



Financing concepts and corporate transactions

Opportunities for SMEs in the “corona crisis”



This publication offers a brief overview of current problems faced by small and medium-sized enterprises, the new legal situation, and associated funding.

On this basis, we are presenting pragmatic financing concepts for SMEs, where growth through equity financing and mezzanine financing, for instance with the participation of family offices or medium-sized private equity companies, may play a key role.

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A. Introduction

The Act to Mitigate the Consequences of the COVID-19 pandemic under Civil, Insolvency and Criminal procedure law (“COVID-19 legislation”), which entered into force on March 27, 2020, and the extensive State aid programs at EU, federal, and state level announced to date, are intended to ensure the survival of small and medium-sized enterprises (SMEs). In addition to loans collateralized by development bank KfW, government assistance programs are also being reinforced, for instance via the Bavarian fund (“Bayernfonds”) for larger SMEs or the additional EUR 2 billion announced by the Federal Ministry for Economic Affairs and Energy for the venture capital sector.

Particularly for smaller SMEs, such as in the automotive, retail, consulting, and media sectors, but also in the heavily affected sectors of travel, event, hotel, and restaurant businesses some of which have a long-standing history, funding loans will be the only options to be considered by SMEs. These loans have to be collateralized by banks. It will likely not be possible for businesses to repay the loans in this generation – at least not in case of extended sales losses. In addition, not a satisfactory number of KfW loans has been received by companies to date, in particular not by those companies that do not have sufficient assets on their balance sheets or whose financial situation was already dire at the outbreak of the coronavirus crisis. According to information from various industries, a massive consolidation wave is therefore expected in the SME sector. Companies should anticipate this development and take advantage of the resulting opportunities.

B. Overview of short-term and medium-term risks in the SME sector

Even if the current stay-at-home orders were to be relaxed again from May/June 2020, according to Institute for Economic Research (Institut der Deutschen Wirtschaft / IDW), normalizing of trade in goods and services would require about another three (3) months. This means that normal sales and thus a **return to earnings-based company valuations and financing is not to be expected before the end of 2020 at the earliest.**

The relatively sound equity ratio of German SMEs (on average some 31% of the balance sheet total, for smaller companies (less than 10 employees) about 22.5%) will not prevent a “credit crunch” as feared in the event of an extended crisis. Depending on the sector, the liquidity horizon of German SMEs is reduced to a few weeks. The suspension of the obligation to file for insolvency (which only applies to some companies, anyway) (see **section C. II.**) is unable to eliminate the legal risks for many companies.



I. Problems encountered by SMEs

- Sharp slump in revenue lines until probably the fall of 2020 (depending on the industry).
- **KfW loans have not yet been paid out** because companies’ principal banks reject the remaining default risk of currently at least 10% (in the case of SMEs); 100% risk assumption would be ruled out under EU State aid law.
- Requirements for “**bank**” **collateralization** of KfW lines are still not uniform among institutions. In the absence of sufficient balance sheet values, considerable personal collateral is sometimes required, which is difficult for businesses to justify in the current (still unpredictable) crisis.
- Considerable capacity problems at banking institutions during processing, waiting times.
- Banks prefer their **existing customers** with existing credit lines to limit their own balance sheet risks.
- **Legal insolvency protection** by the German government does not provide sufficient legal security for **thinly capitalized companies** (only “presumption” regarding the cause of insolvency by COVID-19, examination of individual cases required).
- Widespread risk of **illiquidity of SMEs and young technology companies**, as equity capital support arrives too late for implementation.
- The situation is expected to worsen in the near future due to expected **breaches of credit agreements (covenants)** in connection with external financing, in particular the gearing ratio (net financial debt to EBITDA) and the debt service coverage ratio (cash flow before debt service to debt service).



II. Consequences for the area of corporate transactions

- Limited deal flow in the **private equity** sector due to lack of **earnings-based acquisition financing**; asset-based valuations are usually unacceptable for businesses.
- **Current transactions** are facing **technical difficulties** (acquisition financing, purchase price calculation, earn-out structures), including due to a sharp drop in the financial performance of the target.
- Standstill in **strategic transactions** due to freezing of **budgets of larger strategists**.
- **No funding rounds** and risk of acute illiquidity for software and technology startups with a high personnel level, including in the B2B sector.
- **No investment activity by family offices and business angels**, as the course of the pandemic is unpredictable and losses on the capital market have to be absorbed.
- Standstill in urgently needed SME **succession solutions**.
- Acquisitions by “**restructuring funds**” from insolvency with the loss of substantial assets and customer bases will increase.
- The number of **rights of rescission** exercised **under corporate purchase agreements** may increase if the target company’s financial ratios change significantly between signing and closing of the purchase agreement and appropriate provisions have been agreed (Material-Adverse-Change (MAC) clauses).
- In addition, the number **foreign corporate buyers**, e.g., from China and Korea, that may emerge from the crisis more quickly than the Western industrialized countries, is expected to increase again.

C. Positive effects of the new legislation (brief overview)

The recently adopted new legislation to mitigate the effects of the COVID-19 pandemic in civil, insolvency and criminal procedure law includes the following provisions for SMEs.

I. Civil law, tenancy/leasing law ¹

1. Moratorium on continuing obligations (Article 1)

The following applies to continuing obligations (for tenancies, see item 2) concluded prior to March 8, 2020:

- Micro-entrepreneurs (companies with up to nine employees and annual sales of up to EUR 2 million) are entitled to a temporary right to refuse performance for material continuing obligations if they are unable to meet their contractual obligations solely because of the COVID-19 pandemic.



Implementation in practice:

The right to refuse performance must be expressly pleaded and debtors must prove that they are unable to perform specifically because of the COVID-19 pandemic.

2. Limitation of the termination of leases and usufructuary leases (Article 2)

The following applies to (residential and commercial) leases concluded prior to March 8, 2020:

- Landlords may not terminate the lease if tenants of premises or land fail to pay rent due in the period from April 1, 2020 to June 30, 2020, if the non-payment is due to the effects of the COVID-19 pandemic.
- Tenants' obligation to pay remains in force (in addition to statutory default interest, currently 8.12%), so that **rent is only "deferred" by law**. It is therefore not a question of "not wanting" but of "not being able" to pay. The law does not provide for a separate right of tenants to rent reduction either. The provisions apply accordingly to usufructuary leases.
- Tenants have to **substantiate** the connection between the COVID-19 pandemic and the non-payment of rent in cases of dispute. They must therefore present facts from which an overwhelming probability (cf. Federal Court of Justice, December 21, 2006 - IX ZB 60/06) arises that their non-payment is due to the COVID-19 pandemic.
- Deviations from the provisions at tenants' expense is not possible, irrespective of when the parties made such agreements.
- These statutory provisions **are valid until June 30, 2022**, so rent arrears may be paid until June 30, 2022.
- In the event of an amicable deferment or reduction of rent between landlords and tenants, this should be done as a **written addendum to the lease** in the case of commercial leases (Sections 530 sentence 1, 126, 578 Civil Code).



Implementation in practice:

Documentation that the COVID-19 pandemic is the cause of tenants' non-payment. Statement by tenants that no payment is being made specifically and only because of the statutory provision, i.e., credible evidence that the operation has been prohibited or significantly restricted by legal order or official decree as a result of the COVID-19 pandemic. This relates in particular to restaurants and hotels. When wording deferment agreements, the risk of rescission under insolvency law is to be examined.

II. Insolvency law²

- According to COVID-19 Suspension of Insolvency Act, the obligation to file for insolvency is suspended until at least September 30, 2020, both as regards insolvency and over-indebtedness. The obligation to file for insolvency continues to be given where the insolvency is not due to the consequences of the COVID-19 pandemic or where there are no prospects of eliminating the insolvency.
- Where the reason for insolvency is an inability to pay (not over-indebtedness), it is presumed that the insolvency is based on the effects of the COVID-19 pandemic and that solvency can be restored. The **presumption rule only applies to insolvency, however, and not to over-indebtedness**. Additionally, it does not apply where an inability to pay already existed on December 31, 2019.
- **Creditor insolvency applications** are inadmissible if the insolvency has occurred after March 1, 2020.
- If the conditions for suspending the obligation to file for insolvency are met, the **payment prohibitions** are also **relaxed**, according to which general managers are personally liable for payments made in the ordinary course of business after insolvency proceedings have been initiated.
- Likewise, the risk of future insolvency challenges is largely excluded, provided that the conditions for suspending the obligation to file for insolvency are met. In other words, the repayment of a new loan granted up to September 30, 2023, and the provision of collateral to secure such loans, are not considered detrimental to creditors and therefore may not be contested.
- The protection against challenges **also covers shareholder loans** at the same conditions as third-party financing until September 30, 2023, which, together with the suspension of the subordination of shareholder loans under insolvency law, **is intended to encourage shareholders to financially support their companies by way of loans even during the crisis**.



Implementation in practice:

Preparation of external IDW S11 expert opinions or liquidity planning by auditors. Documentation that there was no insolvency as of December 31, 2019. Presentation of a positive forecast for the company without COVID-19 pandemic (according to which insolvency can be eliminated again). Where a going-concern prognosis is not possible, the implementation of a protective shield proceedings (see, item E. III. below) or regular insolvency should be considered.

III. Corporate law³

- Up to December 31, 2020, the possibility has been created for the first time for stock corporations, partnerships limited by shares (KGaA) and companies in the form of Societas Europaea (SE) to hold (ordinary and extraordinary) general meetings for the calendar year 2020 in a purely virtual manner. The conditions for the permissible holding of a purely virtual general meeting are the transmission of the entire general meeting, the exercising of voting rights, the possibility to ask questions and the right of shareholders to object by means of electronic communication.
- In addition, the period of Section 17(2) Conversion Act is extended to **twelve (12) months** to prevent conversion measures from failing due to the fact that balance sheets have been drawn up at a reporting date which is more than eight (8) months prior to the filing for registration.

i**Advice for use in practice:**

The above provisions are not necessary where small or medium-sized stock corporations with a manageable number of shareholders may pass resolutions by means of a “general meeting.” In these cases, it is possible to waive the formal requirements for holding the general meeting.

³ Act on measures in company, cooperative, association, foundation and residential property law to combat the effects of the COVID-19 pandemic

D. COVID-19 State funding programs

I. EU Commission

The EU Commission considerably shortened the approval procedures for granting State aid within the meaning of Article 107(1) TFEU. On March 19, 2020, the Commission adopted a Temporary Framework for individual approvals. The new rules are intended to enable EU Member States to grant State aid to companies quickly and easily under certain conditions until December 31, 2020 (Article 107(3b) TFEU).

This includes in particular the following funding measures:

- direct grants or tax advantages of up to EUR 800,000 per company;
- State guarantees for bank loans of up to 25% of the borrower’s annual sales;
- subsidized public sector interest loans; and
- facilitating the granting of short-term export credit insurance. Temporarily, all countries will be removed from the list of countries with “marketable risks” via short-term export credit insurance so that government short-term export credit insurance will become more widely available during the corona crisis.

The aid may be granted on December 31, 2020 at the latest and only where companies have incurred financial difficulties solely as a result of the COVID-19 pandemic **after** December 31, 2019.

Companies may receive the aid from all public bodies, which in turn must be notified to the EU Commission. The support measures for improved credit conditions are implemented in the “KfW Special Program 2020.”

On March 27, 2020, the EU Commission proposed five (5) additional types of aid to Member States, including tax deferrals and/or suspensions of employers’ social security contributions and targeted aid for employee compensation to prevent job losses. These targeted aid options provide Member States with more flexibility to intervene where the need is most urgent. The amended Temporary Framework is expected to enter into force on April 3, 2020.

II. Federal government

Measures taken by a Member State to combat the COVID-19 pandemic do not constitute aid within the meaning of Article 107(1) TFEU if they benefit all companies and sectors of the economy, such as subsidies for short-time work allowance, wage subsidies, or tax advantages. Under the billion-euro aid package of the Federal Ministry of Finance, affected companies and businesses are entitled to unlimited aid loans from KfW Bank via their principal bank/financing partner in the event of financial difficulties in connection with the corona crisis through no fault of their own.

1. Funding programs of KfW Bank

Companies, self-employed individuals, or freelancers who having incurred financial difficulties as a result of the “corona crisis” may now apply for loans for investments and working capital from their bank or savings bank, **provided they were not in financial difficulties by December 31, 2019** (detailed examination required). For companies with annual sales in excess of EUR 5 billion, however, individual case assessments will continue to be made.



KfW Entrepreneur Loan and ERP Start-up Loan

- 80% (large enterprises) to 90% (SMEs) risk assumption by KfW;
- Increase of the sales limits for applicants from EUR 500 million to EUR 2 billion;
- Increase in risk assumption (indemnities) of up to 80% for working capital loans up to EUR 200 million;
- Maximum loan amount is EUR 1 billion per group of companies and is limited to 25% of 2019 annual sales, liquidity requirements for the next 12 to 18 months or twice the applicant's 2019 salary costs;
- Interest rate improvements between 1% and 2.12% annually;
- 2018 annual financial statements plus management analysis are sufficient, where annual 2019 financial statements are not yet available.



KfW Loan for Growth

- Provision by way of syndicated financing by several banks without restriction to a specific sector;
- Increase of the permissible sales limit for applicants from EUR 2 billion to EUR 5 billion;
- Increase of risk assumption by KfW from 50% to 80%.



Guarantees by guarantee banks

- Doubling the maximum guarantee amount to EUR 2.5 million;
- Increase of the risk share of the federal government in the guarantee banks;
- Increase of the upper limit of working capital in the total exposure of the guarantee banks from 35% to 50%;
- Up to an amount of EUR 250,000, guarantee banks may decide independently and within three (3) days.



Large Guarantee Program

- Regional restrictions waived;
- Coverage of working capital financing and investments from a guarantee requirement of EUR 50 million with a guarantee ratio of up to 80%.

2. Economic stabilization fund (WSF) for Germany

In addition to the aid provided by KfW, the Economic Stabilization Fund is to be used for a limited period to implement rapid and necessary measures to support the German economy and to secure jobs. This includes in particular large-volume support measures to overcome liquidity bottlenecks and to strengthen the equity base of companies that have incurred difficulties as a result of the Covid-19 pandemic.



Companies that meet at least two of the following three criteria in the last two fiscal years closed prior to January 1, 2020 are eligible to apply:

- balance sheet total of more than EUR 43 million,
- sales in excess of EUR 50 million,
- more than 249 employees on an annual average

Applications for aid must be submitted to the Federal Ministry for Economic Affairs and Energy.



Conditions for implementing stabilization measures include the following:

- the relevant company has no other means of financing,
- the stabilization measures provide the company with a clear independent going concern perspective after the Covid-19 pandemic has been overcome,
- the company was not already in financial difficulty on December 31, 2019, and
- the company is able to guarantee a sound and prudent commercial policy, in particular by contributing to the stabilization of production chains, and to secure jobs.

To ensure the above conditions, terms may be agreed with the beneficiary companies. These include the use of the funds raised, the raising of further loans, the remuneration of their executive bodies, the distribution of dividends and measures to prevent distortions of competition. The requirements may differ according to the nature and addressees of the stabilization measure.

III. German statesv

- In Bavaria, companies with up to 250 employees and freelancers may apply for **emergency aid of between EUR 5,000 and EUR 30,000** in the event of a liquidity bottleneck due to the corona crisis.
- A “BayernFonds” totaling **EUR 60 billion** (authorization to borrow EUR 20 billion and an additional guarantee framework of EUR 40 billion) has been set up to protect larger SMEs. In addition, the state may directly participate in systemically important companies affected by the corona crisis which are on the verge of insolvency. The assets of BayernFonds are managed by a finance agency and corporate participations are under the rules of Bayerische Beteiligungsgesellschaft or LfA Förderbank. The BayernFonds structure is based on the German government’s economic stabilization fund. Startups must have been valued by private investors in a completed financing round at an amount of at least EUR 5 million, including the capital raised through said round.
- **North-Rhine Westphalia** provides, among other things, for **extending the guarantee framework for economic development** by EUR 4.1 billion to EUR 5 billion and **emergency aid of up to EUR 25,000** for companies with 10 to 50 employees. In addition, the micro-mezzanine fund is to provide the option of silent participations in small companies without involvement of the principal bank and without collateral of up to EUR 75,000.

E. Solution approaches for SME corporate finance / corporate transactions in the “corona crisis”

SMEs should now consider the following short-term and medium-term term financing measures.

I. Liquidity protection, reduction of credit requirements

- **Short-time work allowance** should be claimed in the maximum permissible amount. Although reducing capacity to up to 0% leads to a loss of net income for employees (up to 33% for parents and 40% for other employees), employers may mitigate this by making voluntary additional payments.
- **Tax deferrals**⁴ in respect of **income tax** (including solidarity surcharge), **corporation tax** (including solidarity surcharge), **trade tax** and **value-added tax**, i.e. applications for deferral of all taxes due or falling due or unpaid until December 31, 2020, both with respect to back taxes (e.g., for 2018), as to “subsequent advance payments” (e.g., for 2019, if the 2019 annual tax return has not yet been filed), and/or application for reduction of advance payments for the current year 2020 on the basis of re-estimated profits (or losses) resulting from the corona crisis.
- **Deferral of social security contributions** under certain conditions (Section 76(2) sentence 1 no. 1 Social Code SGB IV, “special hardship”)
- **Examination of need for provisions** for all contractual relationships in which the company is in default with its own services or containing a “good standing” clause.
- **Cautious communication** with regard to **contractual relationships at risk of termination**, not risking of extraordinary termination, resulting in possible **premature damage** to the other party and immediate **illiquidity** (no protective shielding procedure allowed).
- **Use supplier credits** in the full amount.
- Fully utilize **development** and **advertising cost budgets** in framework agreements.
- Assertion of **rights of retention** from mutual contracts (Section 320 Civil Code) or the business relationship (Section 273 Civil Code). These will, however, require careful legal examination.
- **Short-term granting of shareholder loans** is possible until subsidies can be obtained, since rescission rules are suspended for companies for which the obligation to file for insolvency is temporarily suspended (see section C. II. above).
- Financial/sales-increasing agreements with **selected (core) customers** (depending on the sector, loyalty programs, private placements).

⁴ <https://www.skwschwarz.de/aktuelles/artikel/artikel-detail/news/handlungsempfehlungen-fuer-unternehmen-und-selbststaendige/4/detail/News/>

II. Improved options of obtaining KfW loans

The KfW programs continue to cause considerable problems for the reasons mentioned above under item **B. I.** This may be countered as follows.

- To avoid rejection of a KfW application because a company is classified as a “company in difficulty” already **prior to December 31, 2019, restructuring steps initiated with existing investors** are to be **documented in detail**.
- **Drawing up a positive going concern forecast or liquidity forecast** of a hypothetical nature (excluding the corona crisis). It remains to be seen how KfW will deal with these issues.
- Negotiation with the principal bank about **third-party collateral to limit the bank’s default risk (10%-20%)**. It remains to be seen to what extent KfW will make use of this collateral.
- **Present restructuring reports** when applying for a loan to improve the applicant’s risk profile compared to other applicants.
- When applying for a loan, **present an overview of possible collateral provided by the borrower**, including capitalized software developed in-house, and draw up a valuation report.
- **Interim financing with potential investors**, such as mezzanine financing, subordinated loans.

III. Protective shield proceedings

1. Motivation

If a KfW loan or subsidy cannot be taken out or cannot be taken out in time, it must **first be examined whether the obligation to file for insolvency is suspended for the company in accordance with the COVID-19 Suspension of Insolvency Act. If this is not the case or cannot be determined with certainty** because

- the company was insolvent as of December 31, 2019,
- an impending insolvency (without KfW financing) cannot be eliminated with certainty with KfW financing (despite legal presumption),
- the **period of the COVID-19 Suspension of Insolvency Act until June 30, 2020** is considered insufficient,
- the **negotiating position towards creditors** is otherwise not strong enough,

protective shield proceedings pursuant to Section 270b Insolvency Code may be the appropriate solution.

2. Implementation, advantages

- The protective shield proceedings represents a reorganization-oriented modification of the preliminary insolvency proceedings and is aimed **at drawing up an insolvency plan under self-administration**. Under the protective shield proceedings, **debtors** are only subject to the **supervision of an insolvency court and a trustee, but do not lose control of the company**. If the company is already insolvent, the protective shield proceedings is ruled out from the outset. High demands are made on protective shield proceedings. Success is mainly based on **professional preparation**.
- The protective shield proceedings is aimed primarily at companies that are structurally sound but **suffer from separable momentary risks for which they are not necessarily responsible**. The company size is not the decisive factor. In other words, **it is particularly suitable for companies where the threat of insolvency has arisen specifically because of the “corona crisis” and where marketability and competitiveness can be restored**.
- The condition for the initiation of protective shield proceedings under Section 270b(1) Insolvency Code is the existence of imminent illiquidity or over-indebtedness and the filing of an application to initiate such proceedings by the debtor. Additionally, debtors must file an application for self-administration and their **restructuring must not be obviously hopeless**.
- The protective shield proceedings protect the company in particular **from enforcement measures** while **management remains entitled to dispose of the company**. In addition, **general managers are entitled to propose the administrator**. It is therefore advisable to propose an insolvency administrator who is experienced in reorganization.
- If the above conditions are met, the court orders the protective shield proceedings to be carried out. **Debtors are given up to three (3) months to draw up an insolvency plan** in accordance with Section 270b(1) Insolvency Code and the court will appoint the proposed provisional administrator. Likewise, the **establishment of liabilities in the insolvency estate** is expressly permitted under Section 270(b)(3) sentence 1 in conjunction with Section 55(2) Insolvency Code, as the restructuring should not fail because, for example, suppliers no longer deliver at all or only against advance payment. **Employees receive insolvency money according to Sections 165 et seqq. Social Code SGB III**.
- The court rescinds the protective shield pursuant to Section 270b(4) Insolvency Code, inter alia, if the intended reorganization has become futile or the temporary creditors' committee has requested its rescission. The **occurrence of insolvency** during the protective shield proceedings is not **ground for termination**, as experience shows that when creditors become aware of the crisis, they will declare their claims due and would thus bring the proceedings to a halt.
- After expiry of the period for submission of the insolvency plan, **the court will decide** whether the insolvency proceedings (self-administration or regular proceedings) are to be initiated or dismissed for lack of assets.

The **administrator will receive 60% of the remuneration of an insolvency administrator** on the basis of the insolvency administrator's remuneration claim. The free insolvency assets are the material factor for computing of fees. Depending on the tasks involved, however, the administrator may claim grounds for surcharges.



Implementation in practice:

Ensuring and checking that there is no insolvency. Sufficient resources to draw up an insolvency plan (no insolvency without assets). Proposing an administrator, coordination with the court. Submit IDW S11 expert opinion or liquidity assessment.

IV. Equity financing in the “corona crisis,” approaches to solutions for transaction practice

Specifically because the corona crisis affects almost all competitors equally, investors will now look for a favorable time to participate in companies that were healthy prior to the corona crisis. These companies will **grow faster than their competitors** and will lead the consolidation that is now expected. The SME sector should therefore be open to **business partnerships** with SME strategists or investment companies at this time in particular. This is the only way to implement upcoming **succession solutions** without being dependent on an (uncertain) end of the corona crisis. Below we present some **particularities and approaches for SME transactions** in the current environment.

1. M&A, private equity transactions

- **Closing accounts are preferable to locked-box arrangements**, as balance sheets have been exposed to high volatility since the beginning of the year.
- For purchase price computations, **net working capital targets** are to be **increased significantly**. It will be a matter of negotiations **as to** how the risk of the current corona crisis is to be distributed.
- Buyers should carefully check the **management analysis (management accounts)** of target companies until the transaction is closed and also have provisions booked in each case.
- **MAC event clauses** remain necessary as their use now depends on future events, with the corona issue in itself no longer representing a MAC event; future developments are, however, too uncertain.
- Exceptionally, from buyers' points of view, a **“holdback” to achieve the net working capital target** should be provided for in the closing accounts.
- The market will provide for significantly **higher earn-out shares of** the total purchase price.

2. Private equity

- For the time being, investors will be more willing to base their investments on **“hard” balance sheet values**. They will receive acquisition financing from their banks only for these values in the short term.
- It seems conceivable, however, that investors may be able to **reschedule the acquisition financing after the corona crisis has abated** (possibly in connection with a staggered purchase price arrangement).
- In return, however, sellers may negotiate a higher **earn-out amount** with **stronger guarantee mechanisms**.
- **The combination of share purchase and capital increase / bridging line for business operations** could be interesting more frequently. The condition would be “fair” loan terms (i.e., no high-risk interest rate).
- Buyers can allow sellers to **“reinstate the value”** by means of a **capital increase** (possibly put/call mechanisms).
- Instead of a 100% sale, there may be more **staggered share sales**, i.e., buyers retaining a portion of the shares (e.g., minority interest) and participate in the **reinstatement of the value** of these shares in the context of the future economic recovery.
- For business owners, active participation in **“buy-and-build” structures** may offer new incentives, particularly in the **consolidation phase**, which make a **“deal” possible at all despite current valuation discounts**. **Inorganic growth** offers great potential due to the expected decline in prices.

3. Venture capital

- Uncertainties in the current environment may be offset by **valuation adjustments** based on objective indicators, where necessary on a **longer-term basis**.
- Startups may have to temporarily switch to entering into **convertible loans** with new investors **with (possibly partly personal) collateral**.
- To obtain internal post-financing, start-ups may have to grant their investors **guarantee rights against the event of insolvency**.
- If key employees cannot be retained despite short-time work allowance (due to considerable net losses), **employee profit-sharing schemes** could be applied **to a greater extent than in the past**, as they enable significant reduction in personnel costs.
- In the context of **employee profit-sharing schemes**, consideration will also have to be given to **“open” participations by key employees**, as the exit options are currently difficult to compute. This requires balanced participation agreements or **“real” (not virtual) share options** that are related to future performance or financing targets (and **not just an exit**).
- **Crowdfunding** as seed and bridge financing could offer a way out of the crisis not only in the VC sector but also for **SMEs**.
- **In the short term, public technology funding will become even more important** than before, as the current unpredictable situation is likely to lead to a significant temporary slowdown in the willingness of SME investors such as family offices, business angels, and VC funds to invest. In addition, the funds of State aid will be significantly increased.

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