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Coming into force of the Act respecting COVID-19 joint and several surety bonds (COVID loans) – what remains, what changes

The Federal Act on credits secured by a joint and several guarantee as a result of the coronavirus entered into force on 19 December 2020 and replaces the ordinance issued by the Federal Council in March 2020. The Federal Assembly extended the loan's amortization period from five to eight years and authorized the possibility of investing in fixed assets during the term of the loan. However, it refrained from freezing the interest rate on the loans at 0% or 0.5% respectively, and from relaxing the ban on paying dividends during the term of the loan.

Following the semi-confinement measures pronounced in March 2020, the Federal Council enacted a series of measures to help companies in difficulty as a result of the pandemic. These measures included the Ordinance of 25 March 2020 on the granting of loans and joint and several guarantees following the coronavirus (hereinafter: aOCaS-COVID-19), which enabled eligible entities to obtain a loan guaranteed by the Confederation for 10% of their turnover up to CHF 500,000 through a procedure that was intended to be quick and unbureaucratic. Businesses could also apply for a loan for a higher amount subject to a more thorough examination of the situation.

Since the OCaS-COVID-19 was enacted as an emergency law, the Federal Assembly passed the Federal Act on Credit Guaranteed by a Joint and several Guarantee following the Coronavirus (SR 951.26 / LCaS-COVID-19) on 18 December 2020, which came into force on 19 December 2020.

This emergency aid gave rise to important parliamentary debates to modify the regime initially decided by the Federal Council. Since many entrepreneurs have made use of this aid, it is appropriate to summarize the changes that have been made.

Duration of the loan – from five to eight years

The aOCaS-COVID-19 provided that loans guaranteed by the Confederation must be repaid within five years (art. 13 para. 1 aOCaS-COVID-19).

After discussion and aware of the difficulties that companies might encounter in repaying this loan on time, the Federal Assembly decided to extend the deadline for loan repayment by three years. Thus, the beneficiary of a COVID loan must reimburse it within eight years from the signature of the loan application (Art. 3 al. 1 LCaS-COVID-19).

This period may be extended by two years if the repayment of the loan has very harsh consequences for the borrower. Such an extension will thus be possible on the basis of an amortization plan to be approved by the lender and the guarantor if it is likely that this will reduce the financial risk for the Confederation.

Interest rates – possibility of increasing them maintained

The aOCaS-COVID 19 provided for an interest rate of 0% for loans below CHF 500,000 and 0.5% for loans above CHF 500,000 (art. 13

para. 3 letters a and b aOCaS-COVID-19). This interest rate could, however, be readjusted on 31 March of each year, starting in 2021.

The National Council had initially agreed to abolish the possibility of adjusting the interest rate, but reversed its decision after the Council of States refused to do so.

The interest rates of 0% respectively 0.5% remain applicable and the Federal Department of Finance keeps the possibility adapt the interest rates after consulting the participating banks (art. 13 al. 4 LCaS COVID-19).

Companies that have benefited from COVID loans should therefore expect an increase in rates.

Use of loans and prohibited activities – no dividends / investments allowed

The Federal Assembly did not follow proposals from some parliamentarians to relax the ban on paying dividends during the term of the loan. The payment of dividends will thus remain prohibited for the duration of the loan.

On the other hand, as mentioned in a previous contribution to our blog (https://8q6a3bewxt.preview.infomaniak.website/actualites/covid-19/prets-covid-19-restrictions-utilisation/), the ban on making new investments in fixed assets, which is prohibited pursuant to Art. 6 para. 2 let. b OCaS-COVID-19, has not been incorporated into the law. As a result, it is now possible to use COVID-19 loans that have not yet been used to make investments.

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The extension of the loan repayment period is welcome, as the pandemic is not yet over and COVID loan recipients will need time to recover from this ordeal. The same goes for the removal of the ban on investment in fixed assets. Indeed, beneficiaries must be able to continue to invest without risking negative consequences.

Source : https://www.wg-avocats.ch/en/news/company-law/act-respecting-covid-19-surety-bonds-covid-loans/