JUDICIAL AND REGULATORY MEASURES TO HELP SUPPORT BUSINESS DURING COVID-19 - AN UPDATE

This Client Alert is an update of part of a document first published on 25 March 2020.

The UK has introduced a series of measures to help support people, jobs and businesses in the face of COVID-19.

This Client Alert provides an overview of some of the **Judicial and Regulatory** measures and outlines how those steps are expected to work in practice.

For information on **UK Government Measures** to support the economy and **Tax Measures**, please see our separate client updates on these topics.

Courts and Tribunals

HM Courts and Tribunals Service is issuing operational guidance on a weekly basis.

The Court of Appeal Civil division is attending to urgent work (applications and hearings); hearings are being held remotely wherever possible.

The High Court is conducting any business that would be sufficiently urgent to warrant an out-of-hours application in normal times. Business that is not urgent business (“business as usual”) continues, as far as possible and in accordance with the contingency plans put in place by the different Divisions and Courts.

Tribunal Presidents have issued practice directions altering the manner in which the Tribunals operate (including staying certain proceedings) following the Pilot Practice Direction "Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal" on 19 March 2020. By way of example, certain proceedings before the First-tier Tax Tribunal have been stayed up to and including 30 June 2020, although this is subject to any contrary direction and hearings have continued throughout lockdown.

The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 extend, for a limited period, the circumstances in which a tribunal may direct that proceedings take place without a hearing (i.e. on papers only) or be held in private.

Financial Conduct Authority (FCA)

The FCA has set up a page dedicated to the *"latest coronavirus news"* on its website.

Measures introduced by the FCA include, in particular:

- acknowledging that firms should use 'flexibility' in undertaking client verification (e.g. accepting scanned documentation, using 'selfies' taken by clients);
- indicating certain areas in which the FCA will exercise supervisory flexibility until the end of June 2020 (including liaising with the European Securities and Markets Authority in relation to practice relating to best execution reports required under MiFID);

- providing guidance on supervisory flexibility over 10% depreciation notifications until the end of September 2020 for firms providing portfolio management services or holding retail client accounts that include leveraged investments;

- granting temporary relief under which the FCA will forbear from suspending the listing of a company if it publishes financial statements within 6 months of their year-end (usually, publication is required within 4 months);

- issuing a statement of policy, effective 8 April 2020, for listed companies seeking to raise new share capital while retaining an appropriate degree of investor protection;

- rule changes, effective 14 April 2020, relating to forbearance in relation to overdrafts, credit cards (store cards and catalogue credit), personal loans where consumers face temporary financial difficulties because of the pandemic;

- permitting, from 27 April 2020, a payment holiday of 3 months for customers in coronavirus-related financial difficulty in relation to motor finance, RTO, BNPL, or pawn-broking agreements and of 1 month for payday loans;

- granting temporary relief, subject to certain notification requirements, in respect of the regulatory deadlines for publishing a fund's annual report and accounts and a fund's half-yearly report and accounts. Where an authorised fund manager of a UCITS scheme or a non-UCITS retail scheme (NURS) needs extra time to complete a fund's annual reports and accounts, the temporary relief allows an additional 2 months for publication. This relief is also available to a manager of other forms of alternative investment funds. For the half-yearly report and accounts for an UCITS scheme and a NURS, an extra month is allowed for publication to take place;

- allowing flexibility in relation to the submission deadline for submitting certain regulatory returns. A 1-month delay is permitted for selected SUP 16 Handbook returns, and a 2-month delay is permitted for other selected returns. A firm will be allowed not to submit an Employer's Liability Register compliance return for 2020[1];

- issuing a "Dear CEO" letter on 28 April 2020 in response to "credible reports of a small number of banks failing to treat their corporate clients fairly" and indicating that if necessary the FCA will take enforcement action to ensure that corporate customers raising equity finance are treated fairly;

- seeking a court declaration to resolve contractual uncertainty in relation to business interruption ("BI") insurance cover. Following a consultation with insurance companies and policyholders, the FCA published a representative sample of 17 policy wordings to be examined in the test case. The FCA will put forward policyholders' arguments and certain insurers who underwrite policies in the representative sample have agreed to participate in the proceedings. The FCA filed the test case in the Commercial Court on 9 June 2020. The insurers will file defences on 23 June 2020. There will be further reply submissions and skeleton arguments before a 5-10 day court hearing in the second half of July 2020;

[1] The FCA website notes: "*(This means you are not required to commission an audit or draft a Director's Certificate, this year. However, we do expect you to continue to ensure your Employers' Liability Register is accurate and up to date.)*"

- issuing a consultation on draft guidance to set out the FCA's expectations for insurers and insurance intermediaries when handling claims and complaints for business interruption policies during the test case brought by the FCA;

- confirming guidance setting out the FCA's expectations for insurers and insurance intermediaries to assess the value of their products in the current circumstances;

- issuing a letter dated 1 May 2020 asking mortgage lenders and administrators managing closed mortgage books to review interest rates being charged to certain customers, to ensure those customers are being treated fairly;

- providing an update on the continued progress of LIBOR transition planning. The FCA and PRA decided to resume full supervisory engagement with dual-regulated firms on their LIBOR transition progress from 1 June 2020, including data reporting at the end of Q2;

- giving firms an additional 6 months until 14 September 2021 to implement strong customer authentication (SCA) for e-commerce;

- extending the maximum period firms can arrange cover for a Senior Manager without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period;

- confirming a series of temporary measures to help insurance customers who may be suffering financial difficulty as a result of COVID-19. Firms are required to consider the options they can provide to customers including: reassessing the risk profile of customers, considering if there are other products they can offer which would better meet the customer's needs, and waiving cancellation or other fees associated with adjusting customer's policies. These measures came into force on 18 May 2020 and will be reviewed in the next 3 months in the light of developments regarding coronavirus and may be revised if appropriate;

- issuing a statement on 13 May 2020 on how firms should handle post and paper documents to comply with regulatory requirements;

- announcing proposals which will continue support for customers who are struggling to pay their mortgage due to COVID-19. Pending the outcome of the FCA's consultation, customers who have already been granted a payment holiday would be able to extend it by a further 3 months and the time to apply for a payment holiday would be extended until 31 October 2020;

- proposing additional temporary guidance on 22 May 2020 to strengthen payment firms’ prudential risk management and arrangements for safeguarding customers’ funds in light of COVID-19;

- publishing draft guidance for mortgage lenders on how to treat customers facing temporary financial difficulties arising from the Coronavirus crisis which, once in force, will apply until 31 October 2020; and

- issuing a Coronavirus (Covid-19) Financial Resilience Survey to ensure that the FCA has the best possible view of the effect COVID-19 is having on firms' financial resilience. Firms will have 7 days to fill out and return the survey.

Bank of England (BoE) and Prudential Regulation Authority (PRA)

The BoE and the PRA have announced measures aimed at alleviating operational burdens on PRA-regulated firms and Bank-regulated financial market infrastructures (FMIs) in the wake of the COVID-19 outbreak, including the following:

- **Cancellation of the Bank's 2020 annual stress test** which would otherwise have applied to eight major UK financial institutions.

- **Amendments to the biennial exploratory scenario (BES) timetable**: publication of the 2019 BES on liquidity has been postponed until further notice.

- **Statement on IFRS 9 and COVID-19:** The PRA has reminded firms that forward-looking information used to incorporate the impact of COVID-19 on borrowers into the expected loss estimate needs to be both reasonable and supportable for the purposes of IFRS9. The PRA expects firms to reflect the temporary nature of the shock and to take into account the significant economic support measures already announced by global fiscal and monetary authorities; more detailed guidance has been provided by the PRA in a "Dear CEO" letter dated 26 March 2020 and in a statement published on 22 May 2020 on the application of regulatory capital and IFRS 9 requirements for payment holidays. The PRA has provided further guidance on initial and further payment deferrals in a "Dear CEO" letter dated 4 June 2020.

- **BoE/FCA survey into open-ended funds**: postponed until further notice.

- **Pausing work on the Insurance Stress Test** and postponing the next Insurance Stress Test to 2022.

- **Postponing the launch of the Climate Biennial Exploratory Scenario** until at least mid-2021.

Supervisory measures include:

- **Supervisory programmes for individuals firms and FMIs:** some supervision reviews will be postponed to allow supervisory engagement to focus on the most important matters relating to financial stability, the safety and soundness of firms, and protection of policyholders, including the impact of COVID-19.

- **Statement on regulatory reporting and disclosure amendments** (updated 9 April 2020)

- **Guidance on statistical reporting** (2 April 2020)

- **Operational Resilience Policy Development:** the deadline for responses to the current Bank and PRA consultations on "Building Operational Resilience: impact tolerances for important business service" and the PRA consultation on "Outsourcing and third party risk management" will, in line with the FCA, have been extended to 1 October 2020.

- **Financial Services Regulatory Initiatives Forum (RIF):** the RIF has been established to help regulators identify and manage peaks in operational demands on firms and FMIs resulting from regulatory initiatives and to ensure firms and FMIs have an early and clearer understanding of them. The RIF has brought forward the launch of the Regulatory Initiatives Grid to help financial firms stretched by the impact of coronavirus to prepare for upcoming regulatory work; the grid lays out the planned timetable for major initiatives including the transition from LIBOR and the introduction of financial services legislation to prepare for the end of the EU withdrawal transition period.

- **Basel 3.1:** implementation has been postponed for a year.
- **Real Estate Valuations:** the PRA has published a response to questions from firms in relation to requirements in the Capital Requirement Regulation for property valuations for residential and commercial real estate exposures.

The BoE issued a "Dear CEO letter" dated 4 June 2020 setting out the BoE's expectations of regulated UK Financial Market Infrastructures and Specified Providers concerning the distribution of profits. Subsequently. the PRA and BoE issued a joint statement noting the Recommendation made by the European Systemic Risk Board on the restrictions of distributions during the COVID-19 pandemic.

The PRA also expects banks not to pay any cash bonuses to senior staff, including all material risk takers, and is confident that bank boards are already considering and will take any appropriate further actions with regard to the accrual, payment and vesting of variable remuneration over coming months.

HMRC Money Laundering Supervision

HMRC has announced that any business due to renew money laundering supervision with HMRC may be able to either take a payment deferral for six months from the date it is due, or deregister if the business has stopped trading due to coronavirus. This applies to all businesses with an annual fee due between 1 May and 30 September 2020.

Financial Reporting Council (FRC)

The FRC has issued guidance on corporate governance and reporting in light of the COVID-19 pandemic, including in relation to the correct approach to the disclosure of "material uncertainties" in forming a going concern opinion and reflecting the "general consensus" that COVID-19 is a non-adjusting event where a period ended on 31 December 2019. This guidance has been updated on 12 May 2020 and 20 May 2020, including in relation to how companies should report exceptional items and alternative performance measures (APMs).

The FRC has indicated a preparedness to use its power to postpone a mandatory rotation of auditors for up to 2 years where a mandate commenced on or after 17 June 1994 and has also noted that an audit committee may agree (without seeking the FRC's consent) to the postponement of the rotation of an audit partner for up to 2 years. The FRC has also provided guidance on modifications to an independent auditor's opinion and report which may be necessary as a result of the pandemic.

The FRC's Audit Quality Review, Corporate Reporting and Professional Oversight teams resumed their full programme of supervisory work from 11 May 2020. This includes correspondence from the Corporate Reporting Team to companies in relation to their financial statements. Expectations regarding deadlines for responses will be relaxed where necessary due to the crisis. The FRC has published guidance on the best practice for Annual General Meetings following the introduction of the Corporate Insolvency and Governance Bill 2020.

Companies House

An application to postpone the filing of accounts for up to 3 months, citing COVID-19, will be automatically granted. Where a company requests voluntary striking off and a Gazette notice has been published, dissolution has been suspended from 16 April 2020. If accounts or a confirmation statement are not filed, Companies House has suspended the publication of a Gazette notice indicating an intention to strike a company off. A "sympathetic" approach to late filing penalties is being taken where late filing is due to COVID-19 and late filing penalty payment plans are available. From 1 June 2020, there will be an exception to the suspension of voluntary strike off activity. In cases where an investigation shows that a company is no longer in operation, the registrar will continue with strike off action for that company.

Intellectual Property Office (IPO)

The IPO has designated days 24 March 2020 and subsequent days (until further notice) as "disrupted days" for most deadlines in relation to patents, supplementary protection certificates, trademarks and designs (and applications for these rights); those deadlines will be extended until the next uninterrupted day (of which two weeks' notice will be given). Priority applications for trademarks and designs must still be made within the 6-month priority window as the interrupted days provision does not apply to these filings. The period of interruption was reviewed on 29 May. Although changes to lockdown regulations have enabled some businesses to resume normal operations there continues to be disruption and impact for many. The IPO has decided to continue with the period of interruption and will review again on 22 June 2020.

Pensions Regulator

The Pensions Regulator has issued guidance for employers and trustees of defined benefit and defined contribution schemes, including relating to the approach to be taken to a contribution deferral request by a distressed employer. Under guidance published on 29 April 2020, trustees have been asked to send a letter warning defined benefit members looking to transfer to a defined contribution pension, of the risks of doing so during the pandemic. The Pensions Regulator has issued updated guidance on an employer's automatic enrolment duties for a furloughed member of staff.

Other Measures

We will endeavour to keep you informed of any new measures that are adopted in the coming days and weeks.

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