BEITEN
BURKHARDT

The BEITEN BURKHARDT corona information centre with the most relevant legal answers:
https://www.beiten-burkhardt.com/de/corona-informationscenter
Contact details of our BEITEN BURKHARDT "Coronavirus Task Force" to support you in the crisis at the end of the e-mail.

On Monday, 23 March 2020, the Federal Cabinet of Germany adopted the draft bill for an Act on the Establishment of an Economic Stabilisation Fund ("WStFG"), and we would like to keep you up to date on it, also in view of the expected liquidity bottlenecks.

"Capital in Crisis - Federal Government establishes Economic Stabilisation Fund"

The Act is to be based on the legislation on the financial market stabilisation during the financial market crisis in 2008/2009 and is to be passed by the Federal Parliament (*Bundestag*) as early as this week. The Federal Ministry of Finance ("BMF") and the Federal Ministry of Economics and Energy ("BMWi") are to be responsible for this, if necessary with the involvement of the KfW development bank (KfW) and the Federal Finance Agency.

The Economic Stabilisation Fund is aimed at large companies and is intended to provide large-volume aid. It thus complements the liquidity assistance already decided on through the KfW special programmes (see our newsletter of 16 March 2020). According to current information, the Economic Stabilisation Fund is to be endowed as follows:

– EUR 100 billion for recapitalisation measures to strengthen the capital and solvency of companies,
– EUR 400 billion in guarantees and indemnities to facilitate companies to obtain refinancing on the capital market,
– Loans of up to EUR 100 billion to refinance the KfW special programmes.

Access to the instruments is to be granted to enterprises in the real economy (i.e. outside the financial sector) that have met at least two of the following three criteria in two consecutive financial years before 1 January 2020:

1) total assets of more than EUR 43m,
2) revenue of more than EUR 50m,
3) more than 249 employees on an annual average.

In addition, smaller companies that are particularly relevant for the infrastructure should also be given access in individual cases.

The recapitalisation measures may be subject to conditions which may include in particular the level of remuneration of executive bodies, the distribution of dividends and the use of the funds provided by the state.

In addition, a number of corporate law provisions will be adapted so that the measures can be effective and companies can be helped quickly and without bureaucracy.

It is true that even in such a short legislative process, changes are likely to be made. However, as of now, the following details seem to be relevant:

- Applications must be submitted to the BMWi which will approve.

- If the BMWi approves, the Federal Ministry of Finance will decide at its dutiful discretion, taking into account certain criteria (e.g. importance of the company for the business location, urgency, effects on the labour market and competition, etc.). There is no legal claim.

- There must be no grounds for exclusion; in particular, the applying companies cannot have any other possibility of financing and may not have already been in economic difficulties before 31 December 2019. Furthermore, the applying companies must provide a positive going concern forecast under the assumption that the overall economic situation will normalise again ("as before the COVID-19 crisis").

- Provided that the applying company fulfils all the requirements, the following stabilisation instruments are available, each of which is to be agreed at market conditions:

  - Acquisition of company shares, silent participations or other equity holdings by the Economic Stabilisation Fund;
  - Subscription of mezzanine instruments by the Economic Stabilisation Fund, such as subordinated debt instruments, hybrid bonds, financing profit participation rights and convertible bonds;
  - Declaration of guarantees by the Economic Stabilisation Fund to third parties for the repayment of new debt instruments to be issued and/or liabilities to be incurred by the applying company.

It is planned to have details of the application requirements, the application procedure and the legal conditions of the individual stabilisation instruments regulated in a statutory instrument to be issued in parallel.

Accompanying, non-permanent adjustments to corporate law and other laws will facilitate the implementation of the measures, such as those relating to the exclusions of subscription rights, exemptions from the rules on mandatory offers, stock exchange listings, concerted practices (acting in concert), antitrust and merger law (German Antitrust Act, *GWB*), and more.

The specialists in our Task Force will advise you on the application and rapid negotiation of the desired stabilisation instruments.

<u>Your contact for inquiries are:</u>

<u>Financing, Restructuring & Insolvency, Frankfurt:</u>

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 Primozic - Frank.Primozic@bblaw.com Phone: +49 69 756095-434
Dr Moritz Handrup - Moritz.Handrup@bblaw.com Phone: +49 69 756095-424

Kind regards,
Your BEITEN BURKHARDT Task Force Team

BEITEN
BURKHARDT

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

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