

## COVID-19 UK BULLETIN – MAY 20, 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. Please note that due to the Bank Holiday our next bulletin will be issued on the 3rd June, and our weekly webinar will return on Monday 1 June 2020.

As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the UK COVID-19 Taskforce (listed at the end of this bulletin), or one of the taskforce co-leads:

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## **1. Competition and Consumers**

### **State aid**

On 11 May 2020, the European Commission announced that it has approved a £9 billion UK aid scheme under the Temporary Framework to support self-employed individuals and members of partnerships. The scheme supports lower-end income self-employed individuals who have been severely affected by the economic impact of the coronavirus outbreak. Self-employed people are able to apply for a grant worth 80% of their average monthly profits over the last three years, up to £2,500 a month. Unlike the employee furlough scheme, the self-employed can continue to work as they receive support.

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## **2. Corporate Governance (including accounts, disclosure and reporting obligations)**

### **Government extends temporary suspension of wrongful trading**

The Department for Business, Energy and Industrial Strategy (BEIS) has announced that the temporary suspension of wrongful trading liability will continue until 30 June 2020. The measure was initially set to expire on 1 June 2020. Current insolvency rules stipulate that a company director can be personally liable for a company's losses if the director knew or ought to have concluded that there was no reasonable prospect of the company avoiding an insolvent administration or insolvent liquidation and where that director failed to take every step with a view to minimising potential losses to creditors. The suspension was introduced to enable directors to keep running their businesses during the COVID-19 pandemic without the threat of personal liability. However, other penalties do remain for directors who continue to trade to the detriment of creditors. Directors should be alive to this and should seek appropriate advice. Specific statutory language to implement these changes will be included in the upcoming Corporate Insolvency and Governance Bill which is yet to be published. The BEIS announcement can be accessed [here](#).

### **Joint Q&A issued by the Financial Reporting Council (FRC) and BEIS**

The FRC and BEIS have published a joint Q&A document on how company filings, AGMs and general meetings should be conducted whilst temporary measures to give companies and other bodies flexibility around such matters are implemented. The Q&A notes that legislation to implement these changes will be introduced as soon as the Parliamentary timetable allows and it is intended that such legislation will apply retrospectively from 26 March 2020 (although this can-not be guaranteed and companies and other bodies should take this into account when deciding how to proceed). The Q&A covers questions relating to calling meetings, virtual meetings and postponing meetings and considerations for directors in relation to safeguarding the interests of shareholders.

## **FRC issues updated guidance on corporate governance and reporting to include considerations relating to interim reports**

The FRC has updated its COVID-19 guidance for companies to include considerations for those preparing interim reports. The updated guidance indicates that directors will need to exercise judgment about the nature and extent of the procedures they apply to assess the going concern assumption at the half-yearly date. The FRC indicates that this might include disclosure of (i) any material uncertainties to going concern; (ii) assumptions made about the future path of COVID-19 and the public health responses; (iii) the projected impact on business activities; (iv) use of Government support measures; and (v) access to bank and other financing. The guidance provides a number of scenarios which may trigger a need to re-examine the going concern assumption and going concern and liquidity risk disclosures. If going concern has become a significant issue since the previous annual financial statements, the guidance indicates that directors should undertake procedures similar to those that they would have carried out for annual financial statements to ensure that all relevant issues have been identified and considered.

The FRC previously issued guidance for companies in March 2020, please see our [COVID-19 UK Bulletin – 8 April 2020](#) for a summary of this. The updated guidance is available [here](#).

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## **3. Cybersecurity and Data Protection**

No update to our [COVID-19 UK Bulletin – 13 May 2020](#).

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## **4. Disputes**

### **Jury trials**

Jury trials in England and Wales were suspended on 23 March 2020. Recently, the Lord Chief Justice, Lord Burnett of Maldon, announced that [new jury trials](#) can commence in some courts from 18 May 2020. Trials will be conducted with the usual twelve jurors participating, with special arrangements in place to ensure their safety and the safety of others in Court. The decision follows work by the Jury Trials Working Group and guidance from Public Health England and Public Health Wales. A small number of pilot jury trials are [starting](#) in London, Cardiff, Bristol and Manchester, each with reconfigured and additional video or audio-linked courtrooms to ensure distancing measures can be followed. One of the first trials to have [resumed](#) is the corruption case brought by the SFO against Unaoil executives. It is [taking place](#) in one of the largest courtrooms at the London Central Criminal Court, to facilitate distancing measures, with adjoining courtrooms provided for deliberations and an audio-linked court for the press and public. Further courts are being assessed against criteria developed by the Jury Trials Working Group to identify whether they can be used for trials with appropriate distancing measures in place (including additional courtrooms linked by CCTV to allow observation of proceedings

by reporters and others, a separate room for jury deliberations, careful supervision of entrances and exits and cleaning services).

## **Lord Chief Justice gives evidence before the House of Lords**

On 13 May 2020, the Lord Chief Justice appeared before the Constitution Committee of the House of Lords to give evidence on a number of issues arising out of the implications of COVID-19.

Lord Burnett praised the innovation and cooperation of all those involved in ensuring the justice system continues to operate. Lord Burnett suggested that digitisation of the courts and use of remote hearings will continue to assist the civil and criminal justice systems beyond the pandemic, and made clear that “there will be no going back to where we were”, but stressed that to ensure any new future arrangements to work effectively there is an urgent need for greater investment. He also stated that the criminal justice system is experiencing a backlog of trials. For every month in which the courts do not sit, there will be around 1000 further trials adding to the backlog, which must be addressed if current restrictions continue longer term.

## **Operation of the Courts – general update**

The Courts are continuing to avoid physical hearings where possible. The High Court is still following its High Court Contingency Plan, prioritising urgent business that would usually warrant out of hours application during normal times, whilst continuing to deal with “business as usual” matters as far as possible under the contingency plans. Lord Burnett, in his appearance before the constitutional committee of the House of Lords, stated that in the High Court around 80% of its normal work has continued since lockdown measures were put in place. In the Court of Appeal, the Civil Appeals Office is dealing only with urgent applications which require substantive decisions within 7 days, whilst non urgent applications will be dealt with once capacity begins to increase. The Court of Appeal Criminal Division will focus on urgent cases, but will continue with other cases where possible.

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## **5. Employment**

### **Employment law considerations for companies responding to COVID-19 and planning for a return to the workplace**

On 10 May 2020, the Government announced a provisional roadmap for the phased relaxation of the current COVID-19 lockdown restrictions, including those restrictions which have impacted businesses across the UK. While the Government continues to require those who can work from home to do so, employees who are not able to work from home are now being actively encouraged to return to the workplace provided that their workplace is permitted to open and can be operated within Government guidelines. In our recent client alert we identify some of the key considerations for UK-based businesses when taking steps to comply with their health and safety obligations once certain groups of employees return to the workplace. We also outline key amendments to the Coronavirus Job Retention Scheme (CJRS).

## 6. Energy

### Oil price update

This week saw Saudi Arabia announce a further oil production supply cut of 1 million barrels a day, with the International Energy Agency expecting to see a nine-year low this month, and prices continuing to stabilise as Brent crossed USD\$30 per barrel on Thursday 14 May. Brent and WTI are both currently above USD\$30 per barrel.

### Energy transition

**In the UK, renewable** energy producers have reported record production and sales, with good weather and low pollution allowing solar farms in April 2020 to power up to almost 30% of the national grid at times. Coal had not been used to power the national grid for 34 days as of 14 May 2020, longer than ever before. These changes have been facilitated by a 14% drop in the UK's demand for electricity in April 2020. The longer term effects of the COVID-19 crisis on the energy transition remain to be seen, but environmental groups as well as energy companies globally have called for a continued push into renewables during this time of market turmoil.

### Impact of COVID-19 on projects

The effects of COVID-19 continue to take their toll on sites and projects globally. Some specific examples of note include:

- Brazil's Petrobras reports entering the "worst crisis in 100 years", announcing a net loss of 48.5 billion reals (around USD\$8.35 billion) which is a drop of nearly 700% from Q4 of last year.
- Kurdistan-focused Genel Energy will cut CapEx to just over USD\$100 million for 2020, approximately a 50% cut, and aims to cut operating fees by 10%.
- Igor Sechin, CEO of Russia's Rosneft, has met with President Putin to ask for measures to aid the energy industry, including "transferring tax payments" for future investigative work and increasing credit availability. These proposals are reportedly under consideration by the Kremlin.
- Singapore-based contractor Sembcorp Marine warned of further losses, also announcing that only 850 workers of its normally 20,000 strong force were working during the current crisis.
- Japanese E&P company Inpex has also warned of lower profits in future, as it works to cut CapEx.
- Gabon has shut its Energy Ministry for sanitisation as confirmed cases rise amongst civil servants in that country.

## 7. Finance

No update to our COVID-19 UK Bulletin – 13 May 2020.

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## 8. Financial Services Regulatory

On 13 May 2020, the FCA published a statement on how firms should handle post and paper documents during the pandemic.

The FCA expects firms to comply with the requirements for post and paper-based processes (incoming and outgoing), but acknowledges that, in the current circumstances, some firms may not be able to fully comply with them. In such cases, firms must notify the FCA as soon as possible. Additionally, firms should (amongst other things):

- try to ensure that all customers are not disadvantaged because of delays and make particular efforts to contact customers who do not use online services. In particular, vulnerable customers must be protected;
  - demonstrate any steps taken to mitigate the impact of non-compliance with postal and paper processes and return to full compliance as soon as practical; and
  - as face-to-face assessments are not currently possible, use other methods to conduct a suitability assessment, such as phone calls and relevant due diligence checks online. Firms should then send out the assessment without delay, whether online or by post.
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## 9. Force Majeure

No update to our COVID-19 UK Bulletin – 13 May 2020.

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## 10. Government Support Schemes

### Coronavirus loans schemes

UK Finance, the trade and industry body for the banking and finance sector in the UK, announced that as of 17 May 2020, approximately £22 billion had been lent to over 505,000 businesses in the UK through the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Bounce Back Loans Scheme, from over 663,000 applications.

## **Coronavirus Large Business Interruption Loan Scheme and Covid Corporate Finance Facility**

The maximum loan size available under the Coronavirus Large Business Interruption Loan Scheme (**CLBILS**) has increased from £50 million to £200 million with effect from 26 May 2020 for those companies with annual revenues in excess of £250 million. Under the enlarged scheme, the amount companies are able to borrow will be capped at 25% of annual revenues, up to a maximum of £200 million. Companies borrowing more than £50 million through CLBILS will be subject to restrictions on dividend payments, senior pay and share buy-backs during the period of the loan, including a ban on dividend payments and cash bonuses, except where they were (i) declared before the CLBILS loan was taken out, (ii) is in keeping with similar payments made in the preceding 12 months, and (iii) does not have a material negative impact on the company's ability to repay the loan. These restrictions will also apply to participants in the Covid Corporate Finance Facility (CCFF) that wish to borrow money beyond 12 months from 19 May 2020. The Government also intends to publish list of companies who are benefitting under CCFF on 4 June 2020.

## **Coronavirus Job Retention Scheme (CJRS)**

The Government announced on 12 May 2020 that the CJRS will continue until the end of October 2020, during which time furloughed workers across the UK will continue to receive 80% of their current salary, up to £2,500 per month. New flexibility to the scheme will be introduced from August 2020 to get employees back to work with employers sharing the cost of the scheme. For more details, see the [Employment](#) section above.

## **Self-Employment Income Support Scheme**

Applications for the Self-Employment Income Support Scheme opened on 13 May 2020 ahead of schedule for self-employed workers. The scheme allows self-employed workers to claim a taxable grant of 80% of their average monthly trading profits, paid out in a single instalment covering 3 months, and capped at £7,500. For more details, see the [Competition and Consumers](#) section above.

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## **11. Insolvency**

No update to our [COVID-19 UK Bulletin](#) – 13 May 2020.

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## **12. International Trade Agreements (private and public)**

No update to our [COVID-19 UK Bulletin](#) – 13 May 2020.

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## 13. Lockdown and Public Law Issues

### Recovery strategy

To implement parts of the Government's stepwise plan for exiting the lockdown, *Our Plan to Rebuild: The UK Government's COVID-19 recovery strategy*, regulations were announced to amend the existing lockdown restrictions in place since 26 March 2020. The amendment, The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020, came into force on 13 March 2020 and makes provisions for: easing restrictions on movement (for work, exercise, visiting a public open space, buying or selling real estate, or using a waste or recycling centre), re-opening certain premises (holiday accommodations for guests who are traveling for work or key workers, outdoor playgrounds, outdoor sports courts, and garden centres), and increasing fixed penalty notice fines.

### Virtual Parliament

The House of Commons has held its first ever remote votes by MPs, including a vote to progress the Agriculture Bill.

### Government plan to rebuild the economy

Prime Minister Boris Johnson has reportedly started work on a major speech to be delivered mid-June 2020 to lay out a plan to rebuild the economy. He is expected to focus on "three pillars" of education, technology and infrastructure to set out his vision.

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## 14. M&A and Private Equity

No update to our COVID-19 UK Bulletin – 13 May 2020.

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## 15. Real Estate

### Commercial outlook

Britain's largest pub landlord, Ei Group, is waiving rents from April to June 2020 for 350 tenants, specifically those who are not able to avail themselves of the Government support scheme. The move follows a letter from 60 MPs to the landlord requesting that it assist tenants. In the latest in the very public Travelodge saga, previously reported on [here](#), Travelodge has warned that it will be required to seek a CVA if landlords do not agree to up to 80% cuts to rents.

Landsec's CEO Mark Allan has commented that whilst he remains optimistic about the prime office space market in London, secondary office stock will take a significant hit. COVID-19 has accelerated the "existing structural trends", compressing developments which might have taken five years into one. His comments come as Landsec announces that it will not be paying a final dividend.

Deloitte Crane Survey has just released a report finding that the London office market had seen 45 new starts in the six months preceding lockdown, a 42% increase on the same six months the year before, and a record high. These levels have, of course, not lasted into lockdown, and Deloitte warned of delays to projects as 60% of those under construction have been suspended, and the likelihood of some smaller companies abandoning plans to move.

However, the market is not all doom and gloom. Grainger, a residential landlord, reported collecting 94% of its rents in April; Sirius Real Estate, a commercial property landlord focusing in German business parks, collected 98% of rent. They will both be paying a dividend, with Grainger announcing an increased payment.

## **Government guidance**

The Government released [guidance](#) on the implementation of social distancing measures in urban centres, including high streets, shopping centres and green spaces. Canary Wharf has already started preparing the site to bring workers back, creating one way systems to guide workers safely around it and installing hand-sanitising points.

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## **16. UK Tax**

### **Country-by-country, DAC6, CRS and FATCA reporting**

HMRC has issued an update regarding the deadline for Country by Country, DAC6, CRS and FATCA reporting. The normal annual deadline for both FATCA and CRS is 31 May. The Country by Country report filing deadline will depend on the financial year end of the filing entity. Under the DAC 6 regulations the first reports are due to be sent to HMRC from 1 July 2020, and by 31 August 2020 for pre-existing arrangements. HMRC did not change reporting deadlines but expressed its understanding that stakeholders may not be able to file timely because of the pandemic. Accordingly, HMRC stated that it accepts that any stakeholder that files a Country by Country, DAC6, CRS or FATCA report late because of Covid-19 difficulties will have a reasonable excuse (and so will not be liable to any penalties for that delay) provided the report is made without unreasonable delay after they are resolved. With regards to DAC6, the European Commission has now proposed amendments to change the time limits in the EU directive (2011/16/EU). As and when the EU Directive amendment is final, HMRC will confirm how this will apply to UK's domestic rules. See [here](#) for further details.

### **VAT – Amendments made to notifying options to tax land and buildings**

HMRC have announced temporary changes to the process for notifying an option to tax land and buildings during the COVID-19 pandemic. The time limit for notifying HMRC of a decision to opt to tax land and buildings, decided between 15 February 2020 and 31 May 2020, has been extended to 90 days from the date the decision to opt was made, as opposed to the usual limit of 30 days. Notifications should be emailed to [optiontotaxnationalunit@hmrc.gov.uk](mailto:optiontotaxnationalunit@hmrc.gov.uk). See [here](#) for further details.

## **New exemption for COVID-19 related reimbursed home office expenses**

A temporary exemption for tax and National Insurance Contributions has been announced for expenses reimbursed by employers for home office equipment. This temporary exemption will ensure that (subject to certain conditions being fulfilled) no tax liability arises where employers reimburse employees' personal expenditure on home office equipment arising from arrangements to work from home during the COVID-19 pandemic. The relevant Regulations are to have effect from 16 March 2020 until the end of the tax year 2020/21. See [here](#) for further details.

## **Reasonable excuse and more time to appeal**

HMRC has confirmed that, where a taxpayer is unable to meet an obligation (such as a payment or filing deadline) due to COVID-19, that will be accepted as a reasonable excuse, provided they manage to remedy the failure as soon as they are able to do so. Taxpayers affected by coronavirus will also be given further time to seek a review of, or appeal against, an HMRC decision. In addition to this, if an application is made to the tribunal to hear a late appeal due to the COVID-19 pandemic, HMRC will not object, provided that the review decision is dated February 2020 or later, and the application is made within three months of the normal deadline. HMRC has updated its guidance to reflect these changes. See [here](#) and [here](#) for further details.

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## **COVID-19 UK Taskforce Leaders**

Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact your usual contact or any member of the Firm's (COVID-19) UK Taskforce:

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