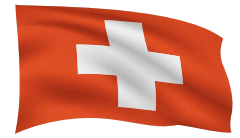


# Switzerland: Special COVID-19 moratorium created for SMEs



**On 16 March 2020, the Swiss government, the Federal Council, proclaimed the extraordinary situation according to the Epidemics Act. This empowers it to issue ordinances for a certain period of time without the involvement of the Parliament. 8,000 soldiers (militiamen) were mobilised to support hospitals and the border guards. This was the largest mobilisation since World War II.**

On 18 March 2020 the Federal Council ordered a general legal standstill until 4 April 2020. This was then extended until 19 April 2020 to cover the Easter holidays. During this period all debt collection activities were suspended. At the same time, all respite running in current proceedings were generally suspended.

On 16 April 2020 the Federal Council issued the Ordinance on Insolvency Law Measures to deal with the Corona Crisis (COVID-19 Ordinance on Insolvency Law). It is valid for a period of six months. The general legal standstill was not extended. This ordinance addresses three issues:

1. The obligation to notify the bankruptcy judge in case of over-indebtedness has been suspended.
2. The conditions for granting the debt-restructuring moratorium have been simplified.
3. A special COVID-19 moratorium was created for small and medium-sized enterprises.

In Switzerland, if there is reasonable cause for concern of over-indebtedness, an interim balance sheet must be drawn up and submitted to an approved auditor for review. If the interim balance sheet shows that the claims of the company creditors are not covered either at the going-concern value or at the

liquidation value, the board of directors has to notify the judge unless company creditors subordinate their claims behind all other company creditors to the extent of this shortfall. Provided that the company was not over-indebted on 31 December 2019 (whereby subordinations are not to be taken into account) and that the over-indebtedness was presumably removed by the end of 2020, the obligation to notify the judge in the event of over-indebtedness is now suspended by six months.

In addition, the normal debt-restructuring moratorium is now granted without any examination of the prospects for recovery. The total duration of the provisional moratorium has been extended from four to six months.

The newly created COVID-19 moratorium is intended to provide small and medium-sized businesses with a simple moratorium, as the normal debt-restructuring moratorium is rather designed for larger companies. The prerequisite for granting the COVID-19 moratorium is that the debtor was not over-indebted on 31 December 2019, or that he was over-indebted but creditors had subordinated their claims. In addition, the balance sheet must not exceed certain parameters. The COVID-19 moratorium is granted by the court upon application by the debtor for a maximum of three months and can be extended once thereafter for a maximum of three months.

In contrast to the normal debt-restructuring moratorium, the COVID-19 moratorium does not usually involve an administrator (commissioner). The COVID-19 moratorium is published and a silent moratorium is not possible, unlike the normal debt-restructuring moratorium.

During the moratorium, the debtor may not pay the debts incurred before the moratorium was granted. This does not

include alimony claims and claims by employees. The COVID-19 moratorium has similar but not as far-reaching effects as a normal debt-restructuring moratorium. The claims subject to the moratorium cannot be pursued and assignments of future claims are cancelled. The debtor may continue his business activities but must treat his creditors equally. During the moratorium, the debtor may not sell or encumber fixed assets without the court's consent.

In contrast to the normal debt-restructuring moratorium, the COVID-19 moratorium expires after the end of the period without further notice or court involvement. Neither a successful restructuring, nor the adoption of a reorganisation plan is required to exit the moratorium. The COVID-19 moratorium does not rule out the possibility that an application for an ordinary provisional debt-restructuring moratorium may be made during or after the COVID-19 moratorium.

On May 20 the government declared a general moratorium until September 30 for all claims against organisers and retailers of package tours for failure to provide a travel service. ■



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