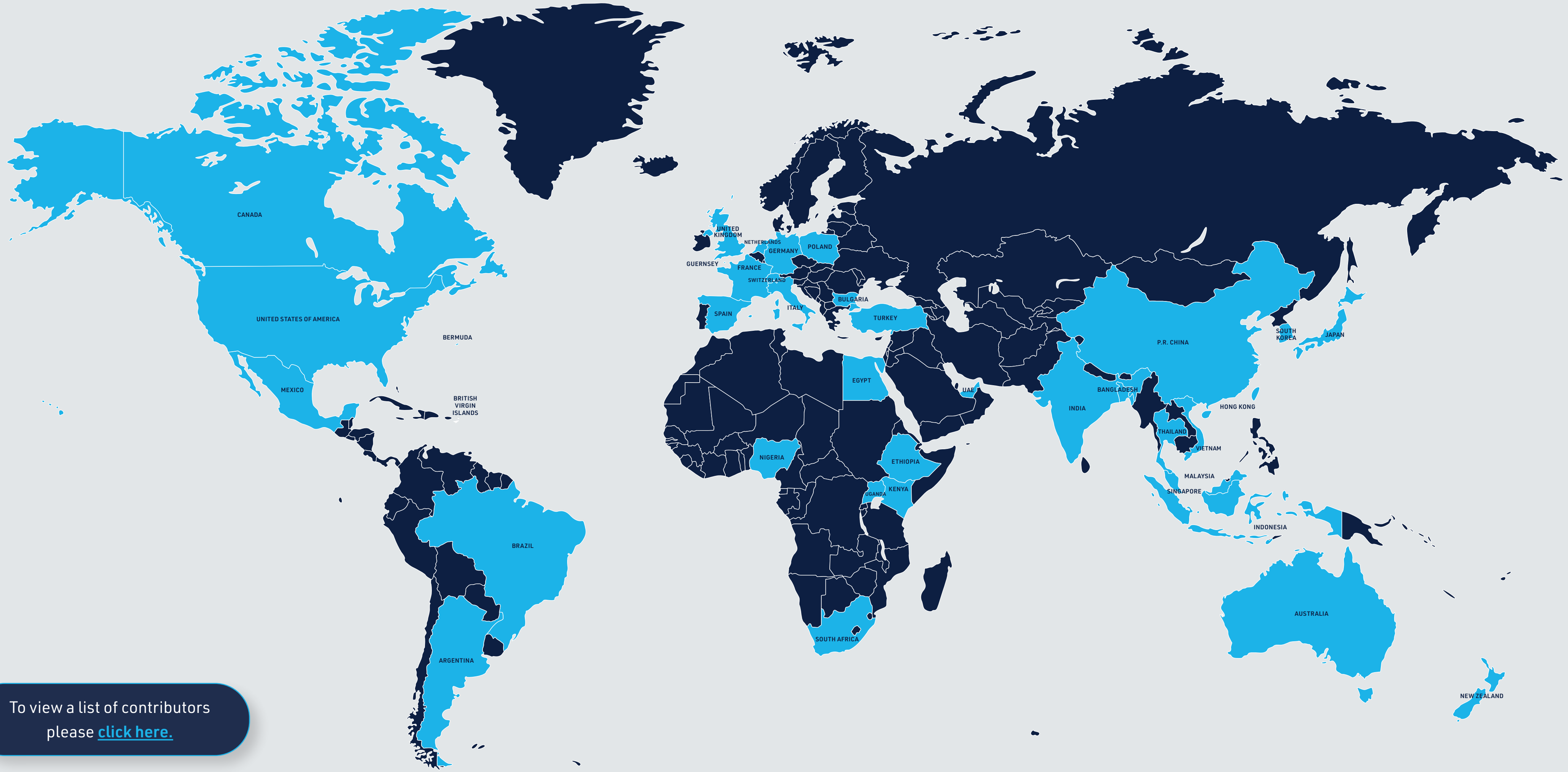
INSOL International

Global Guide: Measures adopted to support distressed businesses through the COVID-19 crisis

WORLD BANK GROUP



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The COVID-19 pandemic has had, and will likely continue to have, major financial repercussions across the globe. In many countries, the effects of reduced demand, disrupted supply chains and tighter liquidity are already causing significant financial distress for businesses – from large public entities to SMEs and informal traders – desperate to survive until the crisis subsides.

Many governments are introducing new financial, legal and regulatory measures in an effort to manage the economic effects of the crisis in an effective and timely manner. These measures continue to rapidly evolve as governments do their best to respond to the crisis.

INSOL International and the World Bank Group have jointly produced this Global Guide to highlight some of the primary measures that have been introduced in 38 countries as a response to the COVID-19 crisis (current as of April 10, 2020). We hope to add more countries to our interactive map in the near future and update existing contributions, as this is a "live" document.

The project leaders sincerely thank the contributors for providing these excellent country chapters in a comprehensive, cohesive manner within a very short period and greatly appreciate their valuable contributions.

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1. Government policy responses

1.1 General fiscal stimulus measures adopted

Following the Covid-19 outbreak, the Chinese Central Government has issued various control measures and special directives aimed at controlling the spread of the disease. These measures impact how companies operate in China. In addition, the Government at all levels, State Council, state-level ministries and agencies, as well as the provincial governments (including major municipal cities) have released measures to help companies to resume production.

To date, the Chinese Central Government has announced a number of economic policy responses designed to mitigate the impact of Covid-19 for businesses and individuals.

In China, most policies and aid measures have been introduced by local governments instead of the Central Government, and so vary from place to place. The individual measures of provinces and cities other than Beijing and Shanghai are not considered in this chapter.

1.2 Support for businesses

China is supporting businesses to manage challenges imposed by Covid-19 at both central government level and provincial government level; the measures include but are not limited to:

1.2.1 Central government level

- Improving the convenience of resumption of production and service, cancellation of unreasonable approvals, and resolute correction of unreasonable regulations that restrict the return of workers.[1]
- Increasing efforts to reduce burdens and stabilise positions. Speeding up the implementation of tax and fee reduction policies. Providing benefits to small and medium sized enterprises (SMEs) that do not lay off or that reduce layoffs. The benefit can be up to 100 per cent of the unemployment insurance premium paid by the enterprise and its employees in the previous year.
- Optimising the self-employment environment. Deepening the reform of 'separation of certificates and licences', promoting the 'reduce licences policy', simplifying approval processes, streamlining the registration procedures of residences (business premises), and allowing applicants to register by submitting the legal use certificates of premises.
- Financial support to enterprises.

1.2.2 Shanghai government level

Following the guidelines and instructions on resolutely winning the battle against epidemic prevention and control and fully implementing the decisions and arrangements of the Communist Party of China Central Committee and the State Council, Shanghai has adopted comprehensive measures to support business, as indicated in the 'Notice of the Shanghai Municipal People's Government on printing and distributing several policies and measures to prevent and control the epidemic situation and support the stable and healthy development of enterprises in Shanghai'.[2] The measures include but are not limited to:

- Granting financial support to enterprises by:

  – supporting enterprises in relation to epidemic prevention and control in public offerings, refinancings, mergers and acquisitions, issuing bonds, asset-backed securities, and so on;

  – encouraging the technological innovation of enterprises in relation to epidemic prevention and control to be listed on the science and technology innovation board;

  – encouraging venture capital and equity investment institutions to guide social capital to invest in the research and development and production of relevant medical equipment, vaccines and medicines; and

  – providing extensive support to enterprises with difficulties in working capital. Increasing credit support to tourism, accommodation and catering, wholesale and retail, transportation, logistics and warehousing, culture and entertainment, exhibitions, and other industries that are affected by epidemics by means of changing repayment arrangements, extending repayment periods, renewing loans without repayment of principal, and so on.

- Reducing the general burden on enterprises by:

  – relieving enterprises' rent on premises;

  – extending the period for tax return filing;

  – granting tax incentives to enterprises and individuals; and

  – exempting individually owned businesses from paying taxes on a regular and fixed-amount basis.

- Promoting the resumption of work and production of enterprises by:

  – putting a focus on the demands of various enterprises for the resumption of work and production and operation and strengthening the supply of epidemic prevention materials including gauze masks, thermometers, and disinfectants; and

  – cultivating and supporting the development of new technology enterprises as well as new business modes and formats. Increasing support for technological innovation vouchers for technology-oriented SMEs – by 2020, the upper limit of the accepted technological innovation vouchers is raised from CNY300,000 to CNY500,000.

1. http://www.gov.cn/zhengce/zhengceku/2020-03/20/content_5493574.htm
2. Hu Fu Gui [2020] No 3.

1.3 Supporting the flow of credit

The People's Bank of China (PBOC) has introduced a series of measures to provide reasonable and sufficient liquidity as well as financial services for epidemic prevention and control, resumption of production and to foster the development of real economy. As at 3 April 2020, PBOC has adopted and implemented the following key measures:[3]

- providing short-term liquidity up to RMB1.7 trillion – on the basis of cutting the required reserve ratio (RRR) for RMB deposits by 0.5 of a percentage point that released RMB800 billion at the beginning of the year, PBOC further announced targeted RRR cuts in March which released RMB 550 billion of long-term funds and finance for the purpose of inclusive finance; and
- providing tailored support for refinancing and re-discounting, and establishment of a special refinancing fund of RMB300 billion for epidemic prevention, with more than half to be invested in SMEs.

After the financial discount is taken into account, the interest cost borne by SMEs is less than 1.3 per cent. In addition to the above RMB300 billion, PBOC has added a new refinancing discount amount of RMB500 billion, lowered the interest rate of loans for agricultural support purpose by 0.25 of a percentage point, from the original 2.75 per cent to 2.5 per cent. PBOC has also used low-cost inclusive funds to support SMEs in key areas to resume production.

- Reducing the loan interest rate: on 30 March 2020, PBOC conducted reverse repurchase (repo) agreements which decreased the bid interest rate by 20 basis points. From 1 January 2020 to 3 April 2020 it fell by a total of 30 basis points.
- Arranging joint efforts of the financial system, PBOC urged large state-owned banks to increase their support for inclusive finance, implemented special credit support for policy banks, guided local banks to provide good services to grassroot organisations, and increase countercyclical adjustments.

1.4 Rent moratorium

Rent-related policies are generally formulated and issued by provincial governments instead of Central Government.

For example, Shanghai has issued such policies. Please refer to 'Rent exemptions' in Section 2.3 below for more details.

Rent exemption policies apply where state-owned enterprises (SOEs) are acting as lessors and non-SOEs, SMEs and companies engaging in production are acting as tenants. In such a set-up, the latter may be able to enjoy certain preferential treatment under those policies.

2. Legislative reforms impacting on stakeholders dealing with companies in financial distress

2.1 Employees

At-will employment arrangements are not recognised, and employees generally can only be terminated during their probation period, at the end of their employment contract, if they have violated the employment contract (provided they were warned and given ample opportunity to improve) or through negotiation. The Covid-19 crisis has not changed this basic rule. Similarly, payment reductions are not a privilege of the employer and generally are only possible through negotiations. An exception, however, is the newly enacted regulation relating to suspension of business operation as a result of Covid-19 (see below).

In addition, enterprises affected by Covid-19 and, as a result, suffering difficulties in business production and operation may, through consultation with their employees, adopt measures including adjusting salary, rotating work and shortening working hours, delaying payment of salaries, and other measures to stabilise employment, and avoid having to lay off employees. The emphasis here is negotiation. This cannot be a unilateral decision of the employer, but rather the result of a dialogue whereby the employer convinces the employees that these measures are required for the business's survival and in which the employer persuades the employees to agree to these measures.

In the wake of Covid-19 the Chinese Government has published specific rules to supplement the general rules and guide companies.[4]

2.1.1 Quarantine employees

Companies are not allowed to terminate employees who are unable to provide normal work due to Covid-19 virus infection, the Government's quarantine measures and the medical observation period (this applies equally to so-called 'dispatched contract' employees employed through a human resources agency). If a labour contract has expired during this period, it is extended until the end of the medical period, the medical observation period or the quarantine period imposed by the Government (as applicable). Payment of salary must continue during these periods in accordance with the standard in the labour contract.[5]

2.1.2 Redundancy for employees unwilling to work

If an employee is unwilling to return to work despite the employer meeting all requirements of a healthy working environment, the company through its labour union (if it has one) or directly (if there is no labour union) is required to discuss this with the employee and assure the employee of the prevention methods it is taking and the importance of returning to work. If the employee still refuses to return without reasonable cause after the patient persuading process, the enterprise may handle the labour relationship according to the law.[6] This does open the door to dismissal of the employee provided the general law and the labour

3. http://www.pbc.gov.cn/rmyh/3963412/3963426/4002107/index.html
4. 'Notice on how to handle labour relationship during the Covid-19 virus period', 24 January 2020, available at http://www.gov.cn/zhengce/zhengceku/2020-01/27/content_5472508.htm.'The opinions on stabilising labour relationship and supporting enterprises' resumption during the Covid-19 virus period', 7 February 2020, available at http://www.gov.cn/zhengce/zhengceku/2020-02/08/content_5476137.htm.
5. 'Notice on how to handle labour relationship during the Covid-19 virus period', 24 January 2020, available at http://www.gov.cn/zhengce/zhengceku/2020-01/27/content_5472508.htm.
6. 'The opinions on stabilizing labour relationship and supporting enterprises' resumption during the Covid-19 virus period', 7 February 2020, available at http://www.gov.cn/zhengce/zhengceku/2020-02/08/content_5476137.htm.

contract are followed.

2.1.3 Benefits for enterprises with lower layoff rate

SMEs can apply to refund 50 per cent of paid unemployment insurance premiums if the layoff rate is lower than 5.5 per cent or (in the case of enterprises with fewer than or equal to 30 employees) if the layoff rate is lower than 20 per cent.

2.1.4 Salary payment of enterprises suspending business operations

A rule released on 12 February 2020 deals with suspension of operations as a result of the Covid-19 crisis. According to a regulation released by the Ministry of Human Resources and Social Security, if an enterprise suspends business operations within a salary payment cycle, the enterprise is required to pay its employees' salaries according to the standard stipulated in the labour contract. However, if the suspension of operation period exceeds one cycle, if the employee continues to work during the suspension period (as his / her work is required even through suspension), the salary may be reduced to no less than the local minimum wage standard from the second salary cycle onwards. If the employee does not work during the suspension period (from the second salary cycle onwards), the enterprise is required to pay living expenses to the employee at a level determined in accordance with the standard prescribed by each province.[7] In terms of practical application, it is important to check with the local labour administration and to notify all employees.

Additionally, on 3 February 2020 the Local Government in Shanghai, for instance, adopted the following employee-related measures to help ease the economic repercussions resulting from Covid-19:[8]

- the Government confirmed that it will refund 50 per cent of the total amount of the unemployment insurance premiums actually paid by the employers and employees in the previous year provided these employers laid off few or no employees;
- for SMEs, the layoff rate will be added to no more than the control target of the unemployment rate in the urban survey of the previous year. The layoff rate refers to the number of employees which may be laid off by an employer without affecting the employers' eligibility to receive refunds on their paid unemployment insurance premiums;[9]
- for enterprises with fewer than or equal to 30 employees paying unemployment insurance by the end of 2019, the layoff rate will be increased to no more than 20;[10]
- the annual social insurance contributions (including medical insurance) will be adjusted from 1 July 2019 to 30 June 2020, whereby this is postponed for three months, and the annual social insurance contributions in 2019 will be postponed to 1 July 2020;
- those unable to join social security programmes or pay fees in time due to the epidemic are allowed to go through the process after the epidemic is over. If the employers fail to pay the social insurance premium during the period of the epidemic, after reporting to the competent department, those employers are allowed to pay the premium within three months after the termination of the epidemic. No overdue pay will be charged, and employees' records will not be affected;
- the enterprises in Shanghai who organise employees (including dispatched workers) to participate in various kinds of online vocational training programmes during the period of the coronavirus outbreak will enjoy a 95 per cent subsidy according to the actual training cost. This subsidy will be paid from the local education additional special fund in each district. Online commerce enterprises and platforms will receive similar benefits.

2.2 Lenders

In the following, we summarise measures published by authorities at the state level in China and at the local level in Shanghai to help ease some of the financial burden caused by Covid-19.

2.2.1 Central Government level

- The payment of fees for electricity, water and gas can be postponed, and the supply of these should be continued during the period of arrears.
- SMEs can apply for a certificate of force majeure if their foreign trade orders failed to be completed or were unable to be completed on time due to the epidemic.
- Loan interest rates will be reduced appropriately, and availability of credit loans and medium and long-term loans will be increased.[13]

2.2.2 Shanghai Government level

- The approval process for a loan application will be shortened for SMEs if they lost their income due to the epidemic.[14]
- The interest rate for loans shall not be more than 3.9 per cent.[15]
- The financing guarantee rate for new SME loan applications has been reduced to 0.5 per cent per year.[16]
- The Shanghai Council for the Promotion of International Trade will issue certificates of force majeure for enterprises that failed to or were unable to perform international trade contracts due to the epidemic.[17]
- Enterprises will not be listed on the 'black list' for behaviour, such as delayed delivery, delayed repayment of loans, and overdue performance of contracts, which was caused by their participation in epidemic prevention activities.[18]

7. http://www.mohrss.gov.cn/SYrlzyhshbzb/SYgundongxinwen/fybmrszxd/zcjc/zcjc_fwdx/202002/t20200212_359626.html
8. http://rsj.sh.gov.cn/201712333/xwfb/zxdt/01/202002/t20200203_1303016.shtml
9. 'Notice on stabilizing employment during the period of the coronavirus outbreak', 9 February 2020, available at http://rsj.sh.gov.cn/201712333/xwfb/zxdt/01/202002/t20200209_1303095.shtml.
10. Ibid.
11. 'Notice on helping SMEs to recover production during the period of the coronavirus outbreak', Article 3, 9 February 2020, available at http://www.gov.cn/zhengce/zhengceku/2020-02/10/content_5476684.htm.
12. Ibid Article 18.
13. Ibid Article 8.
14. 'Notice on stabilizing employment during the period of the coronavirus outbreak', 9 February 2020, available at http://rsj.sh.gov.cn/201712333/xwfb/zxdt/01/202002/t20200209_1303095.shtml.
15. 28 policies issued by Shanghai government to support enterprises, 8 February 2020, available at http://rsj.sh.gov.cn/201712333/xwfb/zxdt/99/202002/t20200210_1303107.shtml.
16. Ibid.
17. Ibid.
18. Ibid.

2.3 Third parties

For certain sectors that were severely affected by Covid-19 (e.g. transportation, restaurants / catering, tourism and accommodation), the loss carry-forward period has been extended from five to eight years.

Civil aviation companies are exempted from the civil aviation development fund.

Financial support for airlines (both foreign and domestic) operating international passenger flights between and from domestic destinations and overseas destinations includes a reward of RMB0.0176 per seat kilometre for a total flight and a reward of RMB0.0528 per seat kilometre for a solo flight.

Taxpayers are exempted from value-added tax (VAT) on income derived from public transportation services, living services (e.g. accommodation, catering / restaurants, education, medical services, and tourism), and courier delivery of residents' essential supplies.

For loans granted to SMEs from banks, the interest rate for central bank lending is reduced from 2.75 per cent to 2.5 per cent.

From 1 March 2020 to 31 May 2020, small-scale VAT taxpayers (including self-employed businesses and small enterprises) in Hubei Province will be exempted from VAT. The VAT rate for small-scale VAT taxpayers outside Hubei Province will be reduced from 3 per cent to 1 per cent.

Other local economic remedies include:

- deadlines for tax declarations of enterprises may be postponed;[19]
- social insurance payments may be postponed for three months;[20]
- online vocational training programmes during the period of the coronavirus outbreak will enjoy a 95 per cent subsidy according to the actual training cost;[21] and
- rent exemptions.

On 5 February 2020, Beijing Municipal People's Government announced several measures in response to Covid-19 infections to promote the sustainable and healthy development of SMEs.[22] According to the Beijing measures, regarding real estate in Beijing owned by SOEs and leased to SMEs to engage in production and operation activities, if such enterprises continue operating in accordance with government requirements or close operations in accordance with coronavirus prevention regulations with no or few layoffs, the rent for February will be exempted. For office buildings they will be given a 50 per cent reduction in rent for February 2020.

Pursuant to the 'Notice of the Shanghai Municipal People's Government on printing and distributing several policies and measures to prevent and control the epidemic situation and support the stable and healthy development of enterprises in Shanghai',[23] SMEs that lease operating property of SOEs in Shanghai (such as various development zones and industrial parks, entrepreneurial bases, and technology business incubators) to engage in production and operation activities are exempted from February and March rent.[24]

3. Legislative reforms for companies in financial distress

3.1 Revision of obligations of directors

No measures have been adopted to date in relation to amendments of directors' duties. For the time being, all existing unmodified duties continue to apply, though this may change.

3.2 Adoption of pre-insolvency measures

No pre-insolvency measures have been created in China as part of the Government's response to Covid-19.

3.3 Changes to moratoria

No specific moratoria in relation to Covid-19 have been adopted in China to date.

3.4 Other changes to formal and informal insolvency processes

No revisions to formal and informal insolvency proceedings have been adopted to date.

4 Financial and regulatory measures

4.1 Financial conduct authorities

China Securities Regulatory Commission (CSRC) has introduced several measures together with other regulators to further strengthen financial support for epidemic prevention and control and has implemented the following measures until April 2020 (with no specific expiry date given by CSRC).[25]

Improving service efficiency for bond issuance and encouraging enterprises to submit online application materials: in order to ensure the stable operation of financial markets, CSRC has increased support efforts and tried to establish 'green channels' for those areas severely affected by the epidemic. The promotion of remote filing and registration has also helped enterprises to operate normally without using face-to-face communication.

- *Adjusting regulatory matters such as enterprise information disclosure in a flexible way:* enterprises affected by the epidemic may have difficulties in disclosing their annual reports for 2019 or quarterly reports for the first quarter of 2020 within the statutory period. CSRC will properly arrange the extension of time in such circumstances and appropriately lower the relevant regulatory standards for risk control indicators for securities and fund futures operation institutions in areas seriously hit by the epidemics.

19. Ibid.
20. http://rsj.sh.gov.cn/201712333/xwfb/zxdt/01/202002/t20200203_1303016.shtml
21. Ibid.
22. Jing Zheng Ban Fa [2020] No 7.
23. Hu Fu Gui [2020] No 3.
24. 28 policies issued by Shanghai government to support enterprises, 8 February 2020, available at http://rsj.sh.gov.cn/201712333/xwfb/zxdt/99/202002/t20200210_1303107.shtml.
25. 'Notice on further strengthening financial support for the prevention and control of the epidemic caused by novel coronavirus-infected pneumonia', 31 January 2020, available at http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3965911/index.html.

- *Appropriately extending the time limit for handling relevant matters on the capital market*: based on the fact that it is difficult for enterprises to carry out mergers and acquisitions, especially on-the-spot investigations, under such epidemic conditions, CSRC has decided to extend the validity period of financial information for the administrative licence for mergers, acquisitions and reorganisations and the time limit for issuing a notice of convening the general meeting of shareholders after the disclosure of a reorganisation plan.
- Reducing and exempting certain fees for listing of companies in areas seriously affected by the epidemic. In particular, with respect to Hubei province, CRSC has decided to exempt the 2020 annual listing fees and listing fees payable by listed companies to the local stock exchanges.

4.2 Central bank (PBOC)

In order to guarantee the normal financial service needs of enterprises and residents in the industries greatly affected by the epidemic, the PBOC has conducted a series of measures. Up to April 2020, PBOC had introduced the following key measures:[26]

- *Maintaining reasonable and adequate liquidity to ensure the stable operation of interest rates on the money market and maintain adequate liquidity*: PBOC has used various monetary policy tools such as open market operations, standing lending facilities, reloans, and rediscounts.
- *Increasing credit support for fields related to epidemic prevention and control*: PBOC has encouraged financial institutions to strengthen their service with relevant hospitals, medical research institutions and related enterprises and to provide adequate credit resources for them, so that the financing needs of the enterprises can be met and adequate medical materials can be produced.
- *Encouraging financial institutions to provide differentiated preferential financial services for industries and enterprises*: regarding the industries seriously affected by the epidemic, the financial institutions shall not blindly call in their loans in advance or suspend or delay their funding for loans. If an enterprise affected by the epidemic has difficulty in making repayment when due, an extension may be granted, or the loan may be renewed.
- *Improving the efficiency of financial services during the epidemic period*: PBOC has encouraged financial institutions to establish and initiate fast examination and approval channels, simplify procedures and effectively improve business handling efficiency. In the regions under traffic control, financial institutions are to use innovative methods like holding online conferences to ensure the speedy approval of loans for enterprises.
- *Supporting development banks and policy banks to increase their credit support*: PBOC has encouraged the said banks to adjust credit arrangements and increase financial support to epidemic prevention-involved enterprises having difficulties in market-oriented fund-raising.
- *Strengthening credit support in key fields such as manufacturing, micro and small enterprises and private enterprises*: PBOC has required financial institutions to increase support to micro and small enterprises and private enterprises, so that such enterprises can get adequate loans with lower interest.

4.3 Other regulators

China Banking and Insurance Regulatory Commission (CBIRC), which supervises the banking and insurance institutions, has also introduced several measures to promote the business. Pursuant to the 'Notice on strengthening financial services for coordinated resumption of work and production across the industrial chain', the following measures have been implemented:

- *Strengthening financial support for core enterprises in the supply chain*: these companies are supported in appropriate ways by financing such as loan credit, bonds and other means, as well as assisting SMEs in the upstream and downstream sectors of these industries to solve problems such as tight liquidity.
- *Optimising financial services for upstream and downstream enterprises in the supply chain*: credit support for SMEs in this area will be enhanced through accounts receivable financing, purchase contract financing, advance payment financing, inventory and warehouse receipt pledged financing, and so on.
- *Supporting policies such as temporarily postponing repayment of principal and interest on loans to SMEs will be further implemented*: insurance institutions are encouraged to further expand the coverage of short-term export credit insurance. In addition, efforts are made to improve financial service technology in the supply chain.

5. Specific measures for micro and small businesses (specifically sole proprietorships)

The existing Enterprise Bankruptcy Law (EBL) only applies to enterprises, including legal persons and unincorporated organisations but excluding natural persons. No legislative reform of the EBL has been announced during the period of the Covid-19 outbreak.

6. Measures introduced by the courts to deal with increased insolvency cases

6.1 Increased e-filings and virtual hearings

According to a Supreme People's Court notice,[27] Chinese courts have utilised and made full use of information technology in litigation since the outbreak of Covid-19.

From February to March, Chinese courts at various levels have received nearly 550,000 cases online across the country, made over 440,000 payments online, held over 110,000 court sessions online, and conducted online mediation more than 200,000 times. The number of exchanges of evidence and electronic deliveries

26. Ibid.
27. http://english.court.gov.cn/2020-03/31/content_37534820.htm

made online was more than 130,000 and 1.67 million, respectively.

Insolvency cases are no exception. According to the Bankruptcy Court of the Third Intermediate People's Court of Shanghai (Bankruptcy Court Shanghai),[28] it has actively used network means to convene a meeting of bankruptcy creditors and achieved a good result. Since the end of 2019 until February 2020, 61 online creditor meetings have been held by the Bankruptcy Court Shanghai, accounting for 75 per cent of the total number of creditor meetings held during the same period. More than 1,400 creditors participated in the meetings via the internet, with an attendance rate of 87 per cent.

6.2 Increased hiring of court staff

To date, no resources have been committed by the Central Government or provincial governments to hire additional court staff as part of the Covid-19 response.

6.3 Increased use of out-of-court mechanisms

No mandatory measures have been introduced, but all courts are actively encouraging parties to seek to resolve matters in general (i.e. not specific to insolvency) by consent and to consider telephone or videoconference mediations if an immediate resolution cannot be reached.

7. Other pending reforms

There are no other pending reforms at present.

28. http://www.hshfy.sh.cn/shfy/gweb2017/xxnr.jsp?pa=aaWQ9MjAxNTg0MjcmeGg9MSZsbWRtPWxtNDYwz&zd=xwxx

1. Government policy responses

1.1 General fiscal stimulus measures adopted

To date, the Swiss Federal Council (SFC) has announced a number of economic policy responses designed to mitigate the impact of Covid-19 for businesses and individuals with a combined value of CHF60 billion, amounting to approximately 8.6 per cent of Switzerland's GDP.[1] In addition, based on the Swiss Epidemic Act and the constitutional emergency competence, a series of Emergency Ordinances have been passed which will be outlined in the respective sections below.

The SFC's economic response is designed to support companies, in particular the large number of small and medium sized enterprises (SMEs)[2] in the country as well as other target groups. It aims to stabilise the economy, avoid insolvencies and redundancies, secure wages and support the self-employed.

Policies and measures are being introduced mostly at federal level but also at cantonal level, and this is expected to continue as the Covid-19 crisis evolves. The individual cantonal and municipality measures are not considered in this chapter.

1.2 Support for businesses

The SFC has been providing financial assistance to Swiss businesses to manage cash flow challenges and retain employees through the following initiatives:[3]

- *Rapid and unbureaucratic support* for the business community: specifically, on 13 March 2020, CHF10 billion was granted as emergency aid and compensation for short-time working. The primary objective is to maintain wage payments. Specifically:

  (i) up to CHF8 billion can be drawn from the unemployment insurance fund for wage payments.[4]

The waiting period for entitlement has been abolished. Provisions have also been adopted to streamline the processing of claims and the payment of benefits.

For further detail, refer to Ordinance[5] and its modification;[6]

  (ii) up to CHF1 billion of financial support is provided to companies particularly affected by Covid-19;

  (iii) CHF580 million of bank loans (secured by guarantee societies) will be available for SMEs in financial difficulty; and

  (iv) an amount not exceeding CHF4.5 million can be requested to compensate for losses related to export promotion activities (e.g. trade fairs) of the official association Switzerland Global Enterprise (S-GE).[7]

- Additional measures concerning short-time working and simplification of procedures, determined on 25 March 2020 to include:

  (i) *Relaxation of the obligation to notify vacancies*:[8] this obligation and the relevant tasks and obligations of employers and public employment services are temporarily abolished in order to simplify recruitment procedures in sectors such as medicine, pharmacy, agriculture or logistics.[9]

  (ii) *Period of notice of short-time working:*[10] The employer is not required to observe a period of notice before claiming compensation for reduced working hours for employees. Notice of reduced working hours may also be given by telephone.[11]

  (iii) *Duration of short-time working:*[12] the period during which a reduction in working hours may be authorised is extended to six months from the current three-month period.[13]

  (iv) *Measures in the area of occupational pension plans:*[14] employers can temporarily use the contribution reserves they have accumulated to pay employees' LPP contributions. This measure is intended to help employers overcome liquidity shortfalls. It does not have any negative effects for employees: the employer continues to deduct the employees' share of contributions from their salary as usual and the pension fund credits the entire contribution in their favour.

  Provision of a comprehensive package:[15] this package consists of immediate aid funds to cultural organisations (CHF280 million),[16] professional and voluntary sport organisations (CHF100 million)[17] as well as the tourism and hotel industry (CHF5.5 million).[18]

  Deferral of social security contributions:[19] companies hit by the Covid-19 crisis are able to seek a temporary deferral of the payment of social insurance contributions (AVS, AI, APG, AC) without any interest. They will also be able to adjust the usual amount of the advance payments made in respect of these social insurance contributions in the event of a significant fall in their sum of salaries. These measures also apply to self-employed persons who face a decline in turnover.

Liquidity reserve for tax purposes and for suppliers to the Federal Government:[20] companies will be able to extend payment deadlines without being subject to interest on arrears while receiving accelerated payments when procuring to government bodies. The interest rate will be lowered to 0 per cent for VAT and direct federal taxes, certain customs duties, special consumption taxes and incentive taxes between 21 March 2020 and 31 December 2020; and no interest will be charged during this period.[21]

1. State Secretariat for Economic Affairs (seco), 'Coronavirus: A package of measures to mitigate economic consequences', 3 March 2020, available at https://www.seco.admin.ch/seco/fr/home/Arbeit/neues_coronavirus.html; and Federal Statistical Office, 'Gross domestic product', available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78437.html; https://www.seco.admin.ch/seco/fr/home/wirtschaftslage---wirtschaftspolitik/Wirtschaftslage/bip-quartalsschaetzungen-/daten.html.
2. 99.7 per cent of all companies in Switzerland are SMEs https://www.bfs.admin.ch/bfs/de/home/statistiken/industrie-dienstleistungen/unternehmen-beschaeftigte/wirtschaftsstruktur-unternehmen/kmu.html.
3. SFC, 'SFC strengthens measures against the coronavirus to protect the health of the population and supports the affected sectors', 13 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78437.html.
4. Ibid.
5. Ordinance on measures in the field of unemployment insurance in relation to coronavirus (Covid-19) (Ordinance Covid-19 unemployment insurance), 20 March 2020, https://www.admin.ch/opc/fr/official-compilation/2020/877.pdf.
6. Ordinance on Measures in the field of unemployment insurance in relation to coronavirus (Covid-19) (Ordinance Covid-19 unemployment insurance), modified on 25 March 2020, https://www.admin.ch/opc/fr/official-compilation/2020/1075.pdf.
7. SFC, 'SFC strengthens measures against the coronavirus to protect the health of the population and supports the affected sectors', 13 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78437.html.
8. SFC, 'Coronavirus: additional measures to support the economy', 25 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques/communiques-conseil-federal.msg-id-78573.html.
9. Ordinance on measures concerning the obligation to advertise vacancies in connection with the coronavirus (Ordinance Covid-19 Obligation to advertise vacancies), SR 823.15, 25 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200865/index.html.
10. SFC, 'Coronavirus: additional measures to support the economy', 25 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78437.html
11. Ordinance on Measures in the field of unemployment insurance in relation to coronavirus (Covid-19) (Ordinance Covid-19 unemployment insurance), modified on 25 March 2020, https://www.admin.ch/opc/fr/official-compilation/2020/1075.pdf.
12. SFC, 'Coronavirus: additional measures to support the economy', 25 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques/communiques-conseil-federal.msg-id-78573.html.
13. Ordinance on Measures in the field of unemployment insurance in relation to coronavirus (Covid-19) (Ordinance Covid-19 unemployment insurance), modified on 25 March 2020, https://www.admin.ch/opc/fr/official-compilation/2020/1075.pdf.
14. Ordinance on the use of employer contribution reserves for the payment of employees' contributions to occupational benefit plans in connection with coronavirus (Ordinance Covid-19 occupational benefit plans), SR 831.471, 25 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200863/index.html.
15. SFC, 'Coronavirus: a package of measures to mitigate economic consequences', 20 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78515.html.
16. Ordinance on the mitigation of the economic consequences of coronavirus (Covid-19) in the culture sector (Covid Ordinance in the Culture Sector), SR 442.15, 20 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200833/index.html.
17. Ordinance on accompanying measures in the field of sport to mitigate the consequences of the measures taken by the Federal Government to combat the coronavirus (Ordinance Covid-19 sport), SR 415.021, 20 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200815/index.html.
18. Ordinance on the temporary waiver of moratory interests for late payment of taxes, incentive taxes and customs duties and on the waiver of repayment of the loan by the Swiss Association of hotel credit, SR 641.207.2, 20 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200842/index.html.
19. SFC, 'Coronavirus: a package of measures to mitigate economic consequences', 20 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78515.html.
20. Ibid.
21. Ordinance on the temporary waiver of moratory interests for late payment of taxes, incentive taxes and customs duties and on the waiver of repayment of the loan by the Swiss Association of hotel credit, SR 641.207.2, 20 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200842/index.html.

1.3 Supporting the flow of credit

The SFC, the Swiss National Bank (SNB) and the Swiss Financial Market Supervisory Authority (FINMA) have taken coordinated action to support the flow of credit in the Swiss economy, in particular for SMEs. These initiatives include a guarantee programme of Covid-19 bridging loans up to a maximum of 10 per cent of their annual turnover and up to a maximum amount of CHF20 million (provided by the banks and joint and severally guaranteed by the Federal Government and guarantee societies) in full or in part to help companies overcome their liquidity problems).[22] In particular, the programme includes the two following credit options depending on whether the loan amount is higher or lower than CHF500,000:

- Bridging loans not exceeding CHF500,000 are 100 per cent guaranteed by the Federal Government and interest-free. They can be requested by SMEs at their main bank. A fast and unbureaucratic procedure aims to provide SMEs with rapid access to credit in order to alleviate the liquidity problems resulting from Covid-19.[23] In order to be entitled to receive a loan, the companies must: (i) have been established prior to 1 March 2020; (ii) not be in bankruptcy or composition proceedings or liquidation at the date of submission of the request; (iii) economically be considerably affected by the Covid-19 pandemic, in particular with regard to their turnover; and (iv) on the date of submission of the request not yet have obtained liquidity aids under the emergency law regulations applicable to the cultural and sport sector.[24]
- Bridging loans in excess of CHF500,000 are 85 per cent guaranteed by the Federal Government and the granting bank participates at a rate of 15 per cent. Since these loans may in total amount up to CHF20 million per company, they require further scrutiny by the banks. The interest rate for these credits is currently set at 0.5 per cent.[25]

The granting of such bank loans is excluded if (i) the company's turnover exceeds CHF500 million, or (ii) the borrower uses the funds to make new investments in fixed assets that are not replacement investments. [26]

During the loan period, the following acts of the borrower are not permitted: (i) the distribution of dividends and directors' fees and the repayment of capital contributions; (ii) the granting of active loans or the refinancing of shareholder loans which are set up as active loans, with the exception of refinancing account overdrafts accumulated since 23 March 2020 with the bank granting the loan; (iii) the repayment of intra-group loans; and (iv) the transfer of the funds to a directly or indirectly connected affiliate company which does not have its registered seat in Switzerland.[27]

Further, on 3 April 2020, the SFC decided to extend the Covid-19 bridge loan programme. In light of the high demand, it made a proposal to the Swiss Parliament to increase the Federal Government commitment from CHF20 billion to CHF40 billion.[28]

On 25 March 2020, the regulators FINMA and SNB announced their support of the Covid-19 loan programme initiated by the SFC. The security provided by the Federal Government allows the involved banks to grant these credits with little risk. At the same time, SNB's newly established facility ensures that the banks are able to refinance these credits and therefore maintain their liquidity position. FINMA expects the banks to make full use of this possibility, which will allow the existing or newly acquired surplus liquidity in the banking system to be used to supply further credit to the real economy or to be used by the banks as a buffer.[29]

Also, on 27 March 2020, the SFC approved the SNB proposal to deactivate the countercyclical capital buffer without delay. This measure increases the scope for banks to grant loans, enables them to better meet the credit and liquidity needs of households and businesses as well as supporting the package of measures decided by the SFC to alleviate the economic consequences of Covid-19.[30] FINMA also shares the SNB's assessment that, in light of the current market situation, the countercyclical capital buffer which is intended for the mortgage market should be lifted. The rationale is that the mortgage market will not heat up further at the moment. FINMA therefore supported the request made by the SNB to the SFC.[31]

1.4 Rent moratorium

On 27 March 2020, the Swiss Federal Council [32] issued the Ordinance regarding the mitigating of the effects of the coronavirus in rent and lease matters (Covid-19-Ordinance Rent and Leasing)[33] which provides for extensions of termination notice periods in relation to tenants that fall behind with their rent payments due to the government response to Covid-19. This measure – which is not a moratorium per se but rather simply prevents tenants from being evicted due to the non-payment of rent – is discussed in further detail in Section 3.2 below. Apart from these temporary measures, the tenants and landlords have been encouraged to attempt informal workouts regarding outstanding commercial (and residential) rental obligations (outside of a formal insolvency process).

2. Legislative reforms impacting on stakeholders dealing with companies in financial distress

2.1 Employees

The SFC has adopted a package of measures aimed at safeguarding jobs, guaranteeing wages and supporting the self-employed. Apart from the short-time working reforms referred to in Section 1.2 above, these measures include the following.

2.1.1 Compensation for loss of earnings of self-employed persons[34]

Self-employed persons who suffer a loss of earnings due to government measures in connection with the combat of Covid-19 are entitled to compensation if they do not already receive remuneration or insurance benefits. Compensation is provided in the following cases: closure of schools, quarantine ordered by a doctor, and closure of an independently run establishment open to the public. The measure also applies to independent artists who have suffered a loss of earnings because their event was cancelled. The allowances are settled on the basis of a daily allowance for loss of earnings.[35]

22. SFC, 'Coronavirus: the SFC adopts an emergency ordinance for granting of loans secured by a joint and several guarantee from the Federal Government', 25 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-78572.html.
23. Ibid.
24. Ordinance on the granting of credits and joint and several guarantees due to the coronavirus (Ordinance on joint and several guarantee related to Covid-19), Article 3, SR 951.261, 25 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200869/index.html.
25. Ibid Article 4.
26. Ibid.
27. Ibid.
28. SFC, 'The SFC increases the volume of loans granted as liquidity assistance to CHF 40 billion', 3 April 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques/communiques-conseil-federal.msg-id-78684.html.
29. FINMA supports the SFC's liquidity package and rolls out further measures, Media Release, 25 March 2020, available at https://finma.ch/en/news/2020/03/20200325-mm-garantiepaket/.
30. SFC, 'Coronavirus: SFC approves deactivation of the countercyclical capital buffer', 27 March 2020, available at https://www.admin.ch/gov/fr/accueil/documentation/communiques/communiques-conseil-federal.msg-id-78604.html.
31. FINMA supports the SFC's liquidity package and rolls out further measures, Media Release, 25 March 2020, available at https://finma.ch/en/news/2020/03/20200325-mm-garantiepaket/.
32. SFC, Media Release, 27 March 2020, available at https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78605.html.
33. SFC, Ordinance regarding the mitigating of the effects of the coronavirus in rent and lease matters, SR 221.213.4, 27 March 2020, available at https://www.admin.ch/opc/de/classified-compilation/20200890/index.html.
34. Ordinance on measures in the event of loss of earnings in connection with the coronavirus (Ordinance on loss of gain Covid-19), SR 830.1, 20 March 2020, available at https://www.admin.ch/opc/fr/classified-compilation/20200841/index.html.
35. Ibid.

2.1.2 *Earnings loss allowances for employees*[36]

Parents who have to interrupt their professional activity to take care of their children due to the Covid-19 restrictions are entitled to compensation. The same applies in the case of interruption of work due to a quarantine ordered by a doctor.

The earning-loss allowances for self-employed persons and employees are examined and paid on the basis of the existing system of loss of earnings allowances in the event of mandatory military service and maternity. Such allowances correspond to 80 per cent of the regular salary and are capped at CHF196 per day.[37]

2.2 Lenders

No specific measures have been adopted by the Federal Government other than the credit facilitation measures described in Section 1.3 above.

3. Legislative reforms for companies in financial distress

3.1 Revision of obligations of directors and managers

No modifications of the obligations of directors and managers have been adopted to date, but it is expected that the SFC will announce such changes soon (see Section 7 below).

3.2 Adoption of any other pre-insolvency measures

The SFC is aware of the risk of arrears in the payment of rent for residential and commercial premises due to the Covid-19 outbreak.

Hence, the Covid-19-Ordinance Rent and Leasing[38] entered into force on 28 March 2020 and is valid until 31 May 2020. Pursuant to the Ordinance, the deadline of Article 257d paragraph 1 of the Swiss Code of Obligations (CO) in relation to arrears of payment of residential and commercial rents is extended from 30 days to 90 days. This applies to payment arrears in connection with the combat against coronavirus and to rents due between 13 March and 31 May 2020.

At the same time, the Covid-19-Ordinance Rent and Leasing extends the deadline for payment of rent due under Article 282 paragraph 1 CO from 60 to 120 days. As a further immediate measure, the Ordinance Rent and Leasing extends the notice period for furnished rooms and parking spaces in accordance with Article 266e CO from two weeks to 30 days.

Additionally, the SFC explicitly encourages landlords and tenants to proactively work together informally during this unprecedented time and to agree to rental reductions or waivers and other temporary lease amendments to support tenants impacted by Covid-19 business disruptions while also taking into account the financial pressure landlords may be under. On a related note, the SFC has set up a task force consisting of the administration, tenants' and landlords' organisations, the real estate industry as well as cities and cantons in order to propose further measures to the SFC if necessary.

3.3 Changes to the insolvency process – enhanced moratoria

3.3.1 *Stay of enforcement*

On 18 March 2020, the SFC[39] issued the Ordinance on the legal standstill in accordance with Article 62 of the Swiss Federal Act on Debt Enforcement and Bankruptcy (DEBA) (Legal Standstill Ordinance).[40] For the first time since the First World War, the Legal Standstill Ordinance provides for a temporary stay on enforcement in relation to all debt enforcement acts by debt collection offices, supervisory authorities and bankruptcy courts in the whole territory of Switzerland,[41] except for seizure proceedings and other urgent debt collection acts (Article 62 in conjunction with Article 56 DEBA). In particular, the forbidden enforcement acts include the service of orders for payment, the removal of debtor's opposition to such orders (granting of 'Rechtsöffnung'), the attachment of assets of the debtor, the liquidation of debtor's assets, the bankruptcy warning and the opening of bankruptcy proceedings. Creditors may still submit debt collection requests, but the enforcement authorities will only proceed with them after the end of the standstill.

The Legal Standstill Ordinance will be effective until 19 April 2020.

However, substantive deadlines, such as the statute of limitation according to the CO, are not affected by the legal standstill. Put another way, claims still become payable since the Federal Government's measure for the time being only keeps creditors from enforcing their claims. Therefore, subject to the request of any new moratorium as per Section 7.2 or 7.3 below, once the standstill period expires (i.e. after 19 April 2020), debtors must expect to face debt enforcement proceedings or summonses to pay, as claims will continue to accrue due during the stay period. In addition, based on Article 190 DEBA, creditors may then even be able to request the opening of bankruptcy proceedings without prior debt enforcement proceedings provided that the debtor has suspended payments and is objectively illiquid. For this reason, debtors facing financial difficulties should consider timely actions such as the request of a moratorium before the end of the standstill.

Also, it is important to emphasise that the current suspension of enforcement actions initiated by creditors against debtors does not relieve the board of directors and management of Swiss companies from their own obligation to file for bankruptcy in the event of over-indebtedness (see Section 7.1 below).

3.3.2 *Other changes to formal and informal insolvency processes*

No additional changes to formal and informal insolvency processes as part of the response to Covid-19 have been adopted in Switzerland to this date, but such amendments are in consideration by the SFC at the time of writing (see Section 7 below).

36. Ibid.
37. Ibid.
38. See Section 1.4 above.
39. https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78482.html
40. SFC, Ordinance on the legal standstill in accordance with Article 62 of the Swiss Federal Code on Debt Enforcement and Bankruptcy, SR 281.241, 18 March 2020, available at https://www.admin.ch/opc/de/classified-compilation/20200804/index.html.
41. In the past hundred years since the First World War, the legal standstill was only applied for certain limited areas such as the canton of Valais which was severely affected by floods in 1993.

4. Financial and regulatory measures

4.1 Broader financial sector measures implemented by regulators

4.1.1 Financial conduct authorities

FINMA

On 25 March 2020, the FINMA has explicitly supported the package of measures adopted by the SFC and has especially welcomed the rapid and unbureaucratic supply of liquidity to the real economy via the banks (see Section 1 above). In order to help maintain the current robustness of the Swiss financial institutions, FINMA has called on the latter to adopt a prudent distribution policy.[42]

On 31 March 2020, the regulator provided the banks with clarifications for dealing with the government-backed Covid-19 loans within the framework of the capital and liquidity requirements including temporary exemptions in relation to the risk distribution and the leverage ratio. FINMA has also provided information about the expected credit loss approach under International Financial Reporting Standard 9 and its application in the context of the Covid-19 crisis. [43]

FINMA has also reiterated the fact that the capital freed up through this relief in the leverage ratio calculation is not to be distributed. For banks whose shareholders approved 2019 related dividends or other similar distributions after 25 March 2020, or who plan to seek such shareholder approvals, the capital relief will be reduced by the amount of the said distributions.[44]

Competition Commission (COMCO)

The COMCO monitors compliance with antitrust laws in Switzerland during the Covid-19 crisis, remains active and prevents violations of competition law. The COMCO is aware that particular times call for particular measures. Antitrust law is not applicable when governments and public authorities order measures that restrict competition to combat the crisis. Nevertheless, private companies must respect the competition framework even if the crisis may lead to an increased need for cooperation.[45]

4.1.2 National bank (SNB)

As outlined in Section 1.3 above, the SNB has supported SFC's package of measures, especially the supply of liquidity to the real economy via the Covid-19 bank loans. In this context, the SNB has introduced the new SNB Covid-19 refinancing facility (CRF). This measure is aimed at strengthening the supply of credit to the Swiss economy by providing the banking system with additional liquidity. There is no upper limit on the amounts available under the CRF, and drawdowns can be made at any time. Under the CRF, the SNB can also conduct additional refinancing transactions in order to supply the banking system with further liquidity if required.[46]

4.2 Other specific measures

According to Article 6a of Ordinance 2 Covid-19, in the case of company meetings, the organiser may, regardless of the probable number of participants and without complying with the period of notice for convening meetings, order the participants to exercise their rights exclusively: a) in writing or online; or b) through an independent proxy appointed by the organiser. Notification of the order must be given in writing or published online no later than four days before the event.[47]

5. Specific measures for micro and small businesses (sole proprietorships)

5.1 Reforms adopted for personal bankruptcy

The emergency measures described in Sections 3.2 and 3.3 above also apply to individual debtors.

6. Measures introduced by the courts to deal with increased insolvency cases

Various measures designed to allow for greater procedural flexibility have been adopted in Switzerland in an effort to manage the impact of Covid-19. These measures are not designed to deal with an influx of cases per se. Rather, the new court measures are designed to ensure the smooth functioning of the judicial system in times of crisis, to promote responsible 'social distancing' in line with requirements and guidelines of the Federal Office of Public Health (BAG) and to allow the courts, attorneys and parties to adapt to the new environment and circumstances. To that end, some of the more flexible court processes adopted since March include:

- On 19 March 2020, the Swiss Federal Supreme Court[48] has decided to suspend the deadlines in pending proceedings from 19 March 2020 until at least 19 April 2020. This applies in particular to submissions of statements and making cost payments.
- On 20 March 2020, the SFC has issued the *Ordinance regarding the standstill of deadlines in civil and administrative proceedings for the maintenance of justice in connection with the coronavirus (Covid-19)*[50] which provides for judicial holidays in civil and administrative matters from 21 March 2020 to 19 April 2020. The court holidays concern the federal and cantonal courts and do not apply to proceedings which, under current law, do not normally benefit from judicial vacations, such as urgent matters and criminal proceedings. In such cases, extensions must still be requested.

Additionally, some cantonal and district courts have decided to postpone non-urgent court hearings and to allow for more flexibility when it comes to requesting (e.g. e-filings) and granting of extensions of court deadlines.

6.1 Increased hiring of court staff

To date, no resources have been committed by the Federal Government to the hiring of additional court staff as part of the Covid-19 response. However, various cantonal governments see a need for that with respect to the expected increase in insolvency filings as per Section 7 below.

42. FINMA supports the Federal Council's liquidity package and rolls out further measures, Media Release, 25 March 2020, available at https://finma.ch/en/news/2020/03/20200325-mm-garantiepaket/.
43. FINMA Surveillance Communication 02/2020. Temporary exemptions for banks due to the Covid-19 crisis, 31 March 2020, available at https://finma.ch/en/news/2020/03/20200331-meldung-finma-aufsichtsmitteilung-02-2020/.
44. Ibid.
45. COMCO, 'Antitrust law applies during coronavirus crisis', Media Release, available at https://www.weko.admin.ch/weko/fr/home/actualites/communiques-de-presse/nsb-news.msg-id-78586.html.
46. Swiss National Bank sets up SNB Covid-19 refinancing facility and requests deactivation of countercyclical capital buffer, Media Release, 25 March 2020, available at https://www.snb.ch/en/mmr/reference/pre_20200325/source/pre_20200325.fr.pdf.
47. Ordinance 2 on Measures to Control Coronavirus (Covid-19) (Ordinance 2 Covid-19), SR 818.101.24, modified on 16 March 2020, available at https://www.admin.ch/opc/en/classified-compilation/20200744/index.html.
48. Swiss Federal Supreme Court, Media Release, 19 March 2020, available at https://www.bger.ch/files/live/sites/bger/files/pdf/de/Information_Anwaelte_Fristen_coronavirus_Internet_d-1.pdf.
49. SFC, Media Release, 20 March 2020, available at https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen/bundesrat.msg-id-78502.html.
50. SFC, Ordinance regarding the standstill of deadlines in civil and administrative proceedings for the maintenance of justice in connection with the coronavirus (Covid-19), SR 173.110.4, 20 March 2020, available at https://www.admin.ch/opc/de/classified-compilation/20200834/index.html.

6.2 Increased use of out-of-court mechanisms

No mandatory measures have been introduced to date, but of course parties are encouraged to seek to resolve matters by consent. For example, as noted in Section 3.2 above, landlords and tenants have been encouraged by the SFC to refrain from enforcing their strict legal rights and to display flexibility, latitude and understanding in an unprecedented time of hardship for business impacted by Covid-19.

7. Other pending reforms

According to the relevant Media Release,[51] the SFC admits and is aware that the general stay of enforcement as per Section 3.3.1 above does not constitute a suitable longer-term instrument for dealing with the economic repercussions caused by the Covid-19 protection measures (particularly the shutdown of shops and restaurants).

The reason for this is threefold. First, it may well be true that the current legal standstill is partly in the interest of all debtors since it allows them to temporarily bridge liquidity shortages, but the granted breathing space from creditor actions does not relieve the directors and managers of the debtors from their obligation to file for bankruptcy in the event of over-indebtedness. Secondly, the existing measures in place could harm creditors which, as a result of the stay of enforcement, face a liquidity crunch themselves. Thirdly, the legal standstill drastically reduces the payment morale of the population the longer it remains in force. Therefore, the SFC has ordered the general legal standstill to apply only for a limited time period and will consider which measures going forward better allow to protect the various interests at stake.

Against this background, from 1 April 2020 to 3 April 2020, the Swiss Federal Department of Justice[52] opened a public consultation[53] regarding suggested further reforms of the Swiss insolvency legislation which provide for adjustment to the obligations of directors in the event of over-indebtedness as well as a new Covid-19-moratorium, besides certain contemplated modifications of the existing composition moratorium. These measures, which are expected to be introduced by 19 April 2020 at the latest, are outlined in detail below.

7.1 Revision of obligations of directors and managers

7.1.1 Proposal

Unlike Switzerland's neighbouring countries Germany and Austria, the Swiss emergency legislation has so far not yet suspended or extended the deadline for filing for insolvency as a result of over-indebtedness caused by Covid-19. The described stay of enforcement as per Section 3.3.1 above currently only bars creditors from enforcing their money claims. In other words, while bankruptcy proceedings cannot be triggered by creditors for the time being, in case of over-indebtedness there is still an obligation of the debtor's directors and managers to file for bankruptcy ('depositing the balance sheet') or composition proceedings in Switzerland in accordance with Article 725 et seq (in conjunction with Article 820)[54] of the CO which has not yet been amended by the SFC's emergency orders.

In fact, according to existing rules, if the last annual balance sheet shows that one-half of the share capital and legal reserves is no longer covered, the board of directors of a Swiss company must convene a general meeting [55]without delay and propose financial restructuring measures (Article 725 paragraph 1 CO: capital loss).

Where there is good cause to suspect over-indebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination. If the interim balance sheet shows that the claims of creditors are not covered, whether the assets are appraised at going-concern or liquidation value, the board of directors must notify the court, unless certain company creditors subordinate their claims to those of all other company creditors, to the extent of the capital deficit (Article 725 paragraph 2 in conjunction with Article 958a CO: over-indebtedness).

According to Article 24 of the Ordinance on joint and several guarantees related to Covid-19, until 31 March 2022 the government-secured SME loans as per Article 3 of the Ordinance (see Section 1.3 above) are not taken into account as liabilities when calculating the capital loss and over-indebtedness as per Article 725 CO.

If the board members to do not comply with these provisions,[56] they may be subject to personal liability (Article 754 CO) and under certain circumstances even criminal sanctions (e.g. Article 165 Swiss Criminal Code).[57]

Since many companies are currently losing revenues as a result of the Covid-19 crisis, there is a high likelihood that these reporting obligations of indebted companies will be triggered in the foreseeable future especially since, based on accounting rules, the company must switch from accounting based on going-concern values to accounting based on (the generally much lower) liquidation values if it no longer appears certain that the company will continue as a going concern for the next 12 months as of the balance sheet date.[58]

In order to mitigate this risk exposure, the SFC contemplates the forthcoming release a new Ordinance with the following text ('Partial suspension of Article 725 paragraph 2 CO')[59]:

> 1 If the debtor was not over-indebted on 31 December 2019, the notification of the judge in accordance with Art. 725 para. 2 CO is not required if there is a reasonable prospect that an over-indebtedness can be remedied within six months after the end of the measures in accordance with Chapter 3 of Covid-19 Ordinance 2 dated 13 March 2020 (SR 818.101.24).
>
> 2 The examination of the interim balance sheet through a licensed auditor pursuant to Art. 725 para. 2 CO is not required.
>
> 3 The paragraphs 2 and 3 mutatis mutandis apply to all legal forms that are subject to a statutory duty of notification in the event of capital loss and over-indebtedness.

51. https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78482.html
52. https://www.bj.admin.ch/bj/de/home/aktuell/coronavirus.html
53. https://www.bj.admin.ch/dam/data/bj/aktuell/coronavirus/oeffentliche-konsultation-d.pdf
54. See also Article 903 CO and Article 84a Swiss Civil Code.
55. At least Article 6a of the Ordinance 2 on measures to combat the coronavirus (Covid-19) stipulates that such meetings and any other meetings of companies can currently be held through electronic means. See Section 4.2 above.
56. The company's auditors have similar reporting obligations (see Article 725 paragraph 3, Article 728c paragraph 3, Article 729c CO).
57. Swiss Supreme Court, BGer 6B_492/2009.
58. Article 958a CO.
59. https://www.bj.admin.ch/dam/data/bj/aktuell/coronavirus/beilage-2-erlaeuterungen-or-d.pdf

7.2 Amendment of composition moratorium (Article 293 et seq DEBA)

7.2.1 Proposal

On the basis of a obtained expert opinion,[60] the SFC advocates that, subsequent to the end of the general stay of enforcement as per Section 3.3.1 above, distressed companies should not be referred to the existing but outdated emergency moratorium in accordance with Article 337 et seq DEBA but rather use the more modern instrument of composition proceedings in accordance with Article 293 et seq DEBA as well as the new instrument outlined in Section 7.3 below. In order to make the former tool even more suitable and effective for the current crisis situation, the SFC proposes a number of selected amendments to the composition proceedings with the goal of enabling viable companies through the assistance of an administrator to be reorganised within a manageable time-frame of a few months (in the best case during the provisional moratorium), namely through operational and financial measures as well as concessions of contract parties and creditors. These modifications, planned to be enacted through an emergency insolvency Ordinance, include the following:[61]

- The further reduction of the already low entry hurdle of Article 293 and Article 293a paragraph 1 and 3 DEBA by basically granting the moratorium to all companies without preconditions provided that they make a request for such composition moratorium and submit a balance sheet, income statement and a liquidity plan or respective documents from which the current and future financial and earnings position of the debtor can be assessed. A preliminary restructuring plan would no longer need to be submitted during the time period in which the Covid-19 measures are in place and the composition courts would temporarily no longer be supposed to examine if there is a chance of reorganisation or the entering into a composition agreement with the creditors. Instead, this task shall be done by the administrator during the moratorium. If not possible, the administrator requests the opening of bankruptcy proceedings in accordance with Article 296b DEBA. This change (waiver of examination of the ability to reorganise by the composition court) is also intended to reduce the workload of composition courts;
- The extension of the (provisional) moratorium pursuant to Article 293a paragraph 2 DEBA from today's maximum of four months to six months which would be in line with the duration limit of the Covid-19-moratorium (see Section 7.3 below);
- The temporary suspension of Article 296b lit. a DEBA until the end of May 2020 provided that the debtor was profitable and not indebted on 31 December 2019, and the financial distress is caused by Covid-19 and the corresponding combat measures;
- The facilitation of the right of the debtor to extraordinarily terminate continuing obligations during the moratorium. Such successful termination would temporarily no longer require that the purpose of the reorganisation would otherwise be frustrated (Art. 297a DEBA).

The amended composition moratorium shall in particular be applicable to the following debtors:

- companies which were already indebted prior to the Covid-19 pandemic and prior to the SFC's mitigation measures;
- listed companies and enterprises of considerable size (see Section 7.3.1 below);
- more complex cases; and
- companies which would like to obtain the wider relief granted by the composition moratorium (Article 297 paragraph 7 and 9 DEBA, Article 297a DEBA, Article 333b CO) and enter into a composition agreement, respectively.

7.3 New Covid-19-moratorium (composition moratorium light)

7.3.1 Proposal

In addition to the amendment of the existing composition moratorium, the SFC suggests introducing a new simple individual relief mechanism called 'Covid-19-moratorium'. The new Covid-19-moratorium also planned to be introduced via an emergency insolvency Ordinance consists of several articles and is specifically designed to address the needs of the presumably large number of SME debtors that were previously profitable and not indebted but whose financial distress is caused by Covid-19 and the corresponding combat measures of the government and will therefore be forced to apply for moratorium in the upcoming months.

According to the draft text of the Ordinance, a debtor that is subject to debt collection under Swiss bankruptcy proceedings (Article 39 DEBA) – in particular all legal entities and sole proprietors – can request the composition court to grant a moratorium of no more than three months[62] provided that he or she was not already indebted on 31 December 2019[63]. Together with the request the debtor shall submit to the court the necessary evidence of his or her financial position as well as a list of creditors. The Covid-19-moratorium shall not be available to public companies and companies that exceed two of the following thresholds in two consecutive financial years:[64]

- balance sheet total of CHF20 million;
- turnover of CHF40 million;
- 250 full-time positions on annual average.

The new Ordinance explicitly states that directors of the company meet their directors' duties in accordance with Article 725 paragraph 2 CO (see Section 7.1 above) by requesting the Covid-19-moratorium.

In contrast to the existing composition moratorium (Article 293b, 295 DEBA), the new Covid-19-moratorium generally does not involve the appointment of an administrator. However, the composition court may at any time appoint an administrator ex officio or upon request of the debtor or a creditor. In such case, the administrator supervises the debtor, can issue instructions to him or her and supports him or her in taking the

60. https://www.bj.admin.ch/dam/data/bj/aktuell/coronavirus/beilage-4-gutachten-lorandi-d.pdf
61. https://www.bj.admin.ch/dam/data/bj/aktuell/coronavirus/beilage-3-erlaeuterungen-schkg-d.pdf
62. Upon request, the court may extend the moratorium once for another three months. If the debtor made false statements to the composition court, the latter may ex officio revoke the moratorium at any time.
63. https://www.bj.admin.ch/dam/data/bj/aktuell/coronavirus/beilage-3-erlaeuterungen-schkg-d.pdf
64. However, such companies can obtain relief through the amended composition moratorium as per Section 7.2 above.

necessary measures and reaching agreements with his or her creditors. The default state of not appointing an administrator is supposed to take into account the nature of the Covid-19-moratorium as a mass vehicle and is intended to keep the administrative workload and cost of the proceedings at a low level.

The approval of the moratorium will be made public by the composition court, and it will immediately notify the debt collection office, commercial registry and land registry. Under justified circumstances, the public announcement can be waived upon request provided that the protection of third parties is guaranteed. In that case, the composition court has discretion to decide if an administrator shall be appointed.

All claims against the debtor which arose prior to the granting of the Covid-19-moratorium or up to 31 May 2020 are subject to the relief. This grace period provides the debtor with time to initiate the Covid-19 proceedings. The effects of the granted moratorium largely correspond to those of the existing ordinary composition moratorium (Article 297 and Article 298 DEBA).[65] Particularly, the Covid-19-moratorium only affects claims that arose prior to the grant of the moratorium or up to 31 May 2020. As with the existing composition moratorium, these claims which are subject to the Covid-19-moratorium are not allowed to be paid by the debtor. If the debtor nevertheless does so, the composition court can open bankruptcy proceedings. Claims that arose after the grant of the Covid-19-moratorium are not affected by it – i.e. can be settled – which allows debtors to continue their business operations as debtors-in-possession. Also, the fact that the debtor pays new debt which is not subject to the Covid-19-moratorium does not constitute legal ground for avoidance and clawback actions pursuant to Article 285 et seq DEBA.

Pursuant to the draft Bill, the Covid-19-moratorium generally ends with the passage of time without any judicial review.

Furthermore, at any time that is both during and after the Covid-19-moratorium, the debtor may still apply for a provisional composition moratorium as per 7.2 above. In such case, the maximum duration of the provisional composition moratorium shall be reduced by half of the time taken by the Covid-19-moratorium.

65. Especially, with respect to claims which are subject to the moratorium, no debt collection enforcement acts against the debtor can be initiated or continued during the duration of the stay, except for enforcement of a pledge for receivables secured by a real estate lien, but the liquidation of the real property is excluded (see also Article 297 paragraph 1 DEBA). However, unlike Article 297a DEBA, continuing obligations cannot be terminated by the debtor.