

**SANGRA MOLLER LLP***Barristers & Solicitors***LEGAL CURRENCY***A Client Communication****COVID-19: German Economic Aid Package (First Update)***

On March 23, 2020, the German Cabinet agreed to an economic aid package totaling more than €750 billion to cushion the effects of the COVID-19 pandemic on the economy (the "**Aid Package**"). Following approval of the Aid Package by the lower parliament of Germany on March 25, 2020, a preliminary draft bill was released publicly, which provided further details on the measures of the Aid Package, including information regarding eligibility and loan limits and availability. The Aid Package was voted into law on March 27, 2020 by the upper parliament of Germany. The following memorandum provides an overview of reported measures under the Aid Package.

In summary, the Aid Package includes the following:

- €156 billion in debt to finance social spending and company aid to prevent deeper economic disruption, and a €50 billion liquidity fund for self-employed people, freelancers and small businesses of up to 10 employees; and
- €600 billion economic stabilization fund for companies affected by COVID-19, comprised of the following (the "**ESF**"):
  - €400 billion in guarantees;
  - €100 billion in loans through the state-run development bank Kreditanstalt für Wiederaufbau ("**KfW**"); and
  - €100 billion earmarked for the government to buy equity stakes in companies (for example, recapitalization measures through the acquisition of shares, subordinated debt, hybrid bonds, profit participation rights, silent partnerships, convertible bonds and other equity instruments).

**ESF Eligibility, Restrictions, and Availability**

The ESF is intended for large companies who meet at least two of the following three criteria over the last two years prior to January 1, 2020: (i) more than 249 employees on the annual average; (ii) total assets of more than €43 million; or (iii) annual turnover of more than €50 million. However, there is discretion to allow eligibility for smaller companies who are considered to operate in critical sectors and the failure of which would have significant impact on the economy, technological sovereignty, security of supply, critical infrastructures or the labour market of Germany. The ESF is only available to companies of the "real economy", and are not available for companies in the financial sector, including credit institutions.

In addition to the foregoing, applicant companies must also meet the following conditions in order to qualify for funding:

- other financing options must not be available;
- as a result of the stabilization measures, there must be a clear view that the applicant company will continue to operate after the COVID-19 pandemic is over;
- liquidity and capital requirements must result from the COVID-19 pandemic (i.e. the company was not previously already in distress);
- the applicant company must guarantee a prudent business policy; and
- the applicant company should contribute to the stabilization of production chains and jobs.

The ESF measures are only granted on application, which applications are to be submitted via the Federal

Ministry of Economic Affairs and Energy. Companies do not have a legal claim to funds under the ESF. Rather, decisions for granting economic aid will be made on a discretionary basis, taking into account the importance of the applicant company for the German economy, the urgency for economic assistance, the effects on the labour market and competition. This discretionary power is based on the principle that the ESF funds need to be distributed as efficiently and economically as possible.

It should also be expected that companies who are granted funding or economic aid will be subject to certain restrictions, particularly in the case of equity purchases by the government. These restrictions include, but are not limited to, matters relating to use of funds, the remuneration of board members, and distribution of dividends.

The stabilization measures under the ESF will only be available until December 31, 2021.

### **KfW Loan Programs**

In addition to the foregoing, the ESF could issue an additional €200 billion in additional debt if needed. Furthermore, it was previously announced that the state-run development bank, KfW, has €500 billion available as loans for companies affected by COVID-19. For companies that have been on the market for longer than 5 years, the following loans are available for application:

- KfW Entrepreneur Loan
  - Assumption of risk (liability waivers) of up to 80% for the on-lending financing partners for working capital loans with a volume of lending of up to €200 million. This granting of liability waiver is also available to large companies with annual turnover of up to €2 billion.
  - Credit amounts under this loan program are limited to the following, and in any case, no more than €1 billion:
    - 25% of annual sales in 2019; or

- twice the wage costs of 2019; or
- the current financing needs for the next 12 months for large companies, and 18 months for small and medium-sized companies; or
- 50% of the applicant company's total debt for loans over €25 million.
- Loan maturity will be minimum of two years up to a maximum of five years.
- KfW Loan for Growth (Special Program: "Direct Participation in Syndicated Financing")
  - Temporary extension to general corporate financing including working capital by way of syndicate financing. Companies that have a sales limit of up to €5 billion are eligible to apply.
  - KfW will assume risk of up to 80% of the loan. The KfW portion of the loan will generally be at least €25 million, but is further limited to:
    - 25% of annual sales in 2019; or
    - twice the wage costs of 2019; or
    - the current financing needs for the next 12 months and 50% of the overall debt of the company.

The above loans are available for application through the applicant's usual house bank, provided that the applicant was not in financial distress as at December 31, 2019. Eligible companies can apply for these loan programs beginning on March 23, 2020, and drawdowns are expected to be available starting on April 14, 2020. In the case of the "Direct investment for syndicate lending" special program, this program will be limited to December 31, 2020.

### **Self-Employed Persons and Small Companies**

Self-employed people, freelancers or companies with up to five employees will be able to seek payments of up to €9,000 each over three months, while companies with up to ten employees may seek up to €15,000 each over three months. This support package is covered by

the aforementioned €50 billion liquidity fund for self-employed people, freelancers and small businesses.

### **Status**

As the announcement and approval of the Aid Package was made very recently, limited information is currently available. This memorandum is based on a preliminary version of the bill respecting the Aid Package, which may be subject to further amendment. Accordingly, we will continue to monitor for developments, and as information becomes available, updates and supplements to this memorandum will be provided.

*This communication is intended to provide general information as a service to our clients and should not be construed as legal advice or opinions on specific facts.*