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## Questions concerning the impact of the spread of coronavirus on the financial statements and their audit (Part 3, update July 2020)

### 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 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?**

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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 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 is 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

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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).

**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. Accounting for payments in the context of short-time work compensation - New question added**

**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 between 67% and 87%, all other employees between 60% and 80% of the net wage and salary difference in the period of entitlement (§ 105 and § 421c para. 2 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.**

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### **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 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**

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**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 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

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(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).

**Question 2.2.3: How do employers account for the obligations to employees to compensate for loss of earnings by means of top-up amounts to the short-time working allowance that they have assumed voluntary or in fulfilling a provision under a collective bargaining agreement or works agreement? - New**

The wages and salaries paid to employees during the period of short-time working but reduced during the period of short-time work, plus any top-up amounts to the short-time working allowance, are to be regarded as part of the performance and remuneration obligations arising from the employment relationship (labour law). Accordingly, the top up amounts for short-time working compensation are recognized as current personnel expenses. Due to the presumption of equilibrium between performance and consideration within the employment relationship, the formation of a provision pursuant to § 249 (1) sentence 1 (2) HGB is not applicable.

The regulations on short-time working compensation and any top-up amounts paid in this context are designed to ensure the continuance of the employment relationship. The primary objective of the regulations on short-time work compensation is to enable companies to retain their existing and proven workforce by avoiding redundancies. This avoids a costly rebuilding of the necessary workforce after the end of the crisis and enables a rapid ramp-up of production and efficiency. Accordingly, in assessing the balance of benefits and consideration, all benefits and consideration over the expected remaining term of the employment contract must be included. Under these conditions, even in the case of "zero short-time work", there is no application of paragraph 32 (2) of *IDW AcS HFA 4* for the formation of a provision for impending losses. This is because an imbalance which is likely to be only temporary and to the detriment of the employer does not trigger the requirement to form a provision.

The same applies to accounting under IFRS. The top-up amounts paid by the employer are part of the short-term employee benefits within the meaning of IAS 19.9 and must therefore be recognised as current personnel expenses. The formation of a provision is not permitted, as the entitlement and obligation arising from the unfulfilled continuing obligation between employer and employees are balanced up to the time of payment.

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## 2.3 Further questions on the annual and consolidated financial statements - New

**Question 2.3.1.:** In the light of the facilitation created by § 1(4)(1) of the COVMG, what conditions must also be satisfied for the permissibility of an advance payment on the anticipated balance sheet profit of a German Stock Corporation? - New

In contrast to a GmbH (German company with limited liability), an stock corporation is not permitted to make a so-called advance distribution (see § 57 (3 German Stock Corporation Act (Aktengesetz (AktG))). However, § 59 AktG provides for the possibility of making a pre-payment to the shareholders after the end of the financial year on the expected net retained profits before a corresponding resolution on the appropriation of profits has been passed by the Annual General Meeting (§ 119 Paragraphs. 1 no. 2 and 174 Sentence 1 AktG). The permissibility of an advance payment is generally subject to the Articles of Association authorising the Management Board to do so (Article 59 (1) AktG). However, the admissibility according to § 1 Para. 4 Sentence 1 of the Law on Measures in Company, Cooperative, Association, Foundation and Condominium Law to Combat the Effects of the COVID 19 Pandemic (COVMG) does not require such an authorization in the Articles of Association - initially limited in time until 31 December 2020 (§ 7 para. 1 in connection with § 8 COVMG).

The conditions for the admissibility of an advance payment are still very restrictive, despite the relief granted by the COVMG. In addition to the requirements of Article 59 (1) AktG, according to which the payment may only be made after the end of the fiscal year and a (sufficiently high) net profit is expected to be available, paragraph 2 additionally requires that:

- provisional accounts for the past financial year show a net profit for the year,
- the advance payment comprises at most half of the amount remaining from the net income for the year after deduction of those amounts which are to be allocated to revenue reserves according to law or the Articles of Association, and
- the advance payment does not exceed half of the net profit for the previous year.

Furthermore, Article 59 (3) AktG (as before) provides that the payment of a discount requires the approval of the Supervisory Board.

If, in the current situation, advance payments are to be made against the background that the Annual General Meeting will be held after a time delay, the aforementioned conditions should, however, generally be fulfilled or achievable because the audited annual financial statements approved by the Supervisory Board (Article 172 sentence 1 AktG) are already available. In these cases, advance payments based on Article 1 (4) COVMG have a secure legal basis.

**What effects does the payment of an advance payment have on the annual financial statements of the stock corporation for the financial year in respect of which the advance payment is to be made (past financial year)? - New**



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Since the payment of the advance payment is not (yet) to be regarded as a measure of appropriation of the annual result within the meaning of Article 268 Paragraph 1 Sentence 1 HGB, it does not affect the statement of financial position and income statement of the stock corporation for the past financial year. In particular, it does not lead to a supplement (in the form of a special item) to the so-called income statement extension statement pursuant to Article 158 Paragraph 1 Sentence 1 of the AktG.

If, in exceptional cases, the annual financial statements have not yet been audited at the time of the approval of the Supervisory Board required under Article 59 (3) of the German Stock Corporation Act (AktG) for the resolution of the Management Board on an advance payment, the advance payment must be disclosed in the proposal for the appropriation of profits to be included in the notes to the financial statements in accordance with Article 285 (34) of the German Commercial Code (HGB). If, however, the annual financial statements have already been audited and adopted at this time - as is usually the case - without the advance payment being specified in the proposal for the appropriation of profits contained in the Notes, this does not result in a subsequent requirement to amend the annual financial statements; neither a supplementary audit within the meaning of Article 316 (3) HGB nor a new adoption of the annual financial statements are required in this respect.

**Question 2.3.2: According to IFRS 9, financial assets must (only) be reclassified if the business model for managing the financial assets changes. Such changes are very rare according to the IASB's explicit expectation.**

**May financial assets be reclassified as a result of the corona pandemic? When should a reclassification be shown in the balance sheet? - New**

A financial asset is classified upon initial recognition. Within the scope of classification, the financial asset is allocated to a business model of the company and - taking this into account - the measurement category is determined for subsequent measurement (IFRS 9.3.1.1). Reclassifications may only be made in connection with a change in the business model for the management of financial assets (IFRS 9.4.4.1)<sup>1</sup>. As expected, a change of business model occurs only very rarely (IFRS 9.B4.4.1).

The occurrence of the corona pandemic may indeed lead to a change in the business model. However, according to IFRS 9.B4.4.1, a reclassification of financial assets requires that the change

- be determined by the *entity's senior management* as<sup>2</sup> a result of external or internal changes,

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<sup>1</sup> See also *IDW RS HFA 48*, section 4.3, for general information on reclassifications according to IFRS 9.

<sup>2</sup> For the term "*senior management*", see *IDW RS HFA 48*, para. 242.

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- is *significant to the entity's operations*, and
- can be evidenced to external parties (*demonstrable*).

According to IFRS 9.B4.4.1, the business model of a company is only changed if the company either *begins or ceases to perform an activity that is significant to its operations*. Whether the conditions for changing the business model of a particular portfolio in the context of the Corona Pandemic are met depends on whether the measures adopted have a demonstrable significant impact on the respective business activities of a company as a whole.

Financial assets must be reclassified prospectively from the *date of reclassification* (*reclassification date* as defined by IFRS 9, Appendix A), i.e. the reclassification is made at the beginning of the reporting period following the decision to reclassify (full reporting period or interim reporting period) (IFRS 9.5.6.1, IFRS 9.B5.6.2). Retroactive reclassification to a reporting date prior to the date of reclassification is therefore precluded.

The above comments apply exclusively to financial assets. Financial liabilities may not be reclassified (IFRS 9.4.4.2).

**Question 2.3.3: To what extent are reclassifications of financial instruments into or out of the trading portfolio possible under commercial law at credit institutions against the background of the Corona crisis? - New**

According to the provisions of § 340e (3) sentences 1 and 2 of the HGB, financial instruments held in a bank's trading portfolio must be measured at fair value less a risk discount. Subsequent reclassification from other valuation categories *to* the trading portfolio is precluded.

Reclassification *from* the trading portfolio is precluded unless extraordinary circumstances, in particular serious impairments of the tradability of the financial instruments, result in the bank giving up its intention to trade (Article 340e (3) sentence 3 HGB). A decline in price alone does not impair the tradability of the financial instruments. This excludes in particular reclassifications which are intended solely to structure or smooth the annual result, i.e. solely to avoid devaluations.<sup>3</sup>

**Question 2.3.4: For financial assets that are measured at amortised cost or fair value with recognition of changes in value in other comprehensive income (IFRS 9.4.1.2, IFRS 9.4.1.2A), for leasing receivables, *contract assets* i.of IFRS 15, *loan commitments* and financial guarantees that are subject to the impairment provisions of IFRS 9.2.1(g), IFRS 9.4.2.1(c) or IFRS 9.4.2.1(d), an impairment loss is recognised for expected credit losses (IFRS 9.5.5.1).**

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<sup>3</sup> See IDW RS BFA 2, para. 23 ff.

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**What effects does the corona pandemic have on the determination of impairment? -  
New**

The principles set out in IFRS 9 continue to apply when determining impairment (see *IDW RS HFA 48*, section 5.2.). Particular attention must be paid to the following aspects:

- In principle, all reasonable and reliable information about past events, current conditions and projections of future economic conditions must be taken into account for the recognition and measurement of expected credit losses, provided that this information is relevant to the credit risk of the financial instrument under consideration and is available at the reporting date without unreasonable cost or delay. In view of the corona pandemic, a critical assessment must be made as to whether forward-looking information has been taken into account to a sufficient extent or to what extent the past can still be considered an indication of future developments. Where appropriate, the existence of government support measures must also be taken into account on the basis of general requirements. An adjustment of the previous methodology or a so-called "management adjustment" may also be appropriate, the derivation and justification of which must be documented.
- In order to determine a significant increase in the credit default risk or the amount of the impairment, especially for the simplified approach within the meaning of IFRS 9.5.5.15 f., an assessment is considered at collective level, provided there are *shared credit risk characteristics* within the meaning of IFRS 9.B5.5.5. Such common/homogeneous credit risk characteristics are, for example, the credit rating, the type of collateral, the date of initial recognition, the residual maturity, the industry, the geographical location of the obligor and the value of the collateral relative to the financial asset if this affects the probability of a default. In view of the corona pandemic, a critical assessment must be made as to whether the previous portfolio formation is still appropriate or whether a more extensive breakdown is required. This could be the case, for example, with newly emerging cluster risks.

In addition, an appropriate explanation of the effects of the corona pandemic should be provided in the notes to the accounts where these are material.

For interim financial statements, an assessment must be made as to whether a significant reportable event has occurred as a result of changes in customer credit risk (IAS 34.6. and .15 et seq.).<sup>4</sup>

For further information on the effects of the corona pandemic on impairments of financial instruments in accordance with IFRS 9, see also the Technical Notes of the IDW Bankenfachausschuss (BFA).

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<sup>4</sup> Vgl. auch ESMA, Public Statement: Implications of the COVID-19 outbreak on the half-yearly financial reports, 20.05.2020.

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**Question 2.3.5: With hedge accounting according to IFRS 9, among other things, a *highly probable forecast transaction* may be designated as the underlying transaction within the scope of a hedging relationship (IFRS 9.6.3.3). This can, for example, be future sales.**

**What effects does the corona pandemic have on the accounting treatment of such hedging relationships? - New**

In light of the corona pandemic, a critical assessment must be made as to whether the hedged future transaction will continue to occur with a high degree of probability within the appropriately specified and generally narrow time frame (for relevant aspects of the analysis, see *IDW AcS HFA 48*, Paragraph 344). The point of reference for the assessment of when a highly probable transaction is present is the previously established *accounting policy* and the concrete documentation of the hedging relationship.

Accordingly, if the occurrence of a transaction (in whole or in part) is no longer expected with a high degree of probability, the hedging relationship (in whole or in part) must be terminated (IFRS 9.6.5.6, IFRS 9.B6.5.26, IFRS 9.B6.5.27(b)). In particular, reference may not be made to a correspondingly higher transaction volume in/at an earlier or later period or date, unless this was part of the originally planned and sufficiently identified expected transaction. Something different may apply in individual cases if the original, sufficiently identified expected transaction does not occur as planned due to an unforeseeable event - e.g. the corona pandemic - but is nevertheless carried out sooner or later within a reasonable period of time and with sufficient certainty (see *IDW RS HFA 48*, paragraph 347).

If the hedging relationship is terminated, the amounts recognised in the *cash flow hedge reserve* must be left there (IFRS 9.6.5.12(a)), provided that the transaction *is still expected to occur*, even if it is no longer highly probable. Otherwise, it must be recognised immediately as a *reclassification adjustment in profit or loss* (IFRS 9.6.5.12(b)).

Irrespective of this, possible effects on the effectiveness of the hedging relationship must be considered.<sup>5</sup>

**Question 2.3.6: IFRS accounting for leases requires the lessee to recognise a *right of use asset* and a lease liability at the *commencement date of the lease* (IFRS 16.22). Subsequently, the right of use must be depreciated on a scheduled basis in accordance with the provisions of IAS 16 "Property, Plant and Equipment" (IFRS 16.31).**

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<sup>5</sup> See *IDW RS HFA 48*, paragraph 346.

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**Can the scheduled depreciation of the right of use by the lessee be suspended in the event of a significantly restricted possibility of use of, for example, a rented property during the Corona pandemic? - New**

The lessee (hire-purchaser) is generally required to depreciate the right to use a leased asset from the time it is made available until the end of its useful life or - if this occurs earlier - until the end of the lease term (IFRS 16.32).

IFRS 16.31 refers to the provisions of IAS 16 "Property, Plant and Equipment" with regard to determining the depreciation method for the right of use. According to IAS 16.60, the depreciation method must correspond to the expected pattern of consumption of the future economic benefits embodied in the asset by the entity. Rights of use under property rental agreements are regularly depreciated on a straight-line basis, as the economic benefit of the right of use is the possibility of using the rented space and - as the area of the rented space does not change - the consumption of the benefit remains the same over the term of the agreement.

In accordance with IAS 16.55, scheduled depreciation of an asset ends (only) on the date on which the asset is classified as held for sale (or included in a disposal group that is classified as held for sale) in accordance with IFRS 5, but no later than the date on which it is derecognised, whichever is earlier. Consequently, depreciation does not cease when the asset is no longer in use or is no longer used (unless the asset is already fully depreciated).

Even a property whose use is restricted by an official order can still be used by the tenant with restrictions but nevertheless (e.g. by allowing access at any time to store inventory there or to carry out cleaning or renovation work). The tenant still derives an economic benefit from the right of use, so that the scheduled depreciation of the right of use must be continued throughout the period of the restricted use of the property.

In analogy to the regulations of IAS 16.79, disclosure of the carrying amount of temporarily significantly restricted rights of use within the meaning of IFRS 16 is recommended, as this disclosure could be considered relevant for the users of the financial statements.

Irrespective of the above, the provisions of IAS 36 require the determination of whether the right of use is impaired and, if so, whether an impairment loss must be recognised (IFRS 16.33).

**Question 2.3.7.: The corona pandemic, as a largely unforeseeable exogenous event, will mean that many entities may not achieve their original forecasts for economic development. How can the effects of the corona pandemic be appropriately presented in the financial statements, depending on the circumstances and their significance in the individual case? - New**

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Even in an exceptional situation such as the Corona pandemic, the general regulations of IAS 1 on the presentation of financial statements must be observed. This applies in particular to any planned "special disclosures" or similar.

In its public statement on the effects of the spread of COVID-19 on the half-yearly reports,<sup>6</sup> published on 20 May 2020, ESMA expressly urges the preparers of financial statements to be careful and cautious with regard to any intended separate presentation of the effects of the COVID-19 pandemic in the statement of financial performance (e.g. pro-forma presentations or similar). Information on significant effects of the corona pandemic should be presented (if possible also on a quantitative basis) as part of the explanations of the amounts shown and disclosed in the statement of financial performance as a separate disclosure (*single note*) in the notes to the financial statements. The IDW expressly endorses this statement.

**Question 2.3.8: On 28 May 2020, the IASB published the amendment standard "Covid-19-Related Rent Concessions - Amendment to IFRS 16" and thus created a (temporary) practical relief for lessees. In the case of COVID-19-related rent concessions (e.g. deferral of rent instalments or rent discounts), an assessment of whether a modification of the lease within the meaning of IFRS 16 exists may be waived under certain conditions. As a supplement to the IASB amendment standard "Covid-19-Related Rent Concessions - Amendment to IFRS 16", the following example considers the accounting for rent concessions by the lessor.**

**For example, a lessor provides a lessee with hardware for two years within the framework of an operating lease. The *commencement date* within the meaning of IFRS 16 is January 1, 2020. The lessee is obliged to make a fixed monthly lease payment. After two years the leased asset must be returned to the lessor. The lessee recognises the lease payments on a straight-line basis. Due to the corona pandemic, the two parties to the contract agree on 1 March 2020 that the lessor will waive the lease payments to the lessee for the next three months (March to May 2020).**

**How does the lessor have to account for the remission of the three monthly instalments in the financial statements? - New**

Due to the Corona pandemic, the original terms of the lease were adjusted so that the lessee is no longer obliged to pay the three lease instalments from March to May 2020. This reduces the fee to be paid for the lease, so that this contractual adjustment represents a *lease modification* within the meaning of IFRS 16 (IFRS 16, Appendix A).

The remission of the three leasing instalments is accounted for by the lessor as a new lease from the effective date of the change (here: 01.03.2020) (IFRS 16.87). Consequently, it

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<sup>6</sup> See ESMA, Public Statement: Implications of the COVID-19 outbreak on the half-yearly financial reports v. 20.05.2020, P. 4.

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recognises the income from the new lease by spreading all agreed lease payments (taking into account any lease payments made or deferred in advance) on a straight-line basis between 1 March 2020 and 31 December 2021 (IFRS 16.81).

**How would the lessor have to account when the three leasing payments for the period from March to May 2020 were not waived but merely deferred and thus only the payment obligation for the lessee was only temporarily waived. The lessee must then pay the deferred lease payments in addition to the originally agreed monthly lease payments during the period between October and December 2020. - New**

At least in the case of a (short-term) deferral of lease payments without interest on arrears, the total consideration to be paid for the lease does not change, so that it does not appear appropriate to assume a modification of the lease as defined by IFRS 16.<sup>7</sup>

IFRS 16 does not contain any explicit rules on the financial statement presentation of a deferral of lease payments within the framework of an operating lease. As the total consideration to be paid remains unchanged, it is permissible for the lessor to continue to recognise income from the lease on the same systematic basis as before the agreed deferral (here: on a straight-line basis). The amount of the amounts recorded each month therefore does not change.

**Question 2.3.9.: Some rental agreements contain so-called *force majeure* clauses, which apply in the event of serious unforeseen circumstances beyond the control of the parties to the agreement. For example, such a clause may exempt the affected party from some or all of its obligations under a contract if a global pandemic (e.g. according to the WHO declaration) has been explicitly identified as a "force majeure" circumstance. However, the nature or form of the clauses may vary, so that it is sometimes unclear which rights apply in the event of a pandemic and whether the clause is applicable to the circumstances arising from COVID-19 at all.**

**What is the financial reporting impact of force majeure clauses in connection with the Corona pandemic on leases under IFRS 16? - New**

First, a legal assessment must be made as to whether the clause in question is applicable in the context of the Corona pandemic. Both the wording of the clause and the relevant laws and regulations must be taken into account. Measures taken by governments in response to COVID-19 could, in some circumstances, also be interpreted as *force majeure*.

As such clauses are already included in the original terms of the agreement, their application, where applicable, does not constitute a modification of the lease as defined by IFRS 16.

If the application of a force majeure clause results, for example, in reduced lease payments, it seems appropriate to recognise these amounts as negative variable lease payments that are

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<sup>7</sup> Vgl. IASB Staff Paper Agenda Ref 32B, Accounting for covid-19-related rent concessions, April 2020, Tz. 11.

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not index-linked or rate-dependent (see IFRS 16.27(b)). Such variable lease payments should not be reflected in the measurement of the lease liability but are recognised by the lessee in *profit or loss in the period* in which the event giving rise to the reduced lease payments occurs (IFRS 16.38(b)). Although this rule applies specifically to lessees, it is also applicable by analogy to lessors, as the general definition of variable lease payments applies to both lessees and lessors (IFRS 16, Appendix A).

If a *force majeure clause* grants one contracting party the right to re-enter into negotiations with the other contracting party again under specified circumstances, it is necessary to assess whether the negotiated changes must be accounted for, for example, as a modification of the lease as defined by IFRS 16.

Where a force majeure clause becomes relevant, additional disclosures will regularly be required to enable users of the financial statements to understand the effects on the financial statements (IFRS 16.51, IFRS 16.89).

### **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



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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.

**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 -

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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 – new questions added**

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

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**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 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**

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**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. 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:

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- 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. 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

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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 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/download-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

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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 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*

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(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.

**Question 3.2.11: What problems can arise in the audit of financial statements as a result of the current pandemic situation if the entity subject to audit outsources parts of its accounting - including the related business processes - to service companies? - New**

As part of the audit planning, the auditor must gain an understanding of whether and how the client uses outsourced services and to what extent this affects the client's internal control system relevant to audit. An understanding of the nature and significance of the services provided by the service provider and their impact on the outsourcing entity's internal controls relevant to the audit must be sufficient to provide a basis for identifying and assessing the risks of material misstatement. If the information provided by the client is insufficient for this understanding, the auditor must perform further audit procedures in relation to the service provider (see *IDW AuS 331 (Revised)*, paragraph 14). If the auditor intends or has to rely on relevant controls at the service provider for the purpose of the audit, he or she must also assess the effectiveness of these controls at the service provider (see *IDW AuS 331 (Revised)*, paragraph 19).

Frequently, service companies that offer standardized services for a large number of companies commission a separate assurance engagement on the internal control systems related to the services, so that the auditors of their clients do not have to perform their own audit procedures at the service company and the service company does not have to prepare corresponding audit evidence for each individual auditor and provide employees to answer questions.

Auditors of outsourcing entities often rely on this assurance report on the service-related internal control systems in accordance with *IDW AsS 951 (Revised)* (Type 1 or 2 reporting) in order to obtain the necessary understanding for the assessment of the risks of misstatement and audit evidence for the adequacy and effectiveness of the controls at the service company relevant to the audit of the financial statements.

However, as a result of the recent pandemic, the preparation of *IDW AsS 951 reports may be* delayed or such reports may not be available at all (for information on how to deal with such a situation, see questions 3.2.12. to 3.2.15.).



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**Question 3.2.12: Can the auditor obtain the necessary understanding of the nature and importance of the activities provided by a service provider be obtained by remote auditing procedures? - New**

In principle, the necessary understanding of the nature and importance of the work performed by a service provider and its impact on the internal controls of the entity subject to audit that are relevant to the financial statement audit can also be gained through audit procedures that are not performed at the client's premises.

For example, the auditor may request from the audit client the following documents and review them

- User Manuals
- System overviews
- Technical handbooks
- Contract or agreement on the scope of services between the outsourcing entity and the service provider
- Reports from service providers, internal audit or supervisory authorities on controls at the service provider.

From these documents, the auditor of the outsourcing company can obtain initial information on the design of controls relevant to the audit. However, reading this information alone will not be sufficient to obtain sufficient appropriate audit evidence about whether the controls of the service provider have been adequately designed and implemented.

**Question 3.2.13: Is it always necessary to obtain reporting in accordance with IDW AsS 951 (Revised) (Type 1 or Type 2) if the entity subject to audit outsources functions that are an integral part of its business activities to a service company? - New**

No. Where there is a high degree of interaction between the activities of the service provider and those of the outsourcing entity, the outsourcing entity may have implemented effective controls itself over the transactions processed by the service provider. For example, if there is a high degree of interaction between the activities of the outsourcing entity and those of the service provider, the outsourcing entity may approve transactions and the service provider may process and book these transactions. In this case, it may not be necessary to gain an understanding of the relevant controls at the service company and a report according to *IDW AsS 951 (Revised)* may not be required. Instead, the auditor may perform audit procedures on relevant controls at the outsourcing entity to obtain audit evidence about their adequacy and effectiveness.

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For example, an enterprise that has outsourced its payroll accounting can set up controls over the sending and receiving of payroll information that can prevent or detect material misstatements in the financial statements, e.g. comparing the data transmitted to the service provider with analyses provided by the service provider after the data has been processed (see *IDW AuS 331 (Revised)* , Paragraph A10).

In other situations, there may be less interaction between the outsourcing entity and the service provider (for example, a financial services provider buying and selling securities on an escrow basis for the entity). There is less interaction between the two parties when the service provider triggers or first records, processes and posts the business transactions of the outsourcing entity. In these cases, the outsourcing entity may rely on controls at the service company. In such cases, it may be essential to gain an understanding of the design and implementation of controls at the service provider.

**Question 3.2.14. If reporting according to IDW AsS 951 (Revised) (Type 1) is not available or is delayed due to pandemic-related restrictions, can the auditor obtain the necessary understanding of the design and implementation of controls at the service company in another way? - New**

If a report according to *IDW AsS 951 (Revised)*, which is generally considered necessary, is not available and the nature of the activities performed by the service provider is relevant to the audit, the auditor should discuss with management the expected date of receipt of the report and point out the necessity of this report for the further performance of the audit

If it is unlikely that the report will be available in time, the auditor should consider what alternative audit procedures may be performed to obtain evidence about the design and implementation of audit-relevant controls at the service provider. If it is unlikely that it will be possible for the auditor to travel to the service provider's premises to perform audit procedures, for example due to travel and contact restrictions, the auditor may consider using the previous period's reporting in accordance with *IDW AsS 951 (Revised)* and performing the following audit procedures for the current reporting period:

- Contacting and interviewing the responsible persons in the service company via the company subject to audit:
  - what significant changes have been made within the service-related internal control system, including relevant procedures or controls, to accommodate remote workers and changed process flows,
  - events within the service system which affect the ability of the service provider to meet its obligations to the outsourcing undertaking.

These interviews should be documented.

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- Read the system documentation and all changes to contracts and service level agreements that affect significant system changes.
- Reading messages from the service company to the outsourcing company about the measures taken in connection with the pandemic and the impact on the service-related internal control system.

The auditor must assess whether, under the currently more difficult conditions, these audit procedures and any further audit procedures at the outsourcing company are sufficient to obtain suitable audit evidence for assessing the adequacy of the relevant controls for the current reporting period. If, in the auditor's professional judgment, sufficient suitable audit evidence has not been obtained after these audit procedures have been performed to determine whether appropriately designed controls are implemented at the service company, a scope limitation may exist which, according to *IDW AuS 405*, leads to a modification of the audit opinion on the financial statements in the auditor's report.

**Question 3.2.15.: Can the auditor obtain sufficient appropriate audit evidence on the effectiveness of controls in the service provider if a type 2 report according to IDW AsS 951 (Revised) is not available or is delayed? - New**

If a Type 2 report in accordance with *IDW AsS 951 (Revised)* is not available at the time of the audit, the auditor should discuss with management by what date the report is expected to be received. Depending on the expected delay, the auditor may discuss with management the possibility of postponing the delivery of the long-form audit report and the auditor's report on the entity's financial statements until the report in accordance with *IDW AsS 951 (Revised)* has been received and all questions arising from the use of the report have been clarified. If the entity needs to have audited financial statements by a certain date, the auditor may, if necessary, ask management to contact key users of the audited financial statements, such as shareholders or financing banks, in a timely manner to determine whether an extension of the deadline is possible.

If the report is not expected to be available in a timely manner within a reasonable period of time, the auditor is unlikely to be able to rely on the effectiveness of controls at the service provider. In this case, the auditor should consider revising the audit strategy and adopting a substantive audit approach when he or she cannot rely on effective internal controls. If a substantive audit approach does not result in sufficient appropriate audit evidence and type 2 reporting is not available in accordance with *IDW AuS 951 (Revised)*, the auditor should assess whether there is a limitation of scope.

**Question 3.2.16: Is the auditor also allowed to "virtually" attend the financial statement meeting (Bilanzsitzung) of the supervisory board or audit committee or is his physical presence mandatory? - New**

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Article 171 (1) Sentence 2 AktG makes it mandatory for the auditor to participate in the negotiations of the Supervisory Board or the Audit Committee on the annual and, where applicable, consolidated financial statements (so-called “financial statement meeting” - Bilanzsitzung). The same applies to a GmbH with an optional supervisory board on the basis of the reference in Article 52 Paragraph 1 GmbHG, unless the articles of association provide otherwise, as well as to a GmbH with a supervisory board by operation of law on the basis of the respective special legal references (including in Article 25 Paragraph 1 MitbestG or § 1 Paragraph 1 No. 3 DrittelbG). Within the framework of the Transparency and Disclosure Act (TransPuG), the legislator has already waived the requirement of “meeting” for a mandatory meeting of the supervisory board; it is sufficient that the supervisory board “holds” one meeting (Article 110 Paragraph 3 Sentence 1 AktG). At least in justified exceptional cases, which undoubtedly include pandemic-related travel and stock exchange restrictions, mandatory meetings of the Supervisory Board or Audit Committee, and in particular the Bilanzsitzung, can therefore also be held in the form of a video conference (ref. explanatory memorandum to the RegE of the TransPuG, BT-Drucks. 14/8769, p. 17). Even if all members of the Supervisory Board are physically present, the auditor does not have to be physically present as well, but can be connected to the discussions via telephone or video conference.

### **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 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**

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### **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 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->

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[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 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

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company's business activities"; ref. § 322 (2) sentences 3 and 4 HGB and *IDW AuS 270* (Revised), paragraph 29).

### 3.4. Reporting on facts that impair development - New

**Question 3.4.1: Under what circumstances can the effects of the corona pandemic be qualified as damaging to development and how can these be distinguished from risks to the survival of the entity i.e., as a going concern? - New**

Pursuant to Article 321 (1) Sentence 3 HGB, the auditor is required to report on facts and circumstances established during the performance of the audit which may significantly impair the development of the audited entity or jeopardise its existence. A going concern risk within the meaning of Article 321 paragraph 1 Sentence 3 HGB exists if there is uncertainty regarding the ability to continue as a going concern, the occurrence of which is not so probable that the assumption of a going concern has to be abandoned, but due to the possible effects and the not only latent probability of occurrence, appropriate information to the addressees of the financial statements is required (ref. *IDW AuS 270 (Revised)*, paragraph 23). Facts and circumstances impairing development are regularly preceded by risks that threaten the entity's existence. However, these must be facts and circumstances that cause more than just a tense economic situation of the entity. These may be facts and circumstances such as the "break" of central, previously positive trends, a sharp decline in incoming orders or official requirements with serious effects on business activity or profitability, without the risk of business operations being discontinued in the foreseeable future. It will not always be possible to distinguish clearly between facts and circumstances that could impair development and risks that could jeopardize the company's continued existence, and these must always be assessed on the basis of the circumstances of the individual case..

In the case of entities which, for example, have to accept losses in sales or earnings during the corona pandemic, but are expected to be able to largely compensate for these losses after the crisis (e.g. entities in certain areas of the retail trade), pandemic-related facts that impair development will be less frequent, taking into account the special circumstances of the individual case (see also Annex 2 "Systematisation of companies in the corona pandemic"; entities in the third category).

If, on the other hand, the negative effects of the pandemic can only be partially compensated (see also Annex 2; entities in the fourth category), the effects of the corona pandemic may be a developmentally damaging fact, especially if the effects have serious consequences for business activities and profitability. A fact or circumstance impairing development may immediately or subsequently result in events or circumstances which may cast significant

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doubt on the ability of the entity to continue its business activities as a going concern. This may be the case, for example, if the loss of sales leads to financial difficulties which, without countermeasures, mean that there is no realistic prospect of repayment of loan liabilities on maturity or the extension of these loans (ref. *IDW AuS 270 (Revised)*, paragraph A5). Due to such events or circumstances, the auditor can come to the conclusion, in the context of his or her assessment of the appropriateness of the going concern assumption, taking into account any countermeasures, that there is already a risk that could endanger the entity's existence (ref. *IDW AuS 270 (Revised)*, paragraph 23; on the consideration of public support measures when assessing the appropriateness of the going concern assumption, see question 3.3.3.).

The greatest challenges are faced by those entities where the corona crisis has had a sustained negative impact on the success of the business model (entities in the fifth category according to Annex 2). If such entities are unlikely to be able to survive in the long term with their current business model, this is at least one factor that will impair their development. In addition, a pandemic-related threat to the continued existence of these entities may already exist. If such an entity - despite possible realistic financing over the next twelve months - does not adapt or plan to adapt its business model, the assumption that the entity will continue to operate as a going concern may no longer be upheld (see also question 3.3.3.).

**Question 3.4.2: How does the auditor's reporting of facts that impair development differ from reporting of risks to the company's existence and what are the differences in the presentation of the accounts? - New**

The following table summarises the main differences and similarities in the presentation of circumstances and facts impairing development and risks threatening the company's existence in the financial reporting and in the auditor's reporting:



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Report/Display in:	Existence of circumstances and facts that are detrimental to development	Existence of risks threatening the existence of the entity
(Consolidated) financial statements	In exceptional cases, it may be necessary to present matters, for example, if omitting them would not give a true and fair view of the entity's financial situation and performance would not be conveyed (ref. <i>IDW AuS 270 (Revised)</i> , paragraph A31).	Information in the notes or below the balance sheet, or if applicable, reference to the management report if applicable (ref. <i>IDW AuS 270 (Revised)</i> , paragraph 24 et seq.)
(Group) Management Report	Usually part of the risk report (Articles 289 (1) Sentence 4, 315 (1) Sentence 4 HGB)	Part of the risk report (Articles 289 (1) Sentence 4, 315 (1) Sentence 4 HGB; ref. GAS 20.148)
Auditors' report	No reporting obligation	Separate section entitled "Material uncertainty in connection with the continuation of the entity's operations" (Article 322 (2) Sentence 3 HGB; <i>IDW AuS 270 (Revised)</i> , paragraph 29 et seq.)
Long-form audit report	Generally following management's statement on the assessment of the entity's situation of the legal representatives (Article 321 (1) Sentence 3 HGB)	Generally following the management's statement on the assessment of the entity's situation (Article 321 (1) sentence 3 HGB; pursuant to Section 11 (2) letter i EU-APrVO including a summary of countermeasures)

The respective facts must already be mentioned in the long-form audit report if they could seriously impair the development or jeopardize the continuation of the entity's business activities and not only when the development of the audited entity is already significantly

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impaired or its existence is specifically endangered (ref. *IDW PS 450 (Revised)*, paragraph 36).

### **3.5. Illustration of the effects of the corona pandemic as a Key Audit Matter ("KAM") in the auditor's report - New**

#### **Question 3.5.1.: Are the current effects of the corona pandemic relevant for the reporting of Key Audit Matters (KAM) in the audit opinion? - New**

When *IDW AuS 401* "Notification of key audit matters in the auditor's report" is applicable to the audit of financial statements, current circumstances and restrictions resulting from the corona pandemic may require a special focus in determining key audit matters to be reported in the auditor's report. *IDW AuS 401*, paragraph 9, defines key audit matters as those matters which, in the auditor's professional judgment, were most significant in the audit of the financial statements for the current reporting period. Key audit matters are selected from matters that have been discussed with the persons responsible for supervision. These include the "most significant assessed risks of material misstatement", which have been identified in accordance with Article 10(2)(c) EU-APrVO, which must be described in the auditor's report in support of the audit opinion.

If an auditor is required to report on key audit matters under *IDW AuS 401* or Article 10 EU-APrVO, the auditor must assess whether the effects of the corona pandemic represent such a matter in individual cases (e.g. challenges for the group audit team resulting from travel restrictions, significant changes in audit strategy, etc.; cf. *IDW AuS 401*, paragraph A21). Audit areas that do not normally represent a particularly important audit subject matter may also become one due to the effects of the corona pandemic (e.g. value appraisals, increased estimation uncertainties, etc.).

#### **Question 3.5.2: In the current environment, what additional considerations can be used to determine whether a matter is a Key Audit Matter? - New**

In order to determine the Key Audit Matters (KAM), first of all those matters that have to be discussed with the persons responsible for supervision and which require special attention by the auditor during the audit must be determined (see *IDW AuS 401*, paragraph 12 et seq.). In the current environment, the determination of these matters and the selection of those matters from them that were most significant in the audit may be influenced by, for example, the following:

- *Problems in obtaining sufficient appropriate audit evidence: Pandemic circumstances may cause problems in performing audit procedures, evaluating the results of those procedures and obtaining relevant and reliable evidence as a basis for the audit opinion;*

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*this may include, for example, the valuation of financial instruments or the calculation of other fair values (see IDW AuS 401, paragraph A30).*

- *Certain events or transactions that have a significant effect on the financial statements: The Corona Pandemic often involves developments that affect several items in the financial statements in different ways and/or result in unusual or non-recurring business transactions (e.g. new impairment of non-financial or financial assets or reduced recoverability of deferred tax assets).*

**Question 3.5.3: Where in the auditor's report should the auditor report on KAM that also contains material uncertainties in connection with the continuation of the entity's activities (risks threatening the existence of the entity)? - New**

Significant uncertainties in connection with the continuation of the company's operations often, but not necessarily in every case, represent a significant risk of material misstatements in the annual or consolidated financial statements and thus meet the key audit matter (KAM) definition in Article 10 (2) (b). c EU-APrVO (cf. reporting on the 259th HFA meeting, item 5. on APAS Announcement No. 9 of 26 February 2020). If there is a significant risk of material misstatement in the case of material uncertainties in connection with the continuation of the business activities of PIE, Article 10 (2) lit. c EU-APrVO is relevant and the auditor's report must contain the information required under this provision, including a summary of the auditor's reactions to this risk. In this case the auditor - as per *IDW PS 270 n.v.*, paragraph A37, second sub-item, the auditor is obliged to provide the information required under Article 10 (2) letter c EU-APrVO in the section "Material uncertainty in connection with the continuation of the company's operations".

#### **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

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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.

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.

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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 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.bmju.de/DE/Themen/FokusThemen/Corona/Downloads/032320\\_FAQ\\_deferral.pdf?\\_\\_blob=publicationFile&v=3](https://www.bmju.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 1: 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>



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Appendix 2: Systematisation of companies in the Corona pandemic – **New**

## Systematisation of companies in the Corona pandemic

