COVID-19 | UK | JUDICIAL & REGULATORY | UPDATE 19 MAY 2020

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 **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 each of 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);

- 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 two 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 one month delay is permitted for selected SUP 16 Handbook returns, and a two 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;

- announcing the FCA's intention to seek a court declaration to resolve contractual uncertainty in relation to business interruption insurance cover. The FCA is inviting policyholders and insurance intermediaries to engage with the FCA and provide any material for consideration by Wednesday 20 May 2020;

- issuing a draft of guidance, intended to come into force by the end of May 2020, setting out the FCA's expectations for insurers and insurance intermediaries in considering 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 have decided to resume full supervisory engagement with dual regulated

[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.)*"

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

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 and the BoE's response to its December 2019 discussion paper on 2021 BES on the financial risk from climate change has been postponed until summer 2020.
- **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.
- **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.

- **Basel 3.1:** implementation has been postponed for a year.

The PRA has welcomed the decisions by the boards of the large UK banks to suspend dividends and buybacks on ordinary shares until the end of 2020, and to cancel payments of any outstanding 2019 dividends to a request from the PRA. The PRA 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.

The Financial Services Regulatory Initiatives Forum 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.

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.

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 have 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.

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 a late filing penalty payment plans are available. Changes to the strike-off policy and late filing penalties are to be reviewed from 1 June 2020.

Intellectual Property Office (IPO)

The IPO has designated days 24 March 2020 and subsequent days (until further notice) as "disrupted days" for 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). The period of interruption will be reviewed again on 28 May.

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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