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## Questions concerning the impact of the spread of coronavirus on the financial statements and their audit (Part 3)

### Technical Guidance by the IDW

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#### 1. Preliminary remarks

The corona pandemic has created numerous accounting and auditing issues in a very short time. The IDW addressed such issues directly and provided initial responses in close cooperation with its expert committees in the Technical Guidance issued on 4 and 25 March 2020. The complex topics addressed therein primarily relate to fundamental issues and therefore also contain corresponding guidance. This guidance is accompanied by technical information, for example on labour and tax legislation and industry-related issues. Related

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guidance material is available on the IDW website at <https://www.idw.de/idw/im-fokus/coronavirus>.

New questions concerning accounting and auditing in practice continue to emerge. Naturally, the questions are also becoming much more detailed. In order to communicate possible solutions in a coordinated and well-founded manner, but also quickly, this guidance converts technical information into a question and answer format. Where necessary, references are made to the information contained in the previous IDW Technical Guidance (parts 1 and 2) or other materials on the corona pandemic in order to facilitate application. The content follows that of the previous Technical Guidance.

In addition, further issues closely related to companies' accounting and auditing, e.g. the (so-called moratorium) whereby consumers and microentrepreneurs have a right to withhold performance (so-called Covid-19 plea), are included in section 4 of this guidance.

## **2. Selected questions regarding the effects on accounting under the German Commercial Code (Handelsgesetzbuch - HGB) and IFRS**

### **2.1. Supplementary reporting in the notes to the annual financial statements under commercial law and in the management report**

#### **Question 2.1.1: Should the effects of the corona pandemic in any case be included in the disclosures (supplementary report)?**

There is no general reporting obligation. The need to report depends on the individual company's exposure to the effects of the corona pandemic on its future development. A "nothing to report" is not required.

#### **Question 2.1.2: What are the specific effects of the corona pandemic on the annual financial statements of a small or micro-corporation or on a company that prepares its annual financial statements in accordance with the (German) commercial law provisions applicable to all traders?**

The legal representatives of small corporations (§ 267 (1) HGB) are not required to prepare a management report under § 264 (1) sentence 4 half-sentence 1 HGB. In addition, pursuant to § 288 (1) No. 1 HGB, they are not required to include a supplementary report (§ 285 No. 33 HGB) in the note disclosures. For micro-corporations (§ 267a (1) HGB), neither a management report (§ 267a (2) in conjunction with § 264 (1) sentence 4 half-sentence 1 HGB) nor notes are required (§ 264 (1) sentence 5 HGB). This also applies to companies that prepare their annual financial statements in accordance with the commercial law provisions applicable to all merchants (e.g. partnerships with unlimited liability or companies that make use of the exemption provisions of § 264 (3) and 264b HGB in the context of preparing their annual

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financial statements). Consequently, it is questionable whether the corona pandemic nevertheless gives rise to reporting obligations for such companies.

According to the explicit statutory exemption provisions with regard to supplementary or management reporting (assuming the company is affected; see question 2.1.1.), no corresponding reporting is necessary. However, when there are material uncertainties in connection with events and circumstances that could cast significant doubt on the company's ability to continue as a going concern (so-called going concern risks), the party preparing the financial statements must report on them (*IDW AuS 270* (revised), para. 9). Small corporations are required to include such reporting in the notes. For micro-enterprises and companies that prepare their annual financial statements in accordance with the provisions of German commercial law applicable to all merchants, the reporting must be included e.g. below the balance sheet (ref. IDW Technical Guidance of 25 March 2020, p. 4).

**Question 2.1.3: The notes to the financial statements must report on events of particular importance that occurred after the end of the financial year, stating their nature and financial impact (§§ 285 No. 33 HGB). In general, an event is of particular importance if its effects are likely to have an effect on the (true and fair) view conveyed by the financial statements as of the balance sheet date and if, without this supplementary report, the development after the balance sheet date would be assessed significantly differently by the financial statement addressees. What details are required to meet this requirement?**

A general reference to the corona pandemic is sufficient when presenting the nature of the transaction.

When presenting the financial impact, the assets and liabilities, financial position and financial performance must be taken into account to the extent that they are affected. Specific quantitative information is not required; qualitative reporting is sufficient. The verbal explanations must, however, sufficiently illustrate the impact on the economic situation of the company as a whole or the three categories (as above), if affected. The purpose of the provision which is to provide the addressees with at least basic information on the further development of the company as a basis for their decisions determines the threshold for reporting. In this respect, the period for which the financial effects are to be presented also extends from the beginning of the subsequent financial year to the date the preparation of the annual financial statements has been completed (in the case of companies subject to mandatory auditing, this is the date of the issuance of the auditor's report). For a consideration of events of particular importance that occurred thereafter, but before the adoption of the annual financial statements, see the IDW's Technical Guidance dated 25 March 2020, p. 32 (English version page 37).

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**Question 2.1.4: Is it possible to dispense with an otherwise obligatory supplementary report in the notes (§ 285 no. 33 HGB) by providing a reference to the reporting in the management report?**

The HGB does not provide for an explicit cross reference and waiver of reporting in one of the reporting elements. Thus, the relevant reporting obligation must be complied with in both the notes and in the management report. Due to the similar nature of the report content, duplication cannot be ruled out. However, in order to increase transparency for the addressees - forward-looking information on the effects of the corona pandemic can be provided in a prominent place – and then, according to the accounting literature, it is considered permissible to include a cross reference the information presented in the Management Report in the supplementary report, provided identical information would otherwise have had to be included in both reports. The reference in the supplementary report must be unambiguous and clearly recognisable.

## **2.2. Annual and consolidated financial statements**

**Question 2.2.1: On the basis of the Ordinance on Facilitating Short-time Work (Kurzarbeitergeldverordnung, KugV) passed on 25 March 2020, employees are generally entitled to short-time working compensation if at least 10% of the employees employed in the company are affected by a loss of remuneration of more than 10% of their monthly gross salary in the respective calendar month (§ 1 KugV in conjunction with §§ 95 f. SGB III). Insofar as the operational and personal prerequisites according to §§ 97 f. SGB III are fulfilled and the loss of work has been reported in writing or electronically by the employer or the works council to the employment agency in whose district the business has its registered office no later than in the month for which the work was to be performed (§ 99 SGB III), employees who would meet the requirements for the increased benefit rate and – in terms of wage and salary payments – receive 67%, all other employees 60% of the net wage and salary difference in the period of entitlement (§ 105 SGB III). For details on the use of short-time working compensation, please refer to the Technical Guidance issued by the IDW Technical Committee for Law (FAR) dated 3 April 2020.**

**How is the short-time working compensation to be accounted for in the employer's financial statements?**

Provided the legal requirements are met and the German Federal Employment Agency has been notified in due time, employees are entitled to short-time working compensation from the Employment Agency. A corresponding notice of recognition is issued for this purpose. The employer is only responsible for handling payments as a trustee. The employer makes payments in advance and must then subsequently apply to the Employment Agency for

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reimbursement. The Employment Agency then issues a notice of recognition, on the basis of which the employer is reimbursed the short-time working allowance (for details on the procedure, see the FAR's Technical Note dated April 3, 2020, p. 2 ff.)

Thus, from the employer's point of view, the short-time working allowance is merely a so-called transitory item. In the profit and loss account under German commercial law, the employer's financial statements record neither expense nor income from the settlement of payments between employees and the Employment Agency. Corresponding to the monthly payments made to the employees, a claim against the Employment Agency is to be capitalized if all claim conditions including the effective submission of the notification of loss of working hours have been met on the balance sheet date and the application for reimbursement has been submitted by the time the financial statements have been prepared or, with a near-certain probability, will be submitted within three months.

The above statements also apply to accounting in accordance with IFRS. Since short-time working compensation is to be regarded as a transitory item and the IFRS do not contain any specific regulations in this regard, IFRS regulations dealing with similar or related issues must be applied when reporting to the employer (IAS 8.10 in conjunction with IAS 8.11(a)). The provisions of IAS 19.116 and IAS 37.53 for reimbursements are particularly relevant. In both cases, the prerequisite for the recognition of a claim against the Employment Agency is that the reimbursement of the short-time working allowances already paid out by the employer is virtually certain. In analogy to the approach under commercial law, this is assumed when all claim conditions, including the effective submission of the notification of loss of working hours, have been met as of the balance sheet date and the application for reimbursement has been submitted by the time the balance sheet is drawn up or will almost certainly be submitted within three months.

In general, the short-time working allowance is only granted subject to reservations and until a final review has been carried out (ref. FAR's Technical Guidance of 03.04.2020, p. 3 f.). In principle, this does not preclude the recording of advance payments as claims in line with the above guidance.

**Question 2.2.2: According to § 2 Para. 1 KugV, the employer can apply for partial or full reimbursement of the social security contributions that he alone has to bear (see FAR Technical Note of 03.04.2020, p. 8).**

**How are the reimbursements of social security contributions granted by the Federal Employment Agency to the employer in connection with the payment of short-time work compensation accounted for?**

The employer has (in contrast to short-time work compensation) its own direct claim against the Employment Agency. Under German commercial law, the claim for reimbursement is a non-repayable grant that must be recognized in the income statement under other operating

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income or as a reduction of personnel expenses (see *IDW St/HFA 1/1984*, section 2a). Since the provision of non-repayable grants is dependent on the fulfilment of certain statutory conditions (KugV in conjunction with SGB III), the income effect of the grants must be linked to the fulfilment of these conditions and the "offsetting" of the associated expenses in order for the beneficiary to be able to report an accurate profit and loss account. Therefore, an immediate complete recognition of non-repayable grants at the time they are approved is generally not appropriate (ref. *IDW St/HFA 1/1984*, section 2a).

In the case of grants for which - as in this case - a legal claim exists, the claim is capitalised as a receivable provided the company has fulfilled the relevant requirements (including notification to the Employment Agency) for the provision of the grant on the balance sheet date and the required application has been submitted or will almost certainly be submitted at the time the financial statements have been prepared (cf. already question 2.2.1.). If a non-repayable grant is paid out before the recipient has fulfilled the material conditions for the grant, the amount received is to be recorded as a liability under other liabilities until it has been used as intended (ref. *IDW St/HFA 1/1984*, section 2b).

The general provisions apply to the information in the notes to the financial statements prepared in accordance with German commercial law.

For financial statements prepared in accordance with IFRS, the reimbursement of social security contributions by the Employment Agency constitutes a so-called performance-related grant (grants related to income as per IAS 20.3). Such government grants may only be recognised as receivables if there is reasonable assurance that the company will comply with the conditions attaching to them and that the grants will be received (IAS 20.7). This is analogous to the German Commercial Code (HGB), if all conditions for entitlement, including the effective submission of notification of loss of working hours, are fulfilled as of the balance sheet date and the application for reimbursement has been submitted by the time the financial statements have been prepared or will almost certainly be submitted on time within three months.

Grants related to income must be presented - either separately or under a general heading (e.g. "other income") - as a component of income. Alternatively, they can be deducted in reporting the related expense (IAS 20.29 et seq.). In this case, the accounting policies applied (including presentation methods) as well as the nature and extent of the government grants and other forms of government assistance recognized must be disclosed in the notes (IAS 20.39).

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### **3. Selected issues concerning the impact on the financial statement audit**

#### **3.1. Effects of the postponement of the Annual General Meeting on auditor appointment**

**Question 3.1.1: If a statutory auditor has been providing audit services to a public interest entity for 20 or more consecutive years as at 16.06.2014, may he/she still be allowed to carry out the audit of the annual accounts as at 31.12.2020, even if the general meeting and hence the election of the statutory auditor is postponed to a date after 16.06.2020 as a result of the corona pandemic?**

According to the wording of Article 41 (1) of the EU Audit Regulation (EU-APrVO), a Public Interest Entity (PIE) may not enter into or renew an audit engagement as of 17 June 2020 if that statutory auditor has provided audit services for this PIE for 20 and more consecutive years (so-called "long-runners") at the date of the entry into force of the EU-APrVO (16 June 2014). Assuming that the audit engagement within the meaning of Article 41 (1) EU APrVO has been granted before 17.06.2020, the auditor may still carry out the audit of financial statements for the period ending on 31.12.2020. If the current corona pandemic leads to the postponement of general meetings, a strict interpretation based on wording that itself is not entirely clear might result in the companies concerned having to tender for the audit for the calendar year 2020 in addition to the burdens resulting from the crisis.

In contrast, the Committee of European Auditing Oversight Bodies (CEAOB), is of the opinion that the beginning of the financial year to be audited can be used as a basis for the audit engagement; i.e. according to this view, the audit of financial statements for financial years commencing before 17 June 2020 (e.g. for a financial year 2020 from 01.01.2020 to 31.12.2020) may still be carried out by the previous auditor (see CEAOB, Guidelines on the duration of the audit engagement, question B.9 p. 6: "[...] the audited entity will not be allowed to renew or enter into an audit engagement [...] for periods that start on or later than 17 June 2020"). An often unavoidable postponement of the Annual General Meeting 2020 will not bring forward the change of auditor and the associated obligation to tender for so-called "long-runners". This view appears justifiable, not least because a formal reference to the time of the appointment of the auditor cannot be justified given the spirit and purpose of the Audit Regulation. Neither the issue of familiarity nor the quality of the audit will be changed by the fact that the auditor for the financial year 2020 will be appointed on 15 June in one case and on 20 June in another.

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**Question 3.1.2: What are the options for action in the event of a postponement of the Annual General Meeting with regard to the election of the auditor for the auditor's review of the condensed financial statements and the interim management report within the framework of the half-yearly financial report according to WpHG?**

If, as a result of the corona pandemic, the review of the half-yearly financial report (§ 115 (5) sentence 1 of the German Securities Trading Law (WpHG)) needs to be carried out before the ordinary Annual General Meeting of the current financial year, there is, on the one hand, the option of appointing the auditor of the previous financial year to perform this review in analogue application of § 318 (2) sentence 2 of the German Commercial Code (HGB) (Alternative 1: acceptance by default). This means that the election of the auditor by the Annual General Meeting is not necessary. The general view in German accounting literature assumes this admissibility, although it has not been clarified conclusively in Court. Otherwise, § 318 (2) sentence 2 HGB does not apply to new appointments in the context of the external rotation requirement under Article 17 of the EU Audit Regulation.

On the other hand, after the first six months of the financial year an application pursuant to § 115 (5) sentence 2 WpHG in conjunction with § 318 (4) HGB for an appointment of a replacement auditor by the Courts (Alternative 2: auditor replacement order). However, the admissibility of the legal appointment has similarly not been clarified conclusively by the Court. In the context of an auditor replacement order, the Court would have to examine in any case whether the fictional effect of § 318 para. 2 HGB would intervene. Should the predominant opinion in the accounting literature prevail, there would be no capacity for a replacement order.

Since the review of the half-yearly financial report is voluntary (§ 115 (5) sentence 1 WpHG), it would also be possible to waive the review of the half-yearly financial, taking the associated consequences into account (Alternative 3: waiver). However, this would have to be disclosed in the half-yearly financial report in accordance with § 115 (5) sentence 6 WpHG and could - especially if this were done only in the current situation, and contrary to the previous year's practice - be viewed negatively by the capital market.

Alternatively, according to the prevailing opinion in accounting literature, it is possible for the Supervisory Board to engage the auditor to perform a review prior to the auditor's election and subject to election by the Annual General Meeting (Alternative 4: conditional commission). This enables the auditor to begin the review as soon as possible and to issue a review report on the results of the review shortly after the election by the Annual General Meeting, which can then be published immediately with the half-yearly financial report.

**3.2. Impact of access and travel restrictions and the increased client's use of remote working**

**Question 3.2.1: Can the audit procedures required by the IDW Auditing Standards or**



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**ISAs also be performed remotely if, for example, the client denies the audit team access to its premises?**

Yes. The auditor must determine the type and scope of the audit procedures required in each individual case within the scope of his own responsibility and in accordance with his professional judgement and taking into account professional requirements and statutory regulations. Neither the IDW Auditing Standards nor ISAs nor statutory regulations deal with the issue of from which location the audit procedures are to be performed. Therefore, in principle, audit evidence can be obtained both on-site at the client's premises and through remote audit procedures.

By making use of today's technical possibilities, in addition to on-site audit procedures, it is also possible to use remote audit procedures, e.g. in the form of video conferences, tours with image transmission via smartphone or tablet, inspection of scanned or photographed documents or screens, if necessary supplemented by a short visit with an appropriate security distance, use of the postal service and remote access for exchanging documents. Depending on the individual case, the auditor must assess whether he can obtain sufficient appropriate audit evidence in this way.

The present catalogue of questions and answers contains an overview of the types of audit procedures mentioned in *IDW AuS 303 (Revised)*. as an appendix, together with information on how these can be performed, if necessary, by means of so-called remote audit procedures, taking into account the specific circumstances of the company to be audited.

If audit procedures are carried out "remotely", the requirements of the IDW Auditing Standards or ISA must nevertheless be complied with. This applies, among other things, to the assessment of the relevance and reliability of the information used as audit evidence (see *IDW AuS 300 (Revised)*, paragraph 8) and the documentation of the audit procedures.

**Question 3.2.2: What are the effects of introducing or extending "remote work" on the client side on the Statutory Auditor's assessment of control risk?**

In identifying and assessing risks of material misstatement of the financial statements and management report (misstatement risk), the auditor is required to obtain an understanding of the company's internal control system and perform follow-up tests of controls relevant to the audit. If the auditor bases his risk assessment and the determination of the type, scope and timing of the meaningful audit procedures on the expectation that internal controls are operating effectively, tests of controls must also be performed on appropriate controls in order to validate the expectations regarding the reliability of the controls (see *IDW AuS 261 (Revised)* paragraph 74; *IDW AuS 350 (Revised)* paragraph 47b).

Since the middle of the first quarter of 2020, in particular, the spread of the coronavirus in Germany has prompted more and more companies to employ staff in a home-office environment. This has an impact on the organization and, where applicable, the business

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activities of the companies as well as on the processes and controls for preparing financial statements and management reports. As a result of the introduction or expansion of "remote work" by the audit client, the control risk with regard to audit-relevant controls may need to be reassessed (see. *IDW AuS 261 (revised)*, paragraph 77). Examples of this are:

- The control design is changed (e.g. reduction of the frequency of control execution) in order to enable the control to be executed despite the large number of the client's employees working in home office.
- The control design is not adapted, although relevant processes have actually changed due to the "home office" work of various client employees (e.g. a change in the person performing the control in the case of manual controls).
- In order to enable or extend the homeworking of client employees, access rights are changed extensively, so that it is necessary to reperform the assessment of whether the protection against unauthorized modification of accounting-relevant data by appropriate and effective controls is still effective.
- If new technologies such as online trading platforms or a cashless payment system are introduced in the short term, it is possible that the automatic or manual controls implemented have not yet been fully developed.

If the auditor wishes to continue to rely on the control environment and relevant controls, the risks resulting from such changes need to be identified and conclusions drawn for designing further audit procedures. In some cases, this may lead to a stronger focus on substantive audit procedures. However, in the case of significant control deficiencies, substantive analytical audit procedures can only be used to a limited extent. They are then not suitable as the sole procedures.

**Question 3.2.3: What possibilities does the auditor have to obtain sufficient appropriate audit evidence if the inspection of tangible assets or the observation of the inventory on site is currently not possible due to access and travel restrictions?**

If the inventories are material, the auditor must - as far as practicable - observe the physical inventory in order to obtain sufficient suitable audit evidence, in particular regarding the existence, completeness and nature of the inventories. In doing so, the auditor must satisfy himself that the inventory procedures are being handled properly (ref. *IDW AuS 301*, paragraph 7). If it is not possible to observe the inventory, e.g. due to the nature of the inventories or their storage location, alternative audit procedures must be used to obtain sufficient suitable audit evidence (ref. *IDW AuS 301*, paragraph 21).

The statutory provisions and the Auditing Standards do not contain any statement as to whether the procedures of inspection and observation require the physical presence of the auditor or a member of the audit team at the location of the asset to be inspected or the inventory to be observed. In principle, the available technologies allow the statements to be verified by means of real-time image transmissions via a smartphone or tablet PC (e.g.

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checking the presence of inventories), provided certain basic requirements are met in order to adequately counteract reliability risks associated with such procedures in the specific individual case (see also question 3.2.4.).

For example, the use of drones may also be considered, e.g., to compare outdoor storage locations with existing drawings in the context of an inventory check, or to assess the degree of completion of investments in property, plant and equipment.

However, depending on the client's circumstances (e.g. the volume and type of storage of the inventories), the inspection of inventories or observation of the inventory using remote inspection technologies may involve higher risks with regard to the reliability of the audit evidence in relation to the existence, completeness and quality of the inventories in comparison with inspection and observation by physical presence on site.

**Question 3.2.4: Under what conditions can real-time video technologies be used for inventory observation purposes and what are the risks involved?**

A basic prerequisite for the use of real-time video technologies for the purpose of obtaining audit evidence will be that the auditor can control the image transmission and that suitable image and sound quality can be guaranteed. The ability to control is necessary to allow the auditor, at his discretion, to inspect certain storage locations in more detail for the purpose of checking the existence of stocks or, if necessary, to have packaging opened in order to check the contents.

In addition, the auditor will need to address the following issues relating to the reliability of the audit evidence obtained and take action to address these issues:

- Does the approach chosen allow the auditor to assess the existence and completeness of the assets to be included? There is a risk that items may be moved in and out of the picture.
- Can the nature of the inventory be assessed? If the image transmissions are not high resolution, it may not be possible to detect indications of damage or indications of obsolete inventory. The method may therefore not be suitable for assessing the condition of the entire inventory.
- If, in individual cases, the auditor assesses a higher risk with this type of inventory observation, he may, for example, consider using a higher number of random samples.
- Are suitable members of the audit team deployed for the inventory audit? Consideration should be given to deploying more experienced staff.

**Question 3.2.5: If on-site observation by the Statutory Auditor is not possible due to access restrictions to the premises, is it possible to arrange for the client's Internal Audit staff to participate in the physical inventory on behalf of the Statutory Auditor?**

No. This would mean including Internal Audit staff in the audit team of the Statutory Auditor.

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This is not permissible because § 319 (3) sentence 1 no. 4 HGB prohibits the integration of employees of the company subject to audit - and thus also of internal audit personnel (ref. *IDW AuS 321 (Revised)*, paragraph 27).

**Question 3.2.6: Is it a problem if the group audit team cannot visit the component-auditors or the component-management on site due to maturity constraints or cannot attend final meetings between the component-auditor and the component-management?**

The Auditing Standards do not provide for a general obligation for on-site visits or personal attendance at closing meetings between the component auditor and component management. Mandatory requirements for the involvement of the Group audit team in the activities of component auditors are set out in *IDW AuS 320 (Revised)*, paragraph 28 et seq., with regard to risk assessment in the case of significant components or further audit activities in the case of significant risks, and in *IDW AuS 320 (Revised)*, paragraph 39 et seq.

Irrespective of the minimum requirements laid down there, the nature, scope and timing of the involvement depends on the understanding of the component and the respective component auditor. For example, depending on the significance of a component for the significant risks identified from the Group's perspective and the understanding of the component auditor, the Group audit team may have identified significant matters to be discussed with the component auditor, component management or Group management. In addition, the group audit team may consider further integration necessary, such as a review of working papers or parts of the working papers of the component auditor or participation in the component auditor's final meeting (see *IDW F & A on ISA 600* or *IDW AuS 320 (Revised)*, question 7.2.6.).

Video conference systems will generally facilitate a discussion of significant matters with the component auditors and participation in the final meeting with the group or the component management. If, the Group audit team decides that a review of the working papers of the component auditors is necessary, a solution should be agreed with the component auditors in the current pandemic situation, taking into account security and confidentiality aspects. The review could be made possible by means of remote access to the component auditor's digital audit file with read authorization or via web meetings.

**Question 3.2.7: In the current situation, the electronic transmission of information and documents to or from clients assumes increased importance. What needs to be considered in this context in regard to confidentiality and data protection?**

Auditors currently receive more and more documents in the form of encrypted and unencrypted e-mails. The exchange of documents in a virtual data room, where the client and the auditor each can log in with a username and password, is recommended. A prerequisite for the data room is that it complies, in particular, with the respective requirements pertaining to confidentiality and data protection. The IDW issued the "Assistance for commissioning service

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providers" on 10 April 2019 as guidance when a virtual data room provided by a service provider is used as Software as a Service (SaaS). The guidance addresses the compliance with criminal and professional law requirements for the commissioning of IT service providers who provide virtual data rooms and is available on the IDW website at: <https://www.idw.de/blob/115228/d19d2eacc9b219c48d6da319044a81ef/down-services-assistance-2019-data.pdf>

**Question 3.2.8: What audit procedures are appropriate for assessing the reliability of audit evidence in electronic form?**

If the auditor uses information prepared by the company, he must assess whether the information is sufficiently reliable for his objectives (see *IDW AuS 300 (Revised)*, paragraph 10). The reliability of information to be used as audit evidence by the auditor is influenced by the nature and source of the information and the circumstances under which it is obtained. Original documents are generally considered more reliable than copies or scanned documents. If, for example, contracts are only available in large numbers as copies or in digital form (e.g. PDF files), the auditor can counter the associated higher reliability risks in various ways. For example, he can carry out a sample selection or a conscious selection of a number of documents for which, due to the small number, and despite existing restrictions an inspection of the respective original document can be organized. From the sample, for example, conclusions can be drawn about the reliability of electronically available documents that were created in a comparable process and released by the same persons.

The adequacy and effectiveness of the company's internal controls are also important for assessing the reliability of documents available in electronic form. A simple form of control may consist of maintaining the principle of dual control when releasing documents on the client's part.

Evaluations from the client's IT system (e.g. lists of totals and balances), which the auditor is currently unable to generate himself due to the lack of remote access to the client's systems, only constitute reliable audit evidence if they were retrieved with reports that were checked for completeness and accuracy by the auditor by means of appropriate audit procedures or by auditing general IT controls and for which the parameter settings of the IT system are clearly recognizable or the parameter settings can be reproduced in another suitable form. Depending on the constellation, it may be advisable to request a screenshot of the technical name of the report and the respective query.

**Question 3.2.9: Can third-party confirmations be obtained in electronic form?**

Yes. Obtaining third-party confirmations in electronic form, e.g. by e-mail, is permissible if the auditor adheres to the requirement for him to maintain control over the confirmation process and any doubts about its reliability are countered by appropriate auditing procedures (for

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details, see *IDW F & A on ISA 505* and *IDW AuS 302 (Revised)*, Section 7).

In practice, the safest and at the same time most expedient way to maintain control over sending confirmations to third parties by e-mail is to send them directly to the third party from the auditor's own e-mail address (i.e. by a member of the audit team) and to request a reply directly to the auditor's e-mail address. Sending a confirmation request via a client's e-mail account is not permitted, as in this case the client can exercise control over the actual sending and, for example, only the client (and not the auditor who may have been copied in cc:) receives feedback on the transfer (e.g. in the form of absence or non-delivery notifications). Sending of request e-mails by the client also involves the risk that many third parties who have been asked to reply to the request e-mails will then reply to the client by clicking the "reply button". The reply does not then - in the absence of direct dispatch to the auditor - constitute a third-party confirmation as defined in *IDW AuS 302 (Revised)*, paragraph 6(a).

In order to eliminate doubts about the reliability of the responses obtained to the confirmation requests, the auditor may, for example, contact the confirming third party directly (by telephone) to orally confirm the content of the response received.

**Question 3.2.10.: Are there specific documentation requirements when the audit is carried out remotely on a large scale?**

The general requirements for documentation in the working papers apply (ref. *IDW AuS 460 (Revised)*). The procedure for obtaining audit evidence will therefore be reflected in documenting the type, scope and result of the audit procedures. In this context, it is useful to explain that a deviation from the previous audit procedure and/or the change to alternative audit procedures has been made and the reasons for this. For the relevant reporting obligations in the auditor's report in connection with any significant problems that may have arisen during the audit, e.g. in obtaining audit evidence, see the IDW's professional advice dated 25 March 2020, p. 29.

**3.3. Assessment of future-related matters, including the going concern assumption, as well as prognostic disclosures**

**Question 3.3.1: Can future-related matters in the financial statements and/or prognostic disclosures in the management report be assessed at all in the current situation with an unusually high degree of uncertainty, or is an audit scope limitation to be assumed in general?**

The modification of the auditor's opinion due to an audit scope limitation is only possible if the auditor is not able to obtain sufficient appropriate audit evidence on the accounting information of the audited company. However, the considerable uncertainties inherent in the forward-looking matters impacting the financial statements (e.g. forecast of future surpluses for the purpose of determining estimated fair values, liquidity forecast for the purpose of assessing

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the ability to continue as a going concern) and prognostic information in the management report due to the dynamic development of the coronavirus pandemic do not in themselves constitute grounds for the existence of an audit scope limitation. An audit scope limitation with regard to the assessment of accounting information based on future-related matters, or in relation to prognostic information in the management report may be present, for example, if the auditor does not obtain sufficient appropriate audit evidence for the purpose of assessing the underlying assumptions made by management (see also question 3.3.2.).

**Question 3.3.2: How can the assumptions made by management be assessed by the statutory auditor?**

A forecast includes the assumptions made by management regarding the occurrence of future events (e.g. the further spread of the corona pandemic and the effects on customer behaviour) as well as management's intended actions (e.g. regarding claims for various measures of government support or adjustment of the business model).

The assumptions made by management must be justified sufficiently. The auditor will therefore regularly assess them to determine whether they are based on current information, whether they are consistent with the assumptions made internally for other purposes (e.g. budget planning) and whether they are consistent with available forecasts made by important institutions on overall economic development (e.g. forecasts of the Federal Government, the German Council of Economic Experts, the EU Commission and leading economic research institutes). In addition, the auditor will have to assess whether management's actual actions are not contradictory to the assumptions made (e.g. whether actual application or preparation of an application for state liquidity aid is included in a liquidity forecast). In contrast, the auditor's opinion does not include any statement concerning whether or not the expectations underlying the forecast statements or the accounting information relating to the future will materialise.

**Question 3.3.3: Unprecedented public support measures have been put in place to avert business crises caused by the corona pandemic. In this context, which aspects may have to be taken into account by the auditor in assessing the appropriateness of the going concern assumption?**

For a large number of companies, the corona pandemic is an event that may cause significant doubts about the company's ability to continue as a going concern. The auditor must perform additional audit procedures at these companies to determine whether there is a risk that could jeopardise the company's existence and whether the accounting principles are appropriate for the continuation of the company's activities by management (see *IDW AuS 270 (Revised)* paragraph 21). If management intends to make use of government support measures, these are countermeasures which management must take into account in their assessment of the ability to continue the company's operations. If the company has not yet received a binding commitment to provide specific assistance, management's assessment must also cover the

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fulfilment of the conditions for entitlement.

KfW (Kreditanstalt für Wiederaufbau) has published requirements for drawing on the KfW Entrepreneur Loan, which was extended as part of the package of measures by the Federal Government, in the leaflet KfW-Unternehmerkredit Sonderprogramm 2020 037/047 Kredit. In addition, some of the principal banks that extend loans impose additional requirements (on these requirements and the associated difficulties in providing liquidity see the letter from IDW to the BMWi, BMF, BaFin and KfW dated 3 April 2020, available at <https://www.idw.de/idw/idw-aktuell/voraussetzungen-fuer-die-gewaehrung-von-kfw-krediten-im-kontext-der-corona-pandemie/123000>). Against this background, the Federal Government has also launched a special programme "KfW Schnellkredit 2020" (KfW Rapid Loan 2020), which will release the financing partners (house banks) from 100% of the liability for the rapid-supply loans, while the company's own banks are to guarantee in return the waiver of any collateral (ref. the joint press release of the BMF, BMWi and KfW of 06.04.2020, available at <https://www.presseportal.de/pm/41193/4565751>). One of the essential prerequisites of the KfW special programme "Entrepreneur Loan" is that the financing difficulties of the company are caused by the corona pandemic and that, assuming that the overall economic situation returns to normal ("as before the crisis"), it is likely that the company will be able to be fully financed (taking into account the liquidity support to be granted) until 31 December 2020. The Federal Government has also based its assessment of the period of the recently introduced temporary right to refuse benefits (Article 240 of the Introductory Act to the German Civil Code) on the assumption that the restrictions on economic activity caused by the pandemic can be gradually lifted in the foreseeable future from the second half of 2020 and that the associated consequences can then be gradually mitigated (see Bundestag printed paper 19/18110, p. 35).

In principle, the auditor will not object if management, in assessing the ability to continue business operations, follows the assumption of the Federal Government with regard to the lifting of the pandemic-related restrictions on economic activity.

For companies that will not be able to compensate for the negative effects of the pandemic-related restrictions or that will only be able to do so in part, management's assessment will have to include further assumptions, the appropriateness of which will have to be assessed by the auditors. For example, despite realistic financing through to 31 December 2020, the ability to continue the company's operations could be adversely affected if the company's business model is no longer viable due to the consequences of the corona pandemic, even after the acute liquidity crisis has been overcome, and the company does not adjust or plan to adjust its business model accordingly.

**Question 3.3.4: In which cases should a reference to a threat to the existence of the company be made in the auditor's report?**

Even if it can be assumed that the company will continue its business activities, due to the current broad range of forecasts made by leading institutions regarding the overall economic



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development, in many cases the auditor will currently conclude that there is a significant doubt that the company can continue its business activities in the relevant forecast period or in the foreseeable future. In this case, the financial statements must provide appropriate information to the addressees about the risks threatening the existence of the company and - if relevant – this must also be provided in the management report (ref. IDW Technical Guidance of 25 March 2020, p. 4) and the auditor must include a corresponding section in the auditor's report (separate section entitled "Material uncertainty in connection with the continuation of the company's business activities"; ref. § 322 (2) sentences 3 and 4 HGB and *IDW AuS 270* (Revised), paragraph 29).

#### 4. Further issues

##### **Question 4.1: What are the legal consequences of the right to refuse performance for consumers and micro-entrepreneurs, the so-called moratorium?**

Pursuant to Article 240 § 1 (1) and (2) EGBGB (German Introductory Law to the Civil Code), consumers and micro-entrepreneurs (as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ EU No. L 124 of 20 May 2003, p. 36) are entitled to a period of grace with regard to claims arising from contracts concluded before 08.03.2020 (with the exception of rental, lease, loan and employment contracts) i.e., a right of refusal of performance limited until 30.06.2020 (extendable until 30.09.2020 by order of the Federal Government or, with the consent of the Bundestag, beyond 30.09.2020). This temporary right extended to consumers and micro-entrepreneurs, however, only refers to "material continuing debts", which are defined as those "necessary to be covered by basic services".

A right to refuse performance is the right of the debtor to refuse performance to the creditor. Accordingly, the debtor must assert this right against the creditor (so-called objection). If the debtor has a right to refuse performance and therefore does not perform, he is not in default (§ 286 (1) BGB (German Civil Code)). Accordingly, no interest on arrears is owed (§ 288 Paragraph 1 BGB). However, the so-called primary obligation to perform remains in principle and is to be fulfilled after the expiry of the period of grace.

In order to assert his right to refuse performance, the debtor must not only invoke his right, he must also prove that he is unable to perform precisely because of the Co-vid 19 pandemic ("it is not possible to perform without endangering his reasonable subsistence or the reasonable subsistence of his dependent relatives", "it is not possible to perform or it would not be possible for the company to perform without endangering the economic basis of its business"). Since the establishment of a temporary right to refuse performance represents a serious encroachment on fundamental rights, the right does not apply if it is "unreasonable for the creditor for his part" to waive performance.

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The above-mentioned amendments have come into force retroactively as of 01.04.2020 and are valid until 30.09.2022.

**Question 4.2: What are the legal consequences of protection against termination for private and commercial tenants?**

According to Article 240 § 2 EGBGB, landlords are not allowed to terminate rental contracts (residential and commercial contracts) if the tenant does not pay the rent in the period from 01.04.2020 to 30.06.2020 (extendable by decree of the Federal Government until 30.09.2020 or, with the consent of the Bundestag, beyond 30.09.2020) if this non-payment is caused by the effects of the Covid-19 pandemic. The regulation applies to leases, accordingly.

The tenant has to substantiate the connection between the non-payment (i.e. non-payment of rent) and the effects of the Covid-19 pandemic. While the landlord cannot terminate the lease due to non-payment of rent during the aforementioned period, the tenant's payment obligation - subject to other contractual or legal rights - remains in principle, i.e. the tenant is still obliged to pay and may be in default (in the event of non-payment despite due date). In contrast to the period of grace for consumers and micro-entrepreneurs (see question 4.1.), the tenant is not granted a right to refuse performance, which means that the encroachment on the landlord's rights is less severe. The landlord is "only" temporarily restricted in his (so-called secondary) right to terminate the lease due to late payment. The landlord retains the right to terminate the contract for other reasons, for example because his inability to pay has causes other than the Covid-19 pandemic.

This law does not grant a tenant a separate right to rent reduction.

The above-mentioned changes came into force retroactively as of 01.04.2020 and are valid until 30.06.2022. This means that the landlord can terminate the lease after this date (i.e. as of 01.07.2022), taking into account the applicable lease law, for payment arrears that occurred between 01.04.2020 and 30.09.2020 and were not settled by 30.06.2022. Accordingly, tenants have approximately two years to make good their arrears of rent incurred during this acute period.

**Question 4.3: What are the legal consequences of the deferral in consumer contracts?**

Pursuant to Article 240 § 3 EGBGB, claims of the lender for repayment, interest or redemption payments under consumer loan agreements concluded before 15 March 2020 and which are due between 1 April 2020 and 30 June 2020 (extendable by order of the Federal Government until 30 September 2020 or, with the consent of the Bundestag, beyond 30 September 2020) are deferred for a period of three months from the due date. The borrower must prove to the lender that due to Covid-19 he has suffered a loss of income (e.g. by presenting an employer's certificate). In addition, the borrower must demonstrate that without the deferral of the due

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claim, his reasonable livelihood or that of his dependants would be endangered.

The deferral has the effect of postponing the specified due date of the claim. During the period of deferral, it thus has the effect that consumers cannot be in default with these claims (§ 286 para. 1 BGB). Accordingly, no default interest is owed (§ 288 Para. 1 BGB). The loan agreement is extended by the period of the deferral (maximum three months), so that the due date of the claims which only become due after the expiry of the deferral is postponed by (maximum) three months. This prevents the consumer from being charged twice due to the simultaneous maturity of two instalments (deferred and regular instalment after the deferral has expired).

Cancellations by the lender due to late payment, a significant deterioration in the financial circumstances of the consumer or the value of collateral provided for the loan are excluded until the end of the deferral. Due to the considerable economic loss suffered by the lender as a result of the deferral, there may be cases in which the deferral is unreasonable for the lender. The need to balance these interests can lead to the regulations do not being applicable in exceptional cases. In its question and answer paper on the regulations, the Federal Ministry of Justice and Consumer Protection (BMJV) mentions "situations in which the contractual relationship is permanently disrupted due to serious culpable violations of consumer rights or due to abusive behaviour" (BMJV, Questions and Answers: Deferral in the context of consumer loan agreements during the Corona crisis of 23.03.2020, available at [#https://www.bmjv.de/DE/Themen/FokusThemen/Corona/Downloads/032320\\_FAQ\\_deferral.pdf? blob=publicationFile&v=3](https://www.bmjv.de/DE/Themen/FokusThemen/Corona/Downloads/032320_FAQ_deferral.pdf?blob=publicationFile&v=3))#

The changes described above came into force retroactively as of 01.04.2020 and are valid until 30.09.2022.

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**Appendix: Overview of possible audit procedures that can be performed remotely**

<b>Audit procedures pursuant to <i>IDW AuS 303 (Revised)</i>, A11 et seq..</b>	<b>Possibility of carrying out remote verification actions, taking into account the conditions set out in point 3.2?</b>	<b>Examples</b>
<p><b>Inspection/examination</b></p> <p>Investigation of internal or external records or documents in paper or electronic form or on other media or the physical examination of an asset.</p>	<p>Yes</p>	<ul style="list-style-type: none"> <li>• Use of real-time image transmission, e.g. for               <ul style="list-style-type: none"> <li>○ Inventories</li> <li>○ Inspection of parameter settings of the IT system</li> <li>○ Inspection of the data center</li> <li>○ Selection of paper receipts.</li> </ul> </li> <li>• Scanning of recordings in paper form and supply by clients.</li> <li>• External access (e.g. via VPN) to the IT system of the client.</li> </ul>
<p><b>Monitoring</b></p> <p>Viewing processes or procedures carried out by other people.</p>	<p>Yes</p>	<ul style="list-style-type: none"> <li>• Observation of the activities carried out by employees of the company by means of live image transmission, e.g. inventory, goods receipt, goods dispatch.</li> <li>• Observation of control activities carried out by employees in the IT system via video recording or web meeting (e.g. electronic release of an order).</li> </ul>

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<b>Audit procedures pursuant to <i>IDW AuS 303 (Revised)</i>, A11 et seq..</b>	<b>Possibility of carrying out remote verification actions, taking into account the conditions set out in point 3.2?</b>	<b>Examples</b>
<b>External Confirmations</b>	Yes	<ul style="list-style-type: none"> <li>• Obtaining external confirmations by means of electronic dispatch under the control of the auditor (determination of the information to be obtained, selection of the third party, design of the confirmation request, dispatch).</li> </ul>
<b>Recalculations</b>  Checking the arithmetical correctness of documents or records.	Yes	<ul style="list-style-type: none"> <li>• Check formulas in client spreadsheets.</li> <li>• Scanning of records in paper form and forwarding them to clients with subsequent recalculation.</li> <li>• Recalculation of numerical entries in documents or in records by using data analysis ("replication" of the calculation logic of the IT system).</li> </ul>
<b>Traceability</b>  Independent performance of procedures or controls by the auditor that were originally performed as part of the internal control system (ICS).	Yes	<ul style="list-style-type: none"> <li>• Analytical audit procedures</li> <li>• Assessment of financial information by analysing plausible relationships between both financial and non-financial data.</li> </ul>

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<b>Audit procedures pursuant to <i>IDW AuS 303 (Revised)</i>, A11 et seq..</b>	<b>Possibility of carrying out remote verification actions, taking into account the conditions set out in point 3.2?</b>	<b>Examples</b>
<b>Analytical audit procedures</b>  Assessment of financial information by analysing plausible relationships between both financial and non-financial data.	Yes	<ul style="list-style-type: none"> <li>• Data analyses under access to client data.</li> </ul>
<b>Consultations</b>	Yes	<ul style="list-style-type: none"> <li>• Participation in telephone/</li> <li>• videoconferencing of the management / the persons responsible for monitoring.</li> <li>• Conducting telephone or web meetings with members of the management, the supervisory board chairman, the internal audit, other employees of the client.</li> </ul>
<b>Obtaining written declarations</b>	Yes	<ul style="list-style-type: none"> <li>• The handwritten signature of the legal representatives and, if applicable, of the persons responsible for monitoring under the DOC, as required by <i>IDW AuS 303 (Revised)</i>, paragraphs 9, 32, can be replaced by a qualified electronic signature.</li> <li>• Other written declarations in the sense of <i>IDW AuS 303 (Revised)</i>, paragraph 13, do not need to be signed. The text form is sufficient.</li> </ul>