

SK | Cash and receivables management in COVID-19 crisis

The measures package should help, but the responsibility of the managing director remains



If the economy only runs in a state of emergency and revenue is being lost, companies quickly face a liquidity problem. A package of measures should help prevent this. Managing directors are then faced with the difficult question of which receivables they should cover first without getting into the area of creditor preferential treatment or bankruptcy deferral, which would be associated with their personal liability. On the other hand, as a creditor, the question is whether the debtors really do not have to pay and whether the words *vis maior* (force majeure), which is currently quite cited, really exempts them from payment obligations.

1. Generally, receivables are to be paid

Even in COVID-19 crisis, due receivables must be paid in general. In any case, this applies between companies and private individuals. If you cannot pay, you have to agree with the creditor (e.g. instalment plan, deferral, discount) or declare bankruptcy. It differs with the state's receivables, which grants deferral or even partial discount with the new measures package for taxes and other contributions (see below in the "Measures package").

2. *Vis maior* (force majeure)

Contract fulfilment and payments are currently often suspended with reference to *vis maior* (force majeure), but, after closer examination, *vis maior* is often not an available option. In many cases *vis maior* does not lead to the termination of the contract and the obligation to pay, but these are – if at all – only temporarily suspended for the duration of the crisis.

Force majeure is a relatively complex topic and each business relationship must be analysed individually on the basis of the existing agreements and applicable regulations:

- Is there a *vis maior* situation?
- How does the contract regulate *vis maior* situation?
- Should a *vis maior* situation occur, what are the consequences? For example:
 - Temporary suspension of contractual obligations;
 - Termination of the entire contract;
 - Termination of individual contractual obligations.
- Should no *vis maior* situation occur, are other instruments available to solve the crisis?

3. Beware of instalment agreements and debt acknowledgment

In the case of instalment agreements, deferrals and debt acknowledgments, the limitation period must be observed. The limitation period is suspended only if the debt is acknowledged in accordance with the substantive and formal requirements. In the case of instalment agreements and deferrals, the limitation period shall be checked and observed in detail. Currently often used email messages do not meet the abovementioned requirements.

4. What if not all receivables can be paid and a bankruptcy threatens

If the debtor is not able to settle all due receivables and bankruptcy does threaten, then the debtor is obliged to satisfy all creditors with the same percentage ("aliquot"). Otherwise, proceedings for creditor preferential treatment and bankruptcy avoidance may be initiated. In these cases, the managing director's personal liability also applies and possible criminal liability is not excluded either. The managing director is also obliged to file for bankruptcy in due time. The statutory period is now 60 days (see below in the "Measures package").

5. Measures package

In the last few days, mostly on 27.03.2020, some measures came into effect that should help with cash and receivables management. The measures are limited, so pay attention to the statutory and expiration period:

- Until 30.04.2020 the limitation period of receivables, that would otherwise have expired between 27.03.2020 and 30.04.2020, does not apply. Limitation periods, that expired between 12.03.2020 and 27.03.2020, will expire not earlier than 30 days after 27.03.2020.
- Until 30.04.2020 court hearings only in non-deferrable matters.
- Until 30.04.2020 procedural statutory periods in court proceedings (e.g. statutory period for filing of an appeal) do not run.
- Deadline for filing bankruptcy applications in case of insolvency is extended to 60 days instead of previously 30 days.
- Until 30.04.2020 no enforcement of liens and auctions will be held.
- Companies with a drop in turnover of more than 40% can suspend the payment of social security contributions and tax advance payments.
- Uncounted losses, that have not been previously claimed since 2014, can now be offset against profits.

6. Responsibility of the managing director

The managing director is obliged particularly in the crisis to take all reasonable measures to solve the crisis, otherwise there may be a risk of his personal liability. In the event of payment difficulties, he must carefully check whether the company is still able to pay individual receivables or whether it shall pay all creditors with the same rate, in the event of impending insolvency. In the case of over-indebtedness, the managing director now has 60 days (instead of 30 as before) to file for bankruptcy. In this situation, managers are often faced with difficult decisions for which they are personally liable. The crisis can be a good opportunity to examine or introduce the effective liability tools and mechanisms.



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