

krfacts

COVID-19 UPDATE no. 1: various legal issues

On March 25, 2020 and March 27, 2020, the Federal Council adopted further measures to combat the economic consequences of the spread of the Coronavirus (COVID-19). This update provides a brief overview and a core summary of the individual measures adopted. This list is not intended to be comprehensive.

Please also refer to our edition of krfacts previously published on March 25, 2020 (in German [krfacts: COVID-19: Diverse rechtliche Fragen \(Ausgabe 25.03.2020\)](#), in English [krfacts: COVID-19: various legal issues \(March 25, 2020 Edition\)](#)).

I. Federal Emergency ordinances

Pursuant to Article 185 of the Swiss Federal Constitution, the Federal Council is able to take action to safeguard internal security and for this purpose to issue ordinances and orders. Their applicability is subject to a time limit.

1. Ordinance on Joint and Several Loan Guarantees

The aim of bridging loans (COVID-19 loans) is to enable affected companies to ensure that they have sufficient liquidity with as little red tape as possible. Applications may be filed until July 31, 2020. The competent Federal Departments have created a homepage [here](#)¹ through which loan applications can be submitted.

Loans cannot be granted under certain circumstances. If a loan is granted, certain duties must be complied with, whilst a number of specified acts (“prohibited acts”) must be ceased and desisted from (see section 1.6. below). If a loan is obtained on the basis of false information or any prohibited acts are carried out, a fine of up to CHF 100,000.00 may be imposed.

1.1. Two types of loan

Under the joint and several loan guarantee scheme, a distinction is drawn between interest-free loans of up to CHF 500,000.00 (“joint and several loan guarantees with simplified requirements”) and loans of more than CHF 500,000.00 at an interest rate of 0.5% per annum (“other joint and several loan guarantees”).

¹ <https://covid19.easygov.swiss/>

Both types of loans are granted for a term of 60 months, i.e. five years, with an option to extend for a further two years in situations involving particular hardship case.

It should be noted that the rate of interest is not fixed over the entire term and the Federal Department of Finance is able to adjust the interest rate on March 31 of each year, for the first time on March 31, 2021.

Up to the CHF 500,000.00 threshold, loans are granted exclusively on the basis of a declaration by the applicant, whilst for other joint and several loan guarantees a standard sectoral credit check is carried out by the bank prior to disbursement.

1.2. 10% of revenues or the “start-up” rule

A joint and several loan guarantee is available for up to 10% of 2019 revenues, based on the definitive or provisional 2019 financial statements; where these are not available, the calculation is based on the 2018 financial statements instead. This means that, for revenues of CHF 2.0 million, a loan of CHF 200,000.00 would be available.

For start-ups (start of business operations between January 01, and February 29, 2020, or incorporation during 2019 with an extended financial year), revenues will be assumed to be triple the net payroll bill for a financial year, subject to a minimum of CHF 100,000.00 and a maximum of CHF 500,000.00. The available loan will thus be between CHF 10,000.00 and CHF 50,000.00 (10% of these notional revenues).

1.3. Loans of up to CHF 500,000.00

The following prerequisites must be met for loans of up to CHF 500,000.00:

- sole tradership, partnership or legal entity based in Switzerland;
- statement by the applicant that:
 - o he/she/it started trading before March 01, 2020;
 - o no bankruptcy or debt restructuring procedures are pending at the time of the application;
 - o revenues have been significantly affected by the COVID-19 pandemic;
 - o no liquidity supports have been received under the emergency regulations in the area of sport and culture.

1.4. Loans above CHF 500,000.00

The following prerequisites must also be met for loans above CHF 500,000.00 and up to CHF 20.0 million:

- the applicant has an enterprise identification number;
- the bank has carried out a standard sectoral credit check with a positive result and has confirmed this decision to the loan guarantee organisation.

1.5. No loans available

No loans will be granted to companies that earned revenues in 2019 of more than CHF 500 million. In addition, no loans will be granted for the purpose of investment in fixed assets, although this rule does not apply to replacement investments, which are permitted.

1.6. Duties and sanctions in the event of non-compliance

If a loan is granted, the borrower is obliged under the terms of the loan agreement with the bank to cease and desist from certain activities. Any breach of these duties is punishable (fine of up to CHF 100,000.00), if not a prevailing criminal act of the Swiss Criminal Code is applicable (e.g. forgery of a document, fraud etc.).

The following acts, which are presented in abbreviated form, are prohibited until the loan has been repaid in full:

- the distribution of dividends or bonuses to the Board Members and capital investments;
- the granting or refinancing of private or shareholder loans;
- the repayment of group loans; and
- the direct or indirect transfer of such loans to related group companies outside Switzerland.

1.7. Capital loss and over-indebtedness

Until March 31, 2022, the loans granted under the joint and several loan guarantee scheme will be disregarded for the purpose of calculating any capital loss or over-indebtedness (cf. Article 725 of the Swiss Code of Obligations [CO]).

2. Employer contribution reserves

Until 26 September 2020, employers may use the employer contribution reserves available within their occupational pension funds not only in order to make employer contributions to pension funds, but also to pay employee contributions. It is not necessary to amend pension fund regulations or affiliation agreements.

3. Job registration requirement revoked

The job registration requirement introduced as a result of the Mass Immigration Initiative will temporarily no longer apply. This means that available positions within professional groups, fields of activity or economic regions with above-average unemployment no longer have to be reported by the employer to the public job placement service. In addition, the requirement imposed on the public job placement service to provide suitable candidate files to the employer will no longer apply.

4. Reduced hours work: no prior notice period

The prior notice period for reduced hours work has been revoked; it is also possible for employers to give prior notice by telephone, provided that it is subsequently confirmed in writing without undue delay. If the period of reduced hours work continues for longer than six months, prior notice must be given again.

5. Camping sites

Since April 02, 2020, camping sites have been closed to the public. Pitches for caravans and mobile homes, which are intended for permanent rental or for travelling people, are still permitted.

6. Export controls on protective equipment

Articles 4b and 4c (former 10d and 10e) COVID-19 Ordinance 2 on export controls over protective equipment have been introduced. As a result, certain products (protective goggles, visors, face shields, nose and mouth protection, protective clothing etc.) may only be exported with SECO approval. Any exports of such products without the requisite approval are punished by fines (Article 10f(2)(b) COVID-19 Ordinance 2).

7. Exceptions for Cantons in particularly hazardous situations

Cantons in which there is a particular risk for public health due to the epidemiological situation may be authorised by the Federal Council, pursuant to an application, to order the restriction or cessation of activities for a limited period of time in particular economic sectors within specific geographical areas.

8. The law on tenancy and leases

8.1. Payment default by tenants

In the event of any default by the tenant on rent or ancillary costs falling due between March 13, 2020 and May 31, 2020, the landlord must issue a formal payment reminder with a deadline of 90 days (rather than 30 days as previously) pursuant to Article 257d CO. Where rents are (as is standard) payable in advance on the 1st of each month, this will cover the months of April and May 2020. The other formal and substantive requirements laid down by Article 257d CO will still apply.

8.2. Notice period for furnished rooms and parking spaces

Furnished rooms and separately leased parking spaces may now only be terminated with notice of 30 days (rather than two weeks as previously).

8.3. Payment arrears by usufructuary lessees [*Pächter*]

In the event of any default by the usufructuary lessee on rent or ancillary costs falling due between March 13, 2020 and May 31, 2020, the usufructuary lessor must issue a formal payment reminder

with a deadline of 120 days (rather than 60 days as previously) pursuant to Article 282(1) CO. The other formal and substantive requirements laid down by Article 282 CO will still apply.

9. Construction delays

Work on construction sites continues to be permitted as previously, although only where general safety requirements relating to COVID-19 are complied with. The resulting impediments to work and supply bottlenecks may result in completion delays. In such cases, the contractor is entitled to an extension of agreed time limits in accordance with both SIA-118 as well as the Swiss Code of Obligations. However, each individual case must be reviewed. Contractors are not obliged to take any steps to expedite work at their own cost, although must at least inform the developer concerning any possible measures to speed up work if the application of SIA-118 has been agreed to. The contractor is obliged under all circumstances to report any impending delays to the developer in good time along with reasons as soon as they become apparent.

The same applies in relation to architects and other planners. Under the specific circumstances, they too are not obliged to comply with agreed deadlines where compliance is no longer possible on account of the prevailing circumstances. However, they are also required to inform the developer promptly concerning any delays to deadlines that may become apparent.

II. Cantonal measures

Several Cantons provide additional instruments to combat the economic consequences of the spread of COVID-19 (non-repayable contributions, Cantonal Joint and Several Guarantees), provided that an affected business has a permanent establishment in the respective Canton. We refer directly to the corresponding Cantonal website of your establishment.

III. Further questions

Due to the developing situation and the different circumstances of each individual case, we recommend that you contact us with any legal questions.

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