

NEWS

UPDATE ON THE FEDERAL COVID-19 MEASURES: THE FEDERAL COUNCIL IMPOSES ANOTHER LOCKDOWN AND ENACTS ADDITIONAL MEASURES TO SUPPORT THE ECONOMY

In view of the tense epidemiological situation, the Federal Council has in recent months gradually adopted further measures against the spread of the Corona virus. The “lockdown”, which was re-imposed on 18 January 2021, has once again turned the economic planning of many companies upside down. Numerous SMEs are facing existential fears.

Against this background, the Federal Council has continuously expanded its economic support over the course of the Corona crisis. For example, short-time work compensation, which accounts for the largest part of the economic aid packages in terms of volume, was recently extended to people in temporary employment and apprentices. In addition to short-time work compensation, the cantons offer hardship programmes totalling around CHF 2.5 billion. In order to take account of the current circumstances, the Federal Council has also substantially relaxed the requirements in this regard. In particular, businesses that have been closed by the authorities for a total of at least 40 calendar days since 1 November 2020 are now considered a hardship case without having to prove a decline in turnover. Furthermore, the Federal Council is currently examining the reactivation of Corona sureties to further support the economy.

In times of a constantly changing regulatory framework, this article provides an overview of the current aid packages for companies.

CHANGES IN SHORT-TIME WORK COMPENSATION

Short-time work compensation (SWC), with planned contributions of over CHF 20 billion, is a key element in mitigating the economic consequences of the Corona crisis. In order to provide rapid and uncomplicated support to affected companies, the Confederation enacted numerous measures during the course of the pandemic to expand the SWC and to simplify its accounting. By now, a large part of these changes has already been repealed or adapted.

The simplified procedure for the advance notification of short-time work and the summary procedure for the accounting of the SWC will be retained until the end of March 2021. For example, the justification for short-time work in the advance notification can

be kept shorter than before. However, the reference to the Corona virus alone is not sufficient. Finally, as income from interim employment continues not to be counted towards SWC and overtime that has accumulated outside the short-time work phase does not have to be deducted, the SWC accounting is made considerably easier for companies.

By contrast, the deadline for advance notification, which had been abolished temporarily, was reintroduced as of 1 June 2020. In concrete terms, this means that the employer must notify the short-time work at least ten calendar days before the intended commencement. There was also a return to the original SWC system with regard to the duration of the permit, which is why the maximum permit duration has again been reduced to three months instead of six since 1 September 2020. Companies must

therefore ensure that they renew their short-time work applications in good time. In total, SWC can be obtained for a maximum of 18 months (instead of the twelve months originally provided for by law).

In addition, the temporarily extended scope of application of the SWC has partly lapsed. For example, the exceptionally decided interim SWC entitlement of persons in the service of an organisation for temporary work and of persons who are in a position similar to an employer or who work in the business of the spouse or registered partner no longer applies. However, in its decision of 20 January 2021, the Federal Council decided that persons in temporary employment and - under certain conditions - apprentices will again be entitled to SWC.

Furthermore, on 20 January 2021, the Federal Council decided to retroactively abolish the waiting period (retention of the company) as of 1 September 2020 as well as to retroactively abolish the maximum period of entitlement to SWC in the event of more than 85% loss of working hours of four settlement periods between 1 March 2020 and 31 March 2021. Thus, restrictions of SWC will be further relaxed in favour of the economy.

EXPANSION OF SUPPORT VIA THE HARDSHIP PROGRAMMES

Another pillar in the fight against the economic consequences of the COVID-19 pandemic are support programmes that are intended to mitigate hardship cases that are directly or indirectly attributable to official measures.

The cantons are in principle responsible for the specific implementation of the hardship aid. However, following demands from the cantons, the Confederation has agreed to make financial contributions to the hardship programmes too. To this end, the Federal Council adopted an Ordinance at its meeting on 25 November 2020 that regulates the details of the hardship programme of the Confederation and the cantons, in particular, under which framework conditions the Confederation participates in the cantonal hardship measures. However, the cantons can continue to define further criteria in cantonal regulations, such as the limitation of eligible sectors, the specific form of the hardship measures or the duration of the measures.

Minimum requirements of the Confederation

According to the Federal Council Ordinance,

only companies that already existed before the outbreak of COVID-19 at the beginning of March 2020 are to be supported. Furthermore, the Ordinance provides for a minimum turnover threshold of CHF 50,000. Large companies, on the other hand, are not per se excluded from eligibility; the definition of any upper turnover caps is the responsibility of the cantons. Furthermore, the Confederation will only co-finance hardship measures if they benefit companies whose wage costs are mainly incurred in Switzerland.

When applying for hardship assistance, the company must prove to the canton that it is profitable or at least viable and that it has taken the measures necessary to protect its liquidity and capital base. Necessary self-help measures to protect liquidity and the capital base include, for example, the waiver of dividends, shares of profits paid to board members and repayment of shareholder loans and the like since the outbreak of COVID-19, insofar as such measures have not been compensated for by capital increases in at least the same amount.

Companies that are already entitled to sector-specific COVID-19 financial aid from the Confederation in the areas of culture, sports, media and public transport are excluded from the hardship provisions. When applying to the canton for the hardship programme, the company must therefore prove that it is not entitled to such subsidies.

Hardship case

Finally, if the eligibility requirements are met, there must be an actual case of hardship. According to the COVID-19 Act, a case of hardship exists if the annual turnover is below 60% of the multi-year average. The Federal Council Ordinance specifies that this drop in turnover of more than 40% is measured on the annual turnover in 2020 compared to the average turnover in 2018 and 2019. As it was important to Parliament that the proportion of uncovered fixed costs is also taken into account when assessing a hardship case, companies must consequently confirm to the canton that significant uncovered fixed costs result from the decline in turnover.

In view of the re-imposed "lockdown" and the continuing restrictions in 2021, the Federal Council additionally relaxed the previously described condition of the decline in turnover on 13 January 2021. Accordingly, in the event of a decline in turnover in the months of January 2021

to June 2021 in connection with officially ordered measures to combat the COVID-19 epidemic, companies may use the turnover of the last twelve months instead of the annual turnover in 2020 for the calculation of the decline in turnover. The new calculation method further expands the group of eligible companies.

In addition, those businesses that have been officially closed for at least 40 calendar days since 1 November 2020 (in particular restaurants, bars and discotheques as well as leisure and entertainment businesses) are automatically considered hardship cases. They do not have to provide proof of the 40% loss of turnover. Finally, for businesses in this category, the proof regarding measures taken to protect liquidity and the capital base (see above) as well as the proof that a significant share of uncovered fixed costs results from the decline in turnover at the end of the year (see above) can also be waived.

Dividend ban

The Federal Council also decided on 13 January 2021 to ease the restrictions on use. The previously applicable Ordinance stipulated that a company may neither resolve nor distribute dividends or shares of profits to board members, repay capital contributions or grant loans to its owners for the entire term of loans, sureties or guarantees and for five years or until voluntary repayment in the case of à-fonds-perdu contributions. This restriction on the use of funds now applies for three (instead of five) years.

Specific design of the aid programmes

As already stated in the introduction, the cantons are in charge of the hardship programmes. In particular, the cantons can determine the type of support contributions and provide for sureties, guarantees, loans and/or à-fonds-perdu contributions in their regulations. For loans, guarantees and sureties, however, the Federal Council Ordinance provides for a maximum duration of ten years. In addition, they may amount to a maximum of 25% of average turnover in 2018 and 2019, but no more than CHF 10 million per company. Finally, à-fonds-perdu contributions are limited to a maximum of 20% of turnover in 2019, but no more than CHF 750,000 per company.

COVID-19 LOANS

Lending

One of the first measures taken by the Federal Council to support the economy at the begin-

ning of the pandemic was the COVID-19 loans. To ensure liquidity, companies affected by the COVID-19 crisis were able to take advantage of bridge loans secured by sureties of the Confederation between 26 March and 31 July 2020.

At the meeting of 13 January 2021, the Federal Council announced that, as a contingency plan, it is examining whether it would make sense to reactivate the COVID-19 sureties in the event of a third wave with a sharp deterioration in the economic situation in order to secure liquidity and support the businesses. It should also be noted that in various cantons (especially in the canton of Zurich), loans secured by the canton are granted as part of the hardship programme.

No new loans secured by a surety of the Confederation can be applied for at present. Since those companies that made use of the possibility of COVID-19 loans last spring are subject to various use and disposition restrictions, it is nevertheless worth taking a look at the COVID-19 Surety Act, which came into force on 19 December 2020 and replaces the COVID-19 Surety Ordinance that was in effect during the granting of credits.

Restrictions on use and disposition

As was already the case under the COVID-19 Surety Ordinance, certain activities of the borrower remain excluded for the duration of the surety. From receipt of the COVID-19 loan until its full repayment, the distribution of dividends and shares of profits to board members as well as the reimbursement of capital contributions are generally prohibited. The buyback of own shares is also considered as such a reimbursement. The granting of new loans or the repayment of loans from shareholders or related parties is also prohibited. Ordinary, contractual amortisation and interest payments on pre-existing loans are, however, permissible.

Furthermore, funds from a secured loan may not be transferred to another group company. Intra-group financing by means of loan funds obtained on the basis of the COVID-19 Surety Ordinance is therefore generally not permissible.

In contrast, the ban on investments in fixed assets, which the COVID-19 Surety Ordinance originally provided for, was not transferred to ordinary law. As a result, borrowers will be able to make all operationally necessary investments that also go beyond mere replacement investments as from the entry into force of the COVID 19 Surety Act.

Restructurings under the Merger Act also continue to be permissible. However, restructurings that serve to transfer the borrower's assets and liabilities abroad are not compatible with the purpose of the COVID-19 loans and are therefore inadmissible. The rights and obligations arising from the credit relationship can only be transferred if this transfer either takes place by means of universal succession (merger, spin-off) or includes the essential part of the company (transfer of assets) or is linked to a change of legal form and thus no transfer of assets and liabilities abroad takes place.

Amortisation of loans

The COVID-19 Surety Act provides for an amortisation period of eight years (compared to the

Ordinance provision, which provided for an amortisation period of five years). However, the interest rate regulations from the COVID-19 Surety Ordinance were transferred unchanged to ordinary law. Accordingly, the interest rate for the COVID-19 basic credit is 0.0% per annum and for the COVID-19 credit plus 0.5% per annum, whereby the Federal Council can adjust the interest rates annually to market developments at the request of the Federal Department of Finance.



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