

COVID-19 UK BULLETIN – APRIL 22, 2020

To Our Clients and Friends:

This bulletin provides a summary and compendium of English law legal developments during the current COVID-19 pandemic in the following key areas:

1. Competition and Consumers
2. Corporate Governance (including accounts, disclosure and reporting obligations)
3. Cybersecurity and Data Protection
4. Disputes
5. Employment
6. Energy
7. Finance
8. Financial Services Regulatory
9. Force Majeure
10. Government Support Schemes
11. Insolvency
12. International Trade Agreements (private and public)
13. Lockdown and Public Law issues
14. M&A and Private Equity
15. Real Estate
16. UK Tax

Links to various English law alerts prepared by Gibson Dunn during this period are also included in the relevant sections.

As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's **Coronavirus (COVID-19) Response Team**, or the co-leads of the UK COVID-19 Taskforce:

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1. COMPETITION AND CONSUMERS

Merger Control – COVID-19 impacting the substantive results of reviews

The UK Competition and Markets Authority (CMA) announced last week that it has provisionally cleared Amazon's minority investment in Deliveroo, which represented somewhat of a U-turn in the CMA's assessment of this case. The change in stance was based on the significant negative impact that the coronavirus crisis and UK lock down has had on Deliveroo's business. In particular, compelling evidence was reportedly presented that Deliveroo would fail financially and exit the market without access to significant additional funding, which the CMA considered only Amazon would be willing and able to realistically provide at this time. The CMA stated that it currently considered that the imminent exit of Deliveroo would be worse for competition than allowing the Amazon investment to proceed.

What does this mean for clients? The CMA's approach in this case shows that it is willing to react quickly and flexibly in response to the unfolding impact of the coronavirus on businesses. Further, that it will take into account exiting firm scenarios as the counterfactual to a merger if appropriate (i.e. provided that the relevant legal tests are met). More generally, the crisis seems likely to cause changes in markets which will impact competitive dynamics – this could influence the outcome of a competition assessment in either direction (the exact impact will vary on a case by case basis).

Antitrust – Relaxation of rules in the dairy industry

On 17 April 2020, the Government announced that elements of UK competition law would be temporarily relaxed to support the dairy industry during the coronavirus outbreak. It suggested that legislation (which would be laid shortly) will be introduced to enable collaboration between dairy farmers and producers so that they can address current market challenges resulting from the coronavirus, including adapting supply chains to avoid surplus milk going to waste and harming the environment whilst maintaining productive capacity to meet future demand. It is said that Dairy UK and the Agriculture and Horticulture Development Board (AHDB) will lead work to bring the industry together.

As mentioned previously, whilst some co-operation may be tolerated in the current environment, this is not without limits. Careful assessment is required as to whether a particular co-operation will be tolerated and safeguards must be put in place to ensure that the co-operation goes no further than strictly necessary to deal with critical issues. Companies facing issues with supply or distribution or considering co-operating with competitors should consult with counsel.

State aid

On 20 April 2020, the Government announced a £1.25 billion support package, comprising a £500 million investment fund (the Future Fund) and a £750 million grants and loan scheme. The Future Fund provides UK-based companies with loans between £125,000 and £5 million, subject to private investors at least matching the Government commitment. The loans provided by the Government will automatically convert into equity on the company's next qualifying funding round, unless the loans are repaid. The £750 million grants and loan support will be made available to R&D intensive SMEs. The Government estimates that around 3,700 SMEs will benefit from the new grants and loan scheme. Both

the Future Fund and the grants and loan scheme will launch in May. The latest measures are the first to have been adopted under the UK umbrella scheme, which was notified by the UK on 26 March 2020 and approved by the European Commission on 9 April 2020. The total budget of the umbrella scheme is estimated to reach £50 billion. For more information, see the update on [Government Support Schemes](#) below.

2. CORPORATE GOVERNANCE (INCLUDING ACCOUNTS, DISCLOSURE AND REPORTING OBLIGATIONS)

The European Securities and Markets Authority (ESMA) issues new Q&A on alternative performance measures in the context of COVID-19

ESMA has updated its [Guidelines on Alternative Performance Measures \(APM Guidelines\)](#) to add a new Q&A to provide guidance to issuers on the application of the APM Guidelines in the context of the COVID-19 pandemic. The APM Guidelines address the information that issuers should publish when disclosing APMs (e.g. Operating Results, EBIT, EBITDA and Free Cash-flow) to the market.

The new Q&A highlights the main principles of the APM Guidelines, encourages issuers to use caution when adjusting Alternative Performance Measures (APMs) and when including new APMs to address the impact of COVID-19, and invites issuers to provide (i) narrative information regarding the modifications made, the assumptions used and the impact of COVID-19 and (ii) information on measures taken or expected to be taken by issuers to address the impact that the COVID-19 outbreak may have on their operations and performance.

Measures in respect of Company filings, AGMs and other general meetings during COVID-19

As discussed in our [COVID-19 UK Bulletin – 8 April 2020](#), the Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma MP, announced on 28 March 2020 that the Government would, as soon as possible, bring forward legislation to assist those companies for which COVID-19 restrictions make it difficult to meet statutory obligations to hold meetings and to file documentation on the Companies Register. These measures are in the process of being developed. In the interim period, the Department for Business, Energy & Industrial Strategy together with the Financial Reporting Council, have issued a Q&A document which is designed to provide companies with additional information upon which to plan activities over the coming months. Further information is available [here](#).

Disruption of the AGM season caused by COVID-19 - New ICSA article

The Chartered Governance Institute (ICSA) has published an [article](#) on the disruption caused to the AGM season as a result of COVID-19. This article builds on previous guidance produced by ICSA (as summarised in our [COVID-19 UK Bulletin – 8 April 2020](#)). In particular, the article highlights the need for companies to balance their legal and regulatory obligations, as well as good practice, against the need for pragmatism in the light of the pandemic, and underlines the importance of maximising stakeholder engagement within the facilities available.

ICSA has also launched a COVID-19 Hub where it intends to store helpful information relating to the impact of COVID-19 on governance.

Institutional Shareholder Services - COVID-19 guidance and launch of new online resource centre

As noted in our COVID-19 UK Bulletin – 16 April 2020, global proxy provider, Institutional Shareholder Services (ISS), has issued guidance on how its benchmark proxy voting policies guidelines should be applied in light of the COVID-19 pandemic. The guidance should be read in conjunction with ISS’s UK and Ireland Voting Guidelines. Certain points in the guidance are unlikely to be relevant to UK listed companies. In addition, ISS has launched a COVID-19 resource centre.

Companies House pauses strike off and offers leniency for late filing appeals

Companies House has said that it will temporarily pause the strike off process in the UK to prevent companies from being dissolved during the COVID-19 pandemic. Companies House will also treat sympathetically any appeals from companies issued with a late filing penalty who have been affected by COVID-19. Companies House guidance has been updated to incorporate these measures (see our COVID-19 UK Bulletin – 8 April 2020 for a summary of the guidance previously issued by Companies House).

International Federation of Accountants (IFAC) guidance on the financial reporting implications of COVID-19

IFAC has published a summary of key areas to consider when preparing financial statements against the backdrop of the pandemic, which has been drawn from advice and guidance produced by accountancy firms, regulators and IFAC members. This includes how companies should assess COVID-19 events after the reporting period, how companies should assess going concern, and other significant effects on accounting and reporting.

Update to guidance issued by the Financial Reporting Council (FRC)

Further to recent FRC guidance, the FRC has clarified that “accounting and auditing standards on going concern have not changed”, nor has the FRC increased pressure on auditors to be tough”. The FRC notes that auditors should challenge management appropriately on their judgements and given the current uncertainty ensure that they have sufficient evidence to support the judgments they make. This is in relation to guidance for companies preparing financial statements and a bulletin for auditors covering factors to be taken into account when carrying out audits during the COVID-19 crisis, each published by the FRC on 26 March 2020 (see our COVID-19 UK Bulletin – 8 April 2020 for further information).

3. CYBERSECURITY AND DATA PROTECTION

Cybersecurity

Video

In light of the increased use of video conferencing platforms, the Information Commissioner's Office (ICO) has provided advice for employers, business owners and managers to share with staff, including checking privacy and security settings, being aware of phishing risks, using only tools approved by the organisation and in line with the organisation's policies and checking software is up to date. It notes that if decisions on software/platforms are made quickly, organisations should revisit risks in due course and consider changing if circumstances change.

Conferencing

Data protection

European Commission (EC)

Our COVID-19 UK Bulletin – 16 April 2020 noted the EC had begun work on a common EU approach to contact-tracing apps for the pandemic. The EC has now published an EU toolbox for the use of contact tracing apps in response to COVID-19. The toolbox sets out essential requirements for national apps, including issues such as technical functionalities, cross-border interoperability requirements, cybersecurity measures and measures aimed at ensuring accessibility and inclusiveness. It is part of an ongoing process where Member States work together to devise and peer review their apps and associated measures. The EC has also published final guidance (not legally binding) on data protection and apps to combat COVID-19, specifically those in which participation is voluntary. It notes that such apps should be an “important element in the exit strategy”, while noting requirements for compliance with GDPR and the ePrivacy Directive. The EC recommends that national health authorities should be the data controllers and addresses topics including data subject rights and data minimisation.

European Data Protection Board (EDPB)

The EDPB published a letter which concerns the EC’s guidance on contact tracing apps. Whilst the EDPB supports the use of such apps for public health purposes, its letter emphasised the need to minimise interferences with private life. The EDPB suggests that such apps should not require location tracking of individual users: this would not comply with the data minimisation principle and would create security and privacy risks. The EDPB supports the EC’s proposal for a voluntary adoption of such apps, a choice that should be made by individuals. It notes that voluntary adoption requires trust and data protection principles remain important. It suggests that the most appropriate legal ground for processing (under the GDPR) is necessity for the performance of a task for the public interest, rather than consent.

ICO

In a document published on 15 April 2020, the ICO acknowledged its responsibility to adjust its regulatory approach during the pandemic and stated that it will: be flexible taking into account the impact of potential economic/resource burdens on organisations from its actions; prioritise the most serious challenges and greatest threats to the public; assist frontline organisations in providing data protection advice and guidance; take firm action against those looking to exploit the pandemic and misuse personal information; and continue to recognise the rights and protections granted to people by the law.

Regulation

Whilst this gives some short-term comfort to organisations, appropriate measures should still be taken to comply with data protection laws and record decision making.

4. DISPUTES

Operation of the courts and remote hearings

On 15 April 2020, the Lord Chief Justice, Master of the Rolls and President of the Family Division issued a [Message for Circuit and District Judges](#), in which they reflect on the judiciary’s collective experience of the recent transition to remote working, and on changes that may be needed going forward. While they acknowledge positive reports of technically effective processes, they remind judges that not all types of case are suitable for remote hearing, in particular those involving hotly contested evidence or where there are high levels of emotion. They take particular note of reports that remote hearings have proven more tiring than in-person hearings in a court room. They advised that even if all parties appear to agree to a remote hearing, this should not necessarily be taken as a green light to conduct the hearing this way. At the same time they indicated that where the parties agree that a hearing should not proceed remotely, this is “a very powerful factor” in not proceeding with a remote hearing.

While this message is directed at circuit and district judges, we expect that much of it will resonate in other branches of the court system.

Separately, in its daily operational summary HMCTS has announced that a new video hearing facility, Cloud Video Platform, will be deployed in certain civil and family hearings (as an alternative to Skype). It has also issued updated guidance on [telephone and video hearings](#) during the coronavirus outbreak and on [how to join a telephone or video hearing](#).

Finally, on 14 April 2020 HMCTS published [data](#) on the number of remote hearings held over the last three weeks, indicating that an estimated 85% of hearings are now being held using video or audio; while on 15 April 2020 the Law Society published an [interactive heatmap](#) showing which courts and tribunals are operating during the COVID-19 outbreak.

Recent guidance from arbitration institutions

Various arbitral institutions have issued COVID-19 related updates over the past week. Firstly, in a display of unity, thirteen arbitral institutions – the LCIA, ICC, CRCICA, DIS, ICDR, ICSID, KCAB International, Milan Chamber of Arbitration, KIAC, SCC, SIAC, VIAC and ICFAI (the Institutions) – have issued a [joint statement](#) in which they express their intention to collaborate and contribute to stability and foreseeability in a highly unstable environment. The Institutions encourage parties and arbitrators to discuss any impact of the pandemic and potential ways to address it in an open and constructive manner, and to avail themselves of the Institutions’ respective rules and case management techniques to allow proceedings to progress without undue delay.

Secondly, the ICC has released a *Guidance Note* (Note) addressed to parties, counsel and arbitral tribunals in ICC arbitrations, outlining a range of measures to help mitigate the effects of COVID-19. The Note identifies aspects of the arbitral process that can take place remotely and encourages parties to file submissions and exhibits electronically, attaching a Checklist for a Protocol on Virtual Hearings (Annex I). The Note also reminds parties and tribunals that virtual hearings should adopt a “cyber-protocol” aimed at implementing measures sufficient to comply with any applicable data privacy regulations, and dealing with the privacy of the hearing and the protection of the confidentiality of electronic communications within the arbitration proceedings. Annex II provides a number of suggested clauses for inclusion in such protocols.

5. EMPLOYMENT

Update on CJRS

In our alert of 20 March 2020, we summarised the Government’s Coronavirus Job Retention Scheme (CJRS), which provides grants to UK employers to pay furloughed employees. In our alert of 27 March 2020, we provided further clarity on the scheme.

The Treasury has recently issued a Direction to HMRC with instructions for making payments under the CJRS. It has also announced that the CJRS has been extended from 31 May 2020 to 30 June 2020. The CJRS online portal is now open and can be accessed via HMRC’s Government Gateway.

The Direction contains some major changes and clarifications:

- The payroll reference date has been pushed back such that employees who joined their employer between 28 February and 19 March 2020 are now eligible for furlough, provided the employer submitted real time information payroll data by that date.
- In order to meet the necessary qualifying criteria, a written agreement that the employee will cease all work for the employer is required. As a result, employers may find themselves ineligible for CRJS grants in respect of employees who have been placed on informal furlough without a written agreement and claims may only be processed in respect of employees for whom a written agreement exists. It is not clear whether such a written agreement, once signed by both employer and employee, can be effective from an earlier date on which the informal furlough commenced, thus allowing the employer to claim the grant from that earlier date.
- Furloughed directors must cease working for their company; however, they can undertake work to fulfil a duty or other obligation arising from an Act of Parliament relating to the filing of their company's accounts or provision of other information relating to the administration of their company. This is a very narrow interpretation of directors’ duties.

- Employers, when calculating salaries, must disregard anything which is not “regular salary or wages”, such as performance related bonuses, discretionary payments, tips, conditional payments and non-financial benefits.
- Employers cannot claim for any salary which is “conditional on any matter”. Employers who made their payments conditional on the CJRS paying out may find themselves ineligible for CJRS grants.

Whilst the Direction is silent on the interaction between annual leave and furlough, HRMC have updated the Employee Guidance on the CJRS to state that it is possible to take annual leave whilst on furlough and employers are required to top up the employee’s salary to 100% when they do so.

Update on Statutory Sick Pay (SSP)

On 16 April 2020, the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 (SI 2020/427) came into force. They further amend the schedule that the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (SI 2020/374) inserted into the Statutory Sick Pay (General) Regulations 1982 (SI 1982/894) so that a person will also be deemed incapable of work when they are isolating themselves because:

- they are defined in public health guidance as extremely vulnerable and at very high risk of severe illness from COVID-19 because of an underlying health condition; and
- they have been advised by a notification (sent to, or in respect of, them) that, in accordance with that guidance, they need to follow rigorously shielding measures for the period specified in the notification.

(These additions increase the scenarios in which a person is deemed incapable of work as a result of COVID-19 from three to five). HMRC updated its [statutory payments manual](#) to provide that employees do not qualify for SSP if they are on furlough. In our alert, we summarised the initial changes to SSP under the heading *Instructing Employees Not to Work – SSP*.

6. ENERGY

Oil price crash

On 20 April 2020, US oil prices (the West Texas Intermediate) fell to their lowest level in history, with the WTI market entering contango (i.e. price for future delivery of crude oil is higher than the spot price). With expiration of May WTI contracts looming, May WTI plummeted more than 300% dipping into the negative for the first time in history to as low as -\$37.63 per barrel. At the time of writing on 21 April 2020, the crash began to spread through markets, with Brent crude oil prices fluctuating (falling 20% into the \$18-\$21 range) and June WTI contracts in the sub \$20 range. This is a highly unusual occurrence caused by a continuing slide in short-term demand for oil, mixed with global crude storage facilities

nearing capacity. The Railroad Commission of Texas (RRC), the state's oil and gas regulator, is set to meet again later on 21 April 2020 having failed to reach an agreement regarding mandated cuts across the state previously. The oil price has continued to slide notwithstanding the biggest-ever production cuts agreed by OPEC+ recently (see our previous coverage of the OPEC+ deal in our [COVID-19 UK Bulletin – 16 April 2020](#)) which indicates that, even when the cuts kick-in, these may not have tracked the level to which demand was cratering.

Help for the energy sector

Industry has been working with Government and the CBI to understand why the sector's take up of current Government support schemes has been limited. We previously reported on barriers in these schemes to accessibility by UK energy companies and it is unclear whether adjustments to the Government efforts have made a difference. In particular, industry group Oil & Gas UK (OGUK) has asked the Government for certainty in relation to an extension to and expansion of the job retention scheme, and assurance from the Government that the energy sector, given considerable volatility and uncertainty pre-COVID-19 and the inter-related challenges of the oil price crash and low gas prices, is able to take advantage of various programmes. The Government has now extended the scheme to last until the end of June but it remains to be seen whether it will provide additional assurances with regards to access. Please see the [Employment](#) section of this bulletin for more information regarding the furlough scheme. OGUK has also called for the Government to include testing energy sector key workers in the five-pillar testing plan, though questions around reliability of various testing procedures remain.

Help from the energy sector

BP bosses announced that they would donate 20% of their pay to mental health charities during the crisis, and over 100 medically trained North Sea divers have signed up to volunteer with the NHS to help ease pressure on staff.

Impact of COVID-19 on workers and sites

COVID-19 continues to impact energy projects globally.

- Canada's Couche-Tard will not be following through on its A\$8.8 billion offer for downstream operator Caltex Australia Ltd, citing COVID-19 concerns.
- After Petrofac's recent announcement of its intention to furlough some staff, reported on in our last bulletin, the company has now confirmed it will reduce staff levels by around 20%. This follows the termination of US\$1.65 billion worth of contracts by ADNOC, who awarded Petrofac the contracts for its Dalma project offshore Abu Dhabi in February.
- The situation in Total's Mozambique LNG site has worsened and the site is now under lockdown. Mozambique's government has reported figures country-wide of COVID-19 as currently at 34 cases with at least 18 of those being Total workers.

- The Hummingbird Spirit FPSO, owned by Teekay and operating in the UK North Sea, has restarted production, following lockdown and deep-cleaning.
- Since some workers tested positive at Chevron’s Tengiz site in Kazakhstan, expansion work has been reduced. Chevron has stated that those measures “have been implemented in order to protect the health and safety of the Tengiz workforce and are not related to current market conditions” and that essential expansion work will still be carried out.
- There have been additional reports of confirmed COVID-19 cases on several other installations globally, including in Norway, Canada and Russia.

7. FINANCE

No update to our COVID-19 UK Bulletin – 16 April 2020.

8. FINANCIAL SERVICES REGULATORY

Financial services regulatory client alert

COVID-19: Regulatory Forbearance for Fund Annual Reports under EU AIFMD

FCA’s expectations on financial resilience for FCA solo-regulated firms

The FCA has published an updated version of its statement on expectations on financial resilience for FCA solo-regulated firms during COVID-19 pandemic. In particular, the FCA expects firms to contact it if: (1) they are planning to draw down a capital or liquidity buffer; or (2) a firm’s wind-down plan identifies material execution risks due to the current crisis. The FCA has also stated that it does not expect firms to distribute capital that could credibly be required to absorb losses over the coming period. The FCA also reminds non-bank lenders subject to IFRS9 that the forward-looking information used in expected credit loss estimates should be reasonable and supportable. Further information is available [here](#).

9. FORCE MAJEURE

No update to our COVID-19 UK Bulletin – 16 April 2020.

10. GOVERNMENT SUPPORT SCHEMES

The Coronavirus Large Business Interruption Loan Scheme (CLBILS)

On 20 April 2020, the CLBILS launched to provide finance to larger businesses in the UK. The CLBILS is available to large businesses with an annual revenue of in excess of £45 million, with loans of up to £50 million available, depending on the size of a business' annual revenue. Businesses with an annual revenue of between £45 million and £250 million able to access loans of up to £25 million and businesses with an annual revenue in excess of £250 million are able to access loans of up to £50 million. The CLBILS will be delivered through the British Business Bank and loans will be made available through accredited lenders. Lender will not be permitted to ask for personal guarantees for loans of less than £250,000. The Government will guarantee 80% of each loan delivered under the CLBILS, but unlike the Coronavirus Business Interruption Loan Scheme, the Government will not cover the first twelve months of interest payments. Further information on eligibility can be found on the [British Business Bank Website](#).

The Innovation and Development Scheme

On 20 April 2020, the Government announced the establishment of a new Future Fund to support the UK's innovative businesses currently affected by the COVID-19 pandemic, together with other measures to support businesses driving innovation in the UK. In total, the package announced represents £1.25 billion of additional funding through: (i) a £500 million investment fund for high-growth companies impacted by the COVID-19 pandemic, delivered in partnership between the Government and the private-sector (Future Fund); and (ii) £750 million of grants and loans to SMEs focusing on research and development. The Future Fund will provide UK-based companies with between £125,000 and £5 million of loans from the Government, with private investors at least matching the Government's funding. These loans will automatically convert into equity on the company's next qualifying funding round, or at the end of the loan if they are not repaid. To be eligible, a business must be an unlisted UK registered company that has previously raised at least £250,000 in equity investment from third party investors in the last five years. Further information and a term sheet for investment can be found on the [Government's website](#).

FCA "Dear CEO" letters

On 15 April 2020, the Financial Conduct Authority (FCA) published two "Dear CEO" letters, setting out its expectations of (i) insurers and brokers in relation to business interruption insurance sold to SMEs; and (ii) banks, in relation to lending to SMEs.

In the [communication to insurers](#), the FCA stressed that insurers and brokers have an essential part to play in supporting customers which are not entirely clear on whether they have appropriate cover in place. The FCA noted that it would also collect data from firms to assess how policies are being interpreted. The FCA estimates that most policies do not cover pandemics and that there is therefore no obligation in such cases to pay out in relation to COVID-19. In the case of dispute, the ability of firms of a certain size to make claims to the Financial Ombudsman Service, for the prospect of a faster decision and timely payment, was also flagged.

In the letter to banks, the FCA reminded them that the priority is ensuring that the benefit of the package of measures introduced by the Government, including the Coronavirus Business Interruption Loan Scheme, are passed through to the relevant businesses as soon as possible. The FCA also highlights that responsibility for these specific lending activities should be allocated to one or more Senior Managers.

In both letters, the FCA stated that a new small business unit has been established. This will, amongst other things, gather intelligence about the treatment of SMEs during the crisis. There is, therefore, a clear prospect of future enforcement action being taken by the FCA against firms where it does not consider that its expectations have been met.

11. INSOLVENCY

No update to our COVID-19 UK Bulletin – 16 April 2020.

12. INTERNATIONAL TRADE AGREEMENTS (PRIVATE AND PUBLIC)

No update to our COVID-19 UK Bulletin – 16 April 2020.

13. LOCKDOWN AND PUBLIC LAW ISSUES

Review of lockdown restrictions

The Government stated on 16 April 2020 that the lockdown restrictions will remain in force for at least another three weeks. Under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 the Government is required to review the appropriateness of the lockdown restrictions every 21 days. The next review is therefore due by 7 May 2020.

Virtual Parliament

Both Houses of Parliament return from Easter recess on 21 April 2020. Both the House of Commons and the House of Lords will consider measures to allow for virtual participation of its members in proceedings. The proposals—which would allow MPs and peers to participate via Zoom and Microsoft Teams, respectively—introduce virtual participation gradually, starting with oral questions and statements and progressing to debates and other functions if deemed appropriate.

14. M&A AND PRIVATE EQUITY

The Coronavirus Large Business Interruption Loan Scheme (CLBILS)

On 20 April 2020, the CLBILS launched to provide finance to larger businesses in the UK. The CLBILS is available to large businesses with an annual revenue of in excess of £45 million, with loans of up to £50 million available, depending on the size of a business' annual revenue. Importantly for our clients, CLBILS (and the scheme for businesses with annual revenue of less than £45 million, the Coronavirus Business Interruption Loan Scheme) will now be available to majority-owned portfolio companies of private equity firms following updated guidance to lenders, as such companies will be considered on a standalone basis when assessing annual revenues (i.e. there will be no grouping of all of a private equity or venture capital firm's portfolio companies' revenues).

For more information on CLBILS, see the update on [Government Support Schemes](#) above.

The Innovation and Development Scheme

On 20 April 2020, the Government announced the establishment of a new "Future Fund" to support the UK's innovative businesses currently affected by the COVID-19 pandemic. As part of the package, a £500 million investment funding scheme for high-growth companies impacted by the COVID-19 pandemic is being established. The scheme will be delivered in partnership between the Government and the private-sector and will provide UK-based companies with between £125,000 and £5 million of convertible loans from the Government through the Future Fund. The Future Fund will have an initial commitment of £250 million from the Government. To be eligible, private investors will need to match the Government's funding. These convertible loans will automatically convert into equity on the company's next qualifying funding round, or at the end of the convertible loan if not repaid prior to maturity. To be eligible, a business must be an unlisted UK registered company that has previously raised at least £250,000 in equity investment from third party investors in the last five years. The scheme has been created to support private equity and venture capital-backed growth businesses that have been unable to access other Government business support programmes, such as the Coronavirus Business Interruption Loan Scheme, because they are either pre-revenue or pre-profit and typically rely on equity investment.

For more information on the Innovation and Development Scheme, see the update on [Government Support Schemes](#) above.

15. REAL ESTATE

Real Estate Industry lobbying Government

Retailers and landlords have come together to call on the Government for urgent help as retailers complain of existing Government loan schemes being largely inaccessible to the industry and the three month moratorium against eviction for non-payment of rents not being long enough to help them survive.

The British Property Federation, together with the British Retail Consortium, has proposed a furloughed space grant scheme, comparable to plans adopted in several other European countries already. Under the proposed plan, the Government would pay a certain percentage of a landlord's fixed costs on a sliding scale: the Government will pay 25% for those losing 40-60% of turnover; 50% for those with a turnover drop of 60-80%; 80% for a drop of 80-99%; and 100% for those not trading. Given the low levels of rent paid last quarter date, there is pressure from the industry to have a plan in force in advance of the next quarter date (24 June 2020). There has been no response as yet from the Government.

UK Hospitality, an organisation representing over 700 businesses in the hotel, restaurant and leisure industry, has warned of "mass redundancies and business failures" if the Government fails to "say something more formal about debt enforcement" as many businesses arrive at deadlines for statutory demands issued by landlords (as an alternative to eviction) which, if not contestable, would result in winding up/insolvency orders being granted.

Construction

BEIS recently released guidance that construction work may continue if carried out in accordance with the PHE social distancing guidelines wherever possible. The Construction Leadership Council (CLC) published version 3 of the Site Operating Procedures (SOPs) on 14 April, aimed at protecting the construction workforce during COVID-19, in particular, the rule of workers staying two metres apart should be respected as far as possible, and is supplemented by a "hierarchy of controls" to be adopted where social distancing is not possible (eliminate, reduce, isolate, control, PPE and behaviours). The amended SOPs have been welcomed by the construction industry for their practical and pragmatic advice with a large number of sites reopening. While some more granular issues remain to be ironed out, on the whole, developers and contractors can feel optimistic about the clarifications in terms of ongoing work (with a sharper focus on practicalities and commercial considerations) compared with when the lockdown first began.

Dividend policy for REITs

Many REITs, including Landsec, British Land and Hammerson, will not be paying dividends, either cancelling them completely or deferring them. Peel Hunt has estimated that cancelled dividends across FTSE 350 and AIM 100 exceed £19 billion. Given the REIT rules require payment of 90% of property income to shareholders within a 12 month period, damage to investors should be only short term. Conversely, REITs holding real estate in high demand (e.g. logistics and industrial) have announced they will be paying dividends.

COVID clauses

Recent press reported that Edinburgh Woollen Mill is negotiating leases for its Bonmarché stores including a COVID-19 clause, allowing Bonmarché not to pay rent until their shops can actually open. The clauses would also provide for rent to be refunded by landlords in certain circumstances in the case of a future pandemic.

16. UK TAX

No update to our COVID-19 UK Bulletin – 16 April 2020.

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