

Response to the coronavirus - Immediate and effective advice to business enterprises

March 17, 2020

Our crisis-related advice is aimed at helping to reduce expenses and secure income, and thus to maintain the liquidity of our clients. The program of measures announced by the Federal Government on March 13 with unlimited liquidity aid and generous guarantees is certainly to be welcomed. However, all steps must be implemented promptly.

We are ready to support you in all questions which are affecting your business in the current crisis and to assist in implementing these measures.

We tailor our offer to your needs. We have identified the following areas of advice with particular relevance:

1) Tax relief

- Tax deferrals (including withholding taxes)
- Reduction of advance tax payments
- Prevention of enforcement measures

2) Labour law measures

- Place of work and working hours: infections, quarantine, closure of educational centres
- Short-time working allowance (effects of the immediate action program of the Federal Government)
- Continued payment of wages in the event of voluntary or officially imposed measures
- Personnel changes

3) Measures to secure liquidity

- Status report; regular updating of liquidity planning
- Use of the planned conditions for the suspension of the consideration of a reason for insolvency due to the effects of the Corona crises - examination of the prospects for restructuring
- Debtor creditworthiness/value of collateral/enforcement of receivables

4) Use of State financial aid

- Quickest possible access to the comprehensive programs of the federal and respective state governments to secure liquidity through promotional loans, sureties and guarantees



5) Contract review: purchasing and distribution; ongoing contracts;

- Analysis of contracts: Effects of supply chain disruption in relation to suppliers and customers: Force majeure, hardship, disruption of the basis of business
- Cost reduction potential from obligations from current contracts (rent, license)
- Insurance claims (business interruption, credit insurance)
- Effects of defaults on fixed-term contracts (construction and special situation in other sectors, e.g. KfW program for assuming rent payments)

6) Construction sector / construction projects

- Status analysis - identification of individual risks in construction projects
- Examination of the justification of "corona-conditioned" obstruction notifications and their effects on agreed execution deadlines, penalties, etc.
- Relevance of cases of "force majeure" within the meaning of § 6 Section 2 No. 1c VOB/B
- Termination of building and architect contracts due to extraordinary terminations

7) Effects on current/future M&A transactions

- Effect of restrictions on entry and exit of countries
- Adjustment of the time and meeting plan originally specified by the process letter
- Expansion of the due diligence request lists to include specific crisis aspects
 - unilateral termination and withdrawal rights
 - Maintenance of supply chains
 - existence of adequate supply chains
- Purchase price adjustment clauses
 - Hedging of negative influences due to corona-induced economic undesirable developments via dynamic purchase price adjustment clauses in contrast to classic locked-box purchase price clauses (seller's perspective)
 - Purchase price clauses that provide for the establishment of closing accounts (buyer's perspective)
 - Restructuring of earn-out clauses in view of the difficulty of defining key figures that can be manipulated to the greatest possible extent in order to justify a purchase price increase, since it is questionable whether, for example, sales target figures can adequately reflect corona-related changes in the target
- Material Adverse Change (MAC) clauses
 - Comeback of MAC clauses? - The decisive factor will be the tailor-made design of MAC clauses with regard to the company concerned. Exclusion of disadvantageous changes in general market and industry conditions will be decisive from the seller's point of view
- Interference with the basis of the business (Sec. 313 German Civil Code)
 - Reference to principles of disruption of the business basis for terminating or adjusting contracts already concluded vs. contract-specific risk allocation between seller and buyer



Your contact persons:

Taxes:

Alessio Rossi	(+49) 172 669 48 74	alessio.rossi@AndersenTaxLegal.de
Dr. Oliver Trautmann	(+49) 171 1808085	oliver.trautmann@AndersenTaxLegal.de

Employment law:

Katharina Müller	(+49) 151 264 59 523	katharina.mueller@AndersenTaxLegal.de
Cord Vernunft	(+49) 151 264 59 520	cord.vernunft@AndersenTaxLegal.de

Subsidies:

Dr. Ingo Kleutgens	(+49) 151 264 59 525	ingo.kleutgens@AndersenTaxLegal.de
Dr. Thomas Koch	(+49) 151 264 59 503	thomas.koch@AndersenTaxLegal.de

Restructuring/liquidity management:

Michael Thierhoff	(+49) 172 680 1304	michael.thierhoff@AndersenTaxLegal.de
Renate Müller	(+49) 151 264 59 532	renate.mueller@AndersenTaxLegal.de

General Contracts/Commercial Contracts:

Dr. Wilhelm Danelzik	(+49) 151 264 59 504	wilhelm.danelzik@AndersenTaxLegal.de
Dr. Hermann Knott	(+49) 151 264 59 502	hermann.knott@AndersenTaxLegal.de

Supply chains/dispute resolution:

Dr. Wilhelm Danelzik	(+49) 151 264 59 504	wilhelm.danelzik@AndersenTaxLegal.de
Johannes Voss	(+49) 151 264 59 506	johannes.voss@AndersenTaxLegal.de

Rental agreements, hotel, retail:

Philipp Zschaler	(+49) 151 264 59 512	philipp.zschaler@AndersenTaxLegal.de
Timo Kläner	(+49) 151 264 59 514	timo.klaener@AndersenTaxLegal.de

Construction contracts:

Philipp Zschaler	(+49) 151 264 59 512	philipp.zschaler@AndersenTaxLegal.de
Dr. Jasper von Detten	(+49) 151 264 59 521	jasper.vondetten@AndersenTaxLegal.de

M&A:

Dr. Moritz Bocker	(+49) 151 264 59 513	moritz.brocker@AndersenTaxLegal.de
Dr. Hermann Knott	(+49) 151 264 59 502	hermann.knott@AndersenTaxLegal.de

