

# BEITEN BURKHARDT

The BEITEN BURKHARDT coronavirus information centre with the most relevant legal answers:

<https://www.beiten-burkhardt.com/de/corona-informationscenter>

**BEITEN BURKHARDT supports companies with a task force in applying for state aid.**

**Contact details of the contacts under number 3.**

## **1. Current facts:**

The Federal Government is reacting to the economic crisis looming as a result of corona and, according to its own statement, will provide "through the KfW without limitation credit programmes to secure the credit activities of the house banks".

The measures launched are not only aimed at supporting a particular sector, but at enterprises of all sizes and in all sectors. According to statements, the spectrum of those affected ranges "*from the smallest taxi driver to the creative industries to really big companies*".

The triad of the German government's Anti-Corona Shield is "*Short-time Allowance - Loans - Tax Deferrals*":

In the future, **only 10 percent of the employees must be affected by short-time work**, without necessarily having used up all working time balances beforehand. The Federal Employment Agency will then assume not only wage costs (67 percent or 60 percent of the net loss of earnings), but also all social security contributions. This also includes temporary workers. The legal regulation is to be adjusted by the beginning of April. Whether and to what extent these regulations will have retroactive effect has not yet been determined.

The Federal Government intends to have the state-owned KfW Bank manage the other **liquidity assistance**. Companies will receive loans and guarantees through their Hausbank (in the KfW context referred to as the regular bank, otherwise main bank), which KfW then secures for the regular banks. The state assumes a larger part of the default risks, in extreme cases even up to 90 percent. The package of measures developed so far includes, among other things:

- The conditions for access to the existing programmes, such as the KfW Entrepreneur Loan, the ERP Start-up Loan and the "KfW Loan for Growth" will be relaxed and the risk coverage will be increased to up to 80 percent;
- For larger enterprises with a (group) turnover of up to EUR 2 billion - in future EUR 5 billion - the restriction of support to innovation and digitisation projects will be lifted and extended to general corporate finance including working capital loans;
- The large guarantee programme for securing working capital financing and investments with a guarantee requirement of EUR 50 million or more, which was previously restricted to enterprises in structurally weak regions, will be opened up to enterprises outside these regions with a guarantee ratio of up to 80 percent;
- for guarantee banks, the maximum guarantee amount is doubled to EUR 2.5 million. In addition, the Federal Government will increase its risk share by 10 percent. The upper limit of 35 percent working capital in the total exposure of the guarantee banks will be increased to 50 percent. In order to accelerate the availability of liquidity, the guarantee banks will in future be able to make guarantee decisions up to an amount of EUR 250,000 independently and within 3 days.

Under the general development guidelines, KfW has so far not participated in debt rescheduling or restructuring financing. Special programmes are planned for such companies in the future, but these have yet to be approved by the EU Commission.

The intended fiscal policy measures consist of **tax deferrals** and the suspension of enforcement measures as long as the tax debtor is directly affected by the effects of the corona epidemic. Advance tax payments would be reduced if the taxable income or turnover in the current year is expected to be lower.

## **2. The experts at BB advise:**

**In the present situation, reviewing whether one's own company is worthy of support under the Anti-Corona Shield is, in case of doubt, a managing director's duty. Applications for measures under the Anti-Corona Shield must be prepared professionally. A promising application regularly requires a presentation of the company's situation in which the effects of the current crisis are clearly worked out. For this purpose, the company should involve its auditor or tax advisor.**

**However, affected companies should begin to prepare the necessary applications as soon as possible so that they do not become insolvent and thus - at least until the EU Commission decides on the special programmes intended by the Federal Government - fulfil an exclusion criterion. While the announced state aid may prevent insolvency since the KfW loans and deferred taxes must nevertheless be carried as liabilities, there is still a risk of overindebtedness under insolvency law, which the companies, together with their advisors, must exclude by taking appropriate measures, for instance a documented going concern forecast.**

**BEITEN BURKHARDT's practice groups in the areas of labour & employment law, banking/financing/restructuring and tax law have set up a task force to assist companies in applying for the necessary measures and to keep them operational even in the event of quarantine measures.**

## **3. Your central contacts for inquiries are:**

### **Labour and Employment Law:**

Martin Biebl - Martin.Biebl@bblaw.com Phone: +49 89 35065-1132

### **Corporate:**

Dr. Christof Aha – Christof.Aha@bblaw.com Phone: +49 69 756095-451

### **Financing:**

Heinrich Meyer - Heinrich.Meyer@bblaw.com Phone: +49 69 756095-414

Dr Christoph Schmitt - Christoph.Schmitt@bblaw.com Phone: +49 69 7560 95-434

Frank Primožic - Frank.Primozic@bblaw.com Phone: +49 69 756095-434

### **Tax law:**

Jens Müller - Jens.Mueller@bblaw.com Phone: +49 69 756095-192

Best regards,

Your BEITEN BURKHARDT Task Force Team

**BEITEN  
BURKHARDT**

The BEITEN BURKHARDT coronavirus information centre with the most relevant legal answers:

<https://www.beiten-burkhardt.com/de/corona-informationscenter>