

Stabilisation measures and participation of public authorities in companies - our expertise

In the course of the "Corona Crisis", many affected companies urgently need government support in order to be able to avert acute liquidity bottlenecks promptly and to strengthen their equity ratio. To this end, the Federal Government has now enacted the law to establish an Economic Stabilisation Fund (**WStFG**). The WStFG provides for the establishment of an Economic Stabilization Fund (**WSF**) to support the real economy (please see [here](#) for detailed information on the WSF, such as application eligibility, requirements and responsibilities). Central instruments of the WSF for the **stabilisation of companies in the real economy** are

- ▶ a total volume of EUR 400 bn for the **granting of guarantees** to mitigate liquidity bottlenecks of companies and support them in refinancing on the capital market
- ▶ a total volume of EUR 100 bn for the **direct recapitalisation and strengthening** of the (economic) **equity base** of companies (in particular for the acquisition of shares or dormant holdings and for the subscription of profit participation rights or subordinated bonds)
- ▶ a total volume of a further EUR 100 bn to refinance the **Kreditanstalt für Wiederaufbau (KfW)** to implement the special programmes assigned to it.

The planned **measures must comply with State aid law requirements** and therefore require the **approval of the European Commission**.

Individual **Federal States** are planning or have already adopted similar measures. These include, for example, Bavaria (BayernFonds with EUR 20 bn as an instrument for temporary participation in companies / tenfold increase in the guarantee framework for corporate loans), Hesse (supplementary budget of EUR 2 bn and increase in the guarantee framework to EUR 5 bn), North Rhine-Westphalia (NRW *Rettungsschirmgesetz* and supplementary budget act provide financial resources of up to EUR 25 bn), as well as other Federal States.

The existing **KfW-programmes** and those additionally launched in response to the Corona Crisis continue to exist ([link](#) to our overview).

We have extensive and long-standing expertise in all relevant areas of law and can advise and support you on the following aspects in connection with recapitalisation or support measures and public sector investments:

Corporate and Capital Market Law

Stabilization measures are complex transactions that must be tailored to the needs of the respective company. Even though the WStFG already provides for far-reaching privileges for the requirements of corporate and capital market law, it by no means avoids all the pitfalls that typically arise in such (time-)critical transactions. Our profound transaction experience helps us with the necessary "pilotage".

EU State Aid Law

The provisions of EU State aid law do not, in principle, preclude public authorities from holding shares in companies. On the basis of the private investor test / the pari passu criteria, it must be ensured that no unlawful aid is granted through the capital contributions of the State. If State aid cannot be ruled out, we ensure that the measures could be approved as compatible with the internal market in accordance with the relevant provisions of EU State aid law. We have already provided comprehensive advice on this in the course of the "financial crisis".



Finance Law

If a company wants to benefit from the State guarantees and warranties, coordination with the other creditors of the borrower will be the key to success. In addition, the eligibility for application, the group structure (especially in the case of private equity portfolio companies) and the interaction with existing financial ratios also play a decisive role. Defining the interfaces to existing financiers and getting them to make an obligatory own contribution requires know-how and negotiating skills.

Restructuring/Reorganisation/Insolvency Law

Should companies become insolvent in the medium term due to Corona, despite state aid, we can duly initiate and support a controllable insolvency procedure. Within the scope of the self-administration managed and advised by us or a subsequent insolvency plan procedure, it would be conceivable to convert the State (loan) claim into a participation in the company concerned by means of a debt cut and a so-called debt/equity swap, provided that a state participation is intended for the purpose of restructuring the company. For the phase following insolvency proceedings, contractual rights of repurchase in favour of the debtor may have to be agreed in order to take effective account of the interests involved even outside the crisis period.

Tax Law

We know how important it is to structure State support measures from a tax point of view in such a way that their restructuring contribution does not lead to avoidable tax damage for the beneficiary companies in the event of a claim.

Budget Law / Corporate Governance Code of the Federal Government

Even if the requirements of Sections 65 - 69 of the Federal Budget Code (*BHO*) for federal government shareholdings in companies by recapitalisation measures under the *WStFG* are not applicable (Section 22 (2) *FMStFG* as amended), the further requirements of the Federal Budget Law or the relevant requirements of the State Budget Regulations must be complied with (e.g. for performance audits within the meaning of Section 7 (2) *BHO*)

Please do not hesitate to contact us in case of any questions you may have on the subject of public sector investments in companies



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