

CORPORATE PLANNING – A PREREQUISITE FOR OBTAINING STATE AID AND THE BASIS FOR SURVIVING THE CRISIS

Unforeseeable political and economic developments like the current corona pandemic have significant adverse effects on the global economy. Existing challenges are exacerbated.

The demand slump caused by the crisis results in reduced profits or losses. A crisis calls for a rethink of existing structures and sometimes a reorganisation too. Various scenarios should be prepared to safeguard the entity's ongoing viability. Attitudes need to be revised and made nimbler.

CONTROL CASH FLOW

Liquidity is at the core of the current developments; revenue is falling, the promised state aid is not there (yet), but the obligations remain and keep adding up. Even if the state intends to offer wide-ranging assistance, it is vital to keep an eye on the concrete situation.

In line with their prior responsibilities, it remains the job of company management to assess the business model and the factors affecting it on a continuous basis, in order to determine how best to respond to change. The fundamentals are and remain

- ▶ a dependable overview of current liquidity and
- ▶ medium-term planning – ideally in an integrated model.

This corresponds to the previous requirements for D&O liability and applies particularly in the current situation.

On this basis it is possible to assess whether the entity can service its debts, whether there is any indication of insolvency, if D&O liability could be invoked and what steps can be taken to overcome the crisis, particularly to make the best use of the available opportunities.

SUBSTANTIATED PLANNING

For various reasons it is absolutely essential to plan well at the moment. External support can help too, partly because it enables third parties to have confidence in the decision-making material, and also to relieve pressure on your own resources in this dynamic environment.

The conditions for state aid, e.g. under the assistance programmes administered by the KfW, require confirmation that the effects of the corona pandemic are the root cause of the financial distress. Risk assessments are always carried out by the banks before any funds are approved. This can only take place on the basis of verifiable documentation that is based on plausible assumptions. Essentially it will come down to an analysis of the critical situation, describing and quantifying the steps that will be required to ensure medium-term solvency in view of the current conditions.



ABOUT BDO

With over 1,900 employees across 27 different locations, BDO is one of the leading companies for auditing and audit-related services, tax and business law consulting, and advisory services in Germany.

BDO AG Wirtschaftsprüfungsgesellschaft is the founding member of BDO International (established in 1963). With over 88,000 employees across 167 countries, it is currently the only globally active auditing and consulting organisation with European roots.

www.bdo.de

CONTACT

BDO Restructuring GmbH
Georg-Glock-Straße 8
40474 Düsseldorf



STEFFEN REUSCH, MBA
Lawyer
Managing director
Tel.: +49 211 1371-130
steffen.reusch@bdo-restructuring.de

SUSPENSION OF OBLIGATION TO DECLARE INSOLVENCY

The Federal Ministry of Justice and Consumer Protection (BMJV) has announced its intention to suspend the obligation to declare insolvency until 30/09/2020, but not in the form of a general waiver. Neither are there currently any indications that negative equity is to be eliminated as a reason for insolvency.

The BMJV has said explicitly that it aims to prevent, "companies having to declare insolvency solely because the aid announced by the federal government does not reach them in time. In such cases the standard three-week deadline defined by the Insolvency Code is too short." A clear connection is therefore being made between the causes of the financial distress and the effects of the corona pandemic.

In this context the requirements referred to above also apply. So in terms of state aid, this calls for an analysis of the probability that such aid is actually obtained for the entity in question. This will largely depend on whether the company crisis results directly from the external cause of the corona pandemic. Furthermore it should not be expected that the state aid will relieve other sources of financing, e.g. providers of equity, of their responsibilities for resolving a crisis that would have existed even without corona.

A company that without the effects of the corona crisis would need capital of X, which the pandemic has now increased by Y, can therefore in all probability not expect state aid amounting to X + Y, but "only" to Y, because here a causal relationship exists.

It must be assumed that even under these conditions, there is the same requirement that the forecast for continuing the company is positive. Funding must therefore be assured, whereby state aid does not replace the capital which would be necessary even without corona. For example, it cannot replace a binding guarantee for third party debts which would have been necessary even without the impact of the corona pandemic.

The expectation is that the corona pandemic will also affect the application of directors' liability law, as in Section 64 GmbH Act. However, the best way to avoid the risks is also by means of the documentation described above.

USE EARLY WARNING SYSTEMS

Digital early warning systems can provide clear indications of an entity's financial situation and potential developments. By introducing such mechanisms it is possible to create a monitoring tool that calculates a range of performance indicators automatically. This is based on methods of business analytics, which can also be extended by what is known as predictive analytics.

USE FUTURE MECHANISMS FOR RESTRUCTURING

The EU has adopted a directive that is to be transposed into national law by mid 2021. It is expected that the German legislature will now take action sooner. This is intended to create a framework for preventive restructuring, which gives companies in financial difficulties the opportunity to reorganise their business without the need for insolvency proceedings, on the basis of a restructuring plan which must be approved by a majority of its creditors.

Even if this is still a long way off, it remains a concrete strategic option that should be taken into account for medium-term planning.

ACTION PLAN

The corona pandemic already calls for corporate planning to be revised to cover extreme situations. In particular the liquidity situation must be measured on a daily basis in order to determine short-term requirements and extrapolate these figures for the medium term. This will improve the ability to take action in the future and generate the documentation that is particularly important when applying for state aid. In this way you also establish the best groundwork for negotiations with your stakeholders, e.g. banks, workforce, customers and suppliers. Liability risks are reduced at the same time. All companies are currently impacted by reduced profits or even losses as a result of the crisis.

EFFECTIVE SUPPORT FROM BDO

Please feel free to ask your BDO contact for a quick liquidity check and an analysis of the causes of the crisis, a calculation of short-term funding needs and the action that is necessary and possible to overcome the crisis. The focus in all cases is on obtaining the state aid that is currently available. In addition, we will of course advise you with an eye to the more distant future, in order to strengthen your company over the longer term. We will help you to identify and avoid existing risks. Wherever necessary we will enlist the support of colleagues from other specialist areas. With the support of multidisciplinary teams, we are then able to offer flexible, customised solutions for the specific challenges affecting your business. If needed we cooperate with colleagues from other BDO member firms in our international network spanning more than 160 countries.