ALLEN & OVERY

Covid – 19 Update

Accessing new debt during the Covid-19 crisis in Germany

Status 19 April 2020

To respond to the Covid-19 crisis and related impacts on businesses and debt markets, affecting almost the whole German economy, *Kreditanstalt für Wiederaufbau* (KfW) implemented a wide array of financing measures. These measures available to companies doing business in Germany and having its seat in Germany or any other country, are in force since 23 March 2020, and, as they are relevant as interest rate subsidies, are covered and allowed by the EU Commission's "Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak". As a consequence of this background, none of the measures can be used for re-financings of credit facilities granted before 12 March 2020. As supplemental measures, the federal states, in some cases together with the Federal Ministry of Economic Affairs and Energy, grant sureties to support businesses which do not qualify for other programmes, given their size or economic position.

On 6 April 2020 and 15 April 2020, KfW updated their remarks on the special programmes. Key amendments are:

- An applicant to the KfW special programmes does not have to have its seat in Germany anymore but is only required to use KfW loans to do business in Germany.
- In terms of approval requirements, KfW added some "soft" requirements, i.e., investments should be expected to allow for sustainable commercial success and each applicant has to be structurally in good standing and competitive. The latter solely paraphrasing the definition of an undertaking in difficulty (cf. below).
- The option for banks cooperating with KfW on syndicated loans are from now on not allowed anymore to refinance their commitments via KfW.
- *KfW-Unternehmerkredit* is now also available for profit-orientated commercial businesses within the public service sector.

KfW Special Programmes

a) Special Programme "Direktbeteiligung für Konsortialfinanzierung"

KfW intends to participate in syndicated loans with an own commitment of at least EUR 25 million (but allowing for exceptions), capped at the maximum liquidity needed for 2020 or certain key performance indicators of the borrower (double amount of annual wages in 2019 or 25% of annual revenue in 2019).
To apply for such loans, certain **criteria** have to be met by the applicant:

As of 31 December 2019:

- The applicant is not an "undertaking in difficulty"[i] as defined under the laws of the European Union, cf. art. 2 no. 18 of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (State Aid Regulation). This has to be assessed and confirmed by the borrower's bank.
- The applicant is in economically good standing, i.e., banks are not aware of any outstanding payments (outstanding for more than 30 days), any covenant breaches and there are no standstills or deferrals agreed.

As of the date of the application:

- Current planning based on the assumption that the overall economic situation will return to normal ("return to pre-crisis conditions") should demonstrate that sufficient funding may be expected for the company to survive up to and including 31 December 2020 (*positive Fortführungsprognose*).

These criteria are almost impossible to meet for businesses already under pressure in the past and offer few leverage to negotiate. Companies with a generally functioning business model should take into consideration that KfW expects security on a pari passu level with the other lender(s) under this newly granted syndicated loan facility (but not necessarily with respect to existing financings) and that these loans are granted for not more than six years and under usual market conditions. Further, it is not possible to combine these syndicated loans with most of KfW's existing programmes which leads to uncertainty whether such existing programmes, if granted to a borrower interested in a KfW-syndicated loan, can be terminated to benefit from a KfW special programme instead.

For banks considering to cooperate with KfW on such syndicated loans, it has to be noted that KfW is only allowed to bear up to 80% of the risk in relation to the facility and KfW's exposure to a borrower is capped at 50% of the total debt of such borrower.

b) KfW-Unternehmerkredit

KfW widened the scope of its existing programme to support specific investments and cash flow facilities for midcap as well as bigger companies. The programme is aimed at companies in existence for at least five years. To benefit from the *KfW-Unternehmerkredit*, an interested company has to contact its relationship bank (*Hausbank*) which then cooperates with KfW during the process, leading to KfW bearing up to 80% of the risk, and even up to 90% of the risk if the borrower is within the midcap segment.

The *KfW-Unternehmerkredit* is subject to the same criteria listed above for syndicated loans, too.

In general, the *KfW-Unternehmerkredit* allows for loans in cooperation with a financing partner of the company (*Hausbank*) of up to EUR 1 billion per group but is eventually capped below based on key performance indicators of such group. KfW allows for different options in terms of repayments and fixed interest rates but credit facilities are not granted for any longer than five years. In terms of required security, KfW relies on what the *Hausbank* requests from the specific lender, allowing under certain circumstances unsecured loans.

To accelerate the approval process, KfW dispenses any risk assessment for credit facilities of up to EUR 3 million and agrees to a reduced risk assessment for credit facilities ranging from EUR 3 million up to EUR 10 million (each included). Generally, KfW requires the documents listed in their checklist "Unterlagen für die Risikoprüfung"[ii] but reserves its right to request further documents at its sole discretion. KfW mentioned on a call on 8 April that, if financial statements for 2019 are not prepared yet, 2018 financial statements should suffice and that a cash flow forecast is not required.

A combination of the *ERP-Unternehmerkredit* with most other KfW measures is not possible.

c) ERP-Gründerkredit – Universell

Further, KfW widened the scope of its existing programme to support start-ups and midcap businesses within their first five years of operation to cover any businesses affected by the Covid-19 crisis. This programme now aims at any company affected by the Covid-19 crisis, if such company meets the criteria set out above for syndicated loans. To benefit from the *ERP-Gründerkredit*, an interested company has to contact its relationship bank, which then cooperates with KfW during the lending process. If the company exists for more than 3 years, KfW will bear up to 80% of the risk, and even up to 90% of the risk if the borrower is already positioned within the midcap segment.

In general, the *ERP-Gründerkredit* special programme allows for loans in cooperation with a *Hausbank* of up to EUR 1 billion per group but is eventually capped below based on key performance indicators of such group. KfW allows for different options in terms of repayments and fixed interest rates but credit facilities are not granted for any longer than five years.

To accelerate the approval process, KfW dispenses any risk assessment for credit facilities of up to EUR 3 million and agrees to a reduced risk assessment for credit facilities ranging from EUR 3 million up to EUR 10 million (each included). Generally, KfW requires the documents listed in their checklist "*Unterlagen für die Risikoprüfung*" but reserves its right to request further documents at its sole discretion.

A combination of the *ERP-Gründerkredit* with other KfW measures is not possible.

d) KfW-Schnellkredit 2020

Starting 15 April 2020, an additional special programme is available, *KfW-Schnellkredit 2020*, open solely to SMEs having their seat in Germany

- in business since 1 January 2019 or longer; and
- with more than 10 to 250 employees; and
- and profit-making in 2019 or at least on an average for the years 2017-2019; and
- not an undertaking in difficulty as of 31 December 2019.

This programme will allow for KfW bearing 100 % of the risk in relation to facilities of up to EUR 800.000 (businesses with more than 50 employees) or EUR 500.000 (up to 50 employees), respectively but limited to 25% of (group) turnover in 2019. Facilities shall mature in 10 years (or shorter) with a fixed interest rate based on the general economic/capital markets environment.

To accelerate the process, neither KfW, nor the partner banks will do an in-depth risk assessment apart from know your customer-checks and a few further items (e.g. *Schufa-Auskunft*). Loans will be guaranteed by the Federal Republic of Germany, security is not required. When assessing applicants, KfW will most likely not expect a *positive Fortführungsprognose* up to 31 December 2020 but will rely on different aspects, which are not confirmed yet.

An applicant, who got granted a *KfW-Schnellkredit 2020* is not allowed to apply for any other KfW programme until 31 December 2020. Combining the *Schnellkredit* with programmes of the *Wirtschaftsstabilisierungsfond* or special programmes of the *Bürgschaftsbanken* is not possible. Certain dividend distribution restrictions and similar restrictions apply.

Surety programmes

In addition to the KfW special programmes at national level, the state banks of the respective federal states, which have also adjusted (some of) their programmes and terms, will continue to provide sureties for SMEs. This applies in particular to sureties of up to EUR 2.5 million as well as offers for sureties provided directly via the relevant surety bank ("surety without a bank").

As larger companies have greater need for sureties, the programme for large-scale sureties under which the federal government and the respective federal states grant parallel sureties and which was previously only launched in economically weak regions got expanded to cover the whole of Germany, in addition to any surety programmes existing in the individual federal states. The aim here is, in particular, to also hedge working capital loans where the need for sureties starts at EUR 50 million (starting at EUR 20 million in economically weaker regions); state and federal government should bear equal parts of the risk but allowing for states to cooperate based on allocation of branches of the beneficiary. However, although the surety quota may be up to 90%, the institution granting the loan must bear a share in the risk of at least 10% without any right of advance satisfaction and special security and investors/shareholders must make an appropriate contribution to the financing by providing equity/liable capital. If the surety is a so-called first loss guarantee, i.e. banks want a safer position, the surety quota must not exceed 35%.

These federal surety programmes (cf. the Announcement of the Provision for the Temporary Granting of Sureties, Suretyships and Guarantees in the Area of Application of the Federal Republic of Germany in Connection with the Outbreak of Covid-19 ("Federal guarantee 2020"[iii]) are open for applications until 31 December 2020, sureties have a maximum term of 6 years. In parallel with KfW special programmes, applicants have to proof that they were not an undertaking in difficulty by 31 December 2019 but got into difficulties as a result of the Covid-19 crisis. For federal sureties which mature after 31 December 2020, the maximum surety amount is capped at the higher of

- twice the total annual wages and salaries of the sponsored company in 2019;
- 25% of total revenue in 2019; or
- in justified cases, the required cash for the upcoming 18 months (SMEs)/ 12 months (large corporations).

Federal sureties which mature in 2020 can exceed this threshold, if adequate (to be determined on a case-by-case basis).

Costs of above-mentioned parallel guarantees are based on below table (not including a EUR 25,000 application fee):

Beneficiary	1 year-Credit Risk Margin	Credit Risk Margin from the 2nd year on	Credit Risk Margin from the 4th year on
SMEs	25 bps	50 bps	100 bps
Large corporations	50 bps	100 bps	200 bps

These measures are either already covered by the existing state-aid provisions and thus do not require approval by the EU Commission or were approved by the EU Commission on 24 March 2020[iv]. Companies interested in these opportunities should contact their own bank or any of the surety banks (*Bürgschaftsbanken*) and state development banks (*Landesförderbanken*) and/or PwC as mandatary of the federal states and the federal government.

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[i] '**undertaking in difficulty**' means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (37) and 'share capital' includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d)Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(e)In the case of an undertaking that is not an SME, where, for the past two years:
(1)the undertaking's book debt to equity ratio has been greater than 7,5 and
(2)the undertaking's EBITDA interest coverage ratio has been below 1,0.

[ii]https://www.kfw.de/PDF/Download-Center/F%C3%B6rderprogramme-(Inlandsf%C3%B6rderung)/PDFDokumente/BDO/Risikopr%C3%BCfung_037-47_75-76_Unterlagen.pdf

[iii] Cf. https://www.foerderdatenbank.de/FDB/Content/DE/Foerderprogramm/Bund/BMWi/rueckbuergschaften-laender-bund.html

[iv] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_517

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