CLIFFORD CHANCE

CORONAVIRUS: GOVERNMENT SUPPORT MEASURES TO HELP GERMAN COMPANIES IN NEED

In Germany, the Federal and state governments have announced a multi-billion package of measures to support businesses affected by the Coronavirus outbreak following the release by the European Commission of details of a new State aid framework allowing such support measures.

Key issues

- The European Commission has relaxed the requirements for state aid granted by EU member states to tackle the economic impact of the Corona crisis.
- In Germany, the main instrument are currently KfW-loans that can also be used for general corporate financing including operating resources.
- In addition to loans, state guarantees are available.
- The German government announced several tax measures, such as a deferral of tax payments and a reduction of prepayments.
- The German government plans to suspend insolvency filing obligation to protect companies in Coronavirus crisis.
- Federal states, such as Bavaria, have also taken measures, including loans, guarantees and a fund which can invest in companies and protect them from the threat of bankruptcy.

Introduction

The Coronavirus outbreak is causing a major economic shock, with disruption to global supply chains, volatility in financial markets, consumer demand shocks and negative impact across numerous sectors, including automotive, transportation, leisure, travel and tourism.

German Aid measures

As Germany's Minister of Finance stated on 15 March 2020: "There is enough money to fight the crisis and we will use these funds now. We will take all necessary measures. Everyone can rely on this." The European Commission ("**Commission**") in turn stated that it is willing to facilitate the granting of state aid by the EU member states to mitigate the consequences of this pandemic and to support firms that are hit by the economic impact. Germany and other member states have already announced several measures in this regard.

Generally, the German support system for companies impacted by the Coronavirus is based on five pillars: Financial support through loans, guarantees and equity, tax relief, relaxation of insolvency filing obligations, short-time work and European cooperation.

In addition to the measures by the Federal Government, the federal states such as Bavaria and others recently announced additional support measures

1. Financial support for companies

As a first step the Federal Government plans to expand existing programmes, namely those instruments already provided by the German promotional bank KfW, *Kreditanstalt für Wiederaufbau.* The Federal Government takes the view that no further approval from the Commission is required for those.

In general, companies may not apply directly to KfW but are channelled through their usual banks. Companies must therefore agree on the loan with their own bank, which will advise and assist the company with the application for a KfW loan. As KfW assumes a large share of the default risk, banks are more likely to grant loans since their risk is significantly reduced.

KfW offers several loan programmes for different beneficiaries from the "real economy" (*Unternehmen der gewerblichen Wirtschaft*). These existing programmes have now been expanded to also cover larger corporates, to expand the purpose of such financing and to increase the loan amount as well as the percentage of default risk that KfW is prepared to assume. Generally, those existing programmes are only available to companies that were not in distress on 31 December 2019. Eligible companies must be privately owned (at least the majority of shares) and include companies owned by private equity investors. An overview of the most relevant programmes in their expanded form can be found in the table at the end of this briefing.

In addition to the already existing programmes, KfW has established a special programme "Direct investment for syndicate lending". This is also available for companies that were not in distress until 31 December 2019 but have temporarily experienced more serious financing difficulties due to the Corona crisis. To this end, KfW may join in syndicated loans for projects in Germany on a pari passu basis. In these cases, KfW may assume up to 80% of the financing risk of the project. These newly designed special programme has just been approved by the Commission.

Timeline

Companies can apply for the (expanded) programmes starting from 23 March 2020 (limited until 31 December 2020 in the case of the KfW special programme "Direct investment for syndicate lending"). KfW has announced that from 14 April 2020 onwards, companies should then be able to drawdown the loans.

Equity

The Federal Government plans to provide EUR 100 billion for capital measures to strengthen the equity of companies and ensure their solvency. For this purpose a newly established Economic Stabilisation Fund can participate in companies on a temporary basis, namely by purchasing shares. Beneficiaries may be "large 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, as well as smaller companies which are relevant for critical infrastructures. Such equity measures may be subject to specific conditions, e.g. concerning the remuneration of board members, the disbursement of dividends or the use of the Fund's capital.

Guarantees

The Stabilisation Fund can provide guarantees in the total amount of EUR 400 billion to facilitate a refinancing of (large) companies.

Moreover, Guarantee banks exist in each German federal state. In general, these banks provide credit default guarantees to companies that are economically healthy, i.e. are sufficiently profitable and creditworthy and have viable prospects for the future, but do not have sufficient collateral to obtain loans from their own bank.

Due to the current situation, the amount for credit default guarantees was increased to an amount of up to EUR 2.5 million in each individual case. The guarantee banks can now independently decide over applications up to an amount of EUR 250,000 within three days to ensure the company's liquidity. Higher guarantees need to be agreed on with the respective federal state's promotional bank.

For cases in which a credit default guarantee exceeding EUR 20 million is needed, a so-called "large guarantee programme" ("*Großbürgschaftsprogramm/parallele Bund-Länder-Bürgschaften*") covers a maximum of 80% of the default risk. This existing programme for projects in structurally weaker regions will now be opened up to projects in other regions if a guarantee of EUR 50 million or more is required. However, the guarantee only covers a maximum ratio of up to 80% of the loan's volume.

2. Tax relief

To further relieve companies, the German federal government announced several tax measures to be taken. These measures are described in our briefing: Steuerliche Maßnahmen zur Abfederung der Auswirkungen des Corona-Virus.

3. Suspension of insolvency filing obligation

The German Federal Ministry of Justice and Consumer Protection (BMJV) has adopted modifications to the insolvency law and other civil law provisions. These measures are intended to accompany the financial aid package that has already been adopted by the federal Government. For more details see our briefing "Insolvenzantragspflichten in Zeiten von Corona".

4. Aid measures in the federal states, e.g. Bavaria

Several federal states, such as the state of Bavaria, recently announced that they will take additional aid measures. For example, Bavaria will make available around EUR 20 billion. In general, the Bavarian aid measures aim at supporting small and medium-sized companies whereas large companies are mainly referred to the KfW loans and federal measures. In the following we give some selected examples for Bavarian measures:

LfA Universal loan

The Bavarian development bank LfA generally offers a "universal loan" for companies with an annual turnover of up to EUR 500 million. It supports, *inter alia*, the financing of operating resources. The loan amount may reach from EUR 25,000 up to EUR 10 million. It is also possible that the LfA partly assumes the default risk.

Bayernfonds

The newly founded Bayernfonds offers the state the opportunity to invest in companies and protect them from the threat of bankruptcy. In this way, operations can be continued. After a certain period of time, the state may withdraw its support.

Approach of the European Commission

At least some of Germany's measures constitute state aid and therefore need to be in line with the European Commission's "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak". This Framework was published on 20 March 2020 and is explained in more detail in our briefing "The European Commission's Coronavirus State Aid Framework", available here. A number of the support measures implemented through KfW have already been approved by the Commission.

Outlook

In its three-step-plan the German Ministry for Economic Affairs and Energy has announced that it will expand the aid measures and ensure further flexibility. If the current situation worsens, additional tax payments may be deferred and KfW loans may be extended.

At level 3, i.e. in case of serious disruptions of supply chains or widespread closures due to quarantine measures, the government will apply further reaching measures. It refers to the measures it used during the financial crisis 2008/2009 and following the flood of 2013. In both cases, not only loans but also direct subsidies were granted and the government made capital injections into banks through share purchases as well as a nationalisation. Moreover, the government indicated that it could amend the provisions on write-offs and thus reduce the tax burden. The establishment of the Stabilisation Fund is already one of these further reaching measures that go beyond KfW loans and tax reliefs.

Annex

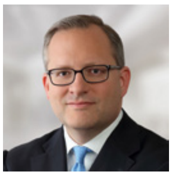
Scheme	Addressees	Type of Aid	Amount	Timing	Collateral
KfW special programme **"Direct investment for syndicate lending"**	German and foreign companies of the "real economy" (*Unternehmen der gewerblichen Wirtschaft*) which are majority private owned and have an annual group turnover of up to EUR 5 billion and were not in economic difficulties until 31 December 2019 For projects in Germany only Excluded: i.a. refinancing, prolongation or subsequent financing of completed projects	Syndicate loan for investment and general corporate purposes with term of up to 6 years KfW participates directly as lender (pari passu) or indirectly via risk sub-participation Additionally, potential refinancing of the financing partners	No total max. loan amount KfW portion generally not less than EUR 25m but but limited to 25% of the annual turnover 2019 or twice the annual wage till 2019 or the liquidity need for the next 12 months and 50% of the overall debt of the company Risk assumption of up to 80% of the loan	Starting from 23 March 2020 Disbursement: presumably starting from 14 April 2020 Programme is limited until 31 December 2020	The economic terms are as agreed with the financing partner and will also apply to the KfW portion

Scheme	Addressees	Type of Aid	Amount	Timing	Collateral
KfW Corporate loan (general corporate purposes)	German and foreign companies of the "real economy" (*Unternehmen der gewerblichen Wirtschaft*) which are majority private owned have been in the market for over 5 years and were not in economic difficulties until 31 December 2019 Excluded: i.a. refinancing, prolongation or subsequent financing of completed projects	Loan for investment, general corporate purposes, warehouse goods etc. up to 100% of the relevant costs Kfw assumes 80% (for SMEs 90%) of the liability risk	Max. EUR 1 billion per company group but limited to 25% of the annual turnover 2019 or twice the annual wage till 2019 or the liquidity need for the next 12 months (18 months for SMEs) or 50% of the overall debt of the company for loans exceeding EUR 25m.	Starting from 23 March 2020 Disbursement: starting from 14 April 2020 Maturity: min. 2 years up to 5 years; interest will depend on the maturity; bullet or amortising, depending on maturity, amortisation be deferred	Secured in line with standard banking practice; Form and scope agreed with financing partner (bank)
ERP founders' loan (universal)	German companies of the "real economy" (*Unternehmen der gewerblichen Wirtschaft*) which are majority private owned and have been in the market less than 5 but at least 2 full financial years and that were not in economic difficulties until 31 December 2019 Excluded: i.a. refinancing, prolongation or subsequent financing of completed projects	Loan for investment, general corporate purposes, warehouse goods etc. Kfw assumes 80% (for SMEs 90%) of the liability risk	Max. EUR 1 billion per company group but limited to 25% of the annual turnover 2019 or twice the annual wage till 2019 or the liquidity need for the next 12 months (18 months for SMEs) or 50% of the overall debt of the company for loans exceeding EUR 25m.	Starting from 23 March 2020 Disbursement: starting from 14 April 2020 Maturity: min. 2 years up to 5 years; interest will depend on the maturity; bullet or amortising, depending on maturity, amortisation be deferred	Secured in line with standard banking practice; Form and scope agreed with financing partner (bank)

CONTACTS

Bettina Steinhauer
Partner
Frankfurt
T: +49 69 7199 3231
E: bettina.steinhauer@cliffordchance.com

Thomas Voland
Partner
Dusseldorf
T: +49 211 4355 5642
E: thomas.voland@cliffordchance.com



Frederik Mühl
Partner
Frankfurt
T: +49 69 7199 1743
E: frederik.muehl@cliffordchance.com

Barbara Mayer-Trautmann
Office Managing Partner
Munich
T: +49 89 21632 8805
E: barbara.mayer-trautmann@cliffordchance.com

Joachim Schütze
Partner
Dusseldorf
T: +49 211 4355 5547
E: joachim.schuetze@cliffordchance.com

Anselm Raddatz
Partner, Co-Head of Corporate, Germany
Dusseldorf
T: +49 211 4355 5510
E: anselm.raddatz@cliffordchance.com

Tobias Schulten
Partner
Frankfurt
T: +49 69 7199 3146
E: tobias.schulten@cliffordchance.com

Marc Benzler
Partner
Frankfurt
T: +49 69 7199 3304
E: marc.benzler@cliffordchance.com

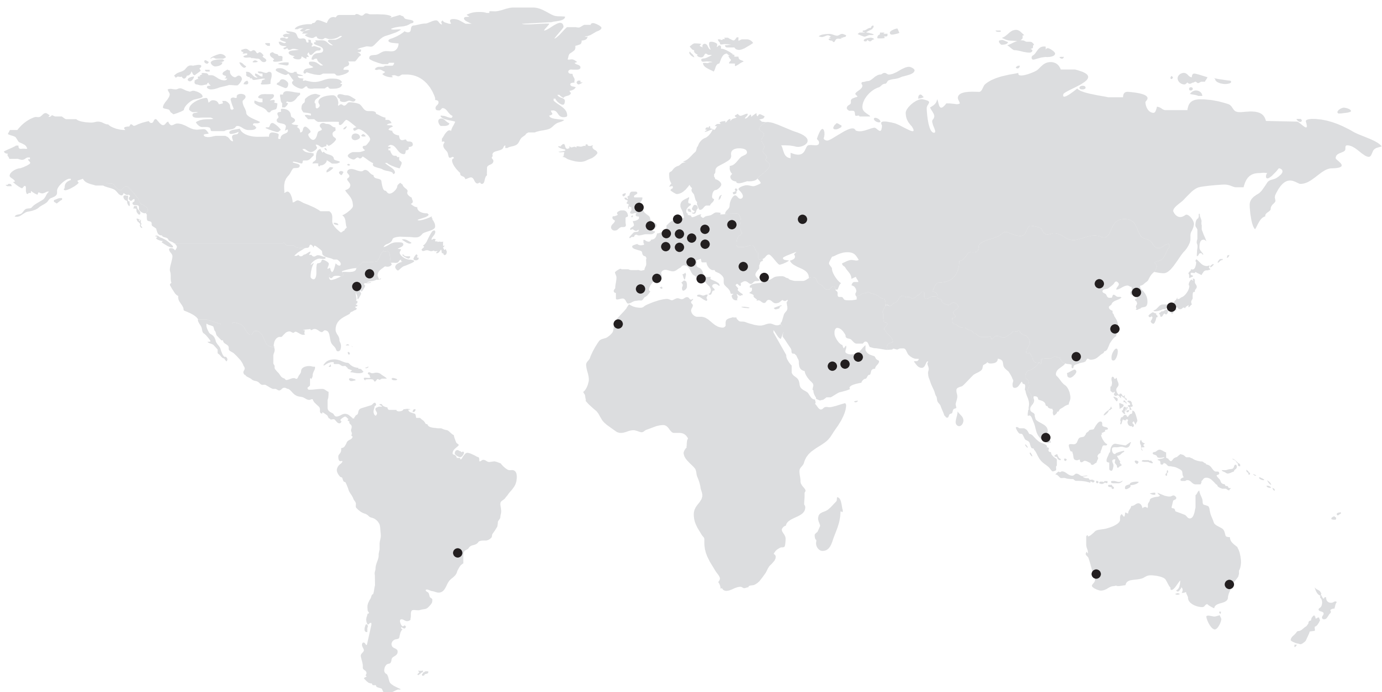
Joachim Hasselbach
Partner
Frankfurt
T: +49 69 7199 1731
E: joachim.hasselbach@cliffordchance.com

Beda Wortmann
Head of Banking & Capital Markets, Germany
Frankfurt
T: +49 69 7199 1347
E: beda.wortmann@cliffordchance.com

Christof Häfner
Partner
Frankfurt
T: +49 69 7199 3160
E: christof.haefner@cliffordchance.com

Kerstin Schaepersmann
Counsel
Frankfurt
T: +49 69 7199 3270
E: kerstin.schaepersmann@cliffordchance.com

OUR INTERNATIONAL NETWORK
32 OFFICES IN 21 COUNTRIES



Abu Dhabi
Amsterdam
Barcelona
Beijing
Brussels
Bucharest
Casablanca
Dubai
Düsseldorf
Frankfurt
Hong Kong
Istanbul
London
Luxembourg
Madrid
Milan
Moscow
Munich
Newcastle
New York
Paris
Perth
Prague
Rome
São Paulo
Seoul
Shanghai
Singapore
Sydney
Tokyo
Warsaw
Washington, D.C.

Riyadh*

*Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh
Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

C L I F F O R D

C H A N C E

2003-000319