

Newsletter No.

135

The Swiss Government declares a nation-wide standstill of deadlines for debt collection proceedings

On Wednesday 18 March 2020, the Swiss Government suspended all deadlines in debt collection proceedings until 4 April 2020. It is a first step under the state of emergency due to the corona crisis that was declared on Monday.

First measures ordered by the Swiss Government



By **Dominik Hohler**
lic. iur., LLM, Attorney at Law
Partner
Telephone +41 58 658 56 25
dominik.hohler@walderwyss.com



and **Stéphanie Oneyser**
MLaw, Attorney at Law
Senior Associate
Telephone +41 58 658 52 40
stephanie.oneyser@walderwyss.com

restructuringlaw.ch If a company is in financial distress or has already entered into insolvency proceedings, immediate and targeted measures are necessary to protect the interests of the parties involved. Our experts have extensive experience in all areas of restructuring and insolvency law as well as in the enforcement of claims.

Extraordinary times call for extraordinary measures. On 16 March 2020, in order to mitigate the dramatic consequences of the Covid-19 pandemic, the Swiss Government called a state of emergency and ordered all bars, restaurants, etc. to close and prohibited all public and private events until 19 April 2020. On 18 March 2020, it announced a nation-wide freezing of deadlines in debt collection proceedings until 4 April 2020; this period will be automatically extended until 19 April 2020 due to the Easter holidays. It is a first step towards relief, but companies are still expected to fulfil their duties.

State of emergency

The Swiss Government called the state of emergency during its press conference on 18 March 2020 and ordered bars, restaurants, etc. to close and prohibited all public and private events until 19 April 2020.

Deadlines in debt collection proceedings suspended until 19 April 2020

Article 62 of the Swiss Debt Collection and Bankruptcy Act (DEBA) entitles the Swiss Government (the Swiss Federal Council) to call for a limited or general stay of deadlines in debt-collection proceedings in times of epidemics or national disaster. On 18 March 2020, the Swiss Federal Council published an ordinance ordering a nation-wide standstill of deadlines in debt-collection proceedings from 19 March 2020 until 4 April 2020. After 4 April 2020, the regime of the Easter holidays (according to the DEBA, debt collection measures are not allowed one week before and one week after Easter Sunday) will take effect and will extend the standstill until 19 April 2020.

In practical terms, such standstill of deadlines means that debt collection offices and courts will not take any actions to collect debts according to the DEBA; in particular, it will not serve any payment orders on debtors or declare a company bankrupt. However, among others, freezing orders against debtors can still be initiated.

During the standstill, all deadlines in connection with debt collection measures continue to run but if they lapse during this period, they will be extended to three days after the end of the standstill period. Also, any notification of the debt collection authorities during this period that triggers a new deadline will be deemed to have been notified on the day after the end of the standstill.

Even though the suspension of the deadlines applies for all Swiss companies it does not release them from their duty to settle due invoices and their boards of directors to notify the judge in case of over-indebtedness. Moreover, creditors may still initiate debt collection proceedings against their debtors, however, the enforcement measures will be stayed.

Duties of the board of directors remain in force

As of today, even though discussed in practice, the Swiss Federal Council refrained from taking further measures so far with respect to insolvency law, such as modifying the duties of the board of directors in case of over-indebtedness of the company.

Capital loss

Therefore, despite the state of emergency, if the last annual balance sheet of a company shows that half of the share capital and the legal reserves are no longer covered by the net asset value (at

going concern value) of the company, the board of directors shall without delay call a general meeting of shareholders and propose adequate measures for restructuring. Concrete options for restructuring need to be considered based on the specific financial situation of the individual Swiss companies concerned.

It is important to note that the Swiss Government has also declared some relief measures with respect to the formal aspects of shareholder meetings, in particular that the board of directors may hold such shareholder meetings by mail or in electronic form.

Over-indebtedness

In case of substantiated concern of over-indebtedness an interim balance sheet must be prepared and submitted to the company's auditors for examination. If the interim balance sheet shows that the claims of the creditors are neither covered if the assets are appraised at ongoing business values nor at liquidation values, then the board of directors is obliged to notify the bankruptcy or composition court. To maintain going concern value, a sound cash flow plan securing operations for a reasonable period (typically 12 months) will be requested. As the measures ordered by the Swiss Federal Council will have a direct impact on cash flows of many companies, a close monitoring of the cash flow situation is vital.

There are two exceptions to this:

- a. No notification is required if creditors subordinate their claims to the claims of all other creditors in the amount of the over-indebtedness;
- b. The board of directors can abstain from notifying the bankruptcy or composition court for a short period of time if it has enough reasons to believe that the company can restructure within a short period of time. However, mere hope or a vague expectation of a restructuring does not justify the postponement of the filing for bankruptcy.

In addition, the board of directors can also file for composition proceedings (instead of bankruptcy).

Therefore, under the current regime, companies in financial distress are not out of options; however, the strategy should be planned carefully.

Additional measures

The Swiss Federal Council took additional measures to help companies and individuals that are hit by the crisis and is further trying to find solutions to mitigate the effects taken to fight Covid-19. Among others, the Swiss Federal Council allocated financial means (CHF 10 billion for short-time work and immediate financial help) and will put in place a mechanism shortly. Furthermore, additional financial measures are under discussion.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

© Walder Wyss Ltd., Zurich, 2020