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 (HMCTS) is issuing operational guidance on a weekly basis. HMCTS has published a court and tribunal recovery update and is focused on recovering its operations to increase courts and tribunals' capacity to deal both with normal workloads across jurisdictions and outstanding cases. The update sets out the work being undertaken by HMCTS in the short and medium terms in response to coronavirus.

The Lord Chancellor has announced locations for ten temporary 'Nightingale Courts', which will begin hearing civil, family and tribunals work.

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 President of the Tax Chamber has also issued a set of COVID-19 Frequently Asked Questions and anticipates being able to hold face-to-face hearings from 1 September 2020.

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 would 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;

- confirming the continued support users of certain consumer credit products will receive if they are still experiencing temporary payment difficulties due to COVID-19. This follows on from the package of measures introduced by the FCA in April 2020;

- confirming the continued support available for users of motor finance and high cost credit products, who continue to face payment difficulties due to COVID-19. This follows on from the measures introduced by the FCA in April 2020;

- 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

[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.)*"

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. Certain insurers who underwrite policies in the representative sample are participating in the proceedings and two policyholder action groups have been permitted to intervene. The FCA filed the test case in the Commercial Court on 9 June 2020 and the first Case Management Conference took place on 16 June 2020. On 23 June 2020, the insurers filed defences which are available on the FCA website. The second Case Management Conference took place on 26 June 2020 and the FCA issued its Reply on 3 July 2020. The FCA and Intervenors have served skeleton arguments which are available on the FCA website. The Defendants served their skeleton arguments on 14 July 2020. The FCA published the Agreed Facts and new Assumed Facts on 17 July 2020 for use in the trial, as well as an Agreed List of Issues and Common Ground that supersedes the Questions for Determination. The 8 day court hearing is taking place from 20-23 July and 27-30 July 2020 and draft transcripts from each day of the trial are being published on the FCA website;

- issuing guidance setting 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 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 the FCA has announced proposals to extend these measures until 31 October 2020;

- 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;

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

- confirming continued support for customers who are struggling to pay their mortgage due to COVID-19. Customers who have already been granted a payment holiday can seek to extend it by a further 3 months and the time to apply for a payment holiday has been extended until 31 October 2020;

- confirming guidance for mortgage lenders, applicable until 31 October 2020, on how to treat customers facing temporary financial difficulties arising from the Coronavirus crisis;

- 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;

- 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;

- publishing the FCA's expectations to help benchmark administrators and firms using Appointed Representative arrangements apply the Approved Persons Regime (APR) during the coronavirus pandemic;

- publishing the FCA's expectations regarding the Senior Managers & Certification Regime (SM&CR) for solo regulated forms and dual-regulated firms with the PRA. The deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons has been delayed from 9 December 2020 until 31 March 2021. The FCA has published a consultation paper on 17 July 2020 on extending other SM&CR deadlines to 31 March 2021 for consistency and to provide extra time for firms that need it; and

- announcing a partnership with the City of London Corporation for the pilot of a 'digital sandbox' to support innovative firms tackling challenges caused by COVID-19.

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 IFRS 9. 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. On 30 June 2020, the PRA issued a statement on the new transitional arrangements for the capital impact of IFRS 9 ECL provisions following amendments to the Capital Requirements Regulation.

- **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.

- **Statement on Capital Requirements Regulations and COVID-19:** HM Treasury has issued a statement on 16 July 2020 providing clarification on the COVID-19 related amendments to the Capital Requirements Regulation and Second Capital Requirements Regulation applicable before the end of the Transition Period and which will form part of the body of EU law to be retained in the UK.

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:** the PRA has concluded that firms have had time to adjust to new ways of working and that it would not be appropriate to continue to apply the reporting measures previously set out in the statement published on 2 April 2020 (updated on 9 April 2020). Going forward, the PRA will generally expect on time submission for future regulatory reporting.

- **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.
- **Statement to insurers on the application of the matching adjustment during COVID-19** (7 July 2020).
- **Statement on implementation of the European Banking Authority Guidelines to address gaps in reporting data and public information in the context of COVID-19** (updated 10 July 2020).

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 has stated that it 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). On 12 June 2020, the FRC provided further practical advice and guidance on disclosure and reporting, including going concern assessments, risk reporting and viability statements. The FRC has completed its first thematic review of company reporting since the start of COVID-19, providing guidance and better practice examples for companies preparing their annual and interim accounts.

On 23 July 2020, the FRC proposed amendments to UK and Ireland accounting standards in relation to the assessment of the going concern basis of accounting and disclosure of any related material uncertainties when preparing interim financial statements and accounting for temporary rent concessions for operating leases occurring as a direct consequence of the COVID-19 pandemic within a limited timeframe.

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 also published guidance on the best practice for Annual General Meetings.

Companies House

The Corporate Insolvency and Governance Act 2020 came into force on 26 June 2020, and the Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020 came into force on 27 June 2020. Companies will now have more time to file accounts. Companies House has published guidance outlining how the measures will affect public limited companies, private companies and *Societas Europaea*.

In March 2020, Companies House introduced a temporary measure to suspend voluntary strike off action with the exception (applicable from 1 June 2020) of a case where an investigation shows that a company is no longer in operation. Companies House has announced that the suspension of voluntary strike off action will be lifted from 10 September 2020 and Companies House will restart the process to dissolve companies that have applied for voluntary dissolution.
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. The latest release of the Upload a document service is now live and Companies House is working to extend its capacity to receive documentation by electronic upload. To facilitate access to online services, Companies House is offering a temporary service for users to request to have the company authentication code sent to a home address if it is not possible to access the company's registered office address.

Intellectual Property Office (IPO)

The IPO has designated 24 March 2020 and subsequent days until 29 July 2020 as "disrupted days" for most deadlines in relation to patents, supplementary protection certificates, trademarks and designs (and applications for these rights). This will mean that the first normal day of operation when all interrupted days deadlines expire will be Thursday 30 July 2020. The IPO has introduced temporary fee changes to help businesses following the end of the period of interrupted days. These will take effect from 30 July 2020 to 31 March 2021 in relation to patents, trademarks and registered designs. 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.

Pensions Regulator

The Pensions Regulator has issued guidance to help employers and trustees of defined benefit and defined contribution schemes with issues that have arisen as a result of COVID-19. 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 also issued updated guidance on an employer's automatic enrolment duties for a furloughed, or partly 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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