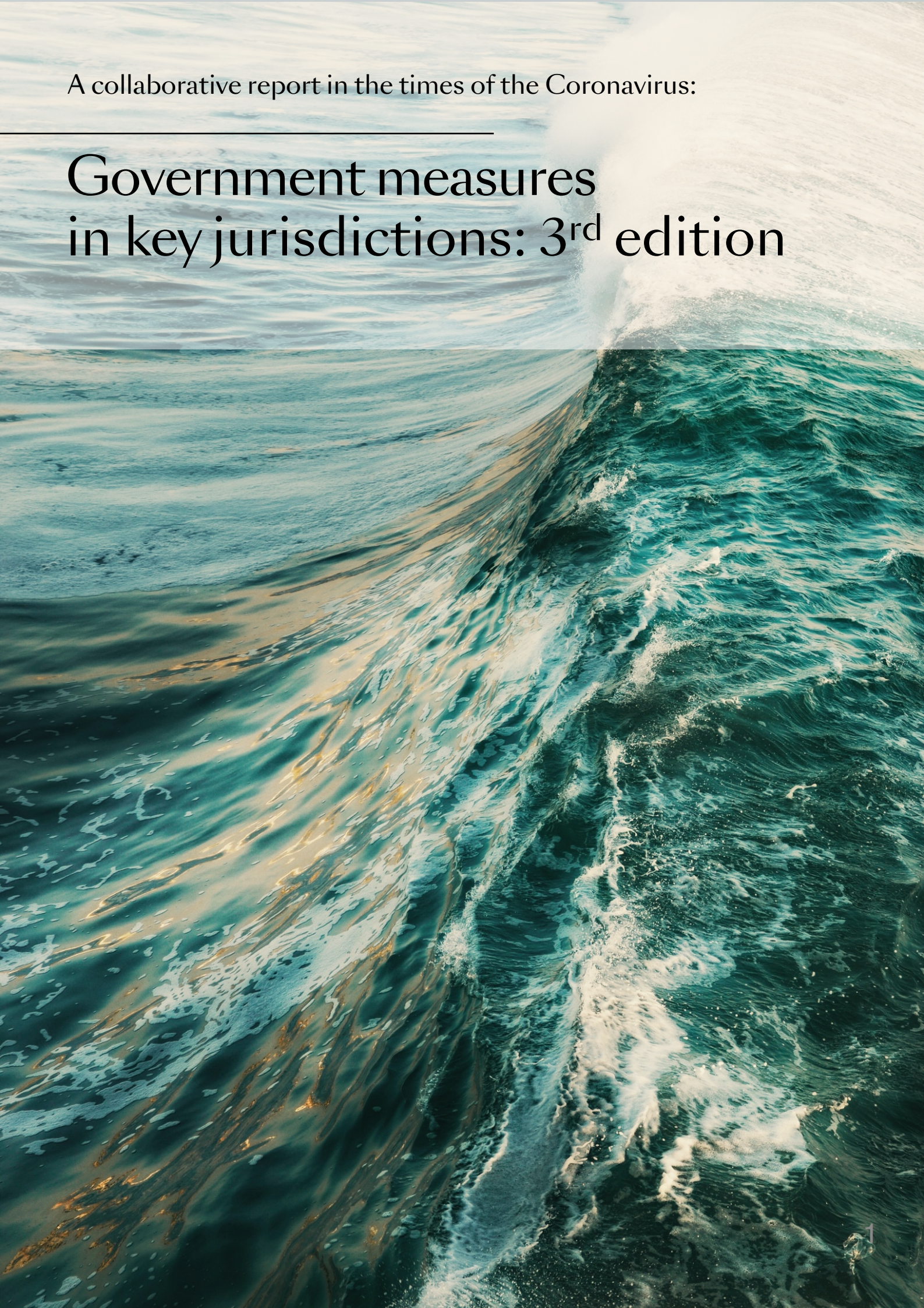


A collaborative report in the times of the Coronavirus:

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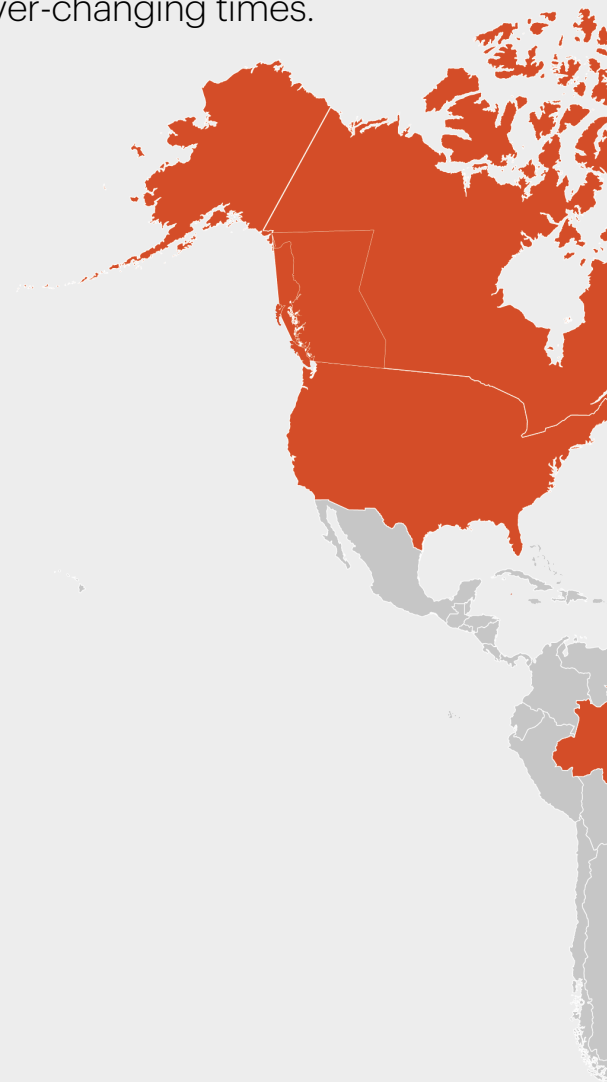
# Government measures in key jurisdictions: 3<sup>rd</sup> edition



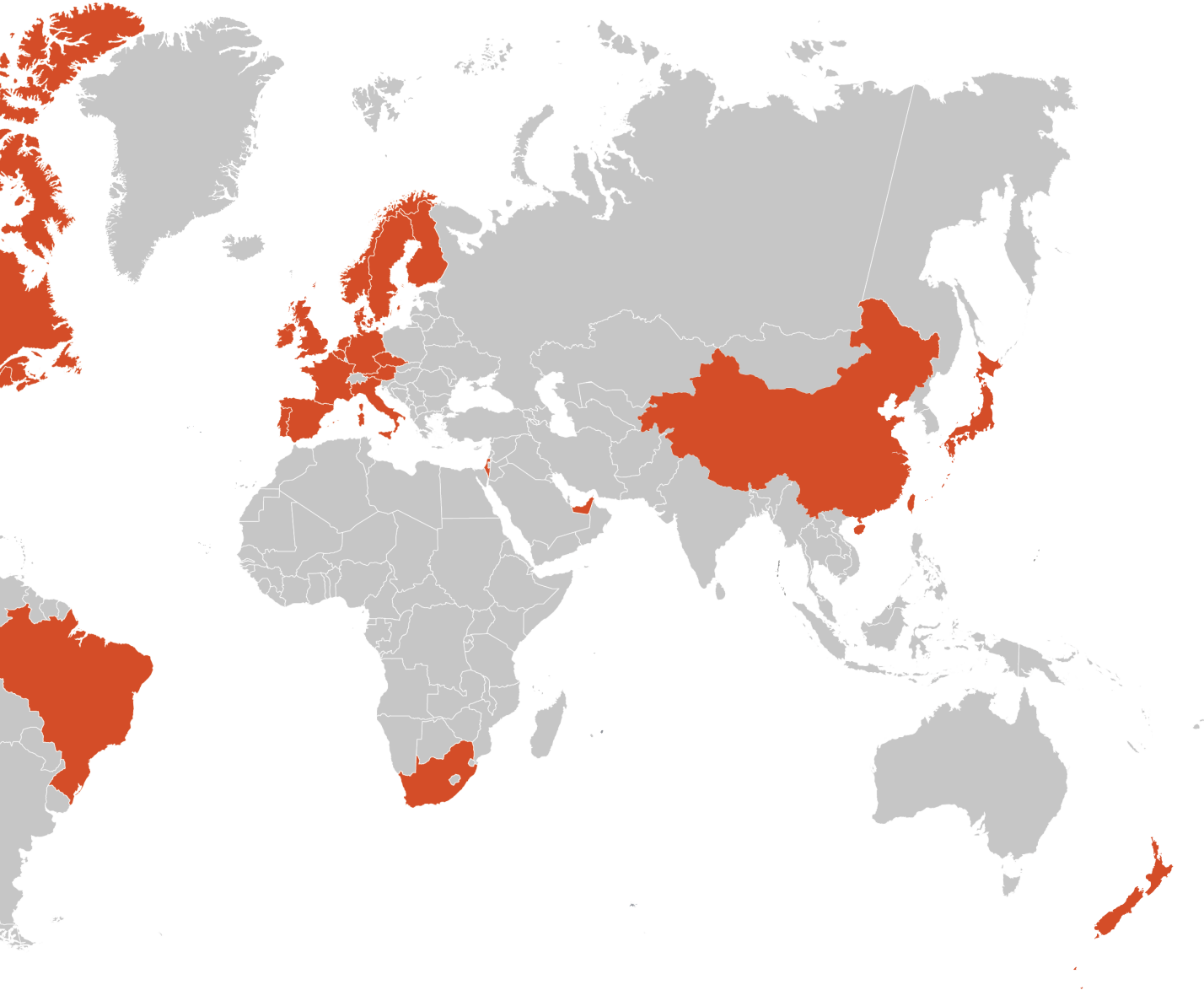
# Introduction

Since the last publication of this bulletin covering the position to 15 May, the situation regarding Covid-19 has continued to develop. Some countries have emerged from lockdown, whereas in others the crisis is deepening or localised outbreaks are occurring. We thought it would be valuable to take stock of where we are and update you on the interventionist role that Governments are taking to mitigate the economic impact of the virus.

We have expanded the number of independent law firms contributing to this multi-jurisdiction briefing. We hope you continue to find it a useful tool to guide you and your business through these ever-changing times.



Please note, this bulletin does not constitute legal advice. It is accurate to 25 June 2020. We recommend that the latest government guidance is checked as this is changing daily. This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.



This report has been put together as a collective effort from the following firms.

**WOLF THEISS**



MONARDLAW

**MATTOS FILHO**

**mourant**

**Cassels**



JunHe LLP



Gorrissen Federspiel

HANNES SNELLMAN

**aramis**

 HEUKING KÜHN LÜER WOJTEK



Duncan Cotterill

THOMMESSEN

**BARNEA**

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

**Legance**  
AVVOCATI ASSOCIATI

 Atsumi & Sakai

RAJAH & TANN ASIA



WERKSMANS  
ATTORNEYS

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**NIXON  
PEABODY**

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## Loans and financial support

Has the government put in place any new bank funding schemes?

- Financial assistance is available under several schemes that have been introduced in Austria, such as:
- EUR 15 billion emergency fund which is primarily intended for companies in sectors particularly affected by the crisis. A combination of governmental guarantees for new loans and grants for the coverage of fixed costs provided to companies which suffered a loss of turnover of at least 40% in 2020 caused by the crisis will be made available to ensure the liquidity of the companies. The companies must be located in Austria and the fixed costs must have arisen from operating activities in Austria. Grants do not have to be repaid. However, the companies are required to take all reasonable measures to reduce fixed costs and maintain jobs, in particular, the distribution of dividends is not permitted. It can be applied for the grants from 20 May 2020.
  - AWS State guarantee in the amount of 80% in order to secure credit facilities of up to EUR 2.5 million granted to the SME by its house bank. Not eligible are associations and SMEs (i) with an annual turnover of more than EUR 50 million, (ii) in need of reorganisation, (iii) meet the statutory requirements for the opening of insolvency proceedings at the request of creditors, (iv) in the tourism and leisure industry, (v) in the banking and insurance sector, (vi) in the real estate sector, and (vii) in the fishing and aquaculture industry or in the primary agricultural sector.
  - ÖHT State guarantee to be granted only to SMEs in the tourism and leisure industry (SMEs with mixed business operations are also eligible). Guarantee in the amount of 80% in order to secure bridging loans (overdraft facilities) granted to the SME by its house bank.
  - OeKB credit line granted to export companies is based on a bill guarantee. Conditions of the assumption of liability are determined individually. The amount of the loan is limited to 10% (large companies) or 15% (SMEs) of the company's last year export turnover. The individual loan is subject to a maximum upper limit of EUR 60 million per company group.

- [Corona Relief Fund – Guidelines for the issuance of guarantees and direct loans from the EUR 15 billion Corona-Relief Fund](#)

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Restricted working hours scheme (Kurzarbeit): Compensation available for employers at the flat rate for each hour of work that is no longer required by an employee due to Covid-19 for a maximum of 3 months (extension of a further 3 months is possible). During such period and for at least one month thereafter, the employer may not terminate the employment. Part-time employees, self-employed managing directors and board members are not eligible for such compensation scheme. Irrespective of reduced working hours, the following salaries must be paid to the employees: (i) for a monthly gross salary (before Covid-19) of less than EUR 1,700, 90% of the net salary; (ii) for a monthly gross salary (before Covid-19) between EUR 1,700 and EUR 2,685, 85% of the net salary; (iii) for a monthly gross salary (before Covid-19) of more than EUR 2,685, 80% of the net salary; and (iv) apprentices should receive 100% of their previous net salary. Companies are required to report to the Public Employment Service (Arbeitsmarktservice, AMS) the number of hours lost (via a payroll list) on a monthly basis. No reimbursement will be due for any income above EUR 5,370 gross.
- Social Security Deferral: There is an automatic deferral of social security contributions for February, March and April 2020 for companies which had to close down due to government regulations or are subject to a ban on entry relating to Covid-19.

## 3

## Insolvency

Has the government made any changes to insolvency legislation?

- The duty to file for bankruptcy due to over-indebtedness was suspended until 30 June 2020, if the over-indebtedness occurred after 1 March 2020.
- To the extent the insolvency was caused by Covid-19, the mandatory deadline to file for bankruptcy has been extended to 120 days following the insolvency.
- [Dispute resolution insider special edition: Covid-19](#)

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- Loans entered into prior to 15 March 2020 and granted to a consumer or a microenterprise (i.e. a company which employs less than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.) will be subject to a moratorium to the extent the consumer has suffered a loss of income due to the Covid-19 crisis as a result of which it cannot be expected to continue the debt repayment or the microenterprise is unable to continue the debt repayment or it cannot be expected to continue the debt repayment without impairment the economic basis of its business due to the Covid-19 crisis. This regulation encompasses any payment obligation under the relevant loans which fell due between 1 April 2020 and 30 June 2020. The mentioned payment obligations are deferred for a period of three months from the initial due date and the lender may not terminate the loan on the grounds of a material adverse change or the non-payment during the period of the moratorium.
- To the extent a party under an agreement entered into prior to 1 April 2020 fails to make a payment which fell due between 1 April 2020 and 30 June 2020 as a result of a material impairment of its economic basis due to the Covid-19 crisis, the other party may not claim an agreed default interest in excess of 4%. Furthermore, such party would not be required to pay out-of-court enforcement costs.
- To the extent a party under an agreement entered into prior to 1 April 2020 defaults on an obligation due to a material impairment of its economic basis as a result of the Covid-19 crisis or due to performance being impossible as a result of the trade restrictions, the other party may not claim a contractually agreed penalty, irrespective of whether it was stipulated to apply irrespective of the obligor's fault or not.
- Covid-19 is generally considered to constitute an event of force majeure under Austrian Law. Various legal doctrines are available to legally assess the legal consequences resulting from the permanent or temporary non-performance of contractual duties caused by Covid-19. However, due to the multitude of possible factual constellations, it is difficult to state in general whether and to which extent Covid-19 provides an exemption from performance obligations. Rather, such analysis depends on the underlying circumstances of or affecting a contractual arrangement or the specific contractual agreements in place.
- [Does Covid-19 constitute Force Majeure?](#)

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- If a tenant of a private apartment does not pay rent (or a part thereof) due from 1 April 2020 until 30 June 2020 because he or she has been significantly economically impaired by the crisis, the underlying lease agreement may not be terminated by the landlord solely based on the payment default. Moreover, the landlord may neither enforce these outstanding payments nor draw a deposit provided by the tenant, before 31 December 2020.
- An eviction is to be postponed at the request of the tenant if the apartment is indispensable for urgent housing needs of the tenant and other persons living in the same household, unless the eviction is necessary to avert serious personal or economic disadvantages of the landlord. Before the decision on suspension is made, the landlord shall be given the opportunity to make a written statement.
- Under the Austrian Civil Code tenants may be entitled to a rent relief provided that their premises cannot be used as contractually agreed due to Covid-19; in practice this currently mostly concerns leases in the retail and leisure industry, as most of such businesses had to be closed due to respective ordinances. However, as these provisions of the Civil Code are not mandatory and can therefore be deviated from (which in practice rarely has been the case, though), the question if and to which extent a rent relief actually applies, needs to be reviewed on a case by case basis.

## 6

### Litigation

Are the courts operating?

- In Austria, courts are operating regularly again. Procedural periods at civil courts and administrative courts, which had not expired as of 22 March 2020 were suspended. These time limits restarted as of 1 May 2020.
- Arbitration is also affected by the Covid-19 pandemic. However, many arbitration institutions continue their work as far as possible. The Vienna International Arbitral Centre (VIAC) is working remotely and its case management is fully operational due to the new electronic case management system that was introduced in 2019.

### Tax

Has any new legislation been introduced in light of Covid-19?

- Taxpayers affected by a liquidity shortage due to Covid-19 may, until 31 October 2020, apply for a reduction of (corporate) income tax prepayments for the year 2020 to the lower amount of (corporate) income tax expected for 2020 or even to zero. No interest will be charged in case the (corporate) income tax ultimately assessed for 2020 turns out to be higher than the (corporate) income tax prepayments.
- Taxpayers affected by a liquidity shortage due to Covid-19 may apply for a deferral of tax or payment in monthly instalments by 30 September 2020. Late payment interest may be reduced or altogether waived.
- Taxpayers may apply for a waiver of late payment fines already imposed, if the belated payment of taxes was due to a liquidity shortage related to Covid-19.
- The general filing deadline regarding (corporate) income tax declarations and annual value added tax declarations for the year 2019 has been extended from 30 June 2020 to 31 August 2020. Up to 1 September 2020 there will be no fines for missing tax filing deadlines.



- Legal transactions necessary for the proper handling of the Covid-19 crisis are exempt from stamp duty if concluded any time from 1 March 2020 to 31 December 2020 (e.g., sureties granted to ensure the liquidity of a company during the Covid-19 crisis).
- Bonus payments of up to EUR 3,000 made by employers to their employees in the calendar year 2020, which are solely being granted due to the Covid-19 crisis and would not have been granted otherwise, are exempt from income tax.
- Public grants to be offered from 1 March 2020 onwards to maintain sustainability during the Covid-19 crisis are tax-free.
- An exemption from fees and federal administrative charges for all documents and official acts related to Covid-19 applies. In particular, registrations of mortgages to secure loans taken out by companies to bridge their liquidity problems due to the Covid-19 crisis shall be exempt from court fees, provided that the application for registration has been received by the court before 1 July 2020.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Meetings of all types of Austrian companies can be held without the physical presence of the participants. In principle, an acoustic and optical connection is necessary in order to hold virtual (general) meetings, whereby a common video conference solution should be sufficient. In exceptional cases, participants can only participate acoustically. Special rules apply, inter alia, to the general meetings of a listed companies: it may be provided that submitting an application for a resolution, voting and raising of an objection in the virtual general meeting can only be made by a special proxy instructed by the company. In such case, the company has to propose at least four suitable and independent proxies, whereby at least two of such special proxies must be lawyers or notaries.
- To the extent a notarial deed or a certification is required with respect to e.g. M&A transactions, capital measures and any legal document, notaries are entitled to use electronic tools to render their services. Such regulation applies until December 2020 and substitutes the requirement of physical meetings in front of a notary.
- The deadline for the ordinary general meetings has been extended to twelve months following the balance sheet date.
- Furthermore, the deadline for submitting the annual financial statements has been extended by three months, so that the annual financial statements of companies must be submitted to the responsible commercial register court no later than twelve months following the balance sheet date.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- In Belgium, the federal and regional governments have put in place numerous financial support measures. Such measures include one-off compensation to enterprises which are required to temporarily close down (such as the hotels and restaurants), deferral payment of bank loans, government guarantees, and other measures oriented to support specific sectors or SMEs. Since the semi-lockdown has been coming to an end, there have been several extra “re-launch” grants provided for enterprises.
- At the federal level, the federal government decided to allow a deferral of payment for existing credits, including mortgages for households and corporate loans for viable non-financial enterprises, SMEs, self-employed persons and non-profit organizations. The deferral can be requested for a maximum period of 6 months for payments due (ending on 31 October 2020). In addition, in respect of new loans granted between 1 April 2020 and 30 September 2020 for a maximum term of one year, the federal government provides guarantees and undertakes sharing of losses with the financial sector. For more details on this topic, please refer to our [Corona Desk website](#).
- At the regional level, in Flanders, the coverage of PMV (Flemish corona crisis guarantee) has been extended. PMV can now also grant medium-term subordinated loans to healthy SMEs for a term of 3 years. The repayment of following loans: start-up loans ‘startlening’, the so-called ‘Co-financiering’ and ‘Co-financiering +’ are deferred for 6 months. In addition, enterprises with a government grant can also request extension of deadlines with VLAIO (the Flanders Innovation and Entrepreneurship).
- In the Brussels-Capital Region, the enterprises can request loans with reduced interest rate from Finance and Invest Brussels. Emergency loan start-up investment fund can provide loans for cultural and creative enterprises. The Brussels’ microcredit has been strengthened in order to boost cash-flow in general under the project “Lening BRUSOC Recover”. In addition, Brussels Waarborgfonds (Brussels guarantee fund) also can provide guarantees on bank loans.
- In the Walloon Region, there are also similar support measures provided by SRIW, SOWALFIN and Groep SOGEPA (guarantees, loans and deferrals).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Following the easing of the quarantine rules, many employees are now able to return to work. Teleworking and/or social distancing remain nonetheless highly recommended. If both are practically impossible, the employer is obliged to foresee adequate preventive measures, such as disinfectants, masks and gloves.
- Some companies, such as nightclubs remain closed. In such cases, employees can apply for “temporary unemployment”, (“tijdelijke werkloosheid”, “chômage temporaire”). Temporary unemployment can also be invoked, for instance, if the company suddenly has insufficient work for its employees, if an employee is not able to find childcare for his/her children, or if an employee has been put in quarantine abroad. In addition to a very flexible scope of application, the Belgian authorities have also significantly eased the application procedure. The employee will receive an allowance of 70% of his average salary (capped), and the government will grant a supplement of 5.63 euro per day.
- Self-employed persons can rely on a “bridging right” (“overbruggingsrecht”, “droit passerelle”), which has also been made more flexible in the context of the Covid-19 crisis. Are eligible: self-employed who are obliged to cease their activities (in whole or in part) or self-employed who are practically forced to cease their activities for at least 7 consecutive calendar days. The monthly allowance amounts to 1,291.69 euro without family charge and 1,614.10 euro with family charge.

The regional authorities also provide for premiums.

- In the Flemish region:
  - The “nuisance premium” if the company is obliged to close completely (a daily premium of 160 euro), and
  - The “support premium” in the company suffers a heavy loss of turnover (2,000 euro).
- In the Walloon region: the “nuisance premium” and “compensation premium” are no longer available. Premiums for certain specific sectors, such as the cultural sector, remain nonetheless available.
- In the Brussels region: the “nuisance premium” and “compensation premium” are no longer available. Premiums for certain specific sectors, such as the cultural sector, remain nonetheless available.
- For the relevant topics, please refer to section Personnel at our Corona Desk topics, please refer to section Personnel at our [Corona Desk website](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- On Friday 24 April 2020, Royal Decree n° 15 on the suspension of implementing executive measures and other measures in favour of undertakings during the Covid-19 crisis entered into force.
- Pursuant to the afore-mentioned Royal Decree, during the suspension period, undertakings are protected against:
  - conservatory seizure or executive seizure (with some specific exceptions),
  - forced bankruptcy, compulsory winding up, compulsory transfer under judicial authority,
  - unilateral or judicial dissolution of contracts due to non-payment of a monetary debt; however, this does not apply to employment contracts, and
  - revocation of the reorganization plan, i.e. the payment periods provided for in the approved reorganization plan are extended for the duration of the moratorium.
- The suspension period was between 24 April 2020 and 17 June 2020. This period was not extended.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- On April 24, 2020, a number of measures were taken to ensure the continuity of companies during Covid-19, which also have an impact on current contracts: agreements concluded before April 24, 2020 cannot be (unilaterally) terminated or (judicially) dissolved, in case of late payment as a result of Covid-19. The other contractual and/or legal obligations and/or rights of the contracting parties remain in place, such as set-off, the exception of non-execution, the right of retention, etc.
- This measure expired on June 17, 2020 which means that the general legal and contractual provisions apply.
- No other specific legal regulations were taken to reinforce contracts.
- The parties will have to analyse the applicable contractual provisions in order to establish whether the current governmental measures can be invoked to suspend performance under the contract or to lift liability for non or late performance. Contracts in Belgium often include clauses relating to force majeure or hardship.

- If parties did not include such provisions, Belgian law and jurisprudence of the highest court provide for several mechanisms to protect contracting parties against adverse events. Principles of good faith and obligations to renegotiate contracts can be invoked under strict conditions. Application of these principles are casuistic and must be assessed in detail.
- For more details on this topic, please refer to section Contract at our [Corona Desk website](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- In respect of payment of rent, the current pandemic does not constitute force majeure for tenants. They have to pay rent and may not suspend payment of rent. However, there are measures to mitigate the impacts of this pandemic. For instance, in the Flemish Region:
  - it is possible to extend the lease agreement by e-mail if the agreement is about to expire during the confinement period,
  - a social tenant who has lost his or her income due to temporary unemployment as a result of force majeure will be able to ask the social landlord for a temporary adjustment of the rent, and
  - social landlords will be able to provide temporary shelter, directly or through an intermediary institution, to individual or families in an emergency situation as a result of the Covid-19 virus measures.
- In addition, due to social distancing requirements, some procedures or meetings with physical attendance requirements that have to be organized during the period between 10 March 2020 and 30 June 2020 have been either postponed or allowed for alternative attendance means, this is the case for the participation in the general meeting of association of co-owners.
- The Flemish government has set up a system of commercial lease loans to support companies and is valid from April 2020.
- Tenants who due to liquidity problems have difficulties to pay the commercial rent can apply for a commercial lease loan. The tenant submits an application via the website of the Agency for Innovation and Entrepreneurship before 1 October 2020. An application may relate to several properties of the same landlord, for which the tenant applies for a single commercial lease.
- The following conditions must be met in order to be eligible for a commercial lease loan:
  - The company must have a registered commercial lease,
  - The property must be located in the Flemish Region,
  - The company has been obliged to close all or part of its physical location, and
  - The company had no arrears in the rent for this property on 15 March 2020.
- The regulation consists of the Flemish government advancing a maximum of two months 'rent, on condition that the landlord remits one or two months' rent.
- The tenant and landlord must sign a model agreement for this, which is made available by the Innovation and Entrepreneurship agency [here](#).



## Litigation

Are the courts operating?

Since 18 May 2020, all courts and tribunals entered into a new phase: the Corona-exit strategy and return to normal phase. The College of Courts and Tribunals has drawn up binding guidelines for the exit strategy. These guidelines entered into force on 18 May 2020.

- The rule of social distancing (1.5 m) must continue to be observed. Physical contact should be avoided.
- Access to the courthouses should be limited as much as possible to persons who, because of their case, need to be in court or who, for professional reasons, need to be in court (lawyer, expert, translator, journalist, etc.).
- As far as possible, parties and lawyers are asked to communicate by telephone or e-mail. Documents and correspondence are deposited, if possible, without contact, electronically, by e-deposit, or physically, by post or by deposit at the Registry in the appropriate box.
- Courts and tribunals are asked to adapt their organisation as much as possible in order to avoid the presence of a large number of people in the court buildings at the same time, for example by splitting hearings into successive blocks, by fixing cases at precise times, by fixing cases at unusual times in order to increase the time available, by not fixing all cases at the same time, and this for different chambers. To this end, appointments can be made with the counters and the bailiffs.
- Hearings by videoconference are encouraged, same as the use of written procedure.
- If social distancing cannot be observed in the waiting rooms, it is recommended that people wait outside. In this respect, it may be suggested to display at the entrance door the hours with the number of the case on which the various cases are presented, and/or to make these known electronically at the desk, or, if possible, via the website.
- The College of Courts and Tribunals advises to allow lawyers to represent their clients, even if their personal presence is required by law. If their personal presence is deemed necessary, the case may be postponed if necessary.
- The transfers of arrested persons will be limited as much as possible. Lawyers are expressly requested to represent their detained clients.
- Exceptions may be decided by the chairman of the criminal division concerned.
- The clerks' offices must remain accessible. Teleworking may be maintained if legal proceedings permit. If teleworking is not possible, compliance with social distancing must be ensured.
- Meetings are held digitally as much as possible. If physical meetings are necessary, they will be limited to persons whose presence is indispensable and social distancing will be observed.

It is important to point out that everyone who is thus called to a hearing since 18 May 2020 must take the necessary measures to be present. He or she can, if the law permits, be represented by a lawyer. Anyone who wants to enter a courthouse must also carry a mouth mask.

Courts and tribunals resumed their activities in the manner applicable prior to 17 March 2020, subject to some additional measures in line with the exit-strategy. It is advisable to consult the websites of the different courts and tribunals for more news on the different measures taken, as these often differ and are quickly updated.

## Tax

Has any new legislation been introduced in light of Covid-19?

In Belgium, the federal and regional governments have provided many tax supports measures.

At the **federal level**:

- Law of 29<sup>th</sup> May 2020 concerning urgent tax provisions due to Covid-19:
  - Tax shelter film and theatre: extension of the period within which the producer must incur expenditure in order to meet the conditions for the "tax shelter" for audiovisual works and performing arts
  - No VAT on donations of medical supplies to hospitals
  - For natural persons: tax reduction for gifts
  - For companies: deduction as professional expenses
  - For self-employed persons: deduction as professional expenses
  - Modification of the prepayment rates of income tax
- Federal Public Services Finance can foresee repayment schemes for existing fiscal debts for businesses that find themselves in difficulties due to the Covid-19 outbreak. It applies to withholding tax, VAT, personal income tax, corporate tax and legal entities tax.
- Companies with a balance sheet date from 1 October 2019 up to and including 30 December 2019 have a new deadline of 7 months as from the balance sheet date, for filing the declaration for corporate tax, legal entities tax, and non-resident tax.
- Deferment of VAT-declaration and intracommunal statements filing.
- Deferment for the payment of VAT, personal income tax, corporate tax and payroll withholding tax.
- VAT rate of 6% on the supply, intra-community acquisition and importation of protective equipment from 4 May to 31 December 2020.
- Covid-19 virus should be considered as an exceptional circumstance justifying the exemption of a write-down on a trade receivable.
- Deferment for the payment of the special VAT declaration 629.
- Non-taxable telework compensation up to 129,48 EUR per month to cover costs like electricity and small office supplies.
- The Belgian federal government introduced an optional powerful tax measure in response to the Covid-19-crisis:
  - carry back of tax losses of companies: deduct the loss of FY2020 from the taxable profit of FY2019
- The Belgian federal government also proposed a reconstruction reserve in order to improve the solvency of companies in the longer term. This should be voted the second week of July.
- Exceptional teleworking measures for cross-border workers due to Covid-19 virus:
  - the presence of cross-border workers Belgium – Luxembourg in their place of residence will not be taken into account for the calculation of the 24-day period,
  - the presence of French cross-border workers in their place of residence in France will not be taken into account for the calculation of the 30-day period,
  - the presence of cross-border workers Belgium – the Netherlands in their place of residence due to Corona measures will not be taken into account, and
  - the presence of cross-border workers Belgium – Germany in their place of residence due to Corona measures will not be taken into account.

– For more information, please view [here](#).

## At the regional level: Flanders

- Assessment notes for property withholding taxes will be sent as from September 2020.
- Exceptional premium of 4000 EUR for companies that are obliged to close down completely.
- Road taxes: The payment period for companies is extended by 4 months.
- Extension of periods to meet tax obligations for inheritance tax and registration tax.
- Facilitating repayment plans.
- Additional period for municipalities to adjust surcharges on property tax.
- For more information, please view [here](#).

## At the regional level: Brussels-Capital

- Exceptional premium of 4,000 EUR for companies that are obliged to close down completely.
- Suspension of the “city tax” in the Brussels-Capital Region for the first half of 2020.
- A two-month extension of the deadlines for the payment of property tax for the 2020 tax year.
- Exemption from tax for taxi services or chauffeur-driven vehicles for the 2020 tax year.
- Suspension of LEZ fines.
- For more information, please view [here](#).

## At the regional level: Wallonia

- Suspension of the deadline for the payment of Walloon taxes according to the duration of the Covid-19 measures.
- Exceptional premium of 5.000 EUR for companies that are obliged to close down completely.
- With regard to disputes concerning regional taxes, the deadlines for lodging appeals and negative administrative decisions are frozen; reimbursements following positive decisions are accelerated.
- Recovery procedures in progress / to be initiated are made more flexible, including at the level of the judicial officers.
- Repayment plans are facilitated.
- Moderation of the administrative fines related to road pricing.
- Adaptation of the time limit to benefit from the favorable regime in the event of a resale of a property within two years.
- Exceptional reduction of the registration fee for mortgage mandates to 0%.
- Reduction of the tax to 1/12 per month of compulsory closure for automatic leisure equipment.
- For more information, please view [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

The Belgian government published on 9 April 2020 a Royal Decree to allow deviations from the conditions of convening shareholders' meetings under the Code of Companies and Associations, due to social distancing requirements.

In respect of shareholders' meetings which have been called or will be called between 1 March 2020 and 30 June 2020, the following deviations are possible:

- Firstly, the shareholders' meeting can be held remotely (through videoconference), and/or through a proxyholder, even if the articles of association does not provide this possibility.
- Secondly, the shareholders' meeting can be postponed to a later date of the choice of the company. In particular, for annual shareholders' meeting which needs to approve financial statements of the company and file them with the National Bank of Belgium within six months following the closing of financial year, a postponement of the approval and filing is possible within maximum 10 weeks. However, certain general shareholder's meetings (for example, when the net asset drops below zero) cannot be postponed.

For more details on this royal decree, please refer to: [Royal Decree No. 4](#)



1

## Loans and financial support

Has the government put in place any new bank funding schemes?

Since the beginning of the outbreak, the government has been taking some important measures to mitigate the effects of the current scenario. The federal government, through Brazilian government-owned banks, has been providing funds to support mostly small and medium-sized companies with respect to employees' payroll and working capital during the period of crisis.

The federal government has also been encouraging the Brazilian government owned/development banks (such as BNDES, BNB, CEF and Banco do Brasil) to postpone the payment of principal and interest of existing loans for periods of up to six months. The financial conditions may vary from bank to bank.

Brazilian federal agencies have also issued temporary regulation suspending certain obligations in order to foster loans and issuances in the financial and capital markets (e.g., suspending the obligation of filing and registering certain corporate acts with the Boards of Trade, lifting restrictions for companies to issue the same type of security within four months from its last issuance). The federal government has also suspended the payment of certain taxes applicable to financial transactions for a period of 90 days.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

The federal government issued Provisional Measure No. 936, which provides an allowance called "emergency benefit" to employees who (i) had their employment agreements suspended, and/or (ii) reduced to part-time with a corresponding salary decrease, by means of collective or individual agreements, that must comply with certain requirements set forth therein. The aid regarding suspensions is currently limited to 60 days, while with respect to the part-time reductions, to 90 days; the regimes could also be combined for maximum 90 days.

Moreover, Provisional Measure No. 944 created the Emergency Employment Support Program, which established an emergency line of credit for financing small businesses' payrolls for two months, and Law No. 13,982 ensured a monthly allowance of BRL 600.00, popularly known as "corona voucher", to microentrepreneurs, autonomous, informal workers and the unemployed for three months. All these measures are being discussed and pending renewal by Congress and the federal government, which may allow the extension of the initially proposed deadlines and benefits.

3

## Insolvency

Has the government made any changes to insolvency legislation?

The Brazilian "House of Representatives" ("Câmara dos Deputados") approved Bill No. 1,397/2020 ("Bill"), which modifies the Brazilian Bankruptcy Law, including emergency relief measures in response to the COVID-19 pandemic. At this moment, the Bill is waiting for the Federal Senate's approval.

The purpose of the Bill is to provide a framework for debtors affected by the pandemic to continue their activities without needing to file for judicial reorganization or pre-packaged reorganization and to provide further flexibility to companies that opt to file for judicial reorganization or pre-packaged reorganization, or that are currently facing such insolvency proceedings.

The Bill creates a provisional regime that will remain in force from the date the Bill is signed into legislation until December 31st, 2020. Once the Bill is in force, all ongoing enforcement proceedings filed against the debtors arising from obligations maturing on or that matured after March 2020 will be suspended for 30 days ("Legal Suspension").

During this period, debtors will be protected by a prohibition on actions such as judicial rulings of liquidation, unilateral termination of contracts, collection of late payment fines (contractual and tax), enforcement of any type of security liens, including fiduciary guarantees, mortgages and pledges, and enforcement of personal and corporate guarantees. The suspension will not apply to obligations incurred or renegotiated after March 20, 2020, or for salary obligations. Also, the suspension will not affect or suspend the exercise of early maturity and clearing rights in the context of repurchase agreements and derivatives transactions.

For the period of 60 days following the Legal Suspension, the debtor that proves that its revenues have decreased at least 30% due to the COVID-19 crisis, upon presentation of a certified document by an accounting professional, is entitled to file for a newly created voluntary remedy called "Preventive Negotiation", during which the prohibition on action mentioned above will be maintained for an additional 90-days period.

It is important to mention that the list of debtors entitled to file for Preventive Negotiation has been expanded, adding to the enterprise and business owner categories, the rural producer and the self-employed professional. However, the list for those entitled to request judicial reorganization and pre-packaged reorganization remains unchanged, benefiting only the enterprise and the business owner that observes the criteria already established in the Brazilian Bankruptcy Law.

During the 90 days non-extendable period of the Preventive Negotiation, the debtor must try to reach a settlement agreement with its creditors to avoid insolvency. However, creditors' participation in this proceeding is optional.

In case a settlement with its creditors is not reached and the debtor files for judicial reorganization or pre-packaged reorganization within the 360 days following the execution of the agreement in the Legal Suspension and/or in the Preventive Negotiation, the creditors' rights and guarantees will be restored under the terms of the original obligations and credit instruments. In other words, the individual settlement agreements reached during the Legal Suspension and/or the Preventive Negotiation will be disregarded, and the parties will return to the status quo ante. The provision to restore the debtor's obligations and the creditors' rights prior to the settlement agreement aims to stimulate extrajudicial negotiation, which brings more speed to the procedure and legal safety to creditors.

In case of a filing for judicial or pre-packaged reorganization, the period of legal protection granted during the Legal Suspension and/or the Preventive Negotiation will be deducted from the 180-day stay period that ensures the suspension of lawsuits and enforcement actions against the debtor.

The Bill also waives certain requirements provided for in the Brazilian Bankruptcy Law for companies that may need to use insolvency procedures during the period in which it is in force, such as:

- the debtor can file for a judicial reorganization proceeding, even if they have not regularly performed their activities for more than two years, have already filed for a liquidation proceeding or have filed for a judicial reorganization proceeding in less than 5 years from the prior filing;
- the debtor can file for a prepackaged reorganization proceeding even if a judicial reorganization request is pending or if they have obtained a judicial or prepackaged reorganization proceeding in less than 2 years;
- the minimum amount to declare bankruptcy is now considered BRL 100,000.00;
- the quorum for the approval of the prepackaged reorganization plan will be reduced to half plus one of all credits; and
- the stay period will be applicable to the credits subject to the prepackaged reorganization proceedings.

In addition, all obligations provided under judicial or prepackaged reorganization plans will be suspended for 120 days, and the debtor may, during this period, submit a new plan for voting, which will bind all claims that have materialized after the filing of the proceeding up to that date, except for the debtor-in-possession financing carried out with the express consent of the court of the judicial reorganization proceeding.

Finally, despite being approved by the House of Representatives, the Bill is still subject to the approval by the Federal Senate and, subsequently, a Presidential signing statement.

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

Brazilian law addresses the general rules regarding force majeure. According to the sole paragraph of Article 393 of the Brazilian Civil Code, force majeure or act of God (provided that such Article treats both concepts equally) is considered to be “the necessary event, whose effects were impossible to avoid or impair”. The event must be beyond the [affected] party’s control and diligence and must make it impossible to comply with certain contractual obligation(s). Under such provision, if the party has not expressly undertaken liability for force majeure and act of God events, no liability should arise from such events.

To qualify as force majeure, an event must cumulatively satisfy the following requirements: (i) be unforeseeable; (ii) be beyond the party’s control; and (iii) prevent the performance of contractual obligation(s). Accordingly, the COVID-19 pandemic may be considered as a force majeure event, to the extent that the COVID-19 pandemic and its related consequences directly affect the party’s contractual obligations. In addition, orders enacted by the Brazilian government (or other relevant local authority) in response to the COVID-19 pandemic, which prohibits the agglomeration of individuals at the place of work, for example, may also qualify as force majeure.

Except for contracts ruled by consumer or labour laws, the parties are free to allocate liabilities. Therefore, the proper determination of the parties’ liabilities, in case of a force majeure event, must always be made on a case by case analysis and should consider contractual provisions as a key factor.

Should the contract be silent in expressly governing force majeure, or if there are gaps on the contract’s terms in that regard, the Brazilian Civil Code will be applicable and will serve as guidance for the interpretation and application of the law by the courts. Considering the COVID-19 pandemic, the parties must pay attention to the contract’s provisions and whether the pandemic and/or its consequences (such as lockdown measures; restrictions on travelling and transportation of goods) do in fact impede the compliance with certain contractual undertaking(s).

Among other relevant issues, the parties must verify whether the contract provides for: (i) specific notification proceedings; (ii) the allocation of risk between the parties in case of a force majeure event; (iii) extension of time for the affected party to overcome the delay due to a force majeure event; (iv) specific remediation measures and mitigation of the other party’s losses that must be implemented; and (v) termination due to a prolonged force majeure event and consequences.

In such cases, the affected party must comply with the specific notification proceedings provided for under the contract, describing (i) the force majeure event; (ii) which contractual obligations were directly affected; and (iii) the measures adopted to mitigate and reduce the impacts of the force majeure under the contract. In addition, the affected party remains bound to comply with all other contractual obligations which were not affected by the force majeure event.

It is important to highlight that, due to the drastic economic and social consequences of the COVID-19 pandemic, the Brazilian government authorities have been comprehensive with projects that adopt mitigatory measures, such as robust action plans, in line with the determinations and recommendations of the competent health authorities, to prevent the dissemination of COVID-19 in the place of work, allowing for the continuity of these projects in compliance with some restrictions.

In addition, Article 422 of the Brazilian Civil Code establishes that the parties must proceed in good faith when performing the contract. Therefore, in case the parties do not reach an agreement regarding the measures to restore the contract’s economic balance, necessary due to COVID-19 pandemic effects, Articles 317 and 480 of the Brazilian Civil Code provides that, in case supervenient and unforeseeable events arise and cause the obligations of one of the parties to become excessively disproportional in view of the transaction, the courts may take actions, at the request of a party, to restore the economic balance of the contract.

As per the requirements provided under such Articles, in order to interfere in the contractual relationship, courts should assess (i) the (un)foreseeability of the supervenient circumstances and (ii) the disproportion between the obligations of the parties.

Notwithstanding the above, according to the courts' and jurists' prevailing understanding and the Brazilian law, especially in business relations, the extent of the court interference in contractual relations should (i) be restricted and (ii) take into consideration the particularities of the case when assessing the (un)foreseeability and the disproportion between the obligation of the parties, as well as any other circumstances which require their interference. This understanding has gained significant support with the enactment of Provisional Measure No. 881/2019 ("Economic Freedom Act") in May 2019, which was then converted into Federal Law No. 13,874/2019 ("Economic Freedom Law") later in October of the same year.

Article 421 and Article 421-A of the Brazilian Civil Code, as amended by the Economic Freedom Law provide that:

- (i) in private contractual relations, there should be minimum State interference, and contractual revision by external agents should be an exception;
- (ii) the allocation of risk agreed between the Parties should be preserved;
- (iii) in business relationships, the parties are presumed to be equally equipped.
- Hence, although Brazilian civil law does allow for court interference to restore the balance of the contract, in business transactions, such interference should be minimum and the parties, which are considered to be sophisticated entities with equal bargaining power, should have their agreements enforced as provided for in the contract.
- Given that the COVID-19 pandemic (and its effects on contractual relations) is an extraordinary and recent event, it is important to assess its impacts on each contract, as well as other circumstances of any particular case and of the contract, in order to determine whether or not COVID-19 can lead to the rebalance of a contract

# 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

During the Covid-19 pandemic, several bills of law were presented before the National Congress in an effort to counterbalance adverse effects of the pandemic to lease agreements. Some of them aimed to rule suspension of rent enforcement as well as reduction of rental values. None has been effectively approved, except for the measure that prohibits the eviction of lessees in causes filed from March 20th, 2020, amending items of the Article 59, § 1º of the Law No. 8,245 of 1991 (the Lease Law), until October 30th, 2020.

There is no official understanding from the Brazilian courts about the adverse effects of the pandemic to lease agreements. Courts are ruling the matters taking into consideration the particularities of each specific contractual relationship.

There is an effort of the Courts to protect both the lessor and the lessee, assuming that both parties have suffered the impacts of the Covid-19 pandemic, as well as to prevent opportunistic behaviors from the parties.

Upon the analysis of approximately 160 decisions of the Courts of São Paulo and Rio de Janeiro, it is possible to verify that, in cases which Courts decided to reduce the rental values, the discount varied from 30 up to 70 percent for a certain period of time (usually for the period of the lockdown). Most common decisions granted 50 percent discount in the rental values



## Litigation

Are the courts operating?

Most Brazilian Courts are operating through remote work and virtual proceedings, including the Supreme Court and the Superior Court of Justice. The virtual operation of Brazilian Courts is working really well: according to data provided by the Brazilian National Council of Justice, Brazilian Courts are not only maintaining their activities during the pandemic, but are also improving their productivity.

This was possible because proceedings that were filed in the past few years in most Brazilian Courts have digital case records, that can be accessed by court staff, lawyers and parties through a website, in which lawyers can also file the petitions. The contact with most judges and Clerk's offices can be made by telephone, e-mail or videoconference during the pandemic and many trials are being held online. Thus, the closure of courthouses over the country due to the pandemic mainly affected (i) the proceedings that do not have digital case records, that have their deadlines suspended and (ii) some acts that cannot be performed virtually (for example, appraisal of real estate, some trials, some attachment

## Tax

Has any new legislation been introduced in light of Covid-19?

The pandemic outbreak triggered tax measures to attend the private sector in different spheres. It is

worth pointing out the following measures adopted by Brazilian Federal Government:

- (i) Reduction to zero rate of import taxes (until September 30, 2020), federal value-added tax on industrialized products (IPI) (until October 1st, 2020), taxes on gross revenues (PIS/COFINS) and on gross revenues on importation (PIS/COFINS-Importation) related to goods aiming at combating the pandemic resulted from the Covid-19.
- (ii) Zero rated the tax on financial transactions (IOF) on loans of any nature contracted from April 3, 2020 to July 3, 2020.
- (iii) Rates of social security tax destined to associations (Sesi, Senai, Senac among others) were reduced.
- (iv) Deferral of payment for certain federal taxes (e.g., employee's severance fees (FGTS), PIS/COFINS, social security taxes, and taxes on telecommunications services), payment deferral for pending tax instalments and postponement of deadlines to submit certain tax returns by individuals & corporations.
- (v) Suspension of procedural deadlines at the Federal Revenue Service (RFB) and at federal administrative tax court. Recently, it was ruled procedures enabling online/remote voting for judgment of federal tax proceedings in specific situations.
- (vi) Simplification of some customs clearance procedures and ancillary obligations (e.g. the validation of tax clearance certificates for ninety days).
- (vii) Suspension of acts by the General Attorney's office.
- (viii) Approval of new rules encouraging renegotiation of federal tax debts.

Specific local measures were also introduced by some States and municipalities. However, there are glaring disparities between the measures from twenty-seven States and being even less uniform among the more than 5,000 Brazilian cities. In this sense, it is worth pointing out the following:

- (i) Some states granted exemption or reduction of State Value Added Tax (ICMS) on import and internal transactions with goods aiming at combating the pandemic resulted from the Covid-19 (e.g. Rio de Janeiro, Santa Catarina, Maranhão).
- (ii) Regarding donations transactions: (i) most of Brazilian States granted exemption of ICMS on the remittance of goods aiming at combating the pandemic resulted from the Covid-19 to the public administration or to non-profit assistance entities, and (ii) a few states granted exemption of tax levied on donations (ITCMD) to the public administration (e.g. Ceará and Espírito Santo) or to hospitals (e.g. Minas Gerais).

Government measures in key jurisdictions (iii) Deferral of payment for certain taxes in some states and municipalities (e.g. ITCMD in

Rio de Janeiro and Amazonas; municipal tax levied on services for specific activities in Recife and Cuiabá).

- (iv) Payment deferral for pending tax instalments (e.g. Rio de Janeiro) and postponement



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

Provisional Measure No. 931, issued by the Federal Government on March 30th, 2020 ("Provisional Measure No. 931"), brought some amendments to the Brazilian Civil Code and to the Brazilian Corporations Law in order to, among other matters, allow shareholders to remotely participate and vote in general meetings.

For privately held corporations ("sociedades por ações"), and limited liability companies ("sociedades limitadas"), the National Department of Business Registration and Integration ("Departamento Nacional de Registro Empresarial e Integração") issued the Normative Instruction No. 79 in order to regulate the changes established by Provisional Measure No. 931 ("Normative Instruction No. 79").

In summary, Normative Instruction No. 79 allows now the general meetings to occur (i) exclusively digitally, in which case participation and vote would only occur remotely, or (ii) in a semi-attending structure, in which the meeting would take place physically, but quota/shareholders would be allowed to attend and vote remotely.

Additionally, Normative Instruction No. 79 extended the possibility of using voting forms – which were already in use by publicly held companies – to all corporate types, in order to ease and expedite the process of remotely voting.

Call notices of the such meetings must inform the structure in which it will take place, describing how shareholders may participate and vote. The same rule applies to the minutes of the meetings, which must specify if the meeting was held exclusively of partially digitally.

As to publicly held corporations, since the issuance of the Brazilian Securities and Exchange Commission ("CVM") Instruction 561/15, which also introduced the distance voting instrument, publicly held companies have already been able to hold "hybrid" meetings, in which there is a face-to-face meeting (similar to a traditional meeting), but with the possibility for shareholders to participate and vote remotely, via electronic system.

As a result of the Covid-19 pandemic, CVM took a further initiative and issued the Normative Instruction No. 622, which allows publicly held companies to hold general meetings exclusively virtually.

Additionally, by relaxing the rule that obliges companies to hold meetings in the headquarters building or, in case of force majeure, in another location in the same Municipality as its headquarters, the CVM now allows, in exceptional situations, that general meetings partially held in digital mode have their "in person portion" held outside the company's headquarters building, and may even occur in another Municipality.

It is important to note that there are a series of legal requirements the electronic system used to broadcast the meetings must comply with, such as insurance of transparency, confidentiality and security of the meetings, mechanisms to register the attendance of the quota/shareholders, possibility of shareholders to manifest themselves during the meetings; full recording of the meetings, possibility to access documents presented during the meetings, among others.

Since Provisional Measure No. 931 may expire on July 30th (if not converted into law by the Congress), Law 10.404 was published on June 10th reassuring that until October 30th, 2020, all corporate meetings may be held digitally, regardless of the set forth in the respective corporate documents.

In addition to remote general meetings, other measures have been put in place to accommodate social distancing and the current scenario caused by COVID-19. Among others, the deadline to hold the annual general meetings, that are legally binding to occur in the first four months counted as of the termination of the fiscal year, was extended to seven months. Furthermore, the general thirty-day period to file corporate documents with the competent Board of Trade was suspended and will resume once the services are regularly reestablished.



1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- All of the six major lending institutions in the BVI have extended loan moratoriums to their customers experiencing hardship because of the ongoing Covid-19 pandemic. Banks are already offering deferred payments, special loan financing and other concessions. Arrangements are currently made on a case by case basis.
- The BVI Government has implemented a phased economic stimulus response plan which includes the allocation of USD 62.9 million to provide assistance to the local economy across various areas including grants to businesses generally, and to support the hospitality industry and BVI infrastructure.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The Government has set up an unemployment fund through the Social Security Board called the Covid-19 Unemployment Relief Fund in the sum of USD 10 million. Local businesses experiencing challenges can qualify for a grant in order to keep their staff employed.

3

## Insolvency

Has the government made any changes to insolvency legislation?

- The legislation has not been changed as a result of the pandemic but the Charging Orders Act 2020, which was published in the Government Gazette on 26 March 2020, confers jurisdiction on the High Court to make orders imposing a charge for securing the payment of money due under judgments or orders of the High Court. As at 25 June 2020, the Act is not yet in force.

4

## Contractual Issues

What measures have been taken to reinforce contracts?

- We are not aware of any intervention into the workings of contracts governed by BVI law and the normal rules apply.
- The majority of commercial contracts under BVI law will have *force majeure* clauses providing for situations when a party may terminate the contract and/or be excused for failure or delay in complying with the terms of the contract due to a specified event. The contract will usually list force majeure events. The question of whether Covid-19 as a pandemic is a force majeure event will depend on the drafting of the clause in each case.

5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- No laws have been amended. However, the BVI Government has appealed to landlords to be flexible with tenants.





## Litigation

Are the courts operating?

- Yes, the Eastern Caribbean Supreme Court remains open and fully operational. Measures and practice directions have been put in place to ensure the continuation of court proceedings while protecting the health and safety of the court employees and other court users. These measures include provision for electronic service and filing and remote hearings via video conferencing technology.
- [Covid-19 Emergency Guidelines for Conducting Court Procedures in the BVI](#)



## Tax

Has any new legislation been introduced in light of Covid-19?

- No.
- See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The BVI Registry of Corporate Affairs is operating as usual with some minor changes to adapt to the Covid-19 pandemic.
- There is no requirement for BVI companies to hold annual general meetings.
- There is also no requirement for board meetings to take place in the BVI or for board members to be in the same physical location. Meetings by telephone or video conference are acceptable, provided that all of the directors participating in the meeting can hear each other clearly.
- The Covid-19 global pandemic has been declared an exceptional circumstance under the Financial Services (Exceptional Circumstances) Act 2020, which provides a framework for stability of financial services operations conducted in and from the BVI during exceptional circumstances. The Act allows regulated persons to relocate outside and elsewhere within the BVI during or after any period of occurrence of an exceptional circumstance and outlines how outstanding regulatory obligations and liabilities are to be applied or modified.
- In relation to economic substance requirements, the BVI International Tax Authority has confirmed that only those board meetings relating to a BVI company's "core income generating activities" are required to be physically held in the BVI. Alternate directors based in the BVI may be appointed to attend physical board meetings whilst regular travel is restricted. If it is still not possible to have a board meeting in the BVI or to meet some other economic substance requirement due to restrictions resulting from the Covid-19 outbreak, BVI entities should retain documentary evidence for the applicable periods of time affected.
- Please see our update on [Overcoming barriers to completion of corporate transactions amidst Covid-19-challenges](#) and our [Caribbean Regulatory Update](#).
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

In Canada, the federal government has introduced the Covid-19 Economic Response Plan (**CERP**), which includes a comprehensive set of economic measures to help combat the economic effects of the Covid-19 pandemic.

The Business Development Bank of Canada and Export Development Canada will provide more than \$65 billion of support to ensure businesses have credit through the Business Credit Availability Program (**BCAP**), largely targeting small and medium-sized businesses. These entities are also working with private sector lenders to coordinate solutions for individual businesses. The objective of the BCAP is to improve access to financing for credit-worthy Canadian businesses with viable business models whose access to financing would otherwise be restricted.

To access the BCAP, businesses should first contact their financial institutions, which will contact Business Development Bank of Canada and/or Export Development Canada, where appropriate. The BCAP includes:

- **Canada Emergency Business Account:** Under this program, financial institutions will be able to provide loans of up to \$40,000 to small businesses and non-profits, which will be guaranteed by the federal government and interest free for the first year. To qualify for these loans, small businesses and non-profits need to have paid between \$20,000 and \$1.5 million in total payroll in 2019 and need to have been operating as of March 1, 2020. Businesses will be forgiven for up to 25% of the loan, up to \$10,000, if the balance of the loan is repaid on or before December 31, 2022. If the loan is not repaid by December 21, 2022, the remaining balance will be converted to a three-year term loan at 5% interest. The funds from this loan can only be used to pay non-deferrable operating expenses, including payroll, rent, utilities, insurance, property tax and regularly scheduled debt service. This program is now available at various financial institutions and credit unions.
- **Loan Guarantee to Small and Medium-Sized Enterprises (SMEs):** Export Development Canada is working with financial institutions to help them issue new operating credit and cash flow term loans up to \$6.25 million to existing SME clients, with 80% guaranteed by Export Development Canada. Export Development Canada is also supporting certain businesses by offering banks a guarantee on loans up to US\$10 million, per business, to ensure these businesses can access cash immediately.
- **Co-Lending Program for SMEs:** The Business Development Bank of Canada is working with financial institutions to co-lend term loans to SMEs to help meet their operational cash flow requirements. The loans available under this program are as follows: (i) loans of up to \$312,500 for businesses with under \$1 million in revenue; (ii) loans of up to \$3.125 million for businesses with revenues between \$1 million and \$50 million; and (iii) loans of up to \$6.25 million for businesses with revenues exceeding \$50 million. The loans under this program are interest-only for the first 12 months, with a 10-year repayment period.

Further discussion on the government funds available for businesses can be found [here](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

As part of the CERP, the federal government has implemented the Canada Emergency Wage Subsidy (**CEWS**) program, providing a 75% wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020. Eligibility is assessed based on the degree of revenue lost in the relevant 4-week eligibility period.

- **Eligible Employers:** Eligible employers can include individuals, taxable corporations, registered charities (other than public institutions such as school boards, colleges, or hospitals), and partnerships (all members of which are eligible employers). Eligible employers must demonstrate a qualifying drop in revenue during the eligible period. Notably, the lost revenue threshold for eligibility for the CEWS in March of 2020 was lowered from 30% to 15% to reflect the fact that the most significant consequences of the pandemic began in mid-March. Employers will be required to re-apply for the CEWS each month.
- **Eligible Employees:** An eligible employee is an individual who is employed in Canada other than those who have been without remuneration for 14 or more consecutive days in the eligibility period.

More information on the CEWS can be found [here](#) and further details on the Canada Emergency Response Benefit (**CERB**) and support for essential workers are discussed [here](#).

The federal government has also amended the Canada Labour Code by creating a new job-protected leave of absence of up to 16 weeks for employees in federally-regulated workplaces who are unable or unavailable to work for reasons related to Covid-19. Several Canadian provinces have similarly amended the applicable provincial employment standards legislation to create job-protected leaves of absence for employees who are unable to work due to Covid-19.

For more information regarding the amendments to the Canada Labour Code and provincial employment standards legislation, please visit the Cassels Comments located [here](#) and [here](#).

The Ontario government recently announced a “Framework for Reopening our Province,” a document setting out the public health principles behind its decision-making respecting the gradual reopening of the economy in the wake of Covid-19.

The document outlines a three-stage reopening process with progress from one stage to the next based on whether the criteria in the preceding stage are met. Although there is no timeline for the commencement of the first stage, it will involve opening “select workplaces that can meet public health guidelines.”

The Ontario government has also published resources for employers on its website, including sector-specific workplace safety guidelines and posters. At present, guidelines and posters have been published for the construction, food processing, restaurant and food services, agriculture, manufacturing, and long-term care sectors, suggesting that these will be the first “select workplaces” permitted to reopen.

Further information on the Ontario workplace safety guidelines can be found [here](#) and a discussion of the reopening plans for each province can be found [here](#) and [here](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

While Canada's main insolvency statutes, the Bankruptcy and Insolvency Act (**BIA**) and Companies' Creditors Arrangement Act (**CCAA**) have not been amended at the time of writing, new legislation and amendments to existing legislation do impact the insolvency process. In addition, guidance from other participants in the insolvency regulatory process will affect insolvency practice and procedures. The following are some examples.

- As part of the federal government's CERB program, the income support benefit provided will not be subject to the operation of any law relating to bankruptcy and insolvency.
- Several provinces have enacted legislation to temporarily suspend limitation periods, which apply to the insolvency process.
- The Office of the Superintendent of Bankruptcy Canada, which regulates Licensed Insolvency Trustees (**LITs**) and is the regulator under the BIA and CCAA, has recommended that LITs work with debtors and third parties to ensure that they are handling insolvencies in a flexible manner that is the least prejudicial to individuals in financial distress. Under the BIA, the courts have broad authority to allow bankruptcy cases to move forward in irregular circumstances if the courts believe it is appropriate.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

Each Canadian province has its own legislation outlining the requirements for doing business electronically and using eSignatures. In Ontario, British Columbia and Alberta, barring a few important exceptions, eSignatures may be utilized for closing transactions to create binding obligations.

Documents requiring a traditional "wet ink" signature include:

- wills, codicils and trusts created by wills or codicils,
- powers of attorney regarding an individual's financial affairs or personal care,
- negotiable instruments (such as certificated securities and negotiable promissory notes),
- beneficiary designations (such as for life insurance),
- certain real estate matters, and
- documents that are from time to time prescribed or that belong to a prescribed class.

With regard to real estate matters, parties may use eSignatures to sign documents that create or transfer an interest in land. However, it is important to note that certain restrictions may apply depending on the applicable province.

For a more detailed explanation, see the Cassels Comment located [here](#).

Other contractual matters, including material adverse effect and material adverse change provisions and Force Majeure clauses, have been impacted by the effects of Covid-19.

For more information, see additional Cassels Comments located [here](#) and [here](#).

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

The federal government, along with its provincial and territorial partners, has introduced additional support for small businesses through the Canada Emergency Commercial Rent Assistance (**CECRA**) program. This program is structured as a forgivable loan for qualifying commercial landlords and is intended to create a mechanism whereby 50% of commercial rent that would otherwise be owed by eligible tenants will be paid through CECRA.

The loans are expected to become available in mid-May and to remain accessible through September 30, 2020. They will be administered through the federal crown corporation, Canada Mortgage and Housing Corporation (CMHC), with the provinces and territories providing implementation assistance and participating in the allocation of up to 25% of the costs. While the federal government's most recent announcement provides that a deal with the provinces and territories has been reached "in principle," the exact mechanism of the loan application, distribution of funds, and ultimate forgiveness of the loan have not been released as of yet.

Further details on CECRA, including amounts and eligibility for loans, as well as legal considerations for landlords and tenants, can be found [here](#) and [here](#).

Provinces and municipalities across Canada have implemented various measures providing relief for both landlords and tenants in residential and commercial leasing matters, including:

- municipal property tax relief measures;
- suspension of eviction orders and hearings related to eviction applications for non-urgent issues;
- temporary rental supplements;
- rent freezes;
- deferral of late fees on late rental payments; and
- commercial rent deferral programs.

In British Columbia (**BC**), the provincial government has introduced its \$5 billion Covid-19 Action Plan, which includes a real estate tax reduction for businesses. It is anticipated that this reduction will provide \$500 million in immediate relief for businesses that own their property and will allow commercial landlords to pass these savings onto their tenants in triple-net leases.

Further details on the relief measures implemented in BC can be found [here](#).

In Ontario, the provincial government has introduced the *Coronavirus (Covid-19) Support and Protection Act*, which includes amendments to the *Planning Act* authorizing the Minister to make regulations respecting the calculation of time for development applications in connection with the emergency declared under the *Emergency Management and Civil Protection Act* (**EMCPA**).

Regulations have been released to provide municipalities with additional flexibility during the Covid-19 emergency to process and advance development applications, particularly where there is no dispute, without concern that appeals may be filed on the basis of non-decision. This should also come as welcome news to applicants and new homebuyers, who have faced technical challenges to project delivery and new home closings during this emergency. More information on the new provincial legislation in Ontario can be found [here](#).



## Litigation

Are the courts operating?

Most courts across Canada have adopted an essential services model and have limited the manner and types of hearings that can proceed before them, focussing on urgent and essential matters. Many categories of cases have been adjourned indefinitely.

However, as the pandemic has continued, there has been a gradual re-opening of courts and increase of the categories of cases, in particular, non-urgent matters, that can proceed. Some courts are now implementing email filing measures and holding hearings by video or teleconference. But when the courts re-open, they are likely to prioritize criminal cases, because of the constitutional obligation to resolve criminal cases within a reasonable period of time. Access to the court will have to be assessed on a court-by-court basis. Accordingly, you should consult with your legal counsel to assess your options.

Many commercial disputes are well-suited to being resolved through arbitration. Arbitration's traditional advantages of greater speed, lower costs, and greater flexibility as compared to litigation give it an even greater edge when courts are closed.

More information can be found [here](#).

The Ontario provincial government has activated its powers under the EMCPA, which has had a significant impact on limitation periods in Ontario.

In accordance with the EMCPA, any limitation period and procedural time periods have been suspended (the Suspension Order). This suspends any time-limiting provision in any statute, regulation, rule, bylaw or order of the Ontario government for all proceedings in Ontario. The suspension is retroactive to March 16, 2020.

On June 5, 2020, the Ontario government amended the Suspension Order to extend the effect of the order.

The amendments strike out the words "for the duration of the emergency" from the Suspension Order so that it will no longer be tied to the duration of the "emergency" that the government previously declared. In other words, the Suspension Order will now remain in effect irrespective of whether the Ontario government later decides to rescind or extend its declaration that there is a state of "emergency" in the province.

Second, the amendments renewed the Suspension Order, currently effective up to June 14, 2020, to extend its application for an additional 90 days from June 13, 2020. The extension was the maximum amount of time that a temporary suspension could be ordered pursuant to the EMCPA. The amendment provides that the last day that the Suspension Order will apply is September 11, 2020.

The effect of these amendments is that limitation periods and other affected time limits will begin to run again on September 11, 2020, unless the Suspension Order is further renewed by a government order.

British Columbia has suspended filing deadlines of Family and Civil claims until May 1, 2020, but all other filing deadlines and limitation periods continue to apply.

Further details of the temporary changes to limitation periods are located [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

The Canadian Revenue Agency has implemented a number of administrative concessions, including:

- extension of filing deadlines,
- tax audit deferral,
- sales tax and customs duty payment deferrals,
- income tax deferrals, and
- objections and appeals extension.

A summary of the key income tax measures can be found [here](#) and further details regarding GST/HST relief and provincial income tax measures are discussed [here](#).

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Certain Canadian provinces, including Ontario, have temporarily extended the time frame in which public companies are required to hold annual meetings of shareholders and provided an exemption for corporations to hold virtual meetings despite any restrictions in the articles or by-laws.
- More information related to the extension and the relief for companies to hold virtual meetings can be found [here](#) and commentary on virtual annual general meetings can be found [here](#).

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

- A Low Interest Loan Programme, administered through the Cayman Islands Development Bank, will provide loans to micro and small businesses which are 100% Caymanian-owned and have been operational for at least twelve months prior to March 2020.
- The programme will provide each borrower with a fully-backed government guarantee. The amount available is up to a maximum of KYD50,000 for a small business and KYD20,000 for a micro business. There will be a six month period of moratorium during which the bank will not collect principal or interest payments. The loan will be given for a period of five years at 1% interest in the first year, subject to increase thereafter.
- Banks generally provided customers with an initial three month grace period for mortgages and personal loans. These payment deferral schemes are now being extended for another three months until 30 September 2020.
- Some banks have offered business customers with a remaining loan principal of up to KYD 2 million, the option to pay interest only for three months. Further deferment may be available on a case by case basis. Business customers with higher value loans may be offered assistance by individual agreement.

## 2 Employment

What financial support is the government providing to individuals on employment issues?

- The Ministry of Commerce, Planning and Infrastructure has implemented a number of relief measures to support micro and small businesses, including a Micro and Small Business Grant Programme, a Low Interest Loan Programme (as detailed above), a Technical Assistance Programme and a government funded Training Programme.
- The Micro and Small Business Grant Programme is providing assistance of KYD1,000 monthly to selected micro and small business for three months.
- The Technical Assistance Programme offers qualified accountants and other professionals to provide technical guidance and coaching to micro and small businesses to help them navigate this difficult period and keep their financial obligations to financial institutions.
- Payment of trade and business licensing application fees from 1 May to 31 July 2020 have been waived. Late fees from 1 March to 31 July 2020 will also be waived.
- Amendments to the National Pensions Law have provided for a pension holiday from 1 April to 30 September 2020. Qualifying pension plan members may also withdraw funds from their account subject to certain provisions.
- The Government has enacted regulations to extend the period of temporary layoff before which severance pay is payable. This extension enables employers to continue to employ staff rather than terminate their employment and ensures that employees retain more of their earnings while accruing other employee benefits under the Cayman Labour Law.
- The Cayman Islands Needs Assessment Unit is providing financial assistance to individuals in need on a case by case basis. The Government has also provided a one-time stipend of KYD425 in addition to the KYD850 current monthly stipend.



**3**

**Insolvency**

Has the government made any changes to insolvency legislation?

- Not yet. However, a draft bill to amend the Companies Law with the introduction of a dedicated restructuring regime and restructuring officer, is currently in circulation for industry consultation. This has not yet been passed by the legislative assembly.
- The introduction of a dedicated restructuring regime in the Cayman Islands has been in the pipeline for some time and is not a direct result of the Covid-19 pandemic.

**4**

**Contractual Issues**

What measures have been taken to reinforce contracts?

- We are not aware of any intervention into the workings of contracts governed by Cayman Islands law and the normal rules apply.
- The majority of commercial contracts under Cayman law will have force majeure clauses providing for situations when a party may terminate the contract and/or be excused for failure or delay in complying with the terms of the contract due to a specified event. The contract will usually list force majeure events. The question of whether Covid-19 as a pandemic is a force majeure event will depend on the drafting of the clause in each case.

**5**

**Property**

Have any changes been made to the laws around property, rent and enforcement?

- No laws have been amended.
- The Cayman Islands Government is urging landlords to be flexible with tenants. As detailed above, most Cayman banks have also offered mortgage relief as a result of the pandemic.

**6**

**Litigation**

Are the courts operating?

- Yes, the Cayman Courts and Judicial Administration remain fully operational. Measures and practice directions have been put in place to ensure the continued administration of justice while protecting the health and safety of the court employees and other court users, including provision for electronic filing and remote hearings via video conferencing technology.
- See our legal update [Litigating in the Cayman Islands during these unprecedented times](#).

# Cayman Islands

## Tax

Has any new legislation been introduced in light of Covid-19?

- No. The Cayman Islands does not have any direct taxation.
- See below regarding economic substance.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Cayman Islands Registrar of Companies is operating as usual with some minor changes to adapt to the Covid-19 pandemic.
- Cayman Islands exempted companies are not obliged to hold annual general meetings.
- The Cayman Islands Government has taken a number of initiatives to ensure that 'business as usual' can continue, such as extending the existing filing deadline for companies. In addition, the Registrar of Companies will accept affidavits or other documents that have been notarised/certified online or utilising audio-video technology during this time.
- Where board meetings are required to be held virtually during this period, the Cayman Islands Department for International Tax Cooperation will take that into consideration, on a case-by-case basis, when determining whether an entity has passed or failed the economic substance test in its reporting which is due in 2021.
- Please see our update on [Overcoming barriers to completion of corporate transactions amidst Covid-19-challenges](#) and our [Caribbean Regulatory Update](#).
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

- In February, a government policy is announced to strengthen financial support to enterprises. The central government will subsidize the interest payment of key enterprises engaged in epidemic containment.
- Financial institutions are asked to refrain from arbitrary withdrawing, cutting or delaying loans that are issued to severely affected industries, (e.g., wholesale and retail) and enterprises that are otherwise performing well but are under temporary difficulties due to the epidemic, and small and micro enterprises in particular.
- For enterprises that cannot repay loans on time due to severe impact by the epidemic, loans can be extended or renewed. Meanwhile, measures are taken to lower lending rates and increase unsecured loans and medium and long-term loans to help enterprises handle the impact of the epidemic.

## 2 Employment

What financial support is the government providing to individuals on employment issues?

The Standing Committee of the State Council on February 18, 2020 adopted national policies to reduce the financial impact of the epidemic on employers as well as to help stabilize employment. Among the policies are the reduction of employer social insurance contributions and the delay of housing fund contributions. The policies have gradually been implemented by national and local notices and policies.

On February 20, 2020, the Ministry of Human Resources and Social Security, together with the Ministry of Finance and the State Taxation Administration announced the following.

- From February 2020, provinces may exempt small and medium-sized enterprises for up to five months from paying the employer portion of contributions for pension, unemployment, and occupational injury insurance.
- Provinces may reduce by 50% the employer contributions for pension, unemployment, and occupational injury insurance for large enterprises for up to three months.
- Hubei province may exempt all employers from paying the employer contributions for pension, unemployment, and occupational injury insurance for up to five months.
- All employers that suffer serious difficulties in production and operation due to the outbreak may apply for deferred payment of contributions for all five types of social insurance for up to six months. Approved employers would not be liable for late payment fees.

### [Further employment policies issued relating Covid-19 epidemic.](#)

On June 22, 2020, the Ministry of Human Resources and Social Security, together with the Ministry of Finance and the State Taxation Administration extended the policy announced on February 20, 2020:

- Provinces may exempt small and medium-sized enterprises from paying the employer portion of contributions for pension, unemployment, and occupational injury insurance until the end of December 2020.
- Provinces may reduce by 50% the employer contributions for pension, unemployment, and occupational injury insurance for large enterprises till the end of June 2020.
- All employers that suffer serious difficulties in production and operation due to the outbreak may apply for deferred payment of contributions for all five types of social insurance until the end of December 2020. Approved employers would not be liable for late payment fees.



## Insolvency

Has the government made any changes to insolvency legislation?

- During the COVID-19 outbreak, courts have allowed enterprises in bankruptcy proceedings to take measures such as resumption of production and operation or disposal of assets related to epidemic prevention and control, which has contributed to fighting the epidemic as well as increasing the creditors' debt repayment ratio.
- For additional information on measures taken related to enterprises in bankruptcy proceedings during the COVID-19 epidemic in Chinese, please click [here](#).
- On April 15, the Supreme People's Court issued the opinions on promoting lawful and efficient adjudication of bankruptcy cases, which provides various measures to improve the efficiency and reduce the cost of bankruptcy proceedings.
- On May 15, the Supreme People's Court issued the second guiding opinions in adjudicating civil cases involving the Covid-19 epidemic. The Supreme People's Court asks the courts at different levels to facilitate consultation between the debtor and creditor if a creditor petitions for bankruptcy of an enterprise that fails to meet its debt repayment obligation due to the Covid-19 epidemic. The courts are asked to avoid initiating bankruptcy proceedings for enterprises that fail to meet debt repayment obligation solely because of the impact of Covid-19 epidemic by evaluating the cash flow and asset liability ratio of these enterprises during this special period of time only.



## Contractual Issues

What measures have been taken to reinforce contracts?

- Performance of contractual obligations could be delayed due to the Covid-19 Epidemic. Here is an analysis about if a developer can claim exemption from liability for the breach of contract arising from a delay in delivering houses on schedule.
- In practice, many developers see epidemics, major public health events, universal epidemic diseases, governmental policies and decrees relating to construction as force majeure events, or at least situations where developers are specifically entitled to postpone the time of delivery as agreed upon in their sales contracts. Thus, based on the principle of autonomy of will, sellers and purchasers can enjoy and undertake the rights and obligations to postpone the time of delivery as agreed upon in their contracts if it is valid.
- If there is no valid agreement, developers can apply for a force majeure or use the principle of change of circumstances. However, the legal consequences and outcome of such a declaration will be determined on a case-by-case basis.
- [Special Series regarding the Legal Impact of the Covid-19 Epidemic on the Real Estate Industry. Topic One: the impact of the Covid-19 epidemic on the sale of commodity housing.](#)
- On May 15, the Supreme People's Court issued the second guiding opinions in adjudicating civil cases involving the Covid-19 epidemic. The Supreme People's Court states that the courts should not grant the petition of either party to terminate a sales contract if the Covid-19 epidemic is making performance more costly or performance will be later than the time specified in the contract as long as the purpose of the contract is not frustrated. On the other hand, the courts may allow adjustment of price or time of performance based on the actual circumstances of each case and the principle of equity.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

Some local governments have introduced support and guidance policies for enterprises affected by the Covid-19 Epidemic, which also include the adjustment of lease agreement relationships. For instance, the Municipal Government of Beijing issued Several Measures on Dealing with the Impact of Covid-19 Epidemic and Promote the Sustainable and Healthy Development of Medium, Small and Micro Enterprise on February 5, 2020.

According to those measures, for medium, small and micro enterprises which rent properties from city-owned or district-owned enterprises:

- the rent in February shall be exempt if such enterprises (i) rent properties for the purpose of manufacturing or operations; (ii) keep operating or stop operating in accordance with the policies for the prevention and control of the Epidemic; and (iii) do not lay off employees or only lay off few employees,
- the rent in February shall be reduced to 50% of the original amount if such enterprises rent properties for office work,
- it is encouraged that landlords (property owners) reduce or exempt the rent of other leased properties, which is subject to the negotiation of the contract parties, and
- for landlords that reduce or exempt rent for medium, small and micro enterprises, the municipal or district government would provide subsidies.

Although the policies above are only applicable to qualified “small, medium and micro enterprises”, it may also act as a guide for other leasing parties.

[Special Series regarding the Legal Impact of the Covid-19 Epidemic on the Real Estate Industry. Topic Three: the impact of the Covid-19 epidemic on property lease agreements.](#)

On May 9, the National Development and Reform Commission and seven other central government agencies jointly issued a policy to further support micro and small-sized enterprises and businesses owned by individuals in the service industry to ease the burden of rental payment for coping with the Covid-19 epidemic, including measures such as:

- exemption of rental payment for three months in the first half of the year for those micro and small-sized enterprises and businesses owned by individuals in distress in the service industry if the property are owned by the state,
- property owners other than the state are encouraged to exempt or delay the collection of rent, and
- local governments should establish and improve the mediation and resolution mechanism for rental dispute and help the parties to resolve disputes through consultation.

## 6

## Litigation

Are the courts operating?

- A number of courts and arbitration institutions issued notice to encourage online filing and submission of materials. For example, court in Shanghai encouraged parties to initiate mediation and handle litigation related matters through online and mobile platforms. On January 28, 2020, the China International Economic and Trade Arbitration Commission issued a notice encouraging parties to submit arbitration applications and related documents through the online filing system.
- For additional information on the development of diversified dispute resolution mechanism to deal with emergencies in Chinese, please click [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- The Ministry of Finance, the State Taxation Administration and the General Administration of Customs have jointly issued several circulars to support the epidemic's prevention and control, prompt the relevant enterprises' development and lighten the tax burden of the taxpayer affected by this epidemic. According to the contents specified in the relevant circulars, the tax policies can be categorized into the following five categories: 1. Corporate Income Tax ("CIT"); 2. Individual Income Tax ("IIT"); 3. Valued-Added Tax ("VAT"), Consumption Tax ("CT") and other taxes; 4. Imported Materials; and 5. Tax Administration and Collection. Below are selected policies.
- (CIT) Enterprises **significantly affected by the epidemic**: for the tax loss incurred in 2020, the maximum carry forward period is increased from five to eight years.
- (IIT) Medical staff and anti-epidemic workers participating in epidemic prevention and control: the temporary subsidies and bonuses obtained according to the standards specified by governments are exempt from IIT.
- (VAT) Revenue derived from providing public transportation services, consumer services and collection and delivery services for residents' daily necessities is exempted from VAT.
- (Tax Administration and Collection) Taxpayers and withholding agents subject to monthly tax filing (Nationwide): the statutory time limit for tax filing in February 2020 will be extended to February 24, 2020. Taxpayers and withholding agents affected by the epidemic who still face difficulties in filing tax returns after the said time limit extension in February 2020, may apply for a further extension in accordance with the law.
- On May 29, 2020, the State Taxation Administration announced a policy that will allow small enterprises (as defined in the State Administration of Taxation Announcement [2019] No. 2) and businesses owned by individuals to delay payment of income tax for the time period from May 1, 2020 to December 31, 2020 until 2021.

• [Summary of the PRC Tax Regulations issued in response to the Covid-19 Outbreak](#)

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Since the outbreak of Covid-19, China's provinces, autonomous regions and province-level municipalities have successively launched public health emergency plans in their respective administrative regions and taken actions to contain Covid-19. Local governments in regions such as Zhejiang, Gansu, Anhui and Shanghai have set out requirements that enterprises should prepare emergency plans for the prevention and control of Covid-19 in the form of notices on the prevention and control of Covid-19 and the resumption of work. Some notices have emphasized that the responsible person in the enterprise should lead the preparation work personally.
- There are various factors to consider in drafting an emergency plan, namely, (i) regulatory requirements may differ depending on different regions (for instance, we have noticed that some local governments have publicized templates of the emergency plans specifically for enterprises' use, while other local governments have not), (ii) regulatory requirements may vary among different industries, and (iii) business features and characteristics may differ among enterprises.
- [For enterprises that are resuming operations: how to prepare an emergency plan for the prevention and control of Novel Coronavirus Pneumonia](#)



STAY HOME

LEGEND

POPULATION DENSITY	0
POPULATION DENSITY	10
POPULATION DENSITY	20
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## Loans and financial support

Has the government put in place any new bank funding schemes?

- Yes, three waves of emergency loans have been handed to SMEs (small and medium enterprises). The first by way of outright government's bank loans, the second and third by way of guarantees for loans issued by the commercial banks.
- The Czech Export Guarantee and Insurance Agency (EGAP) to guarantee for bank loans provided to businesses which employ more than 250 people including companies operating in transport and tourism sector.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Limited support to employees, who must stay home to take care of children, who can't attend schools (applicable to 30 June).
- Opt-in support to all affected self-employed people shareholders of small limited liability companies of about 18 EUR per day for a period from 12 March until 8 June.
- Kurzarbeit / furlough: employers may apply for compensation of payroll costs at 80% (capped at approx. 1 400 EUR) if their business was mandated to close; 60%, (capped at approx. 1 000 EUR) if they suffer indirectly (e.g. reduced orders). Aid to be provided until the end of August.
- Payments of social security premium and state employment policy contributions for June, July and August 2020 waived for some employers with up to 50 employees.

3

## Insolvency

Has the government made any changes to insolvency legislation?

- The debtor's duty to file for insolvency (and associated directors' liability for not doing so) is suspended. The suspension applies during the Covid-19 response measures and 6 months after they are terminated, but in no event beyond the end of 2020. The claw-back periods are not running during the suspension, so a longer period will be effectively available for clawing-back assets in future insolvencies.
- Creditors' right to file for insolvency is suspended until the end of August 2020.
- Extraordinary moratorium may be requested by debtors, but requests can be made until the end of August 2020 only. It would generally stay the enforcement of claims and also prevent the termination of long-term agreements. New debts can be given priority over pre-moratorium debts (by way of re-payment), but no provision is made for new security or priority in insolvency. Set-off would not be permitted during moratorium.

4

## Contractual Issues

What measures have been taken to reinforce contracts?

- NIL.
- Borrowers can request deferral of their debts, which are falling due (but interest continues to accrue) and lenders must grant such deferral. Repayment of the debts may be suspended either to 31 July or 31 October (on borrowers' choice).
- Exorbitant consumer interests were capped.



## 5

**Property**

Have any changes been made to the laws around property, rent and enforcement?

- Tenants (both, commercial and residential) have been temporarily protected from eviction for non-payment.
- Payment of rent by the affected businesses and individuals can be deferred. State to pay up to 50% of rent for closed business premises for the period from 13 March to 30 June, provided that the landlord discounts 30% of the rent and the tenant will pay remaining 20%.

## 6

**Litigation**

Are the courts operating?

- Missing of certain procedural deadlines could now be waived, if caused by Covid-19.

## 7

**Tax**

Has any new legislation been introduced in light of Covid-19?

- Deadlines for most tax filings have been deferred.
- Some tax deposits, which are paid on a regular basis during the year, were waived (but the annual tax would still have to be paid in the full amount).
- Any tax loss from 2020 can be extraordinarily applied against income from previous years – and the resulting tax overpayments claimed.
- No new tax imposed and the government even indicated that it would not consider any new taxes or increase of the existing taxes. Some land-related taxes are relaxed.
- Some social and health security payments have been waived and other deferred.
- Tax on the acquisition of real estate should be abolished.

## 8

**Company law matters**

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- General meetings can be held remotely by all companies.
- Deadlines for approvals of accounts are extended based on individual circumstances up until 31 December 2020.
- Expiry of directors' appointments is extended for the duration of restrictive government measures and for three months following their relaxation.

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Danish government has introduced the following schemes:

- i. a temporary compensation scheme to cover fixed costs of companies, which are particularly affected by the Covid-19 crisis, financed by the Danish state. All Danish companies expecting a decline in turnover (Danish turnover) of more than 35 percent in the period 9 March 2020 until 8 July 2020 due to Covid-19 can apply for compensation for fixed costs,
  - ii. a temporary compensation scheme aimed at self-employed and freelancers with maximum 25 employees. In order to apply for compensation under this scheme, a number of conditions must be met. The compensation will amount to 90 per cent of the expected revenue loss in the period compared to the average revenue in the last financial year, however, for self-employed and freelancers who are forced to close down, the compensation will amount to 100 per cent. In any event, the compensation may not exceed DKK 23,000 per person per month. The compensation may amount to up to DKK 46,000 per person per month, if the self-employed has an employee spouse. This compensation scheme is currently available until 8 July 2020,
  - iii. a guarantee scheme to facilitate financing to small and medium-sized companies affected by Covid-19, and
  - iv. Companies utilising the scheme financing will be governed by certain restrictions in respect of declaring dividends or initiating share buybacks for the financial years 2020 and 2021. We note that in addition to the above, the Danish government has adopted certain schemes aimed at specific businesses, which are not covered here. The Danish government has on 20 May adopted guidelines for a quick and safe payment of the compensation schemes listed in items (i) and (ii). To ensure a quick payment of the compensation, the guidelines introduce a fast track-solution for payment, immediate handling of applications and a solution for applying a digital auditor's statement for endorsement on applications. To ensure a safe payment of the compensation, the guidelines introduce a whistleblower-scheme and increased use of external experts.
- Under the schemes listed in item (iii) and (iv) above, the Danish Growth Fund (In Danish: Vækstfonden) will provide a guarantee of 70 percent for new bank loans to companies which have suffered or expect to suffer a turnover loss of at least 30 percent as a result of Covid-19.
  - Furthermore, the Danish Export Credit Agency has introduced a liquidity guarantee scheme for Danish exporters impacted by Covid-19. This scheme is aimed at small and medium-sized companies, and the Danish Export Credit Agency will provide a guarantee of 80 percent of any loss incurred by banks on new lines of credit.
  - The Danish Travel Guarantee Fund has established a new guarantee scheme, which allows affected tour operators to cover cancelled package trips in order to be able to repay customers. In addition, the loan granted by the Danish state to businesses within package tours has been increased from DKK 1,5 billion to DKK 2,25 billion.
  - For additional information about the temporary compensation scheme to cover fixed costs of companies, please view [here](#).
  - For additional information about the temporary compensation scheme aimed at self-employed and freelancers, please view [here](#).
  - For additional information about the guarantee schemes supported by the Danish Growth Fund (in Danish), please view [here](#).
  - For additional information about the guarantee scheme by the Danish Travel Guarantee Fund see [link](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The Danish government has introduced a temporary wage compensation scheme for employees at risk of being laid-off. The temporary compensation scheme will apply from 9 March 2020 to 29 August 2020 as it has been extended twice.
- The compensation scheme applies to all private Danish companies regardless of size, however, it is a requirement that the company is materially adversely affected financially by Covid-19 and are facing having to lay-off at least 30 per cent of its employees or more than 50 employees. If this is the case, the company can apply for state salary compensation whereby the Danish state will compensate 75 per cent of the salaries of the employees concerned, but a maximum of DKK 30,000 per employee per month. For hourly wage earners, the state wage compensation amounts to 90 per cent of the salaries of the employees concerned, but a maximum of DKK 30,000 per employee per month.
- It is a condition for receiving compensation under this scheme that the employees are sent home with full salary and that they do not work during the period for which compensation is received. Furthermore, as a starting point, employees are obliged to take holidays and/or take time off in lieu of overtime amounting to a total of five days in connection with the compensation period.
- Companies receiving compensation under this scheme undertake not to lay-off employees due to financial reasons during the period in which they receive the compensation. If employees are laid-off during the compensation period, compensation of wages will cease as per the date of the dismissals.
- The Danish government has announced that they will start negotiations with the Danish Employers' Confederation and the Danish Trade Union Confederation on an extension of the wage compensation scheme; however, such extension is not yet adopted.
- In addition to the compensation scheme, the Danish government has adopted amendments to the Danish Act on Active Social Policy, the Danish Act on Unemployment Insurance and the Danish Act on Sickness Benefit due to Covid-19. Pursuant to the amendments, certain periods are extended for the benefit of the persons covered by the acts, i.e. the period under which the persons covered by the Danish Act on Sickness Benefit are entitled to sickness benefits.
- In addition, the Danish government has on 20 May 2020 adopted another amendment to the Danish Act on Sickness Benefit, which entitles employees who themselves are, or who has relatives that are, significantly at risk of getting infected with COVID-19, to remain home from work and receive sickness benefit up until 31 August 2020. In order to receive sickness benefits, the employee must fulfil certain criteria in relation to health, and the workplace must be incapable of arranging the workspace to accommodate the needs of the employee. The employer is from the first day of the employee's absence entitled to get a refund of the sickness benefit.
- Furthermore, the Danish government has introduced a possibility of extending temporary employment due to Covid-19.
- For self-employed and artists specifically, whose business is strongly affected due to the ban on large gatherings, the Danish government has established a separate compensation scheme. The compensation can be applied for in the period of 1 May to 31 July or in the period of 1 June to 31 August.
- For additional information about the temporary wage compensation scheme, see [here](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The Danish government has not introduced any changes to insolvency legislation.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Danish government has not implemented any specific measures to reinforce contracts.
- While some countries have implemented specific legislation on force majeure, this is not the case under Danish law. Accordingly, whether Covid-19 will constitute a force majeure event under Danish law comes down to a case specific assessment of (i) the legal framework, contracts etc. of the individual relationship, and (ii) the very specific matters surrounding each case of non-performance, both in terms of geography, business sector and market conditions.
- However, part of the legislation adopted by the Danish government, as a consequence of Covid-19, directly or indirectly affects contracts. As an example, the Danish government has implemented two Executive Orders under which the Danish Medicines Agency has a right to order Danish manufacturers, importers and distributors to supply certain types of medical devices, personal protective equipment and disinfectants to regions and municipalities against payment from the region or the municipality. As the Danish Medicines Agency has a right to decide the terms of payment and delivery, this may potentially have an impact on the companies' ability to enter into other contracts or fulfil existing contracts. Similarly, the Danish government has implemented an Executive Order which gives the Danish Medicines Agency authority to i.e. decide that prices on medicine may not rise.
- For additional information about Covid-19 as force majeure event under Danish law, view [here](#).
- For additional information about the Executive Orders under which the Danish Medicines Agency can impose extensive obligations on companies, view [here](#).

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- The Danish government has not introduced any changes to the laws around property, rent and enforcement
- However, the Danish government had implemented a temporary ban on the opening of shopping malls, department stores, arcades, bazaars etc. and places where food, beverages or tobacco are served. These bans raised a number of issues for both lessors and lessees related to business leaseholds in the retail, catering and tourist industries, i.e. whether the government actions constitute force majeure. It is likely that the government actions can constitute force majeure in relation to some of both lessor's and lessee's obligations under a lease agreement as (i) the fulfillment of terms of the lease agreement can be impossible due to the extraordinary situation created by the outbreak of Covid-19 virus and the bans imposed by the government, and (ii) the extraordinary situation – at least for the lease agreements drafted prior to the outbreak of Covid-19 virus – must be assumed to have been unpredictable for the parties.
- As per 11 May 2020, these restrictions have been eased, and shopping malls, department stores, arcades, bazaars etc. have now been allowed to re-open again, however, the opening is contingent upon adherence with guidelines established by the Danish government. These guidelines stipulates i.e. how many people are allowed to access the mall at once, that hand sanitizer should be available at all times etc. As per 18 May 2020, these restrictions have been eased even further allowing restaurants, cafés and pubs to reopen contingent upon adherence with specific guidelines established by the Danish government. In addition, as per 8 June 2020 public swimming pools, gyms, sports centers and theme parks have been allowed to reopen contingent upon adherence with specific guidelines established by the Danish government.
- For additional information about the restrictions on business leaseholds due to Covid-19 and the related issues for lessors and lessees, please view [here](#).

## 6

## Litigation

Are the courts operating?

- The Danish courts were closed down on 13 March 2020, but have re-opened again from 27 April 2020. Accordingly, for pending cases this means that from 13 March 2020 until 27 April 2020, the courts have only heard cases within 'critical areas of practice', as the employees of the courts have been sent home to the greatest extent possible. Accordingly, hearings of cases in all non-critical areas of practice were discontinued from 13 March until 27 April 2020. Each court has authority to decide how the re-opening should take place as long as the guidelines issued by the Danish government are adhered to.
- For additional information about Covid-19 consequences for pending court and arbitration cases, please view [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

The Danish government has within the tax area adopted several measures to help secure small, medium and large companies' liquidity. The measures include:

- i. postponement of the deadline for payment of VAT and specific taxes for the months April, May and June 2020 to January, March and May 2021. In addition, the Danish government has introduced further postponements of deadlines of payment of specific taxes for small and medium-sized businesses,
- ii. a temporary increase to DKK 100 billion of the amount that companies are allowed to keep on a so-called "tax account" from 7 May 2020 up until 1 April 2021,
- iii. possibility for some companies to apply for an exemption to pay interest and fees incurred for late payment of specific taxes in March 2020,
- iv. extension of deadline for submission of tax return for 2019 to the Danish Tax Authorities to 1 September 2020. The deadline extension applies to everyone,
- v. possibility for small and medium-sized companies to obtain interest-free VAT loans and possibility for certain professions to obtain payroll tax loans. Companies could apply for the loan from 5 May 2020 to 15 June 2020,
- vi. companies that use the business taxation scheme (in Danish: virksomhedsordningen) and which have a deficit in the income year 2019 may apply to receive payments of the tax value of the part of the deficit arising from research and development expenses in June instead of November. In order to receive the early payment, an application should have been submitted no later than 15 May 2020, and
- vii. for some businesses, the payment deadline for payroll tax for the second quarter of 2020 is extended to 1 September 2020 and for the third quarter of 2020 the deadline is extended to 16 November 2020.

The Danish Tax Administration has emphasized that some businesses must pay tax for the contributions they received in relation to the compensation schemes. This applies for the following compensation schemes:

- Compensation for loss of turnover (self-employed, freelancers, artists and cultural institutions),
- Compensation for cancelled events (event organizers),
- Compensation for expected fixed costs (i.e. rent),
- Salary compensation for employees,
- Compensation for freelancers with B-income, and
- Compensation for freelancers with mixed A- and B-income

For additional information about the postponement of payment of VAT and specific taxes, please view [here](#).

For additional information about the exemption to pay interest and fees incurred for late payment of specific taxes in March 2020 see (in Danish), view [here](#).

For additional information about the extension of deadline for submission of tax return for 2019 see (in Danish), view [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Danish government currently maintains restrictions on large gatherings, and on 13 March 2020 a temporary ban was imposed on holding or participating in events, activities or the like where more than 10 people are gathered. As per 8 June 2020 the Danish government has decided that gatherings of up to 50 people are now allowed. In addition, for activities where people are mostly seated, larger gatherings are allowed.
- As a consequence of the restrictions on large gatherings, the Danish government has implemented an Executive Order whereby the deadline for submitting the annual report to the Danish Business Authority has been postponed. The deadline has been postponed by three months, which means that the annual report must be submitted on 31 July 2020 for listed companies with the calendar year as fiscal year and on 31 August 2020 for other companies with the calendar year as fiscal year.
- The Executive Order furthermore introduces a possibility for general meetings, which are held no later than 8 weeks after the termination of the restrictions on large gatherings, to be held completely electronically, irrespective of the fact that the company's articles of association may not provide for this.
- Due to the easing of the restrictions on large gatherings, companies are now allowed to hold general meetings where up to 500 people may be gathered.
- For additional information about the company law related measures put in place to accommodate social distancing see (in Danish), please view [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Finnish Government has introduced a range of financial schemes for impacted businesses who are experiencing financial difficulties during the COVID-19 pandemic. As the spread of the pandemic has slowed down in Finland and restrictions have been lifted, some of the schemes have already been closed.

The support schemes that are currently available include the following:

- **Finnvera guarantees** - the state guarantees for bank loans, which can be used for working capital needs caused by the COVID-19 pandemic. Guarantees are granted by Finnvera (a state-owned specialised financing company) for up to 80% of the bank loan and no collateral is required.
- **Stabilisation programme to support Mid-cap companies** - a funding program to support MidCap companies who are in temporary financial difficulties due to the COVID-19 pandemic. Finnish Industry Investment Ltd (a state-owned investment company) will make capital investments of EUR 1-10 million into companies with a minimum of EUR 10 million turnover and over 50 employees. The company must have the ability to survive the financial difficulties caused by the crisis and the investment is subject to standard due diligence.
- **Support for restaurants and catering businesses** - direct support consisting of two parts:

**Compensation for restrictions for business:** Compensation is based on the decrease in sales caused by the Government restrictions. Can be used to pay for rent and fixed running costs (excluding material purchases, labour costs and investment costs).

The amount of the compensation is 15% of the decrease in the company's sales during the period 4 April - 31 May 2020 compared to the average sales in January-February 2020 or April-May 2019 (whichever is greater). The maximum amount of compensation is EUR 500,000 per applicant.

**Support for re-employment:** EUR 1,000 per employee.

- **Support for business costs from the State Treasury** - direct support for businesses, which have experienced a distinct decrease in turnover due to the COVID-19 pandemic. The support will be granted by the State Treasury. This new act on the support for business costs has been approved by Parliament and enters into force 1 July 2020.
- **Commercial paper purchase schemes** - both the Bank of Finland and the State Pension Fund of Finland have agreed to increase their investment in domestic corporate papers.
- **Temporary interest-only payments periods** - Finnish banks have agreed to give interest-only payment periods (of up to one year) on mortgages and other loans for individuals and companies in financial difficulties due to the COVID-10 pandemic.
- **Restrictions for consumer credit** - temporary decrease on the amount of permitted interest on consumer credits from 20% to 10% per annum. Direct marketing (e.g. marketing by telephone or emails) of consumer credits is also restricted. The temporary measures are expected to remain in force until the end of 2020.
- **Postponement of certain statutory payments** - In addition to the above financial support, certain payment arrangements have been agreed by the Tax Administration and between the Government and the Pension Insurance Companies. These include measures such as postponement of payments deadlines, extension of tax return deadlines, removal of late payment penalties and temporary reductions of pension insurance payments.

In addition to the above, there are a number of smaller support packages put in place, including support for sole entrepreneurs, for small agricultural businesses and for the primary agricultural sector and fisheries section.



## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Support for business costs from the State Treasury mentioned in the previous section is particularly important to employers, as it may be used to cover payroll costs as well as fixed costs.
- Employers' statutory pension contribution has temporarily been reduced. Employers' statutory pension contribution (has been reduced by 2.6 percentage points. In addition, the contribution payments can be postponed by up to three months.
- Employees' right to unemployment security has temporarily been improved. The qualifying period for unemployment benefit has been removed, i.e. temporarily laid-off or terminated employees are entitled to unemployment benefit from the first day of unemployment. Also, the required period for employment that employees have to meet in order to be entitled to unemployment allowance has been reduced. Unlike before the coronavirus pandemic, entrepreneurs are now also entitled to unemployment security.
- The Finnish government has made multiple amendments to the employment legislation. The most important changes are related to employer's right to temporarily lay-off employees and terminate employment contracts, as well as the personnel consultation obligation which employers in Finland have to fulfill before making decisions that affect its personnel, such as redundancies.
- Normally, employers are not entitled to lay off fixed-term employees on financial grounds. Now, employers are entitled to temporarily lay off fixed-term employees in the case of temporary reduction of work. Furthermore, temporary lay-offs may be executed following a five-day notice period instead of the usual 14-day notice period.
- The government has expanded the right to terminate an employment contract, as cancellation of an employment relationship during a trial period is now allowed on financial and production-related grounds. Normally, cancellation during a trial period is only possible on individual grounds.
- The duration of the negotiations pursuant to the personnel consultation obligation has been reduced to 5 days instead of the usual 14-42 days.
- Employers' obligation to re-employ an employee whose employment has been terminated on financial and production-related grounds has been extended to 9 months from the usual 4-6 months, which improves employees' possibilities to return to previous employment.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- On 28 April 2020, the parliament of Finland approved a legislative proposal for the temporary amendment of the Finnish Bankruptcy Act. The Bankruptcy Act is temporarily amended so as to restrict a creditor's right to file for the bankruptcy of a debtor on the basis of an insolvency assumption. Pursuant to the normal Bankruptcy Act, a debtor is deemed insolvent by the court if the debtor has not repaid a clear and undisputed claim that has fallen due within one week of the receipt of a payment reminder. Thus, as a result of the law reform, this assumption is temporarily removed. The amendment will be in force until 31 October 2020.
- In addition to the above, there have been some temporary amendments to the Enforcement Code in such way that the exceptional circumstances arising from the coronavirus pandemic and the financial difficulties resulting from it could be taken into account in the enforcement proceedings.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Finnish government has not introduced new legislation due to the COVID-19 pandemic that would specifically reinforce contracts between commercial entities and the normal contractual rules apply.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- No particular changes have been made to the laws around property or leasing. However, below we have listed some elements worth considering.
- Some tenants, especially within restaurant and hospitality industries, have requested a temporary adjustment to the rent payable under their leases, including rent holidays or deferment. Some of such requests have also been approved by the landlords.
- Under the constructions agreements, force majeure –notifications have been issued by the contractors. New construction agreements typically include specific provisions regarding possible delays caused by COVID-19.

## 6

### Litigation

Are the courts operating?

- In general, courts are operating normally in Finland. However, some court hearings may be postponed due to the corona crisis.
- With the consent of both parties, hearings may also be held via video conference.

### Tax

Has any new legislation been introduced in light of Covid-19?

The Finnish government has introduced several measures within the tax area, especially in the field of VAT, the purpose of which is to help the companies to retain their liquidity. These measures include, for example:

- The VAT already paid by a company between January and March 2020 can be refunded upon the company's request. These refunds are treated as loans as the companies must repay the amount of the VAT added with interest.
- The late-payment interest and penalty interest on the taxes in the scope of a payment arrangement or extended payment terms was reduced from 7 % to 2,5 %.
- The VAT Act has been temporarily amended to the domestic sales of goods used for the prevention, testing and treatment of covid-19 infection and these type of acquisitions from other EU member states. The amendment applies to sales to producers of public health and medical care and social welfare services, as well as to organisations approved by Customs. The VAT rate for the sales has been amended to 0 %, i.e. sales are considered so-called zero-rated sales. Consequently, VAT included in the purchases made for these sales is deductible.

In addition to the legislative level measures above, the Finnish Tax Administration has e.g. eased terms for payment arrangements and extended filing deadlines of tax returns.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- On 24 April 2020, the Finnish Parliament adopted a temporary act, which allows companies to deviate from certain provisions of the Finnish Companies Act relating to holding of a general meeting of shareholders, in order to prevent the spread of Covid-19 pandemic. The temporary act entered into force on 1 May 2020 and is valid until 30 September 2020.
- Under the temporary act, both listed and non-listed companies can hold their annual general meetings by the end of September 2020, irrespective of the deadlines set by the Finnish Companies Act or their Articles of Association.
- The temporary act makes it possible for listed companies to hold their annual general meetings remotely so that shareholders may participate in the general meeting only by way of a proxy. The board of directors of the company may appoint one or more proxy representatives for the use of shareholders. Alternatively, an annual general meeting of a listed company can be held remotely so that shareholders may participate in the general meeting only by technical means. A remote meeting can also be held as a combination of a proxy meeting and participation by technical means in which case also shareholders' proxy representatives can participate in the meeting only by technical means.
- Regardless of whether a general meeting is organised by using one of the above options or as a combination of them, a physical general meeting must be held. At least the chairman of the meeting and the person appointed as scrutiniser of minutes must attend the meeting in person.
- The temporary act also allows limited liability companies whose financial term has ended between 30 November 2019 and 29 February 2020 to prepare their financial statements and annual reports by the end of June 2020. Limited liability companies whose financial term has ended between 1 March 2020 and 24 March 2020 may upon certain conditions, prepare their financial statements and annual reports later than within the normal four months of the end of the financial term based on the general exemption issued by the Finnish Accounting Board on 25 March 2020.

# 1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- The Government has provided for a guarantee scheme to support bank financing for businesses. Until December 31, 2020, companies (with the exception of property companies & banks) may apply for State-guaranteed bank loans which represent up to 25% of 2019 revenues (or two years of payroll for so-called “innovative” companies or companies created since 1 January 2019). No repayment will be required during the first year of the loan. For companies or groups of companies of important size (>5000 employees or >1.5 billion EUR revenues in France), this loan implies renouncing to distributing dividends in 2020. A decree of 6 May 2020 from the Ministry of the Economy and Finance extended the beneficiaries of this scheme to certain non-trading real estate companies, companies in difficulty since 1 January 2020, “Young Innovative Companies” and loans granted through crowdfunding/ participatory financing platforms.

# 2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The mechanism of “partial unemployment” has been facilitated for companies whose employees cannot work because of the Covid situation. Employers get a reimbursement of 70% of their gross salaries (100% for low salaries), up to a (relatively high) monthly threshold. The exceptional short-time working scheme for home-based employees has been extended until 1 June in order to help individual employers in difficulty to pay their employees and protect them against the risk of losing their jobs.

# 3

## Insolvency

Has the government made any changes to insolvency legislation?

- No substantial rules were enacted on insolvency. Deadlines have been extended to take into account the lockdown situation and commercial courts, who are in charge of insolvency proceedings, have put in place specific emergency procedures in order to be able to handle urgent matters. One specific rule presumes that the financial situation of companies filing for insolvency shall be assessed as it was on March 12, 2020.

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- Specific rules have been enacted to suspend or extend the effects of certain contractual deadlines (except for financial obligations and guarantees listed in art. L211-36 of the French Financial and Monetary Code). The principle is that periodic penalty payments, penalty clauses, termination clauses sanctioning the failure to fulfil an obligation within a specified period shall be deemed not to have commenced or to have taken effect if that period has expired during the “lockdown period” (as defined by the government as a period ending on June 23). They shall take effect from the expiry of a period of one month after the end of that period if the debtor has not performed his obligation before that time. The ending date of the protection period has been set to June 23, 2020. In addition, when an agreement may be terminated only during a specified period or when it is renewed if no termination is notified within a specified period, that period shall be extended, if it expires during the “lockdown period”, by two months after the end of the “lockdown period”. Further, for agreement which can only be terminated in a defined schedule or which are automatically renewed in the absence of denunciation within a limited period: those periods or deadlines are extended if they expire between 12 March and 2 months after the expiry of the “lockdown period”.

## 5

**Property**

Have any changes been made to the laws around property, rent and enforcement?

- A specific rule has been enacted for companies or businesses that are below certain thresholds: they cannot be held liable for not paying rent and building charges that are due from March 12 to the end of a period of 2 months after the end of the “lockdown period”. The thresholds are relatively low and should only benefit small businesses that are strongly impacted. In particular, they require (i) either that the business activity was stopped by the authorities or that it suffered a loss of 70% of revenues, as well as (ii) various thresholds linked to the size of the business (e.g. less than 10 employees, less than 1 million EUR annual revenues). A tax incentive has been created for landlords in the form of a specific deductibility of rent waivers granted by lessors between 15 April 2020 and 31 December 2020.

## 6

**Litigation**

Are the courts operating?

- Courts are operating and emergency regulation has made it easier to hold proceedings remotely, but in practice most courts had simply postponed all hearings and deadlines until further notice and focussed on extremely urgent matters. On a case by case basis, most courts are now organising hearings with or without oral hearing (when the parties agree to it) and sometimes via videoconference.

## 7

**Tax**

Has any new legislation been introduced in light of Covid-19?

- Various measures have been adopted to postpone the payment of both taxes and social contributions, in principle for a limited period of a few months (but individual solutions can usually be negotiated with the authorities) without penalties. It has also been announced that the reimbursement of various tax credits would be accelerated. There are no general measures of tax exemption at this stage but such exemptions can be negotiated on a case by case basis in circumstances of severe financial distress.

## 8

**Company law matters**

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Various legal deadlines applicable under company law have been extended by: (i) 3 months for the approval of accounts when accounts have not been approved before 12 March, (ii) 2 months for the documents to be submitted to the supervisory board per art. L225-68 of the French Commercial Code if the statutory auditor has not submitted his report before 12 March, (iii) 3 months for the liquidator to set the accounts of a company undergoing a liquidation, (iv) 3 months for submission of the financial report by companies who have benefitting from a public subsidiary, and (v) 2 months for companies who have to produce an assessment of assets and liabilities/a cash flow statement/a forecast estimated cash flow statement/a forecast estimated results accounts.
- Rules have been enacted in order to facilitate shareholder meetings and board meetings, in particular by allowing the use of written decision, videoconference systems, even when the bylaws do not provide for that possibility.
- Limitation of payment of dividends: large companies who have benefited from State aids (taxa, social, etc.) as a result of Covid-19 shall commit not to pay dividends unless required by law

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Lending is available under a number of new schemes that have been introduced in Germany. These range from schemes for large corporations to schemes for SMEs, start-ups, micro-enterprises and self-employed individuals. Some of the most relevant schemes are:
  - The “**KfW Instant Loan**” – this scheme provides funding to medium-sized enterprises with more than 10 employees if the enterprise showed profits in 2019 or on average over the last three years. The credit volume per company is up to 3 monthly turnovers, with max. EUR 800,000 for companies with more than 50 employees, and max. EUR 500,000 for companies with up to 50 employees.
  - The “**KfW Special Programme**” – this scheme is designed for medium-sized enterprises and large companies. It aims at mobilizing the willingness of companies’ principal banks to grant substantial amounts of loans to strengthen liquidity. Under this scheme, the German state-owned development bank KfW assumes up to 80% of the risk, but no more than 50% of the total debt. The KfW risk share amounts to at least EUR 25 million and is limited to 25% of the annual turnover in 2019 or double the wage costs in 2019 or the current financing requirements for the next 12 months.
  - The “**KfW Entrepreneur Loan**” – this scheme aims at companies that have been on the market for more than five years. The scheme shall increase their chances of being granted a loan commitment. If they apply for a loan for investments and working capital, the German state-owned development bank KfW assumes up to 80% of the bank’s risk for large companies and up to 90% of the bank’s risk for SMEs. Companies can apply for up to EUR 1 billion per company group. A similar program exists for companies that have been on the market for less than five years.
- State-owned banks also offer to guarantee loans provided to companies by their principal banks if the company has not been in financial difficulties. Guarantees may cover max. 90% of the loan risk, i.e., the companies’ respective principal bank must assume at least 10% of exposure.
- In addition to the programs of the federal government, each federal state has put in place accompanying programs to support regional businesses.
- [Liquidity support through “unlimited” loan guarantees](#)
- To stabilise the real economy in times of the Covid-19 pandemic, the German parliament has established an Economic Stabilisation Fund (“WSF”) as a special fund. The WSF shall overcome liquidity bottlenecks and strengthen the equity base of companies. Instruments of the WSF are (i) guarantees for debt instruments in the amount of EUR 400 billion to bridge liquidity bottlenecks and support the refinancing of companies, (ii) EUR 100 billion to strengthen capital through equity investments in companies (recapitalisation measures) and (iii) EUR 100 billion to refinance KfW special programmes. Stabilisation measures under the WSF are possible until the end of 2021 and shall be the last resort.
- [Establishing an economic stabilization fund for the real economy](#)

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Employers may choose to temporarily reduce the working time of their employees if the company is affected by the corona crisis (e.g. if a company is closed down or if there are difficulties in the company due to missing orders or supplies). The remuneration of the employees will be reduced correspondingly. This measure shall avoid layoffs and enable companies to keep qualified workers during the crisis.
- Affected employees can receive so-called “short-time working allowance”. This benefit must be applied for by the employer. If granted, the government will generally refund 60% (employees without children) or 67% (employees with children) of the difference between the regular net income and the reduced net income. The German government has introduced legislation to increase the short-time working allowance to 70% or 77% starting from the fourth month and to 80% or 87% starting from the eighth month. Due to new legislation, it is sufficient if at least 10% of the workforce are affected by short-time work.
- [FAQ short-time work by Corona](#)
- The German government has passed legislation to facilitate access to the short-time working allowance. Also, the additional income opportunities during short-time work have been extended.
- [Coronavirus: FAQ employment law part 3](#)
- The base period of unemployment pay will be extended by three months for those whose entitlement ends between 1 May and 31 December 2020.
- In case the government orders a (regional) quarantine, the employer pays the regular salary and the regional government will refund the money. After six weeks, the employees will receive sick pay by the government.
- [Coronavirus: FAQ employment law](#)

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- The statutory obligation to file for insolvency within three weeks after a state of insolvency has been reached has been suspended until 30 September 2020.
- However, this does not apply if the insolvency is not a consequence of the Covid-19 pandemic or if there are no prospects of remedying an existing inability to pay. If companies were not insolvent on 31 December 2019, it is legally assumed that insolvency is based on the consequences of the Covid-19 pandemic and that there are prospects of eliminating an existing insolvency.
- Companies’ own applications for the opening of insolvency proceedings and applications by creditors (third-party applications) nevertheless remain possible. In the case of third-party applications, however, the opening of insolvency proceedings requires that the reason for insolvency already existed on 1 March 2020.
- If the obligation to file for insolvency is suspended, companies may continue to make payments in the ordinary course of business although a state of insolvency is reached.
- [Restructuring in times of Corona – legislator assists with suspending the obligation to file for insolvency](#)

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The German government introduced legislation that grants consumers and small companies the right to refuse performance of a contract (in particular payment) in order to protect them from financial hardship resulting from the measures taken to prevent the spread of infections. Small companies are those with less than 10 employees and less than EUR 2 million annual turnover.
- These measures generally require that it concerns claims from a continuing obligation established before 8 March 2020 which debtors are not able to fulfil due to the Covid-19 pandemic or, due to the Covid-19 pandemic, the fulfilment of such claims would endanger their means of subsistence or the economic basis of their business. At the same time, the creditor must not be unreasonably affected as a consequence.
- The provisions do not apply to employment contracts, tenancy agreements and loan agreements.
- For consumer loan agreements concluded before 15 March 2020, lenders' claims for interest or repayment of instalments due between April and June 2020 are deferred for a period of three months from the due date if the borrower suffers a loss of income due to extraordinary circumstances caused by the spread of the Covid-19 pandemic which makes it inappropriate for the borrowers to fulfil their obligations. After expiry of this moratorium, the payment obligation will resume. The individual payment dates as well as the end of the term of the loan will be postponed by three months in each case, unless the parties agree otherwise. The regulations are to apply to consumer loan agreements only. However, there is the possibility of extending the scope of application of the law by means of a statutory instrument to small companies as well.
- [Corona info – the legislator acts – we summarize for you](#)
- The Covid-19 pandemic will have a significant influence on how to draft force majeure clauses in the future. For more information, see [here](#).
- Contracts on the acquisition of German companies may in future not be closed anymore while investment control proceedings are still pending if the company is active in a certain sectors (e.g. health care) and a non-EU investor (directly or indirectly) acquires more than 10% of the voting rights. For more information, see our article '[Upcoming changes to German foreign investment control regime](#)'.
- For merger control filings, the review periods have been temporarily extended. For more information, see [here](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- The German government has passed legislation that excludes terminations of tenancy agreements in the event of late payment of rent for the period from 1 April 2020 to 30 June 2020 if the failure to pay is due to the effects of the Covid-19 pandemic. The correlation between the failure to pay and the Covid-19 pandemic is not assumed but must be shown credibly by the tenant.
- The period from 1 April to 30 June 2020 can be extended by decree until 30 September 2020, i.e. to a total of six months. Any extension beyond this requires the approval of the German parliament.
- The exclusion of termination ends on 30 June 2022, i.e. by this date the rent in arrears (including default interest) must be paid to avoid a termination. Other termination rights remain unaffected, i.e. the ordinary termination right for unlimited rental contracts as well as the extraordinary termination. For more information, please see [here](#).





## Litigation

Are the courts operating?

- In general, the courts are operating normally. Despite of social distancing and travel bans, court deadlines must be met and court hearings have to be attended.
- Currently, court hearings are often postponed due to the corona crisis. With the consent of both parties, the court may switch to written procedure in appropriate proceedings. Alternatively, if the necessary technical equipment is available, hearings may also be permitted via video conference without the consent of the parties.
- [Dispute resolution before state courts and arbitral tribunals in times of the Covid-19 pandemic](#)



## Tax

Has any new legislation been introduced in light of Covid-19?

- The German Federal Ministry of Finance and the supreme tax authorities of the federal states have issued decrees containing new guidance in light of the corona crisis.
- The tax authorities are instructed to make straightforward and quick adjustments of assessed tax advances upon request (trade tax, corporate income tax, income tax and VAT).
- Upon application and to the extent that tax payments cannot be made due to the effects of the Covid-19 pandemic, tax payments due are generally supposed to be deferred without interest until 31 December 2020. There are no tax deferrals for withholding taxes, in particular wage tax and capital gains tax.
- The tax authorities have been instructed to suspend the enforcement of overdue tax debts (corporate income tax and income tax) until 31 December 2020. Late payment surcharges incurred as a matter of law shall be waived.
- VAT on restaurant meals and other food in the catering industry will be reduced from 19% to 7% starting from 1 July for a limited period until 30 June 2021.
- SMEs may offset expected losses against advance tax payments already made for 2019.
- [Measures under German tax law to create or preserve liquidity](#)



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- For stock corporations, the German government has passed legislation that allows Annual General Meetings (AGMs) to be held electronically in 2020. Numerous small and large stock corporations are already using this possibility.
- There are two options for this: Either a physical meeting can be held with the option of shareholders attending electronically and casting their votes electronically or by letter. Alternatively, a completely virtual AGM can be convened without any shareholders being present. For more information, see our article '[Special provisions for the emergency legislation for general meetings 2020](#)'.
- For limited liability companies, the German government has introduced legislation to facilitate the adoption of shareholder resolutions by way of circular resolution. Online shareholders' meetings continue to be possible only if all shareholders agree.
- [Facilitations for circular resolutions in the GMBH by the Covid Mitigation Act – overview and open questions](#)

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

- The States of Guernsey has agreed to underwrite 80% of any qualifying loan made by participating banks to any trading business with less than GBP 10 million turnover.
- Businesses regulated by the Guernsey Financial Services Commission (GFSC) are excluded.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The initial payroll co-funding scheme was similar to the UK's and gave employers and the self-employed in certain sectors co-funding payments where they could show their turnover had fallen below certain thresholds.
- Other measures to support business include the deferral of Social Insurance contributions, local business rates and rent owed to States entities.
- For the most up to date information on financial and business support, please follow this link [here](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- No changes are likely to be made to Guernsey's insolvency laws, in particular regarding wrongful trading. It should be noted that Guernsey's wrongful trading provisions are somewhat more relaxed than the UK equivalent in any event. Once a director concludes (or ought to have concluded) that there was no reasonable prospect of the company avoiding insolvency winding up, the director has a duty to take every step to minimise losses to creditors "he ought reasonably have taken". The Guernsey test introduces a reasonableness qualification on the every step test not expressed in the UK statute.
- Significant amendments to the insolvency laws were passed by the States of Guernsey on 15 January 2020 and are expected to come into effect shortly.
- [Changes to Guernsey's Insolvency Regime](#)

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The Guernsey government has not introduced any legislative measures to deal specifically with contractual issues caused by the Covid-19 pandemic. Any contractual concerns will be dealt with according to Guernsey contract law.
- The main contractual provision which governs the enforceability of a contract upon the existence of an unforeseen event is the force majeure clause. In general terms, the force majeure clause seeks to list the situations in which the parties to a contract may suspend or terminate the contractual relationship due to the occurrence of certain events that are outside the control of the parties.
- Depending on the construction of the force majeure clause in individual contracts, the Covid-19 pandemic may cause the contract to be suspended or terminated.
- Businesses should review their existing contractual relationships and seek legal advice to ensure they are aware and fully understand their ongoing legal obligations and identify any areas of uncertainty.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- No.

## 6

## Litigation

Are the courts operating?

- Yes. The courts are operating normally.

## Tax

Has any new legislation been introduced in light of Covid-19?

- No.
- See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Guernsey Corporate Registry is functioning normally in respect of searches and company incorporation, although some services, especially where hard copy documents are required, are more limited. Mourant can advise on any specific issue.
- The GFSC has simplified some of its measures to reflect the changed environment including allowing more time for certain regulatory returns – see '[Commission allows more time for Firms to complete Key Financial Returns](#)' – and more flexibility on verifying client identities remotely – see '[Can video calling be used to verify the identity of individuals](#)'.
- The Data Protection Commissioner has assured business that it will respond pragmatically to the new challenges arising – see its update [here](#).
- For guidance on corporate formalities in a world without face to face meetings, see our updates on '[Overcoming Barriers to Completion of Transactions amidst Covid-19 Challenges](#)' and '[ICSA Guidance on holding virtual board meetings](#)'.
- A pragmatic approach to economic substance has been promised by the Guernsey Revenue Service. We anticipate this will follow the guidance issued in Jersey where, if a company's operating practices have to be adjusted to compensate for the Covid-19 pandemic, the company will not be deemed to have failed the economic substance test. See release from the [Guernsey International Business Association](#).
- Mourant has produced a briefing regarding regulatory considerations for licensed financial services businesses in the Channel Islands when responding to the Covid-19 outbreak:
  - <https://www.mourant.com/news-and-views/2020/Covid-19--key-regulatory-considerations-for-financial-services-businesses.aspx>
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

Yes. The Covid-19 crisis has prompted the Irish Government to announce a range of supports for impacted businesses and individuals who are experiencing financial difficulties during the Covid-19 pandemic. The range of measures introduced by the Irish Government include the follows.

- The Strategic Banking Corporation of Ireland (“SBCI”) Covid-19 Working Capital Loan Scheme (the “Irish Liquidity Scheme”)** – the Irish Liquidity Scheme is designed to support lending to Irish small and medium enterprises (“SMEs”) only and is not available to larger firms. Loans under the Irish Liquidity Scheme (the “Loans”) can be provided to SME’s to fund future working capital requirements in order to mitigate the impact of the pandemic. The Loans will be available through Allied Irish Banks, p.l.c., Bank of Ireland and Ulster Bank in amounts of between €25,000 and €1.5 million per eligible enterprise, with a maturity of between one and three years. In addition, the Loans will bear a fixed rate of interest negotiated with the lending bank, subject to a maximum of 4% per annum. For Loans of up to €500,000, no security will be required, however any Loans in excess of this amount will require collateral to be posted. The SBCI has stated that a three month interest-only option may be available for the initial period of the Loan (**depending on the lender’s assessment of the relevant application**). For more information on the Irish Liquidity Scheme, please see our recent article available [here](#).
- Future Growth Loan Scheme (“FGLS”)** – the FGLS was originally established in June 2019 via the SBCI to support the development of SMEs and businesses in the agri sector. In light of the pandemic, the FGLS has recently received a boost of €200 million in funding from the Department of Business Enterprise and Innovation which will be released in tranches to provide long-term loans to businesses impacted by Covid-19. Loan amounts will range from €100,000 to a maximum of €3 million per applicant. In addition, loan terms will range from eight to ten years and loans of up to €500,000 can be unsecured. Interest-only repayments may be available at the start of the loan and interest rates will be capped at 4.5%.
- The SBCI Credit Guarantee Scheme (the “CGS”)** – the CGS was originally launched in 2012, however in response to the Covid-19 pandemic, the CGS was amended in April 2020 to assist SMEs whose businesses have been impacted by the virus. The CGS is directed at commercially feasible SMEs which, under normal lending criteria, are unable to obtain new or additional facilities from their bank due to insufficient collateral or because they are impacted by Covid-19. In addition, the CGS is targeted at commercially viable SMEs which due to their sectors, markets or business models are perceived as a higher risk under current credit risk evaluation procedure. The CGS will be available to Covid-19 impacted firms through the pillar banks and provides lenders with a State guarantee, covering eligible credit facilities for 80% of the facility value, over a maximum seven-year period. Essentially, the CGS is an additional form of security provided to the lending bank by the Irish Government on behalf of the relevant borrower.
- The Covid-19 Credit Guarantee Scheme (the “Covid-19 CGS”)** – the Irish government has repurposed an existing SME Credit Guarantee Scheme which has been in place in various forms since 2012. Under the Covid-19 CGS, the Irish Government will guarantee up to €2 billion of loans provided by Irish banks to SMEs whose businesses have been impacted by the pandemic. The Covid-19 CGS will be available to certain SMEs established and operating in Ireland through **AIB, Bank of Ireland and Ulster Bank in the form of** a State guarantee to the relevant bank against 80% of losses. Loans of €10,000 up to €1 million will be made available for terms of between three months and six years. It may also be possible to avail of a three to six month interest only period. The Covid-19 CGS is conditional on new legislation being passed which cannot be done until a new government is formed following the general election held in February. Therefore, it is expected that the Covid-19 CGS will not be available until later in June (at the earliest).

- **Microfinance Ireland Covid-19 Business Loan (the “MFI Business Loan”)** – the MFI Business Loan is a government initiative to support small businesses through the current period of uncertainty and to protect job creation or sustainment in Ireland. The maximum MFI Business Loan available from [Microfinance Ireland](#) has been increased from €25,000 to €50,000 as an immediate measure to specifically deal with exceptional circumstances that micro-enterprises – (sole traders and firms with up to 9 employees) – are facing in order to alleviate the financial pressures arising from Covid-19. In addition, the terms of the MFI Business Loan include a six-month interest free period and a repayment moratorium of up to six months, with the loan then repayable over the remaining 30 months of the 36-month loan period at an interest rate of between 4.5% and 5.5%.
- **Enterprise Ireland Supports** – the Department of Business, Enterprise and Innovation has implemented a €200m package for Enterprise Supports including a Rescue and Restructuring Scheme available through Enterprise Ireland for vulnerable but viable firms that need to restructure or transform their business. In addition, Enterprise Ireland has created a new €180m Sustaining Enterprise Fund in order to provide manufacturing and internationally traded services companies with capital to help stabilise and rebuild their businesses.
- **Pandemic Stabilisation and Recovery Fund (“PSRF”)** – the PSRF is a €2 billion fund administered by the Irish Strategic Investment Fund to support medium and large enterprises in Ireland "materially impacted" by Covid-19. The PSRF will focus on investment in large and medium enterprises employing more than 250 employees or with an annual turnover in excess of €50 million. Aside from material impact, enterprises must be able to demonstrate that their business was commercially viable prior to the pandemic, and that they can return to viability and contribute to the Irish economy.
- **Restart Fund (the “Fund”)** – this is a €250 million fund targeted at small and micro enterprises that have been impacted by Covid-19. The purpose of the Fund is to assist businesses in reconnecting with the market, their employees and their customers. The Fund will operate through a system of rebates/waivers based on commercial rates payments from 2019. Companies will receive a total amount equivalent to no more than their 2019 rates bill or a minimum payment of €2,000, whichever is higher and there will be a cap per business of €10,000. The Fund will be available to businesses with a turnover of less than €5 million and employing 50 people or less, which were closed or impacted by at least a 25% reduction in turnover up to 30th June, 2020. The Fund is a contribution towards the cost of reopening or keeping a business operational following the pandemic.

In addition to the above, a range of measures have also been agreed between the Irish retail banks and the Irish Government as follows.

- **A 6-month payment moratorium** – banks, credit unions, retail credit firms and credit servicing firms will grant payment breaks on mortgages, personal loans and business loans for those businesses and individuals experiencing financial difficulties caused by Covid-19. Following ongoing discussions with the Central Bank of Ireland (“CBI”), the Banking & Payments Federation Ireland have extended the original 3-month payment moratorium to six months, which coincides with the majority of the EU and the EBA guidelines. On 8<sup>th</sup> June, 2020, the CBI sent a [‘Dear CEO’ letter](#) to the CEOs of regulated firms that previously granted payment breaks of up to six months to borrowers affected by the pandemic. The [‘Dear CEO’ letter](#) outlines the CBI’s expectations of regulated firms when dealing with borrowers in respect of Covid-19 payment breaks. It also includes the information that should be provided to borrowers in communications regarding Covid-19 payment breaks.

- **Support for buy-to-let customers with affected tenants** – flexible repayment arrangements will be made available to buy-to-let customers with tenants affected by Covid-19. This includes a mortgage payment moratorium of up to six months, which will allow, and hopefully encourage, landlords to pass that break on to their tenants.

- **A Deferral of court proceedings** – legal proceedings including repossessions will be deferred for three months.
- **Extensive supports for SME customers** – banks are working to ensure that a wide range of measures are made available to businesses who are trying to manage the financial pressures arising from Covid-19. The measures include the provision of cash flow and credit facilities as well as supply chain supports. The deferral of loan repayments for up to six months will also be available to SMEs.
- **A customer focused approach** – banks have committed to providing suitable tailored supports for business including the extension of credit lines, risk guarantees and trade finance.

These supports are intended to complement the range of government supports, including the Irish Liquidity Scheme detailed above. For more information, please see our recent articles listed below:

- The ABC and DE of Emergency Liquidity Solutions (available [here](#)),
- Covid-19: Range of Banking Measures announced due to the Pandemic (available [here](#)),
- Government Funding Supports for Businesses Impacted by the Covid-19 Pandemic (available [here](#)), and
- ~~Update: Additional Government Funding Supports for Businesses Impacted by Covid-19 (available [here](#)).~~
- **Temporary Covid-19 Wage Subsidy Scheme:** Detailed information in relation to the operation of the scheme, which has been extended until 31 August 2020, can be found on the Revenue website [here](#).
- **COVID-19 Pandemic Unemployment Payment:** This is a payment of €350 per week which is available to employees who either lost their job entirely or were temporarily laid-off, on or after 13 March 2020, as a result of the COVID-19 pandemic. The payment is also available to self-employed individuals whose trading income has ceased due to COVID-19. It will be available until 10 August 2020.
- **Return to Work Safely Protocol:** The government has issued a set of guidelines or protocols to enable people to return to work. These are available [here](#). The Health and Safety Authority has also published various templates and checklists to assist employers in complying with the Protocol. Those are available [here](#). Employers need to be aware that they will continue to be bound by their usual obligations as regards the safety and health of their employees (or other visitors to their premises).
- The [Workplace Relations Commission](#), which is the forum of first instance for most employment law matters postponed all Adjudication Hearings, Conciliation Meetings, Face-to-Face Mediations, and cancellation of on-site Inspections in response to COVID-19. This was initially stated to be until after Monday 18th May 2020, which tied in with phase 1 of the Government's "roadmap for reopening society and business at the time. In the meantime, the WRC remained open - complaints can be submitted online or by post and a telephone mediation service has been operating. Most recently, the WRC published its proposed matrix for service delivery to progress alternative approaches for adjudication complaint processing during COVID-19, which can be accessed [here](#). This indicates that the WRC will deal with complaints by way of telephone mediation, written procedure, virtual hearings and limited face-to-face hearing, mediation and adjudication which will be introduced in accordance with the Government's roadmap (we entered phase 3 of that roadmap on 29 June 2020.) The WRC is writing to parties whose complaints are best suited to being resolved by written procedures and will be seeking their consent to the matters being dealt with in that way. Virtual hearings will proceed using the Webex platform and are anticipated to start in the week commencing 13 July 2020. A limited number of face-to-face hearings will recommence in WRC premises from 20 July 2020 (priority will be given to previously adjourned hearings) and a limited number of face-to-face mediations and adjudications are also expected to commence in late July. Detailed guidelines as to the implementation of each of these processes are set out in the document and further updates are expected.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- Not directly.
- There have, however, been some changes to legislation in other areas such as, for example, landlord / tenant or employment law that will impact on insolvency practitioners, particularly receivers and liquidators, during this emergency period.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- There has been no recent legislative intervention in respect of the reinforcement of contracts and the usual contractual rules apply.
- Due to the disruption caused by the Covid-19 outbreak and the extensive Government restrictions, many businesses, as a precautionary measure, may wish to review their current contracts in order to determine whether they are protected or can avail of some form of relief, in case they are unable to perform their obligations. Such relief may take the form of a force majeure clause within a contract or relying on the doctrine of frustration if the circumstances permit.
- Force majeure clauses are interpreted strictly by the Irish courts, so businesses should evaluate the contents of their clauses in key contracts with their legal advisor in order to ascertain whether they cover the current Covid-19 crisis.
- In the absence of a force majeure clause, parties may wish to consider the doctrine of frustration as a possible form of relief, however, the threshold for frustration is extremely high in Ireland and the scope of events which may trigger the doctrine are extremely narrow. Seeking legal advice is recommended.
- While a force majeure clause or the doctrine of frustration may, in certain circumstances, be relied upon, we would recommend that businesses first discuss potential commercial workarounds with their contracting partners before attempting to rely on any such forms of relief. For more information, please view [here](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

The outbreak of Covid-19 has resulted in the introduction of the Health (Preservation and Protection and Other Emergency Measures in the Public Interest Act) 2020 Act in Ireland which together with other emergency legislation has had a wide ranging effect on Real Estate transactions in Ireland. We consider certain elements below.

- In Ireland many commercial tenants are no longer able to operate, however leases continue and the obligations of tenants remain. Many tenants have requested a temporary adjustment to the rent payable under their leases, including rent holidays or deferment. A commentary on the current position regarding the collaborative approach required and the possibility of tenants extracting themselves from commercial leases is [here](#).
- The main statutory interventions in the context of real estate have been in relation to residential property which arise primarily from the enactment of the Emergency Measures in the Public Interest (Covid-19) Act 2020. A commentary on the current position for Residential Leases and the legislative amendments is [here](#).
- The construction industry has been severely affected and all construction sites, save those associated with the provision of essential services, have been closed since 27 March 2020. The following article reviews the impact and considerations, from the perspective of the construction sector, arising from the Health (Preservation and Protection and Other Emergency Measures in the Public Interest Act) 2020 Act: [Construction contracts – Covid-19 impacts and considerations](#).





## Litigation

Are the courts operating?

The Courts Service has announced that measures are being put in place to extend the range of business which can be conducted either by way of remote hearing or physically in courtrooms. The Supreme Court and Court of Appeal are continuing to operate primarily by way of remote hearing. In the High Court, three courts in the Four Courts complex are available daily for remote hearings and seven other courts are available daily for physical hearings. 8 additional case types have been added to the list of urgent matters, including personal and corporate insolvency matters and the commercial, chancery and non-jury lists. It is not currently possible to hear cases which involve oral testimony in the High Court but a further announcement is expected in the coming week setting out when, where and to what extent such cases may recommence.

The Circuit Court is continuing to deal with urgent matters and civil matters which have been adjourned since March are now being allocated hearing dates subject to the submission of a case management questionnaire. Possession cases continue to be adjourned until October at the earliest due to the Government moratorium. The District Court is dealing with urgent civil matters only. Details of the various announcements can be found [here](#) and further updates are expected.

## Tax

Has any new legislation been introduced in light of Covid-19?

- Irish Revenue have implemented a temporary wage subsidy scheme (“TWSS”) which enables certain employers to retain certain staff while at the same time paying staff nothing or a top-up on the Revenue subsidy paid by the Irish Revenue. The scheme was expected to last 12 weeks from 26 March but has now been extended until 31 August and from 4 May is based on each employee’s normal net weekly pay. Businesses re-opening, who were not previously registered for the scheme, can now apply to join the scheme, provided they meet the eligibility criteria. The wage subsidy is available to support employees where their pre-Covid salary was greater than €76,000, and their post-Covid salary has fallen below €76,000, subject to their net pay not exceeding €960 per week. The subsidy payment is not subject to income tax through payroll but is taxed at year end. As at 18th June 2020, there were over 61,300 employers registered for the TWSS and over 551,800 employees had received at least one payment under the TWSS. The majority of employers registered for the scheme have less than 20 staff enrolled for TWSS and in 87% of cases employers are topping up the employees’ salary.
- SMEs experiencing cash flow and/or trading difficulties can defer payment of March/April and May/June VAT returns (due on 23 May and 23 July, respectively) and April, May and June payroll taxes. Non-SMEs are being encouraged to talk to Revenue with a view to similar deferrals if experiencing similar cash flow issues. All debt enforcement activity in respect of SMEs is suspended until further notice.
- Irish Revenue will warehouse unpaid VAT and payroll taxes arising from the Covid-19 crisis. These tax debts will be parked for 12 months after a business resumes normal trading. A lower interest rate of 3% (normally 10%) will apply on the repayment of such debts after this period. The arrangements will ring-fence the debts for the period during which the business is unable to trade or is trading at significantly reduced levels and includes a 2 month period after the business returns to normal trading levels. No interest or debt enforcement will occur with respect to the warehoused debts. This measure will require new legislation before it can take effect.
- Revenue has suspended tax audit and other compliance intervention activity on taxpayers’ premises until further notice.
- Revenue has indicated that it will continue to prioritise the approval and processing of tax repayments and refunds to taxpayers.

- For income tax purposes, an individual will not be regarded as resident in Ireland where they spend additional days in Ireland due to the pandemic.
- For corporation tax purposes, an individual will not be regarded as resident in or outside of Ireland for a company of which they are an employee, director, service provider or agent where they spend additional days in or outside of Ireland due to the pandemic. See more information [here](#).
- Corporation tax returns for accounting period ending 30 June 2019 onwards (i.e. due by 23 March 2020 onwards) will not be subject to a late filing surcharge until further notice and late filing due to Covid-19 will not result in the usual restriction of reliefs, such as loss and group relief. In addition, various other tax filing deadlines have been extended, in particular in respect of employer returns regarding certain benefits supplied to employees (such as employee share schemes).
- Close companies with accounting periods ending from 30 September 2018 onwards are required to make distributions by 31 March 2020 onwards to avoid a close company surcharge. These companies can apply to extend the 18-month distribution period by 9 months where the company is affected by Covid-19 and needs to retain cash to support the business.
- The reporting deadline for DAC2, CRS and FATCA returns has been extended by 3 months to 30 September 2020 for the 2019 period.
- Irish Revenue have confirmed that Ireland has opted-in to Council Directive 2020/876 to [defer the reporting and exchange of information deadlines under DAC6](#) by 6 months.
- A benefit-in-kind will not arise for employees where employers:
  - provide employees with equipment to allow them to work remotely,
  - reimburse flight or holiday cancellations for employees integral to the business, or
  - supply temporary accommodation to employees to mitigate the risk of transmission of Covid-19.

Due to COVID-19 circumstances, some private healthcare providers may issue a refund of healthcare insurance premiums to an employer/employee and individual policy holders who have personally paid for the policy. The amount taxed as a benefit-in-kind will be reduced to reflect the reduced policy amount.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Irish Government has not put in place any measures which may accommodate social distancing in relation to corporate meetings but have recommended, in their Covid-19 Workplace Protection and Improvement Guide, the use of technology for video/ virtual meetings and limiting the number of meetings including length and proximity of gathering of employees and others. There are, in any event, a number of options already available to Irish companies which will allow them to respect the current social restrictions.
- Under the Companies Act 2014, companies may hold general meetings remotely through the use of any technology provided the members can vote and participate in the meeting. There is a requirement, however, that there must be a physical location specified in the notice of the general meeting and it is usually at this physical location where the quorum of the meeting is formed. Members are also allowed to appoint another person to vote on their behalf as a proxy. The use of these methods is subject to the provisions found in the company's constitution. Some constitutions may expressly forbid their use.
- Irish companies may also delay, postpone or adjourn their general meetings, however it should be noted that Irish law requires a company to hold a general meeting every calendar year and no longer than 15 months may pass between each meeting. Single member companies and private companies limited by shares may also dispense with the need to hold a general meeting by passing a written resolution.
- [Board meetings](#) are also capable of being convened through electronic means or by passing a written resolution.



## Loans and financial support

Has the government put in place any new bank funding schemes?

The Israeli government has declared several support initiatives in an aggregate amount exceeding NIS 100 billion. These support initiatives include government-backed loans, governmental grants to businesses implementing social distancing and innovative communication technologies, deferral of tax payments, and cancellation of municipal and other taxes.

Specifically, the government has allocated up to NIS 22 billion to support loans for businesses by providing funding entities with a guarantee for 60% of any loan amount provided. These monies are provided through the government's already existing fund for supporting small-medium businesses, operated by the Ministry of Finance, and are not time-limited.

The funding scheme is divided into two main routes (with a slight overlap between the two). The first route is designated for small-medium entities (SMEs) whose turnover did not exceed NIS 400 million in the previous year. The second route is designated for large entities (LEs) whose turnover exceeded NIS 200 million in the previous year. Of the NIS 22 billion allocated for support, NIS 4 billion is allocated to high-risk SMEs, who can demonstrate that the COVID-19 pandemic caused a reduction of more than 50% in their turnover during the affected period.

Under the SME route, each SME may request a loan of up to 16% of its previous year's turnover, limited to up to NIS 20 million. Under the LE route, each LE may request a loan of up to 8% of its previous year's turnover, limited to up to NIS 100 million. The loans are provided with attractive interest for a period of up to five years, and each entity is allowed a 12-month grace period on loan repayment. The government further undertook to finance for SMEs any interest due on the loan during the first 12 months.

As a precondition to receipt of the loans, all borrowing entities are required to demonstrate that they experienced cash-flow difficulties due to the COVID-19 pandemic, as well as to provide the financing entities with a deposit equal to 5% of the loan. Furthermore, for SMEs requesting funding, any holder of 5% or more of the capital of such SME is required to provide a personal guarantee for the entire loan amount. As for LEs, all their shareholders

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

Encouragement Grant Law, 2020 was passed, enabling employers who recruited or returned to work a "qualifying employee" to be eligible for a grant. A grant of NIS 3,500 will be paid (in monthly installments of NIS 875) if the "qualifying employee" returned to work or was recruited before June 1, 2020. A grant of NIS 7,500 will be paid (in monthly installments of NIS 1,875) if the "qualifying employee" returned to work or was recruited after June 1, 2020.

A "qualifying employee" is an Israeli resident whose monthly salary is at least NIS 3,300 and to whom one of the following applies:

- he/she is between 18 years old and 67 years old,
- one of the following applies:
  - he/she was discharged to unpaid leave between March 1, 2020, and April 30, 2020, or was on parental leave during the aforementioned period, or
  - he/she was eligible for an adjustment grant or income security benefit or unemployment benefit for May 2020.

## 3

**Insolvency**

Has the government made any changes to insolvency legislation?

Israel's insolvency legislation has not changed during the COVID-19 pandemic. However, during the month of April 2020, the Israeli Ministry of Justice introduced a draft bill for new regulations, allowing a company additional time to reach an agreement with its creditors. Under the proposed new regulations, courts will have the option to order a stay of proceedings for a period of up to three months for a company experiencing difficulties, prior to declaring such company insolvent. This three-month period will allow the company to reach an agreement with its creditors, while simultaneously prohibiting the withdrawal of funds and assets from the company. However, the new regulations have yet to be adopted, and it is unclear if and when they will be.

Furthermore, additional reliefs were introduced during this period, such as a reduction of the monthly payments due by debtors under receivership and temporary exemptions from these payment obligations. However, all such reliefs were provided on a case-by-case basis, and not as a change to legislation.

## 4

**Contractual Issues**

What measures have been taken to reinforce contracts?

The Israeli government has not implemented any specific measures to reinforce contracts. In Israel, the "freedom of contract" principle is very dominant. Thus, any enforcement of contracts is considered a commercial issue between the parties.

While the force majeure principle exists under Israeli contract law, it has been greatly minimized by the courts, and is even deemed by some as a dead letter. This principle is thus rarely enforced. That said, parties are free to agree on any force majeure provisions between themselves. The courts have not yet been required to examine if the COVID-19 pandemic should be deemed a force majeure event, nor if the pandemic should allow for the termination or enforcement of contracts.

## 5

**Property**

Have any changes been made to the laws around property, rent and enforcement?

An inter-ministerial committee has been set up to examine the impact of the COVID-19 pandemic on general contract law. In particular, the committee will consider if the pandemic constitutes a force majeure event that justifies the breach or cancellation of a contract by one party without the payment of compensation to the other. In due course, the laws relevant to property and rent may be amended according to the conclusions and recommendations of the committee.

In addition, according to the Israeli Rent Law, tenants are exempt from rent payment, provided their premises cannot be used. Nevertheless, these provisions are not mandatory for non-residential lease agreements. Many rental agreements for premises serving retail or leisure purposes (which were completely closed due to government orders) do not apply the Rent Law. Accordingly, such tenants are not entitled to relief.

## 6

**Litigation**

Are the courts operating?

On March 15, 2020, the Minister of Justice (MOJ) signed and issued emergency orders affecting most civil and criminal procedures in Israeli courts. Pursuant to these emergency orders, most hearings in civil cases were halted, except for special cases such as hearings re motions for temporary and interim remedies.

Moreover, the submission of court papers was also postponed, except if a contradicting and overruling decision in a specific case was handed down by the relevant court or if a specific date was given to submit such court papers.

Most of the limitations imposed by the MOJ's emergency orders were lifted on May 10, 2020, thus resuming any submissions halted due to these emergency orders and allowing most procedural matters to return to normal, including the holding of court hearings.

## Tax

Has any new legislation been introduced in light of Covid-19?

Temporary emergency regulations were published to provide extensions for certain tax-related deadlines as a relief measure due to the COVID-19 pandemic. These include:

- Extensions of the deadlines for reporting and payment of VAT for the months January, February, March, and April 2020, with respect to dealers reporting on a monthly and bi-monthly basis, and automatic cancellation of fines imposed on late reporting (up to five days late),
- Extensions of the deadlines for filing 2018 and 2019 income tax returns for both individuals and corporations,
- Extensions of the validity of 2019 withholding tax certificates, and
- Extensions of the validity of 2019 tax coordination certificates.

In addition, the period between March 22, 2020, and May 31, 2020, shall not be counted as calendar days when determining the tax-related deadlines detailed under certain sections of various Israeli tax laws, such as the Israeli Income Tax Ordinance, the Israeli Value Added Tax Law, the Israeli Real Estate Taxation Law, etc.

Monetary grants not subject to VAT were also provided to businesses hurt by the COVID-19 pandemic. The grants were doled out in three rounds:

**Round #1** – This grant is for self-employed individuals with at least a 25% decrease in revenues during March-April 2020 compared to those months in 2019, subject to certain additional conditions. The grant amount is up to NIS 6,000, and the application for the grant must be submitted by no later than July 1, 2020.

**Round #2** – This grant is for self-employed individuals and salaried business owners with at least a 25% decrease in revenues during March-June 2020 compared to those months in 2019, subject to certain additional conditions. The grant amount is up to NIS 10,500, and the application for the grant must be submitted by no later than July 12, 2020.

**Round #3** – This grant is for self-employed individuals and corporations for help with fixed expenses and is granted to businesses with an annual turnover of up to NIS 20 million and whose profits were affected by COVID-19 (at least a 25% decrease in revenues during March-April 2020). The grant amount is up to NIS 400,000, and the application for the grant must be submitted by no later than August 10, 2020.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

Other than for certain regulatory documents, Israeli law makes no requirements for documents to be signed or submitted in person, and most documents may be executed electronically or by scanned version.

The Israeli Companies Law does not require any corporate meetings to be held in person, and unless specifically noted otherwise in a company's bylaws, all such meetings may be held remotely by means of telecommunication, provided all participants are able to speak and hear one another in parallel.

Furthermore, all regulatory authorities (such as the Israeli Registrar of Companies) have made efforts to accommodate social distancing, by allowing companies and entities to submit reports and documents through the internet or by email. An additional temporary relief includes the ability to verify the signatures of individuals located in Israel remotely by means of telecommunication, instead of in face-to-face meetings.

## Loans and financial support

Has the government put in place any new bank funding schemes?

Financial assistance is available under several schemes that have been introduced in Italy, such as the below.

- **Central SME Guarantee Fund (“CSGF”):** the SME guarantee scheme, already existing prior to the Covid-19 outbreak, has been expanded - until 31 December 2020 - by the Italian Government. The guarantees will now be issued free of charge and not subject to any credit risk assessment and the maximum guarantee per SME will be increased to €5 million. The guarantee percentage shall be equal to the 90% of the loan (100% in case of loans up to €30k). The maximum duration of the financing is six years (ten years in case of loans up to €30k, with a pre-amortization period of at least 24 months). Such scheme is available to SMEs with fewer than 250 employees and annual turnover below €50 million or an annual balance sheet of up to €43 million. SMEs with “unlikely to pay” debt exposures or “in difficulty” cannot benefit from this scheme. Available to mid cap with up to 499 employees. The guarantee may also be issued on transactions already executed. However, this possibility only applies if the loan has been disbursed no more than 3 months before the application to the Guarantee Fund and, in any case, no earlier than 31 January 2020.
- **Support by way of Guarantee by SACE S.p.A. (“SACE”):** the Italian Government has introduced the possibility for SACE to grant guarantees over new financing granted by banks, financial intermediaries and any other authorised financial entities to Italian companies negatively affected by the COVID-19 outbreak (the “SACE Guarantee”). The total commitment of SACE in relation to the SACE Guarantee will be equal to a maximum amount of €200,000,000,000 (of which, at least €30,000,000,000 is allocated to support SMEs (including self-employed persons and VAT-registered professionals as well as to professional associations and/or professional organisations (*associazioni professionali e alle società tra professionisti*)) provided they have already made full use of the CSGF). The obligations of SACE arising from the granting of the SACE Guarantee are counter-guaranteed by the Italian State. Such scheme is available in relation to financings, granted to companies only after the entry into force of the Law Decree No. 23/2020:
  - i. with maturity no longer than 6 (six) years (with the possibility to set a pre-amortisation period of up to 36 (thirty-six) months).
  - ii. which do not exceed the higher of (a) 25% of the turnover (fatturato) made by the relevant company during the financial year 2019, as resulting from the relevant approved financial statements or tax declaration and (b) twice as much as the relevant personnel costs (costi del personale) incurred during the financial year 2019. In case the same company (or another company belonging to the same group) has already received other financings secured by the SACE Guarantee (or other public guarantee) (the “Additional Financings”), the amount of such Additional Financings shall be taken into account for the purposes of the calculation of the abovementioned maximum threshold.
  - iii. whose proceeds will be applied to cover (a) personnel costs (costi del personale), (b) investments or (c) working capital, employed in manufacturing facilities (stabilimenti produttivi) and business activities (attività imprenditoriali) which are located in Italy.
- Companies which benefit from the SACE Guarantee (and any other company of the relevant group, if any) cannot (i) distribute any dividends and/or (ii) repurchase their shares for the 12 months following the granting of the relevant financing (in case the payment of the dividends or the performance of share buyback has already occurred as at the date of request of the financing, such restriction will apply in relation to the 12 months following the abovementioned request). Such companies benefit from the SACE guarantee also in the context of assignment of receivables *pro solvendo* to banks, financial intermediaries and any other authorized financial entities made after 7 June 2020.

For the avoidance of doubt, the SACE's guarantee is not available to companies which directly or indirectly control (or are controlled by), pursuant to Article 2359 of the Italian Civil Code, a company resident in a country or territory that is not cooperative for tax purposes (as identified in the conclusions of the Council of European Union dated 18 February 2020). Companies with "deteriorated" debt exposures, or "in difficulty" cannot benefit from this scheme.

- **Loan repayment suspension:** SMEs may postpone payment of principal and interest on any loans. Revocable credit lines and factoring facilities cannot be revoked until 30 September 20 if the SME sends relevant notice to creditors. As to the applicability criteria, the same criteria as per the CSGF paragraph above will apply.

## Employment

The Italian Government introduced the following schemes to support businesses:

What financial support is the government providing to businesses and to individuals on employment issues?

- **A. Social programs:** if an employer must suspend employees from work since the business activity has been suspended or reduced due to the Covid-19 emergency, it can apply for the following social funds (wage subsidy schemes):
  1. Cassa Integrazione Guadagni Ordinaria (CIGO): available to industrial companies staffed with more than 15 employees.
  2. Fondo d'Integrazione Salariale (FIS): available to non-industrial employers enrolled with FIS that are staffed, as an average, with more than 5 employees.
  3. Cassa Integrazione Guadagni in deroga (CIGD): available to all businesses, even very small ones, that are not covered by CIGO/FIS. It is managed at a Regional level and so each Region has its own procedure and bureaucracy.

Under the above schemes, which normally imply a consultation with the Trade Unions before being implemented, employees who are suspended from work receive an allowance from the social security authority ("INPS") equal to 80% of the lost salary with a cap of €1,129 net per month. These schemes can be used only in favour of employees who were already in force on 25 March 2020 and cover an overall period of 18 weeks (14 of which can be used until 31 August, while the further 4 can be used until 31 October 2020).

In parallel, the Italian Government introduced a temporary firing ban from 17 March until 17 August 2020 it is not possible to make employees redundant either on a collective or an individual basis (some categories are excluded, such as executives or domestic employees).

Based on the above, for those employers that started using social plans since the beginning, i.e. on 23 February, the 18 weeks covered by social plans will expire before the end of the firing ban and this clearly leaves the door open to a series of rather complex implications.

By the way, based on the most recent updates it seems that the Italian Government is considering to extend the firing ban as well as the social programs.



- **B. Deferred payment of social security contributions:**

1. The payment of social security contributions due in April and May 2020 was suspended for (i) companies that incurred at least a 33% monthly turnover reduction if their yearly turnover is up to €50 million; (ii) companies that incurred at least a 50% monthly turnover reduction if their yearly turnover is over €50 million. In both cases the reduction refers to the months of March and April 2020 compared to the same months of FY 2019.

2. The payment of social security contributions was also suspended until 30 April for companies operating in business sectors severely affected by Covid-19 (such as sports, art, culture, tourism, transport, education, entertainment and catering).

The new deadline for all suspended payments is 16 September 2020 (or in 4 instalments to be paid starting from 16 September 2020).

- **C. Review of working time by collective agreement:** company-level or local collective agreements entered into with the Trade Unions may define patterns for the re-modulation of working time (a part of which is to be dedicated to training courses). A special fund called “New Skills Fund” will bear the cost for training hours (this measure needs to be implemented by a ministerial decree).
- **D. Funds for the safeguard of occupation:** a specific new fund with an endowment of €100 million for 2020 has been established in order to support the rescue and restructuring of, among others, companies with at least 250 employees that are in economic and financial difficulty.
- **E. Fixed-term employment contracts:** the existing fixed-term employment contracts can be renewed or extended until 30 August 2020, even without the specific reasons (“causale”) that are generally required by law. Based on a reasonable interpretation of the provision, the same exemption should apply also to existing fixed-term staff-leasing contracts.
- **F. Other wage subsidies:** regions, other territorial authorities and Chambers of Commerce may adopt aid measures, using their own resources, in order to contribute to the salary and social security costs incurred by companies to avoid redundancies during the COVID-19 pandemic. This subsidy may be granted for a maximum of 12 months and up to 80% of the gross monthly salary (including the social security contributions) and only if the staff benefiting from it continues to work throughout the period for which the aid is granted.

It remains to be seen whether the regions and other entities will actually offer such measures, given the likely unavailability of resources.

The Italian Government also introduced the following new and exceptional schemes **to support individuals:**

- **Bonus for on-site employees:** a non-taxable salary increase of €100 pro-rated was granted for the month of March to employees who worked on site and not at home (and if his/her annual income does not exceed €40,000 gross).
- **Paid Parental leave:** an extraordinary leave of 30 days (in the overall), **to be used in the period between 5 March and 31 July 2020**, is made available to parents of children under 12 (without age limits for disabled children), only if the other parent is not unemployed or suspended under a social program. The leave is paid by INPS with an allowance equal to 50% of the salary. As an alternative, parents may request a voucher of €1,200 for baby-sitting services (**to be used also for summer centres/child care services**) that can be used for services until **31 July 2020**.

- **Unpaid Parental leave:** an unpaid leave is made available to parents of children aged under 16 for the period of school closure that can be used by one parent (only if the other parent is not unemployed or suspended under a social program).
- **Remote Working:** in general, the Italian Government recommends maximizing the use of home work which until 31 July 2020 can be implemented without entering into individual agreements which are otherwise required by law. Also other bureaucratic steps have been lightened (including in terms of health and safety information obligations). Parents with children under 14 are entitled to work remotely until 31 July 2020, if their tasks can be reasonably carried out from home and only if the other parent is not unemployed or at home because suspended under a social plan. The same right is provided in favour of disabled employees, their cares or employees with immune-depressive diseases or their cares. Also, employees with reduced working capacity have priority in accessing remote working.
- **Additional leave for disabled people:** the ordinary leave granted to people with serious disabilities or employees who take care of people with serious disabilities (Law no. 104/92) has been increased by 12 days in March and April 2020 **and by further 12 days in May and June** (to be added to the ordinary 3 per month **and therefore for a total of 18 days in March and April and other 18 days in May and June**). The leave is paid by INPS (without salary reduction).
- **Employees affected by Covid-19 or quarantined:** in both cases employees must be considered on sick leave. If Covid-19 has been contracted on the workplace, the periods of quarantine and self-isolation are considered leaves due to accident at work and thus indemnified by the competent public insurance authority (INAIL).
- **Vulnerable Employees:** until 31 July 2020, disabled employees or employees affected by serious diseases have the right to be absent from work and this absence is treated as hospitalization and so this period of absence will be indemnified as sick leave.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Italian Government has adopted – among others – the following measures:

- the inadmissibility of petitions for bankruptcy and for insolvency of large companies filed from 9 March 2020 until 30 June 2020,
- the extension of the deadlines for performing/fulfilling composition with creditors plans and debt restructuring agreements already validated by the competent Courts, if expiring between 23 February 2020 and 31 December 2021,
- the possibility to file a new composition with creditors plan/debt restructuring agreement before the validation hearing or to request an extension of the term for the filing of the composition with creditors plan/debt restructuring agreement (if not filed yet),
- the postponement of the entry into force of the new Code of Crisis and Insolvency from 1 September 2021, and
- the disapplication until 31 December 2020, under certain conditions, of the provisions that require: either the reinstatement of the registered capital, when it has been reduced by more than 1/3rd as a consequence of losses, or the winding up of the company.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

Under a general provision, any action taken to ensure compliance with the measures adopted by the Italian Government to contain Covid-19 emergency should be taken into account for the purposes of excluding debtor's liability – pursuant to the Italian Civil Code – for delayed or omitted performance, also in relation to the application of any related forfeiture terms or penalties.

Besides the above, all contractual remedies provided for under Italian civil law shall apply.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

A tax credit equal to 60% of the rents due in March, April and May 2020 is granted to tenants of shops and similar properties falling within the C/1 properties category. Such tax credit can be used to offset future liabilities and cannot be claimed for refund.

The statute of limitations for natural persons willing to enjoy the “first home” registration tax regime is suspended between 23 February and 31 December 2020.

Enforcement of the measures issued by the competent Courts for the release of properties, including those for non-residential use, is suspended until 1 September 2020 while garnishments proceedings over “first home” properties are suspended until 30 October 2020.

Further, with reference gyms, swimming pools and sports facilities lease agreements, the sport activities suspension set forth during the emergency shall be assessed as factor of “unbalance” between the interests under the agreement, so triggering the relevant remedies provided for under the Italian Civil Code (such as fee reduction).

## 6

## Litigation

Are the courts operating?

During the period 9 March 2020 – 11 May 2020 the Italian Government provided for:

- (i) automatic rescheduling of all civil Court hearings scheduled in the reference period to a date after 11 May 2020 by operation of law,
- (ii) stay of all procedural deadlines in all civil proceedings, and
- (iii) stay of all procedural deadlines in mediation proceedings and in assisted negotiation procedures (jointly, the “**Urgent Measures**”).

The Urgent Measures shall not apply, inter alia, to certain proceedings which, therefore, shall not be rescheduled or stayed, among which:

- (a) interim proceedings regarding fundamental human rights,
- (b) proceedings for the suspension of the provisional enforceability of Court judgments/orders, and
- (c) any proceedings where delay could cause a serious detriment to the parties.

The urgent handling of proceedings under letter (c) above shall be decided by order of the President of the Court or to the Judge in charge of the case.

Hearings in proceedings to be handled with urgency shall be held via videoconference or in writing (e.g. through exchange of written briefs) only, with the sole exception of hearing requiring the attendance of third parties other than parties’ representatives or counsel, where in person hearing shall take place with the implementation of health safety measures (e.g. use of PPEs) to ensure the protection of the individuals attending the hearing.

Starting from 12 May 2020 Courts have restarted the ordinary work. During the period 12 May 2020 – 31 July 2020, special provisions shall apply for the management and rescheduling of hearings in order to ensure a smooth reorganization of the Courts cases workload. All Court Presidents have already issued the relevant Court orders implementing the organization measures that, in brief, provide for: the avoidance of a bulk rescheduling of hearings if at all possible, a strict planning of hearings during the days in order to ensure the orderly attendance to hearing rooms and the avoidance of any overlap between hearings, the implementation of virtual hearings and written hearings as much as possible, the need for all individuals attending hearings in person to wear PPE.

## Tax

Has any new legislation been introduced in light of Covid-19?

- **Tax payment deferral:** Payments of VAT, payroll withholding taxes and social security and compulsory insurance contributions due in March 2020 are suspended for companies (i) operating in sectors most affected by Covid-19, or (ii) not exceeding certain turnover thresholds, or (iii) operating in areas most affected by Covid-19. Suspended payments may be executed in one payment by 16 September 2020, or in four instalments from 16 September 2020 onwards.
- **Tax payment deferral:** Payment of VAT, payroll withholding taxes, and social security and compulsory insurance contributions due in April and May 2020 are suspended for companies that (i) incurred, respectively, a 33% or 50% reduction in monthly turnover in March and April 2020 compared with March and April 2019, taking into account an annual turnover up to or exceeding €50 million, or (ii) are active in sectors most affected by Covid-19, or (iii) started their activity after 31 March 2019. Suspended payments may be executed in one payment by 16 September 2020, or in four instalments from 16 September 2020 onwards.
- **Tax credit for COVID-19 related adaptation of work environment:** A tax credit for 60% of expenses (i) relating to the sanitation of offices and purchase of individual protection devices and (ii) for adapting work environments to tackle the spread of the COVID-19 pandemic up to a maximum of €60,000 (or € 80,000, depending on the beneficiary) is granted. The overall available benefit budget is capped at €200 million for 2020. The tax credit can be used to set off tax liabilities or can be assigned to third-parties.
- **Tax credit for rental fees:** A tax credit equal to 60% of monthly rental fees paid in March, April and May 2020 is granted to enterprises and self-employed workers in connection with rental of real estate assets. This tax credit is available subject to the following conditions: (i) the taxpayer had a total turnover in 2019 not higher than €5 million, (ii) the taxpayer suffered a turnover reduction of at least 50% compared to the relevant months in 2019, (iii) such monthly fees have been fully paid in 2020. This tax credit is limited to 30% if the real estate is available by means of a going concern lease agreement or similar mixed contracts. The tax credit can be used to set off tax liabilities or can be assigned to third-parties.
- **Conversion in Tax Credits of Deferred Tax Assets (DTA):** Upon transfer of non-performing receivables carried out until 31 December 2020, companies can opt for the conversion in tax credits of DTAs generated by tax losses and surplus of notional interest deduction. The conversion applies for an amount equal to 20% of the nominal value of the transferred receivables. A 1.5% annual fee shall apply, until 2030, on the difference between converted DTAs and corporate income tax due for the previous tax year.
- **Revaluation of real estate assets for hotelier activities:** taxpayers that carry out hotelier activities can step-up to the fair market value the tax costs of real estate assets used in their business activity. No substitutive tax is due. This measure allows to minimize the taxable capital gain upon disposal of the above assets.
- **IRAP payments:** the balance for the regional tax on productive activities (so-called "IRAP") for 2019 and the IRAP advance payment for 2020 (equal to 40% of total IRAP due for 2019) are no longer due under certain conditions, while the IRAP advance payments for 2019 remain due. Both the above cuts on IRAP payments are definitive, thus entailing a reduced tax burden on taxpayers in respect of IRAP for tax year 2020. The benefit applies to taxpayers (other than banks, other financial institutions and insurance companies) with total revenues not exceeding €250 million in the last tax year.

- Tax credit for capital increase of medium-size enterprises:** Taxpayers can benefit from a tax credit equal to 20% of any capital increase (up to €2 million) in certain qualified Italian-based companies. In addition to the above, the qualifying Italian-based companies increasing their capital are also themselves entitled to a tax credit (up to a maximum of 30% of the capital increase) equal to 50% of the net operating losses exceeding 10% of their net equity. The total amount of benefits is capped to overall €800,000 per company. The tax credit applies subject to the following conditions: (i) the capital increase is resolved and fully paid between 20 May 2020 and 31 December 2020, (ii) the companies resolving the capital increase had, in 2019, a turnover between €5 million and €50 million (on a group consolidated basis) and suffered a turnover reduction during March and April 2020 of at least 33% compared to the same months of 2019 (on a group consolidated basis). A recapture mechanism will apply if, before January 2024, one of the following cases occurs: (i) transfer of the shares or quotas received upon the capital increase, (ii) distribution of reserves. The implementation of this provision is subject to the authorization of the European Commission.
  - Tax allowance for investment in innovative start-ups:** Individuals investing in one or more innovative start-ups or in innovative small-medium enterprises starting from 19 May 2020 can benefit from an allowance for personal income tax (so-called "IRPEF") purposes equal to 50% of the investment made. This benefit is capped at €100,000 for each tax year. The investment is subject to a lock-up period of 3 years (otherwise a recapture mechanism will apply).
  - Tax allowance for qualified renovation works:** Individuals can set off in 5 yearly instalments an amount equal to 110% of certain qualified renovation expenses (aimed at either increasing the energy efficiency, reducing the seismic risk, installing photovoltaic systems or devices for charging electric vehicles) incurred between 1 July 2020 and 31 December 2021. The tax benefit can be used for either: (i) a discount by the service provider on the agreed fee for the relevant work, since the service provider will be entitled to enjoy a tax credit corresponding to the discount made or to assign for consideration such credit to third parties, or (ii) the conversion of the tax allowance into a tax credit, which could be either enjoyed or assigned for consideration to third parties, including banks and financial intermediaries. The assignees of the tax credit can use the relevant tax benefit to set it off against their own tax liabilities (in the same residual yearly instalments available to the taxpayer prior to the transfer or assignment). Any yearly deductible instalment not used to set off tax liabilities cannot be carried forward or claimed for refund. The benefit is capped to €30,000 or to €60,000 per residential unit, depending on the type of works.
  - Tax incentive for donations against Covid-19:** A 30% deduction from income tax due is granted, up to an amount of €30,000, for donations in cash or in kind, by natural persons or non-commercial entities, to finance measures to contain and manage the COVID-19 emergency. The same kind of donations made by companies are fully deductible for corporate income tax purposes.
- All companies are allowed to hold shareholders meetings by means of telecommunication – even in case their by-laws do not set forth specific provisions for such purpose – provided that identification of participants, their attendance and voting rights are guaranteed.

The requirement under which the chairman and the secretary of the meeting shall be in the same location – even when expressly provided for in the company by-laws – is also derogated.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?



## Loans and financial support

Has the government put in place any new bank funding schemes?

- The Japanese government declared a State of Emergency on 7 April and the same day the Financial Services Agency (the “FSA”), Japan’s financial service regulatory authority, requested financial institutions to support borrowers’ cash-flow by:
  - i. actively providing new loans, and promptly and flexibly rescheduling repayment terms of existing loans in light of changes to borrowers’ ability to repay,
  - ii. cooperating with public credit guarantee associations (funded by local governments) to provide loans with zero interest and no collateral,
  - iii. not automatically triggering acceleration of repayments when borrowers cannot comply with financial covenants but instead promptly and sincerely discussing relaxation of covenants if the borrower requests,
  - iv. closely cooperating with the Japan Finance Corporation (the “JFC”), a public financial institution wholly owned by the Japanese government,
  - v. promptly and flexibly changing repayment terms of residential loans or loans for individual borrowers, or guarantees for either of them, and
  - vi. not recording borrowers’ delinquency information with credit information institutions when any default is due to the impact of Covid-19.
- Regarding (ii) and (iv) above, the necessary government funding to public credit guarantee associations through local governments and to the JFC was included in the Emergency Economic Stimulus Package approved by the Cabinet on 7 April and in a budget passed by the Diet on 30 April.
- On 16 April the FSA requested financial institutions to be flexible and not immediately trigger the suspension of transactions when borrowers fail to pay checks or promissory notes.
- On 17 April the FSA announced that it will delay raising the minimum leverage ratio requirement for banks whilst also disregarding banks’ deposits with the central bank from the calculation of gross assets as the denominator for calculating a leverage ratio, thus making it easier for banks to provide new loans or reschedule repayment terms for borrowers impacted by Covid-19.
- JFC has launched a programme of lending with no interest for the initial 3 years for borrowers whose sales declined by 5% from the same period in either of the two immediately preceding years but who are still hopeful their business will recover in the mid or long term.
- Regarding (iv) above, on 21 April the FSA explained to private sector financial institutions that the JFC will actively assume exposures to bridge loans provided by them to borrowers for dealing with the impact of the Coronavirus pandemic, and requested them to provide bridge loans to such borrowers with the anticipation that the loan exposures can be assumed by the JFC.
- Regarding (ii) above, on 27 April the FSA urged private sector financial institutions to provide “zero interest, no collateral and no guarantee fee” financing with guarantees by public credit guarantee institutions to borrowers as promptly and flexibly as possible, with zero interest etc periods of up to 5 years, as one-stop-shops to process all necessary procedures with borrowers, including the guarantee application procedures.

On 8 May the FSA addressed the issue of property tenant SMEs and individuals facing difficulties in paying rents and property related- business operators (e.g., hotels and other accommodation service providers, leisure facility businesses, owners of buildings for rent, etc.) facing cash-flow problems due to a decline in their incomes, by:

- a) **requesting lender financial institutions** to support the cash-flow of borrowers who are such tenants or property related-business operators by:
  - promptly and flexibly implementing new or bridge loans, reducing principal and/or interest payments or rescheduling repayment terms of existing loans,
  - ensuring such implementation above especially where the borrowers are landlords who have granted their tenants rent reductions or rescheduled rent payment terms, and
  - considering not charging fees or penalties for changing terms of existing loans.
- b) **requesting managers of REITs** (real estate investment trusts and investment corporations) to take flexible measures such as rent reductions or rescheduling rent payment terms with tenants of properties under their management.

On 16 March the FSA relaxed the maximum lending limit per borrower under the Money Lending Business Act.

On 27 May the FSA addressed the importance of private sector financial institutions' loans (other than those guaranteed by public credit guarantee associations) for supporting borrowers' cash-flow, requesting lenders to make utmost efforts to further ensure prompt and proper support measures for borrowers, such as deferment of principal payments or relaxation of other loan conditions and provision of new loans. The FSA also published the following matters to note:

- (i) If a financial institution had evaluated a borrower as being financially sound before the pandemic, and the borrower is now facing a deterioration of business conditions due to the pandemic, and the financial institution has now nevertheless decided to maintain the evaluation as before in consideration of the likelihood of their post-corona recovery and effects of the emergency economic package, the FSA will respect such decisions made by the financial institution.
- (ii) The FSA and Local Finance Bureaus will monitor the balances of private financial institutions' loans (other than those guaranteed by public credit guarantee associations) and conduct hearings concerning the status of their support of borrowers' cash-flow to check whether loan balances are decreasing or not.
- (iii) Active use of borrowings recognisable as capital (borrowed money that is deemed to have the nature of capital through the evaluation of borrowers and that can be treated as capital) is recommended and the FSA will clarify this in its Guidelines for Supervision.

Regarding (v) above, on 27 May the FSA requested financial institutions to support borrowers by:

- (i) Actively offering support to customers by deferring principal payments for a sufficient period of time or otherwise modifying loan conditions promptly depending on customers' needs, and refraining from charging fees for modification of loan conditions;
- (ii) putting in place telephone services dedicated for home loans or establishing consultation offices both to be available even on holidays and to disseminate information on such services broadly to help customers use them more easily;
- (iii) responding to customers' concerns on other personal loans and flexibly modify loan conditions based on customers' needs.



On 10 June the FSA requested financial institutions to support borrowers by:

- (i) Responding appropriately to requests from borrowers as those who have already been provided with loans may want additional loans due to the prolonged impact of Covid-19,
- (ii) promptly and actively providing support having regard to the situation of borrowers, including provision of funds as required until other government-funded support become available to them, and
- (iii) not judging whether to support borrowers only based on pro forma checkpoints, such as financial deficits, excess liabilities or downgrading borrower categorisation, but instead giving utmost consideration to the real situation of the borrowers.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Japan currently has an “Employment Adjustment Subsidy” system; this system has been revised by the Japanese government to help businesses suffering as a result of Covid-19. The system is designed to help employers avoid termination by covering part of their employees’ salaries (up to a maximum of JPY15,000 per employee per day and a maximum of 100 days in any 12 months (but disregarding days in the period 1st April to 30th September 2020 if the subsidy was requested in that period)) during the period the employees are furloughed.

Further, for small/medium sized company (SME):

- i. The subsidy will cover 100% of the amount paid by employers to their employees for their leave allowance (which is 60% of their salary) required by law, and
- ii. if employers voluntarily paid a leave allowance of more than 60% of their employees' salary, the subsidy will cover 100% of such amount paid by employer.

Application for the subsidy is made to the competent Prefectural Labour Bureau or Employment Service Center; it can also be done online application.

For a summary of issues on employment in the context Covid-19, please visit our website [here](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- As of 25 June 2020, the government has not made any changes to insolvency legislation.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

#### Execution of Contracts

- It is common in Japan for companies to execute contracts by signing and/or affixing a company stamp on paper documents. In many cases, even before Covid-19, contract parties sometimes (i) executed agreements separately and then exchanged PDF copies on the contract date, and then (ii) sent the originals to be combined as a single agreement. This approach is legally effective and would be helpful in the Covid-19 situation.
- An electronic contract with electronic signatures without any paper-based documents is also permitted under Japanese law, save for exceptions, such as individual guarantees for a third-party business. The Covid-19 pandemic should encourage the greater use of electronic contracts by Japanese companies.
- On 19 June 2020, the government issued a Q&A about contracts without a stamp on paper documents, which suggests that certain approaches including (i) keeping email exchange records, (ii) keeping a counterparty's KYC information (if it is a new counterparty) and (iii) using electronic signatures or electronic authorisation services would be helpful as evidence of the execution of contracts.

#### Force Majeure

- For a summary of issues on force majeure and frustration in the context Covid-19, please visit our website [here](#).

#### Subcontractors

- On 10 March 2020, the Ministry of Economy, Trade and Industry (“**METI**”) announced it had requested companies to take special care in transactions with mid- or small-size subcontractors (see more [here](#)), including (i) refraining from actions delaying supplies to them, (ii) bearing appropriate increased costs derived from price increases in raw materials and/or extra work of subcontractors, (iii) making payments on their due date, and (iv) refraining from cancelling or changing purchase orders.
- The Antimonopoly Act and Subcontractors Act also prohibit certain unfair trade practices and would still apply anyhow.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- As of 25 June 2020, there have been no changes to the laws that legally allow tenants to defer rent payments. On 31 March, the Ministry of Land, Infrastructure, Transport and Tourism (“**MLIT**”) requested landlords for commercial rents to accept a deferral of rent payments by tenants who have difficulty paying rent due to the Covid-19 situation. On 17 April, the MLIT also announced that it would extend a one-year grace period for the payment of taxes and social insurance contributions by building owners for commercial rents who agreed to defer or cancel rent payments.



## Litigation

Are the courts operating?

- Following the declaration of a state of emergency on 7 April 2020, some courts temporarily limited the scope of the services they provide.
- However, as the state of emergency was lifted on 25 May 2020, some courts, including the Tokyo District Court, have decided to resume some of their operations by taking proper measures to prevent the spread of infection, such as social distancing and the wearing of masks.



## Tax

Has any new legislation been introduced in light of Covid-19?

New tax legislation in relation to Covid-19 has been introduced, which includes the following tax measures.

- One year grace period for payment of national and local taxes, and social insurance premiums by business operators whose revenues during any period of 1 month or longer commencing after 1 February 2020 have decreased by approximately 20% or more from the same period of the previous year.
- A tax refund system may be applied to firms capitalized at over 100 million yen but below 1 billion yen through tax loss carrybacks.
- Tax regime for capital investment for teleworking.
- Donation deductions apply to spectators, etc. who give up the right to claim a refund from organizers who cancel an event based on the government's request for self-restraint.

Stamp tax shall be exempted for future special loan contracts made by financial institutions to business operators whose business operations have been affected by Covid-19.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

### General Meetings

- On 26 February 2020, METI issued a [guideline for hybrid virtual general meetings](#).
- Although the guideline did not originally target the Covid-19 pandemic, it is attracting attention from companies seeking to accommodate social distancing for the peak season for annual general meetings in the coming June.
- It is impossible under the Corporate Code to conduct a purely virtual general meeting. However, the following measures can be taken for social distancing:
  - encourage shareholders not to attend the general meeting but to vote in advance (by a voting paper or online),
  - limit the number of attending shareholders, require pre-registration to attend, and reject attendance by shareholders with symptoms of Covid-19, and
  - hold a hybrid virtual general meeting (i.e., a real meeting with online streaming) pursuant to the METI guideline in order to allow remote attendees to participate in the meeting.

### Board Meetings

- The Corporate Code doesn't require a company to hold a physical board meeting; an online meeting and/or a resolution in writing are commonly used by Japanese companies.

### Remote Working

- The Japanese government has been encouraging remote working in light of Covid-19 and it has rapidly developed across the country. There are subsidies for business operators who will introduce or have introduced a remote working system, especially for mid- or small-size businesses.

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

- Jersey has introduced a GBP 50 million business disruption loan guarantee scheme. The Jersey government will guarantee 80% of loans granted under the scheme. Businesses can borrow between GBP 5,000 and GBP 500,000.
- Certain eligibility criteria must be satisfied. This includes the business meeting the viability test, the business engaging in a commercial activity in Jersey which will be the subject of the loan, normal lending must not be available to the business and the business's annual turnover must not be more than GBP 10 million.
- Certain business sectors are excluded from the scheme. These include financial or professional services, real estate, property development, utility companies, agriculture and fishing.
- More detailed information on the scheme is available [here](#).

## 2 Employment Support to businesses

What financial support is the government providing to businesses and to individuals on employment issues?

- The Government of Jersey has launched the Government Co-Funded Payroll Scheme, which will refund businesses adversely impacted by the Covid-19 pandemic a proportion of their wage bill. This will cover weekly wages up to the value of GBP 200 per employee. A business must show they have suffered at least 30% loss in turnover to be eligible.
- Mourant has outlined some [key questions for employers to consider during the Covid-19 pandemic](#) [Employment update as at 25 March 2020](#)

### Support to individuals

- A Covid Related Emergency Support Scheme has been set up for workers who have lost their jobs due to Covid-19. This scheme is targeted at workers who have not gained their five year residency, as this group would ordinarily not be able to access the pre-existing government income support scheme. The scheme provides weekly payments of between GBP 70 to GBP 150 per person and an additional GBP 50 per child. It is in place until 30 June 2020.
- The Government of Jersey has also made various sickness and short-term incapacity benefit provisions for employees who are either sick or isolating due to Covid-19.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- The Jersey government has worked with the Viscount (who is the executive officer of the court) and the Jersey Law Society to provide guidance and assistance for directors of Jersey companies in understanding wrongful trading and what directors should be considering when determining whether and how to carry on trading during these financially challenging times.
- Jersey's existing wrongful trading rules (which are more relaxed than the UK) provide that once a director concludes (or should have concluded) that there was no reasonable prospect of the company avoiding a declaration of bankruptcy or an insolvent winding up, the director has a duty to take reasonable steps with a view to minimising the potential loss to the company's creditors (failing which the director may be made personally liable for the company's debts). In the UK the equivalent test is that the director must take every step with a view to minimising the potential loss to the company's creditors.

## 3

## Insolvency

Has the government made any changes to insolvency legislation?

- The Viscount has issued a [Guidance Note](#) and the Jersey Law Society has issued a [Practice Statement](#). Both publications give helpful guidance to the wrongful trading provisions contained in Jersey legislation. In particular, both publications analyse what constitutes “reasonable steps” and the Jersey Law Society publication also provides practical considerations on the bringing of a claim against a director.

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The Jersey government has not introduced any legislative measures to deal specifically with contractual issues caused by the Covid-19 pandemic. Any contractual concerns will be dealt with according to Jersey contract law.
- The main contractual provision which governs the enforceability of a contract upon the existence of an unforeseen event is the force majeure clause. In general terms, the force majeure clause seeks to list the situations in which the parties to a contract may suspend or terminate the contractual relationship due to the occurrence of certain events that are outside the control of the parties.
- Depending on the construction of the force majeure clause in individual contracts, the Covid-19 pandemic may cause the contract to be suspended or terminated.
- It is also possible that in certain situations the occurrence of the Covid-19 pandemic may have the effect of rendering a contract “frustrated” i.e. the changes in circumstances caused by the coronavirus pandemic has rendered the obligations under the contract impossible to perform.
- Businesses should review their existing contractual relationships and seek legal advice to ensure they are aware and fully understand their ongoing legal obligations and identify any areas of uncertainty.
- Mourant has set out some of the [contractual issues that arise from Covid-19](#) in Jersey.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- Temporary amendments to residential and commercial tenancy legislation have been passed in Jersey. These make provisions to protect both tenants and landlords, taking into account the possible effects of the Covid-19 pandemic.
- They include the suspension of variations to tenancy agreements, by way of an increase in rent in the period up to 1st October 2020, even where the tenancy agreement allows for an increase at renewal.
- Another amendment effected is that where a tenant has failed to pay rent because of financial hardship, the breach would no longer constitute a breach whereby a landlord may apply for a termination and eviction order.
- The Government of Jersey has also published guidance for residential and commercial landlords and tenants. This outlines principles that must be adhered to in agreeing concessions and making voluntary arrangements for rent and other payments.



## Litigation

Are the courts operating?

The Jersey courts remain open and directions have been made for civil cases during the Covid-19 pandemic. The courts will continue to hear cases but urgent / public law / family law cases will take precedence.

Strict procedures are in place for essential hearings where attendants must adhere to social distancing guidance.

Jersey's Employment and Discrimination Tribunal has adjourned all final hearings due to be heard before the end of May 2020. Case management and interim hearings will proceed but the parties are required to attend by video or telephone conference.

The Royal Court has given directions on the remote execution of powers of attorney and affidavits.



## Tax

Has any new legislation been introduced in light of Covid-19?

### Deferral of payment of Social Security contributions

- Small businesses with less than 80 employees are automatically eligible to defer their payments for the first two quarters of 2020, which are due in April and July 2020.
- Businesses with 80 or more employees may apply to defer their payments and will need to show significant adverse impact on them as a result of the Covid-19 pandemic.

### Deferral of payment of Goods and Service Tax

- GST payments for periods ending between 31 March and 30 June may be deferred for up to 12 months.
- For individuals, in respect of residential tax status and days spent in Jersey, the Government of Jersey has advised that the local tax authority will discount days spent in Jersey which are as a result of exceptional circumstances related to Covid-19. This includes, for example, where prohibition of travel orders have been made in response to the pandemic. See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Jersey Companies Registry is fully operational and continues to provide a full service. It is demonstrating flexibility in its approach by accepting electronic signatures and the submission of information electronically to assist users during the current situation.
- The Jersey Financial Services Commission has similarly demonstrated a flexible approach in accepting electronic or scanned signatures with applications and filings to help overcome the challenges caused by the travel and social distancing restrictions imposed by the coronavirus pandemic.
- Jersey's Comptroller of Revenue has issued guidance to confirm that where companies' operating practices have to be adjusted to compensate for the Covid-19 pandemic, the Comptroller will not determine under Article 6 of the Taxation (Companies – Economic Substance)(Jersey) Law 2019 that a company has failed the economic substance test.
- Mourant has produced a [briefing](#) regarding regulatory considerations for licensed financial services businesses in the Channel Islands when responding to the Covid-19 outbreak.
- Mourant has also considered [the ways companies can overcome barriers to completing transactions during the Covid-19 pandemic](#). All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

The **Business Finance Guarantee Scheme** is being offered by the Government alongside private banks to help provide temporary financial support to businesses.

This scheme is available to small to medium-sized New Zealand business facing temporary financial stress due to COVID-19, for a short-term bridging loan of up to \$500,000 from a bank. The Government will carry 80 percent of the credit risk for the scheme, to encourage lending. Loans are otherwise on commercial terms. Details of the Business Finance Guarantee Scheme are available [here](#).

In addition, the Government has established a Small Business Cashflow Loan Scheme, to provide assistance of up to \$100,000 to firms employing 50 or fewer full-time equivalent employees. The scheme is also available to sole-traders and the self-employed.

The Scheme provides loans of up to \$10,000 to every firm and an additional \$1,800 per equivalent full-time employee. These loans will be interest free if they are paid back within a year. After that the interest rate will be 3% for a maximum term of five years.

Repayments will not be required for the first two years of the loan. Details of the Small Business Cashflow Loan Scheme are available [here](#).

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

The Government established a **Wage Subsidy Scheme**, providing payments for each employee for twelve weeks. Businesses would qualify for the payment if they experienced a 30 percent loss of income attributable to Covid-19.

An employer also had to agree to use best endeavours to pay the employees named in the application at least 80 per cent of their usual wages or salary. If that isn't possible, employers need to pay at least the full amount of the subsidy to the employee. Details of the Wage Subsidy Scheme are available [here](#).

The **Wage Subsidy Extension** is available to employers, including sole traders, who are still significantly effected by Covid-19 after the Wage Subsidy Scheme ends in June 2020. The obligation to pass on the subsidy remains the same, but to be entitled to the extension a business must show that they have suffered, or expect to suffer, a revenue loss of at least 50% for the 30 days prior to the application date, compared to the closest period last year.

This is currently described as lasting for eight weeks. The Government has not ruled out further extensions. Details of the Wage Subsidy Extension are available [here](#).

Immigration New Zealand has also made changes to the application of the Immigration Act 2009 to provide comfort to **Temporary Visa Holders**:

- Visitor, student or work visa holders with an expiry date of 1 April 2020 or earlier and who are unable to leave New Zealand must apply for a new visa online. An interim visa will be issued.
- Visitor, student or work visa holders with an expiry date of 2 April to 9 July 2020 and who are in New Zealand on 2 April 2020 will have their visas automatically extended to 25 September 2020.

Conditions on a work visa may also be varied to allow a visa-holder to change the employer, occupation, or location conditions.

Emergency benefits may also be granted to people who need assistance but would not otherwise qualify for them, including temporary visa holders. More details about the changes for visas are available [here](#).

Since the end of the COVID-19 Alert Level Four lockdown, the New Zealand Government has been encouraging the rebuilding of various industries. Part of this has included an Immigration Border Exemption to allow critical workers an exemption to the border closure.

There are various criteria depending on whether the role is short term or long term. To date it has been used to bring to New Zealand key workers for major infrastructure projects, and also workers on projects which aim to boost the New Zealand economy, such as film and television projects and the America's Cup.

Details about the border exemptions are available [here](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Government has made two key legislative changes to the Companies Act to prevent solvent businesses facing temporary financial distress from being prematurely placed into liquidation.

The first is the **Business Debt Hibernation regime**, which provides businesses with an option to place existing debts on hold until they can start trading normally again, subject to creditor agreement. This prevents creditors from taking legal action against the company to recover their debt for a period of six months.

The second change is the **Safe Harbour regime**, which provides directors with security against a legal claim for failing to meet their insolvency duties under the Companies Act as a direct result of the impact of the COVID-19 pandemic. Under the safe harbour regime, if a director is accused of:

- reckless trading, either by agreeing to the business of the company being carried on in any manner, or causing or allowing the business of the company to be carried on in any manner, which is likely to create a substantial risk of serious loss to the company's creditors; or
- incurring an obligation while being of the opinion that the company has, or in the next six months is likely to have, significant liquidity problems;

she or he will be able to invoke the safe harbour by showing that she or he is of the opinion that:

- any significant liquidity problems over the next six months are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and
- it is more likely than not that the company will be able to pay its due debts on and after 30 September 2021.

Details of these changes are available [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

There has been no Government intervention in contract law, and the usual rules apply. However there has been an increased focus on contractual small print, including:

- questioning whether the COVID-19 Alert Level Four lockdown period was excluded from working day provisions in a contract (not for most contracts, but for those that determine a working day to be a day that a bank is open for business this was less clear-cut); and
- force majeure clauses, which will suspend the performance of the contract during the force majeure event.

Details of how a **Force Majeure Clause** can affect the performance of a construction contract is available [here](#).

In addition, the Commerce Commission (New Zealand's competition regulator) have recognised the greater need for commercial cooperation during the COVID-19 pandemic.

The Commerce Commission is allowing more flexibility to enable businesses to work together, potentially share resources or otherwise cooperate to ensure consistency of supply of both products and services required by New Zealanders.

Detail of the permitted commercial cooperation is available [here](#).



## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

**Commercial property**

Many commercial property leases include a clause providing for an abatement of a “**fair proportion**” of rent and outgoings if the property cannot be used during an emergency. The COVID-19 pandemic is an emergency in terms of those leases, but the question of what is a fair proportion is to be negotiated between the landlord and tenant depending on their own particular circumstances.

The Government is also making a change to legislation to imply this type of clause into any lease which does not already contain one. The legislation will also provide for compulsory arbitration (subsidised for small businesses) if an agreement cannot be reached on the amount of the abatement. Details of the operation of the standard lease clause are available [here](#), and of the changes to the legislation are available [here](#).

The Government has also made changes to the powers under the Property Law Act 2007 (PLA) in respect of **Landlords’ rights to terminate commercial leases** and the powers for Mortgagees to take possession or sell mortgaged land.

The changes mean that a landlord now needs to wait thirty working days (rather than the previous ten working days) before they can cancel a lease for rental arrears. This change will be in place until the end of 2020.

**Residential property**

Two significant changes were made to residential property rentals; restrictions on termination, and prohibitions on rental increases.

For three months, **residential tenancies cannot be terminated** unless:

- the tenant terminates the tenancy;
- the tenancy is terminated with the written agreement of both the landlord and the tenant;
- the termination is in accordance with some specific provisions such as death of the sole tenant, abandonment, or serious damage; or
- an order is made by the Tenancy Tribunal terminating the tenancy for anti-social behaviour.

Fixed tenancies which expire during this time will continue as periodic tenancies and will then be subject to the same termination restrictions.

For six months, **rent cannot be increased** under a residential tenancy. In addition, any increase notified before the commencement date, which have not yet taken effect, will no longer apply.

**Overseas Investment**

The Overseas Investments Act regulates the purchase of assets in New Zealand by overseas people, including the purchase of any “sensitive land”. The Government has introduced a temporary emergency notification regime designed to ensure that sales of business assets or business interests to overseas investors as part of the economic recovery phase (particularly “distressed” sales) are in New Zealand’s national interest.

The emergency notification regime requires all share or business asset purchase transactions to be notified to the OIO if an overseas person is:

- acquiring an ownership interest of more than 25%;
- increasing an existing ownership interest to or beyond certain ownership thresholds (50%, 75% or 100%); or
- acquiring business assets representing 25% or more of an existing business.

The wording of the change means that the sale of land and buildings could be captured by the emergency notification regime where they are used as part of a business, even if the relevant land is not “sensitive land”. Details on the changes to the overseas investment regime are available [here](#).



## Litigation

Are the courts operating?

New Zealand is now at COVID-19 Alert Level One, which means that the country is operating as normal except that borders are closed. Even while New Zealand was at COVID-19 Alert Level Four, the highest level in the alert system, the **courts remained operational**.

During the COVID-19 Alert Level Four lockdown courts changed their practices, to allow greater use of remote hearings, and to permit documents to be filed electronically. During this time hearings were held only for urgent proceedings, as it took time for the necessary technology to be implemented.

Almost all courts are now operating as usual. The only hearings not being held are criminal trials heard by a jury, and these will recommence in the next few weeks.



## Tax

Has any new legislation been introduced in light of Covid-19?

The Government introduced a range of tax measures to provide relief to individuals and businesses. These include:

- Restoring building depreciation. This supports businesses and encourages investment in new and existing building by reinstating depreciation deductions for non-residential buildings. It provides business support by improving cashflow in the near-term, and assists with the broader economic recovery by stimulating business investment in new and existing buildings.
- Increasing the provisional tax threshold from \$2,500 to \$5,000. This relieves the compliance burden for small businesses as well as freeing up cashflow. It allows people to delay paying their provisional tax, as they can wait until 7 February in the year following the year they file their return before they have to pay, instead of having to pay in instalments throughout the year. It allows them to retain cash for longer, and will benefit an estimated 95,000 people.
- Allowing immediate low-value asset write offs. To encourage spending, the change will temporarily increase the threshold of the value of assets which can be deducted in the year the asset was purchased. The threshold will increase from \$500 to \$5,000 for assets purchased in the 12 months from 17 March 2020 (reducing to \$1,000 from 17 March 2021).
- Bringing forward broader research and development (R&D) refundability. The proposed amendment would bring planned refundability measures forward by one year, to the 2019-20 income year. This would help relieve cashflow problems, encourage businesses to retain their R&D staff, and (where possible) support these firms to continue their R&D in the current environment.
- Allowing use of money interest to be waived. This allows Inland Revenue to cancel interest on a late tax payment if the taxpayer's ability to make a payment due on or after 14 February 2020 was significantly adversely affected by the COVID-19 outbreak.
- Allowing greater information sharing. This would allow Inland Revenue to share information with a wider group of government agencies to assist the efficient and effective delivery of the Government's COVID-19 response.
- Allowing more access to the in-work tax credit. This would ensure that working families whose working hours are reduced as a result of COVID-19 would not lose their eligibility for the tax credit. Around 19,000 families will benefit.
- Introducing a tax loss carry-back regime to provide cash flow quickly to businesses, by allowing losses to be carried back one year.
- Allowing Inland Revenue to change due dates, timeframes or other procedural requirements for tax returns for taxpayers affected by COVID-19.
- Ensuring the treatment of benefits and pensions paid to New Zealanders stranded overseas is consistent with the treatment of equivalent payments in New Zealand.
- For the 2019/20 income tax year, tax payable up to \$200 will be written off. The usual threshold for writing off tax is \$50. This will reduce tax bills for approximately 149,000 taxpayers.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

To New Zealand's Companies Act already permitted meetings to take place by means of audio, audio and visual, or electronic communication, as well as in person, subject to any restriction set out in a company's constitution.

The Government has now passed legislation to enable entities (including companies, incorporated societies, charitable trusts, and others) to use electronic means for doing certain things that its constitution or rules would otherwise prevent, and to temporarily modify certain requirements or restrictions in its constitution or rules if it is not reasonably practicable to comply with them.

The matters that may be carried out (wholly or partly) by electronic means are:

- having or recording information in writing;
- calling or holding meetings (including for the purpose of establishing a quorum);
- voting (provided that the entities officers believe that all of those entitled to vote will be able to do so);
- giving or receiving information;
- making or keeping new records;
- providing access to records or information held by or on behalf of the entity;
- signing any instrument; and
- retaining any information.

Temporary modifications to a constitution or rules can relate to:

- how meetings are called or held (including deferring or waiving a requirement to hold a meeting or changing procedures at meetings);
- changing the method or form of voting; and
- deferring auditing, assurance or financial reporting or review requirements.

Businesses have also been encouraged to **sign documents electronically**, where permitted, and for deeds to be witnessed using audio-visual links.

Details on signing documents electronically, and on which documents are not permitted to be signed that way, are available [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Norwegian Government has set up financial aid for businesses, in particular through existing and new liquidity assistance programs.

### A. The State Bond Fund

A NOK 50 billion State Bond Fund has been passed to provide liquidity to larger Norwegian businesses, through government purchases of bonds. The State Bond Fund will invest within all business sectors. A significant portion of the State Bond Fund will be placed in non-financial business, but the mandate also includes investments in bonds issued by banks. The mandate states the investment scope within different sectors. The State Bond Fund will only be mandated to invest in bonds issued by companies incorporated in Norway, i.e. business with their main office in Norway. As of 8 May 2020 the mandate was adjusted to include not only investments in companies with a rating of B- and higher, but also companies with a CCC+ rating.

### B. State Guarantee Scheme

A NOK 50 billion State Guarantee Scheme ("SGS") for small and medium businesses has been passed pursuant to which a state guarantee aimed at facilitating loans to small and medium businesses ("SMB") which have experienced acute liquidity distress as a result of the Covid-19 outbreak. Under the SGS the state guarantees for 90% of each bank loan. SMBs are defined as companies with less than 250 employees and yearly revenues not exceeding EUR 50 million, or companies with a combined balance sheet not exceeding EUR 43 million. The State Guarantee Scheme was on 2 April 2020 expanded to include larger companies not caught up by the definition of SMB.

Under the State Guarantee Scheme SMBs are eligible for guarantees on loans up to NOK 50 million and larger companies are eligible for guarantees on loans up to NOK 150 million.

On 20 May 2020 the government proposed to extend the SGS to beyond 1 June until 31 December 2020. The government will continue to consider the necessity of the State Guarantee Scheme. Moreover, the extension must be approved by ESA.

### C. Reduction of countercyclical capital buffer

The Ministry of Finance has reduced the countercyclical capital buffer requirement from 2.5 to 1% with immediate effect, later combined with proposal to prohibit dividend distributions by Norwegian financial institutions.

### D. Guarantee scheme for the aviation industry

A NOK 6 billion State Guarantee Scheme for the aviation transport industry has been passed. The guarantee scheme will be administered by the Norwegian export finance institution GIEK. The scheme entails the state guaranteeing loans up to 90%, with commercial lenders taking on the remaining 10% exposure. The scheme is available to commercial airlines holding Norwegian Air Operator's certificates. Of the total NOK 6 billion, NOK 3 billion has been allocated to Norwegian, NOK 1.5 billion to SAS and NOK 1.5 billion to Widerøe together with some smaller airlines.

### E. State Compensation Scheme

The government passed a State Compensation Scheme under which companies which have suffered a minimum of 30% reduction in revenues due to the Covid-19 outbreak can apply for state compensation. On 29 May 2020 the government announced that the State Compensation Scheme was extended until 31 August 2020.

Under the State Compensation Scheme companies experiencing a minimum of 30% reduction in revenues, can apply to the state for the state to cover a portion of the company's overhead expenses. Businesses required to shut down by the government are eligible to get up to 90% of their overhead expenses covered. Other businesses experiencing a minimum of 30% revenue reduction are eligible for state compensation for up to 80% of their overhead expense. For businesses not required to shut down by the government, a NOK 5 000 deductible is applicable.

In the extended period of the State Compensation Scheme the coverage-percentage will be reduced to 70% for June and July and 50% for August.

#### F. Financial aid for entrepreneurs and start-ups

On the 27 March 2020, the government proposed a NOK 2.5 billion financial aid package to entrepreneurs and start-ups, pursuant to which entrepreneurs and start-ups are eligible for various loans, financial subsidies and investment capital.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

The employer's obligation to pay salaries after temporary layoffs was as a temporary measure reduced from 15 days (three weeks) to two working days under the Lay-off Salary Payment Act. Moreover, the Government paid salaries for an additional 18 days (capped at 6G, approximately NOK 600,000) to employees laid-off. The changes were effective as of 20 March 2020.

Employers who paid their employees' salaries for more than the 2 working days required, or pre-paid salaries, may apply for a refund, capped at 6G for each employee.

Refund applications must be submitted to the National Labour and Welfare Administration (Nw. NAV) by 31 October 2020. The possibility to apply for a refund is not applicable for lay-off periods commencing subsequent to 20 April 2020.

On 28 May 2020, the government proposed a temporary salary payment-solution for companies who bring back their own laid-off employees in July and August. The proposal implies that the relevant company will receive a monetary compensation for each employee it brings back to work. A refund application portal is scheduled to be opened in September 2020.

On 29 May 2020, the Government proposed to extend the period for which the employer is responsible to pay salary during temporary lay-offs from two to ten working days and to end the arrangement where the Government must pay salaries for 18 days, for new lay-offs subsequent to 1 September 2020.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

The Norwegian Parliament passed the Temporary Restructuring Act (nw: rekonstruksjonsloven), which came into force 11 May 2020. The law will remain in effect until January 2022 and replaces the restructuring chapters of the Bankruptcy Act (nw: konkursloven). The new rules will reduce the risk of unnecessary bankruptcies in viable businesses that are now hit by acute revenue failure.

The most important changes in the new law are:

- No requirement for the debtor to be illiquid to open reconstruction negotiations.
- Creditors may, under certain conditions, request the opening of reconstruction.
- New rules to secure financing of the debtor's operations during the reconstruction period.
- Better opportunities for conversion of debt to equity in connection with restructuring.

- New regulations which makes exceptions to the public's priority to claims regarding taxes and VAT.
- The current requirements for equal treatment of creditors in a voluntary reconstruction and the rules for minimum dividend in compulsory restructuring are abolished.
- Changes to the rules on the adoption of the proposal for reconstruction.

It is expected that the law will become a permanent fixture of Norwegian bankruptcy law even after January 2022.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

In general, there has been no change in rules governing contracts.

The fact that there is an epidemic/pandemic that has or may have negative consequences is not in itself sufficient to qualify as force majeure. Whether the effects of the coronavirus can be regarded as force majeure or a material adverse change in a particular contractual relationship must be decided on a case-by-case basis.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

No laws have been amended, however as mentioned above the government has put in place several funding schemes which makes it more likely that tenants (both private and professional) will be able to pay their rent.

Whether a tenant claim force majeure or otherwise demand a reduction in rent, payment deferrals or renegotiation of other contract terms under the lease depends on a specific interpretation of the relevant lease.

## 6

### Litigation

Are the courts operating?

The courts are operating, though with certain Covid-19 restrictions and measures, such as restricted access for spectators, the media, etc.

Due to the strict Covid-19 restrictions implemented in March 2020 the courts scaled back operations until 13 April 2020. Most first instance hearings and appeal hearings were postponed and had to be rescheduled. Nevertheless, certain hearings were conducted as live-link meetings, pursuant to section 13-1, sub-section 3 b), of the Civil Procedure Act, and according to Section 2 of the temporary Corona Act such live-link meetings could be conducted without prior consent, as long as the court found it "necessary and unobjectionable" to conduct court hearings remotely.

The courts are working hard to get back on schedule and many postponed hearings have been rescheduled. However, the courts are still prioritising criminal proceedings, labour disputes, family disputes, etc.

## Tax

Has any new legislation been introduced in light of Covid-19?

The date for payment of income tax was postponed from 15 April 2020 to 1 September 2020. Advance tax payments for self-employed persons which was due on 15 March 2020 was deferred until 4 May 2020, and payments due 15 May 2020 was deferred until 15 July 2020. The government also postpone the statutory due date for payment of Value Added Tax for the 1st VTA term (Jan-Feb) of 2020. The statutory due date is 10 April, but this due date was postponed until 10 June 2020.

The Parliament resolved on 21 March 2020 to lower the reduced VAT rate of 12% applicable to passenger traffic hotels, broadcasting, movie theatres, sporting events, amusement parks and adventure centres, to 6%. The change will be effective as of 1 April 2020 until 31 October 2020. Business registered for Value Added Tax purchasing such as services during this period, who are invoiced with Value Added Tax at rate 12% instead of 6%, will not be entitled to deduct the full Value Added Tax amount – only the part of 6%. To avoid that the non-deductible amount becomes a cost, the purchaser must require the seller to issue a credit note and new invoice with the correct Value Added Tax rate of 6%.

The government has proposed to defer payment of the employer's national insurance contribution falling due on 15 March 2020 to 15 August 2020.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

In particular, the following temporary simplifications in relation to corporate activities have been adopted.

Private limited liability- and public limited liability companies (AS, ASA and SE) may hold both board meetings and general meetings virtually. The board of directors shall ensure that, to the extent possible, all board members participate at the board meetings. Moreover, the board of directors shall ensure that all shareholders can participate at the general meeting and that participation and voting is controlled in a satisfactory manner. The temporary simplifications will remain in effect as it stands until 1 November 2020

## Loans and financial support

Has the government put in place any new bank funding schemes?

**Specific credit lines available for treasury support:** credit line of up to €400 million for treasury support under the Capitalizar Covid-19 Programme preferentially for SMEs not covered by the specific credit lines below.

**Credit lines for treasury support of companies in the following specific economic sectors:**

- €60 million (tourism sector – microenterprises),
- €600 million (restaurant business),
- €200 million (travel agencies, tourist entertainment and event organisation companies),
- €900 million (touristic developments and accommodation), and
- €4.5 billion (credit line applicable to all companies, irrespective of the economic sector in which they are engaged, and covers, inter alia, textile industry, clothing and footwear, trade and services, transport, real estate, construction, extractive and manufacturing industries, mining and wood industry).

**Specific Portugal 2020 incentives:**

- Manufacturing Innovation Covid-19 (Inovação Produtiva Covid-19) (€46 million) for SMEs and large enterprises.
- Research and Development for Companies – Covid-19 (I&D Empresas - Covid-19) (€23 million) for companies and entities part of the National Investigation and Innovation System (Sistema Nacional de I&I).

**Specific financial support measures for Portuguese start-ups:**

- Creation of “Startup RH Covid-19”, which is a financial support through an incentive equivalent to 1 minimum wage per employee (up to a maximum of 10 employees per start-up).
- Extension of the “Start-up Voucher” (i.e. a 3-month extension of the benefit already awarded (EUR 2,075 per employee)).
- Creation of the “Vale Incubação – Covid-19”, a financial support for start-ups with less than 5 years of existence, through the hiring of incubation services based on a non-refundable incentive of EUR 1,500.
- Creation of “mezzanine” funding for start-ups through a loan convertible into share capital (shareholder loans), after 12 months, applying a discount rate to avoid dilution of promoters (average investment tickets between EUR 50,000 and EUR 100,000 per start-up).
- Launch of the “Covid-19 - Portugal Ventures” for investments in start-ups, with tickets from EUR 50,000.
- Modification of the already existing fund “Fundo 200M”, which is a co-investment with private investors in Portuguese start-ups and scale-ups, with the minimum public investment of EUR 500,000 and the maximum of EUR 5,000,000.
- Modification of the already existing fund “Fundo investimento para a inovação social”, which is a co-investment with private investors in companies with innovative and social impact projects, with the minimum public investment of EUR 50,000 and the maximum of EUR 2,500,000.



**Incentive package:**

- Deferral of 12 months for repayment instalments due up to 30 September 2020 in respect of reimbursable subsidies granted under the incentive schemes of the National Strategic Reference Framework (Quadro de Referência Estratégico Nacional) or Portugal 2020 without interest charges or any other penalty.
- Expenses incurred by beneficiaries of such incentive schemes with events or actions cancelled or postponed as a result of the Covid-19 outbreak, eligible for reimbursement.
- Negative impact of the Covid-19 outbreak causing failure to execute contractual obligations under the Portugal 2020 incentive scheme, may be deemed as force majeure.

**Exceptional and temporary regime applicable to insurance agreements:** aimed at making the payment of insurance premiums more flexible. Under this regime, despite the lack of payment of the premium or fraction thereof on the respective due date, the compulsory insurance cover is maintained in its entirety for a limited period of time (60 days). In situations where there is a significant reduction or even elimination of the risk covered as a direct or indirect result of the legal measures adopted in response to the Covid-19 outbreak, policyholders may request that these circumstances be reflected in the premium and the application of an exceptional regime of fractionated payment.

**Exceptional and temporary regime for commercial practices with price reduction:** aimed at allowing commercial establishments, which were closed down or whose activity was suspended as a result of the Covid-19 outbreak, to dispose of their products and boost their economic activity. Under this regime, sales discount that take place during the months of May and June 2020 are not subject to the maximum limit of 124 days per year.

**“Programa ADAPTAR”:** a safety incentive scheme for micro, small and medium-sized enterprises aimed at reducing the increased costs with the rapid reestablishment of operating conditions for this type of enterprises. Under this incentive scheme, the Portuguese State bears part of the costs with the purchase of personal protective equipment for workers and users, hygiene equipment, disinfection products and of the costs of reorganising workplaces and changing the layout of establishments (for microenterprises investing between EUR 500 and EUR 5,000, the Portuguese State will bear 80% of the costs on a non-refundable basis; for small and medium-sized enterprises investing between EUR 5,000 and EUR 40,000, the Portuguese State will bear 50% of the costs on a non-refundable basis).

**Export support measures:** increase of credit insurance lines guaranteed (i) for the metallurgical, metal-mechanical and mould sectors (increase from €100 million to €200 million); (ii) for work abroad and other supplies (from €100 million to €200 million); and (iii) for short-term export credit insurance line (from € 250 million to € 300 million).

**Moratorium on debts:** moratorium on debts until 31 March 2021, which provides for the prohibition of the revocation of contracted credit lines, the extension or suspension of credits until the end of September this year.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- **Simplified lay-off:** lay-offs, which comprise the temporary suspension of employment contracts or reduction of the working time, have been given more flexibility and the procedure has eased significantly ("simplified lay-off").
- **Extraordinary financial support:** under the simplified lay-off procedure, the employer may temporarily reduce normal working periods or suspend employment contracts, and the employee is entitled to a compensation corresponding to 2/3 of the gross regular salary, with a minimum of €635 per month and a maximum of €1,905 per month. This compensation is paid by the employer, which in turn is entitled to financial support corresponding to 70% of the amount of the compensation, supported by Social Security. Employers are entitled to a financial incentive of €635 per employee, paid in one lump sum, to support the resumption of activity. The simplified lay-off, which initially was supposed to be in force only until 30 June 2020, can now be extended until 31 July 2020 in case of companies that have already resorted to it and have reached the maximum renewal limit by 30 June 2020 and in case of companies and business establishments that remain closed down. Simplified lay-off is also available to those companies that have not yet accessed this regime, which can only submit their initial application up to 30 June 2020, with the possibility of a monthly extension of up to 3 months (i.e. up to 30 September 2020).
- **Exemption from contributions:** the employer is exempted from paying contributions to the Social Security for employees covered by the lay-off measures.
- **Protection of employment:** during the period of lay-off, as well as in the following 60 days, the employer may not terminate the contracts of employees covered by such measures, under the terms of collective dismissal and dismissal for termination of the job.
- For more information please visit [here](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- The suspension of procedural terms and authorised judicial proceedings referred to below is also applicable to insolvency proceedings, notably as regards the term for a debtor to file for insolvency. This suspension, however, does not prevent the courts from ordering the performance of any judicial steps that are necessary to prevent irreparable damage to the legitimate rights and interests of debtors.
- For more information please visit [here](#).

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

- Other than other measures already mentioned herein, there have been limited cases where specific measures aimed at reinforcing contracts have been put in place. It's worthwhile noting that, in relation to public-private partnerships, during the state of emergency, contractual mechanisms allowing financing rebalancing are suspended (such financial rebalancing arising from the pandemic will result in the extension of the duration of the relevant contract).
- With the exception of the abovementioned measures, the Portuguese Government has not taken any further measures to specifically reinforce contracts and, therefore, the normal rules would apply.
- It should be taken into account that the force majeure term relates to the impossibility of the parties to perform their obligations as a result of an event that could not have been foreseen or that, if foreseen, would be inevitable. In this respect, the scope and applicability of force majeure would be subject to the specifics of each case, which shall be, in last instance, examined and determined on a case-by-case basis by judicial courts.

- Likewise, it should be considered that there is a provision on the Portuguese Civil Code that allows contracts to be reviewed or terminated whenever the circumstances in which the parties based their decision to contract have suffered an abnormal change. However, it should also be noted that Portuguese courts tend to apply this provision very cautiously and the impact on the performance of each contract should always be examined on a case-by-case basis. In the specific case of the impacts generated by the Covid-19 outbreak we are witnessing several cases but no judicial decisions have been issued yet.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

**Prohibition of termination of lease contracts by the landlords due to the mandatory closure of establishments and facilities:** mandatory closure of establishments and facilities and suspension measures determined by the Portuguese Government cannot be invoked as grounds for the termination, early break or other forms of terminating lease contracts for non-residential purposes or other atypical forms of occupational agreements regarding real property, nor as grounds for the eviction from the properties where such establishments or facilities are installed. The Portuguese Government has approved a time schedule for lockdown release, in force since 3 May 2020. Under such schedule, business establishments, facilities and services have been progressively reopened to the public (although with working time restrictions).

**Suspension of termination of lease contracts and evictions:**

- The duration of lease contracts (residential or non-residential) that would normally expire before 30 September 2020 is extended until such date (except if the tenant agrees to the expiry of the lease at an earlier date).
- The effects of all notices for termination, revocation or opposition to renewal/extension already served by the landlord are suspended until 30 September 2020.
- Eviction proceedings (either judicial or otherwise) are suspended until the termination of the exceptional measures, in the cases where, as a consequence of a potential final eviction decision, the tenant could be put in a “vulnerable situation due to the lack of a place for permanent residence or to another overriding social reason”.
- The obligation of the tenant to return the premises to the landlord following the termination of the lease is also suspended until 30 September 2020.

**Deferral on payment of rents:** eligible tenants may defer rent payment falling due in the period from 1 April 2020 (i) up to the end of the month following the termination of the state of emergency, or (ii) **up to the end of the month after their date of reopening, however, in no event, beyond 1 September 2020, in case of an extension of the forced closure period under the “state of calamity” or any other legal order.** Eligible tenants will be bound to pay the deferred rental payments in monthly instalments (which shall accrue to the monthly rents due and payable in the same period), with no interest or penalties, within 12 months after the deferment period lapses, however the deadline for payment of deferred rents is June 2021 in all cases. Landlords shall not be entitled to terminate leases or evict tenants for default on the payment of rents during the deferment period. These measures will apply to standard lease agreements (residential and non-residential), shopping center leases and other atypical forms of occupational agreements regarding real property and limited to the following tenants.

- Certain residential tenants whose household income has been reduced as a result of the Covid-19 outbreak (they shall prove that they have suffered a decrease of more than 20% in their household income, as compared to the preceding month or the equivalent period of the previous year; and that the payable rent represents an effort rate above 35% of the reduced monthly household income).

- Retailers and services open to the public who have been forced to shut down or to suspend activity as a result of the state of emergency, or by any other legal or administrative order (including if they keep trading online or through distance sales),
- Restaurants and similar establishments (even if they keep operating for take-away services or home delivery), and
- Residential tenants eligible for purposes of deferral on the payment of rents, who have their “permanent residence” in the property (and student tenants who have their permanent residence more than 50 km away from the let property) may, alternatively, request a loan without interest to the Institute for Housing and Urban Rehabilitation, to cover the difference between the due rent and the amount corresponding to the application of the effort rate of 35% to the household income.

For more information please visit: [Covid-19: Portuguese Government draft bill, establishes an exceptional regime for deferral of rental payments](#), and [Covid-19: Main legislative or regulatory initiatives that have been taken in Portugal](#)



## Litigation

Are the courts operating?

Courts are operating, but as long as the exceptional and temporary measures in response to the epidemiological situation caused by the COVID-19 outbreak are in place, the following shall remain suspended:

- Term for a debtor to file for insolvency,
  - Any acts to be carried out in enforcement or insolvency proceedings related to the implementation of procedures for the judicial surrender of the family home,
  - Eviction orders, special eviction procedures and procedures for surrendering rented properties,
  - Limitation periods for the proceedings and procedures referred to in the preceding paragraphs, and
  - Limitation periods for proceedings that cannot be carried out in person or by means of distance communication.
- For more information please visit [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

**Postponement of CIT/PIT and Stamp Tax payments and obligations:** the following deadlines have been extended.

- Extension of the first CIT special payment on account from 31 March 2020 to 30 June 2020.
- Deadline to submit the Corporate Income Tax return (Modelo 22) was extended from 31 May 2020 to 31 July 2020.
- Extension of the first CIT payment on account and additional payment on account from 31 July 2020 to 31 August 2020.
- Deadline to submit the IES statement from 15 July 2020 to 7 August 2020.
- Deadline to deliver to the tax authorities the tax file (when mandatory) from 15 July 2020 to 31 August 2020 (with no penalties).
- Extension of the deadlines to deliver CIT and PIT withholding taxes and Stamp Tax from April and May from 20 May 2020 to 25 May 2020 and from 20 June 2020 to 25 June 2020, respectively.

**Tax deferrals:** payment of VAT and CIT/PIT withholding taxes due in the 2nd trimester of 2020 may, under certain circumstances, be deferred and paid in 3 or 6 monthly instalments, free of interest and without the need of providing guarantees. The first 1/3 or 1/6 has to be paid on the corresponding legal deadline.

**VAT measures:**

- Extension of the deadlines to submit the VAT periodic return (with no penalties) of February (from 10 April to 17 April), of March (from 10 May to 18 May), of April (from 10 June to 18 June), of May (from 10 July to 17 July) and June (from 10 August to 17 August). The corresponding VAT can be paid until 20 April, 25 May, 25 June, 25 July and 25 August, respectively. Extension of the deadline to submit the 1st quarterly VAT return from 15 May to 22 May and the 2nd quarterly VAT return from 15 August to 22 August and the corresponding VAT can be paid until 25 May and 25 August, respectively. This measure does not preclude the request to pay in instalments of the VAT due between April and June.
- Simplification procedures for filing of VAT periodic returns of February, March and referring to the 1st trimester of 2020 with no supporting documentation as long as substitutive returns are afterwards presented by 20 December 2020. This measure is only applicable to taxpayers with a turnover lower than EUR 10M in 2019 or whose activity was opened in 2020.
- Application of reduced VAT rate (6% in Mainland Portugal, 5% in Azores and 4% in Madeira) to protective masks and disinfectant gel and VAT exemption on health equipment furnished to hospitals and non-profit health organizations.
- Exceptional recognition of PDF invoices as “electronic invoices” in April, May and June for every legal effect.

**Social Security deferrals:** possibility of, under certain circumstances, reducing to 1/3 the Social Security contributions due between March/April and May/June 2020 for companies and self-employed (the remaining 2/3 should be payable under the same instalment deferral rules set out above, i.e. payable between July and September 2020 or between July and December 2020, depending whether payable in 3 or 6 monthly instalments (free of interest and guarantees)).

**Temporary exemption from Social Security contributions:** exemption which is, under certain circumstances, automatically applicable to entities benefiting from the exceptional and temporary measures set for labor protection in the context of the Covid-19 outbreak.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- To accommodate social distancing, the Portuguese Government has extended until 30 June 2020 the deadline for holding annual general meetings which should take place by legal or statutory imposition until 31 March 2020 or 31 May 2020 (e.g. for approval of the year-end individual or consolidated financial statements, respectively).
- Without prejudice to the above, the use of distance communication mechanisms (i.e. video or teleconference) to hold meetings of the corporate bodies and pass resolutions is also admissible, provided that the participation via such means is duly recorded in the relevant minutes of the meetings.
- For more information please view [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Monetary Authority of Singapore (“MAS”) has established the MAS SGD Facility and MAS USD Facility to provide SGD and USD to funding markets in Singapore in order to support their effective functioning.

- The MAS USD Facility, established on 26 March 2020, seeks to provide up to USD60 billion of funding to support stable USD liquidity conditions.
- The MAS SGD Facility is established to provide low cost funding to banks and finance companies on the conditions that such financial institutions commit to pass on the savings in funding costs to small and medium enterprises (“SME”) applying for loans under Enterprise Singapore’s (“ES”) lending schemes for SMEs: the SME Working Capital Loan scheme and the Temporary Bridging Loan Programme. It was announced on 20 April 2020 that MAS will offer near-zero interest rate loans to eligible banks – just 0.1 per cent per annum for a two-year tenor, which will help to lower the cost of loans for these SME lending schemes and help financial institutions make loans to SME borrowers more affordable.

The SME Capital Working Loan scheme was enhanced pursuant to the Solidarity Budget 2020 for the purpose of aiding SMEs with their working capital and operational cashflow needs.

- The maximum loan quantum was increased from SGD300,000 to SGD1 million.
- The risk-share percentage is enhanced to 90% for new applications made from 8 April 2020 until 31 March 2021, i.e. lending institutions may make a claim against ES in the event of defaults by SME borrowers for 90% of the unrecovered amount.
- SMEs under the enhanced scheme may apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment and approval by the lending institution.

The Temporary Bridging Loan Programme was established in March 2020 for the purpose of providing companies with access to up to SGD5 million working capital for business needs.

- The Interest rate payable on the loan is capped at 5% per annum.
- ES will provide 90% risk-share on loans extended under new applications made from 8 April 2020 until 31 March 2021 i.e. lending institutions may make a claim against ES in the event of defaults by SME borrowers for 90% of the unrecovered amount.
- Companies may apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment and approval by the lending institution.

## Employment Individuals

What financial support is the government providing to businesses and to individuals on employment issues?

- The Temporary Relief Fund is a one-off SGD500 cash assistance to support Singapore citizens and permanent residents who are retrenched or suffered at least 30% loss of personal income due to Covid-19, subject to certain criteria being fulfilled.
- The Covid-19 Support Grant provides eligible Singapore citizens and permanent residents who have lost their jobs due to Covid-19 with a monthly cash grant of SGD800 for 3 months, subject to certain criteria being fulfilled.
- The Workfare Special Payment is a cash payout of SGD3,000 provided to all Singapore employees and self-employed who have received Workfare Income Supplement payments in 2019. The cashpayout will be paid over two equal payments of SGD1,500 each in July and October 2020.
- The Self-Employed Person Income Relief Scheme provides quarterly cash payouts of SGD3,000 in May, July and October 2020 to eligible self-employed persons (“SEP”), if the SEP meets certain criteria.

### Businesses

The Jobs Support Scheme (“JSS”) provide wage support to employers to assist them in retaining their local employees.

- The Government will co-fund 75% of the first SGD4,600 of gross monthly wages paid to each local employee until August 2020.
- The Government will co-fund the first SGD4,600 of gross monthly wages paid to each local employee for the months of May to December 2020. The level of co-funding ranges from 75% for sectors classified as Tier 1, 50% for sectors classified as Tier 2 and 25% for sectors classified as Tier 3:
  - Tier 1 is the aviation and tourism sector, which include airlines, airport ground handlers, airport operators, qualifying licensed hotels, qualifying licensed travel agents, qualifying gated tourist attractions, cruise lines and cruise terminal operators, venue operators of purpose-built meetings, incentives, conferences and exhibitions. As of 26 May 2020, Tier 1 also includes all businesses that are unable to reopen on 2 June 2020, lasting until August 2020 or the date they can reopen, whichever is earlier. Upon resuming operations, JSS payouts will revert to the base tier on a pro-rata basis. New additions to Tier 1 also include: aerospace, airline fleet services, and operators providing pilot and crew training; tourism event organisers; money changers; regional ferry operators; central refund agencies; built environment contractors and consultants (for June to August 2020 wages).
  - Tier 2 is the food services sector, which include licensed food shops and food stalls. As of 26 May 2020, Tier 2 includes: retail; arts and entertainment; land transport; and marine and offshore sectors.
  - Tier 3 is all other sectors not falling within Tiers 1 or 2.
  - Businesses that could not reopen on 2 June 2020 will receive up to 2 months’ additional Foreign Worker Levy waiver and rebate. For June 2020, this will be a 100% waiver and a \$750 rebate – these will be halved in July 2020 (i.e. 50% waiver and \$375 rebate).

The MAS Support Package was announced on 8 April 2020 and is a SGD\$125 million support package to sustain and strengthen capabilities in the financial services and FinTech sectors.

- SGD\$90 million has been allocated to supporting workforce training and manpower costs, through the launch of a new Training Allowance Grant, enhanced course fee subsidies and salary grants to Financial Institutions regulated by MAS of \$2,000 per month for eligible Singapore citizens hired under a structured talent development programme.
- A new Digital Acceleration Grant has been set up to enable Singapore-based financial institutions regulated by MAS and Singapore-based FinTech firms certified by the Singapore FinTech Association (“SFA”) to adopt digital solutions as well as upgrade systems to enable business continuity.
- On 13 May 2020, MAS and the SFA, AMTD Group and AMTD Foundation launched a SGD\$6 million MAS-SFA-AMTD FinTech Solidarity Grant to complement the MAS Support Package. This includes the Business Sustenance Grant which allows eligible Singapore-based FinTech firms to receive a one-time grant up to SGD\$20,000 to cover the wages of their local workers as well as office rental costs. It also includes the Business Growth Grant. Eligible Singapore-based FinTech firms will also receive 100% internship funding for salaries of Singapore citizens and permanent resident undergraduate interns, up to a cap of SGD\$1,000 per month per intern.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The SG government has introduced temporary relief for individuals and businesses who are facing financial difficulties.

#### Individuals

- The monetary threshold for bankruptcy has increased from SSGD15,000 to SSGD60,000.
- The statutory period to respond to demands from creditors has been lengthened from 21 days to 6 months.
- The monetary threshold for the Debt Repayment Scheme has been increased from SSGD100,000 to SSGD250,000.

#### Businesses

- The monetary threshold for insolvency has increased from SSGD10,000 to SSGD100,000.
- The statutory period to respond to demands from creditors has increased from 21 days to 6 months.

The Act also provides relief for directors from insolvent trading, as long as the debts are incurred in the ordinary course of business.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

The Singapore government has enacted legislation providing for temporary relief for the inability to perform a scheduled contract. It provides temporary relief from legal action over the following contracts (entered into before 25 March 2020 with contractual performance due on or after 1 February 2020):

- secured loans from a bank or finance company that are (a) made to a local SME; and (b) secured against non-residential property in Singapore, or against any plant, machinery or fixed asset used for business purposes,
- any hire purchase agreement for a commercial vehicle, or any plant, machinery or fixed asset used for business purposes,
- leases or licences for non-residential immovable property,
- construction or supply contracts,
- contracts for the provision of goods and services for events such as weddings and conventions, and
- tourism contracts such as cruises, hotel accommodation bookings.

As of 13 May 2020, two new contracts will also be included. These are (i) options to purchase and (ii) sale and purchase agreements or agreements for lease of residential property, between housing developers (both private housing developers and the Housing & Development Board) and buyers. Property purchasers can only obtain relief upon the satisfaction of certain criteria.

**6 month moratorium:** A debtor under any of these contracts may issue a notification for relief if he finds that an obligation due on or after 1 February 2020 cannot be carried out due to the Covid-19 pandemic. Upon which creditors are prohibited from taking the following actions for 6 months (20 April 2020 to 19 October 2020):

- court, domestic arbitration, and insolvency proceedings, as well as execution proceedings against the debtor's property,
- enforcement of security against immovable property or movable property used for business purposes,
- appointing a receiver and manager over the debtor's property,
- calling on a performance bond given for a construction or supply contract,
- terminating a lease or license over immovable property due to non-payment of rent, and
- exercising any right of re-entry or forfeiture under a lease or license over immovable property.



- Increase of any charges or interest rate payable under the contract unless such increase in charges or interest is specified in the contract and the increase in charges or interest rate is calculated by reference to a formula in the contract (any additional increases will not be allowed without further agreement of the non-performing party).
- Imposition of new charges under the contract without the further agreement of the non-performing party.
- Requiring any part of a security deposit given pursuant to the contract to be replaced by the non-performing party except with the further agreement of the non-performing party.

The aforementioned actions cannot be taken until after the earliest of:

- The expiry of the 6-month moratorium period from 20 April 2020 to 19 October 2020,
- The withdrawal of the notification for relief, or
- A determination by an assessor that the case is not one eligible for the moratorium (note: under the new legislation, if a party is not able to come to an agreement with the other party or parties to the contract for a compromise in relation to his/her obligations covered under the notification for relief, he/she may apply for an assessor's determination of the issues involved).

Temporary relief for contracts affected by delay in performance or breach of construction contracts or supply contracts: Temporary relief measures will be available for parties to a contract that is, on or after 1 February 2020 and before 19 October 2020, affected by a delay in performance by a party to a construction (or construction-related) contract or supply (or supply-related) contract, or a breach of such contract, where such breach or delay:

- Occurs on or after 1 February 2020 and before 19 October 2020, and
- Is to a material extent caused by a Covid-19 event

The contract must be in force from 20 April 2020 to 19 October 2020 (or any part thereof).

A party to the contract may apply for the appointment of an assessor to make a determination whether the contract is eligible for the temporary relief, and if so, whether it is just and equitable in the circumstances of the case for any prescribed obligation or prescribed right under the contract to be performed or exercised in a manner other than that provided for in the contract, and if so, whether the party is entitled to the relief. The SG government with the terms of the legislation providing that the prescribed lease or license over immovable property, lease or license, or other right of re-entry or forfeiture under a lease or license over immovable property will be prohibited for 6 months if the lessee issues a notification for relief.

**Property tax rebate:** The SG government has also introduced a property tax rebate of up to 100% from 1 January 2020 to 31 December 2020 for non-residential businesses, which is intended to help businesses deal with the impact of Covid-19.

The SG government has also enacted legislation to make property owners to pass on the tax rebate to their tenants.

- The passing on of the rebates by the property owner to their tenants/licensees may be by way of cash payment (lump sum or instalment) or by way of an off-set against the rent/licence fee payable by the tenant/licensee or a combination of both.
- Property owners must not subject the passing of the rebate to any conditions – any such conditions will be void.
- Property owners must also retain records to prove that the rebates were passed on for a period of 3 years.
- If property owners fail to pass the rebates to their tenants/licensees or fail to comply with the record keeping obligations, the property owner will be guilty of an offence and liable on conviction to a fine not exceeding S\$5,000.

## 5 Property

Have any changes been made to the laws around property, rent and enforcement?

- On 13 May 2020, the Covid-19 (Temporary Measures) (Transfer of Benefit of Property Tax Remission) Regulations came into operation. It provides further details on how owners are to pass on the rebate, including:
  - the formulae for determining the prescribed amount of benefit that must be passed on to the tenant,
  - the prescribed manner and time for passing on the benefit, and
  - the information to be provided to the tenant.
- **Temporary relief measures for property developers and individuals:** On 6 May 2020, the SG government announced temporary relief measures for property developers and individuals affected by disruptions to construction timelines and sales of housing units resulting from the Covid-19 pandemic:
  - Extension of the Project Completion Period (“PCP”) by 6 months for residential, commercial and industrial development projects.
  - Extension of time by 6 months for the commencement and completion of residential development, and sale of housing units in residential development projects in relation to the remission of the Additional Buyer’s Stamp Duty (“ABSD”) for housing developers.
  - Extension of time by 6 months for the sale of the first residential property in relation to the remission of ABSD for the second residential property purchased by a Singaporean married couple.
- **Rental Relief for SMEs:** The SG government announced on 26 May 2020, as part of the Fortitude Budget, rental relief for SMEs operating in qualifying non-residential properties. SMEs are defined as enterprises with not more than \$100 million in annual turnover in the Financial Year ending 2018, based on Year of Assessment 2019 corporate or individual income tax returns. The annual turnover is based on entity level, as opposed to group level. Taken together with the Property Tax Rebate from the Resilience and Unity Budgets, the Government will be providing rental assistance for eligible tenants who are SMEs or qualifying non-profit organisations as follows:
  - 2 months of rental assistance for qualifying commercial properties
  - 1 month of rental assistance for other non-residential properties (e.g. industrial and office properties)For private non-residential properties, the rental assistance will be given in a form of a cash grant to qualifying property owners who have eligible SME tenants/ sub-tenants/ licensees/ sub-licensees (“eligible tenants”) or who are SME owners operating in the non-residential property. Eligible tenants must have qualifying leases or licenses (i) entered into before 25 March 2020 or (ii) entered into before 25 March 2020 but expired and renewed automatically, or in exercise of a right of renewal in the contract.
- **Measures to protect tenants:** On 5 June 2020, the SG government passed the Covid-19 (Temporary Measures)(Amendment) Bill 2020 which provides for measures which seek to mitigate the economic impact caused on tenants and landlords, purchasers and developers by the Covid-19:
  - Rental relief to SME tenants: Apart from rental relief by the SG government, landlords are now required to grant additional rental relief to SME tenants of non-residential properties (that meet four broad conditions) who have suffered significantly (i.e. suffered a substantial drop in average monthly revenue due to Covid-19 whereby the average monthly revenue from April to May 2020 on an outlet level is reduced by 35 per cent or more as compared to the same period in 2019).
  - Statutory Repayment Scheme: SME tenants that qualify for the aforementioned landlord relief can also repay rental arrears accumulated from 1 February 2020 to 19 October 2020 under a prescribed statutory repayment schedule by serving a written notice on their landlords. Once this notice has been served, the tenants must service the first instalment no later than 1 November 2020. Under the repayment schedule, tenants will pay a specified portion of their arrears in equal instalments over an extended period of time (up to a maximum of nine months or the remaining term of tenancy, whichever is shorter) with interest on these arrears capped at 3 per cent

- Rules on Holdover: Due to Covid-19 and circuit-breaker restrictions, some tenants have faced difficulties vacating their premises at the end of their lease term and before the expiry of the prescribed period. Tenants who are able to show that the inability to vacate the property is caused by a Covid-19 event and other conditions must serve a notification of relief on the landlord and will not be liable to pay the landlord any sums in excess of such amount as may be prescribed, for failure to vacate the property.
- **Measures to protect landlords**
  - Grounds of financial hardship for landlords: If landlords struggle to provide tenants with the mandatory additional rental waiver, they may apply for a rental relief assessor's determination on grounds of financial hardship.
  - Enhanced credit reliefs for landlords: Landlords who are individuals and are currently in their loan repayments as at 1 February 2020 can defer both principal and interest repayment up to 31 December 2020 if they are required under the Covid-19 Amendment Bill to provide their tenants rental waivers or payment rescheduling.

## 6

## Litigation

Are the courts operating?

- On 29 May 2020, the Supreme Court announced that the Relevant Period (where courts would only hear essential and urgent matters) would end on 1 June 2020.
- Therefore, court hearings have resumed after 1 June 2020, with parties being directed to strictly comply with all safe distancing and other applicable measures required under the laws of Singapore, or prescribed by the Court, to minimise the local transmission of Covid19. These include requirements, such as on the wearing of masks in the Supreme Court premises.
- The Honourable Chief Justice has directed that the use of electronic means of communication to conduct hearings be enhanced. Selected hearings will be conducted by video conferencing or where appropriate, telephone conferencing.
- Where the court determines that physical attendance before the court is appropriate, no more than two lawyers/litigants per party may appear at the hearing, unless parties have been granted an exemption to allow additional attendees.
- Video-conferencing will be the default option for solicitors unless otherwise directed for the following hearings:
  - Case management conferences conducted by a Registrar before the Court of Appeal
  - Civil and Criminal Pre-Trial Conferences before a Registrar
  - Civil hearings before a Registrar
  - Bankruptcy hearings before a Registrar
  - Attendance before a Duty Registrar

## Tax

Has any new legislation been introduced in light of Covid-19?

- **Automatic Deferment of Corporate Income Tax (CIT) Payments:** To ease the cash flow for businesses during the Covid-19 pandemic, companies have been granted an automatic deferment of income tax payments for 3 months. No application is required.
- **Support for the Self-Employed:** To support self-employed persons, personal income tax payments due in May, June and July 2020 will be deferred automatically for 3 months this is also the case for one-time income tax payments. No application is required. For one-time income tax payments due in May, June and July 2020, there will be a 3-month deferment to August, September and October 2020 respectively.

- **Support for Employees:** Employees may apply to defer income tax payments due in May, June and July 2020 for a period of 3 months. For employees making lump sum payments, such payments may also be deferred by 3 months upon application.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- **Extension of deadline for holding Annual General Meetings and filing Annual Reports:** On 7 April 2020, the Accounting and Corporate Regulatory Authority (“ACRA”) announced a 60-day extension of time for all listed and non-listed companies to hold their annual general meetings (“AGMs”) and file their annual returns (“ARs”). The Singapore Exchange Regulation (“SGX RegCo”) also announced that it would automatically extend the deadline by 60 days for all issuers with financial year-end on or before 31 March 2020 to hold their AGMs.
- **Alternative arrangements for AGMs which proceed:** On 7 April 2020, the Covid-19 (Temporary Measures) Act was enacted by Parliament. One of the provisions state that a relevant meeting or class of meetings held on or after 27 March 2020 that complies with alternative arrangements prescribed under the new law will be deemed to satisfy any requirements for the convening, holding or conduct or deferral of such meetings under the relevant written law or legal instrument.
- On 13 April 2020, the Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order was gazetted. The Order sets out alternative arrangements to personal attendance in respect of certain classes of meetings, which include, inter alia, general meetings of companies. Personal attendance can be via electronic means instead.
- On 27 April 2020, the Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Corporate Insolvency) Order (“**Insolvency Order**”) was gazetted, prescribing alternative arrangements for conducting meetings in respect of insolvency matters of companies, limited liability partnerships and variable capital companies. The Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Bankruptcy) Order (“**Bankruptcy Order**”) was gazetted as well, prescribing alternative arrangements for conducting meetings in respect of bankruptcy matters. The Orders grant broad flexibility to convenors to either hold meetings virtually, or to deter holding meetings until 30 September 2020. However, the Orders do not apply to all meetings. For example, the Insolvency Order does not apply to, inter alia, any meeting held pursuant to an order or a direction of the High Court under section 210(1) of the Singapore Companies Act – meetings of creditors and members in relation to the proposal of a compromise or arrangement.
- On 22 June 2020, following Singapore’s move into phase two of its reopening on 19 June 2020, ACRA has updated its regulatory announcement to clarify that issuers that are permitted to operate will no longer need to submit a notification to the Ministry of Trade and Industry for a time-limited exemption to have temporary operations in the same physical location for the purpose of holding a general meeting.
- The Singapore Stock Exchange is also providing a grant of SGD5,000 per issuer that can only be used for the purpose of implementing Covid-19 measures for AGMs. This ‘AGM Facilitation Grant’ will cover all AGM-related expenses incurred between 16 March 2020 and 15 March 2021, such as augmenting physical AGMs with video conferencing, additional logistics such as on-site temperature taking or pre-AGM shareholder communication, amongst others.



## Loans and financial support

Has the government put in place any new bank funding schemes?

- Both the Government of the Republic of South Africa (“**RSA**”) and the private sector have introduced a number of financial schemes aimed at assisting businesses, in particular small and medium sized enterprises (“**SMMEs**”), negatively affected by Covid-19. These schemes are being updated from time to time.
- The Government has created a number of Covid-19 loan funding schemes which are specifically aimed at SMMEs generally (annual turnover restrictions are dependent on the industry), namely the:
  - SMME Debt Relief Finance Scheme – this scheme is available to SMMEs in order to assist them with existing debt repayments, acquiring raw materials, paying labour and other operational costs, and
  - SMME Business Growth / Resilience Facilities – this scheme is available to SMMEs classified as ‘essential services’ assisting in producing or supplying ‘essential goods’ during the lockdown.
- Certain industry specific schemes have also been introduced, such as the:
  - Spaza Shop Support Scheme aimed at spaza shop owners and general dealers selling essential goods,
  - National Department of Sports, Arts and Culture Relief Fund aimed at practitioners in the fields of arts, culture, sports and recreation,
  - Covid-19 Tourism Relief Fund and Agricultural disaster support fund for smallholder and communal farmers. This fund provides grant of up to R50,000,
  - Industrial Development Corporation (IDC) Assistance and IDC MCEP Covid-19 Programme, which provide funding to businesses for the acquisition or manufacturing of essential medical supplies, and
  - National Empowerment Fund Black Business Funding Solution, which provides loan funding to black owned SMMEs which manufacture medical products.
- The Government has recently announced the Covid-19 DTI Relief Fund, which will provide R3 billion in relief funding to vulnerable businesses involved in the battle to roll back Covid-19. This fund is not restricted to SMMEs only. Of these funds, R500 million has been allocated for importing medical products and R700 million for financing equipment and working capital requirements.
- In addition to the Government funds which have been in place, a Solidarity Fund has been created (to which the public can donate), a number of prominent business men and women have created dedicated funds and banks have offered certain reprieves to clients (e.g. payment holidays).
- The South African Reserve Bank has also reduced the repo rate (with reference to which bank lending rates are determined) on a number of occasions since the start of the Covid-19 crisis.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment

- The national lockdown imposed by the government of the RSA with effect from 27 March 2020, has 5 levels. With effect from 1 May 2020, the RSA moved from level 5 to level 4 and with effect of 1 June 2020 from level 4 to level 3 (level 5 being the most stringent, and 1 being the least stringent). The different levels put in place various restrictions on which industries can operate, either fully or in part. This is presently done by restricting the operation of certain designated businesses and services. Employers who are able to operate, either fully or in part, are expected to comply with stringent health and safety measures. Since lockdown level 3 a number of additional businesses and services have been allowed to recommence operations. This list is constantly being updated / revised. The restrictions on business have also constantly been relaxed during the currency of lockdown level 3. No announcement has, as yet, been made about when lockdown level 2 will commence.
- Absent industry specific provisions to the contrary, employees who are unable to render services to their employers during the lockdown are not entitled to be paid.
- In response to the financial consequences for employees and employer alike, the government has put in place a number of measures aimed at assisting employers, some of which are industry specific. A number of these measures are now coming to an end, in conjunction with the easing of the lockdown. One such measure is the Covid-19 Temporary Employer – Employee Scheme (Covid-19 TERS), which provides for the payment of benefits to employees employed by employers who have had their operations, either partially or entirely, closed for a period of three months or less due to the Covid-19 pandemic. The minimum benefit payable for each employee is R3,500 per month and the maximum is approximately R6,638.40 per month. This benefit was available for March 2020, April 2020 and June 2020. As of present date, there is no intention by Government to extent this benefit further.
- Additional measures available for employees include sick leave benefits, illness benefits, reduced work time benefits (where the business is operating but on, for instance, short-time) and particular compensation where employees contract Covid-19.
- There are also benefits which assist employers, by virtue of their status as businesses, as stated in the above section

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- There have been no changes to the legislation governing insolvencies in RSA, however, the Companies and Intellectual Properties Commission (“CIPC”) has issued various notices under the Companies Act No. 71 of 2008 (“**Companies Act**”) in respect of the procedure relating to companies who are, or will be, in business rescue as a result of financial distress.
- In notice 17 of 2020, the CIPC undertook not to invoke its powers under section 22 of the Companies Act (to issue compliance notices to business trading recklessly) in respect of companies that are trading in temporarily insolvent circumstances as a direct result of the Covid-19 pandemic. This notice will lapse within 60 days of the declaration that the national disaster has been lifted.
- The CIPC also temporarily ceased operating at full capacity as a result of the lockdown and as such no processing of documents or filings could take place from 24 March 2020 to 30 April 2020. In terms of section 129 of the Companies Act, a company’s board resolution to place itself into business rescue only comes into effect when the relevant resolution placing the company in business rescue and supporting documents are filed with the CIPC. The CIPC accordingly provided for a dies non period for these dates during which no business would be penalised for its inability to file resolutions and supporting documentation to commence business rescue.

- As such:
  - any business rescue applications filed with the CIPC in the prescribed manner and form during the dies non period would be processed to reflect the dates on which it was filed,
  - the appointment of business rescue practitioners filed in the prescribed manner and form during the dies non period would be endorsed by the CIPC to reflect the dates on which it was filed, and
  - entities commencing business rescue proceedings (filed in the prescribed manner and form) will automatically receive a five day extension to appoint a business rescue practitioner.

The offices of the Master of the High Court are also only operating in respect of certain services.

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The RSA legal system recognises the principles of sanctity of contract and relaxation in the face of an unforeseen event which justifiably renders the performance of a contractual obligation impossible. There are a number of principles which are available either in common law or commonly in agreements which may offer some options or relief to contracting parties (described briefly below).
- Although businesses have generally been encouraged to, where possible, not invoke force majeure provisions in order to preserve existing contractual arrangements and business, this decision is ultimately dependent on the particular contracting party, industry and surrounding facts and circumstances. Practically, there have been some contracting parties who have sought to invoke these provisions, while others have been willing to hold back on doing so and/or negotiate and agree amendments to contracting arrangements.
- Under the common law, force majeure events include acts of God, war, riots, natural disasters, energy blackouts, lockouts and labour unrest. Material Adverse Change (“**MAC**”) clauses, like force majeure clauses, are used in contracts to allocate the risk of events that are unforeseen at the time of contracting.
- These provisions usually provide that a party will be able to suspend the performance of their obligations for so long as the force majeure event continues or for a set period of time, whichever is the shorter. Since this is a contractual provision, the extent to which a party will be able to rely upon the clause will depend on the specific wording of each clause. The onus of proving the force majeure will be on the party alleging it and typically that party will have to show that the event was not within its reasonable control, could not have reasonably been avoided and was not a result of an act or omission on their part. While this may seem likely to encompass Covid-19, it is the impact of Covid-19 on the party’s ability to perform that is essential. Force majeure clauses are also likely to include an obligation on the parties to first discuss the effect and potential mitigation of the force majeure, as well as a general obligation on the claiming party to mitigate the impact of the force majeure.
- It is common to see a force majeure clause that will lead to a termination of the contract if the force majeure is not resolved after a certain number of days.
- MAC clauses are contractual and are not regulated by the common law. The contract will define the circumstances in which a material change will be deemed to occur and each contract should be carefully considered with the relevant facts to determine if circumstances exist to invoke a MAC. The burden of proof is similarly on the party alleging the MAC.



- The impact of Covid-19 is severe and there will undoubtedly be parties who seek to avoid their contractual obligations. Whether or not they can be saved by a MAC clause will ultimately depend on the precise wording of the MAC clause and the allocation of risks. It will also depend on the facts and the effect of the pandemic on the business in question.
- When circumstances occur which renders performance under a contract impossible, the principle of supervening impossibility of performance in terms of the common law may also excuse parties from performance. Supervening impossibility of performance occurs when performance was possible on conclusion of the contract, but subsequently has become impossible through no fault of the parties. This could be the result of a vis major or casus fortuitous.
- The test for performance is that it must be objectively impossible. Where a party can perform, albeit at a higher cost or with economic hardship, the RSA courts are unlikely to consider this supervening impossibility. On the other hand, the courts have also been clear that it is not complete factual impossibility that is required but rather that performance has become so difficult and onerous that it can, under no circumstances, be reasonably expected that a party must comply.
- If supervening impossibility can be proven, the obligations of the parties under the contract will be discharged and the contract will be terminated. This differs from force majeure, which often allows for a suspension of performance and only provides for termination in the event that the force majeure is not resolved within a stated period of time.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- Under the lockdown legislation promulgated by the Government of the RSA, many businesses are prohibited from opening and are forced to remain closed during the lockdown period. Notwithstanding this, obligations in respect of commercial leases continue. Landlords have however been encouraged to negotiate with tenants in respect of rental and other obligations, and in practice certain retail tenants have, in terms of the common law, refused to pay rental and have been granted discounts or rental free months by landlords.
- This however does not absolve landlords from attending to their monthly instalments in respect of their bonds if a bond was registered against the property as security.
- The banks and financial institutions have provided relief to certain individuals and entities. This is however not a blanket exclusion in respect of payment holidays to every person and entity. Banks and financial institutions may, for example, either grant a one month or three month payment holiday, depending on the financial position of the individual or entity and provided the individual or entity was not in default with payments when the lockdown started. Other banks have indicated that customers in selected industries who can indicate their income has been affected by Covid-19 may be offered a 6 month payment break.
- The most significant impact of the lockdown was the closure of the Deeds Offices during lockdown level 5. The Deeds Office processes the registrations of transfer of properties and bonds in terms of the Deeds Registries Act and no transfer of properties or registration of bonds could transpire, which had a detrimental effect on the cash flow of individuals and entities, causing hardship.
- The Deeds Office opened under level 4 with reduced staff. The Deeds Office is currently operating under lockdown level 3 but, as a result of its closure under previous levels of the lockdown, a backlog exists which has resulted in delays in the finalisation and registration of matters (with the subsequent knock-on effect on pay away under transactions, etc.).

- The regulations issued in response to the lockdown prohibit evictions without a court order. In terms of the regulations in respect of level 3, such evictions orders may be stayed and suspended until the last day of the level 3 period, unless a court decides that it is not just and equitable to do so.



## Litigation

Are the courts operating?

- In the RSA, presiding officers in the courts have been given the discretion, and are urged, to use teleconference or videoconference tools where possible in order to keep the court system operational, however, in practice a large number of matters are not going forward and have been postponed.
- On 4 May 2020, the Minister of Justice and Correctional Services issued a direction stating that no new civil cases may be placed on the court roll unless identified as urgent or permitted services – this is however subject to the discretion of the presiding officer to use teleconference or videoconference tools.
- Matters already on the roll, where the presiding officer does not exercise their discretion to use videoconference tools, must be postponed and new dates are being provided, in writing, by clerk or register of the courts.
- Service processes and execution of writs and warrants are also restricted to urgent or specifically permitted matters.

## Tax

Has any new legislation been introduced in light of Covid-19?

The Government of the RSA has introduced the following tax relief measures for employers and employees:

- From 1 April 2020, an expanded employment tax incentive of R750 per month for qualifying low-income employees for a period of four months.
- Deferral, for a period of four months, of 35% of employees tax (“PAYE”) payable by tax compliant SMMEs (without penalties or interest).
- Increased deductions from PAYE of certain tax-deductible donations made by employers on behalf of employees.
- From 1 May 2020, a four-month holiday for skills development levy contributions (1% of total salaries) applies.
- The Covid-19 TERS provides tax-free unemployment insurance relief through applications to the Unemployment Insurance Fund (“UIF”) for unemployment resulting from Covid-19 closure of businesses.
- Amounts received by employees on behalf of employers from a COVID-19 disaster relief organisation may be deducted or excluded from the calculation of remuneration for purposes of PAYE.

**The following provisional tax relief has been introduced by Government and is available to tax-compliant SMMEs:**

- A deferral, for a period of 12 months, from 1 April 2020 to 31 March 2021, of a portion of provisional tax liabilities.
- The first provisional tax payment is reduced to 15% (as opposed to 50%) of the estimated total tax liability, while the second provisional tax payment is reduced to 65% (as opposed to 100%) of the estimated total tax liability. The remaining 35% tax liability is payable with the third provisional tax payment.

- **Deferral relief for qualifying micro businesses with regard to interim payments, similar to the 15% and 65% deferral relief with regard to provisional tax payments for tax-compliant SMMEs.**

**Other relief measures introduced by the Government:**

- Fast-tracking of VAT refunds for smaller VAT vendors that are in a net refund position by permitting the filing of VAT returns monthly instead of every two months without the need to apply to the revenue authority to do so.
- Extension of certain prescribed time periods under tax Acts in which the lockdown period will be regarded as days that have no legal effect and will not be counted for purposes of the calculation of certain time periods.
- Deferral for excise taxes on alcoholic beverages and tobacco products for a period of 4 months with effect from 01 May 2020.
- Tax-deductible limit for donations, currently 10% of taxable income, is increased to 20% in respect of donations to the Solidarity Response Fund during the 2020/21 tax year.
- Certain corporate tax measures that were going to be introduced in terms of which the deductibility of interest expenses, as well as the utilisation of assessed losses, would have been limited will be postponed to later legislative cycles.
- An expansion of access to living annuities for a period of four months from 01 May 2020 - 31 August 2020.



**Company law matters**

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Companies Act allows shareholder and board meetings to be held by way of electronic communication, provided that all parties are able to participate in the meeting and communicate concurrently without an intermediary. Meetings were already often held, in whole or in part, by electronic means prior to Covid-19, however, the prevalence thereof has increased substantially since the start of the pandemic.
- In addition to the holding of meetings by electronic means, the Companies Act permits both shareholder and board resolutions to be adopted by means of round robin written resolutions in appropriate circumstances without the need to hold a meeting.
- The Johannesburg Stock Exchange ("**JSE**") has also partnered with The Meeting Specialist to launch the first virtual annual general meetings ("**AGM**") for listed companies in the RSA to enable clients to engage with shareholders while the country is faced with tackling the Covid-19 pandemic.
- If a company holds a virtual-only AGM and does not allow shareholders to ask questions in real time, without moderation, or requires all questions to be submitted in advance, that meeting will not constitute an AGM for the purposes of the Act.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Government will grant up to €100 billion in guarantees for funding provided by credit institutions. In this respect:
  - net indebtedness limit for the Spanish Official Credit Institute (ICO) raised by 10€ billion, to increase ICO facilities providing funding to companies and the self-employed, and
  - the guarantee will cover 80% of new financing operations and renewals for self-employed and SMEs (defined as companies with less than 250 employees, and with an annual turnover that does not exceed EUR 50 million or with an annual balance sheet that does not exceed EUR 43 million). For all other companies, the guarantee will cover 70% in the event of new loan operations and 60% for renewals.
- There is no limit to the amount of guarantee per beneficiary, subject to EU state aid rules. The insurance premiums may vary whether the beneficiary is an SME or a non-SME, in accordance with de minimis EU regulations.
- The Spanish Export Credit Agency (CESCE) has been authorised to provide insurance cover amounting up to €2 billion for the working capital credit facilities needed by SMEs (excluding micro-companies that are those with less than 10 employees and with an annual turnover or annual balance sheet that does not exceed €2 million) and bigger non-listed companies.
- There is no requirement that the use of the funds be linked to the performance of export contracts and should respond to new financing needs and not to pre-crisis situations. The percentage of credit risk cover shall not exceed 80%.
- The sums in the Fund for “Red Cervera” Technical Provisions and R&D&I projects are allowed to be used to cover any risks that the Centre for Technological and Industrial Development (CDTI) may incur by providing loans to finance R&D&I projects of small and medium enterprises, and of mid-cap companies.
- Royal Decree Law 19/2020 (“RD 19/2020”) introduces a special legal regime for moratorium agreements offered by lenders. The regulation requires that these agreements -in order to benefit from the provisions established in RD 19/2020- are the result of the lender's adherence to a sectoral framework agreement for deferred payment promoted by the associations representing financial institutions, which must be communicated to the Bank of Spain.
- For further information regarding these moratoriums, please visit [here](#).
- For more information, please visit: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19, Preserving and increasing liquidity in the time of Covid-19, and Covid-19: Recommendations for accessing the financing facilities offered](#)

## Employment

What financial support is the government providing to businesses and to individuals on employment

- Extension of furloughs procedures (“ERTEs”) due to force majeure until June 30, 2020. Royal Decree Law 18/2020 (“RD 18/2020”) allows the ERTEs due to force majeure, as well as the exemptions from social security payments to be extended until June 30, 2020 and also defines, inter alia, new exemptions in relation to social security contributions, the scope of the job retention obligation, as well as certain restrictions on the distribution of dividends of companies that have used an ERTE due to force majeure. The provision that dismissals on grounds related to COVID-19 cannot be upheld is also extended until June 30, 2020. For further information, please visit [here](#).
- Furlough procedures (“ERTEs”) as a temporary solution: The conditions for processing ERTEs have eased and can be processed much quicker. ERTEs can be processed in case of force majeure and economic, technical, organisational and production-related grounds arising from COVID-19. On May 1, 2020 the Spanish Directorate General of Labour (Dirección General de Trabajo) issued an interpretation report related to the gradually cease of force majeure furloughs. For more information, please visit [here](#).

- Exemption from contributions in the case of ERTes due to force majeure: There is a full exemption from the employer's share of social security contributions for companies with fewer than 50 workers and a 75% exemption for companies with 50 or more workers.
- Obligation to maintain employment: The extraordinary employment-related measures are subject to the company's obligation to maintain employment for a period of 6 months following the date of resumption of the company's activity.
- Rights to adapt and reduce working hours: This measure is addressed to workers who evidence duties of care with respect to their spouse or equivalent and relatives up to the 2nd degree of consanguinity because of COVID-19.
- Preferential nature of teleworking: The Spanish Ministry of Labour is submitting for public consultation prior to the preparation of a draft regulation consisting on the modification and elaboration of the conditions for teleworking.
- Sick leave: Sick leave due to COVID-19 infections or preventive isolation is treated as an occupational accident for the purposes of benefits.
- Recoverable paid leave: There was a time window between March 30 and April 9, 2020, both inclusive, in which workers involved in non-essential activities were not able to go to work as result of the Covid-19 crisis and subsequent State of Emergency. During that period, those affected workers benefited from a mandatory recoverable paid leave (permiso retribuido recuperable). The recovery of the missing working hours by the employees shall be carried out until December 31, 2020 under the conditions to be collectively agreed with their employer.
- Measures applicable after the end of the state of emergency: Royal Decree Law 21/2020 ("RD 21/2020") establishes the specific measures and obligations to be adopted at workplaces, related to ventilation and cleaning, work shifts, workspaces or progressive return, among others, as well as the promotion of the use of teleworking and with regard to workers who have symptoms compatible with COVID-19. See [here](#) for more information.
- For further information, please see: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19](#), [Companies facing the Covid-19 crisis](#), [Key new legislation introduced](#), and [Workers in non-essential services will be compelled to take recoverable paid leave](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- The duty to request a voluntary insolvency order has been disabled until December 31, 2020. In this respect, no petitions for necessary insolvency orders filed by creditors against the debtor will be admitted for consideration. However, directors should not lower their guard, since this measure does not mean that they cannot incur liability for causing or aggravating insolvency for the company. For further information about this matter please visit [here](#).
- The Official Spanish State Gazette (BOE) has published a new Spanish Revised Insolvency Law on May 7, 2020, introducing regulation that departs from the existing provisions on restructurings and insolvencies and that will enter into force on September 1, 2020. For further details please visit [here](#).
- For more information please see [here](#) and [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- There has not been any outstanding measure taken by the Spanish Government regarding the specific reinforcement of contracts, therefore, normal rules would apply.
- When it comes to contract suspensions and reductions in working hours that are directly caused by losses in activity as a result of Covid-19, a legal provision has been included in Royal Decree-law 8/2020, of March 17 (RDL 8/2020) stating that those specific cases shall be considered as force majeure, when duly verified.
- It should be taken into account that the force majeure term relates with the impossibility of the parties to perform their respective obligations due to the existence of an event that could not have been foreseen or that, if foreseen, were inevitable. In this respect, the scope and applicability of the force majeure would be subject to the specifics of each case, which shall be, in last instance, examined and determined one by one by the judicial courts.
- Likewise, if the performance of a contract is significantly affected due to unforeseen circumstances, it should be considered that there is a legal doctrine on hardship created by case law, that allows obligations and contracts to be reviewed when the economic balance of the contract has been upset and the contract has become impossible or very difficult to perform for one of the parties due to those unforeseen circumstances. However, it should be noted that the Spanish courts have hitherto applied hardship principles very cautiously and the specific characteristics of each case must be thoroughly looked at to determine whether it is applicable.
- For more information, please visit: [Companies facing the Covid-19 crisis](#) and [Force majeure and the grounds for suspension of contracts due to Covid-19 cannot be regarded as justifying dismissal](#)

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- **RDL 8/2020** incorporates a moratorium in favour of mortgage debtors who are in a particularly vulnerable situation (i.e. the mortgagor becomes unemployed or, in the case of a businessman, suffers a substantial loss of income or a substantial drop in sales, that is, at least 40%).
- If the landlord is an entity or a public housing company (entidad 'pública de vivienda') or a large individual holder (i.e. an individual owning more than 10 properties or owning a built facility bigger than 1,500 sq.m), the tenant may request temporary and extraordinary deferment of the rent of his/her principal residence within one month from the enter into force of Royal Decree-law 11/2020, March 31, provided that said deferment or the total or partial remission of the rent has not already been achieved voluntarily by agreement between both parties. In the event that the agreement had not taken place, the landlord may choose between the following alternatives:
  - a 50% reduction over the rent while the state of emergency is in force, or
  - a moratorium on the payment of the rent that will be applicable during the term of the state of emergency (and which may be extended monthly if that term is insufficient in relation to the situation of vulnerability caused by the Covid-19), and which may not, in any case, exceed four months.
- In line with the above, Royal Decree-Law 15/2020 has extended, in one additional month starting from April 23 2020, the term granted to the tenant to request a moratorium on the rent payment. However, in this case, the moratorium will be automatically binding to the landlord, and the same conditions as indicated above will apply.

- Likewise, measures related to the suspension of the eviction procedures as well as the removals of judicial releases for vulnerable households without alternative housing have been introduced.
- Finally, besides the above regulations introduced by the Spanish government to mitigate the economic impact regarding the Covid-19, the undertakings that need to bear rental payments while their business are closed (retailers, in particular) are requesting to their landlords, on a general basis, rent free periods regarding their lease agreements given the extraordinary nature of the health emergency resulting from Covid-19, based on the force majeure and hardship (rebus sic stantibus) applicable case law.
- For more information please visit: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19](#), and [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020](#)



## Litigation

Are the courts operating?

- Lifting of the suspension of procedural and substantive time periods, and recommencement of judicial proceedings. An order has been enacted to lift, starting on June 4, 2020, the suspension of procedural and substantive time periods determined in additional provisions two and four of Royal Decree-Law 463/2020 ("RD 463/2020"). Also, on that same date, the judicial activities mentioned will start up again, where health-related, organizational and procedural requirements so allow.
- Remote hearings in civil proceedings. For the time being, this is only allowed for hearings with the exclusive participation of professionals, although the courts have not rejected the option of holding other proceedings with parties or witnesses also taking part. This results from putting into practice the permission, envisaged in Royal Decree-Law 16/2020 ("RD 16/2020"), on procedural and organizational measures to confront COVID-19 in the sphere of the justice system, to hold remote hearings during the state of emergency and until three months after it has ended.
- The General Council of the Spanish Judiciary has published guidelines on holding judicial proceedings remotely. The guidelines provide parameters and recommendations for reconciling the preferred use of these types of technology in the process with the court's plenary session, with the principles and safeguards established in the laws. Over four sections it addresses elements related to the preferred use of remote technology, how the proceedings are to be held, the place and minimum technical requirements that must be taken into account for carrying out the various steps in the process remotely. They are available [here](#).
- For more information please visit our [June Covid-19 special newsletter](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- **Extension of the filing and payment deadline for certain tax returns and self-assessments:** This extension benefits small and medium-sized companies and the self-employed, and relates to be filed between April 15 and May 20, 2020. It applies to taxpayers that had revenues of €600,000 or lower in 2019. For taxpayers with public authority status, including the social security authorities, their latest approved annual budget cannot go above €600,000.
- Exemption in relation to transfer and stamp tax for mortgage transactions.
- **VAT and custom duties exemption:** For imports of any goods necessary for medical treatment of individuals affected by Covid-19 and for avoiding the spread of viruses. In addition, a 0% VAT rate is established temporarily (until July 31, 2020 for domestic supplies, intra EU acquisitions or imports of the goods listed in the annex of the Royal Decree-Law 15/2020, for which the customers are public entities, non-profits and hospitals.

- **Suspension of assessment of VAT and of excise taxes on electricity and on hydrocarbons on the bills or electricity, natural gas and oil products:** Exemption from any obligation to assess and pay VAT and, where relevant, the excise tax on electricity and the excise tax on hydrocarbons relating to bills with suspended payment, until the customer has paid them in full, or 6 months has run from the end of the state of emergency.
- **Measures in relation to the CIT prepayments:** Taxpayers with revenues of €600,000 or lower in 2019 will be entitled to calculate their CIT prepayments using the “tax base method” before May 20, 2020 (deadline for filing the April prepayment for these taxpayers, due to the extension of the period approved by Royal Decree-Law 14/2020). Other taxpayers with net revenues of €6,000,000 or lower in FY19 will be also entitled to calculate their following prepayments (October and December, 2020) using the “tax base method”. This measure does not apply to any tax group taxed under the special consolidated tax regime for CIT purposes.
- **Tax credits for donations:** Taking effect from January 1, 2020, a higher tax credit is available for donations made by individuals and by non-resident income taxpayers operating in Spain without a permanent establishment.
- **Corporate income tax credit for investments in cinematographic productions and audiovisual series:** An increase of the tax credit percentages has been approved for the investments and short films are included among the investments giving entitlement to that tax credit.
- **Events of exceptional public interest:** Additional events and programs of exceptional public interest have been included for the purposes of the tax regime for not-for-profit entities and on tax incentives for patronage.
- **Corporate income tax:** Royal Decree-Law 19/2020 (“RD 19/2020”) states that the three month period for preparing the financial statements will start running on June 1, 2020. Likewise, RD 19/2020 has provided a mechanism allowing a new self-assessment to be filed until November 30, 2020 if the approved financial statements differ from the information used in the self-assessment and filed in the voluntary period, without any surcharges, although late-payment interest will accrue. For more information, please visit [here](#).
- **New stamp tax exemption:** RD 19/2020 introduces a new stamp tax exemption for deeds recording the moratorium arrangements under previous Royal Decree-Laws.
- **Telematic tax inspections:** the General Tax Law has been amended to introduce the possibility that administration’s activities within tax application procedures may be dealt with the taxpayers through telematics means.
- **Increase of tax credit for innovation and unrestricted depreciation for certain assets in the automotive industry:** the rate of the tax credit for technological innovation activities goes from 12% to 25% for expenses in technical innovation activities resulting in a technological advancement related to the automotive industry.
- Taxpayers may take unrestricted depreciation over investments on new tangible fixed assets made in 2020 (excluding real estate). The maximum amount of the investment that may qualify for this depreciation regime will be € 500,000. For more information, please visit [here](#).
- For more information, please visit: [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020, Companies facing the Covid-19 crisis](#), and [Spain interactive map for Covid-19](#)





## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- **Legislation governing corporate bodies.** The various pieces of legislation published during the state of emergency, such as royal decree laws 8/2020, 11/2020 and 16/2020, among others, together with statements by registrars and by the National Securities Market Commission (CNMV), have created a new exceptional regime governing the corporate bodies of commercial companies, which makes it necessary to structure this new legislation by summarizing the measures and their implications depending on the body concerned and dividing them into listed and unlisted companies.

Among the principal measures are, among others: shareholders' and board of directors' meetings may be held via video call even if it is not envisaged in the bylaws (including the notary); modification of the obligatory term for the annual shareholders' meetings that now may be held in the ten months following the fiscal year-end; and the resolutions of the board of directors may be adopted by voting in writing without a meeting even if it is not envisaged in the bylaws, whenever the chairman so decides and with just 2 members in favour.

- **Winding up and right of withdrawal at commercial companies.** Some of the key new provisions in connection with the corporate bodies of the Spanish companies affect issues related to winding up and the right of withdrawal of shareholders or members. As a result of that, companies must be aware of to the various grounds for winding up and how the right of withdrawal of shareholders at capital companies and members of cooperative companies has changed. In this regard, according to the new provisions published, losses for fiscal year 2020 shall not be taken into account for the purposes of determining the ground for winding up of a Spanish company.
- For further information regarding winding up and right of withdrawal at commercial companies, please visit our briefing chart [here](#).
- **Dividend distribution.** Royal Decree-Law 18/2020 ("RD 18/2020") regulates, among others, certain limitations to the distribution of dividends by companies that have gone into furloughs procedures ("ERTEs") due to the economic crisis caused by Covid-19. Commercial companies will have to review whether these limitations apply to them prior to the distribution of dividends. These limitations include the inability to distribute dividends corresponding to the tax year in which the furloughs ("ERTEs") are applied, unless they previously pay the amount corresponding to the exemption applied to social security contributions.

For further information regarding dividend distribution, please visit [here](#).

- **Drawing up and approval of financial statements.** Royal Decree-Law 19/2020 ("RD 19/2020") states that the three-month term for drawing up the financial statements and other documents required by law will start running on June 1, 2020 (and not from the end of the state of emergency as planned on RD 8/2020). Additionally, the term for approving financial statements is reduced to two months running from the end of the term for their drawing up.
- For further information regarding financial statements, please visit [here](#).
- For more information please visit: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19](#), and [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020](#)

## Loans and financial support

Has the government put in place any new bank funding schemes?

### State loan guarantee programme for SMEs

The Swedish Government has implemented a state guarantee for new loans granted by banks to Swedish companies which have experienced financial distress due to the COVID-19 pandemic. The guarantee is directed towards small to mid-sized enterprises ("SMEs"). There are however no official size limits, but the European Commission has issued a recommendation setting forth that the main factors when determining whether an enterprise is a SME are (i) staff headcount (under 250) and (ii) turnover or balance sheet total (under EUR 50,000,000 in turnover or EUR 43,000,000 in balance sheet total).

The Swedish state guarantees 70 per cent of the loan amount, up to SEK 75,000,000 per debtor (with a possibility for the Swedish National Debt Office (Sw. Riksgäldskontoret) to grant exceptions from this limitation). Interest will accrue during the entire credit period, but the debtor's interest payments are postponed during the first twelve months. No amortisation is required on the loan during the first twelve months and the loan may be free from amortisation during the entire loan period. The guarantee for loans taken under the guarantee program is valid for up to three years.

### Almi's bridge loan

In order to bridge a period of financial distress resulting from the COVID-19 pandemic, start-ups and SMEs in Sweden can apply for a bridge loan with Almi, a state-owned non-profit company. Due to COVID-19, Almi has received an additional SEK 3 billion in order to increase its lending to start-ups and SMEs. The bridge loan is granted for a term of twelve months with an individual floating interest rate up to 4.95 per cent, no set-up fee and a possibility to apply for interest and amortisation deferrals for up to twelve months. After the initial twelve months there is a possibility to convert the bridge loan into a new loan with the same terms applied as the terms applied at that time.

### State reorientation support

The Swedish Government has introduced a financial support for companies which have had an annual turnover of at least SEK 250,000 and a loss of turnover of at least 30 per cent due to the COVID-19 pandemic. The loss of turnover is calculated by comparing the turnover of March and April 2020 with the turnover for the same months of 2019. The support should help cover the company's fixed costs and may in any event not exceed SEK 150,000,000.

### Miscellaneous

## Employment

What financial support is the government providing to businesses and to individuals on employment

### Short-term work

Swedish companies can obtain a governmental subsidy for short-term work, meaning that the working hours of the employees can be reduced with up to 60 per cent (however, up to 80 per cent during May, June and July), whereas the employees retain approximately 90 per cent of their salary. The government subsidy covers 75 per cent of the costs for this reduction.

In order to qualify for this subsidy, the following criteria must be met:

- The company should be able to demonstrate financial problems resulting from the COVID-19 pandemic;
- In the event that the company is bound by a collective agreement, the short-time work must be agreed upon with the company's signatory trade unions;

- In the event that the company is not bound by any collective agreement, the short-time work must be agreed upon with 70 per cent of the employees at the relevant business unit and the working hours should be reduced with the same level for all employees;
- The company must have made use of other available measures to reduce its costs, such as termination of non-permanent personnel who are not regarded as critical to the business operations (if possible); and
- The company should not be subject to a restructuring or be insolvent.

**Compensation for people belonging to a risk group:** An individual belonging to a risk group can apply for a temporary compensation (up to SEK 804 per day) for the period 1 July – 30 September, provided that it is not possible to work from home, nor solve the situation in any other manner. However, it will not be possible to apply for such benefit until the 24 August 2020.

**Sick pay:** The government assumes the company's liability for sick pay during April, May, June and July.

**Qualifying period for sick pay:** The government temporarily compensates employees for the deduction from sick pay (i.e. the qualifying period) until 30 September 2020.

**Doctor's certificate:** The requirement to provide a doctor's certificate from day eight in the sick period has been modified, meaning that such certificate is now required after day 21.

**Unemployment insurance:** The qualifying period for obtaining compensation from the unemployment insurance has temporarily been reduced. Furthermore, the compensation will be paid out at a higher level as the cap has temporarily been modified.

**Social contributions:** The social security contributions are reduced between 1 March 2020 and 30 June 2020 (the reduction applies for a maximum number of 30 employees and is capped at SEK 5,300 per employee).

**Tax deferral:** Companies can seek deferral of certain tax payments for the period January to September 2020, however subject to an interest being paid

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The Swedish Government has not made any changes to the insolvency legislation due to the COVID-19 pandemic.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Swedish Government has not introduced new legislation due to the COVID-19 pandemic that would specifically reinforce contracts between commercial entities. Normal contractual rules apply.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

#### Temporary reductions of fixed rental costs

On 16 April 2020, the Swedish Government decided on an ordinance concerning temporary reduction of fixed rental costs in sectors which have been negatively affected by the COVID-19 pandemic. The new regulation is believed to mitigate the financial consequences of the virus outbreak. Sectors covered by the ordinance include, inter alia, hotel, restaurant and retail sectors as well as consumer services sections such as dentists, physiotherapist practices, and hair and beauty salons. In total, the Swedish Government has allocated SEK 5 billion for rent reductions.

If a landlord and a tenant (which is active in a vulnerable sector) have agreed on a reduction of the rent for the period between 1 April 2020 and 30 June 2020, the landlord will be able to seek support to compensate part of the reduction. The compensation provided will be a maximum of 50 per cent of the reduced fixed rent, i.e. the discount that the landlord and tenant have agreed on for the period from 1 April 2020 to 30 June 2020. However, the support can never exceed 25 per cent of the original fixed rent amount. It should further be noted that the agreement on the temporary discount must be entered into by 30 June 2020 and that a tenant (where a group is seen as one and the same tenant) cannot obtain an advantage exceeding EUR 800,000.

Compensation can be applied for by the landlord from 1 July 2020 until 31 August 2020.

#### Temporary removal of interest on deferred rental payments

The Swedish Fortifications Agency (Sw. Fortifikationsverket) and the National Property Board Sweden (Sw. Statens Fastighetsverk) are temporary exempted from the requirement to charge interest when granting deferment of rental payments. Under Swedish law, public authorities are normally required to charge interest according to the interest rate set forth for each financial year by the National Debt Office (Sw. Riksgälden), with an addition of two percentage points when granting credit or deferment with a payment.

The temporary exemption applies to all tenants of the two aforementioned authorities who, in agreement with their landlord, have been allowed to postpone their rental payments in 2020, regardless of whether the tenant is active within the public or private sector and regardless of industry, region or the size of company. The largest proportion of the tenants are state actors. However, the authorities also have private tenants such

## 6

### Litigation

Are the courts operating?

#### Operation of Swedish Courts

The Swedish courts are operating normally, while observing social distancing guidelines and COVID-19-related precautions. In principle, the courts continue to hear cases, prioritizing urgent cases (youth, family law and certain criminal matters). Many hearings are still being cancelled and postponed. The number of hearings carried out remotely via video conferencing technology has increased. The Swedish National Courts Administration [produces statistics](#) on how the courts are affected by the corona pandemic (the statistics will not be updated online during the summer months).

## Tax

N/A

Has any new legislation been introduced in light of Covid-19?

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

### Remote general meetings

The Swedish Parliament has adopted a temporary law that allows Swedish companies to conduct general meetings with remote participation during the COVID-19 pandemic. The measures included in the temporary law permit companies to collect proxy forms in respect of general meetings and enables companies to allow shareholders to vote by post at general meetings even if such option is originally not included in the company's articles of association, as well as to conduct general meetings electronically in combination with postal voting, or solely by postal voting. The temporary law is effective throughout 2020.

### The Swedish Corporate Governance Code

The Swedish Corporate Governance Board (Sw. Kollegiet för Svensk Bolagsstyrning) has decided that companies do not have to apply section 1.1 - 1.3 of the Swedish Corporate Governance Code (the "Code") throughout 2020. The Code, which applies to publicly listed companies, sets out norms for good corporate governance and applies on a "comply-or-explain" basis. The aforementioned suspended rules contain requirements regarding advance publication of the date of the general meeting, attendance of board members and the CEO at the general meeting and presentation of proposals regarding election of the chair at the general meeting. Consequently, publicly listed companies do not have to comply with these requirements or explain any deviations from the aforementioned rules.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- On April 8 2020, the Dutch government announced that it intends to reinsure supplier credits for the remainder of 2020. This measure is mostly aimed at helping SME retailers and catering establishments that make use of supplier credits and which need to provide a payment insurance to the supplier via a credit insurer. It is estimated that the measure will cost around EUR 12 billion, resulting into a loss of approximately EUR 1 billion for the Dutch government. The measure has yet to be worked out in greater detail and approval of, amongst others, the European Commission is required.

Taxpayers that export capital goods or services from the Netherlands can insure their transactions through an export insurance. This insurance is provided by the Dutch government for transactions which involve risks that cannot be insured by the capital market. The Dutch government has extended the export credit insurance schemes until the end of 2020. Taxpayers may apply to [Atradius Dutch State Business](#) for the insurance.

- An SME Credit Guarantee Scheme is available for small and medium sized enterprises established in the Netherlands that have substantial activities in the Netherlands (except for undertakings active in agriculture, fisheries, public health care, insurance and finance, and real estate).

Under the regular scheme, the government guarantees loans to SMEs up to 50% of the loan provided by the financier. The size of the maximum guarantee has been increased from 50% to 75% for loans with a maximum amount of EUR 266,667. For loans of more than EUR 266,667, the guarantee is capped at 50%. In addition, the maximum loan for which the guarantee applies has been increased from EUR 1 million to EUR 1.5 million. With effect from 28 April 2020, the term of the credit is extended to four years. Furthermore, the scheme has become more accessible due to the use of a turnover test instead of a comprehensive liquidity forecast. The scheme can be used by companies for bridging loans or to increase their current account credit.

The premium for the Dutch government guarantee has been decreased from 3.9% to 2% for a loan with a duration of 8 quarters. The premium for a loan with a duration between 9 and 16 quarters has been decreased to 3%. EUR 30 million has been

- made available for SMEs and large companies that are established in the Netherlands and have substantial activities in the Netherlands (except for undertakings active in agriculture, fisheries, public health care, insurance and finance, and real estate) and have satisfactory prospects regarding their internal rate of return and continuity. The Dutch government helps companies by providing a guarantee on bank loans and bank guarantees. Under the GO Scheme, the maximum amount of the guarantee to be provided by the Dutch government to (i) large companies with a minimum turnover of EUR 50 million is 80% of the related bank loan or bank guarantee; and (ii) SMEs with a maximum turnover of EUR 50 million is 90% of the related bank loan or bank guarantee, provided that the large company or SME (as the case may be) has been affected by the Covid-19 outbreak.

Under the regular scheme, this applies to loans and guarantees from EUR 1.5 million up to a maximum of EUR 50 million per undertaking. The Dutch government has increased the maximum amount of any loan or guarantee under the GO Scheme to EUR 150 million per undertaking with a maximum term of six years. The budget of the GO Scheme has been increased from EUR 400 million to EUR 10 billion.

The eligible companies make an application to an accredited financier which is usually a bank. The accredited financiers can submit an application to the Rijkdienst voor Ondernemend Nederland. You can find the eligibility criteria and the list of accredited financiers via [this link](#).

- A measure is available for SMEs with a maximum of 250 employees that were established in the Netherlands before 15 March 2020 and are active in sectors which are affected by the government measures. SMEs can apply for a tax-free allowance to pay fixed costs, which must amount to at least EUR 4,000 from June until September. Depending on the size of the SME, the level of the fixed costs and the degree of loss of turnover (at least 30%), companies can receive a contribution up to a maximum of EUR 50,000 for the months June, July, August and September. The government has made available EUR 1.4 billion to support these businesses, who are expected to be employing over 800,000. Application and further eligibility criteria may be found [here](#).
- Bridge financing is available to start-ups and scale-ups that have been affected by the Covid-19 outbreak. Since these companies usually do not have banking relationships, the credit will be provided by Regional Development Agencies (*Regionale Ontwikkelingsmaatschappijen*, "ROM"). The loans provided vary between EUR 50,000 and EUR 2 million. For amounts above EUR 250,000, 25% co-financing is expected from the shareholders or other investors. A uniform interest rate of 3% applies. The government has made EUR 100 million available to support the start-ups and scale ups through this scheme.
- On 29 May 2020, the Dutch government has made EUR 750 million available for SMEs with a minimum turnover of EUR 50,000 and a financing need of between EUR 10,000 and EUR 50,000. The Dutch government will guarantee 95% of the total amount of the loan granted by the financier. The loans can be granted by banks and non-banking accredited financiers and will have an interest rate of maximum 4%. Furthermore, the SMEs have to pay a one-time premium of 2% as compensation and the bridging loan can be used for a maximum term of five years. Rabobank, ABN AMRO Bank, ING Bank, de Volksbank, and Triodos Bank have agreed to offer loans through this scheme.
- A measure is available for agricultural SMEs that are established in the Netherlands and have substantial activities in the Netherlands. The Dutch government has decided to temporarily amend the scheme to provide more financial leeway for agricultural SMEs that run into difficulties and need working capital and/or liquidity.

The temporary extension is aimed at regular agricultural loans and means that the State guarantees 70% of the total amount of the loan granted by the financier. This temporary extension can be used by agricultural SMEs to obtain a bridging loan or an increase in current account credit from a lender for a maximum term of two years.

On 10 April 2020, the measure has also been extended to include fisheries and aquaculture companies. Companies within these sectors can make use of the scheme retroactively per 18 March 2020.

Furthermore, the premium for the government guarantee has been decreased from 3% to 1.5% and from 1% to 0.5% for starters. The eligible companies make an application to the accredited financier which is usually a bank. The accredited financiers can submit an application to Rijkdienst voor Ondernemend Nederland. You can find the eligibility criteria and the list of accredited financiers [here](#).

- The government introduced a scheme with a EUR 650 million budget for the compensation of damages suffered by specific agricultural sectors as a result of the Covid-19 outbreak.

Businesses in the ornamental horticulture sector and specific sections of food horticulture with a loss in turnover of at least 30% were compensated for up to 70% of their loss in turnover in March, April, May and June 2020. The benchmark was the average turnover in the same period in three preceding years. As of 11 June 2020 only EUR 156 million of the available EUR 600 million was requested.

Chip potato growers received compensation in relation to the quantity of potatoes they still had in storage. The compensation applied to potatoes that can no longer be processed into chips for this season. The total compensation amounted to 40 percent of the average market value of the potatoes over the period from September 2019 up until February 2020. A total of EUR 50 million was made available to this end.

The schemes were not extended beyond 18 June 2020. Further details on the measures may be found [here](#) and [here](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

A subsidy is available for employers that pay Dutch wages and expect to see at least a 20% decline in turnover, for which the government has made available EUR 12.8 billion. The scheme is known as NOW 2.0 and replaces the preceding furlough scheme.

The benchmark is the average turnover over the course of four months in 2019 for companies which existed in 2019. The subsidy is up to a maximum amount of 90% of the wage bill (the wages of all employees) for the months June, July, August, and September. Only in the event of a 100% decline in turnover, will 90% of the total wage bill be paid out. If the decline in turnover is lower, the subsidy will be set at a proportionately lower level.

Based on the application, the Dutch Employee Insurance Agency (the UWV) will pay an advance payment of 80% of the estimated amount of the subsidy based on the expected decline in turnover and the employers' actual wage costs in March 2020. A final settlement will take place on the basis of the actual turnover which normally requires an audit opinion.

In cases of a composition of legal entities, the decline in turnover is assessed at group level. This means that if a group as a whole has a decline in turnover of less than 20%, the individual members of that group are not eligible for a NOW subsidy.

A maximum of twice the maximum daily wage per month per individual employee is taken into account as salary. Compensation for each individual employee's wage is capped at EUR 9,538 per month. As of June 2020, a correction to the subsidy will be applied in case of dismissals. However, the penalty for making employees redundant will no longer apply. Furthermore, the subsidy may also be used for purposes other than the payment of wage costs. When using the scheme, companies are prohibited, amongst other things, to make profit distributions to shareholders, pay bonuses to the board and management, and/or repurchase their own shares. Furthermore, companies must declare that employees will be encouraged to retrain. Applications may be submitted via [UWV](#).

- A measure is available for the self-employed registered in the business register before 17 March 2020. The support may take the form of a benefit payment up to a certain maximum amount (social minimum) and/or a loan for working capital to solve liquidity problems. No viability test will be applied so that the requests may be processed quickly, i.e. 4 weeks instead of the regular 13-week period. The level of income support depends on income and the household composition but is a maximum of approx. EUR 1,500 per month (net). This income support does not need to be paid back. The accelerated procedure also applies to loan applications for working capital up to a maximum of EUR 10,157. In addition, a lower interest rate than the regular rate will be applied on the loans. For more information, see [here](#).
- On 20 May 2020, the Dutch government announced that it intends to extend the scheme, which means that entrepreneurs can apply to their municipality until 1 October 2020. The income support under the extended scheme can only be granted for the period between 1 June 2020 and 1 October 2020. The difference between the schemes is that the income support under the extended scheme is subject to a partner income test. If the household income is above the social minimum, entrepreneurs are not entitled to the income support under the extended scheme. To apply for a loan of working capital, the applicant must declare that no suspension of payment or bankruptcy for the applicant, their company or one of their partners (vennoten) has been applied for or obtained. The amount of working capital granted under the schemes jointly is capped at EUR 10,157.



- Entrepreneurs can apply to their municipality until 30 September 2020, for a maximum of three months in the period between 1 June and 31 September 2020. Applications can therefore also be submitted retroactively. You can find the eligibility criteria [here](#).
- As of June 2020 the Dutch government launched the Temporary Bridging Scheme for Flexible Workers (TOFA). The TOFA is designed to support 'flexible workers' who have lost at least 50% of their income and are not eligible to receive unemployment benefits. Examples include: employees with a zero-hour contract, temporary workers, and students with a part-time job.
- Eligible applicants have earned at least EUR 400 in February 2020 and not more than EUR 550 in April 2020. The entitlement amounts to a one-off allowance of EUR 1,650, being EUR 550 per month over the course of March, April, and May 2020. Click [here](#) to view more information.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Dutch Ministry of Justice and Security published a bill on 8 April 2020 on temporary provisions in the area of the Ministry of Justice and Security in connection with the coronavirus (Covid-19) outbreak (the **"Emergency Act"**) and an accompanying Explanatory Memorandum.

The Emergency Act provides for, among other things:

- a temporary limitation on the 'presumptions of proof' for directors' liability in case of bankruptcy if filing the annual accounts is delayed as a result of Covid-19, and
- the extension of the period for preparing annual accounts by the management board instead of by the general meeting.

Certain provisions have a retroactive effect from 16 March 2020. The bill will apply until 1 September 2020, unless an extension is necessary due to the continuing consequences of Covid-19. The regulation on presumptions of proof in the event of late filing of annual accounts expires on 1 September 2023, as a directors' liability in bankruptcy can be invoked for up to three years. More information can be found [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- There has been no expressive Government intervention into the workings of contracts in the Netherlands and the normal rules apply.
- Delays in production, supply and transportation may result in delay or failure to perform a contract. Therefore, particular attention has been given to existing force majeure clauses within contracts. Contracts usually include a list of force majeure events, including events such as natural disasters, wars, government acts, etc. Whether a 'pandemic' such as the coronavirus and the resulting government measures, is deemed to fall within the scope of the 'force majeure' clause will have to be examined on a case-by-case basis.
- Absent contractual clauses to this effect, Dutch law allows a contracting party to invoke 'force majeure' by relying on various grounds under the statutory provisions of the Dutch Civil Code in case of absence of fault, by virtue of law, a juridical act, or based on common opinion.

# The Netherlands

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

#### Tenants

- The Dutch Government has come to an agreement with housing corporations and associations that tenants will not be evicted during the Covid-19 crisis. For tenants who are unable to pay the monthly rent despite these measures, landlords will endeavour to provide custom solutions. Evictions may only take place in case of criminal activity or extreme nuisance.
- Furthermore, the Dutch Government has initiated an emergency act allowing temporary lease contracts to be extended during the course of the crisis. Currently, Dutch law prescribes that any extension of a temporary lease will automatically be converted into a permanent lease, causing landlords to terminate the contract at the end of the lease. The emergency act will allow landlords to extend the lease with a maximum of three months and until 1 September 2020 at the latest. The aim is for this legislation to enter into force as soon as possible.

## 6

### Litigation

Are the courts operating?

- From 11 May 2020, physical hearings will recommence for cases where the physical presence of the parties is deemed necessary. Criminal, youth, and family matters have priority.
- The deadlines for submitting documents to the courts remain unchanged as much as possible, unless the court reports otherwise.
- Whenever possible, courts aim to carry out any other hearings remotely, using various digital aids that have been put into place.

## 7

### Tax

Has any new legislation been introduced in light of Covid-19?

- Companies can obtain deferral of payment of income tax, corporate income tax, wage tax and/or value added tax, excises (mineral oils, alcohol, and tobacco), insurance tax, gambling tax, and landlord levy). The Dutch tax authorities will postpone collecting payment and grant a deferral until September 2020, immediately after receipt of such request. The deferral applies to current debts as well as the debts that arise during the three months after deferral application. Furthermore, a deferral for a period longer than three months is possible but is subject to further conditions. The deferral application may be submitted [here](#).
- The tax authorities will not impose default penalties for non-payment or late payment of taxes. Default penalties (automatically) imposed will be reversed. Even though this is not specifically confirmed, it is generally understood that both measures apply since 12 March 2020. The collection interest that normally starts after the expiry of the payment term will be temporarily reduced from 4% to 0.01% from 23 March 2020 until 1 October 2020. This applies to all tax debts. In addition, the interest rate for unpaid tax will also be reduced to 0.01% as of 1 June 2020. An exception to this is the temporary reduction of the rate for unpaid personal income tax, which will take effect from 1 July 2020.
- If a preliminary corporate tax assessment has been imposed and the taxable profit is likely to be lower than the taxable profit estimated for the preliminary assessment, a reduction of the preliminary assessment may be requested. This creates a right to a refund (if the preliminary assessment has already been paid in full) or provides for a reduction of the monthly tax due (if the preliminary assessment is paid on a monthly basis).

- The Dutch government has announced that the Dutch tax authorities will grant all requests to reduce preliminary assessments. On 24 April 2020, the Dutch government announced that taxpayers may form a reserve ("fiscal coronavirus reserve") up to the amount of the expected loss for 2020, and set this off against any 2019 taxable income. The amount of the fiscal coronavirus reserve may not exceed the total taxable income for 2019. Taxpayers may take the fiscal coronavirus reserve into account when requesting a preliminary corporate income tax assessment, including a reduced preliminary corporate tax assessment. The application may be submitted via [this link](#).
- Directors who are also major shareholders in their own company are deemed to receive a 'customary salary' for Dutch wage tax purposes. The customary salary rules (gebruikelijkloonregeling) aim to avoid artificial structures under which no salary or only a small salary is attributed to directors/major shareholders. The 'customary salary' depends on the director/major shareholder's specific situation, but is in principle at least EUR 46,000 (2020) or equal to the most comparable employee of another company or the highest earning employee of the director/major shareholder's own company. On 24 April 2020, the Dutch government announced that these rules will be changed so that directors/major shareholders may temporarily reduce the 'customary salary' they are deemed to receive in proportion to the turnover losses incurred due to the coronavirus. Approximately 135,000 directors/major shareholders are expected to benefit from the measure.
- Under the work-related cost scheme, employers may use 1.2% (i.e. the discretionary margin) of their total wage sum for tax-free allowances and benefits to employees. As from 1 January 2020, the discretionary margin was increased to 1.7% for the first EUR 400,000 of the total wage sum. On 24 April 2020, the Dutch government announced to further increase the discretionary margin from 1.7% to 3% for the first EUR 400,000 of the total wage sum.
- On 26 June 2020, the State Secretary of Finance announced a six-month postponement of the reporting deadlines under EU Directive 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6"). The DAC 6 reporting deadline was originally intended to take effect from 1 July 2020. As a result of this postponement, the 30 day period for new reportable cross border arrangements is deferred from 1 July 2020 to 1 January 2021 (i.e. reportable cross border arrangements between 1 July 2020 and 1 January 2021 need to be reported ultimately 31 January 2021). The deadline for reportable cross border

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Dutch Ministry of Justice and Security published a bill on 8 April 2020 on temporary provisions in the area of the Ministry of Justice and Security in connection with the coronavirus ( Covid-19) outbreak (the "**Emergency Act**") and an accompanying Explanatory Memorandum. The Emergency Act provides for, among other things:
  - the facilitation of electronic decision-making by temporary derogation from the legal and statutory provisions concerning holding physical meetings of legal entities,
  - extension of the period for preparing annual accounts by the management board instead of by the general meeting, and
  - a temporary limitation on the 'presumptions of proof' for directors' liability in case of bankruptcy if filing the annual accounts is delayed as a result of Covid-19.
- The bill has now been adopted by the House of Representatives and must be adopted by both the House of Representatives and the Senate. More information can be found [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

### UAE Central Bank

The UAE Central Bank issued standards for its Targeted Economic Support Scheme (TESS) with a focus on private sector companies, SMEs and individuals. In summary TESS targets three principal aspects:

- Firstly, funding relief to banks where such banks can avail zero rated facility from the Central Bank as part of the AED 50 billion stimulus package for UAE banks;
- Relaxation in capital buffers prescribed for banks thereby allowing banks to tap into a capital conservation buffer up to 60% and in some instances up to 100%. TESS also imposes a temporary suspension on banks on maximum distributable amount;
- Offers payment deferral of interest and principal of up to 6 months to private sector companies, SMEs and individuals. Also a restriction on banks to charge fees and penalties.

### Abu Dhabi Fund for Development (ADFD)

ADFD is a multilateral agency which has pledged a COVID 19 soft loan program of AED 1 billion for industrial, healthcare and sectors completely disrupted by COVID 19. Eligibility criterion for availing the soft loans include:

- (a) Annual revenue not less than AED 150 million;
- (b) Asset valuation no less than AED 10 million;
- (c) Audited financials for the last 3 years
- (d) Details of the financial stress on the company proposing to avail the soft loan;
- (e) Operational plan for the utilization of the soft loan and impact on its business; and
- (f) Details of Strategic growth for the next 3 years

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- **Support to Businesses:** No state aid, state wage subsidy and/or state payroll co-funding scheme has been introduced or launched in order to assist employers adversely financially affected by the Covid-19 pandemic and unable to (or facing difficulty in) paying staff wages. Businesses therefore remain solely and exclusively liable for discharging staff wages and other labour-related benefits or entitlements.
- **Support to Individuals:** No state aid and/or unemployment benefit scheme has been introduced in order to assist employees who have lost employment due to the effects of the Covid-19 pandemic.

However, the Ministry of Human Resources and Emiratisation (the “**MOHRE**”) enacted interim legislation on 26 March 2020 mandating the continuation by employers of contractual allowances and (if applicable) staff accommodation for its terminated staff until the earlier of them being able to exit the country, secure alternative UAE employment or the revocation of such interim legislation. The rationale behind such measures is to ensure a sufficient financial safety net is in place for such staff pending repatriation to their home countries (particularly in the light of travel restrictions and travel embargoes still being in place in certain countries). Whilst this interim legislation applies only to those companies falling under the direct remit of the MOHRE (and so technically excludes the free-zones), a number of free zone authorities have nonetheless adopted its terms either wholesale or in varied form.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

No changes have been made as a result of Covid-19.

The UAE issued Insolvency Law No. 19 of 2019 came into effect on 29 November 2019 so is still a relatively new law. The Law aims to provide an enhanced regime for individuals facing financial difficulties. It encourages individuals to seek expert and professional help through a court-led process.

The Insolvency Law only applies to natural persons and the estate of the deceased. It does not apply to merchants, traders, commercial companies and similar persons which fall under the scope of the Bankruptcy Law No. 9 of 2016.

Both laws primarily focus on assisting distressed persons and entities through offering them settlement options.

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

No specific measures have been taken to reinforce contracts in view of the Covid-19 situation. Contracts continue to be governed by the Civil Code and Commercial Transactions law. With regards to force majeure, under UAE law, the concept of force majeure may be pursued by a party to a contract as a matter of law. It is a mandatory rule, as opposed to a default rule, of law that de jure applies even without being expressly set out in a contract.

The UAE Civil Code (Federal Law Number 5 of 1985) sets the definition and boundaries of a Force Majeure event, and the consequences it triggers. In principle, Article 273 of the UAE Civil Code stipulates that in order for an event to be qualified as a force majeure it should be: (a) claimed in a bilateral agreement; and (b) makes the performance of the obligation impossible – not just in hardship

It is anticipated that force majeure claims will be on the rise over the coming days due to COVID-19. However, as the World Health Organization (“WHO”) declared the threat of Covid-19 since it was first reported from Wuhan, China, on 31 December 2019, any defaulting party to a contract that is concluded afterwards is unlikely to succeed in invoking a force majeure claim. As for contracts preceding the WHO declaration, it will be examined on a case-by-case basis in order to determine whether the underlying events meet the criteria set by law and courts practice.

## 5 Property

Have any changes been made to the laws around property, rent and enforcement?

### Emirate of Dubai

- The **Dubai Judicial Council** have temporarily suspended all eviction judgments related to residential and commercial facilities in Dubai (except cases of abandoned homes) and imprisonment judgements linked to rental disputes since March 2020 until further notice.
- The **Dubai Government** have launched an AED 1.5 billion economic stimulus package to support companies and the business sector in Dubai. Some of the key property initiatives include renewal of commercial licenses without requirement of mandatory renewal of lease agreements; reduction in municipality fees imposed on sales in hotels from 7% to 3.5% and freeze on fees for the rating of hotels.

- The **Dubai Land Department** have launched a CSR initiative called “Together” in cooperation with several jointly owned property management companies in Dubai to support tenants and landlords. Under the initiative, they provide the necessary life supplies (such as food, medicine, sterilisation materials, gloves, paper napkins, and face masks) free of charge to those in need in various projects and freehold areas across Dubai. Additionally, the management companies shall consider extending additional measures including cancellation of fines for 2019 and 2020, provision of flexible instalments to pay service fees, reduction of service costs, and flexible payment options for air conditioning services.
- The **Dubai Free Zones Council** have launched an economic stimulus package to compliment the Dubai Government’s efforts to overcome the COVID 19 situation which include real estate initiatives such as postponement of rent payments by a period of 6 months; refund of security deposits and guarantees; facilitating payment by way of instalments; and cancellation of fines on corporates and individuals. The above benefits will be applicable to the free zones in Dubai.
- The **Rental Disputes Settlement Centre (“RDSC”)** have formed a new committee of first instance to review rental cases relating to claims of lease termination and rent reduction arising out of COVID 19 pandemic. A newly set up appeal committee shall review appeal cases in respect decisions issued by the committee of first instance. Both committees shall follow the rules and procedures of the RDSC.

#### Emirate of Abu Dhabi

- The **Abu Dhabi Government** have launched Ghadan21 which consists of 16 initiatives under Abu Dhabi economic stimulus package including numerous real estate recommendations such as zero charge of individual or commercial real estate registration fees; zero Tawtheeq fees for commercial and industrial activities in the year 2020; a 25% reduction in industrial land leasing fees for new contracts; up to a 20% rebate on rentals for the restaurant, tourism and entertainment sectors; and suspension of the tourism and municipality fees for the tourism and entertainment sectors in 2020.
- The **Abu Dhabi Department of Economic Development** have announced a 20% rent refund for leases of restaurants and food and beverage outlets, as well as tourist and entertainment facilities with the exception of lease to own contracts. The refund is applicable for lease contracts signed between 1 October 2019 and 31 March 2020, or renewed between 1 April and 30 September 2020. With respect to rent which consist of fixed rent and percentage of revenue, the refund shall apply on the fixed rent only.

#### Emirate of Ras Al Khaimah

- The **Ras Al Khaimah government** have announced that all eviction procedures relating to family residential premises have been postponed until end June 2020. The travel ban measurement of a debtor has been temporarily replaced with confinement. There is a further suspension of execution procedures on moveables, properties, shares and bonds.
- The **Ras Al Khaimah Tourism Development Authority** have created an internal Stimulus Committee to enact initiatives supporting the hospitality industry which include measures such as 6 months’ waiver of all touristic licenses; waiver of tourism dirham fee from March to May 2020; exemption of tourism licensing fees for Q2 and Q3 of 2020 and tourism licensing fines until 30 September 2020. The authority has also launched a financial incentive package geared towards non-government owned establishments including budget, midscale and 4 star hotels, along with attractions, golf courses and other tourism establishments.

## Emirate of Sharjah

- The **Sharjah Executive Council** have launched a 47 points stimulus package with suggested recommendations to support the Sharjah economy which include real estate suggestions such as (a) resolutions may be issued relating to suspension of eviction judgments and imprisonment rulings on all rental-related cases; (b) exemption from rent payment for tenants in Buildings (1 and 2) of the Sharjah Chamber of Commerce and Industry for a period of 3 months effective from 1 April 2020; (c) exemption for (a) tenants of Expo Centre Sharjah and (b) participants in the Sharjah Centre for Export Development's permanent national industries exhibition, from payment of rent for a period of 3 months effective from 1 April 2020; (d) exemption for employees of small and medium enterprises (SMEs) in 101 Trade Centre from payment of rent until the end of 2020; (e) exemption for hotel establishments from payment of the 5% municipal fees for a period of three months effective from 1 April 2020; (f) exemption for hotel establishments from payment of accumulated prior violations imposed by the Sharjah Commerce and Tourism Development Authority, during the year 2019 until 31 March 2020; (g) suspension of all pending rental property eviction cases together with executive procedures such as imprisonment, blocking of bank accounts, and seizure of vehicles, stocks and assets for a period of two months; (h) deferment of all current and new cases before the rental committees for 1 month; (i) release of 100 prisoners approximately imprisoned on rental issues and provision of a 3 months' period to settle overdue amounts; and (j) 50% reduction in rents for restaurants, exchange shops, commercial shops, banks, travel agencies, car rental companies, telecommunications companies and tourist promotion companies for a period of 3 months from 1 April 2020.

## Emirate of Ajman

- **H.E. Sheikh Ammar bin Humaid Al Nuaimi**, Crown Prince of Ajman and Chairman of the Executive Council has announced cancellation of administrative fines for all violations of real estate registration renewals and has granted an exemption from payment of registration fees for hotels and tourism establishments until end of 2020 and cancelled all penalties and postponed payment of outstanding fines due until the end of 2020.
- **The Ajman Department of Economic Development** have announced that renewal of company license shall be permitted without the need to submit a lease for the entity's premises for a duration of 3 months, provided that the lease is submitted within a month from expiration of the license.

## Emirate of Fujairah

- The **Fujairah government** have announced that cinemas, gaming centres and stores located in shopping malls, hotels, fitness centres, health clubs, wedding halls, and men's and women's salons are completely exempted from payment of licensing fees for a period of 1 year (i.e. 1 January until 31 December 2020). Furthermore, all resorts, hotels and hotel apartments are exempted from the prescribed local tax.

## Emirate of Umm Al Quwain

- The **Umm Al Quwain government** have announced that all licensed establishments and companies affected by the decision to suspend their services due to COVID 19 lockdown are exempt from certain fee payments such as fees for renewing licenses and rental contracts, and other fees or fines incurred that are determined by the Executive Council until further notice. Fujairah resolution No. 04 of 2020 regarding exemption from local licensing fees and taxes for the current year.
- Umm Al Quwain Resolution No. 3 for 2020 exempting licensed local establishments affected by the suspension of services from fees and fines.



## Litigation

Are the courts operating?

Abu Dhabi and Dubai Courts are operating virtually - All hearings are being conducted via Zoom and pleadings are submitted online. Some criminal proceedings are being conducted in person at the discretion of judges.

Sharjah Courts are operating both virtually and in person, at the discretion of the judge and on a case by case basis



## Tax

Has any new legislation been introduced in light of Covid-19?

VAT – Extension of filing and payment deadline for monthly and quarterly VAT period ending on 31 March from 28 April to 28 May 2020

Excise tax – Extension of excise tax submission and payment for March 2020 period for one month (i.e. filing and payment deadline for the March/April periods is 17 May 2020 – two returns were required to be filed by this day for both periods.)



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

The concept of remote general meetings is already recognized under UAE company law. In addition, the Ministry of Economy issued a circular governing remote general assembly meetings of private joint stock companies. Pursuant to this circular the Ministry has requested shareholders to adopt written resolutions instead of attending physical meetings.



## Loans and financial support

Has the government put in place any new bank funding schemes?

Lending is available under five new schemes that have been introduced in the UK:

- The Covid Corporate Financing Facility (**CCFF**) – this scheme provides funding (through commercial paper being issued by the business and purchased by the Bank of England (**BoE**)) to larger businesses and corporates with investment grade credit ratings in order to support their liquidity and working capital issues by helping them to, for example, pay wages and suppliers due to the disruption caused by Covid-19 to their cashflows. It will initially run for twelve months. The CCFF is operated by the BoE under an agreement with HM Treasury. The BoE and HM Treasury stated that they will keep under review whether to propose any extensions or variations of the CCFF in the future. On 22 June 2020, the BoE issued an updated consolidated market notice to provide clarity of existing policy as to what constitutes ‘eligible securities’ for the purpose of the operation of the CCFF. This update follows earlier consolidated market notices published by the BoE on 19 May 2020 and 26 May 2020.
- The Coronavirus Business Interruption Loan Scheme (**CBILS**) – this scheme is designed to support lending to SMEs (businesses with a turnover of no more than £45 million), that are experiencing lost or deferred revenues, leading to disruptions in their cashflow. Businesses can borrow up to £5 million. It will initially run for six months.
- The Coronavirus Large Business Interruption Loan Scheme (**CLBILS**) – this scheme is designed to support lending to mid-sized and larger UK businesses with a group turnover of more than £45 million (the upper limit for CBILS) that are suffering disruption to their cashflow due to lost or deferred revenues due to the Covid-19 outbreak. Businesses can borrow up to £200 million. It will initially run for six months. For loans above £50 million, borrowers cannot make any dividend payments other than those that have already been declared, may not make any share buybacks on dividend payments, may not pay any cash bonuses, or award any pay rises to senior management (including the board) except where they were declared before the CLBILS loan was taken out, are in keeping with similar payments made in the preceding 12 months, and do not have a material negative impact on the borrower’s ability to repay the loan.
- Except in respect of certain residential development facilities, a CLBILS loan will not be subordinated to and must at rank on at least a pari passu basis with the most senior obligations (including secured and/or super-senior obligations, if any) of the Borrower. A CLBILS loan must share in all collateral taken by any lender from the borrower or, where the borrower is a financing vehicle, any member of the borrower’s group (subject to certain exceptions).
- Bounce Back Loan Scheme (**BBLs**) – this scheme was introduced to help provide financial support to smaller businesses across the UK that are losing revenue and seeing their cashflow impacted by Covid-19. It aims to assist those businesses to borrow between £2,000 and up to 25% of a business’ turnover (maximum £50,000). It will initially run until 4 November 2020, with the Government retaining the right to extend it.
- The Future Fund (**FF**) – this scheme was put in place by the Government for start-up businesses as CBILS does not apply to loss making businesses. Under the FF, the Government will match any investment given to start-up businesses by making loans which will be convertible into equity if not repaid. Initially, those businesses must have previously raised £250,000 from private investors in the previous five years, with HM Treasury making clear that the amount could be increased if needed. Due to the popularity of the FF, more funding is now being made available by the Government. The scale of the FF will be kept under review. It will initially run until the end of September 2020.
- Since the FF launched in May 2020, its eligibility criteria have been amended to include innovative companies that participate in accelerator programmes based outside the UK. These companies previously did not qualify to take part in an accelerator programme because they had to register in an overseas jurisdiction, but the new criteria mean they can now access the FF, providing they meet all the other conditions of eligibility.
- With the exception of BBLs and FF, these schemes ensure that businesses that were viable prior to the outbreak of Covid-19 will have access to funding. Those businesses

- For more information, see our articles [Covid-19 Government help for UK businesses](#) and [Covid-19 Government funding for UK businesses update – further help for smaller UK businesses](#)
- A further £750 million will also be available as loans and grants for small businesses focusing on research and development.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The UK Government has introduced The Coronavirus Job Retention Scheme under which employers can access a grant to cover the wages for employees on “furlough” (i.e. still on their employer’s payroll but not providing any work). Under the Scheme the grant will cover 80% of an employee’s wage, up to a maximum of £2,500 per month. To find out more: [Coronavirus Job Retention Scheme: the scheme is now open and there is yet more guidance](#)
- The UK Government has recently made a number of changes to the Coronavirus Job Retention Scheme, including:
  - It is no longer possible to furlough someone who has not previously been furloughed.
  - From 1 July, furloughed employees can be brought back to work part-time, while still being furloughed for hours they don’t work. Employers will bear the cost in full for any hours worked by furloughed employees and can claim a furlough grant to cover the balance between hours worked and an employee’s “usual hours”.
  - From August, employers will need to bear the cost of any employer pension or National Insurance Contributions. In September, employers will also need to contribute 10% of wage costs; in October this will increase to 20% of wage costs.
  - The Coronavirus Job Retention Scheme will end on 31 October 2020.

To find out more: [Q&A on understanding flexible furlough and the extended furlough scheme](#)

- A similar scheme has been put in place for the self-employed: [Coronavirus - Self-Employed Income Support Scheme – what is the government proposing?](#)
- The UK Government has also introduced changes to Statutory Sick Pay, which can now be paid not only to those who are displaying symptoms of Coronavirus, but also to those who live with someone who has symptoms or to those in clinically extremely vulnerable groups who have been notified that they should stay at home at all times until the end of June (known as “shielding”). To find out more: [Coronavirus - An update on Statutory Sick Pay](#)
- The UK Government has announced that changes to IR35 (also known as off-payroll working) in the private sector, which would potentially have affected the taxation of payments to consultants and contractors, have been delayed by a year. The intention had been to extend IR35 to medium and large companies in the private sector from 6 April, however, the Treasury has confirmed that the changes will be postponed until 6 April 2021 in response to the ongoing spread of Coronavirus. To find out more: [IR35 tax rules delayed by 12 months](#)
- On 10 May, the UK Government announced the gradual lifting of certain lockdown measures. As part of this, it said that anyone who could not work from home should now be “actively encouraged” to return to work, albeit avoiding public transport wherever possible. The Government has published a series of guidance documents for employers aimed at helping ensure workplaces are as safe as possible: [Government guidance on making workplaces safe for employees](#)
- To assist employers and employees, the UK Government has also amended the Working Time Regulations 1998 (which govern holiday entitlement in the UK) to relax the carrying over of holiday entitlement: under these new rules, workers will be allowed to carry-over up to four weeks’ holiday into the next two holiday years. The Government has also published guidance on holiday entitlement and pay during the Coronavirus pandemic: [Holiday entitlement and pay during the Covid-19 pandemic and the impact of this on the furlough scheme](#)

## Insolvency

Has the government made any changes to insolvency legislation?

On 26 June 2020, the Corporate Insolvency and Governance Act 2020 (the Act) was passed into law. The Act has introduced a series of measures to amend insolvency and company law to support businesses to address the unique circumstances arising from the Coronavirus pandemic.

The insolvency measures will provide vital support to businesses to help them through this period of instability and include:

- **Wrongful trading provisions** – As we outlined in our previous briefing, now enacted, the provisions in the Act relax the threat of personal liability for wrongful trading from company directors who continue to trade a company through the coronavirus pandemic. The provisions set out in the Act do not provide a blanket suspension of the wrongful trading provisions. The provisions state that the directors will not be responsible for any worsening of the financial position of the company or its creditors that occurs during the period 1 March 2020 to 30 September 2020. These changes will help boards where the company is (or was) in financial difficulties and there is significant uncertainty regarding the businesses' financial future. Whilst directors may not be liable to contribute to the extent the financial position worsens during this period, it is important to note that this does not apply to the period before and after the period set out in the Act. Decisions and actions occurring before this period will still be able to be reviewed and will not fall under the protections laid out in the Act. There are likely to be significant challenges "apportioning losses" in this manner. In addition, directors may still be subject to action for other breaches of duties during the coronavirus pandemic.
- **Company Moratorium** – The Act has introduced a stand-alone moratorium which will give struggling businesses a 20-business day opportunity to consider a rescue plan, extendable by the directors for a further 20 business days or with creditor consent up to a year. During the moratorium period, the day to day running of the business of the debtor company remains with the directors but under the supervision of a monitor (an insolvency practitioner). The monitor's consent is required before the directors can undertake certain transactions. Creditors and lenders will not be able to take enforcement action against the debtor company (including the enforcement of security) during the moratorium period. Landlords will also be unable to exercise rights of forfeiture. The debtor company must continue to pay certain debts during the moratorium in order for it to continue. These payments include amounts due for new supplies during the moratorium, rent in respect of a period during the moratorium, wages and salary, and amounts due under financial contracts, including loan agreements.
- **Restructuring Plan** – The Act includes a new restructuring process which enables any creditor or member of the company, or appointed administrator or liquidator to propose a Restructuring Plan to the company's creditors and/or shareholders. This process is available to companies which have encountered or are likely to encounter financial difficulties that affect their ability to continue to trade as a going concern. The Plan is similar to a scheme of arrangement, and requires court sanction. The Act introduces a new "cross-class cram down" feature to the Restructuring Plan which is not possible in a scheme of arrangement. The cross-class cram down will allow dissenting classes of creditors (including secured lenders, landlords and suppliers) or members to be bound by the Plan. The Plan will enable complex debt arrangements to be restructured and will support the injection of new finance in order to support a rescue.
- **Winding Up Petitions and Statutory Demands** – From 27 April 2020 to 30 September 2020, a creditor is prohibited from presenting a winding-up petition, unless it has reasonable grounds to believe that either coronavirus has not had a financial effect on the debtor company, or that the company was unable to pay its debts regardless of the financial effect of coronavirus. This will be difficult to prove if the petitioning creditor does not have access to the debtor company's up to date accounts and records. Further, there is a prohibition on the use of statutory demands served between 1 March 2020 and 30 September 2020 as the basis for presenting a winding up petition on or after 27 April

2020.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- As yet there has been no statutory Government intervention into the workings of UK contracts between commercial entities and the normal rules apply. However, the Government is strongly urging contracting parties to act fairly, reasonably and in the national interest when seeking to enforce contractual rights and remedies, in an attempt to minimise the impact the coronavirus will have on jobs and the wider economy. Legislation may follow to give teeth to this guidance.
- In the UK there has been an increased focus on contractual small print, such as the precise wording of force majeure clauses within contracts. The sort of unforeseen disruption to lives and businesses that we are now seeing is exactly what one imagines a force majeure clause is designed to respond to. In many cases the pandemic or the restrictions the Government has now advised to limit its spread will fall into a contractual definition of force majeure, however the clause itself will need to be scrutinised carefully in order to determine whether or not it is engaged.
- If a force majeure clause is engaged, typically it will suspend the performance of the affected party's obligations under the contract, for the duration of the force majeure event.
- If performance of a contract may be significantly affected it is crucial to review the terms of your contracts so you understand your rights and obligations and to allow you to scenario-plan accordingly. [Contracts in the time of Covid-19: Force majeure and frustration](#)
- Particularly with long-standing contracting partners, many businesses are trying to agree a mutually acceptable way forward, including varying contractual obligations and sharing the exposure more fairly (in which case any variations should comply with the formalities required by the original contract).
- Public sector bodies are being strongly encouraged by the Government to provide financial support to their at-risk suppliers to increase the financial resilience of their supply chains.
- The Government is fearful of a plethora of disputes that could arise as a result of the chaos caused by the coronavirus crisis and is encouraging parties to resolve contractual disputes responsibly, using alternative dispute resolution procedures where possible, before commencing formal litigation.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- Under emergency legislation:
  - Landlords of business tenancies are prohibited from re-entering premises (forfeiture) for non-payment of any sums due under the lease, from 26 March to 30 September inclusive. This period can be extended by further legislation. Landlords will retain their right to exercise re-entry for these sums at a later date, unless they expressly waive it in writing. Existing court orders for possession of premises may be postponed.
  - Notice periods for terminating most residential tenancies are extended to three months, for the period 26 March to 30 September. The notice period can be extended to a maximum of 6 months by further legislation.
- All current property possession claims are suspended until 23 August 2020. This suspension affects all tenancies and licences of dwellings, as well as commercial property. Again, this period can be extended.
- Seizing goods to cover unpaid rent (known as Commercial Rent Arrears Recovery) is restricted until 30 September so that it can only be used where 189 days' rent is due and unpaid (increased from 7 days' rent in normal times).

- Many business tenants are now able to open their doors to the public, although some remain closed. Aside from the legislation above and absent any other intervention, leases will continue and the obligations on tenants will carry on as before.
- Despite many business tenants being able to open again, there may still be significant financial problems. The most practical route for the majority of tenants will be some form of temporary adjustment to the rent payable under the lease, from a switch from quarterly to monthly rent payments, to a rental holiday or deferment or even a full rent-free period.
- Landlords in the UK are being encouraged to approach negotiations with a degree of flexibility. The government has published a Code of Practice to help landlords and tenants to work together which can be viewed [here](#).
- A number of practical tips for both landlords and tenants is [here](#).



## Litigation

Are the courts operating?

- In the England and Wales, with the help of some technological innovation such as the use of video conferencing tools, the civil courts are operating largely ‘business as usual’.
- On 19 March 2020, the Business and Property Courts of England and Wales issued a protocol regarding remote hearings, providing that remote hearings should take place wherever possible. Where a remote hearing is not possible, then the Court has only two solutions: (1) proceed with the matter in court; or (2) adjourn because a remote hearing is not possible. The protocol emphasises the need for the court and parties to be proactive in relation to forthcoming hearings. Subsequent guidance from the senior judiciary and from case-law has been consistent that remote hearings are to be the norm for the foreseeable future wherever possible even in more complex cross-jurisdictional cases. To find out more information, see [here](#).
- Similar methods are being employed to deal with arbitration hearings. To find out more information, see [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- The cash grants being offered under the UK Government’s Coronavirus Job Retention Scheme mentioned is closely linked to HMRC’s existed pay-as-you-earn (PAYE) tax withholding system.
- Payments of VAT for the period from 20 March 2020 until 30 June 2020 may be deferred until April 2021, regardless of the type or size of business, although the VAT returns must still be made. However, VAT refunds and reclaims will be paid by HMRC as normal to aid businesses’ cashflow. HMRC will also consider extending payment deadlines for customs duty and import VAT on a case-by-case basis for importers facing severe financial difficulties as a direct result of Covid-19.
- Income tax self-assessment payments for the self-employed, including individual partners in partnerships, that are otherwise due on 31 July 2020 will also be deferred until 31 January 2021.
- All businesses in the hospitality and retail sectors irrespective of their rateable value are exempted from paying business rates this tax year.
- A £25,000 grant will also be available to businesses with smaller retail, hospitality and leisure premises that have a rateable value between £15,000 and £51,000.
- There is also a support package for self-employed individuals who make profits of up to £50,000 a year and who will be entitled to a taxable grant worth 80% of their average monthly profits over the last three years, up to £2,500 a month for 3 months.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The UK Government announced on 28 March 2020 that legislation will be introduced to ensure that those companies required by law to hold annual general meetings (AGMs) (i.e. public companies and private companies that are traded companies) will be able to do so safely and in a manner consistent with the Stay at Home Measures.
- On 26 June 2020, the Corporate Insolvency and Governance Act introduced measures to temporarily allow companies that are under a legal duty to hold an AGM to hold a meeting by other means (i.e. virtually) even if the company's constitution would not normally allow it.
- Allowing companies to ignore the process set out in the existing articles will ensure that shareholders' rights will be reserved by allowing them to vote on issues virtually. These measures ensure that directors are not exposed to liability for a lack of shareholder approval of certain actions taken by the company.
- These measures will apply to the whole of the United Kingdom retrospectively from 26 March 2020 to 30 September 2020 in order to cure any constitutional defects arising as a result of the current crisis.
- [Shareholder meetings and decision making during Covid-19 lockdown.](#)



1

### Loans and financial support

Has the government put in place any new bank funding schemes?

- The U.S. federal government has embarked on several initiatives to support businesses.
- The **Paycheck Protection Program (PPP)** incentivized employers to continue to employ workers and pay employee benefits. PPP was administered by the Small Business Administration (SBA) and offers employers unsecured loans at a nominal interest rate, with a streamlined closing process. The program is available to companies with less than 500 full-time equivalent employees. The deadline for new applications was June 30, 2020; however, the program still had approximately \$130 billion in funds not expended. There is conjecture that the remaining funds will be part of a new program – perhaps targeting restaurants or retail stores, which have both been very hard hit by the lockdowns.
- Companies that accept PPP funds can't take advantage of some of the tax benefits rolled out by the U.S. government (see below). While struggling businesses have grappled with the complex qualification and application rules of the PPP, those businesses have considered the Employee Retention Credit (ERC). In many instances, the ERC was a better choice.
- For more details, please refer to our client alerts [here](#) & [here](#).
- The **Main Street Lending Program (MSLP)**, facilitates low interest lending to small and medium-size businesses. On Monday, June 8, 2020, the Federal Reserve announced it would be expanding the Main Street Lending Program (the Program) to permit smaller and larger loan facilities, extend repayment terms, and make other changes to expand the number of small and medium-sized businesses that would be eligible to receive financial support under the Program.
- For more details, please refer to our client alert [here](#).
- The SBA is once again (as of June 15 2020) accepting applications for its Economic Injury Disaster Loan (EIDL) Program. This program is geared at small businesses and has a maximum loan value of \$2 million and has no forgiveness aspect.

2

### Employment

What financial support is the government providing to businesses and to individuals on employment

- The U.S. federal government created the **Federal Pandemic Unemployment Compensation program**, which provides an additional \$600 weekly in special unemployment compensation for individuals receiving as little as \$1 in standard unemployment benefits. The law also extends the maximum duration of benefits by 13 weeks, which means that in most states, employees who have lost their jobs, or been placed on furlough, will be able to collect for up to 39 weeks. The new rules also include compensation for individuals who are not traditionally eligible for unemployment benefits, including independent contractors. **These benefits expire at the end of July 2020.**
- The Families First Coronavirus Response Act created mandatory employer-paid leave related to Covid-19.
- For more details, please refer to our client alert [here](#).



## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The CARES Act modifies the Small Business Reorganization Act (SBRA) and greatly expands the restructuring options available to businesses with less than US\$7.5 million in debt through March 27, 2021. It is effective immediately. Previously, only businesses with up to \$2.7 million in debt could use the SBRA's expedited procedures. Small business debtors have traditionally been wary of a reorganization process under Chapter 11 of the Bankruptcy Act (which provides for reorganizations), despite its well-acknowledged benefits, due primarily to the potential cost and disruption it often causes. For those businesses that qualify, the SBRA is intended to alleviate those concerns and to make small business bankruptcies proceed under a faster timeline and at reduced cost.
- We are not surprisingly seeing a major uptick in bankruptcy filings by retailers. Even when the economy was firing on all cylinders, retailers were facing rising expenses, changing consumer shopping habits, and stiff competition-leading many iconic retail brands in the U.S. and around the world into bankruptcy. As the coronavirus (Covid-19) pandemic and economic crisis have taken hold, it is not surprising that even more retailers (whether teetering prior to the pandemic or crippled as a result of state-mandated closures) are considering bankruptcy as a viable strategy for survival.
- For more details, please refer to our client alert [here](#) & [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Covid-19 pandemic has significantly affected the global supply chain. In addition to duties, liabilities, and defenses created by contract, businesses also need to be conscious of a number of common law duties and obligations that may arise as a result of what is happening around the globe. These can include extra-contractual defences and concepts such as force majeure, impossibility of performance, and frustration of purpose. We are beginning to see litigation begin in earnest, albeit under different circumstances with virtual hearings and other modified protocols. We are encouraging clients to be proactive about their possible disputes. Typically, a party does not have a legally valid breach of contract claim until after a breach occurs. But that does not mean you have to sit idly by when you can see the writing on the wall.
- For more details, please refer to our client alert [here](#) & [here](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- The impacts of Covid-19 have led many landlords and tenants to consider their options under existing leases to determine the best path forward and what actions to take if someone on the property has contracted the virus. As a result, many states and local jurisdictions have taken action to prohibit certain evictions based on non-payment of rent and to delay foreclosures by mortgage lenders. We are starting to see litigation around these issues; however, many landlords and lessees are still negotiating resolutions of claims. Additional state and local legislation will also likely impact leases (and mortgage) obligations by residential and some commercial tenants. Also, there are special considerations for multi-family residential property owners and property holders in light of the virus.
- For more details, please refer to our client alerts [here](#) and [here](#).



## Litigation

Are the courts operating?

Generally, yes. Federal and state courts are operating, albeit under modified protocols.



## Tax

Has any new legislation been introduced in light of Covid-19?

- Government stimulus policy generally takes two forms: fiscal policy (direct payments to individuals, business subsidies, and tax incentives) and monetary policy (central bank intervention). The U.S. government is using tax policy to stimulate the economy in response to the coronavirus (Covid-19) outbreak. These policy tools are contained in the Coronavirus, Aid, Relief, and Economic Security Act (CARES Act) and Families First Coronavirus Response Act (FFCRA). The CARES Act offers some taxpayers an opportunity to take immediate action to reduce their federal income tax liability as they prepare their 2019 income tax returns. However, much of the CARES tax impact will be delayed until income tax returns are filed for tax periods during the crisis, which, for most U.S. taxpayers, began in 2020. Thus, in many cases, federal income tax refunds (particularly refunds resulting from the carryback of net operating losses (NOLs)) will not become available until income tax returns for 2020 are filed in 2021.

Nevertheless, some action may be taken in the short-term to accelerate the ability of taxpayers to obtain income tax refunds this year, and some action may be taken during the balance of 2020 to ensure that income tax refunds will be obtained when 2020 income tax returns are filed in 2021.

- For more details, please refer to our client alert [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Yes, in many cases taking advantage of legal concepts already on the books. Generally, U.S. corporate law is specific to the state of incorporation, except for listed companies, where federal securities law considerations are important. State law generally permits adjournment of annual meetings for emergencies, and for the conduct of meetings by remote means. State law generally allows for action by written consent without a meeting in many cases. For private companies, those whose charters contain conflicting provisions are generally reviewing changing them. For public companies, the long-held idea that holding annual meetings online could suppress shareholder democracy has been turned around, with many enthusiastically embracing the idea.

Please note, this bulletin does not constitute legal advice. The law is accurate to 25 June 2020 and the position is moving rapidly. We recommend that the latest government guidance is checked as this is changing daily. This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.