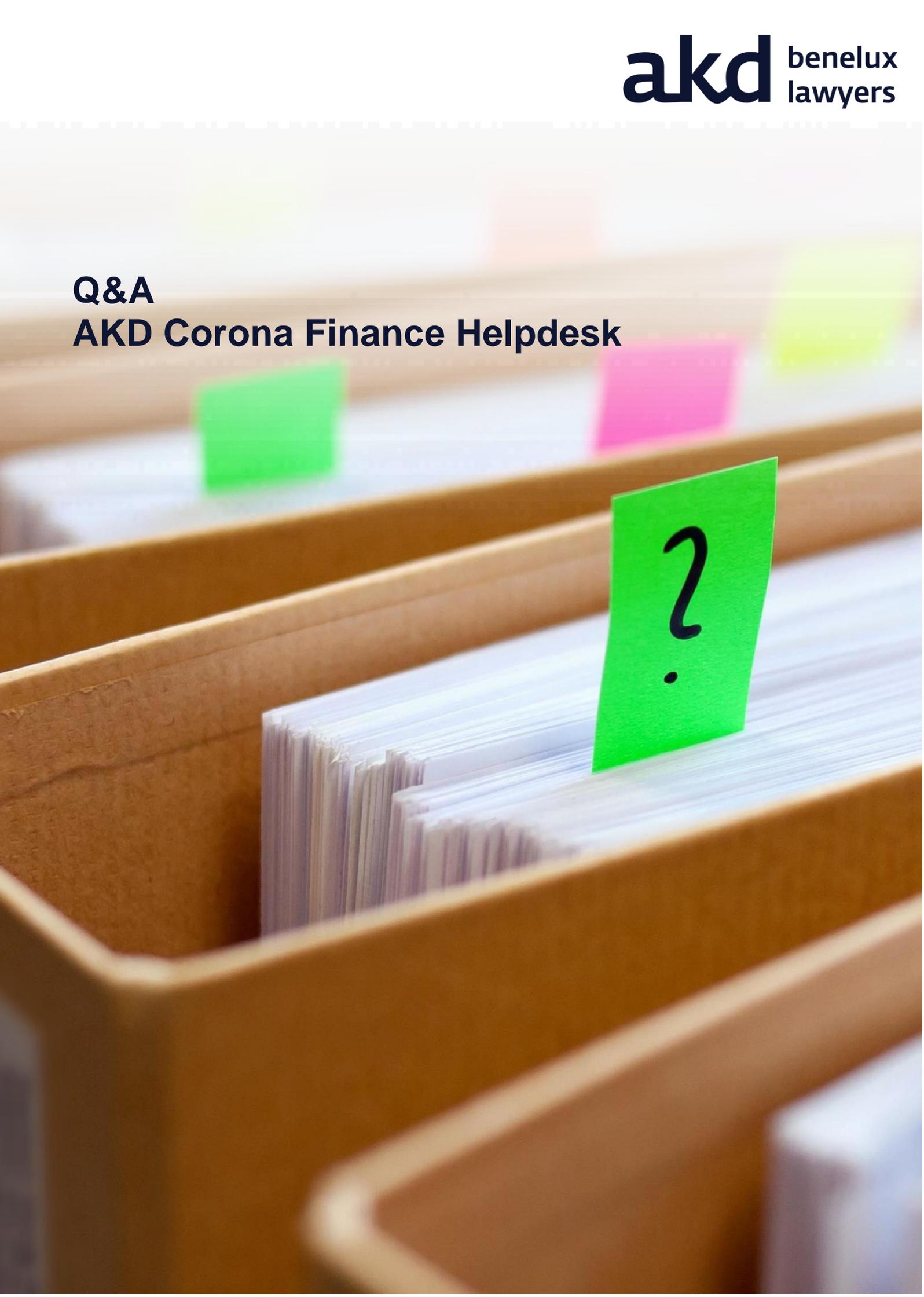


Q&A

AKD Corona Finance Helpdesk



INTRODUCTION

The corona virus can put financial performance of companies under pressure. At AKD, we receive many financing related questions, for example in the area of the consequences for existing financing, attracting additional financing, but also about what can and may one do if financing no longer proves to be sufficient.

What can you expect? How can you prepare? And how can we help you?

Package of measures taken by the Government

1. Measures relating to employment
2. Non-repayable financial assistance
3. Capital granted in the form of an advance
4. Payment of an advance on compensation extraordinary family leave
5. Moratorium granted by certain banks on repayment of existing loans
6. Relaxation of repayment conditions regarding loans and credits granted by Société Nationale de Crédit et d'Investissement (SNCI)
7. State guarantee scheme for new bank loans over a maximum duration of 6 years for SMEs and large companies
8. Guarantees offered to SMEs
9. Access to financing guaranteed by the Mutualité de Cautionnement et Mutualité des PME for SMEs
10. Specific surety offered by the Chamber of Commerce
11. Allowance for mutual funds to extend the guarantees provided to SMEs, supported by the SNCI
12. Deferral of certain tax obligations and payment

What options do the bank or government offer to obtain (additional) financing in connection with the coronavirus?

The increased and lasting spread of the ongoing extraordinary human infectious disease (**COVID-19**) rapidly affecting all parts of the world and a large part of the global population caused the World Health Organization (WHO) to declare a global pandemic on March 11. It has led many countries to take drastic measures, such as the containment of populations, having a major impact notably on the economy.

In these specific circumstances, the Luxembourg government has implemented a package of measures to support the economy of the Grand Duchy and therefore its companies through several instruments, such as the limitation of expenditures of the companies, the improvement of liquidity, measures to safe keep the financing by banks, taxes waivers and deferrals...

Temporary unemployment scheme (accelerated procedure)¹

Implementation of an accelerated procedure for temporary unemployment scheme for all Luxembourg companies affected by the COVID-19.

Requests have to be filed via an online system² to request reimbursement of hours worked during partial unemployment periods.

The reimbursement under the accelerated procedure is limited to 80% of the normal salary up to a maximum of 250% of the minimum social wage for non-qualified employees (i.e. EUR 2,141.99 x 2.5) and will be retroactive if applicable.

During the period of partial unemployment, the employer pays each employee (i) the salary due for hours worked and (ii) a compensation allowance corresponding to at least 80% of the salary normally received for non-working hours.

Extraordinary leave for family reasons COVID-19³

Extraordinary leave, limited in time (by decision of the Government, for the time being implemented until 4 May 2020, potentially to be extended depending of the evolution of the crisis) which will not affect the balance of the regular leave for family reasons that employees may have.

The request for such assistance has the same value as a medical certificate⁴; consequently, it cannot be refused.

Such leave cannot be cumulated when the other parent benefits from the accelerated procedure for temporary unemployment.

In practice, the company will pay the normal salary of the employee during this period and request repayment from the social security administration.

Non-repayable financial assistance⁵

Providing direct assistance in the amount of 5,000 euros to companies ≤ 9 employees that are forced to cease their activities following the regulation of 18 March 2020, supported by the General Direction of Middle Classes (for Micro-enterprises).

¹ <https://adem.public.lu/en/employeurs/demander-aides-financieres/maintenir-emploi/chomage-partiel/chomage-partiel-covid19.html>

² [https://www.services-](https://www.services-publics.lu/login/TAMLoginServlet?TAM_OP=cert_login&USERNAME=unauthenticated&ERROR_CODE=0x00000000&ERROR_TEXT=HPDBA05211%20%20Successful%20completion&METHOD=GET&URL=%2Ffgun-)

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[publics.lu&AUTHNLEVEL=5&FAILREASON=&PROTOCOL=https](https://www.services-publics.lu/login/TAMLoginServlet?TAM_OP=cert_login&USERNAME=unauthenticated&ERROR_CODE=0x00000000&ERROR_TEXT=HPDBA05211%20%20Successful%20completion&METHOD=GET&URL=%2Ffgun-)

³ https://gouvernement.lu/en/actualites/toutes_actualites/communiques/2020/03-mars/14-crf-infos-supp.html

⁴ <https://guichet.public.lu/en/actualites/2020/mars/13-conge-raisons-familiales-covid-19.html>

⁵ <https://guichet.public.lu/fr/support/coronavirus/corona-virus-pme.html>

Non-repayable financial assistance for self-employed⁶

Financial support, in the form of certified non-taxable emergency compensation, to traders, artisans and intellectual workers who are self-employed as well as to managing partners who have a licence of establishment.

The compensation takes the form of a single lump sum capital grant of 2,500 euros.

Capital grant in the form of an advance⁷

Financial assistance in the form of a reimbursable advance of up to 50% of eligible costs (capped staff and rental costs, income) with a maximum amount of 500,000 euros in the form of a repayable advance to cover operating costs in the context of temporary financial difficulties for the related company. Measure dedicated to both (a) commercial, industrial, and artisanal companies that have a business licence, as well as (b) self-employed professions already conducting their business activities before the unforeseeable event.

Applications⁸ must be submitted in writing to the Minister for Middle Classes or the Minister for Economic Affairs or the Minister for Tourism no later than 15 August 2020.

The advance must be repaid with interest not earlier than twelve months after the first payment of the repayable advance, unless requested otherwise by the company. The aid must be granted before 1 October 2020.

Payment of an advance on compensation extraordinary family leav

The reimbursement of any advance on wages that employers must pay to parents concerned, will be supported by the Joint Center for Social Security (CCSS), Employers' Mutuality and National Health Fund (CNS), and is applicable to VSEs (very small enterprises) (including employers in personal name for their employees), SMEs (small and medium enterprises) and large companies.

State guarantee scheme for new bank loans over a maximum duration of 6 years for SMEs and large companies

Guaranteed new bank credit lines for which the Grand Duchy guarantees 85% and banks 15% for a total amount of 2.5 billion euros. The loan request has to be made to a participating bank (BCEE, BIL, Banque de Luxembourg, Banque Raiffeisen, BGL BNP Paribas, ING).

The maximum amount of eligible loans can be up to 25% of the company's revenues in the year 2019 (or, failing this, the last year available).

⁶ <https://guichet.public.lu/fr/support/coronavirus/corona-virus-independants.html>

⁷ <https://guichet.public.lu/fr/entreprises/financement-aides/coronavirus/aides-difficultes-financieres-temporaires.html>

⁸ https://www.services-publics.lu/login/TAMLoginServlet?TAM_OP=cert_login&USERNAME=unauthenticated&ERROR_CODE=0x00000000&ERROR_TEXT=HPDBA05211%20%20Successful%20completion&METHOD=GET&URL=%2Ffpgun-iep%2Fjsp%2Factivate_service.action%3FserviceType%3FDECO_COVID_19&REFERER=https%3A%2F%2Fguichet.public.lu%2Ffr%2Fentreprises%2Ffinancement-aides%2Fcoronavirus%2Faides-difficultes-financieres-temporaires.html&HOSTNAME=www.services-publics.lu&AUTHNLEVEL=5&FAILUREASON=&PROTOCOL=https

Guarantees SMEs

In collaboration with banks active in the financing of companies.

Provide guarantees to SMEs for obtaining financing of new operating capital lines from banks.

Access to financing guaranteed by the Mutualité de Cautionnement et Mutualité des PME for SMEs

Set up for the benefit of companies with cash flow difficulties and to guarantee access to financing for SMEs, this entity will be responsible and pay back part of the amount borrowed from approved credit institutions when the guarantees provided by the entrepreneur prove to be insufficient.

Specific surety offered by the Chamber of Commerce

For companies that will need a cash credit from their banks and in order to guarantee rapid assistance to companies that request it, a rapid file analysis procedure has been put in place. Companies wishing to take advantage of this bank guarantee will have to request it directly from their banks, which will decide on the release of the credit. The Chamber of Commerce is in contact with all of the country's banks to organise the provision of this new service.

Tax and social contributions measures

From a social debts perspective

As of 1 April 2020, to increase the flexibility for the payment of social security contributions to all companies, the CCSS put the following **temporary** measures into place:

- Suspension of the calculation of default interest for late payments
- Suspension of the initiation of proceedings for the forced collection of contributions
- Suspension of the enforcement of constraints by bailiff
- Suspension of fines to be pronounced against employers who are late in making declarations to the CCSS

Such measures do not only apply to future calls for contributions, but also to the current balances of social security contributions, notwithstanding any mention (interest, fines, etc.) on the CCSS statement of account dated 14 March 2020.

From a tax perspective**a. Direct contributions**

As long as they are experiencing liquidity problems due to the COVID-19 pandemic, legal and natural persons who make a commercial profit, an agricultural and forestry profit or a profit from the exercise of a liberal profession may request through dedicated forms⁹:

- a cancellation/reduction of their quarterly advances in income tax (for local authorities) and municipal commercial tax in the 1st and 2nd quarters of 2020;
- a payment deadline for income tax (local authorities), municipal commercial tax and wealth tax (payment deadline model): for any CIT, MBT and NWT due as from 1 March 2020, taxpayers may request a 4-month deferral, starting from the due date of the tax concerned.

Requests for cancellation of advances and payment periods are automatically accepted for eligible taxpayers who actually have advances to pay or tax ratings due.

In addition, the deadline for submitting tax returns has been extended to 30 June 2020.

b. Indirect contributions (VAT)¹⁰

Until further notice, as a matter of administrative tolerance, no fines will be levied when VAT returns are filed late. Normally, such fines are system-generated as soon any deadline expires, and can range from EUR 250 to EUR 10,000.

Liquidity needs are served by a prepayment of credit balances VAT below 10,000 euros.

Do banks have an official position regarding deferral or postponement of payments?**At Luxembourg level**

Luxembourg banks have not adopted any blanket official position. They seem to be moving towards a case-by-case approach even if retail banks declared through the ABBL (the Luxembourg Bankers's association) their intent to support small businesses, professionals and entrepreneurs in this particularly difficult economic environment, specifically their short-term financing needs.

Moratorium granted by certain banks on repayment of existing loans

Some banks have postponed the repayment of credits to better cope with cash flow difficulties – to be negotiated on a case-by-case basis.

⁹ <https://impotsdirects.public.lu/fr/formulaires/contribuables.html>

¹⁰ <http://www.aed.public.lu/actualites/2020/03/Covid19Tabo/index.html>

Relaxation of conditions regarding repayment of Société Nationale de Crédit et d'Investissement (SNCI) loans and credits

All principal repayments due on 31 March 2020 and 30 June 2020 have been suspended for all direct and indirect loans.

The terms of all loans for which such a moratorium was put in place will be automatically extended by 6 months.

At European level

The European Bank Association (**EBA**) clarified that, in the event of debt moratoria, there is no automatic classification in default, forborne, or IFRS9 status.

Is it possible to use remaining credit of the credit balance still has margin?

As a general principle, the assets held by a bank in the name and on behalf of a specific company are owned by this company. Consequently, it must remain possible to use the remaining credit in accordance with the terms of the agreement entered into by and between the company and its bank.

Nevertheless, specific cases may restrict the right of the company to use such assets, if those assets have been pledged, for example. Alternatively, does the agreement between the company and the bank provide for an automatic netting mechanism between accounts of the same company having positive and negative positions?

What is the direct consequence in case of breach of the applicable credit conditions?

The main factors here are the contractual obligations and the meaning given in the contract to events of default; specific procedures may have been detailed (sending of formal notice) with different steps for remediation delay. Depending on the seriousness of the breach suffered by the bank, guarantees may have been granted by the company to the bank and in an event of default, the bank should be entitled to realize the guarantee.

In the event of non-execution or delay in the execution of its obligations by the company, the bank may seek damages or the immediate termination of the related contract.

The bank could be entitled to petition for the bankruptcy of the company.

Certain banks have agreed to grant a moratorium regarding the reimbursement of existing loans. Companies have to liaise directly with their banks to discuss such specific terms on a case-by-case basis.

What aspects should I, as director, particularly focus on if my business suffers financial problems as a result of the COVID-19?

Attention points regarding ongoing contracts

In the event of a potential default of the company in the performance of its obligations, it is advisable first to check:

- the definition of the contractual obligations for the company
- the penal clauses contained in the contract
- the *force majeure* clause
- the clauses of jurisdiction and applicable law in case of litigation
- the guarantees which can be activated by the creditor
- the limiting clauses or exclusive of liability

In this situation, we would recommend to talk with the related creditors to find friendly arrangements.

Defence point

If the financial situation of the company is the direct result of the COVID-19 and if COVID-19 is recognised as a *force majeure* event - i.e. an occurrence that is unpredictable, could not have been avoided, is beyond the control of a contracting party, and impedes or wholly precludes a party's ability to perform a contractual obligation - the company would be exempted from its contractual obligations.

Director's liability

As a general principle, the personal liability of the managing director or director could be triggered in the event of a fault of management or non-respect of the framework of its mandate; for example, acts exceeding the societal object of the company, contrary to the interest of the company...

New credit opportunities

In addition to the package introduced by the Luxembourg Government, companies may use:

1. **Special Anti-Crisis Financing (FSAC)** via the corporate bank and SNCI covers financing needs related to the current crisis via indirect loans for amounts between 12,500 and 16 million euros.

This FSAC is intended for SMEs and large Luxembourg companies with a view to financing any exceptional need arising in the context of the COVID-19 crisis, for financing decisions taken until 31 December 2020.

It is an indirect financing carried out through the usual bank of the requesting company: SNCI finances up to 60% of the financing need, up to a maximum of 10 million euros, on the assumption that the company's usual bank finances the remaining 40%.

2. Factoring and alternative financing

Classical refinancing mechanisms are still available but the current situation makes pricing and arranging possibilities difficult to predict.

3. Current interest rate level

There is no coherence or unity regarding interest rates offered during these special times. It all depends on the situation of the borrower and on assets available to guarantee the loan.

Contact:

Vincent Bettonville

E: vbettonville@akd.eu

T: +31 6 46 70 07 46

Jasper Verhoog

E: jverhoog@akd.eu

T: +31 6 55 39 58 04