

Early termination of a Covid-19 loan due to the change of the borrower's legal form

Topic: **Other loans** Case number: **2021/16**

The two clients ran their business in the form of a simple partnership. In the course of the Corona crisis, the bank granted them a Covid-19 loan. Due to the hardship aid from the canton, which they also claimed, they had to change the legal form of the company so that it could be entered in the commercial register. They clarified with the bank in advance whether the Covid-19 loan could be transferred to the newly founded company, which the bank approved. Nevertheless, the loan was subsequently terminated because the change of legal form was not carried out in accordance with the Merger Act. They then sought assistance from the Ombudsman. In the course of the ombudsman proceedings, the bank granted the clients compensation of CHF 1,000.

In the present case, the complainants had probably done everything right and had proceeded very prudently. Nevertheless, they were mercilessly caught in the mills of bureaucracy, as a mandatory rule of the Covid-19 Solidarity Guarantee Act, which was enacted in great haste in connection with the Covid-19 loans, had a very unfortunate effect on them. At the request of the canton, which granted them hardship aid, they had to register their company in the commercial register. Since this is not possible for a simple partnership, they converted it into a general partnership. This was done by taking over the assets and liabilities of the simple partnership by the newly founded general partnership according to the rules of the Code of Obligations.

Beforehand, they clarified with the bank whether the newly founded general partnership could take over the Covid-19 loan. The bank answered in the affirmative and explained to them that a takeover would only not be possible if the company's liability would change, e.g. if the personal liability of the two complainants would cease because the simple partnership had been replaced by a joint-stock company, for example. This was not the case in the present case, as the members of a simple partnership, like the partners of a general partnership, are ultimately personally liable in full for the liabilities of their partnership. The complainants trusted this comprehensible information in good faith.

Unfortunately, however, this turned out to be wrong. The Covid-19 Solidarity Guarantee Act stipulates that such a change of legal form must be carried out according to the rules of the Merger Act. However, this is not possible for the conversion of a simple partnership into a general partnership. Since the bank in question is generally not allowed to grant loans, it could not manage the Covid-19 loan as a normal loan and had to insist on its repayment. However, it was prepared to compensate the complainants for their efforts with CHF 1,000. The complainants were able to secure the necessary liquidity elsewhere and accepted the bank's settlement proposal.