



COVID-19: 3rd Covid-19 bill brings simplifications for the execution of notarial deeds, changes to corporate and contract law

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A new bill currently being debated by the Austrian parliament is set to introduce a variety of amendments to Austrian law amid the ongoing Covid-19 pandemic. While the bill also includes other changes such as moratoria on consumer/microenterprise loans, changes to the insolvency filing requirements and their deferrals, this note focuses on the most important changes from a corporate law perspective.

Health warning: The bill – which is expected to be passed during this weekend – may be subject to further amendments during the legislative process. Below is an outline of some key issues which are currently being considered:

Simplifications for the execution of documents requiring the involvement of a notary

The bill proposes that documents requiring the involvement of a notary (including (i) notarisation of signatures, (ii) minutes recorded by a notary or (iii) a notarial deed) may be executed remotely by using electronic communication. This effectively eliminates the requirement for a party to appear personally before the notary as documents could be drawn up via video conference if the notary is able to assess the identity of the signatory and witness the act of signing. It is currently planned that the law will be in place until 31 December 2020.

Corporate governance

The bill proposes that:

- the extension of the deadline to conduct the annual general meeting 2020 from eight to twelve months from the beginning of the financial year (as already set out for stock corporations in the first set of Covid-19 laws) also applies to limited liability companies (*GmbHs*) and cooperatives (*Genossenschaften*);
- such extension to twelve months overrides any fixed time periods for holding general meetings potentially required by partnership agreements, articles of association and similar corporate governance documents, if the management deems it impossible or inappropriate to hold such meeting at the scheduled time due to Covid-19;
- cancelling mandatory supervisory board meetings in the first quarter of 2020 does not constitute a violation of applicable corporate law;
- financial statements can be drawn up until the end of September 2020 (instead of end of May 2020) in case a company is not in a position to prepare the financial statements until the end of May due to Covid-19 (this only applies to companies with a balance sheet date until 31 July 2020);
- the deadline for the submission of annual financial statements to the corporate

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register is extended to a period of 12 months from the beginning of the financial year (this only applies to companies with a balance sheet date until 31 July 2020).

Prohibition to pay out dividends likely

The Austrian government has also announced that it will propose a restriction of dividend pay-outs for one year effective retroactively as from 16 March 2020 for all companies that have drawn down federal support from the Covid-19 emergency program. As a further measure, the government also proposes to cap bonus payments of managers of companies that turn to federal support to an amount corresponding to 50% of the bonuses received in 2019. The details of these proposals are yet to be disclosed.

Short term shareholder loans

The new bill further proposes that for shareholder loans that are granted to a company during a crisis such loan is not deemed to be equity substituting if (i) it is granted for no more than 120 days, (ii) the company does not provide a pledge or a comparable security for such loan and (iii) such loans have been granted after the proposed bill comes into force, but before 30 June 2020.

Contract law

- Default interest will be limited to 4% if the delay in performance occurs between 1 April 2020 and 30 June 2020 and is due to the Covid-19 outbreak.
- There will be no obligation to pay already agreed contractual penalties for a delay in performance that occurs until 30 June 2020 and is a result of the Covid-19 outbreak.

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