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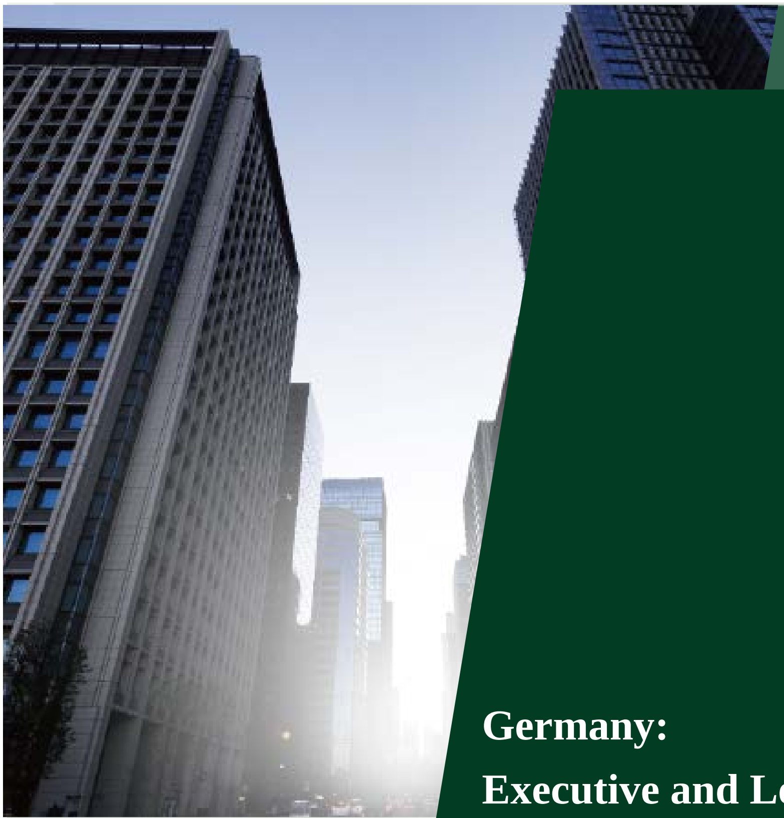

Germany:
Executive and Legislative actions in response to the COVID-19 outbreak (As of April 1, 2020)

***This article is based on the information as of April 1, 2020.**

In response to the outbreak of COVID-19, the German federal and state governments have implemented several executive and legislative measures to support affected businesses in Germany. This newsletter provides an overview of the key measures which may be relevant to Japanese companies with operations in Germany. Naturally, there will be many questions and issues to be clarified, and we will be happy to use all our experience and local contacts to help answer and overcome them.

Overview

Generally, the current German federal support measures for companies affected by the COVID-19 outbreak focus on four areas:

1. providing financial support through loans, equity and guarantees,
2. granting of tax relief,
3. relaxation of insolvency filing obligations, and
4. enabling short-time work.

In addition to the federal support measures, many German states have enacted their own aid programs for companies. The scope and volume of these programs vary greatly and are typically intended for individuals and smaller businesses.

1. Financial support for companies

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a) Loans

The German federal government has extended certain programs already provided by the state-owned German Promotional Bank (*Kreditanstalt für Wiederaufbau – KfW*) by EUR 100 billion. In general, companies may not apply for support directly to the KfW. Instead, applications need to be channeled through the companies' regular commercial banks, which will advise and assist the companies with the application for a commercial bank loan supported by the KfW. Companies meeting the relevant KfW program's eligibility requirements can apply for the (expanded) programs since March 23, 2020. The KfW has announced that companies should be able to drawdown the loans from April 14, 2020 onwards. An overview of the most relevant KfW programs in their expanded form, as well as the respective eligibly requirements, can be found under https://www.kfw.de/KfW-Group/Newsroom/Latest-News/KfW-Corona-Hilfe-Unternehmen.html.

b) Equity

To complement the special KfW programs, the German federal government is providing additional EUR 100 billion for measures to strengthen the equity of eligible companies and to ensure their solvency. For this purpose, a newly established Economic Stabilisation Fund

(*Wirtschaftsstabilisierungsfonds – WSF*) can make investments in companies on a temporary basis, namely by subscribing to shares. Eligible are “large systematically important companies” with more than 249 employees, a balance sheet of more than EUR 43 million and/or an annual turnover of more than EUR 50 million. Smaller companies can also benefit if they are relevant for critical sectors such as energy, transport or health care. Equity measures supported by the WSF may be subject to specific conditions, e.g. concerning the remuneration of board members, the disbursement of dividends or the use of the capital injected by the WSF.

c) Guarantees

In addition to KfW loans and capital measures, the WSF can provide guarantees of EUR 400 billion to secure corporate debt and liabilities and thereby help companies refinance themselves on the financial markets. The duration of these WSF guarantees can be up to 60 months. More detailed provisions on the exact modalities of the guarantee program will be laid down in secondary regulations, which are currently being drafted. We will provide an update in a separate newsletter once the exact details have been determined.

2. Tax relief

To further relieve companies, the German federal government has announced several tax measures to be implemented. Among the concessions being planned are reductions of advance payments on consumption tax, corporation tax and trade tax, in each case on presentation by taxpayers of their circumstances and implications of COVID-19. In addition, companies may now submit applications for a deferral of taxes already due or becoming due by 31 December 2020; the tax authorities may not reject these applications based simply on an applicant’s inability to prove details of the amount or value of losses incurred due to COVID-19.

3. Relaxation of insolvency filing obligations

The German federal government has adopted modifications to the insolvency law and related civil and corporate law provisions. A key element is the comprehensive suspension of the obligation to file for insolvency before September 30, 2020. However, the suspension does not apply if the insolvency is not caused by the effects of the spread of the COVID-19 or if there exists no prospect of remedy of an existing cash flow insolvency (*Zahlungsunfähigkeit*). The modifications to the insolvency law is accompanied by a number of additional measures which are intended to ensure that management can continue to run the business in the ordinary course, eliminate legal risks in connection with the provision of new financing in a crisis and reduce the risk of claw backs by contractual counterparties.

4. Short-time work

With retroactive effect as of March 1,2020, the German federal government has introduced a temporary simplified procedure for companies to adopt short-time working compensation schemes in response to the COVID-19 crisis. “Short-time work” is the temporary reduction of working hours with a corresponding reduction in pay. The purpose of short-time work is to temporarily relieve the company's financial burden by reducing personnel costs while maintaining jobs. The loss of remuneration of the employees is (partially) compensated by short-time work compensation from the German Federal Employment Agency (*Bundesanstalt für Arbeit*).

Outlook

The measures now introduced by the German federal and state governments are mostly replications of the measures used after the financial crisis 2008/2009. However, rather than focusing on supporting the financial sector, the current government measures are aimed at supporting companies in what the German federal government calls "the real economy", in the hope that this will avert a further spill-over to banks and the financial markets. The German Ministry for Economic Affairs and Energy has announced that it will potentially expand the financial support measures and ensure further flexibility if the situation worsens, e.g. by extending existing KfW loan programs. Additional tax relief may also be granted.