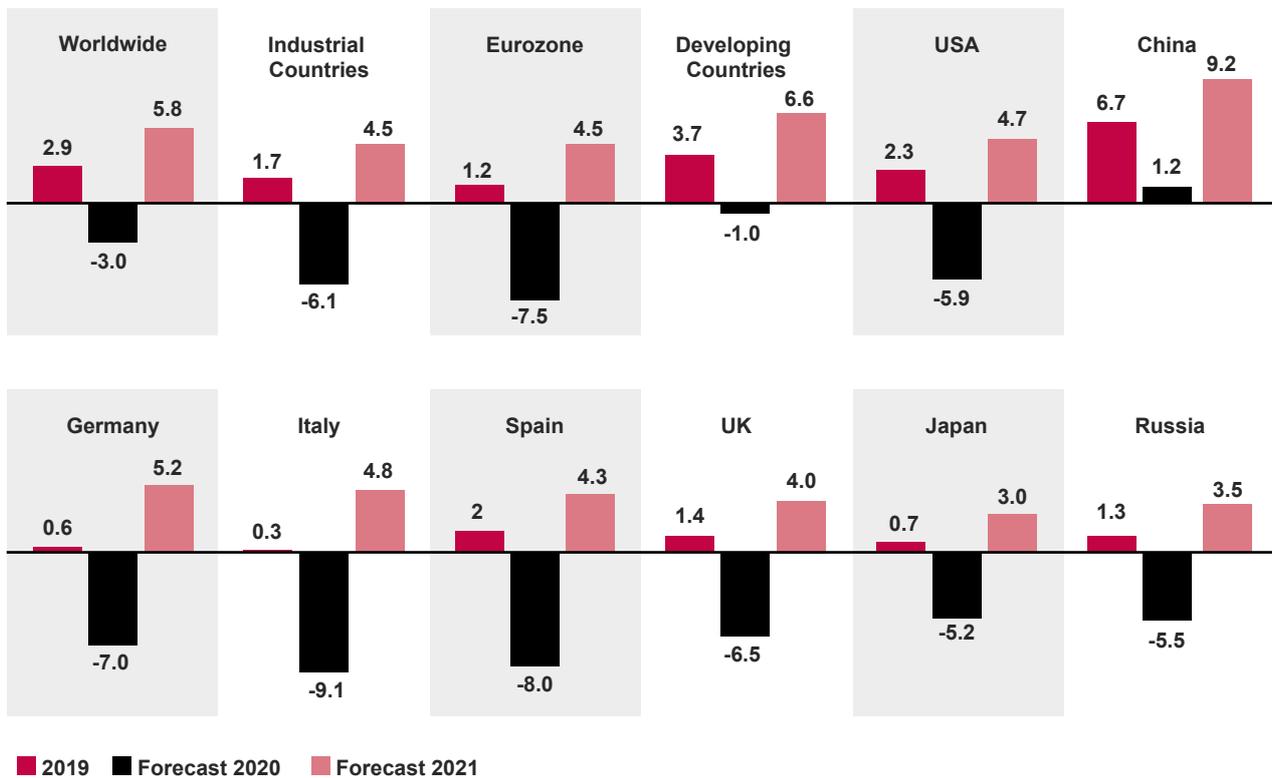
## Joint Webinars With German and Swiss Chambers in Singapore

Together with the Singaporean-German Chamber of Industry and Commerce on 30 April 2020 and with SwissCham Singapore on 4 May 2020, LUTHER professionals in Singapore (Dr Maximilian Kressner, Shalin Kaur and Yves van Brussel) held webinars on HR compliance and current support schemes available in the city-state to manage the operational challenges in times of COVID-19.

# The Global Impact of the Corona Crisis

The outbreak of the novel coronavirus (SARS-CoV-2) is unprecedented in modern history. During the SARS epidemic in 2003 and 2004, 8,000 people were infected and 800 people died over a period of nine months. COVID-19 accounts for close to 4 million infections and more than 250,000 deaths in less than five months, with the numbers still increasing and no immediate immunity or cure in sight. The economic fallout is huge. Instead of a 3+% growth as predicted by the IMF at the beginning of the year, the world economy is set to dive by – 3% or worse in 2020.

## Changes in Gross Domestic Product According to IMF Estimates, in Percent



## National Responses: “Whatever it Takes”

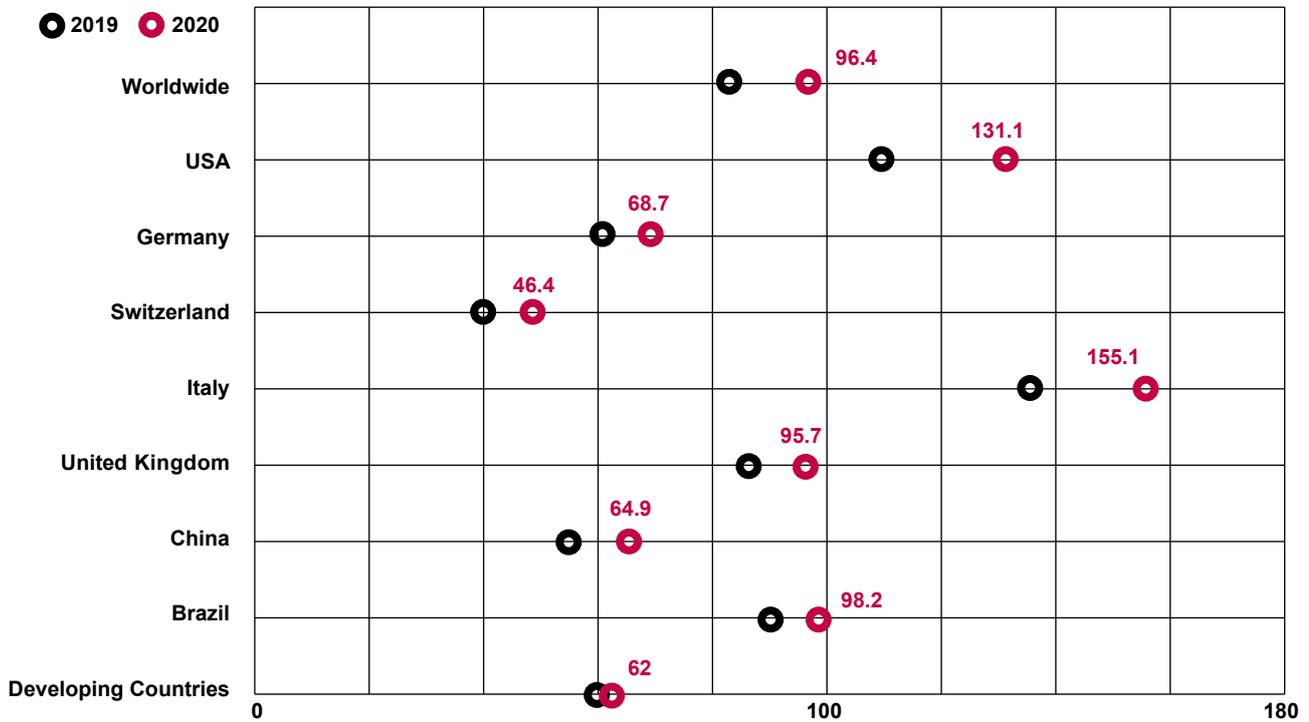
From China to other particularly hard hit countries like Italy, Spain, France or India – most national governments responded to the spread of the virus with very robust measures indeed. Some governments acted late, but most countries eventually declared a state of emergency or put other severe restrictions in place. Spring 2020 will go down in history as the “Great Lockdown”.

China closed off a whole province and imposed other draconian measures to combat COVID-19. Japan, South Korea and other Asian countries also managed well to contain the virus, while most European countries and the US had more difficulties or are still struggling to “flatten the curve”.

Many analysts believe that we are now facing the worst recession or even depression in the last 100 years. Many countries have rolled out massive government support programs to the tune of more than USD 10 trillion globally, surpassing by far the fiscal stimulus packages during the global financial crisis ten years ago. The US and Germany alone account for the astronomic sum of more than USD 5 trillion. The various state aid programs – including direct spending, short-time work benefits, tax and other payment deferrals, credits, guarantees and many other measures – are described in the **COVID-19 Country Reports** in this newsletter (information current as of the end of April 2020).

With the gigantic bail-out packages dished out by governments and central banks, state and corporate debt increases

Gross State Debt in % of GDP (IMF Forecast)



in all major economies. Naturally, the self-employed, family-owned businesses and multinational corporations alike make use of the many government incentives in order to pull through this crisis as best as they can. Eventually, however, companies and tax payers will have to deal with the after-effects of slower economic growth, higher unemployment and also an increased role of the state for a long time.

**Restarting the Economy**

Governments and businesses around the world are anxious to restart the economy and getting people back to work. China, where the COVID-19 outbreak started and which took drastic measures to contain the virus, is the first major country emerging from the lockdown. Business and social life within China is gradually getting back on track despite continuing restrictions. For example, foreigners are still banned from entering the country and Chinese residents coming back from overseas have to spend at least two weeks in quarantine. Most other countries in Asia are still in the middle of the fight against the COVID-19 pandemic, even though some fare better than others.

Europe has been hit particularly hard with Italy, Spain, France and the UK at the forefront, but across the continent we now see clear signs that the worst seems to be over and Europeans are keen to get back at least to the “new normal”. Even in the US where the number of new infections is still very high

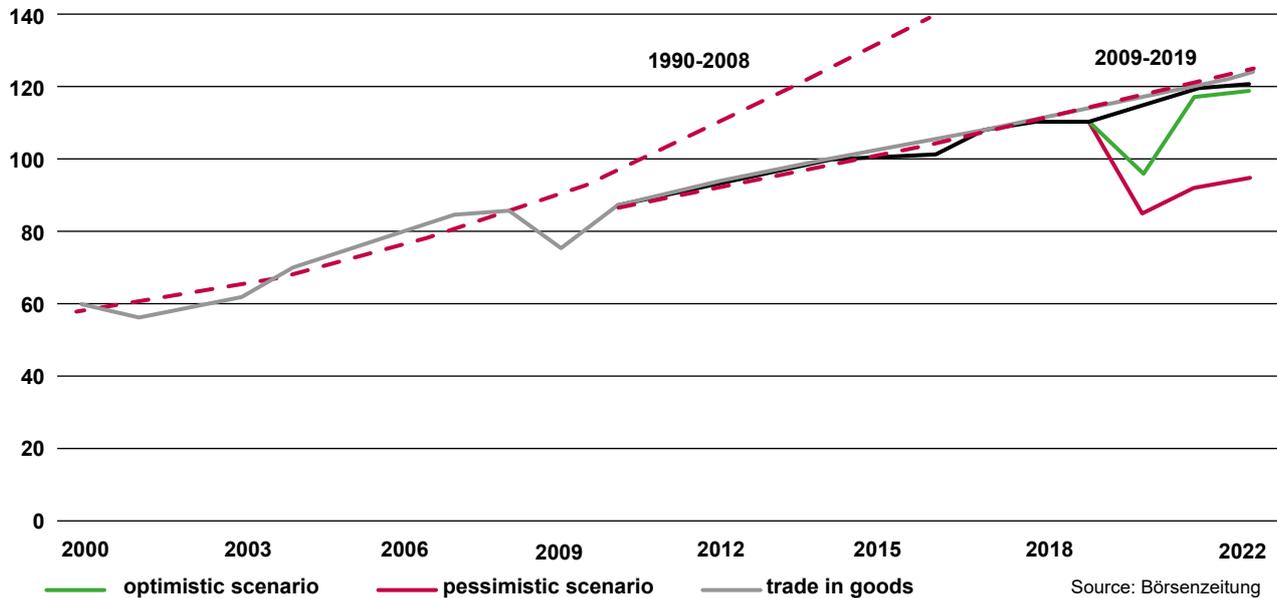
(more than one million cases and approaching 100,000 deaths now), President Trump and some of the Federal States are pushing hard to reopen the economy.

We have seen how fragile the global economy is in times of COVID-19 and that national borders can again be serious obstacles to trade. In the past weeks and months, the virus has severely disrupted global production and international supply chains and nearly all companies have been affected by the pandemic in one way or another. The economic consequences are often significant for the companies concerned while the legal remedies are not that clear in many instances. In this newsletter we also feature an article on how **Corona has disrupted the international supply chain**, providing an initial orientation on the force majeure requirements and related aspects from the perspective of German law as well as other civil and common law jurisdictions.

**Life After Corona**

The economic and the social effects of the virus and the global response to it will be felt for a long time to come. The immediate consequences of the “Great Lockdown” are a slow-down and in many countries a recession of the economy worse than anything this generation has had to endure.

### Shrinking Global Trade (Index: 2015 = 100)



The coronavirus pandemic is far from over, but global trade will likely see an even sharper decline than during the global financial crisis 2009. The trade dispute between the US and China had slowed growth already before the COVID-19 outbreak and the virus does everything but help in overcoming the new mantra of “de-globalisation”. Predictably, there are calls in Europe and the US for repatriation of medicine production from Asia, but this will not be an easy solution to ensure medical supplies in the future. It could also become a boomerang in the short term if China and India retaliate by restricting their drug exports to the West which sources a large part of active pharmaceutical ingredients and many other medical products there. We should bear in mind that these initiatives are driven by government officials who for years ignored the warnings about a virus pandemic and who failed to store adequate and sufficient protective equipment even for medical staff.

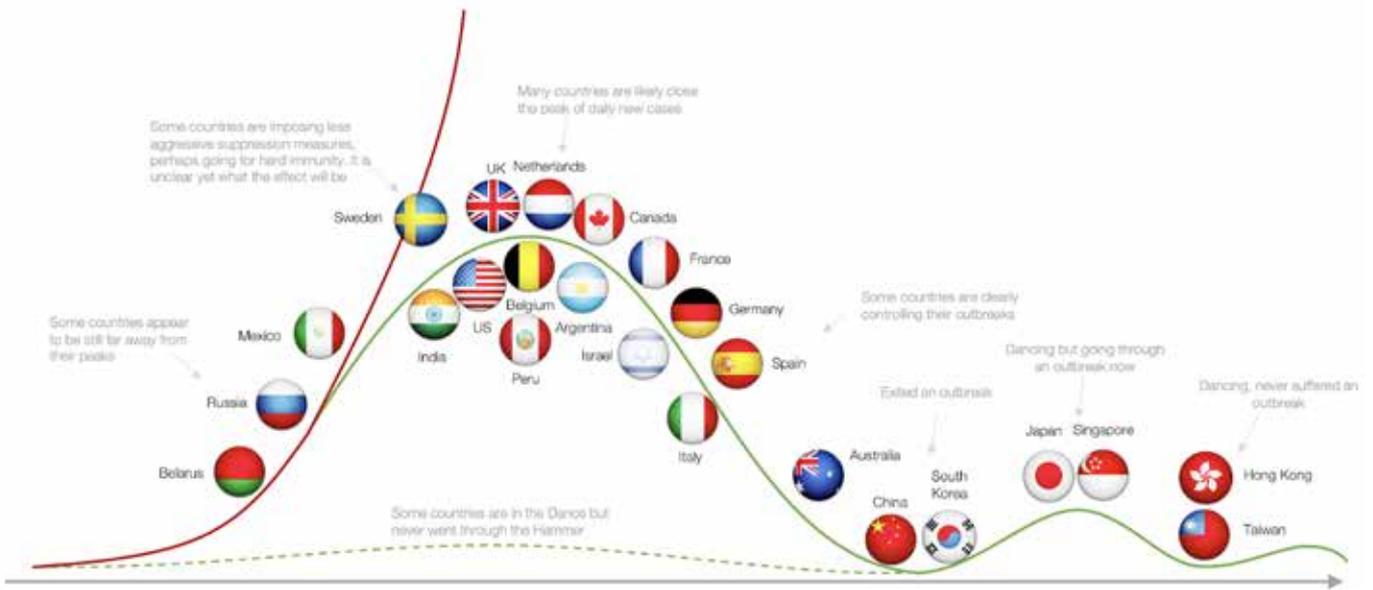
Unfortunately, even champions of global trade like Germany do not seem to be immune to the globally spreading virus of protectionism. The German government, similar to developments elsewhere (US, France, Poland, India and Australia, to

name only a few countries), responds to the coronavirus crisis by tightening the national investment control regime with a view to protecting vulnerable German companies from foreign takeovers. In the long term, foreclosure from foreign investment will be poison to the export-oriented German economy and the order of the day should be global cooperation, not isolation.

### Preparing for the Second Wave

Many scientists are certain that a rebound of the coronavirus is inevitable, likely as early as autumn this year. They also warn of the danger that premature easing of restrictions may wipe out the results of the lockdown measures and risk a second, potentially even more dangerous round of infections. Germany’s Robert-Koch-Institute and other virologists often refer in this context to an analysis by Silicon valley entrepreneur Thomas Pueyo and his study “Coronavirus: the hammer and the dance”. Pueyo sets out in his paper how a pandemic can be fought off effectively through strict measures (“hammer”) over a short period of a few weeks, followed by relaxations tested in a second phase (“dance”) without losing control over the virus.

“Hammer and Dance”



Source: Thomas Pueyo

Of course this approach is not without risk and Singapore has learned the hard way how volatile early achievements can be. The country responded quickly by shutting down travel to and from China around the Chinese New Year and was seen as having contained the virus. However, infections in the migrant worker community in April saw the number of cases spike and the city-state is now in a lockdown tighter than during the SARS episode 18 years ago.

As the virus cannot be eradicated, at least not in the near future, governments and businesses need to focus on avoiding or at least preparing how best to restrain the impact of a second wave. Mass testing is now widely encouraged and there are also numerous tracing apps used or in preparation around the globe. It is yet to be proven how effective the new digital tools will be, and there are in any case a myriad of legal controversies involved. What is clear is that the “new normal” will be here for quite some time.

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# Corona and the International Supply Chain

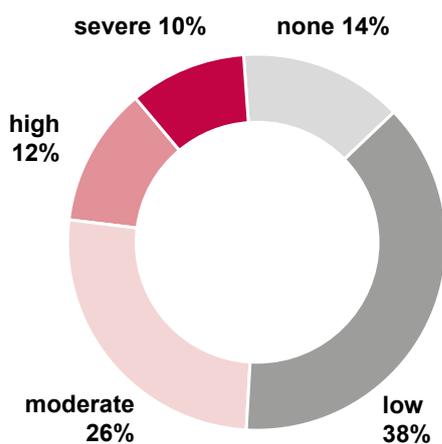
## A brief comparative legal description between German, Italian, Chinese, English and Singaporean law

The novel corona virus (SARS-CoV-2) does not stop at national borders. For the global economy national borders have long since ceased to be an obstacle, or at least this is what many believed. In the recent weeks and months, however, the virus has severely affected international supply chains. Nearly all companies are affected by the effects of the pandemic in one way or another: lack of orders, deliveries are not received because employees are ill or on short-time work, transport routes are restricted, raw materials and components for production are not delivered, invoices cannot be paid due to a lack of liquidity. This list could be continued. The economic consequences are often significant for the companies concerned. It is not always possible to find acceptable solutions by negotiation without legal support. An objective assessment of the legal situation can help to avoid a legal dispute and to reach a mutual agreement, which is the basis for a partnership with a future.

The questions arising for businesses around the world are often similar: Is the outbreak of the Corona pandemic a case of force majeure? What does that mean anyway? When does the obligation to perform cease to apply? And is there a claim for compensation? With this article, we would like to provide an initial orientation, with a focus on German law, flanked by insights into selected foreign legal systems. One immediate conclusion from this is that there are no general answers. It always depends on the specific individual case.

### Supply Chain Bottlenecks

#### Impacts on Companies in the USA and Europe



Source: Inverto/Börsenzeitung

### The Contract in Question as the Focal Point

Before the legal situation can even be assessed, the facts of the case must be fully established. This includes in particular the question of the contracting parties, which for many people sounds trivial. The contract in question is the focal point for the assessment of all legal questions that arise when one party is prevented from performing its obligations. For this purpose, the contract in question must first be analysed. There is not always a written contract document. Then it must be worked out as precisely as possible which regulations the parties have made orally or, for example, by e-mail. Often parties use general terms and conditions, which, however, only apply if they have been effectively incorporated into the contract.

### Applicable Law and Jurisdiction Clause

As soon as parties which are not domiciled in the same state conclude a contract, the question arises under which legal system the facts of the case are to be assessed. Many international contracts contain a choice of law clause, i.e. an agreement between the parties on the applicable law. If a contract does not contain a valid choice of law clause, it must be examined according to the relevant provisions of private international law to determine which legal system is applicable. The UN Convention on Contracts for the International Sale of Goods (CISG) supersedes national regulations in its scope of application. Nevertheless, it is important to determine the applicable national law, because this is the basis if individual legal questions are not covered by the CISG. The parties often expressly agree that the applicability of the CISG should be excluded.



We believe that consensual solutions are the means of choice for the problem that is the focus here, i.e. the disruption of supply chains caused by the outbreak of the corona pandemic. Nevertheless, especially in international contractual relations, it is worthwhile to take a look at the court having jurisdiction in the event of a dispute. It is not uncommon for such contracts to stipulate the jurisdiction of a particular national court. But has such an agreement been effectively reached at all? Or, if it comes to the practice test, would the court at the domicile of the contracting party, for example in China, be called upon? Often the parties also agree that international arbitration proceedings should be conducted; this may be relatively fast in principle, but it is associated with significant costs. Such considerations can help to demand or make concessions in the context of an out-of-court settlement. Some contracts provide, alternatively or prior to litigation, the involvement of out-of-court settlement bodies, such as the international chambers of commerce, or the conduct of a mediation procedure.

### **Contractual Force Majeure Clause**

A first look at many contracts will reveal that the parties have agreed to a so-called force majeure clause. A force majeure clause should determine both the conditions of application and the legal consequences. Epidemics are rarely explicitly mentioned in these clauses as a case of force majeure. If the contract does not contain a specific definition or if a list is - as is usually the case - not exhaustive, general principles should

be used. Epidemics are mentioned as cases of force majeure, for example, in the explanatory memorandum to the draft law of the German Federal Government on travel organization contracts. Since March 11, 2020, the outbreak of the COVID-19 virus has been officially classified by the WHO as a pandemic rather than an epidemic.

In this context, it should also be noted that contractual force majeure clauses will usually be general terms and conditions (GTC) of one of the parties. Therefore, it must also be examined whether the respective legal consequences are actually effective from the point of view of GTC law in the individual case and according to the relevant legal system, for example with regard to regulations which only permit a termination of the contract after a very long period of delay. Especially under German law this judicial control of content is particularly strict and German courts often declare regulations in commercial business transactions ("among professionals") to be ineffective. Courts in countries of the Anglo-Saxon legal system are usually considerably more generous here.

However, it is decisive for the application of a force majeure clause that the force majeure event does not only affect the contract somehow. Rather, the event in question must make it temporarily impossible or unreasonable to fulfil the contractual obligation of precisely that party who wishes to rescind its contractual obligations. Whether this is the case can only be examined in relation to the respective individual case.

The mere fact that there is talk of an epidemic or pandemic worldwide does not lead to an impairment of any supply relationship. In particular, the location of the supplier - or even the customer - can be decisive. If, for example, a supplier produces in Northern Italy and was or still is unable to deliver already manufactured special individual castings for his customer in Germany, it is highly probable that this is a case of force majeure. Whether or for how long this will also apply if a Czech supplier is unable to deliver a marketable product - which he himself obtains from China - to his customer in Berlin because a container load is stuck at the port of Qingdao and therefore not being shipped, is to be determined by the circumstances of the specific case. Depending on whether a delivery from Germany for a customer in the US has to be made according to the Incoterms ® 2020 Ex Works or, for example, DAP New York, the outcome may differ.

If the conditions for the application of the force majeure clause are fulfilled, the agreed legal consequences will be decisive. Here, too, different arrangements are conceivable. Frequently it is stipulated that the parties are (temporarily) released from their performance obligations, that the parties must try to keep the impairments for the other side as low as possible, that after a certain period of time there is a right to terminate or rescind the contract and/or that compensation for damages due to the event of force majeure should be excluded. The fact that typical force majeure clauses generally provide for such a right of termination or rescission should lead to a cautious handling of force majeure notices. It is at least dangerous to send precautionary force majeure notices to customers without prior examination. The sender declares with such a message that he is not able to perform until further notice, which may entitle the customer to an extraordinary termination (without notice) of the contractual relationship (or to rescission).

Commonly, there is an obligation on the affected party to inform the other party immediately about the occurrence of the event and its expected duration - and this regardless of whether the contract is affected by this or not. If the party does not make a force majeure notification as soon as possible after it has become aware of the circumstances, it may be liable for any damages resulting due to late notification.

Some contracts also contain a so-called reservation of self-supply. It needs to be examined which legal consequences the contractual regulations then provide for in each case and whether these could be effectively agreed upon.

## Statutory Regulations

### Force Majeure

#### German Law

The German Civil Code (BGB) and the German Commercial Code (HGB) do not use the concept of force majeure in relation to supply contracts. If the contract concerned, which is to be assessed according to German law, does not contain an effective, relevant force majeure clause, the general legal principles are to be applied, i.e. in particular to the provisions concerning the impossibility of performance (*Unmöglichkeit*) or disruption of the commercial basis of the contract (*Störung der Geschäftsgrundlage*).

#### Other Jurisdictions

##### Italy

In Italy this is basically the same. Italian law does not contain a precise definition of force majeure, as there is no provision explicitly describing the case in question. The term “force majeure” is mentioned in some provisions of the Italian Civil Code, including Article 1785, which concerns the limits of the innkeeper’s liability. However, based also on Article 1467 of the Italian Civil Code, it is considered that force majeure can only occur when the event causing the non-fulfilment is unforeseeable, unavoidable and exceptional.

##### China

The General Rules of Civil Law, the Chinese equivalent of the general part of the German BGB, the Contract Law and a number of other regulations contain definitions of the phenomenon of force majeure. The statutory definition of force majeure in China corresponds to the internationally accepted definitions. Moreover, the official “Interpretations” of the Supreme People’s Court added the concept of a “substantial change in objective circumstances” which may give one or both parties a right to seek an amendment to the contract between them. This rule is quite similar to the “radical change” element under the doctrine of “frustration”, but the threshold for applying it is somewhat lower.

##### England

In England, as in most common law countries, there is no legal definition, but the legal institution of force majeure is found in common law and requires an agreement in contracts.

In fact, most commercial contracts subject to English law contain a force majeure clause, often found under the so-called boilerplate provisions. If there is no provision for costs already incurred or contractual payments, the starting point in English law is that “costs lie where they lie”. This means that payments made under the contract or costs incurred by either party in performing the contract are not recoverable.

## Singapore

In order to be able to invoke force majeure in Singapore, a corresponding clause is also required in the contract. If a force majeure clause is included in the contract, the specific wording of the contract is decisive. The party invoking the force majeure clause must explain and, in the event of a dispute, prove that the conditions are met. The legal consequences also depend on the specific wording of the clause. For example, it may be considered that the service which cannot be rendered due to force majeure must be rendered after the obstacle has been removed or a right of termination exists.

## Impossibility to Perform

### German Law

In the event that performance is **impossible** for the supplier or anybody else, the German Civil Code (BGB) stipulates that the claim for performance is excluded. However, the basic principle must be observed here that a case of impossibility only exists if the supplier is also unable to procure the goods, for example from other, if necessary, even more expensive sources of supply.

It is important whether the supplier is obliged to procure the affected products on the market or whether his obligation to perform is limited to the affected products which, for example, cannot be finished in his factory in the Czech Republic. Thus, not every form of aggravation of performance directly leads to the impossibility of performance. It should also be noted that the obligation to perform does not cease to apply simply because a possible replacement purchase on the market is unexpectedly expensive. Whether the supplier could refuse performance in cases of mere economic impossibility is in detail a controversial issue.

In the event of impossibility, the debtor is released from his obligation to perform and the respective creditor is entitled to rescind the contract. In many cases, the debtor's claim to consideration will then also be cancelled. For example, the claim to the consideration does not lapse if the creditor is solely or

largely responsible for the circumstance that led to the impossibility. Of course, the creditor will not be responsible for the outbreak of the global pandemic; however, there are cases conceivable in which the creditor, for example by acting reluctantly, may have contributed to the occurrence of a circumstance which makes it impossible for the debtor to perform. It is important to note that the debtor's claim to the agreed remuneration does not lapse if the creditor is already in default of acceptance at the time when the circumstance, for which the debtor is not responsible and which leads to the impossibility, occurs.

Is it a case of impossibility in the aforementioned sense if the customer cannot or does not wish to accept ordered goods because he has temporarily suspended his business operations? As a rule, the customer's obligation to perform consists solely in the payment of the agreed remuneration, which is not rendered impossible by the suspension of operations. Here the principle “*money is to be had*” applies.

The law passed by the German Bundestag on 25 March 2020 to mitigate the consequences of the COVID-19 pandemic in civil, insolvency and criminal proceedings law contains a deviation from this principle for consumers and gives them a temporary right to refuse performance with regard to the consideration owed under contracts providing for basic needs (*Verträge der Daseinsvorsorge*). Similarly, the new law grants micro-entrepreneurs a corresponding right to refuse performance in the context of material long-term obligations. If the customer does not accept ordered goods, he will regularly be in default of acceptance, which will result in a reduction of the supplier's liability.

### Other Jurisdictions

#### Italy

The situation is basically the same in Italy. Italian law contains in Art. 1256 of the Italian Civil Code a regulation similar to German law. The only significant difference is that Italian law expressly regulates the case of temporary impossibility and provides that the debtor is not liable for the delayed performance as long as the impossibility exists. However, the obligation expires if the impossibility lasts for so long that the creditor no longer has any interest in obtaining performance. Only in the case of synallagmatic contracts does Art. 1463 of the Italian Civil Code provide that impossibility of performance leads *ipso iure* to the dissolution of the contract. In case of partial impossibility, the other party is entitled to a corresponding reduction of its owed performance. The other party may also

terminate the contract if it has no significant interest in partial performance.

## China

As under German law, if performance by a party has become objectively impossible – i.e. nobody can perform a contractual obligation – that party is released from its obligation to perform. By their nature, monetary obligations cannot become impossible. If the impossibility was caused by force majeure, both parties have the right to terminate or rescind the contract. If one or both parties have already performed all or a portion of the contract, that performed portion must be returned or compensation must be made in another way.

When the contract is still valid, but one party fails to perform, the other party has the right to refuse its performance. It can withhold the agreed consideration until the former party performs or provides security.

Similar to German law, the risk of loss of or damage to the purchased goods is usually transferred to the buyer upon delivery to the carrier entrusted with transporting the goods to the buyer. Therefore, loss of or damage to the goods after handover does not relieve the buyer from its obligation to pay the purchase price.

## England

In England the legal institution of the doctrine of frustration is most comparable to the impossibility in German law. The doctrine of frustration applies to unforeseeable events that are not caused by one of the parties to the contract. However, English courts have strict requirements in recognizing the doctrine of frustration as a ground for dissolution of an obligation, e.g. in cases where performance can actually no longer be rendered due to the destruction of an object on which performance is to be rendered, or also in cases where performance of the contract has become illegal due to a change in the law which the parties could not foresee when the contract was concluded (e.g. prohibition to enter an enemy port during wartime). In the future, this could also include cases of a legal ban on opening shops, bars, restaurants, etc. during the COVID-19 crisis. An impossibility of the obligation to perform as a consequence of the ascertainment of goods (*Konkretisierung der Leistungspflicht*) is foreign to English law. At first sight, the doctrine of frustration seems to be similar to force majeure. However, the consequences of frustration differ considerably from those of force majeure.

If the contract is “frustrated”, the parties are completely released from their contractual obligations. The contract is not only suspended (which is usual due to force majeure), but ends. Unlike force majeure, the costs not always lie “where they fall”, but can be varied by contract terms. The courts will not easily invoke the principle, and the parties should carefully consider the implications before claiming “frustration”.

It is important to note that the applicability and effects of frustration may be overridden by the terms of a force majeure clause or other parts of the contract. A carefully drafted force majeure clause that addresses all the necessary issues, including the sharing of costs and losses between the parties, is likely to displace the application of frustration altogether. However, if there are loopholes in a force majeure clause, the institute of frustration can be applied in addition to the terms of the contract.

## Singapore

In Singapore, even if the contract does not contain a force majeure clause, a party can invoke the so-called “doctrine of frustration”, which exempts both parties from the fulfilment of their contractual obligations. “Frustration” is a common law principle that is supplemented by the legal provisions of the Frustrated Contracts Act. “Frustration” occurs when the performance of the contractual obligations has become impossible due to an event beyond the control of either party or when the conditions are radically or fundamentally different from those agreed (“*where the intervening event has rendered contractual obligations so radically different or impossible to perform*”). The Singaporean courts are very strict in assessing whether something is impossible or not. For the assumption of impossibility it is generally not sufficient that additional efforts must be made or higher costs are incurred.

## Disruption of the Commercial Basis of the Contract (*Störung der Geschäftsgrundlage*)

### German Law

If there is no case of impossibility, under German law an adjustment or cancellation of the contract according to the **principles of disruption of the commercial basis of the contract (*Störung der Geschäftsgrundlage*)** can be considered. Whether an adjustment or even a cancellation of the contract can be demanded with reference to the principles of disruption of the commercial basis of the contract depends on various factors.

A certain circumstance must have become the **basis of the contract** and must have changed seriously after conclusion of the contract. The starting point is therefore the question of the contractual basis. In very few cases will the parties have consciously considered that the basis for the contract in question is, for example, the absence of a pandemic. However, as part of the basis of the contract, it may also be necessary to take into account the circumstances and relationships whose existence and continuation are objectively necessary so that the contract can still exist as a meaningful regulation in the interest of both parties. For example, open country borders may be seen as prerequisites in order to meet certain delivery dates or ensure uninterrupted just-in-time deliveries.

The next step would be to examine the **distribution of risk** between the parties. This depends primarily on the contractual agreements and otherwise on general principles according to which the typical risk of a contract is to be determined. The decisive factor is whether the specific risk that has materialized in the case in question is assigned to one of the two parties alone. If one party has to bear this risk alone, an adjustment of the contract is excluded. Ultimately, it must be examined on the basis of a comprehensive **balancing of interests** whether the party affected by the disruption can still be expected to continue with the unchanged performance of the contract. Only if the further fulfilment of the contract is **unreasonable** for the affected party, an adjustment or even termination of the contract may be considered.

An adjustment of the contract can therefore only be considered as an exception, if circumstances beyond the control and risk area of the affected party result in such a blatant disproportion between performance and consideration that it is no longer reasonable to adhere to the unchanged contract. Whether the outbreak of the pandemic or its specific effects on a particular contractual relationship may prompt an adjustment or even a cancellation of the contract must be carefully examined in detail according to the criteria presented. The German courts have developed various case groups for this purpose which are to be considered in the examination.

In principle, the customer bears the risk of use of the goods ordered. However, in exceptional situations, cases may be conceivable in which the risk assumed by the customer is exceeded or the supplier has to share the risk assumed. It may therefore be worth examining the individual case in order to clarify whether, for example, the customer can demand an adjustment of the contract under a concluded framework supply agreement if he has temporarily closed his company or had to close it down due to the outbreak of the pandemic.

## Other Jurisdictions

### Italy

In Italy this is regulated somewhat differently. There is no provision in Italian law similar to Section 313 of the German Civil Code (BGB) that precisely defines the precondition and effects of the disruption of the commercial basis of the contract. Nevertheless, this legal institution has established itself in jurisprudence and legal doctrine under the name "**presupposizione**". This is possible by applying the *rebus sic stantibus*-principle and referring to the *causa negotii*. According to this principle, a *presupposizione* is deemed to exist if, on the basis of an interpretation of the contract in good faith, it appears that the parties have considered a certain present or future factual circumstance to be decisive for the conclusion of the contract, even though they have not included this circumstance in the written contract. If, however, this circumstance is not present, the contract is null and void according to case law or can in any case be dissolved by rescission. This effect is linked to the provisions of Articles 1374 or 1467 of the Italian Civil Code.

### China

In many cases the performance of services is indeed still possible, but it has been made considerably more difficult for one of the contracting parties. In such cases, the affected party may be granted relief in accordance with the rule of "substantial change in objective circumstances". This rule was developed by the Supreme People's Court of the People's Republic of China and requires the following:

- the severe difficulty must be caused by a material change in the objective circumstances which was unforeseeable at the time of concluding the contract, and does not constitute a case of force majeure;
- the severe difficulty must not reflect the materialization of the risk inherent in the contract; in other words, the party concerned must not be relieved of the commercial risk which it undertook;
- considering all the circumstances, the insistence on (complete, unaltered) performance of the contract would be patently "unfair" to one party, or performance would be unable to achieve the original purpose of the contract.

If the above-mentioned conditions are met, the parties should agree to an adjustment or even cancellation of the contract. In the current crisis, the Supreme People's Court encouraged the lower courts to mediate and find solutions that balance the legitimate interests of the parties concerned. Finally, many

courts hold that parties that are severely affected by the crisis may have the right to demand price adjustments or, for example, a reduction of commercial rents.

## England

There is no provision in England which is fully comparable to the disruption of the commercial basis of the contract as applied in German law. Nevertheless, the common law doctrine of frustration already described above can also be applied here. However, the courts handle the applicability very restrictively. The basic idea behind this is that the parties should preferably return to the negotiating table.

## Singapore

Similar as in England, there is no separate regulation for the disruption of the commercial basis of the contract as applied in civil law jurisdictions. Rather, the “doctrine of frustration” is applied both in cases of impossibility and in cases where an event has a “radical and fundamental” impact on the fulfilment of contractual obligations. This primarily covers physical or legal obstacles, although the yardstick applied by the courts is very high. If the circumstances change in such a way that the execution of the contract is possible, but involves considerable additional work or costs for one party, the only remaining option is usually to attempt to adjust the contract by negotiation.

## Damages

### German Law

Whether in one of these constellations the party that does not fulfil the agreed obligation is obliged to pay damages depends first of all on whether it is entitled to one of the solution rights described above and whether the supplier (debtor) is responsible for the respective impediment to performance.

German law follows the principle that the debtor is only **liable in case of fault**, and vice versa not if there is an actual or legal obstacle to perform not caused by him, for example in the event of operational disruptions due to force majeure or an official entry ban. This applies under statutory law and does not require the agreement of a force majeure clause. Even without such a clause, the supplier shall in principle not be liable for damages if he cannot deliver on time due to an event of force majeure.

In addition, however, the debtor is also liable if he has assumed a guarantee or the procurement risk in the contract. If the supplier has assumed the procurement risk, then he is usually liable even if he is not responsible for the obstacle to performance. Such cases, however, in which as a result of unforeseeable circumstances such significant obstacles to performance have arisen that the supplier can no longer be reasonably expected to procure the goods, are usually no longer to be attributed to the procurement risk assumed.

If the principle of disruption of the commercial basis of the contract (*Störung der Geschäftsgrundlage*) applies, the Federal Court of Justice considers participation in the adjustment of the contract to be a genuine legal obligation of the parties, so that claims for damages can be triggered in the event of refusal to cooperate.

### Other Jurisdictions

#### Italy

It is basically the same in Italy. Italian law contains in Art. 1218 of the Italian Civil Code a regulation corresponding to German law. According to this provision, the debtor is liable for non-performance unless he proves that the non-performance or the delay was caused by impossibility of performance due to a reason beyond his control. For the debtor to be discharged from liability, he must prove that there is an objective impossibility of performance and that he is not responsible for it.

It follows from this that the debtor is liable if there is no objective impossibility of performance, but only a subjective difficulty which has led to non-performance. For example, late delivery by the supplier does not justify the contractor's default if the contractor could have obtained the delivery elsewhere and in time. Furthermore, the Italian Civil Code, in contrast to Section 275 (2) of the German Civil Code, does not expressly provide that performance may be unreasonable. However, legal doctrine and case law state that a service that is possible but requires excessive economic or psychological effort to provide it, is unreasonable. In such cases, it would be contrary to good faith (Articles 1175 and 1375 of the Italian Civil Code) if the creditor also demanded performance.

Moreover, it must be an impossibility due to a cause beyond the debtor's control. The debtor is therefore liable even if he could have avoided the obstacle to performance by exercising the best possible care. It is generally assumed that the debtor is at fault and therefore liable.

If the debtor is liable pursuant to Art. 1218 of the Italian Civil Code, the damages include both the loss suffered by the creditor and the loss of profit, insofar as these are a direct and immediate consequence of the non-performance or delay (Art. 1223 of the Italian Civil Code). A limitation of liability is provided for in Art. 1225 of the Italian Civil Code: If the non-performance or the delay is not due to the debtor's intent, compensation is limited to the damage that could have been foreseen at the time the obligation was incurred. Of course, the debtor's liability is further reduced if the creditor has culpably contributed to causing the damage or if the damage could have been avoided by exercising due care (Article 1227 of the Italian Civil Code).

## China

Under Chinese law, the debtor is liable for breach of contract (non-performance, delay or poor performance) regardless of fault. The debtor must compensate the creditor for all damages (including consequential damages) caused by the breach of contract. However, if a case of force majeure exists and this was the direct cause that the performance could not be rendered or could not be rendered in time, the debtor does not have to pay damages. However, this shall only apply as long as the force majeure situation persists.

As in Germany, the focus is on the direct causal link. Although the COVID-19 epidemic and the measures taken to combat it were in many cases a direct and compelling obstacle to the performance of the contract, it is very often the case that performance was only made more difficult economically, for example because the loss of turnover had eaten up liquidity. In this case, the most that can be considered is an adjustment of the contract in accordance with the principles of material change of the objective circumstances described above.

## England

In contrast to German law, the question of fault on the part of a contracting party is not relevant in English law. The basic idea is that one has assured the other party that one is and remains capable of fulfilling the contract properly. If this is not possible, the other party is liable to pay damages and, if necessary, the other party may rescind the contract.

Whether the breach of contract consists in misfeasance or non-performance is in principle irrelevant in English law. When determining the legal consequences, the decisive factor is how serious the breach of contract was. A distinction is

made between "warranty" and "condition". A "warranty" is a contractual assurance, while a "condition" is a term of contract in the strict sense. In the case of a breach of a "condition", the primary claim for performance of the contract still exists, whereas in the case of a breach of a "warranty" only the secondary claim for damages exists.

Apart from the possibility of rescission in case of breach of a "condition", a party may rescind the contract if the other party declares that it does not want to or cannot properly perform the contract ("repudiation" by the debtor) or in case of breach of a fundamental provision of the contract ("fundamental breach of contract"), which in this sense is deemed a "condition".

## Singapore

In Singapore, in case of a breach of contract, the creditor can primarily claim damages - usually compensation in money. It is in general not necessary that the debtor is also responsible for the breach of contract. In addition, under certain circumstances the contract can be terminated or rescinded or a certain action or omission can be demanded.

Claims for damages are intended to compensate the injured party and not to punish the injuring party (there are accordingly no "punitive" damages).

In case of a breach of contract, a distinction is made between two types of damages: (i) "general damages", i.e. those which are the natural consequence of the breach of contract and (ii) "special damages", which are caused by special circumstances. The burden of proof for the reimbursement of "special damages" is higher than for "general damages" and requires not only that the occurrence of the damages was reasonably expected but also actual knowledge of the consequences that will arise for the creditor in case of a breach of contract.

## Contract Design

It is completely uncertain how long the Corona pandemic will keep the world on tenterhooks. Today, the outbreak of the pandemic and the associated potential impairment of various supply relationships are no longer unforeseeable. It will probably be difficult to invoke force majeure for newly concluded supply contracts now - i.e. after the outbreak of the pandemic. Anyone who enters into an obligation which he is fully aware he cannot fulfil is also liable to pay damages. These circumstances should definitely be taken into account when new contracts are concluded. There are various possibilities of

doing this. We recommend agreeing on rules which enable the parties to react flexibly to changing and as yet uncertain circumstances, for example by stating specific assumptions under which performance is deemed possible by the agreed date and concrete mechanisms which will apply if the assumptions change.

The explicit choice of the applicable law as well as the competent court and, where appropriate, binding out-of-court settlement instruments can help to further reduce the costs of any disputes.

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# State Aid in the EU and the Corona Pandemic

All EU Member States are responding to the corona pandemic with programs to mitigate the significant economic impact on businesses by means of government support measures. The COVID-19 Country Reports in this newsletter describe some of these measures in more detail. This article provides a brief EU perspective.



Support measures granted by any of the 27 EU Member States to a company or to an industry and constituting state aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU) require prior approval by the European Commission. During the corona pandemic the Commission has swiftly issued several dozens of such approvals for programs of quite different designs. For an overview, please refer to our EU update [„State aid and the corona pandemic“](#)

While in most instances the need for state support is undisputed, there are some cases where companies feel discriminated by their competitors receiving public means. This is summarized in our article that features the legal action taken by Ryanair against state aid for other airlines, for more details please refer to this [link](#)

The European Central Bank (ECB) also introduced measures to fight the economic consequences of COVID-19 and initiated the Pandemic Emergency Purchase Program (PEPP) to buy up government and corporate bonds in an amount of up to EUR 750 billion. ECB President Christine Lagarde announced that this amount might be increased if necessary as the ECB is ready to use all tools available to ensure stability. It remains to be seen how the judgement of the Federal Constitutional Court of 5 May 2020 on the constitutionality of other programs will affect the future work of the ECB in this regard.

The European Commission itself does not pay direct financial aid to states, companies or individuals, but it has contributed EUR 1 billion to a total of EUR 7,4 billion collected in a fundraising it initiated at EU level to support the development of vaccines. For more information please visit [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/overview-commissions-response\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/overview-commissions-response_en).

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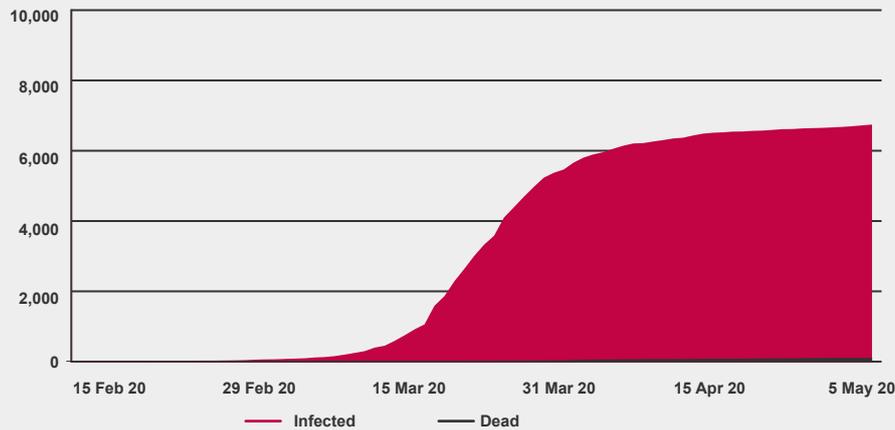
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# Australia

## COVID-19 Country Report



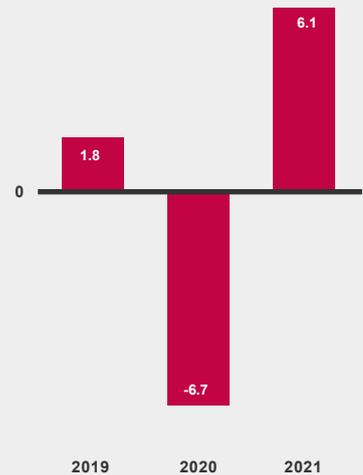
Corona Curve in Australia



<b>6,849 Infected</b>	<b>5,975 Recovered</b>	<b>96 Dead</b>
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 169 billion (16.4% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>45.0% (2019) → 59.4% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>5.2% (2019) → 7.6% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

Since March 2020, significant restrictions have been placed on Australians and Australian businesses in an effort to “flatten the curve” and slow the spread of COVID-19. On 18 March, the Australian government banned all non-essential indoor gatherings of more than 100 people. Since then, each State and Territory has enacted restrictions with respect to movement and non-essential gatherings. From 9 p.m. AEDT on 20 March, Australia closed its borders to all non-Australian citizens or permanent residents. On 24 March this was tightened to a total ban on international travel (subject to limited exceptions) and all Australians were encouraged to remain home, unless it was absolutely necessary to go out.

On 27 March, the Australian Prime Minister announced that Australia would need to go into economic hibernation to survive the impact of COVID-19. Broadly speaking this means that Australian businesses and individuals are granted relief from paying some of their bills in circumstances where business and household incomes are significantly reduced. For example, banks are being prepared to suspend business loan and mortgage repayments, insurance companies are suspending premium payments, and the Australian government is suspending tax payments and providing significant wage subsidies.

On 28 March, the Federal government requested that only children of essential workers (i.e. health care professionals), that do not have suitable care arrangements at home, should physically attend school. By this time, many schools in the States and Territories had decided to end the school term early for the Easter break or transition to having children undertake remote learning from home. Some schools are expected to gradually reopen from 11 May 2020.

Many Australians are currently required to work from home, events and mass gatherings have been prohibited, socialising has been severely restricted, beaches have been closed and individuals that returned from overseas or had actual or likely

exposure to persons infected with COVID-19 have been forced to self-quarantine for 14 days.

The effects of COVID-19 and the governmental restrictions imposed as a result have significantly affected the Australian economy in many ways:

- So called 'non-essential' businesses have been forced to close, including cinemas, pubs, restaurants, fitness studios, sporting facilities and live music venues.
- Other businesses have been unable to afford to pay their employees as a result of reduced trade and are struggling to meet contractual commitments.
- Businesses that remain open are required to abide by social distancing requirements (no more than one person per 4m<sup>2</sup> of the business' premises).
- There has been a significant decline in demand resulting in excess capacity and inventory, while select industries have seen a surge in demand (including supermarkets and electronics) creating short-term supply shortages.

One of the most prominent economic casualties of COVID-19 is Australia's second-largest domestic air carrier, Richard Branson's Virgin Australia, which was forced into voluntary administration on 21 April 2020, after the Australian government refused to bail it out.

In response to the restrictions and declining economic conditions, the Federal and State governments have introduced new legislation and temporarily amended existing legislation to help businesses through this difficult time.

Despite the severe economic impact, from a national health perspective, the restrictions have been successful. There are currently less than 1,000 active cases of COVID-19 in Australia and the number of daily infections is decreasing fast, with many states having recently reported no new cases. There is prospect that the restrictions are beginning to ease.

Recently, the Federal government launched the "COVIDSafe" app which Australians may voluntarily download to assist in contact tracing. The app works by using Bluetooth capabilities to recognise other users of the app that are nearby and record the time, date, distance and duration of the contact. Users that test positive for COVID-19 may provide their permission for the data to be used to contact persons that have come in contact with the infected user. The government has indicated that the app will assist in containing COVID-19 and, depending on the number of Australians that download and use the app, will lead to restrictions being eased.

## State Aid Measures

Between 12 and 30 March 2020, the Australian Government released three tranches of economic measures in response to COVID-19.

The first economic response to COVID-19 was announced on 12 March 2020 and comprised an AUD 17.6 billion stimulus package, including AUD 4.76 billion for payments to welfare recipients and AUD 6.7 billion for wage subsidies payable to businesses. At the same time, the Australian Taxation Office (ATO) released a series of administrative concessions. This was followed by the second economic response to COVID-19 on 22 March 2020 worth AUD 66.1 billion, with new tax measures for small to medium enterprises and individuals. On 30 March, the Government announced the AUD 130 billion Job-Keeper Program to help keep Australians in jobs. This brings the Government's total support for the economy to AUD 320 billion, representing 16.4 per cent of Australia's annual GDP.

On 3 March 2020, the Reserve Bank of Australia cut the official cash rate to 0.25%, a new record low. Furthermore, the Reserve Bank of Australia set up a three-year funding facility for at least AUD 90 billion to be lent to Australian banks at a fixed rate of 0.25%. The aim is to encourage lending to businesses to spend and invest, keeping workers in jobs.

### Instant Asset Write-Off and Backing Business Investment Incentive

As a part of its first economic stimulus package, the Australian government introduced the following measures with respect to depreciation deductions:

- The instant asset write-off threshold has been increased from AUD 30,000 to AUD 150,000 and is available to businesses with an aggregated annual turnover of less than AUD 500 million (up from currently AUD 50 million); and
- the backing business investment incentive allows businesses to claim a deduction for part of the cost of depreciable assets that cost over AUD 150,000.

Businesses that qualify for the **instant asset write-off** can claim an immediate deduction of 100% of the cost of new or second-hand depreciable assets that are installed and ready for use between 12 March 2020 and 30 June 2020. The threshold applies on a per asset basis, so eligible businesses can immediately write-off multiple assets. The threshold will revert to AUD 1,000 for small businesses (turnover less than

AUD 10 million) from 1 July 2020, however businesses not entitled to the instant asset write off from 1 July 2020 may be entitled to the 50% backing business investment incentive.

The **backing business investment incentive** consists of a 15 month investment incentive (through to 30 June 2021) to support business investment and economic growth, by accelerating depreciation deductions. Businesses with an aggregated annual turnover of less than AUD 500 million per annum will be able to deduct 50% of the cost of an eligible asset upon installation, provided it was acquired after 12 March 2020 and first used or installed by 30 June 2021. There is no asset value threshold for this 50% depreciation deduction. The existing depreciation rules will continue to apply to the remaining balance of the asset's cost over its effective life. Therefore, an eligible asset will generate the immediate deduction of 50%, plus in the same year will generate the usual depreciation deduction calculated in accordance with the normal depreciation rules. The measure results in businesses bringing forward depreciation deductions from future years to the current period resulting in a reduced tax liability in the current period. A rise in tax liability due to reduced depreciation in subsequent years will offset this reduction.

### Cash Flow Boost for Employers

The temporary 'Boosting Cash Flow for Employers' measure provides a tax-free payment of up to AUD 100,000 (being AUD 50,000 for each of the current and next financial years) to eligible small and medium sized enterprises and not-for-profit organisations (being enterprises and not-for-profit organisations that have an aggregated annual turnover of under AUD 50 million) that employ staff.

Eligible entities will receive two payments equal to 100% of their salary and wages withheld but capped at AUD 50,000. The payments will be tax-free and flow through automatically from the ATO. Every entity with a PAYG withholding liability (i.e. an entity that is required to withhold part of the wages payable to its employees as income tax and remit it to the ATO) will receive the payment.

The cash flow boosts will be delivered as credits in the Australian business activity statement system, and will generally be equivalent to the amount withheld from wages paid to employees for each monthly or quarterly period from March to June 2020. In practice, this means the eligible entity will keep the amounts it has withheld from payments for these periods.

An additional cash flow boost will be applied when activity statements for each monthly or quarterly period from June to September 2020 are lodged. These credits are equal to the total boosts credited for March to June 2020. They will be paid out in either two or four instalments depending on the eligible entity's reporting cycle.

An eligible entity must lodge its business activity statements to receive the cash flow boosts.

### SME Loan Guarantee Scheme

The Australian government has established the 'Coronavirus SME Guarantee Scheme' to support small and medium sized enterprises to get access to working capital. Under the scheme, the Australian government will guarantee 50% of new loans issued by eligible lenders to small and medium sized enterprises and thereby enhance the willingness and ability of banks to provide credit to small and medium sized enterprises. The scheme will support AUD 40 billion of lending to small and medium sized enterprises.

The scheme will complement announcements made by Australian banks to support small and medium sized enterprises with their existing loans by deferring repayments for up to six months as well as the AUD 90 billion term funding facility at an interest rate of 0.25% offered by the Reserve Bank of Australia to banks, that will reduce the cost of lending, with particular incentives to lend to small and medium sized enterprises.

### JobKeeper Program

On 30 March 2020, the Australian government announced an AUD 130 billion JobKeeper Program to assist employers to retain their employees. In short, the Program provides eligible employers with a wage subsidy for wages paid to eligible employees during the six-month period starting on 30 March 2020.

For employees who are working, the scheme provides a wage subsidy to the employer. For employees who are not working because they have been stood down, it provides a minimum wage for the employee and an ongoing connection with their employer. The JobKeeper payment to the employer is fixed at AUD 1,500 per fortnight, per employee. The JobKeeper payment is also available to sole traders, partners in a partnership, or directors in a company who satisfy the relevant eligibility requirements.

The JobKeeper Program is being administered by the Australian Taxation Office (**ATO**) and includes stringent reporting and record keeping obligations.

To be eligible to participate in the JobKeeper Program, the employer must demonstrate that the GST turnover of its business has decreased by:

- 30% or more, if the aggregated annual turnover of the employer's business is less than AUD 1 billion (for income tax purposes); or
- 50% or more, if the aggregated annual turnover of the employer's business is AUD 1 billion or more (for income tax purposes).

The 'aggregated turnover' includes the annual global turnover of all connected entities and affiliates regardless of location.

If an employer does not satisfy the decrease in turnover test in the first month or quarter, it can re-test in a subsequent month or quarter and become eligible to JobKeeper payments from that later point in time. Once the decrease in turnover test is satisfied in a particular month or quarter, this condition does not need to be re-tested in a later period.

The rules provide for a basic test to determine the decline in GST turnover, which in practice will use information contained in the business activity statement of the employer. There is an alternative test which relies on the Commissioner of Taxation exercising a discretion if the employer cannot satisfy the basic GST turnover decline test. Examples of when an employer might not satisfy the basic test and be able to apply for eligibility under an alternative test include:

- Newly started businesses that do not have a previous period to which they can compare their current GST turnover;
- acquisitions or restructurings during the year which resulted in an increase of the GST turnover;
- employers who were scaling up, this will apply to most start-up companies; or
- businesses with highly variable turnover.

Under the JobKeeper Program **eligible employees** are employees who as at 1 March 2020 were:

- employed by the eligible employer (including those stood down or re-hired) on a full-time, part-time or long-term casual basis;
- at least 16 years of age;

- an Australian citizen or a holder of a permanent resident visa; or
- an Australian resident for tax purposes and the holder of a *Special Category (Subclass 444) Visa*, which is only available to New Zealand citizens.

The ATO will make payment of the JobKeeper subsidy to an eligible employer monthly in arrears from 30 March 2020 (or the period in which it first satisfied the decrease in turnover test) until 27 September 2020. The employer must then pay each eligible employee the full AUD 1,500 per fortnight, even if the eligible employee's fortnightly wage is less than AUD 1,500.

### Tax Administrative Relief

The Australian Taxation Office (**ATO**) has announced a number of administrative support measures for business taxpayers who are experiencing challenges in managing their taxation obligations due to COVID-19.

The ATO administrative relief is available to small businesses and large corporate taxpayers alike and includes:

- Deferring by up to six months the payment date of amounts due through the business activity statements (such as 'pay as you go' (PAYG) instalments (i.e. income tax prepayments), PAYG withholdings (i.e. income tax withheld from wages paid to employees)), income tax assessments, fringe benefits tax assessment and excise duties. However, employers are still required to make all superannuation contribution payments for their employees on time – this payment obligation cannot be deferred;
- allowing businesses on a quarterly reporting cycle to opt into monthly GST reporting in order to get quicker access to GST refunds they may be entitled to. However, once a business chooses to change, it must keep reporting its GST monthly for the next 12 months;
- allowing businesses to vary PAYG instalment amounts (i.e. income tax prepayments) to zero for the March 2020 quarter. Businesses that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters;
- remitting any interest and penalties, incurred on or after 23 January 2020, that have been applied to tax liabilities of the affected business;
- deferring the lodgment date for research and development refund (**R&D Refund**) applications for the 1 July 2018 to 30 June 2019 income year to 30 September 2020; and

- working with affected businesses to help them pay their existing and ongoing tax liabilities by allowing them to enter into low interest payment plans.

In order to obtain administrative relief, businesses impacted by COVID-19 must contact the ATO to explain how COVID-19 has affected their business and to discuss the relief options and agree on an arrangement that suits them and the ATO.

The ATO is not granting blanket extensions of time for tax return lodgment, but will continue to assess requests for lodgment extensions on a case by case basis, having regard to a taxpayer's particular facts and circumstances.

## Labour Law

### Stand Down and Reductions in Working Time and Salary

The *Fair Work Act 2009* (Cth) (**FWA**) provides an employer with the right to stand down an employee without pay where the employee cannot perform useful work in certain defined circumstances. However, the stand down rights under the FWA are quite limited and there was considerable uncertainty as to whether a mere decline in trading activity caused by COVID-19 allowed employers to stand down their employees.

Furthermore, any reduction in working time and proportionate reduction in salary payments due to COVID-19 is regarded a variation of the employment contract and therefore requires the consent of the employee.

To address these issues, the Federal government temporarily amended the FWA on 9 April 2020 and provided employers that are eligible to participate in the JobKeeper Program more flexibility with respect to their work force arrangements. The amendments to the FWA will expire on 28 September 2020.

The changes allow employers that participate in the JobKeeper Program to:

- Stand down eligible employees who the employer cannot usefully employ as a result of COVID-19 (the employer does not have to prove a complete stoppage in work as would otherwise required under the FWA);
- unilaterally reduce eligible employees' working hours;
- unilaterally change eligible employees' duties and work location provided such change is safe, within the employee's skill and competency, and reasonably within the scope of the employer's business; and

- agree with eligible employees to change their work days or take annual leave (provided the employee retains at least two weeks of accrued annual leave),

without breaching any provisions of the FWA.

An employer may only exercise the above rights if they reasonably believe such actions are necessary to save an eligible employee's job, give the eligible employee prior notice (generally three days) and consult with the eligible employees and, if applicable, any unions.

### Working From Home

Many Australian employees have been directed by their employers to work from home to minimise the risk of COVID-19 spreading. However, where a direction to work from home is not mirroring a government direction for employees to work from home, employees may be able to refuse to comply with such a direction.

Given the government restrictions that have been imposed on businesses, especially the requirement that some businesses cease providing services to the public, many workplaces will be required to close down in part or in full to comply with such restrictions. Some workplaces will also need to close to reduce the risk of infection. In these circumstances, it would be reasonable for an employer to direct employees to work from home or an alternative location.

Employers may also direct specific employees to work from home, for example, to self-isolate where the employee is unwell or at risk of having been infected with COVID-19.

### Work Health and Safety

Under State based work health and safety laws, employers have a duty to their employees to ensure as far as reasonably practicable that the workplace (which also extends to home office arrangements) does not present any health or safety risks to employees and that safe work systems are in place.

In light of the COVID-19 climate, employers should:

- stay up to date with current COVID-19 advice from Federal and State governments and health organisations;
- provide information to employees in relation to COVID-19 health risks and how to minimise those health risks, including adequate hygiene practices;

- monitor, assess and mitigate any COVID-19 health and safety risks to employees that arise within the workplace;
- provide adequate hygiene facilities in the workplace for employees; and
- implement self-isolation or quarantine policies in respect of employees that have or may have contracted COVID-19 as well as policies to mitigate the risk of transmission to other employees.

Where an employee may have contracted COVID-19 in the workplace, employers should investigate and report the infection, including in relation to its workers' compensation insurer. The contraction of COVID-19 by an employee may be deemed a workplace injury depending on whether the contraction occurred in the workplace and other circumstances.

## Contract, Corporate and Foreign Investment Law

### Contract Law

#### Performance of Contractual Obligations

Neither the Federal government nor State governments have enacted any new legislation or amendments in relation to the general performance of long term commercial contracts, other than commercial leases. Parties whose contractual obligations or benefits that have been affected by the COVID-19 pandemic will need to rely on any force majeure clauses in their existing contracts. If the contract does not contain a force majeure clause or if the definition of force majeure is not broad enough to cover the occurrence of COVID-19, the party wishing to terminate the contract may invoke the common law doctrine of frustration of contract. Frustration of contract applies if:

- an event causes the contractual obligations to become impossible or radically different from what was contemplated by the parties at the time of entering into the contract (frustrating event);
- the frustrating event was not caused by either party; and
- the contract does not otherwise deal with the frustrating event.

However, establishing frustration of contract is difficult as the obligations must be rendered impossible, not merely difficult, more burdensome or expensive.

### Commercial Leases

On 7 April 2020, the National Cabinet announced a Mandatory Code of Conduct (**Code**) to apply to small and medium sized commercial tenancies impacted by the COVID-19 pandemic. The Code aims to alter the rights of affected landlords and tenants for commercial tenancies and is intended to have nationwide application. However, it is incumbent on the individual States and Territories to introduce legislation or regulation to adopt, implement and enforce the Code within their respective jurisdiction.

The Code requires landlords to engage in good faith negotiations with eligible tenants, at the tenant's request. Eligible tenants are tenants that are eligible to receive the JobKeeper Payment and have an annual turnover of AUD 50 million or less (including the turnover of the tenant's group companies). Landlords are expected to reduce the rent proportionately to the decline in the tenant's business, measured by the reduction in turnover during the period of the COVID-19 pandemic and a reasonable recovery period. The rent reduction is to be a combination of waivers and deferrals of rent. Alternate outcomes such as deferral, pausing or hibernating may also be used to reach commercially agreed outcomes.

### Execution of Documents

The requirement to practice social distancing has produced challenges in executing documents that require the execution to be witnessed. To assist, the New South Wales government enacted the *Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulations 2020* (NSW) which allows legal documents, the execution of which is required to be witnessed by law, to be witnessed by audio visual link, provided it is continuous and contemporaneous and the witness observes the person signing the document in real time. The changes will remain in place until 26 September 2020.

The Federal government has not yet announced any changes to execution requirements of companies under the *Corporations Act 2001* (Cth) and there remains uncertainty as to whether companies may electronically sign documents.

### Corporate Law

#### Temporary Changes to Insolvency Laws

On 24 March 2020, the Federal government introduced the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (**CERPO Act**). Schedule 12 of the CERPO Act



aims to provide a safety net to businesses to assist them in continuing to operate where the impacts of COVID-19 may have caused a temporary period of illiquidity in order to avoid entering voluntary administration or liquidation.

The safety net measures under Schedule 12 of the CERPO Act took effect on 25 March 2020 and will see temporary measures put in place in relation to issuing and responding to statutory demands and director's duty to prevent insolvent trading.

The measures will temporarily increase the:

- threshold at which creditors can issue a statutory demand on a company from AUD 2,000 to AUD 20,000;
- threshold at which creditors can initiate bankruptcy proceedings from AUD 5,000 to AUD 20,000; and
- time companies have to respond to statutory demands from 21 days to 6 months.

### **Statutory Demands**

Prior to the CERPO Act, if a creditor was owed at least AUD 2,000 or more from a company, the creditor could issue a statutory demand on a company under the Corporations Act 2001 (Cth). If the statutory demand was not paid within 21 days, the company was presumed to be insolvent and creditors could file an application for the company to be wound up.

As a result of the CERPO Act, for the six-month period from the commencement of the changes (i.e. from 25 March 2020), the monetary threshold for issuing statutory demands will be increased to AUD 20,000 and the timeframe for responding to the statutory demand will be increased to 6 months.

By increasing the monetary threshold and the timeframe for debtors to respond, businesses are afforded a greater period of time to satisfy unpaid debts. However, conversely, it will also result in many suppliers and other creditors facing increased delays in payment. It should be noted that the temporary changes to the laws regarding statutory demands do not prevent a creditor from taking the usual enforcement actions, including initiating legal proceedings.

### **Temporary Relief from Director's Duty Not to Trade While Insolvent**

Under Australian law, the test for insolvency is whether a business can pay its debts as and when they fall due (i.e. it is a cash flow test and not a balance sheet test). Directors have a duty to ensure that the company does not incur further debts whilst insolvent and can be personally liable for debts incurred by the company if, at the time the debts were incurred, there were reasonable grounds to suspect that the company was either insolvent or would become insolvent by incurring the debt.

Temporary relief from this personal liability has been introduced which is designed to give directors the confidence to

continue to trade, pay their bills and retain staff through the COVID-19 crisis. Directors will be able to rely on the temporary relief in relation to a debt incurred by the company if the debt is incurred:

- in the 'ordinary course of the company's business';
- during a six month period which commenced on 25 March 2020; and
- before any appointment of an administrator or liquidator of the company during the temporary safe harbour application period.

A director is taken to incur a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business. This could include, for example, a director taking out a loan to move some business operations online.

Despite the safe harbour relief afforded to directors, directors will still be liable in cases of egregious dishonesty and fraud, and the company will still be liable to repay any debts incurred.

By providing safe harbour relief, directors will likely be faced with less trepidation, however, on the other hand, suppliers may have less confidence that they are in fact dealing with a solvent company.

### **Treasurer's Power to Modify the Corporations Act**

The Treasurer is now empowered to make instruments which exempt classes of persons from, or modify the operation of, specified provisions of the Corporations Act.

In order to make such an instrument, the Treasurer must be satisfied that:

- It would not be reasonable to expect the persons in the class to comply with the provisions because of the impact of COVID-19; or
- the exemption or modification is necessary or appropriate to facilitate continuation of business because of COVID-19, or to mitigate its economic impact.

The instruments can be made up until 24 September 2020, and will have force for up to 6 months after they are made.

The power conferred on the Treasurer is very broad, and comes with very little explanation as to its limits or scope in either the CERPO Act or in the accompanying explanatory memorandum.

### **ASIC's 'no Action' Position Regarding Annual General Meetings**

The government restrictions on non-essential gatherings pose a challenge to Australian companies that are required to hold shareholder meetings during the COVID-19 pandemic. To alleviate such challenges, the Australian Securities and Investments Commission (ASIC), has stated that, in respect of public companies with a 31 December 2019 financial year end that would otherwise be required to hold their annual general meeting (AGM) by 31 May 2020, ASIC will not take any action against those companies if their AGM is postponed up to the end of July 2020. However, it should be noted that ASIC's no-action position does not prevent action being taken by other parties (i.e. shareholders of the company) or the Court deciding that the company has breached the Corporations Act.

ASIC further noted that some entities may wish to proceed with holding their AGM by 31 May 2020 or during the two month extension period, using technology such as "hybrid" AGMs (where there is a physical location and online facilities) or "virtual" AGMs (where the meeting is conducted solely online).

In Australia, the participation by shareholders in a meeting via the use of technology is expressly permitted under the Corporations Act. This section provides that a company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate. As such, unless the entity's constitution restricts meetings being held in this manner, hybrid shareholder meetings are permitted under the Corporations Act, and could be conducted in several venues by way of audio and visual link up.

However, there is doubt as to whether the current law in Australia permits a shareholders' meeting to be held solely online, where there is no physical 'venue'. It is arguable that the traditional concept of the word 'venue' does not encompass a virtual venue for this purpose.

While ASIC does not have the power to modify the Corporations Act to facilitate virtual AGMs, ASIC announced that it intends to take a 'no-action' position on non-compliance with the Corporations Act that may restrict the holding of virtual AGMs where an entity elects to do so in view of complying with the statutory 31 May 2020 deadline, or during the two month extension period. However, the 'no-action' position is conditional on the technology providing members, as a whole, a reasonable opportunity to participate, including:

- Allowing members to ask questions of the auditor and about management; and
- ensuring voting occurs by poll rather than on a show of hands.

### Capital Raisings

Given the economic impact COVID-19 and the resulting government restrictions have had on liquidity and cash flow of Australian businesses, we expect to see many businesses relying heavily on equity funding in order to survive. In recognition of the need for businesses to raise equity, ASIC and the Australian Stock Exchange (**ASX**) have announced relief measures for listed entities.

#### ASX Relief for Emergency Capital Raisings

On 31 March 2020, the ASX announced temporary emergency measures to help facilitate emergency capital raisings, including the following:

- Back-to-back trading halts permitting an entity to request two consecutive trading halts, allowing it up to a total of four trading days in halt to consider, plan for and execute capital raising.
- Temporary increased placement capacity of 25%. However, the increased placement capacity is conditional on entities making a follow-on pro rata entitlement offer or a follow-on offer to retail investors under a share purchase plan (SPP) at the same price or at a lower price than the placement price. ASX has made it clear that this is a one-off measure and that once utilised, the additional placement capacity will not be able to be ratified or replenished.
- Waiver of the one-for-one cap on non-renounceable entitlement offers.

These temporary measures will expire on 31 July 2020, unless ASX otherwise decides to remove or extend them. ASX also intends to keep these measures under review and notes that it may alter or replace them if they are not having the desired effect on capital raisings.

#### ASIC Relief for 'Low Doc' Offers

ASIC has also announced temporary relief under *ASIC Corporations (Trading Suspension Relief) Instrument 2020/289* and *ASIC Corporations (Amendment) Instrument 2020/290* for listed companies to raise capital quickly by way of 'low doc' offers. In particular, the relief allows some listed companies to utilise 'low doc' capital raising where they would otherwise

have been prohibited for having been suspended for a long period while assessing the impact of COVID-19 on their business.

Entities will be able to rely on regulatory relief if they:

- have been suspended for up to 10 days in the 12 months before the offer, and
- were not suspended for more than five days in the period commencing 12 months before the offer and ending 19 March 2020. It should be noted that ASIC takes the view that securities are not suspended during a trading halt.

ASIC will provide 30 days' notice prior to revoking the relief.

#### Foreign Investment Regulations

Australia operates a complex foreign investment screening regime which requires proposed acquisitions by foreign investors that meet certain conditions to be notified to the *Foreign Investment Review Board (FIRB)* in order to obtain a 'no objection' notification from the Australian Treasurer.

Prior to temporary changes introduced on 29 March 2020, private foreign investors (as opposed to foreign government investors) were only required to notify FIRB if the value of the transaction exceeded a prescribed monetary threshold. The applicable monetary threshold depended on the type of asset being acquired. For investors from countries that are not party to a Free Trade Agreement with Australia, the threshold is generally AUD 275 million. Foreign government investors do not receive the benefit of the monetary thresholds and are required to notify FIRB, irrespective of the value involved. Under the regime, the Treasurer is required to consider whether the proposed transaction is in the national interest within 30 days of FIRB being notified of the proposed transaction and the foreign investor is prohibited from implementing the transaction until it receives a 'no objection' notification from the Treasurer or the statutory review period (plus a 10 day notification period) expires.

On 29 March 2020, the Treasurer announced temporary changes to foreign investment rules whereby the monetary screening thresholds have been reduced to zero for all investors and the timeframe for FIRB's review of applications has been extended from 30 days to up to six months. The changes took effect for all transactions entered into after 10.30 p.m. on 29 March 2020 and are expected to last for the duration of the COVID-19 pandemic. However, the changes to the monetary thresholds do not apply to agreements which had been en-

tered into before 10.30 p.m. (AEST) on 29 March 2020, including where the acquisition has not yet occurred and regardless of whether there are still unmet conditions.

The reduction of the monetary threshold to zero means that all transactions which meet the other conditions (including the percentage thresholds) of a 'significant action' or 'notifiable action' under the foreign investment rules will now require FIRB approval, regardless of the transaction value.

However, for example, the following acquisitions by a private foreign investor may still proceed without FIRB approval despite the new zero monetary threshold, because the percentage thresholds are not met:

- acquisitions of an interest of less than 20% in an Australian entity that is not an Australian land entity and does not operate a business that is subject to a specific lower percentage threshold;
- acquisitions of an interest of less than 10% in an agribusiness or a listed Australian land entity; and
- acquisitions of an interest of less than 5% in an unlisted Australian land entity or in a company, unit trust or business that wholly or partly carries on an Australian media business.

Whereas the following transactions may now require FIRB approval due to the new zero monetary threshold:

- any acquisition where the above stated percentage thresholds (i.e. 20%, 10% and 5%) are reached or exceeded;
- commercial property leases for a period of more than five years (including options to renew), agreements for leases or acquisition of developed commercial land by foreign owned entities, including Australian subsidiaries of foreign entities;
- offshore transactions involving a foreign buyer, seller and target, if there is a change of control of an Australian entity even if the Australian entity is of immaterial value in the context of the transaction;
- internal reorganisations by multinational corporate groups involving changes in ownership of Australian entities (even if those entities are of little value).

FIRB has also stated that it is prioritising applications that protect and support Australian businesses and Australian jobs. To assist in prioritising existing or new applications, FIRB has requested that applicants advise FIRB if an application has commercial imperatives or broader economic impacts, which warrants its prioritisation.

Failure to comply with the foreign investment laws may result in a disposal order, civil penalty orders and/or criminal prosecutions.

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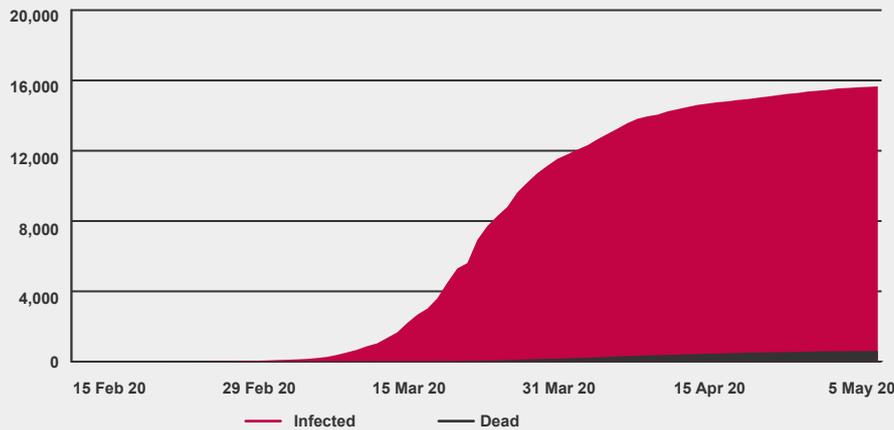
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# Austria



## COVID-19 Country Report

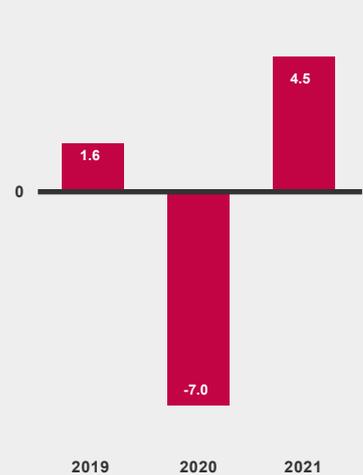
Corona Curve in Austria



15,650 Infected	13,462 Recovered	606 Dead
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> EUR 38 billion (9% GDP <sup>2</sup> )	<b>State debt (in % GDP)</b> 70.8% (2019) → 84.6% (forecast 2020)	<b>Unemployment rate:</b> 4.5% (2019) → 5.5% (forecast 2020)
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

As from the beginning of March, comprehensive curfews were imposed in Austria in order to contain the spread of the corona virus. After these measures have proved successful in the recent weeks and the infection rate has dropped significantly, the measures are now being gradually reduced since 14 April 2020. Nevertheless, the Federal Government is continually implementing new measures to prevent further spread of the virus, which, for the time being, are to remain in force until the end of June.

Since 14 April 2020, for example, in addition to businesses in system-relevant sectors such as food retailers, pharmacies, petrol stations and tobacconists, small business premises for the sale of goods (with a max. sales area of 400 m<sup>2</sup> and one customer per 20 m<sup>2</sup>) and craft businesses have also been reopened. According to the Ordinance of the Ministry of Health, a mouth and nose protector must be worn in all open shops as well as on public transport, while exceptions only apply to children up to six years. In addition, it is recommended to wear a protection in all public places that bear the risk of close contact with other people. The safety distance of at least one meter must be maintained at all times.

As of 1 May 2020, freedom of movement in public spaces was re-expanded in Austria. However, the general rule of maintain-

ing a safety distance of 1 m to people outside the common household still applies. From 2 May onwards, all shops selling goods and many service providers (with the exception of tourism, gastronomy and the leisure industry) were allowed to reopen their doors under certain conditions. From 15 May, catering establishments will also be reopened, although restrictions will continue to apply.

Since 20 March 2020, new regulations have been in force for entering Austria via plane. Persons with Austrian citizenship, as well as those with a right to stay in Austria, must go into a 14-day at home quarantine after entering the country. Third-country nationals without a right of residence (even if they would otherwise be entitled to enter the country) who arrive in Austria by plane from outside the Schengen Area are not al-

lowed to enter the country, apart from a number of exceptions. Persons wishing to travel to Austria from neighboring countries must carry a medical certificate confirming a negative molecular biological test for SARS-CoV-2. Persons who cannot present such a certificate will be refused entry.

On 16 March 2020, the first comprehensive package of measures to combat the consequences of the corona virus came into force, a second COVID-19 law was announced on 21 March 2020. On 3 April 2020, the National Council adopted three further COVID-19 legislative packages, amending 85 laws and introducing seven new laws.

## State Aid Measures

In order to secure jobs and the liquidity of companies during the COVID-19 pandemic, the Austrian Federal Government has finalised an aid package of a EUR 38 bn, which includes, in particular, measures for the accommodation, catering and leisure industry.

At first, the aid package includes establishing a hardship fund. This hardship fund provides for subsidies to one-person companies (OPC, new self-employed persons), freelancers according to § 4 paragraph 4 ASVG and micro-enterprises. It is administered by the Austrian Federal Economic Chamber. The processing of the subsidies to businesses in the agricul-

ture and forestry sector (including Buschenschanken and farm holidays) is handled by Agrarmarkt Austria. Private landlords with rooms in their own households can also submit applications via Agrarmarkt Austria.

Moreover, the aid package provides EUR 9 bn for guarantees and commitments in order to secure loans. In addition, the amendment of the SME Promotion Law created a flexible liability limit to help SMEs secure their liquidity. For tourism enterprises, the Ministry of Tourism, together with the Austrian Hotel and Tourism Bank, has put together a package of measures, ranging from liabilities to secure bridge financing, to the assumption of costs for these guarantees, the increase of the liability limit from EUR 100 m to EUR 1 bn, as well as the suspension of the repayment of ÖHT loans for the year of 2020.

The aid package provides for a EUR 15 bn Corona Aid Fund for the most affected sectors. It is intended to support businesses that are severely affected by measures such as bans on entry, travel or assembly restrictions and that face liquidity problems and are therefore confronted with major losses in turnover threatening their businesses very existence. In particular, these are businesses from sectors such as the catering, tourism and trade sector. To bridge the liquidity shortages of business, operating subsidies in the event of a drop in sales as well as loans with a state liability guarantee are provided for.



A further EUR 10 bn is provided for tax deferrals, tax relief and the suspension of fees to improve the liquidity of companies. The measures include a deferral and facilitated reduction of advance payments of corporation tax and income tax. Furthermore, benefits received are exempt from tax.

Additionally, the aid package included a EUR 4 bn emergency fund for short-time work and the support of SMEs, which was recently increased to EUR 10 bn and will be discussed in detail below.

## Labor Law

In view of the COVID-19 pandemic, in particular the following innovations in labor law were introduced:

### “Corona Emergency Aid - Short-Time Work Flex”

In order to keep as many employees and apprentices as possible in employment during the COVID-19 pandemic, the existing short-time working model, which provides for a temporary, foreseeable reduction in regular working hours (by at least 10% and up to a maximum of 90%), was adjusted so that working hours can now be reduced temporarily to as little as zero hours. However, throughout the entire averaging period the reduced working time must still average at 10% at least.

For the regular working hours lost, the employee is entitled to a short-time working allowance, for which the employer then is reimbursed by the short-time working aid. However, remuneration components above the maximum social security contribution base (gross EUR 5,370 per month) are excluded from this. The employer pays the employee a so-called net replacement rate of between 80 and 90% of the remuneration lost. If the employee does not receive a regular pay the net replacement must be based on the average remuneration of the last three months prior to the short-time work.

Corona short-time work can also be claimed retroactively from 1 March 2020. Short-time work is currently limited to a maximum of three months. However, it can be extended for a further three months if necessary. Short-time work is possible for all employees and is available to part-time employees. In addition, Corona short-time work can be applied for by apprentices who cannot perform any or no suitable work in the company, as well as members of the managing body (e.g. managing directors). Short-time work is not possible for part-time employees and freelancers.

## Leave Entitlements and Other Forms of Time Compensation

In general, a company cannot unilaterally send its employees on vacation or any other type of time off, e.g. compensatory time off. In view of the COVID-19 pandemic, this regulation has now been amended to the effect that employees of those companies currently affected by access prohibitions, are obliged to use holiday and time credits at the request of the employer during the period in which their services cannot be carried out due to measures in accordance with the 1st COVID-19 measures act. However, holiday entitlements of the current year can only be requested to be taken for up to two weeks.

## Home Office

Home office must always be explicitly agreed upon between employee and employer. If the employment contract contains such an agreement, the employer can order his employees to work from home. However, the employer has to reimburse the employee for all costs incurred for working from home (e.g. internet, mobile phone).

## Contract, Corporate and Insolvency Law

### Contract Law

In general, contracts and the rights and obligations they contain remain legally binding despite the COVID-19 pandemic and the associated official measures. In case of loss of performance, possible contractual arrangements are to be taken into account first. If the contract includes, for example, a force majeure clause, it confers the parties the right to suspend the obligation to perform or even to withdraw from the contract if and when unforeseen events occur without fault of either party which prevent, hinder or delay the fulfillment of the contract.

In the absence of a contractual arrangement, Section 1447 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, “ABGB”) provides that, for example, in the case of specific obligations (Speziesschulden) (i.e. if, for example, a specific order cannot be delivered due to the imposed export embargoes), contractual obligations are mutually cancelled in the event of the accidental loss of the good. However, this does not apply to generic debts, i.e. products that can be described by general criteria. However, if the official measures to contain the corona virus lead to the frustration of a contract, it can be adjusted or cancelled, provided the original contract cannot be maintained.

Unless otherwise provided for in the contract, the Austrian Civil Code (ABGB) stipulates that if items taken into inventory cannot be used or put to use due to extraordinary circumstances, no lease or rental payments are to be made in connection with existing contracts (e.g. rental contracts). It is to be assumed that official restrictions based on the corona virus constitute such an “extraordinary circumstance” which can stand in the way of the “specified use” of an existing object. This means that for the period in which (business) premises and accommodation facilities are closed in accordance with the official orders, a reduction in rent or, in exceptional cases, the complete omission of rent for the duration of the restrictions may be enforceable. It should be noted that this does not apply to private apartments, as these can be used without constraints.

## Corporate Law

### Annual General Meeting

According to the Stock Corporation Act, the Management Board must convene the General Meeting annually, which then must take place within the first eight months of the financial year. If the financial year of a stock corporation corresponds to the calendar year, the Annual General Meeting must take place by the end of August at the latest. In view of the COVID-19 pandemic, this period for holding the Annual General Meeting has now been temporarily extended by a further four months to a total of twelve months.

### “Virtual“ General Meeting

When conducting the general meeting of a corporation, it is sufficient for the individual shareholder to be able to watch and listen to the proceedings of the meeting by means of an “acoustic and optical connection in real time”. In addition, the individual shareholder must be able to submit requests to speak and participate in votes during the meeting (e.g. by electronic, written transmission of questions or motions and voting via special voting software).

If all shareholders agree, general meetings of a limited liability company (GmbH) can also be held via video conference. In order to meet the requirements of the COVID-19 pandemic, general meetings can now generally and until the end of 2020 be held without the physical presence of the participants and resolutions can be passed in a so-called “virtual meeting”. This allows for resolutions that need to be passed in a General Meeting and must be certified by a notary.

Due to recent legal changes that will become effective until the end of the year and in accordance with the available technical requirements, documents can now also be drawn up electronically by a notary if it is mandatory to call in a notary (e.g. for the transfer of ownership shares) through the use of an electronic means of communication. For this purpose, the notary must be connected to the party before and during the signing process by using an electronic means of communication that allows an optical and acoustic two-way connection without interruption so that the notary can clearly and seamlessly follow the signing process.

## Insolvency Law

In general, corporations must open insolvency proceedings if they are insolvent or over-indebted without a positive prognosis of continuation. If there is a reason for insolvency, the management is obliged to file for insolvency as soon as possible, but within 60 days at the latest. If it fails to do so, it is personally liable for any damages caused by the late filing of the application and may also be prosecuted under certain circumstances.

Due to the COVID-19 pandemic, the 60-day period has now been extended to 120 days. However, this extended period only applies if the insolvency is a result of the corona virus or if it was at least partially caused by it. Furthermore, it should be noted, that the extension of the deadline to 120 days only applies if restructuring measures implemented within this (extended) deadline have a chance of succeeding.

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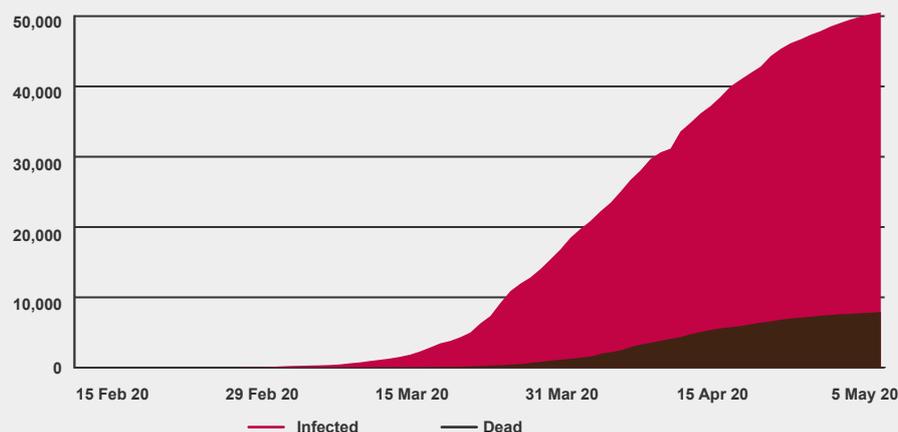
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# Belgium

## COVID-19 Country Report



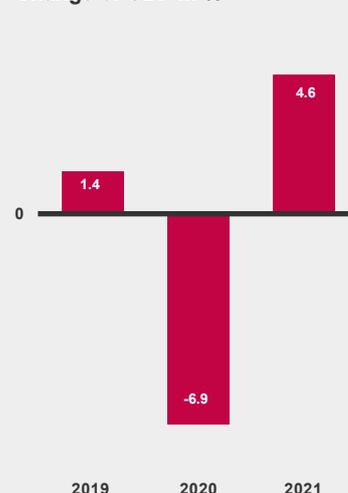
Corona Curve in Belgium



<b>50,509 Infected</b>	<b>12,441 Recovered</b>	<b>8,016 Dead</b>
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 69 billion (14.6% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>99.0% → 114.8%</b> (2019) (forecast 2020)	<b>Unemployment rate:</b> <b>5.4% → 7.3%</b> (2019) (forecast 2020)
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

To minimize the spread of COVID-19, the Belgian National Security Council has taken very stringent measures. Since 18 March 2020, companies are obliged to organize working from home (“teleworking”). Companies who are not able to organize this need to make sure that the rules of social distancing of 1,5m can be respected. If they cannot comply with any of these rules, they need to keep their premises closed. Non-essential shops and retail outlets are closed, except supermarkets and other food shops, pharmacies, pet food shops and newsagents. On 15 April 2020, the National Security Council decided to re-open the “DIY” stores and “garden” centers as from 18 April 2020.

All schools are currently closed. Primary and secondary schools as well as universities have developed remote learning modules. Furthermore all commercial and recreational events (culture, sports,...) regardless of the size and whether public or private are prohibited. Any form of gatherings is also prohibited and mass events, such as music festivals, cannot take place until at least 31 August 2020. Restaurants, bars and discos are closed and remain closed until further notice.

Non-essential travel is currently not allowed. People need to remain at home and can only travel to buy food, visit a doctor or pharmacy, go to the bank or refuel their car. Exercising outside is possible in the vicinity of one’s home. Crossing the border is only allowed when it can be proven that the journey

is professionally necessary. The national airline, Brussels Airlines, has stopped operating flights until 1 June 2020 and public transport needs to respect social distancing measures.

The above mentioned measures result in massive losses for different industries (retail, restaurants, event organizations, sport clubs, etc.) and a significant amount of employees has been put on temporary unemployment. There is also an increased risk of companies becoming insolvent.

On 24 April 2020, the National Security Council announced its “exit-strategy”, which consists of three phases. The first phase will commence on 4 May 2020. Non-essential business can progressively start operating again under strict safety mea-

asures and social distancing. Wearing a facemask in public areas is recommended and mandatory on public transport and train stations for people above the age of 12. Shops selling fabric can open their doors again as from 4 May 2020.

As from 11 May 2020 (still phase 1), all stores in Belgium can re-open again also under strict safety measures. The conditions for re-opening are still unclear today. Phase 2 is foreseen for 18 May 2020. Schools can re-open partly for certain students. Phase 3 will not commence before 8 June 2020. The National Security Council will consider if restaurants, cafés and bars can re-open at a later stage and if travelling will become possible again.

### State Aid Measures

The economy and a lot of companies are heavily impacted by the outbreak of the COVID-19 and the measures taken by the Belgian National Security Council. Therefore the Belgian federal government and the regional governments of Flanders, Brussels and Wallonia have provided aid measures. You will find an overview of the most important measures hereunder.

### Federal Government

#### Loan Guarantee Scheme

The European Commission approved the Belgian loan guarantee scheme set out in the federal statute of 27 March 2020 and the accompanying Royal Decree of 14 April 2020. The Belgian State will guarantee losses that banks suffer on their portfolio of qualifying loans.

Qualifying loans are new loans of up to 12 months that are granted by Belgian banks between 1 April 2020 and 30 September 2020. These need to be investment or working capital loans. The maximum amount of the qualifying loans is the lower of EUR 50 million or the borrower's liquidity needs for its activities during maximum 12 months for large enterprises or 18 months for SMEs and self-employed traders.

The beneficiaries of this measure are all undertakings active in Belgium, including self-employed traders, SMEs and large enterprises. Undertakings that are part of the financial sector and government entities are excluded. To be eligible they need to have less than 30 days of bank payment arrears on 29 February 2020 or on that date were not already subject to credit restructuring by their bank and they were not in difficulty



within the meaning of the General Block Exemption Regulation on that same date.

The State guarantee will only cover residual losses and there is a deductible for the first 3% of losses on the bank's portfolio; the next 2% is split 50/50 between the banks and the State and for losses higher than 5%, 80% of the losses will be borne by the State.

The credit institutions must call the State guarantee on 31 March 2023 and the Belgian Federal Government submits that all guaranteed loans will account for an aggregate principal of up to EUR 50 billion.

### **Tax and VAT**

All companies which have an enterprise number (KBO) can request support from the Federal Public Service Finance, "FPS Finance" if the spread of COVID-19 has affected their business (e.g. decrease in turnover, a significant decrease in orders, etc.). This will have to be demonstrated by the companies applying for this support. The aforementioned aid from the government can not be granted to companies which have structural payment difficulties or have debts arising from fraud.

Companies can receive a payment plan, exemption from default interest and a remission of fines for non-payment related to the following debts: withholding tax, VAT, personal income tax, corporate tax and legal entities tax.

Furthermore the filing deadline for corporate income tax, legal entities tax and corporate non-resident tax returns has been postponed as well as the filing deadline for periodic VAT returns. The payment deadline for VAT and wage withholding tax has also been deferred.

### **Flemish Government**

#### **Compensation Premium**

Flemish companies and self-employed traders which experience a decrease of at least 60% of their turnover compared to last year (the reference period is 14 March 2020 to 30 April 2020), can apply for a corona compensation premium of EUR 3,000. For those who practice secondary activity, the premium will amount to EUR 1,500.

#### **Nuisance Premium**

Due to the corona measures taken by the government, some companies, located in Flanders, are obliged to close. In case of such a complete closure of their physical premises, they can apply for a one off corona nuisance premium of EUR 4,000. In case they still need to stay closed as from 6 April 2020, an additional premium of EUR 160 per day of closure will be granted.

#### **Tourism Support**

EUR 5 million support has been made available for youth and social tourism. Tourism Flanders is currently elaborating the conditions for this support.

#### **PMV Support (Flemish Participation Fund)**

Participatie Maatschappij Vlaanderen, "PMV", grants a three month payment extension to all customers who have received a Start-up loan, co-financing or co-financing +.

#### **Corona Loan – Extension of Crisis Guarantee – COVID-19 Guarantee**

SMEs and self-employed traders located in the Flemish Region can apply for a subordinated loan over three years of a minimum of EUR 25,000 and a maximum of EUR 2 million with the Participatie Maatschappij Vlaanderen ("PMV"). The conditions differ depending on the target group.

In order to absorb the economic impact of the corona virus, the Flemish government has extended the existing guarantee scheme at PMV with the Guarantee Corona Crisis until the end of this year. Through this extension, companies and self-employed traders can also have a bridging loan guaranteed by PMV for certain non-bank debts (up to 12 months old). More information can be found at [www.pmvz.eu/corona-extension](http://www.pmvz.eu/corona-extension). Furthermore, Gigarant will market an adapted COVID-19 guarantee which offers more flexibility. Gigarant's capacity will be increased from EUR 1,5 billion to EUR 3 billion.

#### **Employee Incentive Premium**

The Flemish incentive bonus, which already existed to encourage employees to work part-time and thus avoid layoffs, was extended to companies that experienced a decrease of at least 20% in turnover, production or orders in the month prior to the interruption due to the corona crisis compared to the

same month in the previous year. The monthly premium for the employee is between EUR 68 and EUR 172 and can start at the earliest on 1 April and end at the latest on 30 June 2020.

### **Flemish Tax Measure**

The payment of property tax and annual road tax has been postponed. The tax administration will be flexible for granting of repayment plans and there will be an extension of time limits to meet tax obligations for inheritance tax and registration tax.

### **Brussels Capital Government**

The Brussels Capital Government has freed up a budget of more than EUR 150 million to take the following economic and social measures:

- A one-off premium of EUR 4,000 per company (in certain business sectors such as retail, food, etc.) which has been obliged to close its premises as a result of the decisions of the Belgian National Security Council;
- suspension of the payment of the city tax for the first half of 2020;
- granting public guarantees on bank loans for a total amount of EUR 20 million;
- moratorium on the capital repayment of loans granted by finance&invest.brussels to companies of the affected sectors;
- two month extension of the time limits for the payment of property tax;
- accelerated or even early processing, commitment and disbursement of economic expansion support for the hospitality, tourism, events and cultural sectors.

### **Walloon Government**

The Walloon government has made EUR 350 million available to support the economy in Wallonia the French and German speaking region in Belgium as a result of the measures taken by the Belgian National Security Council in order to limit the spread of COVID-19. Hereunder you will find the most important measures:

- A one off premium of EUR 5,000 for each company which needed to close completely or has ceased operating as a result of the decisions of the National Security Council and that is active in the following sectors: catering, accommodation, travel agencies, tour operators, booking offices and related activities, retail trade;

- deferral of the payment of principal and interest on loans and financial aid offered by the regional agencies SRIW, SOGEPAGROUP and SOWALFIN;
- additional guarantees to be granted by the aforementioned regional agencies;
- approval of the Wallonia-Brussels federation ("FWB") of an emergency loan for the cultural and creative enterprises. The loan is available for 6 months for an amount of EUR 20,000 to EUR 100,000 with a fixed interest rate of 2%;
- support measures for the health, social and employment sectors.

### **Labor Law**

#### **Working from Home**

Companies providing essential services continue their activities. Telework is organised to the extent possible, but there is no obligation.

Telework from home is compulsory for all non-essential companies. If these companies cannot organize telework, they need to ensure compliance with the rules of social distancing, a distance of 1.5 meters between each person. Non-essential companies which cannot organise these measures are obliged to close.

As from 4 May 2020 non-essential companies can start operating again respecting strict safety measures including social distancing, but telework should stay the norm.

#### **Compensation for Telework**

An office allowance of EUR 126.94 per month can be paid by the employer to the employee who is working from home to cover the costs of heating, electricity, small office equipment, etc. This amount is free of social security contributions and income tax.

#### **Preventive Measures at the Work Place**

The employer should guarantee the following measures: 1) providing clean and hygienic workplaces by regularly disinfecting them; 2) the application of good hand hygiene by employees by providing hand disinfectants in visible places; 3) providing good respiratory hygiene in the workplace by using paper tissues in case of coughing and sneezing; 4) informing employees that they should not go to the workplace with disease symptoms such as cough and/or fever; 5) providing in-

structions in case someone becomes ill with a suspicion of having the coronavirus.

### **Temporary Unemployment for Economic Reasons**

An employer who is affected by a temporary lack of work as a result of the spread of COVID-19 and the measures taken by the National Security Council, can under certain circumstances invoke the temporary unemployment system for economic reasons. In such case the employment contract will be completely suspended or a partial labor scheme will be introduced. During this period of economic unemployment the employees can receive an unemployment benefit from the RVA.

### **Temporary Unemployment Due to Force Majeure**

If an employer is prevented from providing work to his employees due to a circumstance that constitutes a situation of force majeure, a sudden, unforeseen event, independent of the will of the parties, that temporarily or completely makes the performance of the agreement impossible (e.g. the measures of the Belgian Security Council to close the enterprise), he may place his staff under temporary unemployment due to force majeure. The execution of the employment agreement will be suspended due to force majeure as stipulated by article 26 of the Belgian Act of 3 July 1978 on employment contracts. During this period, employees can receive an unemployment benefit from the RVA.

## **Corporate Law**

The COVID-19 measures also have an impact on the annual general meetings ("AGM") which are to be held in April or May, as physical meetings cannot take place. A lot of companies had also planned to amend their articles of association to the new Code on Companies and Associations, which entered into force on 1 January 2020.

Therefore the Royal Decree n° 4 containing various provisions regarding co-ownership and company and association law in the context of the fight against the COVID-19 pandemic has been published in the Belgian Official Gazette on 9 April 2020. This Decree provides how AGMs (ordinary, extra ordinary or special) and meetings of the board of directors can be organized.

The provisions of the Royal Decree were initially applicable during the period of 10 March 2020 and 3 May 2020. In the meantime the end date has been extended until 30 June 2020.

The board of directors of any company, association or other legal person may, even when not authorized by the articles of association, require AGM participants to exercise their rights exclusively (1) by voting remotely before the AGM by correspondence and (2) by granting a proxy before the AGM. This power of attorney must include specific voting instructions. The Royal Decree n° 4 sets out the process of the voting forms and proxies for the different types of companies.

When a company decided to organize remote participation in the AGM and the use of proxies, the members of the board of directors, the statutory auditor and any person who has been given a proxy, may validly participate in the meeting remotely (including by telephone or video conference).

Companies also have the possibility to postpone their AGM, even if the AGM has already been convened. Several deadlines have, such as the six-month period to file the annual accounts with the National Bank, been extended with 10 weeks.

Decisions of the board of directors may be taken by unanimous decision of all its members in written form. Meetings of the board of directors may be held by any means of telecommunication permitting joint deliberation, such as telephone or video conferencing, even if this is not provided in the articles of association.

If the decisions of the board of directors are to be established by authentic deed, the physical appearance before the notary of one duly authorized member of the board is sufficient.

## **Moratorium on Bankruptcy Proceedings and Enforcement Measures**

On 24 April 2020, the Royal Decree n° 15 related to the temporary suspension, for the benefit of enterprises, of enforcement measures and other measures during the COVID-19 crisis was published in the Belgian Official Gazette. Companies affected by the COVID-19 crisis will be temporarily protected from bankruptcy, attachment and dissolution of agreements due to non-payment as from 24 April 2020 until 17 May 2020 ("Suspension Period"). The Suspension Period can be extended. Companies which already had financial difficulties on 18 March 2020, or were already declared bankrupt, or are not impacted by the COVID-19 crisis are not protected under the Royal Decree n° 15.

The protection entails: 1) suspension of protective or enforcement attachment and other enforcement measures on the assets of the enterprise (with the exception of immovable prop-

erty and seagoing and inland vessels); 2) during the Suspension Period an enterprise may not be declared bankrupt by writ of summons or be dissolved by the courts (bankruptcy or judicial dissolution by the Public Prosecutor or with the consent of the enterprise remains possible); 3) payment terms in a reorganisation plan approved by a court will be extended with the duration of the Suspension Period, 4) the possibility of unilateral or judicial dissolution of agreements entered into before the entry into force of the Royal Decree due to the non-payment of a payable monetary debt will be excluded during the Suspension Period (employment contracts do not fall under this regime), 5) the obligation to file the books by the company has been suspended when the fulfillment of the bankruptcy conditions is the result of the corona crisis.

It should be stressed that companies still have the obligation to pay their debts which are due and that other general contract law exceptions/sanctions, such as the exception of non-performance, the right of retention, set-off etc. remain applicable.

There is also the possibility for the President of the Commercial Court to decide that an enterprise does not fall within the scope of the Royal Decree.

## Impact on Proceedings

The Royal Decree n° 2, published on 9 April 2020 in the Belgian Official Gazette, concerns the extension of limitation periods and other time limits for bringing legal actions and the extension of procedural time limits and written procedure before the courts and tribunals. Limitation periods and other procedural time limits for initiating proceedings before a civil court that expire in the period from 9 April to 3 May 2020 will automatically be extended with one month after the expiry of that period. In the meantime the end date of 3 May 2020 has been extended until 17 May 2020 by Royal Decree of 28 April 2020.

Other procedural time limits, such as for filing submissions, lodge an appeal, etc. have also been extended. Oral pleadings are eliminated for cases set for hearing between 11 April 2020 up to 17 June 2020. Judgements will be rendered on the basis of written submissions and document production.

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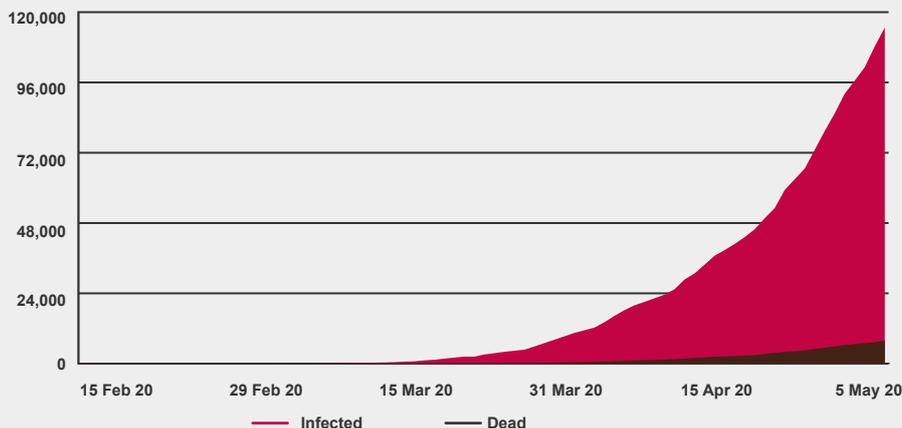
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# Brazil

## COVID-19 Country Report



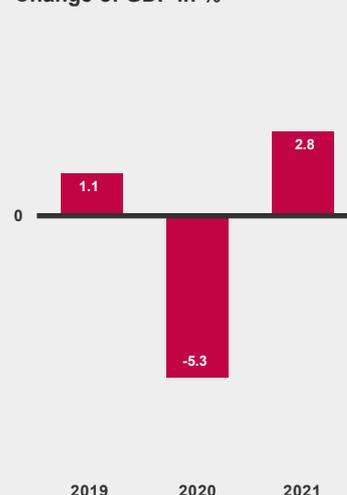
Corona Curve in Brazil



<b>114,715 Infected</b>	<b>48,221 Recovered</b>	<b>7,921 Dead</b>
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 110 billion (6.5% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>89.5% (2019) → 98.2% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>11.9% (2019) → 14.7% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

In Brazil the first case of COVID-19 was detected on 26 February 2020. It is not surprising that Brazil, the largest country in Latin America, reported close to 100,000 cases of infection and more than 6,000 deaths related to COVID-19 by the end of April 2020. Brazil's president, Jair Bolsonaro, has initially trivialized the pandemic (as only a mild flu) and subsequently undermined the sensible and reasonable measures of initial restrictions and social distancing, which were imposed by the governors of the federal states, by continuously arguing with various governors and issuing presidential decrees against these measures.

Brazil in its fight against the Coronavirus pandemic is furthermore facing the particular problems of an emerging economy: about 40% of the employees are working in the informal sector, making it difficult to support them through measures such as short-time work or direct payments. The situation in the slums around Brazil's large cities (favelas) does in practice not allow for the observance of social distance rules, let alone their enforcement.

## Travel Restrictions

On 30 March 2020, the Brazilian Government, by means of Administrative Order No 152, imposed extensive restrictions on foreigners entering Brazil by air. The restriction is valid until

30 April 2020, but an extension is expected. Excluded from this restriction are spouses, partner, children, parents and foreigners who have a permanent residence permit for Brazil. Also excluded are travellers who enter Brazil on behalf of an international organisation. Similar restrictions apply to the entry of foreigners from other Latin American countries by land or sea.

## State Aid Measures

The emergency financial aid of about EUR 120.00 per month for about 60 million workers in the informal sector was applied for by about 2.7 million Brazilians within two days, but the payments stopped because many of these workers still had to



have their tax numbers updated at the tax office. In addition to the emergency aid for the workers, the government introduced a “war budget” by constitutional amendment (PEC10/2020), which has not yet been passed. The amendment suspends the normal rules for the federal budget during the period of public emergency until 31 December 2020 and allows the Brazilian central bank to create liquidity for measures supporting the economy.

At the end of March 2020, the Brazilian Development Bank BNDES launched an aid programme amounting to Real 55 billion (approx. EUR 0.9 billion). The most important point for companies that are borrowers of the BNDES is a six month deferral of interest payments and repayments. Furthermore, a credit line of Real 5 billion (approx. EUR 83 million) was created for small and medium-sized companies.

## Labor Law

Employers have the right to reduce the working time during the COVID-19 pandemic and to suspend employment contracts with their employees (provisional Decree 936/2020). For these measures, the federal government provides a kind of short-time work allowance.

The provisional Decree 927/2020 allows employers not to fully apply the strict rules of worker protection in the Brazilian Labour Code. The employer may order home office, cancel shifts and reschedule holidays for the employees. He can also apply for a deferral of social security contributions.

Collective agreements that expire in the next six months are considered to be extended for 90 days. Employees who are abroad have the right to return to Brazil and employees can choose not to travel to risk areas as defined by the WHO.

## Contract and Corporate Law

The treatment of COVID-19 in contract law is currently still contradictory in Brazil. On the one hand, the Brazilian government classified COVID-19 as force majeure by provisional decree no. 921 of February 2020. On the other hand, the Ministry of Justice stipulated in technical decree no. 2/2020 that COVID-19 does not constitute an act of force majeure. This issue may therefore be treated differently by the courts in individual cases.

The commercial register in the federal state San Paolo (JUICESP) did not register any corporate changes anymore since 23 March 2020. This halt in the judicial administration is expected to last until 10 May 2020. Commercial registers in other federal states such as Rio de Janeiro which have already switched to electronic filings do not have these COVID-19 restrictions.

For closely held corporations, limited liability companies and cooperations, the National Authority for Commercial Registers (DREI), determined by normative instruction no. 79 on 14 April 2020 that general meetings of these companies can be held virtually, i.e. online. In insolvency proceedings, deadlines have also been suspended and creditors' meetings are held electronically.

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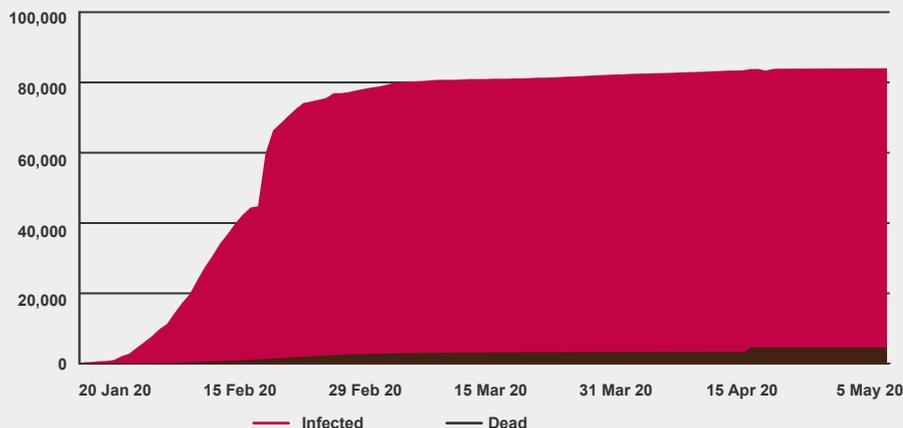
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# China

## COVID-19 Country Report



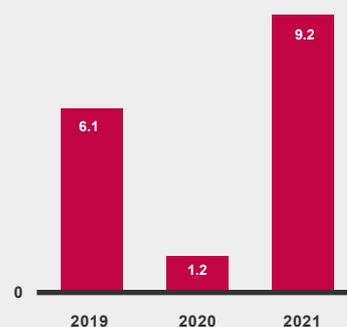
Corona Curve in China



83,966 Infected      77,911 Recovered      4,633 Dead

Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

 <p><b>Corona state aid<sup>1</sup>:</b> EUR 330 billion (2.5% GDP<sup>2</sup>)</p>	 <p><b>State debt (in % GDP)</b> 54.4 % (2019) → 64.9% (forecast 2020)</p>	 <p><b>Unemployment rate:</b> 3.6% (2019) → 4.3% (forecast 2020)</p>
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Source: IMF, Bruegel, Statista  
1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

The Coronavirus, first detected in the central Chinese city Wuhan in December 2019, spread with shocking speed across China and the globe. By the end of January 2020, confirmed cases have been reported in all Chinese provinces and regions. Wuhan, epicenter of the outbreak, had been under lockdown since 23 January. Strict emergency measures including factory lockdowns, quarantines, health screening and documentation obligations were imposed throughout the country, initially during the seven day Chinese New Year Holiday and then prolonged way beyond that period. The effects of the vigorous response by the Chinese authorities became visible when new confirmed cases began to decrease in early February outside of Hubei Province, and in mid-February inside Hubei as well, where Wuhan is located. In the last few weeks restrictions are gradually being loosened in China, and the lockdown was officially lifted in Wuhan on 8 April, ending the 76-day shutdown of the worst hit city which accounts for about two-thirds of COVID-19 infections in China.

The focus of epidemic prevention now has shifted to China's borders, resulting in increased controls, health checks and entry bans. Visa to China automatically expired and an entry ban was imposed on all foreigners entering China with effect from 28 March 2020. The blanket entry ban also affects expats with an existing visa or residence permit. With this regulation, all visas and residence permits already issued will lose their validity with the departure from China and effectively prevent foreign residents from leaving China. Life inside China, despite certain ongoing restrictions such as measuring of

temperature and mandatory wearing of masks is gradually getting back on track.

Many Chinese and foreign-invested enterprises, especially small- and medium-size enterprises, are severely hit by the pandemic and the tough measures taken by the government. Business data show that about 460.000 Chinese firms had to shut down in the first quarter due to the coronavirus. The registration of new companies between January and March fell 29% from a year earlier. Figures released on 17 April by the



State Statistical Bureau for the first quarter of 2020 show a 6.8% lower GDP in comparison to the same period last year. According to statistics published by the General Administration of Customs, export has also witnessed an 11.4% dive in comparison to 2019. The Chinese economy is slowly recovering, but forecasts predict only 1 - 2.5% growth in GDP for 2020.

## State Aid Measures

Since February 2020, government authorities at various levels have adopted business promotion measures and introduced a series of policies in an effort to support the shattered economy and stabilise the struggling labor market. Enterprises may also get direct aid or have easier access to bank loans to assist them in surviving the crisis. Some local governments and investment zones also offer support to companies and individuals. Overall, the state relief measures in China are, however, less comprehensive than what we see in Europe or the US.

## Tax Relief Measures

The state tax relief measures aim to provide taxation support for epidemic prevention and control in four ways, i.e. support for epidemic protection and medical treatment, support for material supply, encouragement of public welfare donations,

and support for the resumption of work and production. The measures apply to “six types of taxes”, i.e. enterprise income tax (“EIT”), individual income tax (“IIT”), value added tax (“VAT”), consumption tax (“CT”), duties and urban maintenance and construction tax and “two types of fees”, i.e. education fee and local education fee.

## Support for Epidemic Protection and Medical Treatment

- Temporary subsidies and bonuses obtained by medical staff and epidemic prevention workers participating in epidemic prevention and control are exempted from IIT.
- Employees are exempted from IIT for drugs, medical supplies, protective equipment and so on (not including cash) obtained from their employers.

## Support for Materials Supply

- Full refund of incremental uncredited VAT amount is allowed for enterprises engaging in the production of key protective materials for epidemic prevention and control.
- Income derived from transportation services for key emergency materials and from public transportation services, living services and courier delivery services (limited to essential supplies) is exempted from VAT.

- Expenses incurred by enterprises for purchase of equipment which expands production capabilities for key emergency materials can be fully deducted altogether before EIT calculation.
- Exemption of import duties applies to goods and materials imported by competent health departments for epidemic prevention and control.

### Encourage Public Welfare Donation

- Donation of goods used for epidemic prevention and control can be exempted from the value added tax, customs duty and all surcharges.
- One-off deduction before EIT or IIT calculation is allowed for donation of goods or materials once certain criteria has been met.

### Support for Resumption of Work and Production

- Extended carry-forward period for loss is applicable for losses incurred by enterprises in highly-affected industries (i.e. transportation, catering, accommodation, tourism), of which the carried-forward period can be extended from five to eight years.

### Social Insurance Relief Measures

To ease COVID-19's impact on enterprises, in particular for micro-, small and medium-sized enterprises ("SMEs") and to enable enterprises to have a buffer period after resumption of work and production, a three-to-five month exemption of social insurance fund payments has been implemented in China from February 2020 onwards. Details are as follows:

- The exemption involves only three types of statutory social insurance, respectively pension insurance, unemployment insurance and work-related injury insurance.
- Full exemption for five months of social insurance fund exemption is granted to SMEs;
- Half exemption for three months is granted to large-scale enterprises.
- For all enterprises located in Hubei province, regardless of large-scale enterprises or SMEs, full exemption for five months is granted.
- Such exemptions are only applicable to the employer's portion of the social insurance fund.

Except for being exempted from paying into the social insurance fund, before June 2020, all enterprises in China can apply for deferred contribution for the housing provident fund.

During such period, any housing provident fund loans, which are not repaid by the employees within due period because of the impact of epidemic, would not be deemed as overdue payments.

### Facilitation of Loans and Deferral of Repayments

To address the difficulty in repayment of loans by companies in Hubei Province and the small businesses across China due to COVID-19, the central bank (PBOC) and the banking regulatory authority of China (including some local level authorities) issued various circulars and guidelines, such as the provision of temporary repayment deferral, exemption of interest, cuts of banking charges, expedition in approving credit facilities to small businesses with favorable interest rate incentives, suspension of credit rating downgrade, etc. Overall, the People's Bank of China provides RMB 800 bn (approx. EUR 10.5 bn) in the form of refinancing and rediscounted loans to support enterprises nationwide during the COVID-19 crisis.

### Labor Law

The following labor law aspects are presently of particular relevance for employers.

### Payment Entitlements in Times of Covid-19

#### Remuneration Payments to Employees in Regards to Covid-19 Cases

If the employee proves to be a COVID-19 patient, a suspected patient, or a person in close contact, or is subject to governmental isolation or other emergency measures, the employer shall pay him/her salary during the medical treatment period, medical observation period, or relevant periods of isolation or other emergency measures. In addition, some provinces and municipalities have further stipulated that employers are to regard such employees as providing regular labor services and are required to pay salaries according to the standard of the normal working period (we understand that such salaries shall include bonus and allowance receivable by the employees under normal attendance, such as rental allowance).

#### Remuneration Payments to Employees During the Business Suspension Period

Many enterprises, especially small and medium enterprises, suffered significant financial pressures in spring 2020 due to the COVID-19 epidemic. As a result, some of those enterprises must indefinitely suspend business and production

even after the statutory work postponement period, in order to lower cost and seek capital. According to the notice issued by the Ministry of Human Resources and Social Security, where an enterprise's shutdown or production halt occurs within one salary payment period, the enterprise should pay salaries to its employees based on the standard stipulated in the employment contracts. Where such shutdown or production halt lasts more than one salary payment period and the employees provide regular labor services, the employer should pay salaries no lower than the local minimum salary standard. If the employees do not provide regular labor services, the enterprise should pay living allowances in accordance with the standards stipulated in the relevant provisions promulgated by provinces, autonomous regions, and centrally-administered municipalities. For example, Shanghai and Tianjin require that the living allowance amount shall not be lower than the local minimum salary, while Beijing requires that the living allowance shall be no lower than 70% of local minimum salary.

#### **Remuneration Payments to Employees Unable to Return to Work Due to Epidemic Control Measures**

If the employee is unable to return to work for 'objective reasons' in relation to epidemic control measures e.g. home-based observation as required by the industry park, or taking care of children at home, the employer may arrange for the employees to take annual leave or work from home. If it is impossible for a certain employee to work from home and he/she has used up his/her annual leave, the employer may negotiate with said employee a salary payment solution, by taking the salary payment standard during the business suspension period for reference i.e. paying normal salary within one salary payment cycle, and living allowance during and after the second salary payment cycle (with the standards stipulated in the relevant provincial regulations e.g. in Jiangsu, no less than 80% of local minimum salary).

#### **Postponed Payments of Remuneration**

In principal, companies shall pay remuneration to the employees as per the payment term agreed in the employment contract. However, it is allowed that the enterprise may postpone salary payment to employees in instances of impeded business operation and cash flow issues. According to local regulations in Beijing and Shanghai, after having acquired consent from the labor union or employees' representatives, an enterprise that has business operation difficulties may postpone the payment of salary to its employees.

In the event that an enterprise is not able to pay salary to the employees on time due to the COVID-19 epidemic, it is suggested that the enterprise firstly informs the employees with the difficulty it faces as well as the estimated payment term, in order to acquire understanding and consent from the employees' side. However, please note that the postponed period shall be no more than 30 days.

#### **Laying Off Employees and Salary Reduction**

In China, there is no official regulation on short-time work (and no corresponding state aid) such as is currently being applied en masse in Germany and other European countries, even though in practice salary reductions are negotiated with employees or their representatives. Under State Council notices, companies shall refrain from layoffs or downsizing to the extent possible, and should in the first place counter business difficulties by reducing salaries or postponing salary payments.

Enterprises are allowed to lay off employees if they fulfill the conditions and procedures listed under the Labor Contract Law. For example, if a company intends to lay off 20 employees or more, or lay off more than 10% of all employees, it needs to notify the labor union or all the employees with the decision 30 days in advance and collect their opinion/feedback. Furthermore a layoff plan needs to be filed with the competent labor administrative authority. So far, the official unemployment statistics in China do not show any significant increase and it seems that many companies have not laid off their employees during this crisis.

#### **Contract, Corporate and Investment Law**

The Chinese government has passed a series of regulations and circulars to mitigate the consequences of the COVID-19 pandemic in civil and insolvency proceedings. The economic slow-down will also have a big impact on foreign direct investments and there are expectations that China may liberalise more sectors of its economy.

#### **Application of Force Majeure and Change of Circumstances Rules**

The COVID-19 epidemic has severely impacted the performance of many civil and commercial contracts. Debtors impeded from fulfilling their obligations are at risk of default. Under such circumstances, a contract party who is unable to satisfy its obligations, or a contract party for whom, in light of the epidemic, the contract appears unfair, may seek assis-

tance through the “force majeure” and “change of circumstances” rules, so as to be exempted from breach of contract liabilities and/or being able to modify or terminate the contract. The Chinese courts and authorities in general adopt a liberal approach to such claims.

### Measures to Rescue Enterprises on the Verge of Bankruptcy

Industry associations work hand-in-hand with the government in carrying out support measures, especially for private small- and medium-sized enterprises with strong innovation capabilities and high development potential. Financial institutions are encouraged to implement support policies such as an interest rate reduction, a moratorium on principal and interest repayments in order to support industries and enterprises in regions affected by the epidemic.

Chinese law provides rules for insolvency filings including restructuring under an insolvency plan, but these steps are in practice discouraged. The Higher People’s Court of some provinces in China, e.g. Jiangsu Province, also issued some implementing opinions in relation to the trial of bankruptcy cases. For enterprises affected by the epidemic which meet the conditions necessary for insolvency filing, the court should advise the involved parties to carry out rescue action through reorganisation and reconciliation, and make every effort to retain the business value of the enterprise and the employment of workers. For enterprises undergoing management difficulties which are not affected by the epidemic, the court should also guide creditors and debtors to collaborate in promoting self-rescue through restructuring.

### Effects on Foreign Direct Investment

There are signals that China will open up more sectors to foreign investment in the wake of the Coronavirus crisis. The Chinese government plans to accelerate the revision of the national negative list of foreign investment market access, further reduce items, and expand the liberalisation of financial and other service sectors. Local authorities are directed to strictly implement the negative list management system and may not impose access restrictions on foreign investment in fields outside of the negative list. On 20 April 2020, the National Development and Reform Commission (NDRC) stated that, in the context of the current epidemic, tax breaks for foreign-invested companies are also planned as part of a catalogue of support measures.

According to the Chinese Ministry of Commerce (MOFCOM), there is no evidence that foreign companies are relocating their production sites from China to other countries in response to the COVID-19 pandemic. However, current statistics show that in the first quarter of 2020, foreign direct investment fell by more than 10% to around RMB 216 billion (approx. EUR 28 billion). In addition, Western companies have so far been rather reluctant to pursue new expansion plans in China. On the other hand, positive news can be reported in the high-tech sector. Here, investments by foreign companies rose by around 16% in the first quarter of 2020.

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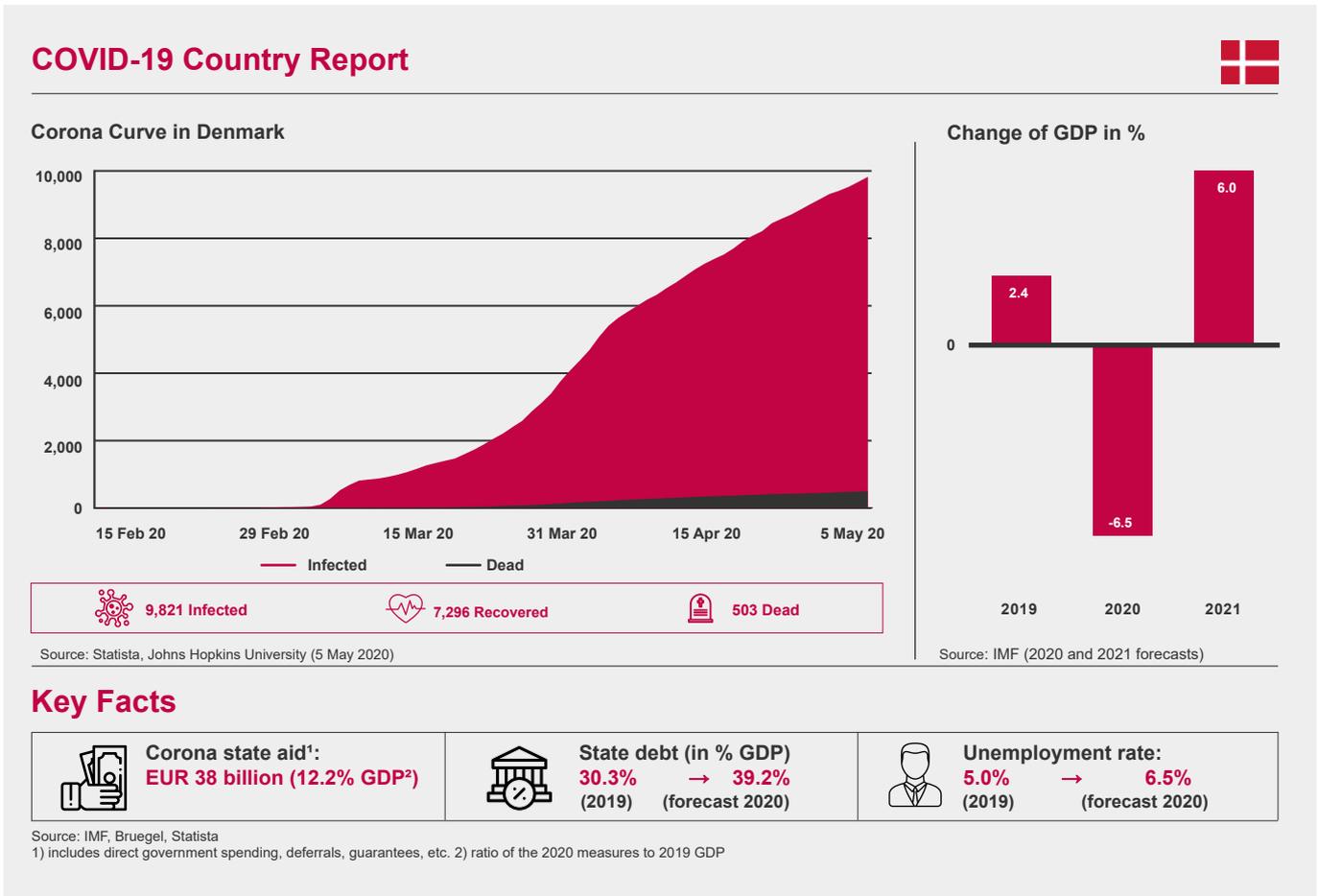
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# Denmark



On 11 March 2020, the Danish Prime Minister Mette Frederiksen announced to the nation that during the following days Denmark would be locked down. In response to the subsequent development of the R0, the metric expressing the severity of the spread of COVID-19, the lock was turned ever harder. As part of the lock down, schools and day-care centers have been closed, most public sector employees ordered to work from home (WFH) and strong recommendations for the private work force to do the same, shops and commercial centers closed, cultural institutions and event, including all kinds of sports, cancelled. Restrictions includes a ban of all types of gatherings of more than ten people in the public sphere.

Because of the immediate catastrophic impact on Danish commerce and employment, the government adopted a series of support packages which are all subject to the same unclear premise: the need for support must be caused by the COVID-19 outbreak. The compliance control effects of this requirement remain to be seen.

With a successful control of the Ro, the Danish government has just recently initiated the first phase of a gradual reopening of Denmark, including the opening of day-care centers and primary schools for the youngest pupils. Certain types of shops have been allowed to open. In response to critical voices, the government has promised to produce and announce a long-term strategy for the reopening on 10 May 2020 latest.

## State Aid Measures

### Compensation for Fixed Expenses

This support initiative is relevant for businesses, which for the period between 9 March up to and including 8 July 2020 (so far) have an anticipated loss of revenue of more than 35% as a result of the outbreak and must sustain fixed expenses in excess of DKK 12,500 during the period. A revenue loss of respectively 35-60%, 60-80% and 80-100% will result in a compensation of 25%, 50%, 80% of fixed expenses. The compensation is capped to a maximum of DKK 110m per business (approx. EUR 15m).

## Postponed Payment of VAT and Tax

The Danish Government has activated law provisions which postpones certain payment deadlines. The postponement of deadlines vary subject to the size of the company, which is most favourable to SMVs (> 250 employees).

## Loans With Government Guarantee

Two schemes have been introduced to enable commercial enterprises to raise loans from financial institutions based on a government guarantee; one for large companies and one for SMVs. In both schemes, it is a requirement that the company is experiencing or expecting a loss of revenue of at least 30% as a result of COVID-19. Under both schemes, the guarantee will cover a maximum of 70% of the loan. The loan financing will need to comply with certain terms and conditions including service periods to qualify for a state guarantee.

## Event Compensation Scheme

An event will be eligible for compensation if it is was planned to have at least 350 participants and if it was to take place from 6 March up to and including 31 August 2020. The compensation is focused on events which are planned to occur less frequently than every day.

## Compensation Targeting Freelancers and Business Owners

Business owners and freelancers may receive compensation of 75% for loss of revenue in the period 9 March up to and including 8 July 2020. Several conditions must be fulfilled, and the compensation schemes are capped.

## Labor Law

As a main rule, it is unlawful to arrange or participate in events with more than ten participants until at least 11 May 2020. There are, however, quite a few exemptions including gatherings in private homes and at workplaces in the normal course of business.

Guidelines have been issued by the Danish Police on how compliantly to arrange and reopen a workplace. The guidelines are specific to each industry, for instance for construction work and offices. Public day-care facilities and schools for students up to grade five have been in a gradual reopening process since 15 April 2020. All public servants who do not perform critical functions are still sent home with WFH instructions.

## Salary Compensation

The salary compensation scheme is relevant for companies that due to COVID-19 send home 30% or more than 50 employees in the period from 9 March up to and including 8 July 2020. Employees, for whom compensation is paid, must not work at all as the situation shall be a real alternative to redundancies. The compensation is 75% of the salary for salaried employees per month (max DKK 30.000 approx. EUR 4.000).

## Reimbursement of Sickness Benefits

The employer period of 30 days is suspended for sickness when the employee's incapacity for work is due to COVID-19 for reasons of; sickness or isolation without sickness. If an employee reports sick, the business may obtain reimbursement of sickness benefits from the first day of sickness absence if the employee solemnly declares that the employee realistically assumes that it is COVID-19.

## Supply Relations and Services

### The Concept of Force Majeure in Danish Law

Since Danish law has no actual provision that defines force majeure in general, the legal principle is developed through case law. The concept of force majeure is generally defined as a condition in which the fulfilment of an obligation is hindered by external events considered extraordinary and unforeseen. The events should be of such a nature that not even reasonable precautions could have ensured the possibility of performance.

Whether or not an event causing non-performance may constitute force majeure will depend on an individual assessment of the event based on the specific contractual provisions governing the obligation. Whether e.g. a pandemic constitutes force majeure is therefore not to be decided by the issuance of a governmental certificate.

### The Legal Effect of Force Majeure in Danish Law

The legal implication of force majeure under Danish law is a temporary relief from the contractual obligation, without being met by remedies for breach of contract from the contractual counterparty. In this case both parties to the contract will be temporarily relieved from performance. When the event constituting force majeure has ended, the obligations of the parties revive. Depending on the specific case, the force majeure situation may also result in an extraordinary right to terminate the contract.

## Disturbance of Contractual Basis

Danish contract law does provide for a principle of disturbance of contractual basis, which in certain circumstances may justify that a party step back from a contract. It is a requirement that circumstances have changed the entire base of assumptions which made the party enter the contract. However, this instrument is unlikely to apply in response to the occurrence of an outside event like a pandemic. The risk for such an event will be shared by the parties in a contract. Moreover, the rule of force majeure seems more relevant.

## Corporate Law

### Extension of Deadline for Filing Annual Reports

The Minister for Industry, Business and Financial Affairs has issued a ministerial order extending the deadline for companies to file their annual reports with three months. The extension of the filing deadline applies to all companies with financial years ending in the period from 31 October 2019 to 30 April 2020, as well as branches of foreign companies that are required to submit the annual report of the foreign company to the Danish Business Authority.

### Extension of Deadline for General Shareholder's Meetings

The ministerial order also provides an extension of deadline for companies to discharge their ordinary general meeting. The deadline for holding ordinary general meetings are extended with three months.

The ministerial order has also introduced the possibility for companies to hold an electronic general meeting, regardless of whether this is stated in the company's articles of association, as long as the general meeting is held within eight weeks after the termination of the ban on gathering more than ten people.

### Extension of the Deadline for Notification of Mergers, Divisions and Relocations

The ministerial order provides an extension of the deadline for notifying the Danish Business Authority on mergers and divisions to eight weeks after the termination of the ban on gathering more than ten people. This also applies to the notification of cross-border mergers, divisions and relocations.



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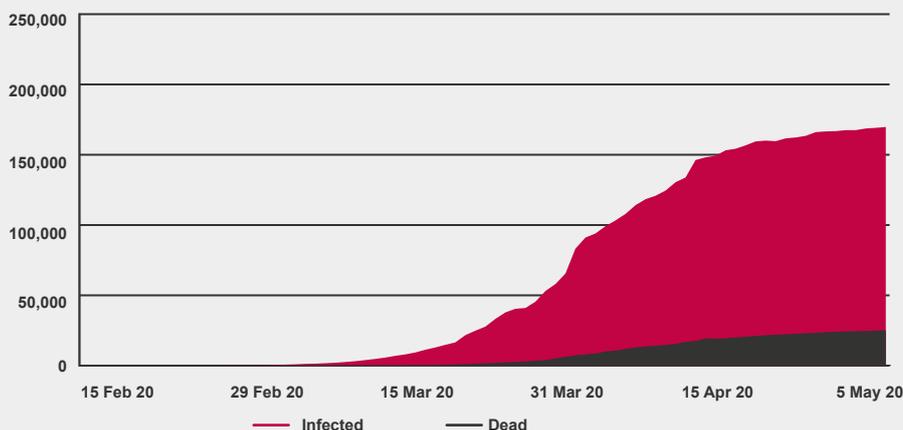
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# France

## COVID-19 Country Report



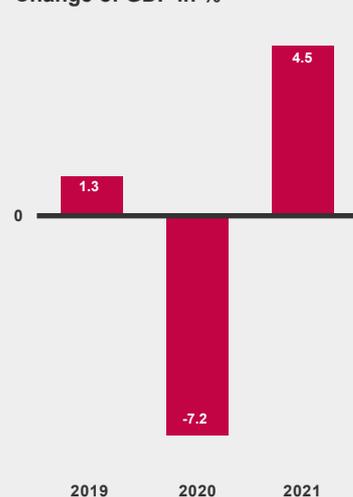
Corona Curve in France



 **169,583 Infected**
 **52,736 Recovered**
 **25,531 Dead**

Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

 <p><b>Corona state aid<sup>1</sup>:</b>  <b>EUR 662 billion (25.8% GDP<sup>2</sup>)</b></p>	 <p><b>State debt (in % GDP)</b>  <b>98.5% → 115.4%</b>                  (2019) (forecast 2020)</p>	 <p><b>Unemployment rate:</b>  <b>8.4% → 10.4%</b>                  (2019) (forecast 2020)</p>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

“We are at war”, declared President Emmanuel Macron on 12 March 2020. The COVID-19 crisis was worrying enough in France to close all schools and universities from 16 March and to shut all cafés, restaurants, non-food shops, hair-dressers, cinemas and sports centers. All residents countrywide were told to stay at home, unless they need to shop for food or medicine, attend medical appointments, or go to an essential job. Local authorities have taken further measures regarding the confinement, particularly as regards the conditions under which people may exercise. Paris has consequently locked the parks and closed riverside paths and banned running during the day between 10 a.m. and 7 p.m. Regarding international travel, like in the other European countries, French citizens and nationals of the European Union were allowed to enter the national territory in order to return to their homes. As France had to deal with an acceleration of cases, a military hospital has been being mobilised in Alsace, one of the worst-affected regions. As the trajectory of the new cases and new deaths is not totally under control, the government has extended its lockdown until 11 May and warned the French citizens: “We are going to live through a very difficult, very tense moment”.

From an economic point of view, the situation is brutal as well. Prime Minister Edouard Philippe has launched a EUR 45 billion financial aid program but that sum was more than doubled as the gravity of the looming economic recession has become clear. The spending is expected to triple the budget deficit to nearly 10% of gross domestic product this year, the biggest since the second world war. In order to avoid a liquidity crunch due to the economic effects of the coronavirus on the airline sector, the government has granted to its national airline com-

pany, Air France-KLM a EUR 7 billion loan package. “Air France’s planes are grounded, so we need to support the company” said Bruno Le Maire, the French finance minister. The minister also confirmed that the state had prepared a EUR 5 billion loan for French carmaker Renault which earlier this week said it was burning through EUR 600 million per month in cash. The state is also Renault’s biggest shareholder, with just over 15% of the capital.

## State Aid Measures

In response to the COVID-19 Coronavirus outbreak, the French national and regional authorities have put into place concrete and immediate support measures for businesses that are experiencing proven difficulties in the deployment of their activity in France. These measures provide financial support to French businesses to help them mitigate the economic impact of the Coronavirus outbreak.

## Tax Measures

The French tax authorities have announced extraordinary measures to defer tax payments, suspend deadlines and accelerate tax rebates in response to the coronavirus pandemic.

### Tax Deferrals

Companies can postpone for three months, without penalty, payment of corporation income tax, payroll taxes, business tax (Contribution sur la Valeur Ajoutée des Entreprises – CVAE) and property taxes. No conditions need to be satisfied or justification given, other than a request for postponement. VAT and similar taxes are excluded from the measure, as is the payment of withholding tax deducted from payments. Companies can request the speeding up of the processing of tax credit refunds such as those relating to VAT, research tax credit (CIR), innovation tax credit (CII) and tax credit for employment and competitiveness (CICE).

### Social Contributions

Employers whose social contributions are due may postpone, without penalty, all or part of the payment of their employee and employer contributions, from 15 March 2020. The date of payment of these contributions may be postponed up to three months. A postponement or a deadline agreement is also possible for supplementary pension contributions.

### Tax Rebates

Requests for direct tax rebates must be justified by proper documentation. Rebates can only be granted in the event of serious difficulties that a deferral of payment is not enough to overcome. Rebates will therefore be considered individually after examining the situation of each taxpayer. This measure concerns the payment of all direct taxes.

The request must be made using the 'Difficulties linked to Coronavirus - COVID 19' form.

## Measures for the Self-Employed

Workers can adjust the rate and withholding tax on salaries (Prélèvement à la Source - PAS) at any time. It is also possible to defer the payment of withholding taxes on professional income up to three times each month if the instalments are made on a monthly basis, or from one quarter to the next if the instalments are made on a quarterly basis.

### Impact on the Accounts Closed on 31 December 2019

It is not possible to adjust the accounts closed on 31 December 2019 by taking into account the difficulties linked to the health crisis. This is because the epidemic and its consequences are events after the end of the 2019 financial year and are therefore not such as to allow the results of the financial year ended 31 December 2019 to be adjusted downwards. Companies must however provide suitable information in the appendix and in their management reports.

### Time Limits

The government has changed the time limits applicable to the processing of applications and demands submitted to the tax administration and has extended the time limits for proceedings before the administrative courts. All deadlines that expire during the period of the health crisis will be suspended, regardless of the consequences of the failure to comply with the deadline. These measures apply from 12 March 2020 until no more than three months after the end of the health emergency period. The government has also announced that the tax statutory limitation period will be suspended retrospectively from 12 March until one month after the end of the health emergency. This means that the time granted to the tax administration to correct underpayments of tax paid by companies or individuals, or insufficiencies, inaccuracies or errors in tax returns, for which the deadline is 31 December 2020, will be extended for the duration of the suspension period.

However, for the time being, there is no extension of the deadline for the filing of tax returns.

### Measures Supported and Encouraged by the OECD

The Organisation for Economic Cooperation and Development (OECD) has encouraged the implementation of aid measures to help companies, and therefore national economies, facing the health crisis.



It has published a list of the various measures set up by governments all over the world. While France has already implemented most of the measures suggested by the OECD, it could go even further by implementing more generous measures for the carry-forward of tax losses. The OECD says that one option could be to turn carry-forward tax losses into carry-back tax losses, allowing businesses to receive a one-off cash payment.

### **Business Cash-Flow Measures**

The French President has announced an exceptional state guarantee system to support corporate financing, up to EUR 300 billion. This will allow banks to grant cash loans to companies of all sizes, enabling them to have the cash necessary to continue their activity and preserve employment. This is temporary, since it will only cover loans made from 1 March to 31 December of this year.

The Paris Region has designed a regional emergency plan for businesses. This plan entails accelerated payment to businesses (i.e. within 30 days), an easier access to bank loans of over EUR 1 billion through a Guarantee Fund, EUR 700 million in new loans up to 7 years, 80% guaranteed up to a maximum of EUR 6 million. The Paris Region has asked the na-

tional bank to pass on this loan at zero interest, as opposed to 3.8% today. The aim is to help 5,000 small and medium-sized businesses very quickly.

The Paris Region has implemented a relocation pack dedicated to supporting SMEs with specific assistance in finding sites in the Paris Region, in their recruitment processes, and financial help through regional aid schemes.

The Minister of Economy and Finance announced the creation of a solidarity fund of EUR 1 billion to support small, independent and micro-enterprises affected by regulatory activity restrictions and experiencing a significant drop in turnover.

This solidarity fund will operate at two levels. On the one hand, eligible companies will benefit from fast, simple and unitary support of EUR 1,500. It will also offer a safety net for artisans, traders and small entrepreneurs particularly affected by the current situation. In addition, further support may be granted on a case-by-case basis, to avoid bankruptcy.

Very small enterprises (VSEs) facing economic hardship can postpone the payment of utility bills (water, gas, electricity) and rental payments.

## Part-Time Activity and Social Contributions

A simplified and reinforced use of the part-time activity scheme is available to companies experiencing severe economic difficulties. This system, also called “partial unemployment”, enables companies to receive financial aid to offset the loss of income caused by the reduction in the working time of their employees.

Companies may only apply for the part-time activity scheme specifying the reasons justifying the recourse to part-time activity, the foreseeable period of under-activity and the number of employees concerned.

On 17 March 2020, the French Government announced that part-time activity would be compensated up to 84% of the net salary of employees, with a ceiling for the highest salaries. In addition, the French Government indicated that the employer who is required to pay for the allowance will be refunded within 10 days.

## Labor Law

The speed of spread of this virus has encouraged employers to consider putting implementation of measures to prevent or react to possible situations linked to COVID-19 taking into account government recommendations (in particular the French Ministry of Solidarity and Health, the French Ministry of Europe and Foreign Affairs and the French Ministry of Labour) and the various official bodies (in particular Public Health France, the Regional Health Authorities and the World Health Organisation).

Employers have the right to take measures to cope with the absences of their employees and variations in the activity of their company. The COVID-19 epidemic is likely to slow down the activity of some companies or, conversely, increase the activity of others. Likewise, some companies are at risk of absence of their employees, requiring measures to be taken to ensure the continuity of their activity. Consequently, the regulation regarding the executions of fixed-term employment contracts and/or temporary employment contracts has been adapted. Moreover, employers have the possibility to extend the daily and/or weekly working time and some derogations to daily and/or weekly rest have been granted.

Some of these measures however require prior consultation of the Social and Economic Committee as well as information or even prior authorisation from the Labour Inspector or the Director of the Regional Direction of the Companies, the Com-

petition, the Consumption, the Work and the Employment (DIRECCTE). Similarly, some of these measures can only be implemented in special circumstances (examples: urgent work to prevent imminent accidents, repairing accidents that have occurred, organising rescue measures, temporary increase in activity, replacement of absent employee, etc.).

In order to comply with their safety obligation, mentioned in article L. 4121-1 of the French Labour Code, as from the beginning of the crisis, the employers had implemented measures for the protection of the physical and mental health of employees, in connection with the occupational medicine and the staff representatives such as organising the repatriation of in business trip in areas affected. The employers have as well to provide employees who cannot work remotely with personal protective equipment (surgical mask, protective mask, hydro-alcoholic solution, gloves, etc.), in particular for employees exposed to risk and plan regular disinfection of premises and work tools in the event of exposure or risk of employee exposure to COVID-19.

Finally, employers may also have to face requests for recognition of COVID-19 as an occupational disease (maladie professionnelle) by infected employees. Indeed, a characterised illness not designated in a table of occupational illnesses can also be recognised of professional origin when it is established that it is essentially and directly caused by the victim's usual work and that it results in the death of this or a permanent incapacity at a rate at least equal to 25% after an opinion from the regional committee for recognition of occupational diseases. In case of such requests for recognition of the professional origin of contaminations by COVID-19, it would be up to employers to assess the opportunity to challenge such a qualification and the consequences which would result from it, having regard to the circumstances of each individual case. With regard to the possible challenge to the professional origin of the contamination, the question would be asked whether the pathology was indeed contracted during the employee's usual work.

## Virtual Shareholder and Board Meetings

In order to ensure the continuity of the operations and activities of French companies, the government has taken specific measures for corporate decisions in order to adapt the decision making process during the COVID-19 pandemic. It is now easier to use alternative means of decision-making as well as increase their availability for certain entities. Entities within the scope of the draft bill are companies, economic interest groupings and European economic interest groupings. The law is

intended to apply until 31 July 2020, unless this period is extended, with 30 November 2020 being the cut-off date. The videoconferencing and telecommunication means employed need to exhibit certain technical characteristics to guarantee the integrity and quality of the debates, deliberations and meetings.

### General Shareholders' Meeting (GSM)

Entities will exceptionally be authorised to hold their GSM without their partners, associates, shareholders and members being physically present. Depending on the type of entity, a decision of the competent authority (e.g. board, director or manager) may or may not be necessary. The partners, associates, shareholders and members of said entities will continue to be able to exercise their rights (voting rights or the right to formulate written questions for example) in accordance with the conditions laid down by the law and the regulatory provisions specific to each type of entity. The bill extends the possibility for partners, associates, shareholders and members to use alternative decision-making means (videoconference and telecommunication means as well as written consultation procedures).

### Board Meetings

The use of videoconference and other telecommunication means is both made easier and extended to allow supervisory boards and boards of directors to continue to perform their tasks and duties. Consequently, any clauses in the constitutive documents and by-laws (*statuts* or *règlement intérieur*) of an entity that would prohibit the use of alternative decision-making means is set aside. The use of alternative decision-making means is extended to all meetings held by board of directors or supervisory boards, including approval of the company accounts.

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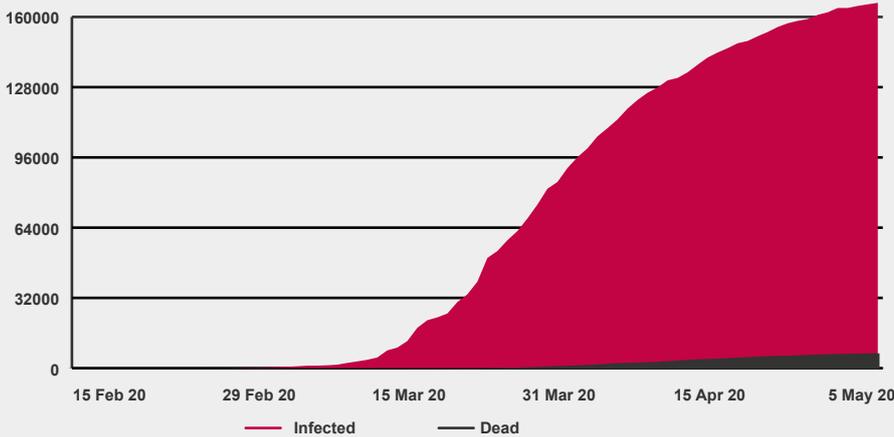
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# Germany

## Covid-19 Country Report



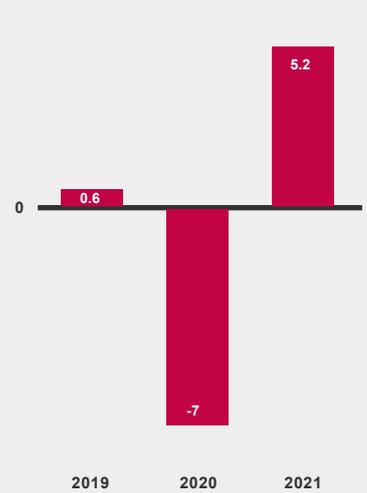
Corona Curve in Germany



**166,424 Infected**
**137,400 Recovered**
**6,993 Dead**

Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in % in Germany



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<p><b>Corona state aid<sup>1</sup>:</b> <b>EUR 2.1 trillion (60.1% GDP<sup>2</sup>)</b></p>	<p><b>State debt (in % GDP)</b> <b>59.8%</b> (2019) → <b>68.7%</b> (forecast 2020)</p>	<p><b>Unemployment rate:</b> <b>3.2%</b> (2019) → <b>3.9%</b> (forecast 2020)</p>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

The Coronavirus has Germany firmly in its grip even after first relaxations of Corona measures were announced after Easter. Protective masks become part of life and since the end of April must be worn when using public transport or shopping. Most retail shops as well as restaurants and hotels are allowed to open again if they comply with special hygiene requirements, as well as limiting access and avoiding queues. Schools will be reopened gradually in May. Large-scale events were cancelled and may not take place before 31 August 2020, at the earliest. Football fans look forward to 16 May 2020 when the Bundesliga will be the first European top league playing again (without fans in the stadiums, though). Social contacts should still be avoided as far as possible. Many employees are on short-time work or work from home whereby the opening of shops is noticeably reviving both the city centres and public transport.

In Europe there are border controls both on the German side, e.g. to France, and on the part of the European neighboring states, e.g. at the border crossings to Poland. The federal states and individual municipalities have in some cases issued even stricter regulations; traveling to second homes in the northern German holiday regions, for example, were no longer allowed for some weeks. However, curfews such as in China or in some European countries have not been imposed in Germany.

According to the Robert Koch Institute, Germany's central scientific body and key advisor to the Government, the measures are having an effect and the infection rate has been successfully contained. Federal health minister Jens Spahn declared the Corona crisis to be "controllable". Nevertheless, like everywhere else in the world, the German health care system is facing great challenges. The hospitals have prepared for the admission of a large number of COVID-19 patients and 40,000 intensive care beds have been available since the beginning of April. The authorities are currently focusing on increasing testing capacities and procuring masks and other protective

material. The federal government is currently working on new legislation which will lay the foundation for stricter reporting requirements for corona cases and mass tests, among other things. This should enable a more precise assessment of the actual spread of the virus.

For companies, the official measures result in massive economic losses, some of which are already threatening their very existence. The Lufthansa subsidiary Germanwings has stopped flight operations and a direct state participation in Lufthansa is currently being discussed. The first insolvency proceedings were already initiated in early April, including the clothing brand Esprit, the department stores Karstadt and Kaufhof and the restaurant chains Maredo and Vapiano. The cultural and entertainment sector has not been spared either - various German Bundesliga soccer clubs are threatened with insolvency as are countless artists, event organizers and restaurants. All relevant business and consumer indices have reached historical lows. According to the German Government, Germany's gross domestic product is set to shrink by around six percent in 2020.

Most of the official measures concerning the Coronavirus are based on the regulations of the German Infection Protection Act (IfSG). Combating an infectious disease is the responsibility of the authorities responsible under state law (often the local regulatory authorities). According to the blanket clause of sec. 28 IfSG, these authorities take protective measures as and when necessary to prevent the spread of transmissible diseases. The authorities have a wide discretion in selecting the measures required. The said blanket clause is currently used, for example, for bans on events, the ordering of closures in the retail trade and in catering. Guidelines of the Federal Government are not legally binding in this respect. However, they can be taken into account in the exercise of local discretion. In addition, new emergency laws are being discussed at federal and state level. The federal states of North Rhine-Westphalia and Bavaria passed pandemic laws with extensive powers for the government. Unlike in various European countries, however, there have not yet been any state-ordered plant closures in Germany. Companies can equip themselves against possible plant closures or other restrictions, which are also conceivable in Germany in the future, by submitting an application for classification as a system-rele-



vant plant that is part of a supply chain relevant for basic needs of the population.

## State Aid Measures

In record time, the German Bundestag and Bundesrat have adopted a comprehensive aid package of EUR 156 billion to limit the economic consequences of the epidemic, and there are also numerous other measures at state and, in some cases, municipal level. In addition, there is a moratorium on the fulfilment of contractual claims arising from rental and other continuous obligations until June 30, 2020 and the obligation to file for insolvency has been suspended until September 30, 2020. These measures are intended to avoid liquidity shortfalls and secure the financing of companies currently affected by the Corona crisis. Companies can apply for short-time work compensation under eased conditions; by the end of April 2020, approx. 750,000 applications for short-time work were received by the Federal Employment Agency nationwide. Further aid measures at EU level are currently under discussion. In total, Germany has tied up one of the world's largest rescue packages to date with aid (direct funds, deferred payments and guarantees) amounting to a gigantic EUR 2.1 trillion.

## Emergency Aid

Special support measures apply to small enterprises (up to 10 employees), the self-employed and freelancers. To ensure their liquidity for three months, they receive one-off cash grants - depending on the size of the company - of up to 9,000 euros (up to five employees / full-time equivalents) or up to 15,000 euros (up to ten employees / full-time equivalents). The one-off payments do not have to be repaid. Emergency aid totaling EUR 50 billion also is available for farmers with up to 10 employees.

## KfW Corona Special Program

Under the Corona Special Program by KfW (Germany's promotional bank), the access conditions and terms for the existing promotional programs Entrepreneur Loan, Loan for Growth and ERP Start-up Loan will be improved and simplified considerably. Within this framework KfW has "unlimited" funds for loans, but in practice the granting of loans can be quite complex. This is because a commercial bank has to first bear 10 to 20 percent of the credit risk; hence, a credit check is required. In addition, the effects on existing financing arrangements must be reviewed. By the end of April, the volume of enquiries had already reached more than EUR 30 billion. Of this amount, EUR 2.4 billion are attributable to the sporting

goods manufacturer Adidas alone, which secured further loans of 600 million euros from various other banks. Tour operator TUI has received a KfW credit line amounting to EUR 1,8 billion.

## KfW Fast Loan for SMEs

The Federal Government has furthermore decided on a KfW fast loan for SMEs in order to close the previous gap in the Corona support provided to companies. On the basis of the adjusted aid framework (so-called Temporary Framework) published by the EU Commission at the beginning of April 2020, the Federal Government is introducing comprehensive KfW fast loans for SMEs. By the end of April, the volume of enquiries had almost reached EUR 800 million. A company wishing to apply for a fast loan must not have been in financial difficulty on 31 December 2019 and must have been on sound business footing at that date.

The credit volume is turnover-based and a company may receive up to three months of its turnover in 2019, with a maximum of EUR 500,000 for small companies (< 50 employees) and EUR 800,000 for larger companies (> 50 employees). An important difference to the KfW Corona Special Program is that no collateral need be provided and no risk assessment is carried out.

## Guarantee Programs of the Federal States

In addition to the guarantee and promotion programs of KfW, there are corresponding guarantee programs of the Federal States which, however, may differ considerably from one another. In particular, these programs shall guarantee the loans of a company's principal banks.

## Deferral of Tax Liabilities and Other Tax Reliefs

The options for deferring tax payments are facilitated and tax prepayments can be reduced more easily. Tax authorities shall generally waive enforcement and late payment surcharges in connection with the Corona effects.

Companies shall be able to use loss carry-forwards more easily and set them off with losses incurred due to COVID-19. Details are still being worked out, but the simplified use of loss carry-forwards is meant to help the liquidity situation in particular of small and medium-sized companies by reimbursing tax prepayments. The tax relief measures are estimated to amount to up to EUR 4.5 billion.

## Economic Stabilization Fund (WSF)

The WSF is aimed at large, system-relevant companies whose failure would have a significant impact on the economy, technological sovereignty, security of supply, critical infrastructures or the labor market. Eligible are larger companies not belonging to the financial sector in the broader sense and having fulfilled at least two of the following three criteria in the last two financial years before 1 January 2020:

- Balance sheet total of more than EUR 43 million,
- Revenues of more than EUR 50 million, or
- more than 249 employees on average.

The WSF has primarily two instruments for the stabilization of companies. On the one hand, it is authorized to issue guarantees of up to EUR 400 billion for debt instruments and liabilities created by companies to remedy liquidity shortfalls. On the other hand, the WSF can participate in the recapitalization of companies through equity or similar instruments.

## Support Package for Start-Ups

In principle, start-ups can take advantage of all the above-mentioned support measures of the Corona aid package. However, many credit instruments do not meet the needs of start-ups, which often do not yet show profits or can offer collaterals. To ensure that financing rounds continue, the Federal Government is supporting venture capital financing with around EUR 2 billion.

## State Aid Also Available for Companies With Foreign or Private Equity Investors

The various state aid incentives are in principle open for all German companies and there are no restrictions for those with foreign or private equity shareholders. This was confirmed expressly by German state bank KfW which added that this applies independently of the size of the company and the shareholder structure. However, companies granted state support under the corona measures must not pay out dividends to financial investors with a controlling stake - in general of 20 % or more - during the period they receive government loans or other means of support.

## Labor Law

The following labor law aspects are currently of particular relevance for employers.

### Payment Entitlements in Times of COVID-19

#### Continued Payment of Remuneration

If an employee is incapacitated for work (for whatever reason), the general regulations for continued remuneration apply. If an employee is not unfit for work but cannot resume work for other reasons, there is usually no entitlement to continued remuneration (e.g. in the case of quarantine). An exception can be made if the incapacity is only for a “relatively insignificant period of time”, i.e. usually no longer than five days. However, this again does not apply if the application of sec. 616 BGB is excluded by employment contract, works agreement or collective bargaining agreement.

Current practice: regardless of existing provisions in relation to sec. 616 BGB or the question of what constitutes a relatively insignificant period of time, many employers currently continue to pay wages for 10 days. In addition, the obligation to pay remuneration continues to exist where the employer denies an employee access to the company due to existing health measures and the employee is therefore unable to work.

#### Loss of Earnings According to the German Infection Protection Act (“IfSG”)

If an employee is in quarantine due to an official order, there is in principle no entitlement to remuneration (see above), but there is a claim to loss of earnings in accordance with sec. 56 IfSG.

- until week 6: compensation in the amount of the loss of earnings (net pay).
- from week 7: compensation in the amount of the sickness benefit.
- officially ordered quarantine: loss of earnings must be paid for six weeks.

#### Short-Time Work

By the end of April 2020, almost a third of all companies in Germany have applied for short-time work for up to 10 million employees. The conditions for the payment of short-time work

compensation are regulated in secs. 95 et seq. of the German Social Code III. The following must be observed:

- Short-time work requires a considerable loss of working hours (possibly after reduction of overtime and vacation). The loss of working hours must be of limited duration and be based on economic reasons or an unavoidable event. This applies in the event of a (partial) stoppage of operations due to Corona (e.g. due to a drop in orders, bans on activities, quarantines).
- Finally, the loss of work must reach a certain minimum level. According to current legislation, 10% of the employees of a company or a department of a company must be affected by a loss of earnings amounting to more than 10% of their monthly gross income. On March 23, the Federal Government passed a statutory ordinance which applies retroactively to March 1, 2020.
- The employment relationship may not be terminated during short-time work or by means of a termination agreement. The statutory subscription period for short-time work compensation is currently twelve months. The subscription period can be extended to up to 24 months.
- Employees with at least one dependent child receive 67% of the net remuneration difference, all other employees 60%.
- Prior to the current Corona situation, the employer alone had to bear all social security contributions for the short-time work allowance. The legislator has decided on various simplifications regarding access to short-time work benefits. These also provide for social security contributions attributable to the short-time work allowance to be reimbursed in full by the Federal Employment Agency.

### Working from Home

There is no entitlement to working from home. Arbitrary absence of the employee - without a certificate of incapacity to work, without an official quarantine order or without consultation with the employer - is a violation of the main contractual obligation under the employment contract. An arbitrary stoppage of work is only admissible in exceptional situations (e.g. if previous protective measures remain unsuccessful and there are cases of infection in the department of the employee concerned or the employer does not follow official orders).

The employer can order working from home in individual cases, duly considering everyone's interests and fiduciary duties (e.g. when employees return from risk areas), always provided it is technically possible. In the current situation, health

protection regularly outweighs the personal interests of the employee.

### Health Protection - what Must the Employer do?

The employer has the duty to take appropriate measures to protect the health of its employees. Therefore, if there is a real possibility of infection, companies must take appropriate and reasonable measures. The following measures, among others, are conceivable:

- Informing about the risk of infection and minimizing the risk,
- Transfer of particularly vulnerable employees to other jobs,
- Organization of the work in smaller working groups,
- Transfer of employees from open-plan to individual offices,
- Raising the standard of hygiene and
- under certain conditions, carrying out health checks.

### Contract, Corporate and Investment Law

The Bundestag has passed a law to mitigate the consequences of the COVID 19 pandemic in civil, insolvency and criminal proceedings.

#### Moratorium on the Fulfilment of Contractual Claims Arising from Long-Term Debt Obligations

Under strict conditions, consumers and small enterprises are granted a general right to refuse performance of major long-term debt obligations initially until 30 June 2020. Major long-term debt obligations are rent, utilities and other basic amenities or which are necessary to continue business operations appropriately (e.g. compulsory insurance or contracts for the supply of electricity and gas or telecommunications services).

#### Suspension of the Obligation to File for Insolvency

The new law to mitigate the consequences of the COVID-19 pandemic initially provides for a limited suspension of the obligation to file for insolvency until 30 September 2020. This will not apply if the insolvency maturity is not based on the consequences of the COVID-19 pandemic or if there is no prospect of eliminating an existing inability to pay. Uncertainties in how to apply the new rule are to be resolved by a presumption in favor of the debtor, provided that the debtor was not insolvent on 31 December 2019. In addition, the new law provides for further changes to suspend existing payment prohibitions, in particular for measures to resume and maintain business ac-

tivities and for the restructuring of the business operations and model. In addition, new loans will enjoy liability privileges and it will be more difficult for the insolvency administrator to contest completed transactions.

### Facilitations for Shareholders' Meetings

Companies may pass necessary resolutions despite existing travel and meeting restrictions and thus remain capable of operating. In addition, accounting deadlines in the law on conversion are extended.

The Management Board of a stock corporation (AG), partnership limited by shares (KGaA) and a European Company (SE) may convene a virtual (without physical presence) General Meeting. Significant for SMEs is the provision that resolutions of the shareholders of a GmbH - in deviation from sec. 48 GmbHG - can be passed in text form or by written submission of the votes even without the consent of all shareholders.

### Effects on Foreign Direct Investments

Even before Corona, foreign takeovers were increasingly under scrutiny. As part of the "National Industrial Strategy 2030", the Federal Ministry of Economics plans to further tighten investment controls under the Foreign Trade Act. In the Corona crisis, concerns are growing that German companies could become easy takeover targets for foreign investors. In the course of the worldwide search for vaccines and drugs against the novel lung disease COVID-19, for example, companies from the pharmaceutical, biotechnology and life science sectors are particularly sought after by international investors. In this context, there are discussions about tightening the existing regulations in foreign trade law to protect vulnerable companies from takeovers. In addition, direct state investments may be possible for a limited period of time to protect against a "sell-out" of system-relevant companies. The German government on April 8 approved a new bill which aims to further increase its powers to curb foreign investment in certain critical industries and technologies including artificial intelligence, robotics and biotechnology. On March 25, the EU Commission presented detailed guidelines for the member states with similar considerations.

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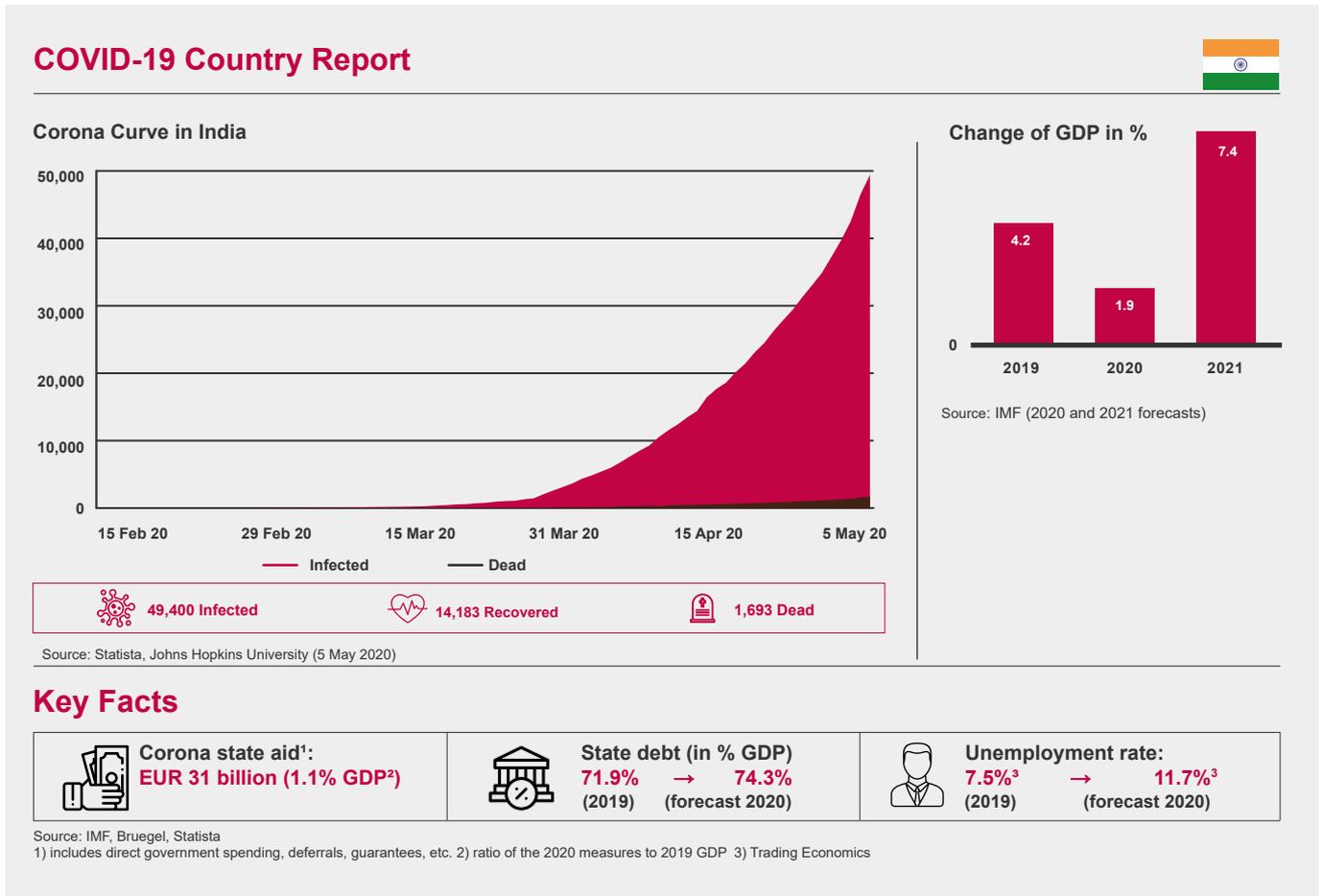
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# India



India is hit heavily by the COVID-19 outbreak. On 11 March 2020 India invoked the Disaster Management Act, 2005 (“DMA”) and the Epidemic Act, 1897 (“EA”) giving authority to the Central Government to take necessary measures to prevent the spread or mitigate the consequences of COVID-19. Prime Minister Modi on 24 March 2020 announced with hardly any notice one of the most comprehensive lockdown measures worldwide for the entire country with its more than 1,3 bn people. Modi’s speech triggered a massive flight of migrant workers from the cities to their homes as millions had become unemployed over night.

Prior to this announcement, numerous containment measures had already been imposed, varying in intensity across the country, including travel restrictions (complete restriction of incoming international commercial passenger aircraft and some restrictions on domestic travel including cancellation of domestic passenger air traffic); closing educational and recreational establishments; bans on mass gatherings; and encouraging companies to promote remote work. On 15 April 2020, consolidated revised guidelines followed which laid down which activities, industries and businesses are permitted to operate. The consolidated revised guidelines included several relaxations measures with a view to supporting economic activities. Currently it is envisaged that the lockdown will continue at least until 17 May 2020.

The authorities are constantly monitoring the spread of the virus and have marked certain geographical areas as hot spots. Within the hot spots, areas will be demarcated by relevant district administration as containment zones (red, orange, green). In the containment zones (red and orange) all activities will be suspended except the ones specifically permitted under the guidelines of the Ministry of Health and Welfare (“MoHW”), those permitted under the revised guidelines will not be applicable. An area/district in which no new case has been reported in the last 14 days will be changed from red to orange and if no new case is found within further 14 days, it will be moved to a green zone.

All establishments have to adhere to the standard operating procedures for social distancing for offices, workplace, factories and establishments issued by the Ministry of Home Affairs ("MHA") and maintain a very strong vigil on hygiene. New is the obligation imposed on employers to ensure that all employees, irrespective of their salary, have a medical insurance coverage.

The MHA on 23 April 2020 released a letter clarifying several uncertainties that arose in connection with the publication of the consolidated revised guidelines on 15 April 2020. It stated that companies will not be penalized if employees were tested positive for COVID-19. Also companies outside containment zones which were allowed to operate before 15 April 2020 do not need new permissions under the new guidelines. Generally, companies granted permission to operate before the lockdown do not need fresh statutory approval once their operations are permitted activities under the consolidated revised guidelines and the company complies with the standard operating procedure for social distancing and hygiene measures.

## State Aid Measures

The Indian Central and State Governments as well as the Reserve Bank Of India ("RBI") are continuing to release numerous notifications and orders to support businesses and the population against the fallout from the COVID-19 pandemic in India.

On 24 March 2020, Finance Minister Nirmala Sitharaman announced several relief measures on statutory and regulatory compliance matters as reaction to the COVID-19 outbreak. Subsequently on 26 March 2020 the Government granted financial state aid in form of a first stimulus package amounting to approx. EUR 21 billion which shall support particularly lower-income households and includes the distribution of food. Several state governments have also announced measures to support the health and well-being of lower-income households, primarily in the form of direct transfers (free food rations and cash transfers).

On 27 March and 17 April 2020, the RBI announced several measures to enhance the liquidity of companies.

- Provision of approx. EUR 6,1 bn in order to stabilize non-banking financial companies and micro finance institutes.
- Instruction of banks to defer payment of loan instalments - including credit card debt - for three months (March to May) in order to support in particular medium sized companies.

- Reduction of the reverse repo and reverse repo rate by 75 and 90 basis points (bps) to 4.4 and 4.0 percent, respectively and further to 3.75% in order to encourage banks to use their liquidity and lend more money to companies.
- Revision of the liquidity coverage ratio ("LCR") in form of high quality liquid assets to be maintained with the banks which will be required to maintain 80% LCR until September 2020, 90% from October 2020 to March 2021 and 100% LCR from 1 April 2021 onwards in order to improve the liquidity of individual institutions.
- Instruction of banks not to make any further dividend payments from the profits of financial year 2020 till further notice in order to ensure liquidity.

Currently the Government is further assessing the impact of COVID-19 on the Indian economy and the possibility of a second stimulus package in order to support the industries which are mostly affected by the lockdown measures as well as the population with the lowest income.

## Labor Law

The Ministry of Labour & Employment of India on 20 March 2020 issued a note instructing all employers to make payments of wages to employees on due date without any deductions for the duration of the lockdown period. Employees who are on leave shall be treated "on duty" as well as employees who are unable to work because their place of employment is rendered non-operational due to the COVID-19 outbreak. This means, that employees shall get paid irrespective of whether they have worked or not. The government in the note further advised employers not to terminate employees, particularly casual or contractual workers.

Whereas it is favorable for both employers and employees to reach a mutual agreement about reducing work, some employers might consider lay-offs. Usually under the Industrial Disputes Act, 1947 ("IDA") an employer having more than 50 employees can lay off employees for up to 45 days with payment of 50% of the salary in case of natural calamity. However, for the duration of the lockdown, the provisions are suspended and overruled by the current orders of the Government.

For more details, please refer to our HR and corporate compliance guide in India: <https://www.luther-lawfirm.com/en/newsroom/newsletter/detail/covid-19-guidance-for-businesses-in-asia>



## Contract, Corporate, Tax, Insolvency and Investment Law

### Contract Law

The question whether relief from payment or service under a commercial or lease contract due to a 'force majeure' event applies is one of the questions that has often arisen in connection with the current COVID-19 outbreak.

The Government (Ministry of Finance) clarified in an office memorandum dated 19 February 2020 that the disruptions of the supply chains due to the spread of COVID-19 will generally fall under a force majeure clause. However, a force majeure clause is a contractual clause and cannot be applied in India only on statutory grounds. It can therefore be only availed if such a relief is explicitly provided under the relevant contract. A force majeure clause further only frees the parties from liability and their contractual obligations for the duration of the force majeure event which prevents them from performing their obligations under the contract. The COVID-19 outbreak is a natural calamity but does not necessarily prevent everyone from fulfilling their obligations. Given that force majeure is a contractual right, the express wordings of the clause has to be carefully assessed in each individual case.

Beyond that, Indian law as common law jurisdiction also recognizes the doctrine of frustration. If a commercial contract (without a force majeure clause) becomes impossible to perform due to the COVID-19 outbreak, it may have been frustrated and

considered to be void. However, there is a high threshold for the doctrine of frustration to apply and it is not enough that the contract becomes more onerous or costly as a result of the outbreak.

### Corporate and Tax Law

Several measures were taken to give companies more flexibility to meet the challenges of COVID-19.

Resolving resolutions is now easier for companies. Until 30 June 2020 it is possible to hold extraordinary general meetings via video conferencing or other audio visual means. The use of the relaxations is subject to the compliance with certain criteria, such as the duty to store recorded transcripts and provide the possibility for all members to participate in the meeting. However, holding extraordinary general meetings shall be an exception in urgent and unavoidable cases.

Moreover, the mandatory requirement of holding meetings of the board of directors within 120 days as stipulated in the Companies Act, 2013 is extended by a period of 60 days till next two quarters i.e. until 30 September.

Independent directors are legally required to hold at least one meeting without the attendance of non-independent directors and members of management. For the year 2019/2020, if independent directors of a company have not been able to hold even one meeting, this shall not be seen as a violation of the law.

Several statutory deadlines were prolonged, such as the obligation for newly incorporated companies to file a declaration for commencement of business within six months of incorporation which was prolonged by additional six months. Further, in order to reduce the compliance burden during the COVID-19 outbreak no additional fees shall be charged for late filing during a moratorium period from 1 April to 30 September, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date.

Several measures to ease the tax compliance burden across a range of sectors have also been announced, including postponing some tax-filing and other compliance deadlines.

For more details, please refer to our HR and corporate compliance guide in India: <https://www.luther-lawfirm.com/en/newsroom/newsletter/detail/covid-19-guidance-for-businesses-in-asia>

### Insolvency Law

As many companies are facing serious economic pressure since the beginning of the COVID-19 outbreak, the threshold of default under section four of the Insolvency and Bankruptcy Code (“IBC”) triggering insolvency proceedings was raised from INR 100,000 to INR 10 million (approx. EUR 120,000). This shall particularly support small and medium sized companies.

The Government is currently considering taking steps to suspend Section 7, 9 and 10 of the IBC for a period of six months which shall prevent companies having to commence insolvency due to effects of the COVID-19 outbreak. Under Sections 7 and 9 financial and operational creditors can initiate insolvency proceedings whereas Section 10 deals with voluntary insolvency filings.

### Investment Law

As a result of the COVID-19 outbreak the Government reviewed its foreign direct investment policy and tightened the restrictions. Until recently non-residential persons could invest in India without Government approval – except in certain sectors – as long as they were no citizen or corporation from Bangladesh or Pakistan. Under the revised regulations these restrictions were broadened to all countries sharing a border with India and to beneficial owners of an investment which is situated in or a resident of any such country. This means, that from now on investments from China, for example, can only be made with Government approval. Moreover, any direct or indi-

rect transfer of any current or future investment resulting in beneficial ownership being transferred to a person of an adjacent country will require Government approval. Though foreign investors from other states still do not fall under the stricter regulations these changes might also be relevant if investors make their investments via a Chinese subsidiary or another country with a border to India.

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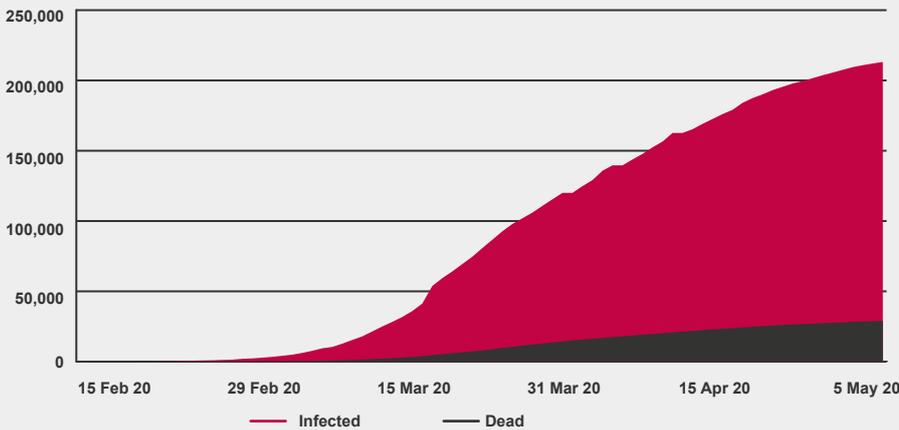
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# Italy

## COVID-19 Country Report



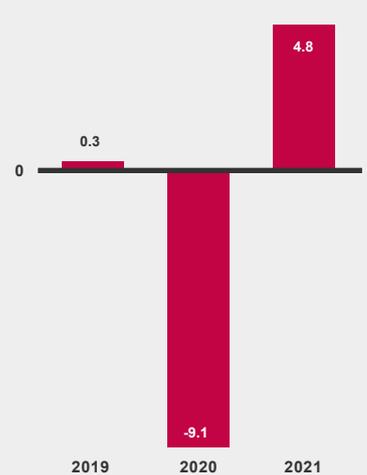
### Corona Curve in Italy



213,013 Infected	85,231 Recovered	29,315 Dead
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Source: Statista, Johns Hopkins University (5 May 2020)

### Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> EUR 781 billion (43.9% GDP <sup>2</sup> )	<b>State debt (in % GDP)</b> 134.8% → 155.5% (2019) (forecast 2020)	<b>Unemployment rate:</b> 10.0% → 12.7% (2019) (forecast 2020)
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

As a result of the COVID 19 outbreak in Italy, the Government introduced a structured set of measures to mitigate the spread of contagion, ensure the safe conduct of the industrial and commercial activities still allowed and provide support to companies. The measures introduced include the prohibition to leave – by public or private transport – your own city or town (“*quarantine*”), except to go to work, for urgent matters or for health reasons. The lockdown was extended by Prime Minister Giuseppe Conte until 4 May 2020. Demonstrations, events and shows, including cultural, entertainment, sports, religious events and trade fairs, in public or private locations, will continue to be suspended. All meetings must be held via conference call.

Stringent measures also apply to workers entering Italy. It is possible for anyone to pass through or stay in Italy only for work reasons and for a period not exceeding 72 hours, which may be extended by an additional 48 hours for justified reasons (*transit and short-term stay*). Anyone entering Italy is required to inform the prevention department of the local healthcare authority of their arrival, whether or not they show any symptoms, and will be subject to a health surveillance and self-quarantine period (*isolamento fiduciario*) for a period of fourteen days at the place specified upon departure; persons showing any symptoms of COVID-19 are required to promptly report the change in circumstances to the healthcare authority using the dedicated phone numbers.

All industrial and commercial activities (as identified by the relevant NACE Codes) have been suspended up to 3 May 2020, except those of enterprises providing public utilities and essential services. For example, the following activities and services may continue to be carried out (subject to notifying the *Prefetto* – chief of police): activities related to aerospace and defense industry, including the processes, equipment, materials, services and basic infrastructure essential for national security and public rescue services, continuous production activities which, if interrupted, could cause severe damage to the equipment or risk of accidents, the manufacture, transportation, sale and delivery of pharmaceutical drugs,

healthcare technology and medical/surgical equipment, as well as activities related to agricultural and food products.

Phase 2, during which coordinated measures will be introduced to relaunch economic and production activities, has started on 27 April: all industrial and commercial activities will be gradually resumed according to a national plan (but taking into account particular regional requirements and characteristics) but with new organisational and relational models.

The measures providing support to companies are included in Law Decree n. 18 of 17 March 2020 - *Decreto Cura Italia* – and Law Decree n. 23 of 8 April 2020 - *Decreto Liquidità*.

## State Aid Measures

The measures introduced are intended to facilitate the grant of credit to Italian enterprises (article 1 of *Decreto Liquidità* concerns the measures taken by the State in support of the companies affected by the COVID-19 emergency).

The State guarantees will be issued by two entities: *Fondo Centrale di Garanzia* and *SACE*.

The following three key conditions must be met to qualify for *SACE*'s guarantee:

- Applicants must be Italian-resident organisations and the funds will have to be invested in Italian production businesses;
- Applicants must be companies which had no financial issues as at 31 December 2019 but found themselves in a difficult situation (as defined in legislation) as a result of the COVID-19 outbreak;
- Applicants must be companies that have already utilised the maximum amount available under *Fondo Centrale di Garanzia*, or cannot apply to said *Fondo Centrale di Garanzia* because that do not qualify as Small and Medium Enterprises (SMEs - enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million) by reason of their larger size.

If the applicant meets the above conditions, it can apply for a loan covered by *SACE*'s guarantee.

From a practical point of view the applicant shall identify a bank through which the application will have to be filed: the bank chosen by the applicant must have implemented the

electronic exchange of information arrangement with *SACE*. The bank will examine the application filed and, on successful completion of the process – before granting the loan – will request the issue of the State guarantee from *SACE*, as to the prescribed amount.

The reason underlying the loan application must fall within one of three following categories: *i*) funding of current assets; *ii*) funding of investments; *iii*) funding of personnel costs. These are very broad categories which will probably cover almost all requests for funding.

The amount of the loan which will finally be granted is discretionary and will be the result of discussions between the applicant and the bank; the rules only provide for the maximum amount of the loan, which cannot exceed the higher amount of (i) 25% of the company's 2019 turnover as shown in its Financial Statements or, if the company does not file Financial Statements, in its tax return and (ii) twice the amount of the salaries paid by the applicant in 2019.

The guarantee, and therefore the loan, will have a maximum duration of six years from the date of issue; there may be an initial period of up to 24 months during which only the interest will be repaid ("*preammortamento*"). Again, these are maximum periods, and the parties may agree to different terms, which in any case may not exceed six years.

The possibility to benefit from the guarantee is available until 31 December 2020.

Two other significant issues are the costs of the guarantee and the amount of the loan covered by the guarantee, which vary depending on the size of the borrower. For example:

- For companies with a turnover higher than EUR 50 million but lower than EUR 1,500 million, and a headcount of less than 5,000 employees, the *SACE*'s guarantee will cover 90% of the loan; the cost of the guarantee will be 50 basis points the first year, 100 basis points the second and third year and 200 basis points the fourth, fifth and sixth year.
- For Companies with a turnover higher than EUR 1,500 million, and a headcount of more than 5,000 employees the *SACE*'s guarantee will cover 80% of 70% of the loan, the cost of the guarantee will be 50 basis points the first year, 100 basis points the second and third years and 200 basis points the fourth, fifth and sixth years.

Law Decree "*Cura Italia*" introduces also the following measures to support the liquidity of the banking system:



- moratorium on loans (the revocation of credit lines and the repayment of loans in various forms have been suspended until 30 September 2020). These support measures are available to those SMEs which submit the relevant request on the grounds that they suffered liquidity issues as a direct consequence of the COVID-19 emergency and do not have loans that are considered to be non-performing.
- moratorium on the repayment of loans in support of e-commerce and export activities (the payment of the installments – principal and interest – falling due in 2020 can be postponed to 31 December 2020);
- support to new finance through the banking system (the activities of the SMEs' central guarantee fund will be expanded for a period of nine months from the entry into force of the Decree).

## Tax Payments and Compliance With Tax Obligations

*Decreto Liquidità* extended the deadlines for tax and social security payments for the entities most heavily affected by the COVID-19 emergency. The relief regards the extension of the deadlines for the April and May 2020 payments of withholding taxes on employment and quasi-employment income and rel-

evant regional and municipal surcharges, VAT and social security contributions and compulsory insurance premiums.

All suspended payments shall be made (without interest or penalties) in a single installment by 30 June 30 or in up to five monthly installments of equal amount starting from June 2020. All amounts paid shall not be refunded.

The eligible entities are:

- entities carrying on a business or a profession, which are resident for tax purposes or have their registered office or principal place of business in Italy and earned up to 50 million in revenue and fees in FY 2019 (i.e. the condition for eligibility is a reduction in sales or fees of at least 33% in March 2020 over March 2019 and in April 2020 over April 2019);
- entities carrying on a business or a profession, which are resident for tax purposes or have their registered office or principal place of business in Italy and earned over 50 million in revenue and fees in FY 2019 (i.e. the condition for eligibility is a reduction a reduction in sales or fees of at least 50% in March 2020 over March 2019 and in April 2020 over April 2019).

Please note that for entities carrying out a business or profession, which are resident for tax purposes or have their registered office or principal place of business in the provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza, and suffered from a reduction in sales and fees of at least 33% in March 2020 over March 2019 and in April 2020 over April 2019, the suspension of VAT payments in April and May applies regardless to the prior fiscal year's sales and fees.

Article 20 of *Decreto Liquidità* enables taxpayers (corporate entities and individuals) to assess and pay over the tax payments on account using the “forecasting” method (i.e., on the basis of the expected income for the FY 2020) instead of the “historical” method (i.e., on the basis of the prior year's income).

No interest or penalties will apply on the underpayment of tax payments on account of IRPEF (*individual tax*), IRES (*Corporate tax*) and IRAP (*Regional Tax*) liability provided that the amount paid is not less than 80% of the amount that will be actually due pursuant to the income tax return for the year.

This provision solely applies to payments on account due for the fiscal year subsequent to that in progress at 31 December 2019.

Article 22 has deferred the deadline for delivery to employees, quasi-employees and self-employed and for the submission to the Revenue Agency of *Certificazione Unica 2020* (annual statement of wages and tax withheld).

## Customs Issues

The Italian Customs Authority (*Note no. 95986 of 19 March 2020*) provided clarification on the customs issues in connection with some articles of the Decree “*Cura Italia*”, with particular regard the extended deadlines for taxing authorities' activities, the extended deadlines for payment of taxes and duties to the Tax Collectors and the road transport and public passenger carriage.

The custom duty assessment procedures will not be suspended. Since Customs laws are mainly based on EU legislation, they cannot be derogated by domestic laws without the European Commission's express approval and, as can be inferred from the Note issued by the Italian Authority, the Italian Customs Agency was not authorised to derogate from the Union Customs Code (EU Regulation 952/2013). In the next few weeks, therefore, the Authority will issue the notices of deficiency in connection with the March-May 2017 importation du-

ties, which would otherwise be time-barred under the statute of limitations.

Consistently with European law, the Italian Customs Agency stated that the two-year extension of the limitation period for inspections will not be applicable for customs duty purposes.

The deadlines for payment obligations in connection with tax payment demands falling due in the period between 8 March and 31 May 2020, including those relating to traditional own resources (customs duties and VAT on imports), have been extended. Payments shall be made by June 2020, unless further extensions are granted.

A significant measure is the deferral of debit account payments. The debit account procedure enables taxpayers to make periodical payments of the customs duties payable on different imports carried out over a specific length of time, subject to the issue of a special-purpose surety. In particular, all debit account payments falling due between 17 March and 30 April 2020 have been deferred by 30 days, without interest and penalties. In line with EU rules, the Italian Customs Agency specified that the deferral may apply only to providers of goods transportation services, including customs agents, container terminals and international shipping companies, as stated by the Ministry of Transport and Infrastructure in its Note no. 12033 of 19 March 2020.

The Italian Customs Agency confirmed that the deadline for the online submission of the Intrastat lists of intracommunity transactions has been extended to 30 June 2020 without penalties, and introduced exceptional administrative procedures for dealing with applications for AEO and authorised exporter status, and for the extension of the re-exportation period under the ATA Carnet, starting from 25 March 2020 and as long as the state of emergency is in place.

## Labor Law

The Italian Social Security Authority, (*INPS*) in Circular no. 47 of 28 March 2020 dealt with income support benefits in more detail.

### **Cassa Integrazione Guadagni Ordinaria (CIGO) – Ordinary Unemployment Benefit**

The CIGO COVID-19 benefit may be applied for in the event of suspension and/or reduction of working activities for reasons related to the public health emergency. Eligible workers are indefinite-term or fixed-term employees on payroll as at

23 February 2020, including apprentices, but not including managers/executives. Employees hired after 23 February 2020 - although affected by the suspension and/or reduction of working activities – are not eligible for the benefit.

The Authority confirmed that the benefit will be granted for a maximum of nine weeks in the period between 23 February 2020 and 31 August 2020. There is an obligation to inform the trade unions and start the relevant consultations, including in remote mode, within the next three days.

However, the trade union agreement is not a condition for the purpose of obtaining the benefit. INPS specified that, when submitting the online application for the benefits, there is no obligation to enclose minutes of the agreement with the relevant trade union organisation; in fact, there is no need to notify INPS of the successful conclusion of the trade union procedure (information, consultation and joint examination).

Applications must be sent online within four months from the start of the period in which work activities were suspended or reduced. Given the urgent character of the measures, the applications will be dealt with according to a faster, more simplified procedure than usual.

Pending completion of INPS's authorisation process, companies are not required – but are allowed – to advance payment of the benefits on behalf of INPS. Therefore, payment to the eligible workers can be requested directly from INPS.

### **Assegno Ordinario Di Integrazione Salariale – Income Support Benefit Paid by Fondo Di Integrazione Salariale (FIS) to Employees of Companies Not Eligible for CIGO Benefits**

Ordinarily, the FIS benefit is available to companies with more than 15 employees; however, given the current circumstances, it has been extended also to companies having between five and 15 employees. Eligibility depends on the company's area of business and classification for social security purposes.

There is no obligation, but only the possibility, for companies to advance payment of the benefits to workers on behalf of INPS, pending conclusion of the authorisation process.

### **Cassa Integrazione in Deroga – Regional Income Support Benefit**

The *Cassa Integrazione in Deroga* is a benefit issued by Regional Governments and Autonomous Provinces govern-

ments and payable to employers who are not eligible for either FIS benefits (companies with up to five employees), or CIGO.

This income-support benefit may be granted even if eligible employees have untaken holidays of prior years (although regional framework agreements may provide otherwise). The provisions on actual seniority of services do not apply, nor applies an additional contribution payable by the employer which filed the application. The benefit is granted by a Decree issued by Regional Governments and Autonomous Provinces governments are required to send the Decree to INPS, together with a list of the eligible workers, within forty-eight hours of its enactment.

## **Civil, Corporate and Investment Law**

*Decreto Liquidità* introduced new rules on the suspension of the period allowed for tax authorities' activities and of the limitation period for judicial proceedings. All hearings in civil and criminal proceedings (except for specific cases) scheduled between 9 March 2020 and 11 May 2020 have automatically been deferred to a date subsequent to 11 May 2020.

Furthermore, the limitation period for filing an appeal before provincial Tax Courts has been suspended between 9 March 2020 and 11 May 2020.

### **New Rules Regarding Business Crisis Management**

*Decreto Liquidità* introduced new rules regarding business crisis management. According to article 5 the date of entry into force of the Italian Business Crisis and Insolvency Code, pursuant to Legislative Decree no. 14 of 12 January 2019, has been postponed to 1 September 2021.

### **Amendments to the Italian Civil Code**

The amendments to the Italian Civil Code regard the reduction of the share capital. Purpose of the rule is to avoid that losses resulting from the COVID-19 emergency in the FY ending on 31 December 2020 may force directors to put companies into liquidation if the going concern assumption may no longer be met, with the risk that directors may even be charged with non-compliance with the obligations imposed by article 2486 of the Italian Civil Code (i.e. to preserve the integrity and value of the company's assets during the liquidation process).

The following Civil Code articles shall not apply in the period between 9 April 2020 and 31 December 2020:

- 2446(2) and (3) (reduction of the share capital as a result of losses);
- 2447 (reduction of the share capital below the legal minimum requirement);
- 2482-bis (4), (5) and (6) (reduction of the share capital as a result of losses);
- 2482-ter (reduction of the share capital below the legal minimum requirement).

During the same period, the reduction or write-off of the share capital will not constitute reasons for dissolution.

Article 7 of the *Decreto Liquidità* introduced also a temporary derogation of the basis of accounting used in the drafting of Financial Statements, and in particular the going-concern basis of accounting.

As stated in the explanatory Report to the Decree, purpose of the rule is to neutralise the distortions caused by the current circumstances, while ensuring that the Financial Statements continue to provide appropriate information to third parties. For this reason, companies which before the crisis would have continued to operate as a going concern, will be allowed to adopt the going concern basis of accounting in the Financial Statements for the fiscal years in progress during 2020.

In preparing the Financial Statements as at 31 December 2020, valuations of items can be made on a going concern basis if this assumption was met in the latest Financial Statements for the year ended at a date prior to 23 February 2020 (the 2019 Financial Statements, for entities whose fiscal year coincides with the calendar year). The valuation criteria must be expressly outlined in the notes to the Financial Statements, including by making reference to the results of the prior year's Financial Statements. The above provisions also apply to Financial Statements for a period ending up to 23 February 2020 and not yet approved.

According to article 8 of the *Decreto Liquidità* the procedures to postpone the reimbursement of the loans made by shareholders or entities exercising direction and coordination have been suspended. As explained in the explanatory Report to the Law Decree, this was required by the need to stimulate the channels for an adequate financing of companies. This has required the temporary suspension of the procedures to postpone the reimbursement of the loans made by shareholders or entities exercising direction and coordination, since they are deeply discouraged by the current economic situation. This being a contingent situation, said provision applies only to the loans made by 31 December 2020.

### **Debt Restructuring Agreements**

In order to minimise the risk that composition with creditors and debt restructuring agreements which could actually be successful prior to the outbreak of the crisis, due to COVID-19 might be irretrievably jeopardised, *Decreto Liquidità* prescribes a series of actions regarding composition with creditors and debt restructuring agreements consisting of the following:

- with regard to compositions with creditors and debt restructuring agreements which have been approved by the Court prior to COVID-19 emergency, the limitation period (expiring in the period between 23 February 2020 and 31 December 2021) has been suspended for six months;
- with regard to the proceedings approving the compositions with creditors and debt restructuring agreements still pending as at 23 February 2020, the debtor may be granted an extension of the limitation period to prepare a new proposal of composition or debt restructuring agreement;
- with regard to the proceedings approving the compositions with creditors and debt restructuring agreements still pending as at 23 February 2020, the debtor may ask to change the limitation period originally envisaged in the proposal and in the agreement, however for not longer than six months.

*Decreto Liquidità* prescribes also the extension of the expiry date of debt instruments included in the period between 9 March 2020 and 30 April 2020. The extension also applies to debtors and their guarantors, unless they waive to benefit therefrom.

### **Extension of the Government's „Golden Powers“**

Articles 15 and 16 of *Decreto Liquidità* strengthened the Italian Government's "Golden Powers", which had been introduced to protect the ownership structure of companies engaged in strategic areas and areas of national interests; they consist of special powers which the Italian Government may exercise in sectors such as defense, national security, 5G broadband services, energy, transport, communications and other strategic sectors.

Depending on the sector, these powers basically consist in voting rights against the acquisition of shareholdings, vetoing company resolutions and imposing specific conditions in respect of company resolutions or execution of contracts, and may be exercised subject to giving appropriate notification to the Office of the Italian Prime Minister.

The special powers may be exercised also after 31 December 2020, where the notification was made at a later time or was not submitted, provided that the obligation to do so arose by such date.

In order to determine whether an investment by a foreign company could affect national security or public order, the Government may consider the following circumstances:

- the purchaser is directly or indirectly controlled by public authorities, including state organisations or the armed forces, of a non-EU country, by way of ownership or significant loans. Until 31 December 2020, the rule applies also when control is exercised by the public authority of an EU Member State;
- the purchaser has already been involved in activities affecting the security or public order of an EU Member State;
- there is a serious risk that the purchaser may engage in illegal or criminal activities.

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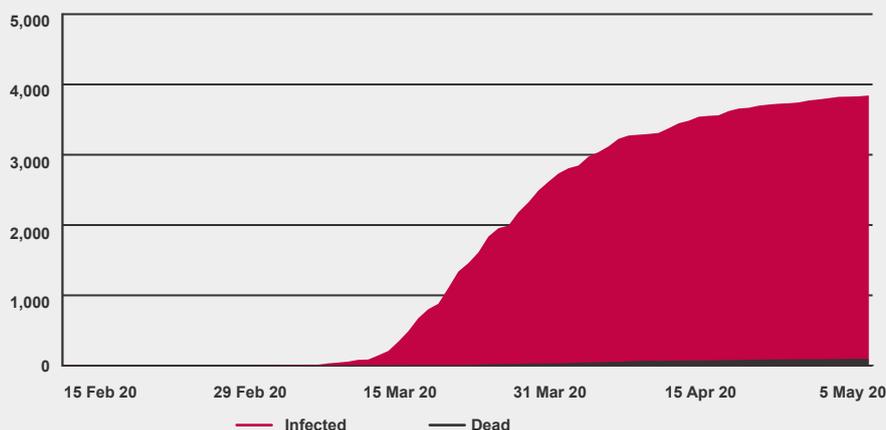
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# Luxembourg

## COVID-19 Country Report



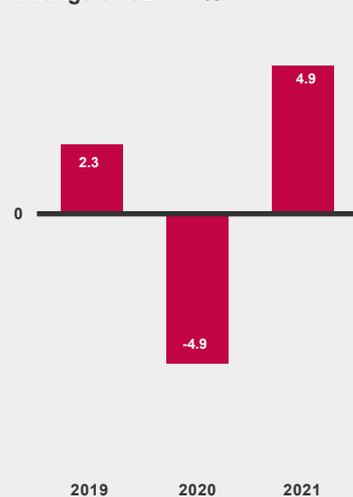
Corona Curve in Luxembourg



<b>3,840 Infected</b>	<b>3,412 Recovered</b>	<b>96 Dead</b>
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 21.0 billion (33.1% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>22.0% (2019) → 23.4% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>5.4% (2019) → 7.7% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

Luxembourg has been affected by the spread of the Coronavirus virus pandemic just like various other countries worldwide. Since the declaration of the state of emergency on 18 March 2020 social distancing has been the norm. The lockdown measures have borne their results as the number of infections has significantly decreased, thus, allowing the government to plan easing measures in compliance with specific safety and hygiene requirements. As of 20 April 2020, wearing masks has become mandatory in places where a 2m safety distance cannot be guaranteed between people. Schools will gradually reopen throughout May and some non-essentially vital activities have reopened, such as hardware stores, recycling centres, and construction sites. However, restaurants, bars, pubs, will remain closed until further notice and large scale events are banned at least until 31 July 2020. Teleworking is and will still be strongly recommended for all employers.

Since the start of the crisis Luxembourg has tested nearly 40,000 people for COVID-19 and in light of the easing measures the country plans to test its entire population to monitor the spread of the virus.

## State Aid Measures

To cope with the financial difficulties that workers and businesses are facing due to the lockdown measures, the government has injected almost EUR 9 billion into its economy, consisting of direct aid to citizens, businesses, and a generous unemployment scheme

SMEs, self-employed persons, large businesses can benefit from one or more of the following state aid measures:

**Emergency allowance for the self-employed:** Traders, artisans and intellectual workers who work as self-employed with less than 10 employees can benefit from a non-refundable and non-taxable support of EUR 2,500.

**Non-repayable, tax free grants:** Microenterprises can be granted direct aid in the amount of EUR 5,000 to companies with ≤ nine employees, forced to cease their operations as a result of the amended regulation of 18 March 2020.

**Capital grant advances:** self-employed, SMEs and large enterprises can be granted financial aid of up to EUR 500,000 in the form of a repayable advance to cover operating costs.

**Full coverage by National Health Fund (CNS) of the remuneration only in case of sickness:** The normal mechanism for continuation of remuneration in case of sickness leave is waived and CNS takes over remuneration of sick employees as from the first day of sickness for the self-employed, SMEs and large enterprises.

**Moratorium on loan repayments offered by certain banks:** The Ministry of Finance and several banks can postpone the repayment of loans to allow self-employed, SMEs and large enterprises to better cope with cash-flow difficulties.

**Relaxation of repayment conditions for SNCI loans and credit:** Société Nationale de Crédit et d'Investissement (SNCI), a public-law banking institution, suspends principal repayment at 31 March and 30 June maturities for direct and indirect loans for SMEs and large enterprises.

**Advance refund of VAT:** to meet liquidity needs SMEs and the self-employed will be granted an early repayment of VAT credit balances below EUR 10,000.

**Payment of an advance on extraordinary family leave:** Advance partial reimbursement of salaries that employers must continue to pay to the parents concerned.

**Financial support for companies carrying out investments or R&D projects for products helping to combat the health crisis:** The Ministry of Economy will co-fund up to 80% of costs for industrial research and experimental development projects as well as investment projects to produce/develop medical devices or hospital and medical equipment with respect to SMEs and large enterprises.

**Investment aid for the production of articles relevant to the fight against COVID-19:** Support companies that reorient their production chain to manufacture e.g. protective masks or produce hydro-alcoholic gel.

**State-backed guarantee facility for new bank loans for up to a maximum of six years:** Guarantee new bank credit lines, for which the State guarantees up to 85% for a total amount of EUR 2.5 billion

**Special Anti-Crisis Financing” via companies’ banks and SNCI:** Cover financing needs in the context of the current crisis through indirect loans ranging between EUR 12,500 and EUR 16.6 million.

In addition to the above measures that are meant to assist in meeting liquidity needs, encourage research and investment for COVID-19, and facilitate bank financing, the government has assisted start-ups through the following measures:

**Reinforced coverage of the financing need of young innovative enterprises:** to support start-ups of less than five years the maximum cofounding rate of 50% has been raised to at least 70% for new young innovative enterprise aids granted.

**Call for projects open until 30 April for innovative solutions to fight COVID-19:** Provide support of up to EUR 150,000 for the development of innovative technological products or services intended to limit or even overcome the economic, health or societal effects of the COVID-19 crisis.

## Real Estate Law

A Grand-Ducal Regulation of 25 March 2020, as amended by another Grand-Ducal Regulation of 1 April 2020 (the “**Regulation**”) has deferred, with certain exceptions, procedural deadlines in proceedings before judicial, administrative, military and constitutional courts with effect as of 26 March 2020. The Regulation has halted the enforcement of evictions for residential leases, commercial leases, foreclosures and forced sale for the duration of the state of crisis. All tenants with a commercial lease will be protected from eviction.

## Bankruptcy Law

Also in the context of the Regulation, those **companies that are facing extreme financial difficulties**, during the official period of crisis, there has been a suspension of managers’ duty to file for bankruptcy within 30 days of the cessation of payments.



## Labor Law

The following topics are of particular relevance for employers:

### Teleworking for Cross-Border Workers

According to existing treaties workers living either in Belgium, France or Germany and who work in Luxembourg, can only telework a certain number of days per calendar year in their country of residence (or in a third country). Under this threshold cross border workers residing in one of Luxembourg's neighboring countries will continue to be entirely taxed in Luxembourg. As the relevant authorities considered that the current coronavirus situation constitutes a case of force majeure, it has been decided to suspend the specific threshold until further notice.

### Expiration of Residence/Working Permit Documents of Third-Country Nationals

The residence document of third-country national employees that expires as from 1 March, 2020, shall automatically remain valid during the state of emergency period. The following documents held by any third-country national employees will automatically remain valid:

- short and long stay visas;
- temporary authorizations to stay;
- residence card, and
- residence permits.

### Drop in Activity

In case of a sudden decrease of employment activity, employers will be entitled to invoke the temporary unemployment measures. Specific conditions shall however be given and only employees without any certificate of incapacity of work who can no longer work full time or work at all will be covered. If an agreement is reached, the Employment Fund can then pay 80% of the normal wage (capped at 250% of the minimum social wage for an unskilled employee) for a maximum of 1,022 hours per employee per year.

## Corporate Law

### Virtual Shareholder and Board Meetings

A Grand Ducal Regulation of 20 March 2020 has introduced temporary measures (that derogate from ordinary Luxembourg company law provisions) to allow companies and other

legal entities to hold their **corporate body meetings** remotely and thus without a mandatory physical presence.

Notwithstanding any contrary provisions present in a company's articles of association:

- **Shareholders meetings** can be held without a physical meeting and a company can require its participants to exercise their rights remotely:
  - either by vote in writing or in electronic form, subject to the condition that the full text of the decisions to be taken have been previously published or communicated to each shareholder;
  - through a proxyholder appointed by the company, or
  - by videoconference or other means of telecommunication allowing their identification.
- **Management body meetings** can be held without a physical meeting and the company can require its participants to exercise their rights remotely:
  - by written resolutions, or
  - by videoconference or other means of telecommunication allowing their identification.

Any shareholder/member of a management body participating in a meeting remotely as described above shall be deemed present to determine the required quorum and majority. It is important to point out that these measures apply also to bondholders meetings.

- **Deadlines to convene annual general meetings.**

Furthermore, regardless of any contrary provisions of the articles of association, a company is authorized to convene its annual general meeting by one of the following two dates:

  - a date that is within six (6) months after the end of its fiscal year, or
  - a date that is within a period of time that is up to and including 30 June 2020.

Companies are authorized to take this decision for any meeting convened by 30 June 2020 at the latest. Any company that has already convened its general meeting before the entry into force of this Regulation and wishes to apply the above deadlines must notify it to its shareholders or other participants in the form in which they had convened such meeting or

by publication on its website (no later than three (3) business days before the meeting).

### Extension of Deadlines to File Annual Accounts

Under normal circumstances companies must file their annual accounts with the Luxembourg Trade and Company Register ("RCS") within a month of holding their annual general meeting. To address the COVID-19 crisis, companies have been granted an additional administrative period of four (4) months to file their accounts without incurring any late penalty filing (which is exceptionally suspended until 30 November 2020), according to a communication published by the RCS on 18 March 2020.

Accordingly, for example, for a financial year ending on 31 December 2019, the filing of annual accounts will be subject to the standard administrative costs of EUR 19 without VAT until 30 December 2020.

### Author



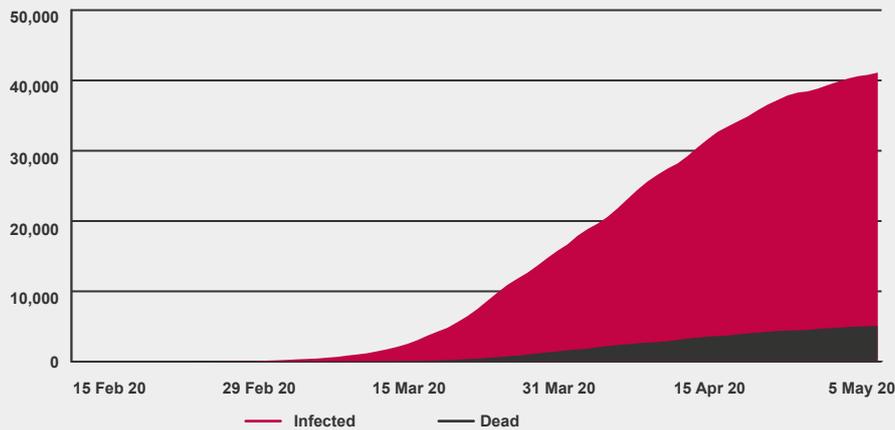
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# Netherlands

## COVID-19 Country Report



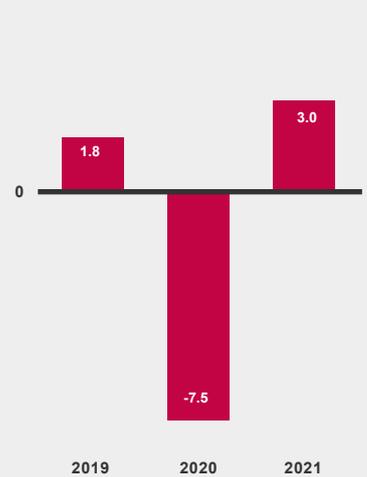
Corona Curve in Netherlands



<b>41,087 Infected</b>	<b>N/A</b>	<b>5,168 Dead</b>
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 56 billion (7.5% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>48.3% (2019) → 58.3% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>3.4% (2019) → 6.5% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

Like in the rest of the world daily life in the Netherlands is currently guided and impacted by the effects of the coronavirus. The Dutch government introduced many laws and regulations in order to combat the spread and effects of the coronavirus. Public life has been restricted to a large extent. People should work from home, avoid travelling and stay inside as much as possible. Group gatherings are not allowed until 19 May 2020 (certain exceptions apply e.g. in case of funerals). All these measures have an enormous effect on people and businesses in the Netherlands.

Schools and nurseries have been mandatory closed (apart for children of parents with a so-called 'cruciaal beroep' (important profession, e.g. medical, safety) since mid-March, forcing parents to start home-schooling. Restaurants, bars, pubs and hotels have been closed and will remain closed until at least 19 May 2020. All public events such as festivals and sport events have been cancelled and will be forbidden until at least 1 September 2020. Airlines, as well as the entire tourism sector, have been impacted severely and are now looking for state aid in order to survive. Retail chains stopped paying rent and shops are closed.

Recently the Dutch government announced some initial, careful, steps towards reactivating society. Children up to the age of 18 will be allowed to do sport again as of 29 April. Schools

and nurseries will reopen after 11 May. Some relief albeit under strict conditions and taking into account the new normal: 1.5 metres society. Social distancing will be the way forward and every business and organisation in the Netherlands will need to prepare for this new reality. The Dutch government will announce new measures and hopefully a relief of the current measures on 19 May 2020.

Travelling has been restricted, and people are advised not to travel, unless strictly necessary. Border controls are in place to discourage unnecessary visitors from our neighboring countries. The Netherlands follows the EU where it concerns restrictions on entering the EU by non-EU citizens.

The National Institute for Public Health and the Environment (*Rijksinstituut voor volksgezondheid en milieu* ("RIVM")), the Dutch agency for public health, has been advising the Dutch government on the measures taken in the past weeks. It looks as if the so-called intelligent lock down has been successful as the number of people hospitalised and dying as a result of the coronavirus are decreasing on a daily basis. This also applies to the number of patients at the intensive care. Nevertheless, the overall warning is that despite these positive developments the coronavirus has not been defeated yet! The Dutch health care system continues to face huge challenges as a result of the coronavirus. Like in other countries the authorities are currently focusing on increasing the test capacity, increasing the number of intensive care beds, increasing (and enhancing) the production of mouth caps, etc. In addition apps are being developed and tested in order to enable a better registration and combat against (the spread of) the coronavirus.

Many companies are facing financial difficulties and employees are either working from home or without work because of a total shut down of companies. The economic impact of all these measures is enormous and the Dutch government has announced, together with e.g. the European Committee, various arrangements to enable companies to avoid dismissals and bankruptcies. These arrangements vary from state guaranteed facilities, subsidies, tax relief and state aid. For instance Air France-KLM will be granted considerable financial support, possibly combined with state participation and subject to various 'social' conditions such as renewable goals and restrictions on bonuses and dividend distributions. Also the cultural sector as well as the sport sector is being affected heavily and are facing insolvencies without governmental support.

## State Aid Measures

Developments in the Netherlands with regard to COVID-19 are currently still following one another quickly. The severe impact of the Coronavirus on the national and international economy led to a quick and comprehensive package of measures and arrangements to enable companies to survive in this period of uncertainty.

The Dutch government has announced that measures will be taken to support companies, regardless of their size, in this (financially) challenging period. By letter of 12 March 2020, the Ministry of Economic Affairs and Climate announced that various actions are being considered. In the context of financing and liquidity, the extension of the existing guarantee for SME loans scheme (BMKB) and a number of tax measures,

including the temporary collection of VAT payments, are particularly important. These specific measures have been further developed in the last months. In particular, a lot of discussions were focused on which entities should be able to benefit from the various schemes.

## BMKB Scheme and Go Financing

Under the BMKB scheme, the Dutch government grants guarantees for credits granted to SMEs. This guarantee makes it easier for SMEs to attract financing. Under the standard scheme, the Dutch government can guarantee up to 50% of the credit amount. Under the extended scheme, this percentage will become 75%. The scheme will also be applicable to bridging loans and overdrafts with a maximum term of two years.

The expanded scheme applies to SMEs. An SME is an enterprise that meets the following criteria: (a) a maximum of 250 employees and (b) an annual turnover of a maximum of EUR 50 million or a balance sheet total of a maximum of EUR 43 million. Companies that do not meet these criteria cannot benefit from the BMKB scheme. The GO Financing scheme may offer a solution.

As an alternative to the BMKB scheme, companies could consider (in consultation with their lenders) whether the Guarantee Enterprise Finance facility (GO financing) could offer a solution. Information about the Go Financing can be found on the website of the RVO (<https://www.rvo.nl/subsidie-en-fancieringswijzer/Garantie-ondernemingsfanciering-go/deelnemen-als-ondernemer>).

The European Committee approved the use of the GO financing as one of the state aid measures on 22 April 2020. This means that the Dutch government may increase the budget for this facility up to EUR 10 billion. This is a temporary increase and will be referred to as the GO-C Module.

Under the GO financing banks can issue loans which are guaranteed by the Dutch government. Both SMEs as larger companies can benefit from the Go financing. The Go financing also contains a specific program for bank guarantees required for non-banking agreements.

Under the temporary amendment of the GO financing scheme a company can receive a government guarantee up to 80% of the amount obtained under a bank loan or bank guarantee for a large company with an annual turnover of EUR 50 million.



For a SME with a turnover up to EUR 50 million this will be 90%.

Go financing will be applicable for the following financing types and requirements (non-exhaustive):

- (subordinated) loan arrangements both secured and unsecured (acquisition and convertible arrangements are excluded);
- interest is fixed or flexible based on EURIBOR
- maximum term of facility is three years;
- loan amount is min. EUR 1.5 million and max. EUR 150 million;
- no refinancing (specific conditions may apply).

### Sector Specific Compensation Schemes

For a number of specific sectors, a sector-specific compensation scheme will be developed in the coming period. This concerns, for example, hotels, restaurants, bars and the travel industry. The compensation schemes are currently being prepared as a matter of urgency and will upon completion be urgently submitted to the European Commission for the assessment of (permissible) state aid.

To finalise, a number of other measures were announced which include:

- temporary arrangement for compensation for wage costs;
- extra support for independent entrepreneurs;
- flexible deferral of tax and reduction of fines;
- interest discount for small entrepreneurs on microcredit Qredits (companies do not have to repay their loan for a period of six months. During this time, the interest rate will be lowered to 2%. The government supports Qredits with EUR 6 million);
- consultation on tourist tax and culture sector.

### Tax Relief

A number of tax related measures have been taken in the past few weeks in order to support companies suffering from the impact of the coronavirus. The main tax relief measures are:

- temporary reduction of collection interest and tax interest from 4% and 8% respectively to 0.01%;
- special deferral of payment in case of liquidity problems; and
- revision of provisional income tax and corporate income tax assessments.

The Dutch tax authorities announced to be more lenient in enforcing the rules. However, it should be noted that this only applies to companies facing financial difficulties as a result of

the coronavirus. It is expected that additional relief measures will be announced in the near future.

### **Reinsurance Facility**

The Dutch government is currently developing an reinsurance facility. This facility would consist of a reinsurance of short term credit insurances portfolios. This facility will be introduced to support companies that take out short term credit insurance with credit insurers active in the Netherlands to ensure that credit limits remain in place. E.g. in the (online) retail sector this has shown to be an issue.

### **Invest-NL and Regional Development Companies**

As of the end of April, start-ups and scale-ups will be able to apply for bridging financing granted by Regional Development Companies: Corona-overbruggingslening (COL). The budgeted amount for this purpose is currently set at EUR 100 million for all non-bank funded companies: startups, scaleups and innovative SMEs by the government. Loans will be between EUR 50,000 and EUR 2 million. For bigger tickets, the Regional Development Companies will work with Invest-NL. Applications can be made via an online portal built by Techleap.nl, the Regional Development Companies and Invest-NL.

In addition it has been announced that Invest-NL is working on a European initiative together with the European Investment Bank and private investors to support scale-ups.

### **Compensation Scheme for Entrepreneurs in COVID-19 Affected Sectors (TOGS)**

A compensation scheme has been introduced on the basis of which entrepreneurs active in a number of sectors that have been affected by the coronavirus can apply for a compensation of EUR 4,000.

### **Labor Law**

The Dutch government has taken various measures to combat the coronavirus, measures that also affect employers and employees, such as recommendation to work from home and travel restrictions. But also the closure of schools and the introduction of home-schooling will have an impact on employers and employees. The most severe impact is caused by mandatory closure of certain companies and businesses. The following labor law obligations and regulations are of importance for employers and to an extent employees.

### **Health Protection – what Must the Employer do?**

The coronavirus pose a potential risk to employee health. Employers have a duty to provide and ensure a safe and healthy workplace and to observe a general duty of care with regard to their employees. In addition, employers have a right to give instructions to their employees and to set rules regarding the performance of work and the maintenance of order within the company.

In order to ensure that they fulfil the abovementioned duties, it is important that employers are (and remain to be) familiar with the guidance issued by the RIVM and the Public Health Services (GGD).

### **Working from Home**

As in many other countries in the world, the Dutch government recommends to work from home as much as possible. This means that employers should minimise employee presence at the office and facilitate working online, unless this is not possible given the nature of the employee's position or for business continuity reasons.

An employee who works from home remains entitled to receive regular remuneration (including all other emoluments).

### **What About Employees Who do Not Work: Continuation of Payment?**

As a general rule an employee that for whatever reason is incapacitated for work the general regulations for the continuation of remuneration by the employer apply. The coronavirus however introduced various unknown scenarios in relation to employees being capable or willing to work. For these situations different rules (may) apply.

An employee that cannot work from home and refuses to come to the office in general is not entitled to remuneration. However, employers should be able to demonstrate that they have taken the necessary precautions to ensure a safe and healthy workplace.

The mandatory closure of all nurseries and schools (until at least 11 May 2020) creates a new situation that could lead to an employee may not being able to work from home or at the office due to childcare responsibilities. It is important that employers, in consultation with the employee, try to find a workable solution. Certain laws and regulations could facilitate a possible solution: e.g. the employer may consider granting the

employee statutory emergency leave under the Employment and Care Act (*Wet arbeid en zorg*). Other options include allowing the employee to take holidays or granting unpaid or partially paid leave. Please note that an employee cannot be forced to take holidays.

Employees who are willing to work but due to a shortage of work cannot work remain entitled to remuneration. In this case, the employer may be eligible for assistance from the Emergency Bridge Fund for Employment (see below). Under Dutch law employees are not obliged to accept cost-saving measures.

### Emergency Bridge Fund for Employment

COVID-19 has an enormous impact on employers and employees. In order to help employers with the payment of salaries even in the event that companies are temporarily out of business, the Dutch government announced on 31 March 2020 the introduction of the Emergency Bridge Fund for Employment (*Noodmaatregel Overbrugging Werkgelegenheid*) (in the Netherlands known as “NOW”).

The main objective of NOW is to provide financial assistance to employers to cover the labor costs of companies suffering from a significant drop (20% or more) in revenue as a result of the coronavirus.

The purpose of NOW is to enable employers to retain employees and make them jointly responsible, together with the government, for preserving employment in the Netherlands. Support takes the form of partial coverage of the employer’s wage costs and is proportionate to the decrease in revenue.

Financial assistance is available for all employers. Employers that have submitted an application for a reduction in working hours (*werktijdverkorting*) which was not granted prior to the introduction of NOW are automatically deemed to have applied for financial assistance from NOW.

### Requirements in Order to Benefit from NOW

Employers need to meet certain requirements in order to be eligible to benefit from NOW. The main requirements are:

- the employer must expect a decrease in revenue of at least 20% over three consecutive calendar months in the period from 1 March 2020 to 31 July 2020; employers do not need to prove that the decrease is caused by the coronavirus, this is considered being a working assumption;

- the employer must undertake not to dismiss employees (from 18 March 2020 until the end of the period for which the financial assistance is granted). If, contrary to this commitment, an employee is dismissed, the portion of financial assistance corresponding to the dismissed employee’s wage cost must be paid back, together with a penalty of 50% of this amount.

### Other obligations imposed on the employer

In order to benefit from NOW certain obligations will be imposed on the employer. Below we set out some of these obligations, this is however not an exhaustive list and it is possible that other or additional obligations will be imposed:

- the funds received must be used solely for the payment of wages;
- the employer has a best-efforts obligation to keep the wage cost at the same level and to continue to pay the employees their salaries, including employees with a flexible or on-call employment contract. A downwards adjustment in the wage cost will lead to a downwards adjustment in the financial assistance;
- the employer is obliged to inform the works council or employee representative body or, in the absence thereof, the employees themselves of the fact that financial assistance has been granted. Prior consultation is not required;
- payroll tax returns must continue to be filed at the times indicated by law;
- the employer must immediately notify the authorities if it becomes clear that the eligibility criteria are no longer met. The employer must maintain auditable records from which all information relevant for the grant of the financial assistance can be verified;
- for a period of five years after the receipt of financial assistance, the employer must provide the authorities with access to its administrative and accounting records; and
- within 24 weeks after expiry of the period for which the financial assistance is granted, the employer must provide a final statement of the decrease in revenue, supported by an audit opinion and a statement confirming compliance with the obligations imposed by the government.

## Real Estate and Construction

### Rent Reduction and Suspension of Rent

As a consequence of the (mandatory) closure of retail, restaurant, hotels, etc. entrepreneurs are facing a serious decrease of turn-over and income. The financial consequences of the

coronavirus are considerable and parties are looking for solutions to deal with these financial distressed situations.

Associations of retailers and real estate owners have been discussing a solution (in the medium and long run) for the financial consequences of the Corona virus. An initial (temporary) solution has been agreed upon on 24 March 2020: suspension of the rent payment until at least 20 April 2020. This should give tenants in the retail sector some financial breathing space. In addition hereto, landlords should (i) not collect invoices that already have been sent, (ii) waive any agreed obligation to operate and (iii) not charge any penalty (interest). Tenants in the retail sector whose turnover decrease is less than 25% are not eligible for this solution. What also helps is that the emergency measure of the Ministry (one-time contribution of EUR 4,000 net) has been broadened: also retailers and entrepreneurs in the non-food sector are now covered by the measure. They can register for this at the Netherlands Enterprise Agency as per 30 March 2020.

The consultation on solutions continued and also the Dutch Association of Banks and the Ministry of Economic Affairs are involved. Dutch Banks indicated that they are willing to grant (amongst others) retail investors and retailers with a finance up to EUR 2.5 million a half year postponement of their repayment obligations. The Ministry of Economic Affairs hopes that other real estate investors will follow this example, in order to offer landlords financial breathing space.

The continued consultation has led to a subsequent arrangement on 10 April 2020. In summary, the branch associations make a plea towards their support base for the following:

- suspend the rent of retailers as of April 2020 for a period of three months (this was previously until 20 April 2020);
- the suspension should be at least 50% of the rent and where needed 75 or 100% (this has to be tailored and depends on various circumstances, such as bearing strength, owner structure of the retailer (which may have ownership abroad) and possible online turnover);
- this arrangement only applies if the turnover loss of the retailer is a direct consequence of the corona crisis and is at least a turnover loss of 25% as of 1 April 2020. When assessing the turnover loss, only the 'offline' turnover is relevant. It has been emphasised that the retailer has to prove its turnover loss;
- remission of the rent (rent discount) can only be discussed in three months, when the impact is clear (and hopefully better times have arrived).

This arrangement is however not binding, meaning that tenants and landlords still need to enter into consultation with each other. The slogan "*Only together we can control the corona virus*" also applies to landlords and tenants. The consultation of the branch associations also included that retailers shouldn't unilaterally enforce a payment arrangement or rent discount to their landlords.

### **FIDIC COVID-19 Guidance Memorandum to Users of the FIDIC Standard Forms of Works Contract**

FIDIC (the International Federation of Consulting Engineers) published guidelines answering questions and challenges users of FIDIC Standard Forms have or face as a consequence of the coronavirus. FIDIC describes seven scenarios users of the FIDIC standard forms may face and provides guidance on how to deal with the relevant articles of the FIDIC standard forms.

## **Contract and Corporate Law**

### **Contract Law**

COVID-19 has not yet, and for now it is not expected that it will, lead to specific rules regarding e.g. the termination of contracts or the postponement of fulfilment of obligations under contracts. This means that the general Dutch law principles such as force majeure, unforeseen circumstances and reasonableness and fairness continue to play an important role in determining whether or not a termination or postponement is allowed and justified. This means a case to case approach will be upheld.

### **Insolvency**

As to date the Dutch government has not imposed any rules or regulations limiting the rights of creditors. However, banks and other financial institutions are requested to not initiate enforcement actions, this request is supported by relevant trade bodies. As a result the Dutch government, banks and insurers have agreed on a general suspension of the possibility of enforcement sales on residential mortgages until (at least) 1 July 2020 (supported by the Dutch Central Bank (*De Nederlandse Bank*) and its European equivalents by more flexible rules regarding capital requirements).

A number of banks announced a six month extension for repayments and interest payments in respect of commercial loans of up to EUR 2.5 million (or more).

No restrictions have been imposed in relation to the filing insolvency requests. Dutch courts will consider all relevant circumstances to determine whether an insolvency filing is legitimate. This expressly includes consideration of the impact of COVID-19 and the resulting economic situation. Courts are being requested to consider referring insolvency applications to mediation where appropriate, e.g. where a resolution between the debtor and its (main) creditors would take away the need for insolvency proceedings. Recent court cases show that the courts are acting in accordance with the above.

### Virtual General Meetings Introduced for Dutch Companies

The Dutch Emergency Act ("Emergency Act") on coronavirus-related matters (*Tijdelijke wet COVID-19 Justitie en Veiligheid*) includes temporary facilities to mitigate the impact of the coronavirus outbreak on various aspects of Dutch society.

The Emergency Act contains measures aimed at helping organise general meetings during the corona crisis, including the option of holding virtual meetings. The Emergency Act became effective as per 24 April 2020 and has retroactive effect and is applicable to all general meetings held on or after 16 March 2020.

According to the Emergency Act it will be possible to communicate temporarily by electronic means instead of a mandatory physical meeting. It allows companies to organise virtual general meetings.

In addition, it will be possible for the board to postpone the term for holding a general meeting and the term for drawing up the annual accounts. This emergency legislation will apply not only to listed companies and associations, but also to cooperatives, mutual insurance companies, private companies and associations of owners who hold an annual general meeting.

Where it concerns voting, shareholders attending the virtual meeting are unable to vote during the meeting itself. This is different in case the board facilitates electronic voting during the meeting. Should this not be the case, votes may only be submitted ahead of the meeting.

The Emergency Act will set aside arrangements set out in the articles of association of legal entities.

The Emergency Act imposes a number of requirements (specific requirements and terms may be applicable) that should

be met in order to be able to hold a virtual meeting (non-exhaustive):

- the notice to the meeting must state that the meeting will be held as a virtual meeting;
- the meeting must be broadcasted live, by video or audio cast, to shareholders;
- prior to the meeting, shareholders must be able to submit written or electronic questions to the company regarding items tabled for discussion or for a vote at the meeting;
- in general the deadline for shareholders to submit questions is 72 hours before the meeting;
- questions submitted by shareholders be answered during the meeting, before the meeting is also allowed;
- questions may be bundled on the basis of the respective topic and answered as such;
- answers must be posted on the company's website or made available electronically to shareholders;
- for a public limited liability company (*naamloze vennootschap met beperkte aansprakelijkheid*) the following applies: the board should enable shareholders to submit follow-up questions during the meeting, but the meeting's chairman will have a certain discretion in this. In general only shareholders who already submitted questions prior to the meeting are allowed to ask follow-up questions;
- in a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*), the board must make efforts to provide for the option to ask questions.

### Preparation of Annual Accounts and Annual Meeting

The coronavirus could have an impact on a company's obligation to timely prepare (and file (director's liability)) its annual accounts. For companies without a listing on an EU stock exchange the annual accounts should be prepared within five months from the end of their financial year. To provide these companies with more time, the Emergency Act allows such companies to extend this deadline by max. five months.

The Emergency Act allows all public limited liability companies to postpone their annual general meeting (the statutory term is within six months after the end of their financial year). This postponement option is for up to four months.

Companies with a listing on an EU stock exchange, which are required to prepare their annual accounts within four months from the end of their financial year, will not be permitted to extend the deadline. Their publication obligations under the Dutch Financial Supervision Act (*Wet op het financieel*

*toezicht*) in respect of their annual and six-monthly results will also continue to apply and cannot be extended. This is contrary to the guidelines issued by the European Securities and Markets Authority (“ESMA”) on 27 March 2020, on the basis of which national supervisors should apply the deadline rules less strictly to the extent that any delay is caused by the effects of the coronavirus. Nevertheless, ESMA emphasises that listed companies must ensure that they keep their investors informed of the expected delay in publication and that the requirements of the Market Abuse Regulation remain fully applicable. The Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) announced that it will show some flexibility in enforcement.

### Penalties for Late Filing of Annual Accounts

If the annual accounts of a company are not published within twelve months of the end of the financial year a director will upon operation of law be considered liable in case of a bankruptcy (manifestly improper management presumed to be an important cause of the bankruptcy). Pursuant to the Emergency Act, these presumptions of proof do not apply, but only in case the board member(s) are able to demonstrate that the failure to publish is due to the consequences of COVID-19.

### Temporary and Retroactive Effect of the Emergency Act

The Emergency Act provides for the possibility to reduce or extend the period during which the Emergency Act will be effective. This will be determined on the basis of the development of the coronavirus. Parties should therefore continuously and carefully monitor developments.

A number of measures imposed by the Emergency Act have retroactive effect as of 16 March 2020. One of the results of this retroactive effect is that certain potential defects of general meetings held on or after 16 March 2020 are remedied and do not affect the decisions taken during such meetings.

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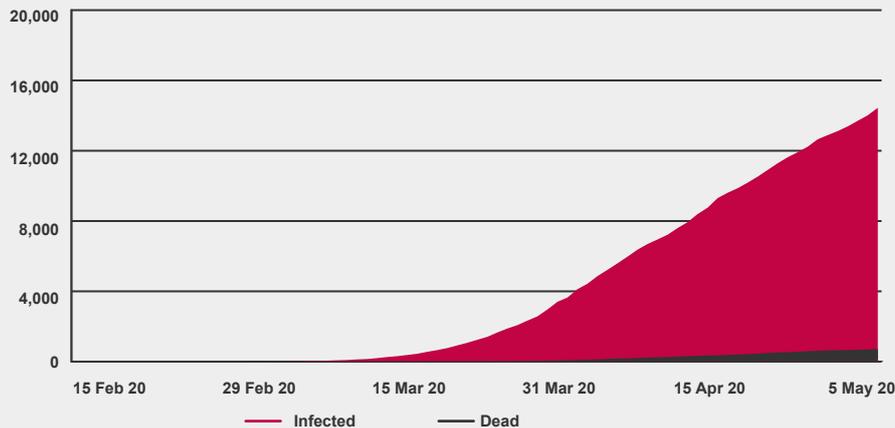
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# Poland

## COVID-19 Country Report

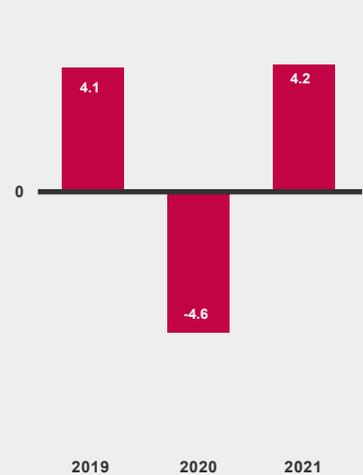


### Corona Curve in Poland



Source: Statista, Johns Hopkins University (5 May 2020)

### Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 59 billion (12% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>46.7% (2019) → 53.9% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>3.3% (2019) → 9.9% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

The coronavirus pandemic has also spread to Poland. Schools and day-care centres have been closed since 16 March 2020, commercial centres (larger than 2000 m<sup>2</sup>), restaurants, cinemas and theatres since 14 March 2020. Assembling is prohibited, all events have been cancelled, social contacts should be avoided as far as possible. Many employees work in home office. Poland has reintroduced border controls along all its borders (including those to its European neighbors). Entry into the territory of Poland has been considerably restricted for foreigners and is only possible in some cases defined by law. In addition, all persons coming to Poland must, as a rule, undergo a mandatory 14-day house-quarantine. Civil air transport and international rail transport have been suspended. The Polish healthcare system is facing major challenges. The Polish health care system is focusing on increasing test capacities.

The legal situation in connection with the epidemic is changing very fast in Poland. In total, between 14 March and 26 April 2020, the ordinances on restrictions, orders and bans in connection with the status of the epidemic were amended 14 times – often overnight. For business activities in Poland, it is therefore very important to regularly monitor changes in the law and analyse their impact on the company's current operations.

For companies, the official measures result in massive economic losses. According to research by the Polish Economic Institute, the service sector suffers the most, with 63% of entrepreneurs reporting lower turnover. In the trade sector, 55%

of the companies recorded a decrease in turnover, while in the production sector the figure is 49%.

As part of the fight against the economic consequences of the epidemic, the so-called “anti-crisis shield”-act was adopted on 31 March 2020, introducing a series of measures to reduce the negative impact of the epidemic on the Polish economy.

From 20 April 2020, the gradual “thawing” of the Polish economy and the return to a “new normality” began. The first restrictions (e.g. the ban on access to forests and parks) were lifted. The government has announced that commercial cen-

ters and hotels can be reopened from 4 May 2020, day-care centers and kindergartens from 6 May. The gradual lifting of the restrictions is to take place in stages, taking place every two weeks.

The government is currently planning to lift the economic restrictions completely by the end of June 2020, although this will depend on the current health situation.

## State Aid Measures

As part of the fight against the economic impact of the epidemic, the so-called “Anti-Crisis Shield”-Act was adopted on 31 March 2020, introducing a series of measures to reduce the negative impact of the epidemic on the Polish economy. It was the first stage of state aid for entrepreneurs. Its main objective was to protect jobs and financial security of companies on the one hand, and the health of citizens on the other hand. The package was supplemented on 7 April 2020 by the so-called “Shield 2.0”, which extends the aid measures available to entrepreneurs. Later aid packages will be announced as part of the stages that will be presented depending on the evolution of the epidemic situation and the needs of the economy.

According to the government’s announcement, the “protective shield” is to be regularly modified and supplemented by other support measures for entrepreneurs. In parallel with the legal changes, the institutions responsible for coordinating the respective aid programs – including the Polish Development

Fund, the Industrial Development Agency and the state-owned bank *Gospodarstwa Krajowego* – are to constantly expand their portfolio of instruments intended for its implementation.

On 28 April 2020, the government announced the project of the so-called “Anti-Crisis Shield 3.0” which aims to liberalise the labor market and to restrict workers’ rights amongst other things. For example, it will be easier to cut workers’ salaries and to terminate their employment contracts.

Among the aid solutions currently in force on the basis of the “Anti-Crisis Shield” and the “shield 2.0”, the following measures should be noted:

### Help Available on Request

#### Liquidity Financing from the Polish Development Fund (PFR)

This is a form of support via loans or bonds for a period of two years with a one-year extension option worth up to PLN 1 billion. They may be applied under certain conditions by large companies that have experienced a decrease in economic turnover of at least 25% after 1 February 2020, have lost their production or service capacity, do not receive sales payments exceeding 25% of their receivables and are participants in sectoral programs. Co-financing shall take the form of a loan, the purchase of receivables or debts, bonds or guarantees. It is granted in the amount of up to PLN 1 billion for a period of



two years with an option to extend it by one year. It may be used for remuneration, purchase of goods and materials, public-law liabilities or for other purposes related to financing ongoing operations (as stipulated in the agreement with PFR).

### **Financial Support from the Agency for Industrial Development (ARP)**

The ARP-funds shall be granted in the form of repayable aid, in particular in form of loans, sureties, guarantees, leasing and other instruments used to finance business activities. The support is provided at the request of an entrepreneur on the basis of an agreement concluded by the ARP and the entrepreneur. Support may be requested by entrepreneurs with a decrease in economic turnover as a result of COVID-19. The amount and type of support depends on the actual financial impact that the entrepreneur has suffered as a result of the announcement of the risk of an epidemic or epidemic condition, as well as on the scope of his activity.

### **Contributions from the Pension Fund for Guaranteed Employee Benefits to the Salaries and Contributions of Employees Affected by Economic Downtime or by Reduced Working Hours**

This is a support for entrepreneurs during the period of economic stagnation or the reduction of working time introduced by them – in case of a decrease in economic turnover as a result of COVID-19, it amounts to 50% of the minimum wage for work (taking into account the working time) or up to half of the wage received after the reduction of working time, up to 40% of the average monthly wage.

### **Exemption from Social Security Contributions for Companies with up to 49 Employees**

This is an exemption from social security contributions for three months. Companies employing up to nine people are completely exempt. If up to 49 persons are employed, the exemption is 50% of the contributions due. A similar exemption is granted to self-employed persons whose income does not exceed 300% of the average salary.

### **Standstill Benefit for Self-Employed Persons Whose Monthly Income Did Not Exceed 300% of the Average Wage (Approximately PLN 15,600), as Well as for Persons Employed under Civil Law Contracts**

This is an one-off support for persons who carry out a one-person business activity if their activity has come to a stand-

still as a result of COVID-19 and for such employed on the basis of civil law contracts if the activity of the company for which they provide their work/services has come to a standstill as a result of COVID-19. The amount of the remittance is 80% of the minimum wage or 50% of the minimum wage, depending on the form of tax deduction for self-employed persons, or 50% of the minimum wage for income of persons employed on the basis of civil law contracts.

### **Co-Financing of Employees' Salaries and Contributions by the District Governor in the Event of a Reduction in Economic Turnover as a Result of COVID-19**

This is a support for an entrepreneur in the role of an employer through the partly assumption of the costs of employees' wages and salaries and the related social security contributions by the District Administration President (*Starosta*) in case of a decrease in economic turnover as a result of COVID-19 for a maximum of three months. Depending on the amount of the decrease in income, the remittance can range from 50% of the minimum wage for work up to 90% of the minimum wage for work, increased by social security contributions.

### **Financing of Part of the Cost of Operations by the President of the County Council for Self-Employed**

This support is granted by the President of the County Council to subsidise part of the costs of the business activity of self-employed in case of a decrease in their economic turnover after the appearance of COVID-19 for a maximum of three months. The remittance can be between 50% and 90% of the monthly minimum wage.

### **One-Time Loan to Cover Current Operating Expenses**

This is a one-time loan of up to PLN 5,000 for micro-entrepreneur (who already carried out business activities before 1 March 2020), granted to cover the running costs of the business. The loan may be re-paid upon fulfilment of certain conditions.

### **Other Accessible Assistance**

#### **Deductible Loss in 2020 from Income for 2019**

Income and corporate tax payers can reduce their income from business activities in 2019 by the amount of the loss incurred in 2020 due to COVID-19. This means that the tax base is reduced and the overpaid tax is refunded.

### **Protection Against Tax Consequences of Doubtful Commercial Debts**

Income and corporate tax payers who are in arrears with the payment of trade receivables after 90 days from the date of their due date do not have to take these debts into account when calculating income tax advances in the respective accounting period.

### **Possibility of Changing the Conditions or Deadlines for the Repayment of a Loan or Credit by a Bank**

Within the framework of support for entrepreneurs (micro, small and medium-sized enterprises), banks may change the conditions or deadlines for the repayment of a loan or credit. The change is to be made on the terms and conditions agreed between the bank and the debtor (debtor). It may not cause a deterioration of the financial and economic situation of the debtor (debtor).

### **Granting Tax Benefits to Entrepreneurs in Connection with COVID-19**

A tax payer who is a fiscal group of companies but who will suffer negative economic consequences in 2020 due to COVID-19 and therefore will not meet the condition of profitability and absence of tax arrears will retain its status as a fiscal group of companies.

## **Labor Law**

The Polish government mainly uses, besides many instruments to support the economy, the mechanism of direct support for employers. It has also introduced many smaller facilitations in connection with the employment of workers. In the following we present the most important labor and social security regulations provided for in anti-crisis laws.

### **Direct Financing for Employers**

#### **Co-Financing for Employers Who Have Closed Their Businesses or Reduced Working Hours and Wages**

- Companies that have had to cut back on operations during the epidemic, whether in the form of economic downtime or by cutting working hours and wages, can obtain funding from the government to maintain jobs. The funding covers

part of the employees' salaries (and the related social security contributions) up to three months.

- The precondition for the funding is that the employer's turnover has decreased as a result of the COVID 19 epidemic (the law defines the minimum level of reduction) and that an agreement is reached with the workers union or other workers' representatives on downtime or reduced working hours.

### **Financing for Small and Medium-Sized Enterprises**

- an instrument accessible only to small and medium-sized enterprises,
- funding is more universal – not limited to companies that have ceased operations or cut working hours and salaries;
- also includes co-financing of jobs (subsidies for employees' salaries and social security contributions),
- necessary condition for obtaining this financing is a certain decrease in the economic turnover of the employer,
- the amount of financing depends on the extent of the decline in economic turnover.

### **Other Supports for Employers**

- Exemption from the obligation to pay social security contributions for employers who employ fewer than 10 insured persons for several months.
- Suspension of the penalty fee in case of deferred payment/ payment in instalments of social security contributions.
- Standstill allowance for self-employed/employees with civil law contracts amounting to 80% of the minimum wage.
- Extension of the deadline for the payment of income tax advances to the tax office.
- Postponement of the start of the new pension system for small and medium-sized enterprises until autumn 2020.
- Relaxation of working time restrictions (reduction of daily and weekly rest periods, introduction of a more flexible (than before) system of equivalent working time with a settlement period of up to 12 months).
- Special solutions for employers who are entrepreneurs in the critical infrastructure sector.
- Extension of the validity of work permits for foreigners.

## **Contract and Corporate Law**

The "Anti-Crisis Shield"-act also introduced several changes in Polish contract and corporate law. The most important regulatory changes to facilitate business operations are:

## Facilitation of Meetings and Conventions of Company Bodies

Shareholders' meetings and general meetings can usually be held by means of remote communication (e.g. by using video conferences). This form of meeting is only unacceptable if it is clearly prohibited by the articles of association.

Meetings of managing directors, management boards and supervisory boards can also be held via remote communication. For medium-sized companies it is stipulated that resolutions of the managing directors/the executive board and the supervisory board can also be passed in writing by an authorised member of this body without being provided within the articles of association.

## Extended Deadline for the Preparation and Approval of Financial Statements

The deadline for the preparation and approval of the financial statements for 2019 has been extended by three months. As a rule, the annual financial statements for 2019 must be prepared by 30 June 2020 and approved by 30 September 2020. Companies subject to the supervision of the Polish Financial Supervision Authority should prepare their annual financial statements for 2019 by 31 May 2020 and approve them by 31 August 2020.

## Interruption of the Commencement and Termination of Proceedings

Since 14 March 2020, the judicial time limits no longer apply and pending proceedings have been discontinued. The same goes for applications to be submitted to the National Court Register in connection with the business activity carried out.

## Entries in the Register of Actual Beneficiaries

The deadline for registering actual beneficiaries (*beneficial owners*) of the company in question to the relevant register has been extended to 13 July 2020.

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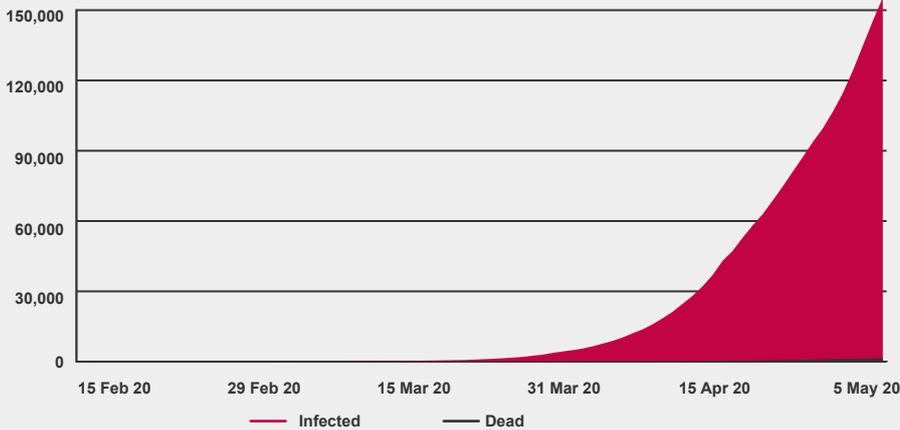
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# Russia

## COVID-19 Country Report



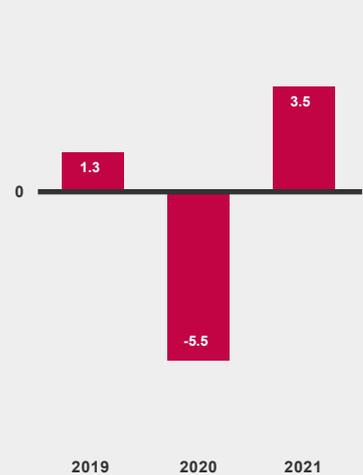
Corona Curve in Russia



155,370 Infected	21,327 Recovered	1,451 Dead
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 42 billion (2.8% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>14.0% → 17.9%</b> (2019) (forecast 2020)	<b>Unemployment rate:</b> <b>4.6% → 4.9%</b> (2019) (forecast 2020)
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

In view of the corona virus pandemic, President Putin has declared the time period of 30 March until May 11 2020 to be a nationwide work-free period. According to the orders No. 206 dated 25 March 2020, No. 239 dated 2 April 2020 and No. 294 dated 28 April 2020, exceptions only apply to certain organisations and their employees as well as medical facilities and pharmacies; facilities supplying food and goods for everyday consumption, agriculture, etc. A week ahead of this, all states schools were closed, closely followed by nurseries. The public life came to a near complete halt. All large-scale events were cancelled, parks, gyms, bars, cafés, restaurants, recreational facilities and retail stores are closed. Churches have not been spared. Easter 2020 Services could only be “attended” online. Even such significant events as the constitutional referendum were postponed because of Corona.

A strict curfew, a ban on contact and a self-isolation obligation in the case of a confirmed corona infection apply nationwide. However, the rules may differ depending on the Federal subject and the municipality. For example, in the Moscow region a strict self-isolation obligation applies if any symptoms of any acute virus-related respiratory disease are present. In the capital Moscow, special digital exit tickets were introduced. Anyone who disregards these regulations and leaves the apartment without this certificate is liable to a fine of up to RUB 40,000 (about EUR 500). The compliance with these rules is controlled inter alia with the help of special digital solutions. In some regions, further measures against the spread of

COVID-19 were imposed, ranging from the compulsory wearing of face masks to the use of GPS trackers for the infected.

Movement within Russia is very limited. Currently, there are increased police controls on the entry roads to Moscow. Solely certain groups of people with special identity cards, such as journalists, the military, police, etc., are allowed to move freely within the country.

Moreover, from 18 March 2020 the entry of foreigners into the country is also restricted. Exceptions solely concern drivers engaged in international carriage by road, accredited and ap-



pointed staff of diplomatic missions and consular posts of foreign countries; members of official delegations and individuals holding visas issued in connection with the death of a close relative. Further exempted are individuals entering the country as family members of Russian citizens and individuals who have a permanent residence in the Russian Federation. All persons entering the country are obliged to isolate themselves in an apartment for 14 days.

For foreigners and stateless individuals whose residence permits expires between 15 March and 15 June 2020, the time-limits for stay are extended – as is the validity of expiring entry visas and other documents.

Hospitals in Russia have prepared for the admission of a large number of COVID-19 patients. Currently, the authorities are focusing on increasing testing capacities and procuring masks and other protective material. The number of infected people is growing rapidly and currently amounts to over 106,000 people (as of April 30 2020). However, the peak of the pandemic has not yet been reached.

The financial situation in the country is worsening day by day. The drastic official measures mean massive economic losses

for companies, some of which are already threatening their very existence. The Ruble is losing a lot of its value against the US Dollar and the Euro. Currently EUR 1 is buying RUB 82.08. In April, the oil price reached a new historic low. The country's entire economy is severely affected.

## State Aid Measures

Politicians in Russia are working intensely on limiting the economic consequences of the epidemic as much as possible. The Russian President has already addressed the Russian population several times about the coronavirus crisis and promised numerous support measures.

The government plans to allocate about RUB 2 trillion (approx. EUR 25 billion) to support the economy. There are already numerous other measures in place at federal, state and also local level.

In addition, the government has compiled a list of “strategically important” and “system-relevant” companies for Russia (this list is being continuously expanded). The list includes companies that can contribute to the stability of the country because of their significant economic importance (e.g. as

major employers) and should therefore receive more state aid. Included are companies from various sectors ranging from energy companies and airlines to food chains and online retailers.

### Financial Aid

In the future, special support measures will be provided for small and medium-sized companies in the sectors most severely affected (catering, tourism, hotel business, air transport, culture, etc.). In order to ensure their liquidity, they can apply for direct grants from early May onwards to be able to pay their salaries in April and May. One of the conditions for this payment is that the company must have kept at least 90% of its jobs (in comparison to 1 April 2020) despite the crisis. The amount of the payment is then calculated on the basis of the minimum monthly wage (RUB 12,130, approx. EUR 150) per employee per month. This financial aid is limited to two months (April and May).

Every company can check online at <http://covid.economy.gov.ru/> (the state website of the Ministry of Finance) whether it is entitled to such state support.

### Loans

The Russian central bank has announced the expansion of its refinancing program for loans to small and medium-sized businesses. Within the framework of this program, loans are to be granted at an interest rate of up to a maximum of 8.5% (the key interest rate in Russia is 5-6%, which is significantly higher than our interest rate level). At the same time, all industry restrictions on lending to small and medium-sized businesses have been lifted.

Also within the framework of the government program, banks have already begun to grant interest-free loans regarding salary payments of up to six months. The loan amount is calculated based on the number of employees multiplied by the monthly minimum wage and the credit period.

Even more favorable credit terms will be provided for those companies classified as “system-relevant” by the government. In the future, such companies will be able to obtain loans to replenish their working capital at an interest rate equal to the base rate. Half of the loan will be secured by government guarantees.

### Tax Receivables and Social Contributions

SMEs in the sectors affected should in future receive deferrals of tax payments and social contributions. Deferral periods have already been set for the most important taxes (transport, land and property taxes).

With help of the digital service of the Tax Service of the Russian Federation ([www.nalog.ru](http://www.nalog.ru)), every company can find out what kind of relief and deferral is applicable for its own business.

A reduction in social security contributions is also provided for all SMEs.

The collection of taxes and social security contributions was suspended until May.

### Labor Law

The following labor law aspects are currently of particular relevance for employers.

#### Work-Free Time – Who Can Work?

The month-long forced holiday in Russia has raised a lot of questions. What is the status of these days? Who must continue to work, who may work and who may not?

As was explained later, the “work-free days” are not public holidays. First and foremost, the aim of this measure was to reduce contact between people. Therefore, these days are treated as “normal” working days when calculating deadlines and wage payments.

The work-free days do not apply to employees of medical facilities and pharmacies; facilities supplying the population with food and goods for everyday consumption; and all other areas necessary to maintain the basic and most urgent needs. Moreover, authorities must at least maintain an emergency service.

Companies that are not covered by the above-mentioned exceptions can only be granted the right to operate if they receive a corresponding permit from the local authority. Furthermore, those businesses that succeed in transferring the majority of their activities from the company to the home office may continue to operate. However, it must be taken into account that the employee has to agree with working from home, which must be documented in a supplement to the employ-

ment contract. These rules may differ depending on the region and municipality.

In Moscow it is generally permitted to continue the operation of the business to the extent necessary for the business to “function”. For this purpose, the employer must issue an order specifying the number of “necessary” employees and the number of employees working from home and/or at their regular workplace. In addition, the employer is obliged to report the number of employees within these three categories to the relevant authorities, also indicating the address of the activity.

### Payment Entitlements in Times of COVID-19

Despite the work-free days and the economic losses associated with them, **all employers must pay their employees’ salaries without interruption**. Otherwise, the general rules of the Russian Labor Code continue to apply.

In times of the pandemic, additional payments by the federal government will be made to doctors and health professionals working in direct contact with COVID-19 patients. For physicians, this bonus shall amount to RUB 80,000 (about EUR 975), for mid-level professionals - RUB 50,000 (about EUR 610), for auxiliary staff - 25,000 Rubles (about EUR 305 Euros). The payments are to be made monthly starting in April.

### Continued Payment of Remuneration

For Russian citizens who have lost their jobs after 1 March 2020, unemployment benefits will be paid for a period of three months (April to June) in the amount of the minimum monthly wage, i.e. RUB 12,130 (about EUR 150). The registration with the employment agency is supposed to run smoothly online.

Furthermore, it is currently being discussed whether foreign citizens shall also receive this financial support if they lose their jobs during the pandemic.

## Continuous Obligations and Insolvency Law

Through numerous government resolutions and legislative amendments further measures to mitigate the consequences of the COVID-19 pandemic in civil and insolvency law have been taken.

### “Tenant Holidays”

A government decree provides that the tenants of a property owned by the State may receive a deferment of or exemption from payment of rent. Similar measures are recommended for regions and municipalities.

Special schemes have also been introduced for businesses in the sectors affected the most. According to these, businesses have the possibility to receive a deferment of rent or lease payments until 1 October 2020, regardless of who owns the rented property.

In order to make use of this possibility, the tenant must contact the landlord. The landlord, for his part, is legally obliged to conclude an amendment agreement within 30 days of the tenant’s request, which provides for a deferment of payment of the rent set in 2020. The amount of the deferment depends on specific circumstances as well as the region.

In addition, the tenant is entitled to demand a deferment of the rental payments or even a reduction if he was not or not completely able to use the rented property.

### “Loan Holidays”

The aid package to support small and medium-sized businesses also provides for the possibility of deferring loan agreements.

The borrower is entitled to submit an application for deferral to the lender by 30 September 2020 at the latest and before the expiry of the loan agreement. This special support applies to credit agreements (loan agreements) that have been concluded before 3 April 2020. The borrower can determine the period of deferral in his application, however, this period shall not exceed six months.

Within five calendar days of receipt of the application the bank must confirm granting the applied for grace period. If it fails to do so within 10 calendar days, the extension is considered to be granted under the conditions specified in the borrower’s application.

No contractual sanctions may be imposed during these so-called “loan holidays”. The lender is not entitled to demand early repayment of the loan or to proceed to foreclosure.

The borrower has the right to choose whether to suspend payments in full or to reduce the amount of the payment. Furthermore, he has the right to terminate the “loan holidays” at any time.

### **Moratorium on Proceedings Based on the Petition of a Creditor, Suspension of the Obligation to File for Insolvency**

The aforementioned amendments to the law also prohibit creditor applications for a period of six months. This primarily concerns companies and the self-employed in the sectors most affected, system-relevant companies and strategically important organisations as potential debtors. For the duration of the moratorium, all creditor insolvency petitions submitted, even those submitted before the moratorium, will not be considered and will automatically be returned to the petitioners by the court.

At the same time, it remains possible to open insolvency proceedings at the debtor’s request (the debtor’s obligation to file for insolvency is suspended).

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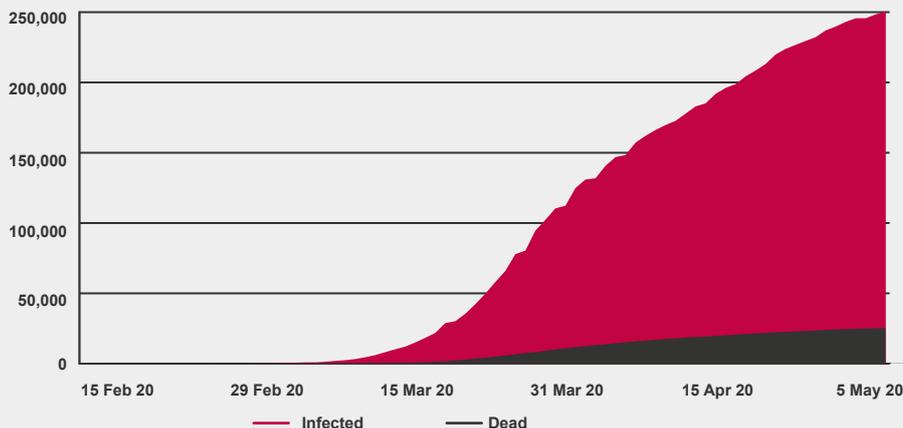
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# Spain

## COVID-19 Country Report



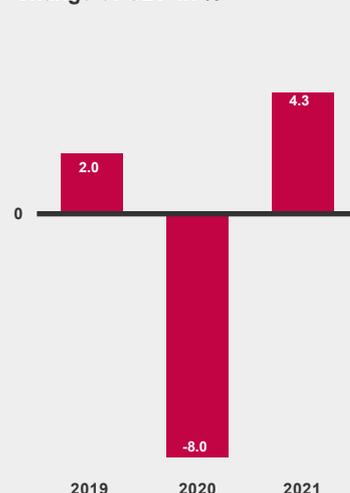
Corona Curve in Spain



**250.561 Infected**
**154.718 Recovered**
**25,613 Dead**

Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> <b>EUR 145 billion (11.7% GDP<sup>2</sup>)</b>	<b>State debt (in % GDP)</b> <b>95.5% (2019) → 113.4% (forecast 2020)</b>	<b>Unemployment rate:</b> <b>14.1% (2019) → 20.8% (forecast 2020)</b>
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Source: IMF, Bruegel, Statista  
 1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

Spain is among the countries worst hit by the COVID-19 outbreak. The Spanish Government announced a state of emergency on 14 March 2020 and has imposed one of the toughest measures in Europe to contain the spread of the virus. For weeks, residents were only allowed to go outside for work and only if they could not work from home. Other than that, they were only allowed to leave their home for shopping, taking out their dogs or for other important activities like seeing a doctor. Since the end of April, there have been a first set of alleviations and parents may go out with their children again for one hour a day to play. Certain “non-essential” business activities are also allowed again and it seems that Spain is slowly opening up its economy.

Since the declaration of the state of alarm, procedural and administrative acts and deadlines and, de facto, all judicial proceedings, have been suspended. Except in those cases of urgent actions expressly regulated by law: urgent criminal proceedings (habeas corpus, guards, proceedings with detainees, prison supervision, interim measures, etc.), protection of minors procedures, protection of fundamental rights and issues of judicial authorisations of non-voluntary detentions, procedures in matters of collective conflicts or in fundamental rights matters; and those that a judge of any jurisdiction may decide in order to avoid irreparable damage to the defendant. Royal Decree-Law 16/2020 of 28 April 2020 stipulates the way

in which these deadlines will be reactivated when the suspension is lifted:

- Terms and deadlines suspended by the declaration of the state of alarm will recommence from the beginning (without counting the period elapsed).
- Deadlines for lodging appeals against judgements and other resolutions ending a proceeding that are notified during the suspension under the declaration of the state of alarm, as well as those resolutions notified in the 20 business days following the lifting of the suspension of the procedural deadlines, shall be extended for a period equal to the provided for such procedures.

Furthermore, the days between and including 11 to 31 August 2020 except Saturdays, Sundays and public holidays are declared business days for all judicial activities. Moreover, during the period of the state of alarm and up to three months after its termination, morning and afternoon working hours are established for all services and jurisdictional bodies.

## State Aid Measures

In the financial and banking area, the main measures adopted by the Spanish government through the various Royal Decree-Laws are aimed to mitigate the major liquidity problems of companies, as well as the income of certain households in a situation of social and economic vulnerability, through certain public financing measures and the establishment of debt moratoriums, both mortgage and non-mortgage. Notwithstanding the above, there is no moratorium on the obligation to comply with the obligations arising from financing contracts and other debt instruments.

### Public Finance

#### Guarantee Lines for Companies and Self-Employed

One of the main measures adopted is the approval of a guarantee line for companies and self-employed persons for a maximum amount of EUR 100 billion. Coverage that is implemented through the Official Credit Institute (*ICO*) for financing granted to companies and to self-employed workers by credit institutions, financial credit establishments, electronic money institutions, payment institutions, the Spanish Counter guarantee Company – *Compañía Española de Reafianzamiento, Sociedad Anónima (CERSA)* – as well as promissory notes incorporated into the Fixed Income Market of the Association of Financial Instruments Brokers (*AIAF*) and the Alternative Fixed-Income Market (*MARF*). The *ICO* assumes between 60% and 80% of the financial risk.

The purpose of this coverage is to enable such companies and self-employed persons to meet their arising needs, inter alia, the management of invoices, working capital requirements, financial or tax obligations and other liquidity requirements. This, may be requested by companies and self-employed persons provided that they were not in default (*CIRBE*) on 31 December 2019, subject to bankruptcy proceedings on 17 March 2020, or in a situation that would have enabled their creditors to apply a bankruptcy proceeding.

#### Guarantee Lines for Tenants

There are plans to develop, through the *ICO*, guarantees lines (with full state coverage and for a maximum amount of EUR 1,200 million) for the financing by banks aimed at aid for housing expenses in households in situations of social and economic vulnerability, with the sole purpose of paying the rent of the housing lease and for a maximum amount of six months' rent payments.

#### Debt Moratorium

A moratorium of the mortgage debt is foreseen for a period of three months (i) for the acquisition of habitual residence of the individuals, (ii) for the self-employed, businessmen and professionals in relation to the properties affected to their economic activity, and (iii) for the individuals that have rented properties for which they do not receive the rent in application of the measures in benefit of the tenants as consequence of the state of alarm.

In addition to mortgage financing for housing, there is a moratorium on non-mortgage loans and credits maintained to people in a situation of economic vulnerability, including consumer credits.

#### Deferment of Tax Debts and Suspension of Tax Deadlines

The Royal Decree-Law established the possibility that persons and entities with a volume of transactions not exceeding EUR 6,010,121.04 in 2019 defer their tax debts derived from self-assessments when the voluntary period of filing ends between 13 March and 30 May, both inclusive. The amount of the customs debt incurred may not be more than EUR 30,000. The above debts will be deferred for a period of six months and with no interest for the first three months.

Moreover, the deadlines for the presentation and payment of tax statements and self-assessments of taxpayers with a turnover of less than EUR 600,000 in 2019, which expire between 15 April 2020 and 20 May 2020, will be extended until that date.

Royal Decree Law establishes an extension until 30 April 2020 (i) of the deadlines for payment of the settlements made by the Administration; (ii) of injunctions; (iii) of the expiry of the deadlines and fractions of the deferred and fractioned agreements granted by the Administration; (iv) of the deadlines related to the development of the auctions and awarding of

goods and (v) the deadlines to meet the requirements, seizure orders and of requests of information with tax implications; (vi) to make allegations in relation to the beginning of such proceedings or hearings, issued in proceedings for the application of taxes, penalties or declarations of nullity; (vii) refunds of undue income, correction of material errors and revocation; all of which have not concluded on 18 March 2020. The deadlines for actions notified from 18 March 2020 onwards are extended to 20 May 2020, unless the general deadline is longer, in which case the latter will apply.

## Labour Law

The main labour measures approved in the context of the health crisis caused by COVID-19 are aimed at protecting employees, families and vulnerable groups, as well as supporting companies.

## Teleworking

Teleworking arises as the preferred labour measure to maintain business activity, whenever technically and reasonably possible. If teleworking has not been implemented in the company, the obligation to carry out the relevant labour hazards' evaluation will be complied with by means of a self-assessment carried out by the employee. This measure will be in force for two months after the end of the month in which the state of alert finishes.

## Temporary Suspension of Employment Contracts and Reduction on Working Hours

In order to avoid dismissals, Labour Law promotes temporary proceedings for the suspension of employment contracts and the reduction on working hours (in Spanish, “*ERTE*”) derived from force majeure and objective grounds.

### ERTE Derived from Force Majeure

An ERTE derived from force majeure is directly based on activity losses resulting from the measures adopted by the Government due to COVID-19, including the declaration of the state of alarm, such as (i) the suspension or cancellation of events, (ii) the temporary closure of premises with public access; (iii) restrictions on public transport and on the mobility of persons and/or goods; (iv) lack of supplies that seriously prevents from keeping the regular development of the activity and (v) COVID-19 infection of the staff or the adoption of preventive isolation measures ordered by the health authorities.

The length of the ERTE is determined by the validity of the state of alarm. The proceedings to apply an ERTE derived from force majeure is as follows:

- The company will submit the ERTE's request and documentation supporting the force majeure before the Labour Authority and also provide it to the employees' representa-



tives (or directly to the employees if there is no employees' representation).

- The Labour Authority must confirm the existence of force majeure within five days. If this period elapses without a resolution, the ERTE is deemed to be approved.

### ERTE Due to Objective Grounds.

An ERTE due to objective grounds is based on economic, technical, organisational and productive causes related to COVID-19. The procedure for its implementation is as follows:

- The company must communicate to the employees the purpose to apply an ERTE. In absence of employees' representatives, the company should communicate this decision to all employees in order to establish an employees' committee during the process, composed by the most representative trade unions or, where appropriate, by three employees of the company elected on democratic basis. This employees' committee must be constituted within a maximum period of five days.
- After the negotiated committee is established by the company's side and the employees' side, the company must provide the employees' committee with all the documentation (basically, a report proving the causes for the ERTE) and after that, the negotiation process starts. Additionally, the Labour Authority must be informed of all these points.
- Consultation period lasts for a maximum of seven days and the parties must negotiate in good faith. Consultation period may conclude with or without an agreement.
- Once the consultation period is terminated, the company must inform the Labour Authority on this matter and shall implement the ERTE with or without an agreement.
- The final decision must be communicated individually to the employees, who may challenge the company's decision before the labour courts, either through individual or collective claims.

### Extraordinary Measures for Employment Protection

Both force majeure and objective grounds supporting an ERTE derived from COVID-19 will not justify any termination of employment contract.

Likewise, companies that have implemented an ERTE due to force majeure and/or objective causes derived from COVID-19 will be obliged to maintain the volume of employment during the following six months from the end of the state of alarm.

## Real Estate

### The Royal Decree-Law 11/2020 of 31 March on Urgent Measures to Protect Tenants of Primary Residences in a Situation of Economic Vulnerability by COVID-19:

#### Extension of the lease contracts on habitual residence:

The tenant is granted the right to request an extension for a maximum period of six months with the same conditions of the lease, provided that the contract ends between 2 April 2020 and two months after the end of the state of alarm.

**Measures regarding the payment of rent:** Possibility of obtaining a moratorium on the payment of rent or a reduction of 50% of the rental payment under certain circumstances.

**Duration:** Once the requirements are met, these measures will be in force during the validity of the state of alarm and for a maximum period of four months. The rents that have not been paid will be divided into the monthly payments following the expiration of the measure and, at least, for three years.

**Deadline to request the measure:** The application must be made by the tenant from 2 April to 2 May 2020. The tenant must provide sufficient evidence that the requirements for applying the measure have been met.

**Typology of landlords:** A differentiation is made between types of landlords:

- Large real estate holdings. Those natural or legal persons who own ten (10) or more properties. In this sense, the measures requested by the lessee must be accepted automatically, unless other measures have already been taken between the parties.
- Other lessors. The lessor may or may not accept the lessee's request for a moratorium. In the event of refusal, the lessee may benefit from a public aid scheme approved by the Government in Royal Decree Law 11/2020.

**Public aid:** Certain public aid for lessors and tenants affected by COVID-19 are approved.

### Royal Decree-Law 15/2020 of 21 April on Urgent Complementary Measures to Support the Economy and Employment With Regard to Non-Housing and Industrial Leases.

**Measures:** Possibility of obtaining a moratorium on rent payments only for self-employed persons and SMEs in relation to

(i) leasing contracts for purposes other than living signed under Article 3 of the LAU 1994 and (ii) industrial leasing contracts (the lease must be for the activity of the self-employed person or SME).

**Requirements:** SMEs are defined as enterprises that do not exceed the limits set out in Article 257(1) of the Law on Corporations, i.e: (i) less than 50 employees, (ii) less than EUR 8 million turnover and (iii) less than EUR 4 million assets.

The measures will be accessible to those self-employed or SMEs that are in a situation of vulnerability in accordance with the following requirements:

- That their activity has been suspended due to the state of alarm.
- That their activity has not been directly suspended, but that they can prove that their monthly turnover has been reduced by at least 75% of the average monthly turnover of the previous quarter.

**Deadline for requesting the moratorium:** The request for the moratorium must be made by the tenant from 23 April to 23 May 2020.

**Lease agreements with large landlords:** In the case of leases with large landlords, the moratorium (i) must be automatically accepted by the lessor, whenever no agreement has already been reached between the parties on the moratorium or reduction of rent (in this case the agreement between the parties will prevail), (ii) will affect the period of time that the state of alarm condition lasts and its subsequent extensions (up to a limit of four months), and (iii) means the division of the monthly rent affected by quotas that must be paid in a period of two years from the moment the state of alarm is overcome and, in any case, from the end of the four month limit period indicated. All this, always within the period of validity of the lease or any of its extensions.

**Leases not signed with large landlords:** In the case of leases signed with lessors not considered large landlords, the same requirements are established as for leases signed with large landlords, although it is not expressly regulated that they are obliged to accept the request for deferment of rent. However, it is established the possibility that the parties may freely dispose of the deposit for the total or partial payment of one or more monthly rent, with the lessee having to replace the amount within one year from the conclusion of the agreement or within the remaining term of the contract, if this term is less than one year.

## Commercial Contracts

### Measures for the Protection of Consumers and Users

**Interruption of the deadline for the return of products** purchased by consumers in any form, in person or online, during the state of alarm.

### Contracts for the Sale of Goods or for the Provision of Single-Tract Services:

Consumers may terminate the contract for a period of 14 days after it has become impossible to perform the contract, if the proposal(s) for revision offered by the parties, on the basis of good faith, does not provide a solution which restores the reciprocity of interests of the contract. Proposals for revision may include, among other things, the offer of substitute bonds or vouchers for redemption. It is understood that no proposal for revision can be obtained if 60 days have elapsed since the impossible performance of the contract without agreement. If the performance of the contract proves impossible, the company shall return the sums paid by the consumer in the same form in which the payment was made within a maximum of 14 days.

### Contracts for the Provision of Successive Services:

Consumers may terminate the contract on the same terms as those for single-tract services. However, the company may offer options for recovery of the service *ex post*. Only if the consumer is unable or does not accept such recovery, the amounts already paid will be refunded for the part of the service period not provided for that reason or, with the consumer's acceptance, it will be reduce the amount resulting from future fees for the provision of the service. Likewise, the collection of new fees or monthly payments will be paralysed until the service can be provided again normally; however, the contract will not be terminated (except by agreement between the parties).

### Package Travel Contracts Cancelled Due to COVID-19:

Consumers may choose to request a refund or to make use of the voucher (for an amount equal to the refund that would have been due), which will be issued by the organiser or, where appropriate, by the retailer. This voucher can be used within one year of the end of the state of alarm. If it is not used within that period, the consumer may request a full refund of any payment made. The replacement voucher must have sufficient financial backing.

However, consumers who request termination of the contract before the start of the journey shall be entitled to reimbursement if there are unavoidable and extraordinary circumstances at the destination place which significantly affects the performance of the journey or the carriage of passengers to the destination. This refund will be total or partial depending on, whether the service providers included in the package contract had proceeded to the total refund of the amount corresponding to their services or the amount returned was partial. The deadline for refunds is 60 days from the date of resolution or from the return date.

### Impact on the Supply Chain of Products and Services in the Spanish Market

The measures taken as a result of the declaration of the state of alarm have an impact on commercial agreements, particularly on long-term agreements.

#### Potential Application of Force Majeure

The Spanish Civil Code provides that, except in cases expressly provided by law or in contract, an obligor is not required to perform his obligations in the event of force majeure, i.e. “*events that could not have been foreseen, or which, if foreseen, were unavoidable*” (Article 1105).

For force majeure to arise the event must be beyond the control of the parties, irresistible, unforeseeable or unavoidable, making it impossible to perform the obligation. In addition, there must be a causal relationship between the event and the result. In other words, the event must consist of a force beyond the parties' control, which excludes fault.

Pandemics have traditionally been considered by case law as events of force majeure, especially when binding and enforceable administrative measures are in place that make it impossible to comply with a contractual obligation.

The most important effect of force majeure is the release of the obligor from the duty affected by the event and the exoneration of liability for the obligee's damages. In addition, if performance is temporarily impossible, the obligor will not fall into arrears.

Spanish case law has made it clear that force majeure does not affect generic obligations such as financial obligations, allowing at most for temporary non-performance or delay.

#### Potential Application of Rebus Sic Stantibus Clause

*Rebus sic stantibus* clauses (Latin for “whilst things stay like this”) have been defined by case law as the rule which allow one of the parties to a contract to mitigate the negative impact of the contractual risk resulting from an unforeseeable and extraordinary alteration of the circumstances existing at the time of execution of the contract which leads to imbalanced performance.

While force majeure excludes the possibility of performance of an agreement, the sudden change in circumstances embodied in the *rebus sic stantibus* clause does not prevent the contract from being fulfilled, even if it breaks the financial equilibrium of the obligations.

In the context of continuous contractual relations, this clause is a remedy to restore the economic equilibrium altered by a change in the circumstances at the time in which the contract was entered into.

Classical case law has been very restrictive in the application of the *rebus sic stantibus* clause and has required the following conditions to be met: (i) an extraordinary alteration of the circumstances existing at the time of performance of the contract compared to those existing at the time of execution; (ii) an excessive disproportion between the parties' obligations, resulting in the breakdown of the contractual equilibrium; (iii) the existence of unforeseeable causes; (iv) the absence of any other damage relief method; and (v) the permanence or duration of the alteration, so that the disruption of the performance balance is not merely episodic or transitory.

However, since the Ruling of 30 June 2014, the Spanish Supreme Court has relaxed the application of this doctrine, stating that the circumstances of the case must be assessed objectively, taking into account the basis of the transaction and the risk derived from it and, in particular, the existing social situation.

The application of the *rebus sic stantibus* clause may result in contracts being amended or terminated. Amending a contract, a solution more consistent with the principle of preserving legal transactions, is the preferred option applied by the courts, especially in the case of long-term contracts.

## Data Protection

### Report from the Spanish Data Protection Agency (SDPA) on the Data Processing Activities Resulting from the COVID-19 Extension (Report 0017/2020)

The SPDA has issued a legal report analysing the processing of personal data related with sanitary emergency. Such report makes clear that the data protection regulation will continue to be of application, to the extent it protects a fundamental right and there is no justified reason for its suspension.

The General Data Protection Regulation (EU) 2016/679 ("GDPR") contains the necessary rules to be applied in this matter during a sanitary emergency. Thus, article 46 of the GDPR recognises that the legal basis under such circumstances can be based, e.g., in the public interest foreseen under section 6.1.e) of the GDPR. A further ground could be the vital interest of data subjects covered in section 6.1.d). Notwithstanding this, the processing of health data will require that any of the exemptions set forth under section 9 of the GDPR applies.

The report also states that the relevant health authorities shall adopt the necessary decisions and data controllers will be required to follow such instructions, even in such cases where the processing includes health.

### FAQs Concerning the Processing of Data During the Alarm Status Responded by the SDPA

In addition to the above report, the SDPA has published a FAQs document to respond to queries that may arise, including:

- Are companies allowed to process data related to the possible coronavirus infection of employees?

Companies can treat data of the staff to guarantee its health and such of the rest of employees. In consequence, the company may know if the employee is infected or not, so as to design, through its safe and healthy system, the relevant contingency plans or those established by the health authorities.

- May they communicate such information to the staff of the company?

Generally, such information shall only be provided without identifying the persons affected.

- Can be employees and visitors be asked about countries being visited previously or on symptoms related to the coronavirus?

Companies have the duty to protect the health of the employees and keep the working space free from sanitary risks and thus it would be justified to seek information from employees and external visitors on symptoms and risk factors without being explicit consent required.

## Corporate, Insolvency and Investment Law

### Corporate Law

The rapid spread of COVID-19 has led to the need of a quick reaction by adopting urgent measures, in order to reduce its economic impact and facilitate the productive fabric's immediate adaptation to the new reality.

### Private Corporations

Measures have been established in order to facilitate the holding of meetings of the governing bodies of private legal entities by telematic means, together with the adoption of agreements in writing (without the need of holding a meeting).

Limitations are also established on the exercise of the right of separation of a shareholder (even if there is a legal or statutory cause) and the regime for the dissolution of companies is suspended.

Likewise, it is established that for the concurrence of the cause of dissolution for losses that reduce the net assets to an amount less than half of the share capital, the losses of the financial year 2020 will not be taken into account and that, if in the result of the financial year 2021 losses are appreciated that reduce the net assets to an amount less than half of the share capital, the company must be dissolved, if necessary.

Company directors will not be liable for the corporate debts incurred during the state of alarm, if during this period the company is involved in a legal or statutory dissolution.

The period for the formulation of annual accounts is suspended, optionally, during the state of alarm. Furthermore, in certain cases and under certain conditions, companies are allowed to replace the proposal for application of profits contained in the report with a different proposal, whether the general meeting has already been convened or is convened during the state of alarm.

In the property and commercial registers, among others, the expiry deadline of the main registry agreements is suspended.

### Listed Companies

The legal deadlines for the publication and submission to the CNMV of the annual financial report, the audit report, the interim management statement and the half-year financial report are exceptionally extended during 2020.

The period in which the ordinary general shareholders' meeting can be held is extended and the regime for holding it is made more flexible.

### Insolvency Law

Royal Decree-Law 16/2020 repeals the previous regulation contained in Article 43 of Royal Decree-Law 8/2020, providing new measures applicable in insolvency proceedings.

### Measures Regarding Deadlines for Filing an Insolvency Proceedings and Other Corporate Obligations

The insolvent debtor will not be obliged to file for an application for declaration of insolvency until 31 December 2020. If an application of a mandatory declaration of insolvency is submitted by its creditors within this period and the debtor files an application for a voluntary insolvency proceedings before 31 December 2020, the latter shall preferably be processed, even if it is filed at a later date.

Furthermore, in order for the debtor to be in cause of dissolution of the company due to accumulated losses, the results for 2021 should be taken into account, not those for 2020.

### Measures Regarding Homologated Refinancing Agreements, Creditors' Agreements and Out-of-Court Settlements

The new insolvency regulation includes greater flexibility with respect to the agreements that the debtor may have reached with his creditors, before the declaration of insolvency and during the proceedings itself.

In this respect, we must highlight the possibility of negotiating new refinancing agreements for their homologation or modifying the existing ones within one year from the declaration of the state of alarm.

Likewise, this applies to creditors' agreements or to out-of-court settlement agreements at the stage of compliance, as their modifications could also be requested within one year of the declaration of the state of alarm.

### Measures Regarding the Classification of Credits of Persons Particularly Connected with the Debtor.

In addition, special rules are provided for the recognition of credits that may be held by persons qualified as being especially connected with the debtor.

Thus, credits arising from financing and payments on behalf of the insolvent party to ordinary and privileged creditors that have been made, since the declaration of the state of alarm, by persons especially related to the debtor will be recognised as ordinary credits.

Likewise, in the event of a breach of an approved/amended agreement within two years of the declaration of the state of alarm, credits arising from the financing or provision of guarantees by any person, including those specially related to the debtor, shall be recognised as claims against the estate.

### Measures Regarding the Liquidation Phase in Insolvency Proceedings

Among the novelties introduced affecting the liquidation phase of the bankrupt's active mass, we must highlight the suspension of the debtor's obligation to request the opening of the liquidation phase for a period of one year from the declaration of the state of alarm, provided that the request for modification of the agreement has been admitted for processing.

Measures are also introduced to accelerate the processing for approval of the liquidation plan by the courts.

Finally, within the liquidation phase itself, priority is given to out-of-court auctions as a method of assets realisation.

### Foreign Direct Investment in Spain

Foreign direct investment in Spain has been suspended if (i) the investor will hold 10% or more of the share capital of the Spanish company, or if as a result of the corporate transaction, legal act or business, the investor effectively participates in the management or control of the company, provided that certain residence requirements are met, or (ii) the investment is made in sectors that affect public order, public safety or

public health (e.g. critical infrastructure or technology, supply of essential inputs, sectors with access to sensitive information, or the media).

Investment operations carried out without the required prior authorisation will be invalid and without legal effect, until they are legalised. The carrying out of acts, business, transactions or operations without requesting authorisation (when mandatory), prior to granting its concession or with failure to comply with the conditions established in the authorisation, will constitute very serious infringements.

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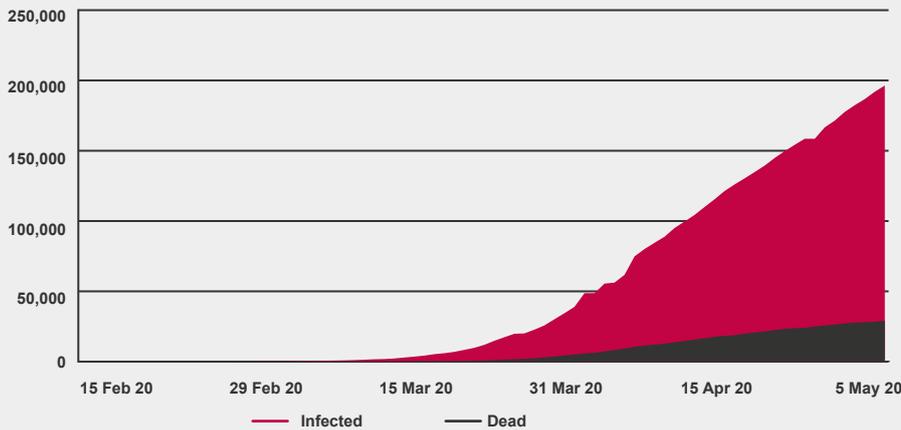
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# United Kingdom



## COVID-19 Country Report

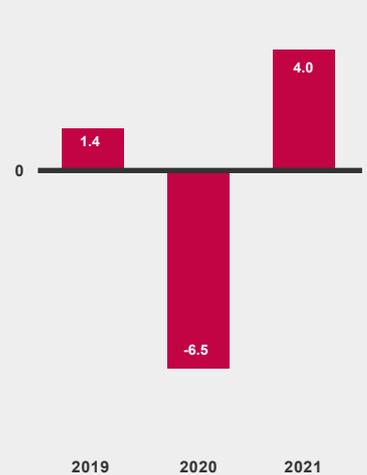
Corona Curve in United Kingdom



**196,238 Infected**
**N/A**
**29,427 Dead**

Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<p><b>Corona state aid<sup>1</sup>:</b> <b>EUR 523 billion (20.8% GDP<sup>2</sup>)</b></p>	<p><b>State debt (in % GDP)</b> <b>85.4% (2019) → 95.7% (forecast 2020)</b></p>	<p><b>Unemployment rate:</b> <b>3.8% (2019) → 4.8% (forecast 2020)</b></p>
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

The United Kingdom has been in a “lockdown” since 23 March 2020, which was initially extended until 7 May 2020. Compared to other European countries, the measures in the UK were introduced relatively late, but have been all the more stringent since their introduction. This means that the population may only leave their homes for very limited purposes. These include the purchase of food and medicines, medical necessities and once-a-day exercise, as well as work that cannot be done from home. Schools, childcare facilities and other educational institutions are closed until further notice, with the exception of children of “critical workers”. There are currently no border closures in the United Kingdom similar to those which Germany has imposed. However, British citizen abroad have been advised to return to the United Kingdom and advised not to travel abroad if it is not absolutely necessary.

On the morning of 30 April 2020, the United Kingdom had about 171,000 confirmed corona cases and 26,771 deaths. However, it can be assumed that not only the actual number of infections, but also the death figures should be much higher, as deaths outside hospitals caused by the corona virus are not included in the statistics. In addition, the test capacities are only being increased very slowly; for example, hardly any tests have been carried out in nursing homes so far. Persons who show symptoms of the corona virus are recommended to stay at home and only visit a hospital in the most urgent cases. This approach is due to the low number of intensive care beds compared to other European countries. At the beginning of

the corona crisis, the United Kingdom had 6.6 beds per 100,000 inhabitants. The bed capacity was recently increased by 4,000 beds by converting the London conference centre ExCel into a hospital.

For businesses in the United Kingdom, the administrative measures will result in massive economic losses. In order to mitigate the economic consequences, the British government has also enacted a series of measures, which are constantly being expanded and are presented in the following overview.

## State Aid Measures

In order to support businesses during the COVID-19 pandemic, the United Kingdom Government has adopted a number of measures to ensure the survival of pre-Corona healthy businesses during the COVID-19 pandemic. The individual measures are briefly described below:

### COVID-19 Corporate Financing Facility (“CCFF”)

CCFF provides funding to larger companies that make a significant contribution to the UK economy to help them deal with liquidity and working capital problems, for example by helping them to pay wages and suppliers. CCFF offers financing on terms comparable to those in the markets prior to the COVID-19 situation. All loans granted by the Bank of England under CCFF are guaranteed by the Department of Finance and the Department of Trade and Industry. The CCFF will initially run for at least 12 months and will last as long as steps are needed to reduce cash flow pressures on companies. However, the Bank of England will announce a planned withdrawal of this measure at least six months in advance.

Financing is provided through the purchase of commercial papers (“CP”) by the Bank of England through state-owned companies. CPs have the same characteristics as bonds, but are short-term debt instruments with a maturity of 12 months or less. Selected banks are CP traders and therefore the link between the issuer and the buyer of CPs. The minimum issue size is a nominal GBP 1 million, with a rounding to the nearest GBP 0.1 million when an offer is made.

The CCFF is available to companies that can prove that they were in a good financial position prior to the COVID-19 situation by obtaining either a short-term investment grade rating (A-3/P-3/F-3/R3) or a long-term investment grade rating (BBB-/Baa3/BBB-) from at least one of the major rating agencies as of 1 March 2020. Companies without a credit rating can also access the CCFF by requesting a credit quality assessment from one of the major rating agencies.

### Coronavirus Business Interruption Loan Scheme (“CBILS”)

The CBILS is a government guaranteed loan of up to GBP 5 million which supports SMEs in the UK with a turnover of no more than GBP 45 million, 50% of which must be from commercial activities. The scheme is provided by the British Business Bank through over 40 accredited providers (including

many of the leading banks) and offers the lender a government-backed guarantee against outstanding facilities.

The borrower continues to bear the primary obligation for the loan and always remains 100% liable for the debt. The government gives the lenders an 80% guarantee for each loan. The government also makes a business interruption payment to cover the first 12 months of interest payments and any fees charged by lenders. SMEs therefore benefit from the exemption from upfront costs and lower initial repayments.

### Term Funding Scheme (“TFSME”)

Not a direct consequence of the COVID-19 pandemic, but another potential financing alternative for SMEs is the Bank of England’s TFSME. The Bank of England cut interest rates to an unprecedented low of 0.1% in recent weeks to ease pressure on banks and maximise the effectiveness of monetary policy. In addition, additional funds will be made available to banks that increase their lending, especially to SMEs.

### Other State Aid Measures

UK businesses can also apply for deferral of VAT and income tax payments. They can also apply for debt settlement plans for outstanding tax liabilities. Business Rates, a form of local authority tax, are suspended for 12 months for all retail, hospitality, leisure and childrens’ daycare facilities in England. There are also grants of GBP 10,000 for small businesses and farms and GBP 25,000 for retail, hospitality and leisure businesses with property with a rateable value between GBP 15,000 and GBP 51,000.

## Labour Law

Other measures to mitigate the consequences of COVID-19 concern labour law:

### Coronavirus Job Retention Scheme

Through the Coronavirus Job Retention Scheme, employers can apply for a grant to cover 80% of the wages (up to a total of GBP 2,500 per month) of workers who have been “furloughed”. The workers remain employed by the company, but are temporarily not working. The scheme is available to any employer in the UK.

Employees who have been laid off since 28 February 2020 can be rehired by their employer to take advantage of the Coronavirus Job Retention Scheme. If employees have more

than one employer, each job is treated separately. Employees may also take on another job if their contract/existing employer(s) allow(s) and the employee is able to return to their original job when the “furlough” is over.

Regular payments such as wages, past overtime, fees and mandatory commission payments are used for the calculation of wages. Discretionary bonuses, tips, discretionary commission payments and cashless payments (e.g. payments in kind) are excluded from the calculation. For employees with varying incomes, the average earnings over the last 12 months are used. Employees can be furloughed several times, but each time for at least three consecutive weeks.

### **Sickness Benefit / Statutory Sick Pay (“SSP”)**

If an employee is unable to work because of the coronavirus, the SSP is paid from the first day of an employee’s absence from work and not, as previously, from the fourth day. In addition, the SSP increased to GBP 95.85 per week on 6 April 2020. The definition of who is considered “incapacitated for work” and therefore eligible for benefits has been extended to include those who “isolate themselves in a way that prevents infection or contamination with coronavirus”. In addition, the new regulation specifies groups of persons and periods of time after which they are entitled to SSP. The amendments

apply retroactively from 13 March 2020 and for an unlimited period.

### **Vacation Entitlements**

The government announced that employees will be able to carry over up to four weeks of remaining vacation into the next two years of leave. This provision applies, if at the end of the year it was not “reasonable and practicable” for an employee to take that leave “due to the effects of coronavirus”. It should be borne in mind that “leave” in this case means taking a break from work and not the ability for employees to use this time in any other way (e.g. on the beach and not in the living room).

## **Contract, Company and Insolvency Law**

### **Contract Law**

How companies and their suppliers, customers and trading partners can continue to fulfil their contractual obligations despite the COVID-19 pandemic and, if not, what the consequences will be, is usually a matter of contractual fine print and legal terms that are usually not taken into account in normal times. Now they can be crucial for the survival of companies. In the United Kingdom, the question of whether COVID-



19 is a force majeure event and whether a contract has been 'frustrated' at the centre of this discussion.

### Force Majeure

Most commercial contracts under English law contain a force majeure clause, often found under the so-called boilerplate provisions. In many cases, the pandemic or the arrangements to limit its spread will fall under the contractual definition of force majeure. This often includes the extent of the disruption that the force majeure event must have for the affected party to trigger the relevant consequences of the contract.

As a general rule, a force majeure clause suspends performance of the obligations of the party concerned for as long as the force majeure event continues to have an effect. The aim is to ensure that the contract can be resumed, wherever possible, after the event and that both parties can then fulfil their obligations as they originally intended. However, some contracts set a time limit for suspension and may give the unaffected party (and sometimes the affected party) the right to purchase goods or services from elsewhere or to terminate the contract if the affected party is unable to meet its obligations for a certain period of time.

If there is no provision for costs already incurred or for contractual payments, the starting point in English law is that "costs lie where they fall". This means that payments made under the contract or costs incurred by either party in performing the contract are not recoverable. As this rule can be highly disadvantageous, it is necessary to check whether insurance (e.g. business interruption or cancellation cover) exists.

### Frustration

The doctrine of frustration applies to unforeseeable events not caused by one of the parties. Similar to force majeure, frustration requires more than one event that makes performance more difficult or less economically viable. The party affected by the frustrating event must also be able to prove that it has taken reasonable steps to mitigate the impact of the event on its performance. At first sight, the frustration therefore appears to be similar to force majeure. However, the consequences of frustration differ significantly from those of force majeure.

If the contract is "frustrated", the parties are completely released from their contractual obligations. The contract is not only suspended (which is usual due to force majeure), but ends. Unlike force majeure, the costs do not always occur "where they are", but can be varied by contract terms. The courts will therefore not casually invoke the principle, and the parties should carefully consider the implications before invoking "frustration".

It is important to note that the applicability and effects of frustration may be overridden by the terms of a force majeure clause or other parts of the contract. A carefully drafted force majeure clause that addresses all the necessary issues, including the sharing of costs and losses between the parties, is likely to displace the application of frustration altogether. However, if there are gaps in a force majeure clause, the legal principle of frustration can be applied in addition to the terms of the contract.

### Company Law

Since 26 March 2020, public gatherings of more than two people are prohibited by law. The Minister of Economic Affairs announced on 28 March 2020 that legislation would be introduced to ensure that legally obliged companies could hold their general meetings in accordance with the "Stay at Home" measures.

Requirements for a valid general meeting are usually determined by the articles of association of a company and have to be examined on a case-by-case basis. If meetings cannot be postponed or decisions cannot be made using other methods, adjustments may have to be made.

Provided that a quorum can be established and maintained and the other requirements of the general meeting are met, a company can hold its general meeting "behind closed doors". The quorum for a general meeting is normally set out in a company's Articles of Association and the Companies Act 2006 requires two shareholders present in person or by proxy. Where the Articles of Association require more than two shareholders to be present, members can usually be represented by proxies and do not need to be physically present. The fact that the presence of two persons is necessary to constitute a quorum means that their presence is "essential for work purposes" and therefore permitted.

## Insolvency Law

The details of the regulations are still pending, but the main changes include:

- the temporary suspension of liability for wrongful acting by directors for a period of three months from 1 March 2020 for all companies (not limited to those directly affected by Coronavirus); and
- the introduction of a new moratorium by creditors in addition to the existing administrative provisions.

However, the suspension of the personal liability of the managing directors shall not apply if an unavoidable insolvency is not applied for.

## Effects on BREXIT

Even without COVID-19, the period until the end of the year was very short to negotiate a trade agreement. However, the British government has so far ruled out an extension of the transitional phase. A decision on how to proceed further is expected by the deadline of 30 June 2020, although a 'no deal brexit' still cannot be ruled out at this stage.

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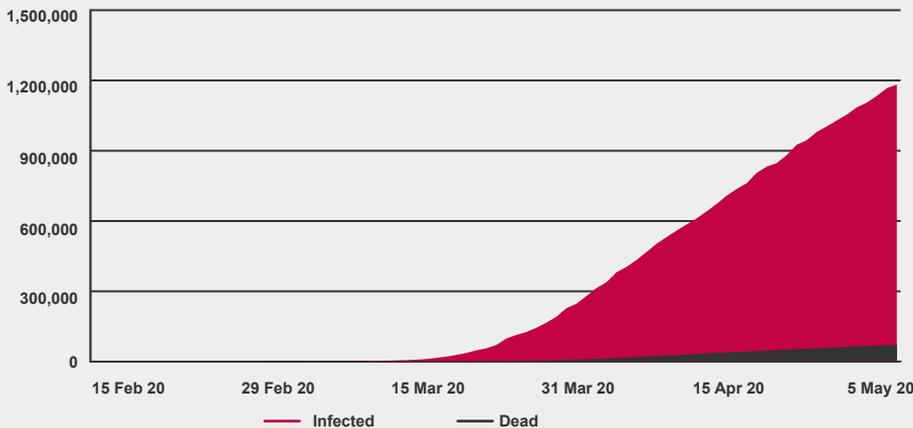
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# USA

## COVID-19 Country Report



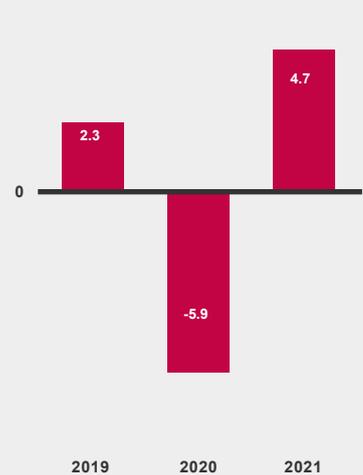
Corona Curve in USA



1,181,885 Infected	200,669 Recovered	72,271 Dead
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

### Key Facts

<b>Corona state aid<sup>1</sup>:</b> EUR 2.7 trillion (14.3% GDP <sup>2</sup> )	<b>State debt (in % GDP)</b> 109.0% → 131.1% (2019) (forecast 2020)	<b>Unemployment rate:</b> 3.7% → 10.4% (2019) (forecast 2020)
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Source: IMF, Bruegel, Statista  
1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP

The coronavirus (COVID-19) outbreak has had a massive impact on the United States, including its economy. Economic contraction not seen since the Great Recession of the past decade and unemployment not seen since the Great Depression of the 1930s have been the result of effectively shutting down huge chunks of the American economy. All non-essential in-person service industries – hospitality, retail, restaurants, travel, sports, recreation, etc. – have been suspended. Many other sectors, including manufacturing, construction, health care, transportation, and federal, state and local government have all been significantly affected. Many are working from home, but for many others that is simply not practical.

Many states and localities are looking to reopen parts of their economies in May; however, these openings may still exclude many businesses where social distancing is impractical, keeping large parts of the economy closed. Even as businesses reopen, social distancing and other restrictions are likely to persist for some time. Moreover, opinion polls indicate that many consumers will be reluctant to shop, travel or socialise for even longer.

relief from the federal government. While states, counties, cities and some even industry groups also offer aid and loan programs, these are primarily aimed at very small business and provide little support. At the federal level, three important loan programs were included in the CARES Act, which was signed into law on 27 March 2020. The Act also included changes in the U.S. tax code to help affected businesses and individuals.

### Government Aid Measures

Most direct governmental aid to businesses is coming in the form of direct funding (including low-interest loans) and tax

### Paycheck Protection Program

The Paycheck Protection Program (PPP) incentivises employers to continue to employing workers and paying employee



benefits. PPP is administered by the Small Business Administration (SBA) and offers employers unsecured loans from commercial banks at a nominal interest rate, with a streamlined closing process and all repayment risk held by the government, not the bank. The program is available to companies with less than 500 U.S.-based full-time equivalent employees. Foreign ownership is not a bar to participation. PPP loans are available for up to the lesser of (a) USD 10 million and (b) 2.5 times average monthly payroll. PPP loans can be forgiven in whole or in part, to the extent that recipients use them for qualified purposes, namely, wages, salary, benefits, rent, mortgage interest and utilities. A first tranche of USD 349 billion has been exhausted, but Congress recently approved USD 310 billion in additional funds.

For more details, please refer to our client alerts:

<https://www.nixonpeabody.com/en/ideas/articles/2020/03/27/stimulus-provides-relief-for-businesses-during-coronavirus-crisis>

<https://www.nixonpeabody.com/en/ideas/articles/2020/04/24/sba-emphasizes-need-in-paycheck-protection-loans>

<https://www.nixonpeabody.com/en/ideas/articles/2020/04/22/senate-approves-additional-funding-for-paycheck-protection-program>

### **Main Street Lending**

The Main Street Lending Program (MSLP), facilitates low-interest lending to small and medium-size businesses, including those with over 500 employees. Unlike the PPP, under MSLP banks retain a portion of the repayment risk, more traditional underwriting standards apply, and the loans are not forgivable. Up to USD 600 billion of MSLP loans will be available, although Congress may increase this in future.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/04/09/main-street-lending-program-established-to-facilitate-lending-coronavirus-covid-19>

### **Primary Market Corporate Credit Facility**

The Primary Market Corporate Credit Facility (PMCCF) permits the Federal Reserve to support large companies through

the purchase of eligible corporate bonds from, and lending through syndicated loans to, large companies. The total program size is up to USD 2.3 trillion

## Tax

The CARES Act also offers U.S. taxpayers an opportunity to take immediate action to reduce their federal income tax liability as they prepare their 2019 income tax returns. However, much of the CARES Act tax impact will be delayed until income tax returns are filed for tax periods during the crisis, which, for most U.S. taxpayers, began in 2020. Thus, in many cases, federal income tax refunds (particularly refunds resulting from the carryback of net operating losses (NOLs)) will not become available until income tax returns for 2020 are filed in 2021. Nevertheless, some action can be taken in the short term to accelerate the ability of taxpayers to obtain income tax refunds this year, and some action can be taken during the balance of 2020 to ensure that income tax refunds will be obtained when 2020 income tax returns are filed in 2021.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/03/31/responding-to-income-tax-changes-under-the-coronavirus-aid-relief-and-economic-security-act-cares>

## PPP or ERC?

While struggling businesses have grappled with the complex qualification and application rules of the PPP, those businesses should also consider the Employee Retention Credit (ERC). In many instances, the ERC will be a better choice. These two options are, however, mutually exclusive. Receipt of a PPP loan can render an employer ineligible to claim the ERC.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/04/26/evaluating-the-paycheck-protection-program-versus-the-employee-retention-credit>

## Labor Law

The federal government created the Federal Pandemic Unemployment Compensation program, which provides an additional USD 600 weekly in special unemployment compensation for individuals receiving as little as USD 1 in standard unemployment benefits. The law also extends the maximum duration of benefits by 13 weeks, which means that in most

states, employees who have lost their jobs, or been placed on furlough, will be able to collect for up to 39 weeks. The new rules also include compensation for individuals who are not traditionally eligible for unemployment benefits, including independent contractors. The Families First Coronavirus Response Act also created mandatory employer-paid leave related to COVID-19.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/03/17/what-employers-need-to-know-about-the-impending-covid-19-paid-leave-bill>

## Contract, Corporate and Investment Law

### Contract Issues

The coronavirus (COVID-19) pandemic has significantly affected the global supply chain. In addition to duties, liabilities, and defenses created by contract, businesses also need to be conscious of a number of common law duties and obligations that may arise as a result of what is happening around the globe. These can include extra-contractual defenses and concepts such as force majeure, impossibility of performance, and frustration of purpose. Although federal courts are open, many state courts are running with reduced capacity, so the U.S. has not seen widespread contract litigation as of late April. However, parties are generally positioning themselves to prepare for it. From the obligor side, this includes correspondence emphasizing how the current crisis makes strict contractual compliance impossible. From the obligee side, this includes careful steps to preserve rights while avoiding the implication of taking harsh positions that could lead to adverse litigation outcomes in future.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/03/06/coronavirus-and-contractual-rights>

### Real Estate

The impacts of the outbreak have led many landlords and tenants to consider their options under existing leases to determine the best path forward and what actions to take if someone on the property is infected. As a result, many states and local jurisdictions have taken action to prohibit evictions based on nonpayment of rent and to delay foreclosures by mortgage lenders. The U.S. has not yet seen a wave of real estate re-

lated litigation, likely because court access is curtailed and landlords may consider a nonpaying tenant preferable to no tenant.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/04/03/covid19-guidance-for-commercial-landlords-and-tenants>

### Litigation

In the United States, federal courts are operating, and state courts are available for emergency relief. In general, courts are deferring items that are not urgent, and also adjusting procedures to observe social distancing guidelines.

### Company Law

Generally, U.S. corporate law is specific to the state of incorporation, except for listed companies, where federal securities law considerations are important. State law generally permits adjournment of annual meetings for emergencies, and for the conduct of meetings by remote means. State law generally allows for action by written consent without a meeting in many cases. For private companies, those whose charters contain conflicting provisions are generally reviewing changing them. For public companies, the long-held idea that holding annual meetings online could suppress shareholder democracy has been turned around, with many enthusiastically embracing the idea.

### Bankruptcy

The CARES Act modifies the Small Business Reorganisation Act (SBRA) and greatly expands the restructuring options available to businesses with less than USD 7.5 million in debt through 27 March 2021. It is effective immediately. Previously, only businesses with up to USD 2.7 million in debt could use the SBRA's expedited procedures. Small business debtors have traditionally been wary of a reorganisation process under Chapter 11 of the Bankruptcy Act (which provides for reorganisations), despite its well-acknowledged benefits, due primarily to the potential cost and disruption it often causes. For those businesses that qualify, the SBRA is intended to alleviate those concerns and to make small business bankruptcies proceed under a faster timeline and at reduced cost.

For more details, please refer to our client alert:

<https://www.nixonpeabody.com/en/ideas/articles/2020/03/28/cares-act-expands-restructuring-options-for-small-businesses>

### Effects of Foreign Direct Investments

While the U.S. economy has suffered from severe disruption as a result of the virus's outbreak, there are now tremendous opportunities for global investors. Many companies and other assets have seen their valuations fall over the last few months. As various states begin to open up their economies, increased business activity may result in a robust recovery in certain sectors. There are still only minor restrictions on foreign investment in the U.S., opening the door for investors from around the world to make investments or acquisitions here.

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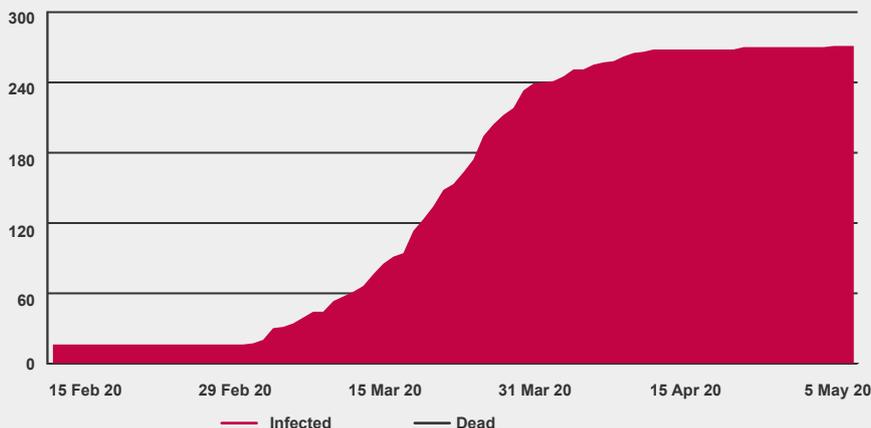
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# Vietnam

## COVID-19 Country Report



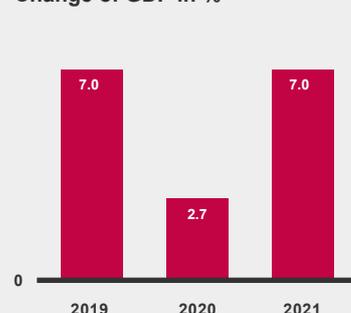
Corona Curve in Vietnam



271 Infected	232 Recovered	0 Dead
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Source: Statista, Johns Hopkins University (5 May 2020)

Change of GDP in %



Source: IMF (2020 and 2021 forecasts)

## Key Facts

<b>Corona state aid<sup>1</sup>:</b> EUR 22 billion (7.5% GDP <sup>2</sup> )	<b>State debt (in % GDP)</b> 42.9% (2019) → 45.7% (forecast 2020)	<b>Unemployment rate:</b> 2.2% (2019) → 3.5% <sup>3</sup> (forecast 2020)
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Source: IMF, Bruegel, Statista

1) includes direct government spending, deferrals, guarantees, etc. 2) ratio of the 2020 measures to 2019 GDP 3) Trading Economics

With only 271 cases of confirmed COVID-19 infections and a zero death toll as of 6 May 2020, Vietnam has successfully managed to control the pandemic due to its early response and handling such as implementing travel restrictions and social distance measures at an early stage of the spread of the virus in the community. But as other countries, the government had to enforce a lockdown to contain the virus, which had a huge effect on the economy.

One of the early adopted measures in Vietnam were the suspension of granting visa and work permits to foreigners from early March this year to avoid imported COVID-19 cases. Currently there are no announcements on how long these suspensions will last. The entire country was put into a lockdown on 1 April 2020 which was lifted on the 25 April 2020, though wearing masks is still recommended. During this period, only businesses providing essential services such as hospitals, pharmacies, supermarkets, government agencies, etc. were allowed to continue their operations and also public transportation was heavily affected as they were suspended and domestic flights were limited to 1 flight per day to one destination per each airline. As of the day of this Article, international flights to South-east Asia, Northeast Asia, Australia are suspended until 31 May

2020 and international flights to Europe are suspended until 30 June 2020.

Due to the adverse, complicated and unpredictable impacts of the COVID-19 pandemic worldwide and in Vietnam, the key policy of the Government, the Prime Minister and the National Steering Committee on Controlling the COVID-19 Epidemic is taking precautions to realize the dual goal: not only drastically preventing and controlling the epidemic, but also focusing on removing the difficulties to promote production and business operations, ensuring social security and the people's livelihoods, while making best efforts to achieve the set objectives and tasks of socio-economic development.

The Directive of the Prime Minister No. 11/CT-TTg dated 4 March 2020 provides a road map of urgent objectives and solutions and addresses the State bank of Vietnam, Ministry of Finance and other authorities to implement these steps. Some of these steps have been formally implemented already, some are still in the process. We will focus below on those areas which came into effect and may be most relevant for enterprises and individuals.

## State Aid Measures

### Emergency Aid

The government of Vietnam has announced a relief package to support employees and employers who are affected by the COVID-19 pandemic. Under the Resolution No. 42/NQ-CP dated 9 April 2020 ("Resolution 42") financial support will be provided to six different categories of beneficiaries, including (a) impacted employees, (b) impacted employers, (c) household businesses with revenue under VND 100 million (approx. EUR 3,900) a year, (d) people with meritorious service to the country, (e) poor and near-poor households; and (f) social protection beneficiaries. The most relevant employee and employer's incentives are outlined in the following.

### Employees

Financial assistance of VND 1,8 million per month (approx. EUR 70) will be given to employees whose labour contracts are temporarily suspended or have to take unpaid leave for a month or above, due to the inability of the employer to pay the wages due to the COVID-19 situation. This takes effect from 1 April 2020 and can be applied for up to three months, which varies according to the duration of the employment contract suspension or unpaid leave as well as the pandemic situation.

Employees whose labour contracts are terminated but who are not eligible for unemployment benefits or those who worked without labour contracts and have lost their jobs will upon application receive VND 1 million (EUR 40) per month for up to three months according to the pandemic situation.

If the employee is eligible for more than one allowance category he/she will only be entitled to the one with the highest allowance financial assistance amount.

### Employer

Employers who are facing financial difficulties and have paid at least 50% of suspension allowance for their employees in ac-

cordance with Article 93 (3) of the Labour Code during the period from April to June 2020 may apply for an unsecured and interest free loan with the Vietnam Bank for Social Policies. The loan amount may be up to 50% of the total region –based minimum wages of suspended employees over the suspension period, not exceeding three months. The maximum term of such loan shall be 12 months. The loan shall be used for payment of unpaid salaries and disbursed monthly to pay the suspended employees.

### Social Insurance Contribution

In case an employer is forced to reduce 50% of his manpower which is subject to social insurance contribution due to reasons such as termination, temporarily suspension or unpaid leave, both the employer and employee can apply for a suspension of the contribution to the pension and survivor funds for up to 12 months.

The government of Vietnam has issued Decision No 15/2020/QĐ-TTg on 24 April 2020 guiding the implementation of Resolution 42, which includes forms that can be used by employers and employees for submitting their applications.

### Deferral of Tax Liabilities

With immediate effect as of 8 April 2020, the Vietnamese Prime Minister approved Decree 41/2020/ND-CP ("Decree 41") allowing the deferral of value added tax ("VAT"), corporate income tax ("CIT"), personal income tax ("PIT") and land rental fee payments to reduce the impact of the pandemic on the economy.

Decree 41 applies enterprises and individuals in specific business lines, such as agriculture, construction, transport, employment services, entertainment, etc., earning revenue in 2019 or 2020. The entire list of eligible taxpayers are set out in Art. 2 of Decree 41.

### VAT

VAT payment deadlines (except for VAT paid upon importation of good) have been extended by five months from the statutory deadlines for the period March to June 2020 (for monthly VAT declaration) and for the first and second quarters of 2020 (for quarterly VAT declarations). The VAT return filing deadlines have not been extended.



## CIT

Also with regard to CIT, the tax payment deadline has been extended for five months for CIT declared in the 2019 annual statement or in the first and second quarters of 2020.

In case CIT tax, declared in 2019 annual statements has already been paid, the eligible taxpayer may apply to offset the paid CIT against other unpaid taxes.

## VAT and PIT

The deadline for paying VAT and PIT liabilities incurred in 2020 are extended to 31 December 2020 for individuals and household businesses conducting eligible business activities.

## Land Rental

The deadlines for annual payments of land rental due from eligible taxpayers who lease land directly from the government are extended by five months from 31 May 2020 for the first rental fee in 2020.

Applications for tax and land rent deferral have to be submitted latest by 30 July 2020.

## Labor Law

If an employee is subject to work suspension due to direct impacts of the COVID-19 pandemic, the employee's salary

during the suspension period is subject to Article 98 of the Labour Code, which means that the salary shall be agreed upon by both parties but must not be lower than the regional minimum wages prescribed by the Government. This has been clarified by the Official Letter of the Ministry of Labour –Invalids and Social Affairs No. 1064/LDTBXH-QHLDTL dated 25 March 2020 ("Letter"). According to the Letter a direct impact of COVID-19 pandemic is considered in the following cases:

- Foreign employees who are not allowed to return to work by request of competent authorities;
- employees who are suspended from work due to mandatory quarantine orders; and
- employees who are suspended from work because the enterprise or any of its department are unable to operate as a consequence of the aforementioned situations.

Further the Letter stipulates that arrangements with the employees shall comply with the Labour Code, in particular with Art. 38 or 44 of the Labour Code, which gives the employer the following options to deal with the crisis:

### Annual Leave or Home Office

The most straight forward case is where the employee takes his annual leave or is allowed to work from home. In such case, the salary of course has to be paid in full.

## Temporary Job Transfer

Where the employer faces difficulties regarding materials supply or markets, causing redundancy, employers may temporarily transfer employees to perform work that is different than that agreed in the labor contract (Article 31 of Labor Code 2012). Such transfer period shall not exceed 60 days accumulatively in any one year, unless mutually agreed. Further, the salary should remain same for the first 30 days of the temporary job transfer period. After that, the salary for the new position can be 85% of the contractual salary, but shall not be less than the minimum salary for the relevant area stipulated by the Government.

## Arrangements Affecting Worktime and Salary

Reducing working time, salary, or suspension of work can only be mutually agreed upon, taking into consideration that the reduced salary in all such cases shall not be less than the minimum salary for the relevant area stipulated by the Government.

## Unpaid Leave

Another option is to put the employee(s) under unpaid leave status, if the employee agrees to it.

## Termination / Retrenchment

If both parties reach an agreement on the termination of the labor contract, then the employer has to take into account severance allowance (if applicable) and compensation for unused annual leave.

If the labor contract has been unilaterally terminated by the employer, he needs give termination notice and prove that all necessary measures have been taken to overcome the difficulties but still fail to maintain the operations.

A retrenchment due to economic reasons requires the employer to consult the opinion of the trade union and implement a labor usage plan and prove that they are unable to provide work to the employee and therefore must retrench them. The employer shall inform the relevant labor authorities at least 30 days prior to the implementation of the labor usage.

## Financing

The State Bank of Vietnam have instructed credit institutions and foreign bank branches ("FBB") with Circular No. 1/2020/TT-NHNN dated 13 March 2020 ("Circular 1") to restructure the repayment periods, waive or reduce the interest and fees,

maintain the debt classifications for the borrowing businesses and people affected by the impacts of COVID-19 epidemic. In considering the borrower's eligibility for debt rescheduling, the Circular 1 provides the following rules:

- debt is a loan or finance lease;
- the principal sum and/or interest arises during the period from 23 January 2020 to the day after three months after the day on which the Prime Minister declares the end of the COVID-19 outbreak;
- the borrower is unable to repay the principal and/or interest under the loan/finance lease agreement due to the decrease in revenue caused by the pandemic;
- the debt is undue or up to 10 days overdue, or overdue during the period from 23 January 2020 to the 29 March 2020;
- debts that violate the Law shall not be rescheduled; and
- debts shall not be deferred for more than 12 months from the initial repayment deadline according to the underlying facility agreement.

Credit institutions and FFB may further, according to their own rules and regulations, decide reduction and exemption of interest and/or fees on extension of debts, except for purchases of corporate bonds, that are due during the period from 23 January 2020 to the day after three months after the Prime Minister declared the end of the COVID-19 pandemic.

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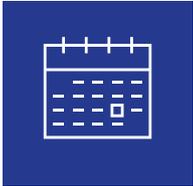
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