



## WHITE PAPER

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### **Act to Mitigate the Consequences of the COVID-19 Pandemic Under Germany’s Civil, Insolvency and Criminal Procedure Law of 27 March 2020**

The COVID-19 Mitigation Act (“Act”) is part of the German Federal Government’s comprehensive package of measures aimed at mitigating the consequences of the COVID-19 pandemic and of official measures taken by the authorities to support the German economy and to confine the pandemic. The goal of the Act, which was passed recently, is to provide temporary protection for consumers, small-sized enterprises (*Kleinstunternehmen*), borrowers and tenants who are economically affected by the pandemic. At first glance, the regulations for the different areas appear to be in sync, but a closer study of the legal text reveals differences (whether or not these were intended by the legislator) in the conditions and legal consequences.

The following overview aims to highlight the similarities and differences by means of a comparative analysis. It can be expected that the legislator will introduce improvements to the Act.

## Act to Mitigate the Consequences of the COVID-19 Pandemic Under Germany's Civil, Insolvency and Criminal Procedure Law of 27 March 2020<sup>1</sup>

	§ 1(1) Consumer Moratorium	§ (2) Small-Sized Enterprises Moratorium <sup>2</sup>	§ 2 Leases and Usufructuary Leases	§ 3 Loans
<b>Relevant date of conclusion of contract</b>	Before 8 March 2020	Before 8 March 2020	Not applicable	Before 15 March 2020
<b>Personal scope of application</b>	Consumers	Small-sized enterprises	Tenant (commercial/ non-commercial)	Consumer (also when jointly and severally liable)
<b>Material scope of application</b>	Consumer contract (para. 310 (3) of the German Civil Code (long-term contract between entrepreneur and consumer))	Long-term contract	Leases (over land or premises)	Consumer loan agreements (para. 491 of the German Civil Code)
	Not applicable to lease, usufructuary, loan and employment contracts. These are covered by para. 2 and 3.			
<b>Requirements</b>	Consumer	Small-sized enterprise	Tenant (commercial/ non-commercial)	Consumer
	Consumer contract that qualifies as a long-term contract for the supply of goods and services that are essential for the daily living	Long-term contract for the supply of goods and services that are essential for the continuance of the business undertaking		Consumer loan agreements (para. 491 German Civil Code), i.e. general consumer loans and mortgage loans
	Compliance with the contractual obligation is not possible without jeopardising the consumer's (own or any of his dependants) appropriate standard of living ( <i>angemessener Lebensunterhalt</i> )	Compliance with the contractual obligation is not possible without jeopardising the <i>economic basis of the business undertaking</i>		Compliance with the contractual obligation could no longer reasonably be expected to be acceptable (i.e. in particular if the standard of living ( <i>angemessener Lebensunterhalt</i> ) of the obligor or any of his dependants is jeopardised)
	Due to circumstances resulting from the spread of COVID-19 infections	Due to circumstances resulting from the COVID-19 pandemic	Non-payment of rent is due to the effects of the COVID-19 pandemic	Income losses due to the extraordinary circumstances caused by the coronavirus pandemic
<b>Proof of evidence</b>	No explicit provision—according to the legislative explanatory material to the Act, the obligor might need to demonstrate and provide evidence that the requirements are satisfied, if necessary		The connection between COVID-19 and non-payment must be satisfactorily asserted ( <i>glaubhaft machen</i> )	No explicit provision—according to the legislative explanatory material to the Act, the obligor might need to demonstrate and provide evidence that the requirements are satisfied, if necessary

<sup>1</sup> Federal Law Gazette 2020, Part I, pages 569–574

<sup>2</sup> Enterprises with less than 10 employees and an annual turnover or annual balance sheet not exceeding €2 million (Commission Recommendation 2003/361/EC of 6 May 2003).

	§ 1(1) Consumer Moratorium	§ (2) Small-Sized Enterprises Moratorium <sup>2</sup>	§ 2 Leases and Usufructuary Leases	§ 3 Loans
<b>Legal implications</b>	Right to withhold performance/payment until no later than 30 June 2020  To be asserted and proved by the obligor		No termination right for the sole reason that rent has not been paid	Deferral of interest and principal payments for the period between 1 April 2020 and 30 June 2020 for three months from due date by operation of law (without assertion)  However, the consumer may continue to make payments
	If the right to withhold performance/payment is excluded (see exceptions below), the obligor has the right to terminate the contract		Other rights of termination remain unaffected	Exclusion of termination due to default in payment, significant deterioration of the financial conditions of the consumer or the value of securities until the expiry of the deferral
	Secondary claims (e.g. interest on arrears) are also excluded according to the legislative explanatory material to the Act		Other rights, including secondary claims such as damages due to default, remain unaffected	No default (according to the legislative explanatory material to the Act)
				Extension by three months, if not agreed for the period after 30 June
				Lender must provide the consumer with a copy of the contract with the new conditions
<b>Exceptions</b>	Para. 1(1) shall not apply if its application could not reasonably be expected to be acceptable for the creditor, because non-performance would jeopardise the economic basis of its business undertaking	Para. 1(2) shall not apply if the exercise of the right to withhold performance/payment could not reasonably be expected to be acceptable for the creditor because non-performance would jeopardise its appropriate standard of living (or that of its dependants) or the economic basis of its business undertaking	Not applicable—possible negative effects on the landlord are not considered	Para. 3 shall not apply if, taking into account all circumstances of the individual case (including the COVID-19 pandemic), deferral or exclusion of termination could not reasonably be expected to be acceptable for the lender
<b>Deviating agreements</b>	No deviation to the disadvantage of the debtor permitted			Deviating agreements are permitted (except for termination provision)
<b>Authorisation to issue statutory instruments</b>	If it is to be expected that social life, the economic activity of a large number of enterprises or the employment of a large number of persons will continue to be significantly adversely affected by the COVID-19 pandemic, the deferral period or the right to withhold performance can be extended by way of ordinance ( <i>Verordnung</i> ) until 30 September 2020. In addition, the Federal Government is authorised until 30 September 2022 at the latest to extend the deadlines beyond 30 September 2020 by way of ordinance if the impairments continue to persist.			

<sup>2</sup> Enterprises with less than 10 employees and an annual turnover or annual balance sheet not exceeding €2 million (Commission Recommendation 2003/361/EC of 6 May 2003).

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