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## FAQs regarding insolvency law/insolvency procedures

### **Under which circumstances is the obligation to file for insolvency suspended under the current COVID-19 crisis?**

The obligation to file for insolvency for all companies whose current insolvency maturity is based on the consequences of the COVID 19 pandemic has been suspended until 30 September 2020. However, this is subject to the condition that the companies were solvent on 31.12.2019. In addition, there must be prospects that any insolvency can be eliminated.

In order to avoid problems at a later date, appropriate precautions should therefore be taken now to document the existence of the above-mentioned prerequisites and, if necessary, to be able to prove them. You are welcome to contact us in this regard.

### **Can my creditors file a third-party application to open insolvency proceedings?**

Third party applications for the opening of insolvency proceedings filed between 28.03.2020 and 28.06.2020 will only lead to the opening of insolvency proceedings if the reason for the opening (illiquidity or overdebtedness) was already present on 01.03.2020.

### **Which insolvency challenges are to be feared if contracts are concluded with companies that are insolvent due to the COVID-19 crisis?**

The new legal regulations also contain a provision to the effect that repayment by 30 September 2023 of a new loan granted during the period of suspension of the obligation to file for insolvency (until 30 September 2020) and the provision of collateral to secure such loans during this period are deemed not to be detrimental to creditors and cannot be contested. The granting of credit and the provision of collateral are also not considered immoral. Congruent legal acts cannot then be contested in subsequent insolvency proceedings unless the opponent of the contestation knew that the debtor's restructuring and financing efforts were not suitable for eliminating an insolvency that had occurred. Accordingly, banks can - under these conditions - grant countervailable bridging loans.

All other legal acts are not contestable either, provided that they are congruent acts (i.e. those which the business partner was entitled to claim in the manner and at the time).

### **What about the personal liability of Directors and Officers?**

Payments in the ordinary course of business, in particular those payments which serve to maintain or resume business operations or to implement a restructuring concept, shall be

deemed compatible with the diligence of a prudent and conscientious manager, so that any liability on the part of the corporate bodies is excluded in this respect.

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