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The COVID-19 pandemic has had, and will continue to have for some time, major financial repercussions across the globe. In many countries, the effects of reduced demand, disrupted operations and tighter liquidity have caused significant financial distress for businesses – from large public entities to SMEs and informal traders.

In response to the crisis that unfolded last year, many governments introduced financial, legal and regulatory measures in an effort to manage the economic effects in their respective countries in an effective and timely manner. These measures continue to rapidly

evolve as governments do their best to respond to the crisis. More importantly, we have seen that many governments are now looking at the long-term effects of COVID-19 and are introducing more permanent and enduring legal, financial and regulatory reforms, particularly in an effort to ensure greater efficiency and flexibility in relation to insolvency and bankruptcy processes.

In April last year, INSOL International and the World Bank Group jointly produced this Global Guide to highlight some of the primary measures that have been introduced in 38 countries and thereafter the map was updated twice. The June 2020 update

covered 54 countries. This year, we have revised the template of questions and have added 26 new countries to our interactive map and the total number of countries covered in this map is 80. On average the information of these country chapters are as of 1 April 2021.

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 Fiscal response measures

#### 1.1 General fiscal stimulus measures that have been 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 more than CHF 87.7 billion, amounting to approximately 12.3% of Switzerland's 2019 GDP.<sup>1</sup> Based on the Swiss Epidemic Act and the constitutional emergency competence, the SFC has passed a series of Emergency Ordinances since March 2020. In addition, on 25 September 2020 and 18 December 2020, respectively, the Swiss Parliament has enacted the COVID-19 Act<sup>2</sup> and the COVID-19 Loan Act<sup>3</sup> which provide the legal basis to maintain the necessary measures previously adopted by the SFC under emergency ordinance law. The relevant laws and regulations 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)<sup>4</sup> 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:

- *Rapid and unbureaucratic support for the business community*<sup>5</sup> - on 13 March 2020, CHF10

billion was granted as emergency aid and compensation for short-time working. The primary objective was to maintain wage payments. Specifically:

- up to CHF8 billion could be drawn from the unemployment insurance fund for wage payments.  
The waiting period for entitlement has been abolished. Provisions have also been adopted to streamline the processing of claims and the payment of benefits;<sup>6</sup>
  - up to CHF1 billion of financial support was provided to companies particularly affected by COVID-19;
  - CHF580 million of bank loans (secured by guarantee societies) were made available for SMEs in financial difficulty; and
  - an amount not exceeding CHF4.5 million could be requested to compensate for losses related to export promotion activities (e.g. trade fairs) of the official association Switzerland Global Enterprise (S-GE).<sup>7</sup> As the measures taken were not sufficient to cover the additional needs of exporters, the SFC decided on 25 September 2020 to increase the federal government's export promotion in 2021 by an additional CHF 2.6 million.<sup>8</sup>
- Measures concerning short time working and simplification of procedures include:
    - Relaxation of the obligation to notify vacancies*<sup>9</sup> - this obligation and the relevant tasks and obligations of employers and public employment services were temporarily abolished in order to simplify recruitment procedures in sectors such as medicine, pharmacy, agriculture or logistics.<sup>10</sup>

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3. Federal Act on loans with joint and several guarantee as a result of the coronavirus (COVID-19 joint and several guarantee Act), <https://www.fedlex.admin.ch/eli/cc/2020/982/de>.

4. 99.7% of all companies in Switzerland are SMEs <https://www.bfs.admin.ch/bfs/de/home/statistiken/industrie-dienstleistungen/unternehmen-beschaeftigte/wirtschaftsstruktur-unternehmen/kmu.html>.

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10. 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>.

- ii) *Period of notice of short-time working*<sup>11</sup> – 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.<sup>12</sup> This provision has been abolished effective as of 1 June 2020.<sup>13</sup>
- iii) *Duration of short-time working*<sup>14</sup> – the period during which a reduction in working hours may be authorised is extended to six months from the previous three-month period.<sup>15</sup>  
As of 1 September 2020, the SFC extended the maximum period of compensation for short-time working to 18 months.<sup>16</sup> The SFC announced further adjustments to the short-time working regime on 18 December 2020<sup>17</sup> and 20 January 2021.<sup>18</sup>
- iv) *Measures in the area of occupational pension plans*<sup>19</sup> – 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.
- v) *Temporary occupation and self-employment*<sup>20</sup> – More on-call workers are entitled to short-time working allowances. In addition, the measures provide for some financial incentives to take up temporary jobs during such short time working in industries which are in urgent need of personnel (e.g. health care, agriculture and logistics).

On 28 October 2020, the SFC decided to retrospectively (as of 1 September 2020) grant short-time working allowances to on-call workers who have a contract of indefinite duration.<sup>21</sup>

- vi) *Duration of compensation* – the maximum duration of compensation for short-time working (so far four months) has been abolished.

- *Provision of a comprehensive package*<sup>22</sup> – this package consisted of immediate aid funds to cultural organisations (CHF 280 million),<sup>23</sup> professional and voluntary sport organisations (CHF 100 million),<sup>24</sup> as well as the tourism and hotel industry (CHF 5.5 million).<sup>25</sup> On 18 December 2020, the SFC adopted an amendment to the COVID-Ordinance regarding the Cultural Sector to strengthen compensation for financial losses and support for people and enterprises engaged in the cultural sector.<sup>26</sup>
- *Stabilisation measures in favour of the Swiss sport sector* – CHF 350 million was made available in the form of loans to carry out football and ice hockey leagues; other professional sports and non-professional sport organizations received a support package of CHF 150 million.<sup>27</sup>
- *Support for childcare institutions*<sup>28</sup> – The Federal Government has provided support to childcare institutions which have suffered financial losses as a result of the COVID-19 crisis. The Federal Government bears one third of the resulting costs of the Cantons. The Federal Parliament has approved a credit of CHF 65 million for this purpose.
- *Deferral of social security contributions*<sup>29</sup> – companies hit by the COVID-19 crisis have been able to seek a temporary deferral of the payment of social insurance contributions (AVS, AI, APG, AC) whereby no default interest was due until 30 June 2020. They were also 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 total 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*<sup>30</sup> – companies were able to extend payment deadlines without being subject to interest on arrears while receiving accelerated payments when procuring to government bodies. The interest rate has been lowered to 0% for VAT and direct federal taxes, certain customs duties, special consumption taxes and incentive taxes between 21 March 2020 and 31 December 2020; and

11. SFC, 'Coronavirus: additional measures to support the economy', 25 March 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-78437.html>.

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19. 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>. See also Art. 16 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act): <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

20. SFC, 'Coronavirus: adjustments to short-time working and scenarios for the Swiss economy', 8 April 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-78742.html>. Ordinance on supplementary measures in the field of unemployment insurance in relation to coronavirus (COVID-19) (Ordinance COVID-19 unemployment insurance), 8 April 2020, available at: <https://www.admin.ch/opc/fr/classified-compilation/20200805/index.html>.

21. SFC, 'Coronavirus: compensation in case of short-time working for on-call workers', 28 October 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal.msg-id-80891.html>; Ordinance on supplementary measures in the field of unemployment insurance in relation to coronavirus (COVID-19) (Ordinance COVID-19 unemployment insurance), available at: [https://www.fedlex.admin.ch/eli/cc/2020/169/fr; Art. 17 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic \(COVID-19 Act\), https://www.fedlex.admin.ch/eli/cc/2020/711/en](https://www.fedlex.admin.ch/eli/cc/2020/169/fr; Art. 17 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), https://www.fedlex.admin.ch/eli/cc/2020/711/en).

22. SFC, 'Coronavirus: a package of measures to mitigate economic consequences', 20 March 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-78515.html>.

23. Ordinance on the mitigation of the economic consequences of coronavirus (COVID-19) in the culture sector (COVID Ordinance in the Cultural Sector), SR 442.15, 20 March 2020, available at: <https://www.admin.ch/opc/fr/classified-compilation/20200833/index.html>.

24. 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>.

25. 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>.

26. SFC, 'Coronavirus: strengthening support for the cultural sector', 18 December 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal.msg-id-81748.html>; Art. 11 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

27. SFC, 'Coronavirus: Federal Council sets criteria for sport related stabilisation measures', 13 May 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-79090.html>; Art. 12b and 13 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

28. SFC, 'Coronavirus: Support for childcare institutions', 20 May 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-79188.html>.

29. Ordinance on Measures in Relation to Coronavirus (COVID-19) concerning compensation for reduced working hours and the settlement of social insurance contributions, available at: <https://www.admin.ch/opc/fr/official-compilation/2020/875.pdf>.

30. Ibid.



no interest has been charged during this period.<sup>31</sup>

- *Extraordinary support to stabilise the Swiss wine market*<sup>32</sup> - The SFC has decided to provide CHF 10 million to rebalance the market for Swiss wines.
- *Immediate financial assistance for the media*<sup>33</sup> - The SFC backed by the Federal Parliament decided to provide immediate financial assistance in the amount of CHF 57.5 million to the media sector which has lost a great deal of advertising income but has an important function in a democracy.
- *Measures in favour of public transport and rail freight*<sup>34</sup> - The SFC submitted to the Swiss Parliament a package of measures amounting to CHF 700 million in favour of public transport and rail freight companies which incurred major drops in revenues due to the COVID-19 crisis.
- *Hardship measures for businesses* - On 25 November 2020,<sup>35</sup> the SFC adopted the Ordinance that regulates the details of the business hardship assistance program set up by the Confederation and the cantons. The Ordinance has been modified on 18 December 2020,<sup>36</sup> 13 January 2021<sup>37</sup> and 27 January 2021.<sup>38</sup> The Confederation may at the request of one or more cantons provide additional financial support to businesses that suffer particular hardship as a consequence of COVID-19 due to the nature of their economic activity; in particular businesses connected with the events industry, fairs, service providers in the travel and tourism industry including restaurants and hotels. A case of hardship arises where a business's annual turnover is less than 60% of its multi-annual average. The entire asset and capital situation must be taken into account. The provision of support requires that a business was profitable or viable before the COVID-19 outbreak and has not already received other financial assistance from the Confederation. The latter does not include short-time work compensation, compensation for loss of earnings or COVID-19 loans granted.

### 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% of their annual turnover and up to a maximum amount of CHF 20 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.<sup>39</sup> As per 18 December 2020, the respective SFC Ordinance has been replaced by the COVID-19 Loan Act<sup>40</sup> In particular, the programme includes the two following credit options depending on whether the loan amount is higher or lower than CHF 500,000:

- Bridging loans not exceeding CHF 500,000 are 100% 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.<sup>41</sup> 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.

31. 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>.

32. SFC, 'Coronavirus: Extraordinary support to stabilise the Swiss wine market', 20 May 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/msg-id-79195.html>.

33. SFC, 'Coronavirus: Temporary immediate aid to the media', 20 May 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/msg-id-79184.html>; Art. 14 Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

34. SFC, 'Coronavirus: the package of measures in favour of public transport and rail freight is submitted to Parliament', 12 August 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal/msg-id-80052.html>; Federal law on support of public transportation in the COVID-19 crisis, <https://www.fedlex.admin.ch/eli/cc/2020/708/de>.

35. SFC, 'Coronavirus: SFC adopts the COVID-19 Ordinance on hardship assistance', 25 November 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal/msg-id-81342.html>; Art. 12 and 12a Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

36. SFC, 'Coronavirus: The Federal Council amends the Ordinance on Hardship measures for businesses and the Ordinance on Loss of Earnings', 18 December 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal/msg-id-81734.html>.

37. SFC, 'Coronavirus: Federal government increases support under the programme of hardship measures for businesses', 13 January 2021, available at: <https://www.seco.admin.ch/seco/fr/home/seco/nsb-news.msg-id-81966.html>.

38. SFC, 'Coronavirus: Federal Council increases program resources for hardship measures and strengthens unemployment insurance', 27 January 2021, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués-conseil-federal/msg-id-82135.html>.

39. 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/communiqués-conseil-federal/msg-id-78572.html>; Art. 3 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), SR 951.261, 25 March 2020, available at: <https://www.admin.ch/opc/fr/classified-compilation/20200869/index.html>.

40. Federal Act on loans with joint and several guarantee as a result of the coronavirus (COVID-19 joint and several guarantee Act), <https://www.fedlex.admin.ch/eli/cc/2020/782/de>.

41. Ibid.

- Bridging loans in excess of CHF 500,000 are 85% guaranteed by the Federal Government and the granting bank participates at a rate of 15%. Since these loans may in total amount up to CHF 20 million per company, they require further scrutiny by the banks. The interest rate for these credits has been set at 0.5%.<sup>42</sup>

The granting of such bank loans is excluded if i) the company's turnover exceeds CHF 500 million, or ii) the borrower uses the funds to make new investments in fixed assets that are not replacement investments.<sup>43</sup>

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.<sup>44</sup>

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 CHF 20 billion to CHF 40 billion.<sup>45</sup>

On 22 April 2020, the SFC decided to prevent promising start-ups from coronavirus-related insolvency by extending the guarantee programme of COVID-19 bridging loans already available to SMEs.<sup>46</sup> Given the withdrawal of some investors and the resulting delays or cancellations of financing rounds, some start-ups with a big potential have also been in danger of insolvency. The

Federal Government guaranteed 65% of a loan and the respective canton the remaining 35%. Each canton is free to decide whether it wants to make the SME guarantee instrument available to its start-ups. Some cantons have already committed significant amounts to support them in other ways.

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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup>

On 29 April 2020, the SFC decided to provide support to the Swiss airlines (Swiss and Edelweiss) to bridge liquidity shortfalls (CHF 1.3 billion). Given that in order to resume flight operations these airlines are dependent on the services provided by aviation-related businesses at the national airports, the latter should also receive support (CHF 600 million) if necessary, provided that the stringent conditions imposed by the Federal Government are met.<sup>50</sup> In this regard, the SFC obtained the approval of the guarantee credits totalling CHF 1.9 billion from the Swiss Parliament.<sup>51</sup>

42. Ibid Article 4.

43. Ibid.

44. Ibid.

45. 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/communiqués/communiqués-conseil-federal.msg-id-78684.html>.

46. SFC, 'Coronavirus: additional federal support for innovative start-ups', 22 April 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-78872.html>.

47. 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/>.

48. SFC, 'Coronavirus: SFC approves deactivation of the countercyclical capital buffer', 27 March 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-78604.html>.

49. 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/>.

50. SFC, 'Coronavirus: Federal Council clarifies aid for aviation companies', 29 April 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-78944.html>.

51. <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20200039>.



On 1 July 2020, the SFC approved the first tranche of the commitment credit for so-called aviation-related businesses. The SFC has granted SR Technics Switzerland SA, which provides airlines with essential services that other companies could not provide in the short term, a guarantee line covering 60% of a bank loan of CHF 120 million to overcome a liquidity shortage.<sup>52</sup>

On 12 August 2020, the SFC decided to grant airspace and traffic supervisor Sky guide financial support of up to CHF 400 million for the years 2020 and 2021.<sup>53</sup>

### 1.4 Rent moratorium

On 27 March 2020, the Swiss Federal Council<sup>54</sup> issued the *Ordinance regarding the mitigating of the effects of the coronavirus in rent and lease matters (COVID-19-Ordinance Rent and Leasing)*<sup>55</sup> which provided 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<sup>56</sup>

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 events were cancelled. The allowances are settled on the basis of a daily allowance for loss of earnings.<sup>57</sup>

On 22 April 2020, the SFC adjusted the duration of such entitlements based on the gradual reopening plans for the economy.<sup>58</sup>

On 20 May 2020, the SFC decided that the entitlement to compensation will cease at the end of May 2020.<sup>59</sup>

On 19 June 2020 and 1 July 2020, the SFC specified the deadline for exercising the right to the loss of earnings allowance to be the 16 September 2020. No retrospective recalculation could be requested after this date.<sup>60</sup> On 11 September 2020, the SFC decided that the claim may still be made after 16 September 2020 in certain situations such as self-employed persons whose activity is restricted due to a closure or a ban on events.<sup>61</sup>

By way of the new COVID-19 Act<sup>62</sup> of 25 September 2020, Parliament has extended assistance granted to self-employed persons. On 4 November 2020, the SFC adopted amendments to the respective Ordinance retroactively as of 17 September 2020 and which will remain in force until 30 June 2021.<sup>63</sup>

#### 2.1.2 Earnings loss allowances for employees

Parents who have to interrupt their professional activity to take care of their children due to the COVID-19 restrictions are entitled to compensation.<sup>64</sup> The same applies in the case of interruption

52. SFC, 'Coronavirus: Federal Council grants guarantee to SR Technics', 1 July 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-79695.html>.

53. SFC, 'Coronavirus: Federal Council intends to stabilize Sky guide's finances', 12 August 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-80037.html>.

54. SFC, Media Release, 27 March 2020, available at: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78605.html>.

55. 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>.

56. 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>.

57. Ibid.

58. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen/bundesrat.msg-id-78856.html>.

59. SFC, 'Coronavirus: additional financing of unemployment insurance and phasing out of COVID-19 related measures', 20 May 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-79205.html>.

60. SFC, 'Coronavirus: clear deadlines for claiming COVID-19 loss of earnings benefits', 19 June 2020, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-79505.html>; 'Corona-loss of earnings allowance for the self-employed: extension until September 16, 2020', available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-79685.html>.

61. SFC, 'Coronavirus: Corona-loss of gain allocation extended in certain situations', 11 September 2020, available at: <https://www.seco.admin.ch/seco/fr/home/seco/nsb-news.msg-id-80367.html>.

62. Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

63. <https://www.seco.admin.ch/seco/fr/home/seco/nsb-news.msg-id-80968.html>.

64. 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>.

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% of the regular salary and are capped at CHF 196 per day.<sup>65</sup>

### 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.

### 2.3 Unemployed individuals

On 25 March 2020, the SFC adopted emergency measures to mitigate the economic consequences of the spread of the coronavirus. These measures included the right to receive up to 120 additional daily allowance payments between 1 March 2020 and 31 August 2020.<sup>66</sup>

According to Art. 17 (c) of the COVID-19 Act,<sup>67</sup> the SFC may issue provisions in derogation from the Unemployment Insurance Act re the extension of the period for claiming payments and of the contribution period for insured persons who between 1 March 2020 and 31 August 2020 were entitled to claim a maximum of 120 additional daily allowance payments.

On 27 January 2021, the SFC proposed changes to the COVID-19 Act that provides for a three-month extension of the period of entitlement to daily allowances for unemployed persons to ensure that the difficult situation in which they find themselves does not put them at a disadvantage on the Swiss labour market.<sup>68</sup>

## 3. Legislative reforms for companies in financial distress

### 3.1 Revision of obligations of directors and managers

On 16 April 2020, the SFC issued the *Ordinance concerning insolvency law measures to combat the corona crisis (COVID-19 Insolvency law Ordinance)*<sup>69</sup> which entered into effect on 20 April 2020 and was valid until 19 October 2020. The Ordinance provided for a temporary suspension of the obligation of the debtor's directors and managers to file for bankruptcy ('depositing the balance sheet') or composition proceedings provided that certain requirements were met.

Art. 1 of the new emergency Ordinance read as follows:

1. *By derogation from Art. 725 para. 2 CO, the board of directors may refrain from notifying the court if the company was not over-indebted on 31 December 2019 and if there is a prospect that the over-indebtedness can be remedied by 31 December 2020.*
2. *The board of directors must justify and document its decision in writing.*
3. *By derogation from Art. 725 para. 2 CO, the examination of the interim balance sheet is not required.*
4. *By derogation from the Art. 728c para. 3 and 729c CO, the auditor is exempt from the obligation to notify the court if the board of directors may dispense with the notification based on para. 1.*

In addition, Art. 2 of the COVID-19 Insolvency law Ordinance stipulated that the preceding Art. 1 *mutatis mutandis* applies to all legal forms that are subject to a statutory duty of notification in the event of capital loss and over-indebtedness.

In fact, according to previously 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

65. Ibid.

66. SFC, 'Coronavirus: additional measures to support the economy, 25 March 2020 available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-78573.html>.

67. Federal Act on the Statutory Principles for SFC Ordinances on Combating the COVID-19 Epidemic (COVID-19 Act), <https://www.fedlex.admin.ch/eli/cc/2020/711/en>.

68. SFC, 'Coronavirus: Federal Council increases program resources for austerity cases and strengthens Unemployment Insurance, 27 January 2021 available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-82135.html>.

69. Ordinance concerning insolvency law measures to combat the corona crisis (COVID-19 Insolvency law Ordinance), SR 281.242, 16 April 2020, available at: <https://www.admin.ch/opc/de/official-compilation/2020/1233.pdf>.

company must convene a general meeting<sup>70</sup> 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* (see also Art. 24 *COVID-19 Loan Act*), until 31 March 2022 the government-secured SME loans as per Article 3 of the said 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 do not comply with these provisions,<sup>71</sup> they may be subject to personal liability (Article 754 CO) and under certain circumstances even criminal sanctions (e.g. Art. 158, 163 et seq. Swiss Criminal Code).<sup>72</sup>

Since many companies have been losing revenues as a result of the COVID-19 crisis, there is a high likelihood that these reporting obligations of indebted companies are triggered now or 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.<sup>73</sup>

Pursuant to the temporary COVID-19 Insolvency law Ordinance, directors and managers were still required to draw up an interim balance sheet where there was good cause to suspect an over-indebtedness although that balance sheet did not have to be examined by a licensed auditor.<sup>74</sup>

However, according to the temporary safe harbour rules, the directors and managers of corporations (Art. 725 CO), limited liability companies (Art. 820 CO), cooperatives (Art. 903 CO) and foundations (Art. 84a) were temporarily exempt from their filing obligations in the event of over-indebtedness provided that the following criteria were met cumulatively:

- i) the company was not over-indebted on 31 December 2019;
- ii) there was a prospect that the over-indebtedness could be remedied by 31 December 2020; and
- iii) the directors justify and document their decision in writing. In other words, such board minutes needed to include all relevant information and details including but not limited to an agenda, resolutions and annexes such as the interim balance sheet based on going concern and liquidation valuation, budget 2020, liquidity forecast, order history and trend, account receivable report, sales market forecast, intentions of shareholders, lenders and investors etc.

### 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*<sup>75</sup> became effective on 28 March 2020 and was 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 was extended from 30 days to 90 days. This applied 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* extended the deadline for payment of rent due under Article 282 paragraph 1 CO from 60 to 120 days. As a further immediate

70. 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.

71. The company's auditors have similar reporting obligations (see Article 725 paragraph 3, Article 728c paragraph 3, Article 729c CO).

72. Swiss Supreme Court, BGer 6B\_492/2009.

73. Article 958a CO.

74. COVID-19 Ordinance insolvency law – Explanations regarding the individual provisions, 16 April 2020, available at: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/erlaeuterungen-COVID19-insolvenz-d.pdf>.

75. See Section 1.4 above.

measure, the *Ordinance Rent and Leasing* extended 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 encouraged 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. However, the SFC's proposal of a COVID-19 business rental Act<sup>76</sup> has been rejected by the Swiss Parliament.

### 3.3 Changes to the insolvency process – enhanced moratoria

#### 3.3.1 General stay of enforcement

On 18 March 2020, the SFC<sup>77</sup> 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)*<sup>78</sup> which was effective until 4 April 2020 and followed by the statutory enforcement holidays which had the same effects and lasted until 19 April 2020. For the first time since the First World War, the *Legal Standstill Ordinance* provided 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,<sup>79</sup> except for seizure proceedings and other urgent debt collection acts (Article 62 in conjunction with Article 56 DEBA). In particular, the forbidden enforcement acts included 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 were still able to submit debt collection requests, but subject to 3.3.2 and 3.3.3 below the enforcement authorities only proceeded with them after the end of the standstill that is as of 20 April 2020.

However, substantive deadlines, such as the statute of limitation according to the CO, were not

affected by the legal standstill. Put another way, claims still became payable since the Federal Government's measure for the time being only kept creditors from enforcing their claims. Therefore, subject to the request of any new moratorium as per 3.3.2 and 3.3.3 below, from 20 April 2020 onwards, debtors faced debt enforcement proceedings or summonses to pay, as claims continued to accrue due during the general stay period. In addition, based on Article 190 DEBA, creditors were even able to request the opening of bankruptcy proceedings without prior debt enforcement proceedings provided that the debtor had suspended payments and was objectively illiquid. For this reason, debtors facing financial difficulties needed to consider timely actions such as the request of a moratorium.

#### 3.3.2 Amended ordinary composition moratorium

Besides the relief of the directors' insolvency filing duties, the temporary COVID-19 Insolvency law Ordinance<sup>80</sup> which was valid until 19 October 2020, in Art. 3 to Art. 5 also provided for certain modifications to the existing composition moratorium as per Art. 293 et seq. DEBA.

In order to make the existing relief even more suitable and effective for the current crisis situation, the SFC's amendments to the composition proceedings aimed to enable viable companies to reorganise within a manageable timeframe, namely through operational and financial measures as well as through concessions of contract parties and creditors. These temporary modifications included the following:

- 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 made a request for such composition moratorium to the court and submitted 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 could be assessed. By derogation from Art. 293 (a) DEBA, the submission of a preliminary

76. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-80448.html>.

77. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78482.html>.

78. 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>.

79. 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.

80. Ordinance concerning insolvency law measures to combat the corona crisis (COVID-19 Insolvency law Ordinance), SR 281.242, 16 April 2020, available at: <https://www.admin.ch/opc/de/official-compilation/2020/1233.pdf>.

restructuring plan was no longer required (Art. 3 para. 1 COVID-19 Insolvency law Ordinance);

- Art. 293a para. 3 did no longer apply (Art. 3 para. 2 COVID-19 Insolvency law Ordinance);
- by derogation from Art. 293a para. 2 DEBA, the duration of the (provisional) moratorium was extended from four months to up to six months (Art. 4 COVID-19 Insolvency law Ordinance); and
- the temporary suspension of Article 296b (a) and (b) DEBA until 31 May 2020 provided that the debtor was not indebted on 31 December 2019 or creditors subordinated their claims in full extent of the over-indebtedness as per Art. 725 para. 2 CO (Art. 5 COVID-19 Insolvency law Ordinance).

The temporarily amended composition moratorium was in particular applicable to the following debtors:

- companies which were already indebted prior to 1 January 2020;
- listed companies and enterprises of considerable size (see Section 3.3.3 below);
- more complex cases; and
- companies which wanted to obtain the wider relief granted by the composition moratorium (Art. 297 paragraph 7 and 9 DEBA, Art. 297a DEBA, Art. 333b CO) and enter into a composition agreement, respectively.

While the SFC did not generally prolong the temporary amendments of the ordinary composition moratorium beyond 19 October 2020 based on the Emergency Insolvency Law Ordinance, on 20 October 2020 it decided to bring into force the amended Art. 293a DEBA adopted by the Swiss Parliament in the course of the revision of the Swiss company law which provides for an extension

of the provisional moratorium from four to eight months.<sup>81</sup>

### 3.3.3 **New COVID-19-moratorium ('composition moratorium light', 'SME moratorium')**

In addition to the temporary amendment of the existing composition moratorium, the COVID-19 Insolvency law Ordinance, which was valid until 19 October 2020, in Section 3 (Art. 6 et seq.) introduced a temporary simple individual relief mechanism which was 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 was caused by COVID-19 and the corresponding combat measures of the government.

According to Art. 6 para. 1 of the COVID-19 Insolvency law Ordinance, any debtor in the legal form of a sole proprietorship, a joint partnership or a legal entity was able to request a COVID-19 moratorium at the composition court for a period of no more than three months if the debtor was not indebted as per 31 December 2019 or if creditors subordinated their claims in full extent of the over-indebtedness as per Art. 725 para. 2 CO. Upon request of the debtor, the composition court could extend the COVID-19 moratorium once for another period not exceeding three months (Art. 7 COVID-19 Insolvency law Ordinance). However, pursuant to Art. 6 para. 2 of the COVID-19 Insolvency law Ordinance, the following legal entities were excluded from the new temporary moratorium:<sup>82</sup>

- i) listed companies in accordance with Art. 727 para. 1 (1) CO; and
- ii) companies which in 2019 have exceeded two of the following thresholds in accordance with Art. 727 para. 1 (2) CO:
  - A balance sheet total of CHF 20 million.
  - Turnover of CHF 40 million.

81. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-80701.html>.

82. However, such companies could obtain relief through the amended composition moratorium as per section 3.3.1 above.

- 250 full-time positions on annual average.

Together with the application, the debtor needed to credibly present his financial position and provide as much evidence as possible (Art. 6 para. 3 of the COVID-19 Insolvency law Ordinance).

Art. 8 of the COVID-19 Insolvency law Ordinance explicitly stated that directors of the company meet their directors' duties in accordance with Art. 725 para. 2 CO (see Section 3.1 above) by requesting the COVID-19-moratorium.

In contrast to the existing composition moratorium (Article 293b, 295 DEBA), the new temporary COVID-19-moratorium generally did not involve the appointment of an administrator (Art. 9 COVID-19 Insolvency law Ordinance). However, if required by the circumstances, the composition court could at any time appoint an administrator *ex officio* or upon request of the debtor or a creditor. In such a case, the administrator supervises the debtor, issues instructions to him, reports to the competition court if the debtor violates the provisions of the COVID-19 Insolvency law Ordinance and supports him in taking the necessary measures and reaching agreements with his creditors. The default state of not appointing an administrator was supposed to take into account the nature of the COVID-19-moratorium as a mass vehicle and was intended to keep the administrative workload and cost of the proceedings at a low level but bore risks for creditors.

Another difference to the ordinary composition moratorium (Article 293c para. 2 DEBA) was the fact that the COVID-19-moratorium was always made public and reported to the debt collection office, commercial registry and land registry (Art. 10 COVID-19 Insolvency law Ordinance).

The primary legal effects of the COVID-19-moratorium were stipulated in Art. 11 to Art. 13 of the COVID-19 Insolvency law Ordinance.<sup>83</sup>

### 3.3.4 Temporary Stay of enforcement concerning Swiss travel industry

In order to specifically protect the Swiss travel industry which has been hit quite hard by the

COVID-19 crisis, on 20 May 2020 the SFC<sup>84</sup> issued a new separate *Ordinance on the legal standstill in accordance with Article 62 DEBA concerning the travel industry*.<sup>85</sup> The Ordinance, which became effective on 21 May 2020 and was valid until 31 December 2020, provided for a temporary limited stay of enforcement in relation to customers' claims arising from the cancellation and non-performance of travel services towards travel organisers or retailers pursuant to Art. 2 of the 'Swiss Federal Act on Package Travel'. Other claims towards such travel service providers (e.g. salaries and rent) were not covered by the relevant standstill. With respect to the limited scope of companies and claims that were subject to this specific stay, the legal effects of the standstill were basically the same as the previous general stay of enforcement which, however, applied to all debtors and claims (see section 3.3.1 above).

### 3.4 Other changes to formal and informal insolvency processes

On 16 April 2020, the SFC issued an additional new Ordinance<sup>86</sup> which in Section 3 facilitates debt enforcement proceedings with respect to the delivery of notices, orders and decisions of debt enforcement and bankruptcy authorities as well as debt collection documents.

Furthermore, in addition to the existing public auctions and sales by private contract, the new procedural rules also allow for the liquidation of movable property through publicly accessible online auction platforms.

In addition, despite the fact that the COVID-19 moratorium and the amendments to the ordinary composition moratorium based on the temporary COVID-19 Insolvency law Ordinance are no longer in force, according to Art. 9 (Insolvency law measures) of the newly enacted COVID-19 Act, to the extent necessary to prevent mass bankruptcies and to stabilize the Swiss economy and society, the SFC may at any time enact new provisions that deviate from the DEBA and CO concerning:

- i) the composition moratorium (Art. 293 et seq. DEBA);

83. See also COVID-19 Ordinance insolvency law – Explanations regarding the individual provisions, 16 April 2020, available at: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/erlaeuterungen-COVID19-insolvenz-d.pdf>.

84. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-79182.html>.

85. SFC, Ordinance on the legal standstill in accordance with Article 62 with Article 62 DEBA concerning the travel industry, SR 281.243, 20 May 2020, available at: <https://www.admin.ch/opc/de/classified-compilation/20201505/index.html>.

86. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78793.html>; Ordinance on measures in the area of justice and procedural law in connection with the corona virus (Ordinance COVID-19 justice and procedural Law), 16 March 2020, available at: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/vo-COVID19-justiz-f.pdf>; see also Explanations regarding COVID-19 Ordinance justice and procedural law, 16 April 2020, available at: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/erlaeuterungen-COVID19-justiz-f.pdf>.



- ii) the preconditions, effects and procedure of a special moratorium; and
- iii) the notification obligations in the event of capital loss and over-indebtedness.

### 4. Financial and regulatory measures

#### 4.1 Broader financial sector measures implemented by regulators

##### 4.1.1 Financial conduct authorities

###### *Financial Market Supervisory Authority (FINMA)*

On 25 March 2020, the FINMA explicitly supported the package of measures adopted by the SFC and 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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup>

On 19 May 2020, the regulator published further guidance in the context of the COVID-19 crisis containing adjustments to the periods for various exemptions already granted and specifying in more detail how the net stable funding ratio (NSFR) is calculated.<sup>90</sup>

###### *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.<sup>91</sup>

##### 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 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.<sup>92</sup>

On 11 May 2020, the SNB has announced that the SNB COVID-19 refinancing facility has been expanded to include cantonal loan guarantees as well as joint and several loan guarantees for start-ups. So far, the SNB had accepted as collateral for the CRF only credit claims in respect of loans guaranteed by the Federal Government under the COVID-19 ordinance on joint and several guarantees. The SNB now additionally accepts claims secured by loan guarantees or credit default guarantees offered by Cantons, provided these have been granted in order to cushion

87. 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/>.

88. 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-aufsichtsmittteilung-02-2020/>.

89. Ibid.

90. FINMA Guidance 06/2020: extension or discontinuation of exemptions due to the COVID-19 crisis, 19 May 2020, available at: <https://finma.ch/en/news/2020/05/20200519-news-aufsichtsmittteilung-062020/>.

91. COMCO, 'Antitrust law applies during coronavirus crisis', Media Release, available at: <https://www.weko.admin.ch/weko/fr/home/actualites/communiqués-de-presse/nsb-news.msg-id-78586.html>.

92. 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](https://www.snb.ch/en/mmr/reference/pre_20200325/source/pre_20200325.fr.pdf).

the economic impact of the COVID-19 pandemic. Claims secured by joint and several guarantees provided for start-ups by the Federal Government in cooperation with the Cantons are now also deemed to be eligible collateral.<sup>93</sup>

According to SNB's monetary policy assessment dated 17 December 2020, the coronavirus pandemic is continuing to have a strong adverse effect on the economy. Against this difficult backdrop, the SNB is maintaining its expansionary monetary policy with a view to stabilising economic activity and price developments. Furthermore, it is supplying generous amounts of liquidity to the banking system via the SNB COVID-19 refinancing facility. The SNB's expansionary monetary policy provides favourable financing conditions, counters upward pressure on the Swiss franc, and contributes to an appropriate supply of credit and liquidity to the economy.<sup>94</sup>

#### 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.<sup>95</sup>

### 5. Specific measures for micro and small businesses

#### 5.1 Simplified measures addressing small business insolvency

See the comments re the temporary SME moratorium in section 3.3.3 above which is no longer in force.

#### 5.2 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 2020 include:

- On 19 March 2020, the Swiss Federal Supreme Court<sup>96</sup> 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<sup>97</sup> 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)*<sup>98</sup> 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

93. SNB COVID-19 refinancing facility expanded to include cantonal loan guarantees as well as joint and several loan guarantees for start-ups, Media Release, 11 May 2020, available at: [https://www.snb.ch/en/mmr/reference/pre\\_20200511/source/pre\\_20200511\\_en.pdf](https://www.snb.ch/en/mmr/reference/pre_20200511/source/pre_20200511_en.pdf).

94. SNB monetary policy assessment of 17 December 2020, Media Release, 11 May 2020, available at: [https://www.snb.ch/en/mmr/reference/pre\\_20201217/source/pre\\_20201217\\_en.pdf](https://www.snb.ch/en/mmr/reference/pre_20201217/source/pre_20201217_en.pdf).

95. 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>.

96. 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](https://www.bger.ch/files/live/sites/bger/files/pdf/de/Information_Anwaelte_Fristen_coronavirus_Internet_d-1.pdf).

97. SFC, Media Release, 20 March 2020, available at: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen/bundesrat.msg-id-78502.html>.

98. 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>.

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 virtual hearings

On 16 April 2020, various measures<sup>99</sup> designed to allow for greater procedural flexibility have been adopted by the Federal Government in an effort to manage the impact of COVID-19.

These measures are designed to promote responsible 'social distancing' policies in an effort to control the spread of COVID-19 in Switzerland and to ensure a normal functioning of justice, which is an intrinsic and indispensable element of the rule of law, especially in this extraordinary situation.

These new measures temporarily adapt the existing civil law proceedings by allowing, under certain circumstances, teleconferencing or videoconferencing or written proceedings instead of oral hearings in order to guarantee or improve the functioning of justice and courts. They remain valid until 31 December 2021.

### 6.2 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.

### 6.3 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

There are no other pending reforms at present.

The information in this chapter is correct as of 8 February 2021.

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99. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-78793.html>, Ordinance on measures in the area of justice and procedural law in connection with the corona virus (Ordinance COVID-19 justice and procedural Law), 16 March 2020, available at: <https://www.fedlex.admin.ch/eli/cc/2020/234/fr>; see also Explanations regarding COVID-19 Ordinance justice and procedural law, 16 April 2020, available at: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/erlaeuterungen-COVID19-justiz-f.pdf>.