

## COVID-19 UK BULLETIN – JUNE 3, 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 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**

### **Mergers and antitrust**

Coronavirus has had minimal impact on merger and antitrust decisions in recent weeks. On 19 May 2020, a former director contesting his disqualification by the CMA in relation to price-fixing unsuccessfully argued that the High Court should postpone his trial due to the impact of the COVID-19 outbreak. At the case management conference, the former director's legal representatives argued that the former director and his witness could not be fairly cross-examined by the CMA via a remote link. It was argued that the witness had an unreliable internet connection and could not travel as her husband was medically vulnerable to the coronavirus. Judge Clive Jones concluded that the trial could be conducted by remote link "without unfairness" and that there was insufficient evidence to authorise a delay.

On 25 May 2020, the European Commission (EC) opened a Phase II investigation in the Air Canada/Transat deal, noting that mergers have long-term structural effects on competition which need to be considered even in times of severe shocks affecting the economy. Executive Vice-President Margrethe Vestager commented that "a return to normal and healthy market conditions must be based on markets that remain competitive". The airline sector has been significantly impacted by the coronavirus outbreak and the EC was not able to determine whether the parties would continue to compete on every route on which they competed before the crisis. The EC took the preliminary position that Air Canada and Transat will remain the closest actual or potential competitors on the EEA-Canada routes, and this will be considered further in the Phase II investigation.

### **Consumer protection**

On 21 May 2020, the CMA published a second update from its COVID-19 Taskforce, which monitors and responds to consumer issues arising from the pandemic. Since early April 2020, the number of complaints about price rises has fallen. The majority of recent complaints have been about unfair practices in relation to cancellations and refunds, of which three-quarters relate to holidays and airlines.

The CMA previously launched a programme of work to investigate whether companies are breaking the law, prioritising holiday accommodation, weddings and events, and nurseries. The CMA has now opened cases in respect of certain companies in these sectors and further details will be announced in due course. The CMA has added package-holiday providers to the scope of its investigation due to a rising number of consumer complaints.

The EC is also working to protect consumers, and recently coordinated a "sweep" of websites by the Consumer Protection Cooperation Network to identify where EU consumers are subject to content promoting false claims or scam products in the context of the coronavirus. The sweep involved a high-level screening of online platforms and an in-depth analysis of specific advertisements and websites linked to products in high demand because of the coronavirus. Particular attention was focused on offers linked to protective masks and caps, sanitiser gels, testing kits and products with alleged healing effects in relation to the coronavirus. As a result, platforms have removed or blocked millions of misleading advertisements and product listings. Of the 268 websites covered by the in-depth sweep, 206 were flagged for further investigation for potential breaches of EU consumer law.

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

### Government publishes draft Corporate Insolvency and Governance Bill

The Government has published a draft bill (Bill), which proposes to relax various statutory obligations in relation to wrongful trading, company filings, AGMs and general meetings (amongst other things) to provide companies and other corporate bodies with greater flexibility in the midst of the current crisis. The Bill follows a series of announcements made by the Department for Business, as discussed in our COVID-19 UK Bulletin - 20 May 2020. Key highlights of the Bill are as follows:

- **Introduction of a company moratorium.** Directors of insolvent companies or companies likely to become insolvent can obtain a 20 business day moratorium period which will be overseen by an insolvency practitioner or “monitor”. The moratorium is initiated through filing prescribed papers in court including certain confirmations by directors and the monitor. Directors will retain responsibility for running the business and this period will offer viable businesses a period during which they can restructure or seek new investment free from creditor action.
- **Restructuring plan.** Companies (both solvent and insolvent) will be able to propose a restructuring plan to bind all creditors similar to the existing English law creditor “schemes of arrangement” including requiring approval of creditors and sanction of the court. The plan if approved will allow a company to bind all classes of creditors through a cross-class cram down provision (provided any dissenting class would be no worse off than they would be in an applicable alternative scenario). The approval threshold for a class is 75% of a class by value and more than 50% in number.
- **Wrongful trading.** The Bill also seeks to codify the Government’s proposal to suspend wrongful trading liability with effect from 1 March to 30 June 2020 (or, if later, one month after the measure comes into force). Suspension of the wrongful trading offence should give directors greater comfort to use their best endeavours to continue to trade during the pandemic without the threat of personal liability.
- **Termination clauses in supply contracts.** The Bill introduces a permanent change to the use of termination clauses in supply contracts in order to alleviate the strain cause on companies by suppliers stopping or threatening to stop supplies essential to continued trading. Pursuant to this change, where a company has entered an insolvency or restructuring procedure or obtains a moratorium, the company’s suppliers will not be able to rely on any existing contractual terms to cease supply or adversely vary the contract terms. The customer will be required to pay for any supplies made once the insolvency process has commenced, but will not be required to pay outstanding amounts due for past supplies while it is implementing its restructuring plan. Small company suppliers and suppliers whose businesses would themselves suffer hardship pursuant to the operation of this change, will be exempt from these requirements.

- **Extensions for public companies filing accounts.** The Bill temporarily extends the filing deadlines for public companies to file their annual accounts and reports at Companies House. Where a public company was required to file such accounts between 25 March 2020 and 30 September 2020, the deadline will be extended to the earlier of 30 September 2020 and the date which is 12 months following the end of the relevant accounting reference period.
- **Filings at Companies House.** The Bill empowers the Secretary of State to make regulations to extend the deadlines for certain company filings, including the periods specified in the Companies Act 2006 for filing company accounts, annual confirmation statements, notices of changes of directors, secretaries or PSCs and for registering charges.
- **Annual General Meetings (AGMs) and General Meetings.** Companies (and certain charitable incorporated organisations) which are required to hold AGMs (either by law or as a result of their own constitution) between 26 March and 30 September 2020, may postpone holding that meeting up to 30 September 2020. In addition, any such AGMs or other general meetings held during this period do not need to be held in a particular place and can be held by electronic means, irrespective of whether this is permitted by the company's constitution. The Secretary of State is also empowered to provide, by regulations, for further temporary extensions of any deadlines for holding an AGM beyond 30 September (and up to 5 April 2021) if circumstances require.

The current Bill is draft legislation and is progressing through parliament, with its second reading tabled for 3 June 2020. The [explanatory notes](#) accompanying the Bill indicate that the Government intends to ask Parliament to expedite the parliamentary progress of the Bill. If the Bill has a straightforward journey through Parliament, this could mean that the new restructuring mechanisms outlined above may be available from the start of July 2020.

## **European Securities and Markets Authority (ESMA) statement in relation to half-yearly financial reporting**

ESMA has published a [statement](#) in relation to the preparation of half-yearly financial reports during the COVID-19 pandemic. The statement is relevant to listed companies and also pertains to financial reporting in other interim periods where IAS 34 Interim Financial Reporting is applied. According to the statement, issuers should:

- **Extending publication date for half-yearly financial reports – use with care.** Choose whether to make use of additional time allowed by national law to publish half-yearly financial reports, provided that such publication is not unduly delayed. Issuers must continue to comply with their ongoing obligations under the Market Abuse Regulation.
- **Annual Reports to include appropriate COVID-19 impact risk disclosures.** Update information included in their latest annual accounts to ensure that stakeholders are adequately informed of the impacts of COVID-19, in particular in relation to significant uncertainties and risks, going concern, impairment of non-financial assets and presentation in the statement of profit or loss.

- **General obligation to consider impact of COVID-19 on strategy and operations.** Continue to consider the need for entity-specific information on the past and expected future impact of COVID-19 on their strategic orientation and targets, operations and performance as well as any mitigating actions put in place to address the effects of the pandemic.

Management, administrative and supervisory bodies, including audit committees, of issuers and, where applicable, their auditors, should take due consideration of the recommendations included within the statement. ESMA and National Competent Authorities will monitor and supervise the application of the relevant IFRS requirements and other provisions highlighted in the statement.

## **The Financial Conduct Authority (FCA) publishes its 28th Primary Market Bulletin**

The FCA has published its 28th Primary Markets Bulletin (Bulletin). The Bulletin provides guidance for London listed companies in the context of the COVID-19 pandemic, confirms temporary relief to listed companies for half-yearly financial reports, includes a statement on going concern assessments in financial statements and encourages shareholder engagement and the delivery of soft pre-emption rights. Salient points are as follows:

- **Forbearance on enforcement action - Financial reporting.** The FCA will not pursue enforcement action for a technical breach of DTR 4.2.2R, if listed companies publish their half-yearly financial reports one month late, but within four months of the relevant reporting period. This is a policy of forbearance by the FCA as opposed to a rule change and is line with previous guidance issued by the FCA, the Financial Reporting Council (FRC) and the Prudential Regulation Authority (PRA) and ESMA's public statement on financial reporting deadlines (see our COVID-19 UK Bulletin – 8 April 2020 for summaries of the previous guidance). The FCA will review the application of this forbearance during the pandemic and will announce how the policy will end in a fair, orderly and transparent way at the appropriate time.
- **Going concern assessments.** Auditors and listed companies are urged to continue to be clear and transparent about the impacts of the current pandemic in their financial statements, particularly with regard to “going concern” assessments and any remarks that auditors may need to include in their opinion when reviewing the going concern assessment. Market participants, including intermediaries, should not draw unduly adverse inferences from these disclosures, nor from listed companies changing their financial calendars to make use of the extra time allowed by the FCA to publish annual and half-yearly financial reports.
- **Shareholder engagement and virtual general meetings.** Listed companies are encouraged to continue to engage with shareholders and to be as “open as possible” with shareholders about the implications of COVID-19 on their business. This may include formal disclosures to the market through financial reports and trading updates and, in the absence of physical general meetings, allowing shareholders to pose questions to management and exercise their voting rights effectively. Further, the FCA supports listed companies holding virtual general meetings as a means of gaining shareholder approval where the company's articles of association authorise it to do so.

- **Capital raising.** Further to the FCA's previous statement on 8 April 2020 (see our [COVID-19 UK Bulletin – 16 April 2020](#) for a summary), the FCA continues to encourage issuers to contribute to the delivery of “soft pre-emption rights” by exercising their right to be consulted on, and to direct, bookrunners' allocation policies.

The Bulletin also provides a link to the FCA's latest Market Watch newsletter, Market Watch 63. This contains commentary on market conduct and discipline in the context of COVID-19, including, among other matters, the appropriate treatment of inside information, information on short selling and identifying and managing conflicts of interest by market participants that may arise in capital raisings. For a full summary of Market Watch 63 please refer to the [Financial Services Regulatory](#) section of this Bulletin. A copy of Market Watch 63 can be accessed [here](#).

## **Financial Reporting Council (FRC) issues updated guidance on corporate governance and reporting to include considerations relating to exceptional items and alternative performance measures (APMs)**

The FRC has updated its guidance for companies on corporate governance and reporting during the COVID-19 pandemic to explain how they should report APMs.

- **Exceptional items.** In relation to exceptional items, companies will need to consider whether additional items of income and expenditure arising from the COVID-19 crisis should be separately disclosed in accordance with their existing policies for ‘exceptional’ or similar items. The materiality of items such as restructuring costs, impairment charges, incremental health and safety costs, and the costs of onerous contracts will need to be considered by each company. The nature and amounts should be presented in a way helpful to readers; for example, by giving them all in a single note or linking them with cross-references.

Companies should be even-handed in identifying gains as well as losses; not describe amounts as non-recurring or one-off if they are also expected to arise in future periods; not disclose costs as exceptional solely because of a reduction in, or elimination of, the related revenue streams due to the COVID-19 crisis; and not identify incremental costs as exceptional if they result in incremental revenue not also described as exceptional. In circumstances where the effects of COVID-19 are pervasive and hard to quantify, it is helpful for companies to provide narrative disclosures explaining the nature of the items and uncertainties around them. However, splitting discrete items on an arbitrary basis in an attempt to quantify the portion relating to COVID-19 is unlikely to provide reliable information. The FRC discourages companies from disclosing these in their accounts.

- **Changes to APMs.** In relation to APMs, the FRC observes that APMs should be presented consistently year-on-year, but that there may be circumstances where the COVID-19 crisis has, for instance, resulted in a company's making changes to its operations or business model which may result in changes to the APMs used to run and monitor the business. In these circumstances, readers should be informed of any such changes and provided with an explanation of why they provide reliable and more relevant information.

APMs which attempt to provide a measure of normalised or pro-forma results, excluding the estimated effect of the COVID-19 crisis, are likely to be highly subjective and potentially unreliable. In addition to the subjectivity arising around which costs to exclude, in most cases COVID-19 is likely to have resulted in reductions in revenues. Any adjustment for lost revenues would be hypothetical and not reflected reliably in an APM. The FRC does not expect companies to provide these measures (e.g. by including them in a “third-column” income statement presentation).

The FRC previously updated its guidance for companies in early May, please see our [COVID-19 UK Bulletin - 20 May 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 – 20 May 2020](#).

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### **4. Disputes**

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

The courts are continuing to avoid physical hearings where possible, having acted swiftly when the pandemic broke to improve IT systems and increase capacity for the operation of telephonic and video hearings, and issuing [detailed guidance](#) on their use. HMCTS has issued an indicative [rollout plan](#) to accompany the introduction of the secure Kinly Cloud Video Platform (CVP) to the Crown Courts and magistrates’ courts as well as to the civil and family courts, which will assist with the greater use of video hearings.

On 26 May 2020 it was [announced](#) that the Rolls Building will offer physical hearings from 1 June 2020, albeit at reduced capacity of around one third of the usual number of courtroom hearings, with a total limit of 13 courts able to operate across the Chancery, Admiralty and Commercial Court and Technology and Construction Court. The update sets out the following four types that will be held, noting that will be for the judge to decide which sort of hearing or combination of forms of hearing is required in each case: (i) fully remote hearings with the judge at home; (ii) partly remote hearings with the judge based in an office or court in the Rolls Building; (iii) hybrid hearings with some participants based remotely and the judge and other participants in court; and (iv) normal physical hearings with all participants attending court in person. Whilst the majority of hearings should continue to take place remotely, parties are encouraged to agree the proposed form of hearing in order to enquire with the court whether it is possible and necessary to accommodate such a hearing.

#### **Commercial dispute resolution**

The British Institute of International and Comparative Law (BIICL) published a second [Concept Note](#) (see previous [Concept Note 1](#)) on the effect of the 2020 pandemic on commercial contracts at the private

law level, following its recent promotion of its “breathing space” project. The Concept Note focuses on the need to mitigate large scale damage caused by parties to contractual disputes triggering default clauses and excusing themselves from performance as a result of the pandemic—in order to limit the risk of “a deluge of litigation and arbitration placing a strain on the system of international dispute resolution”. Concept Note 2 focuses on two aspects: (i) the use of a wide range of dispute resolution mechanisms to encourage parties to negotiate solutions, alongside fair and expeditious handling by the courts of disputes that cannot be settled, to evade cumbersome backlogs; and (ii) the application of existing legal principles, whilst recognising that these will be applied in unique circumstances dependent on specific facts. The premise behind the “breathing space” project is to encourage commercial, equitable solutions to disputes arising out of or facing obstacles as a result of the pandemic, “and to avoid a deluge of disputes impeding [global] recovery”.

## Arbitration

For the second time, the UNCITRAL tribunal have refused a request for suspension of proceedings by Bolivia based on global circumstances resulting from the COVID-19 pandemic; in this instance, in the *Glencore v. Bolivia* case. An extension of a filing deadline was granted instead. A similar request had been rejected by the tribunal in April 2020 in the case of *Orlandini and Compania Minera Orlandini v. Bolivia*. The tribunal noted its duty to avoid unnecessary delay and expense and to promote fairness and efficiency in proceedings, whilst nonetheless being understanding of the effects of the pandemic on the parties and proceedings.

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## 5. Employment

No update to our COVID-19 UK Bulletin – 20 May 2020.

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## 6. Energy

### Impact of COVID-19 on transactions and projects

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

- Carlyle- and CVC-backed Neptune Energy has walked away from buying US\$250 million worth of UK and North Sea assets from Italy’s Edison (who is in turn being acquired by Mediterranean-focused player Energean Oil and Gas). Neptune will pay a US\$5 million break fee. Energean and Edison are in the process of restructuring their deal with a view towards Energean acquiring the UK assets but potentially excluding the Norwegian assets.

- BP continues its discussions with Golar LNG, after BP called a force majeure event in April 2020 under the two parties' FLNG contract for the Greater Tortue Ahmeyim LNG project offshore Senegal and Mauritania.
- The South Korean refiner SK Energy has warned of diminishing capacity in their storage facilities which are used both by SK Energy and by Middle Eastern NOCs.
- Some US LNG projects are being put on hold and plant use has fallen by a third as the price of gas in Asia, the biggest market for LNG, is now only around 40 cents higher than the price in the US, rendering many sales no longer profitable given transportation costs and other overheads.
- Subsea 7, an engineering firm operating in the North Sea, announced it would be letting go of a quarter of its 12,000 strong global workforce, with hundreds of redundancies believed to be planned for the UK.
- The Chevron-operated Tengiz field in Kazakhstan has almost 950 confirmed COVID-19 cases, 13% of the cases in the country as a whole, and local authorities are threatening closure of the plant if additional measures are not brought in to prevent the spread.
- The Ghana Health Service has confirmed that over a quarter of the 200 employees on a vessel in the Tullow-operated Jubilee field offshore Ghana have contracted COVID-19.

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## 7. Finance

No update to our COVID-19 UK Bulletin – 20 May 2020.

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## 8. Financial Services Regulatory

### Financial services regulatory client alert

Financial Conduct Authority outlines expectations for managing enhanced market conduct risks in the context of the pandemic

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## 9. Force Majeure

No update to our COVID-19 UK Bulletin – 20 May 2020.

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## **10. Government Support Schemes**

### **Coronavirus loans schemes**

The Government announced that as of 24 May 2020:

- Approximately £8.15 billion had been approved for lending to 43,045 businesses under the Coronavirus Business Interruption Loan Scheme from 84,607 applications.
- Approximately £800 million had been approved for lending to 154 businesses under the Coronavirus Large Business Interruption Loan Scheme from 502 applications.
- Approximately £18.5 billion had been approved for lending to 608,069 businesses under the Bounce Back Loan Scheme from 769,137 applications.

The Government also announced that, as at 27 May 2020, approximately 419 applications had been made to access funding through the Future Fund for innovative small high-growth companies.

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

The Government announced changes to the CJRS on 29 May 2020 such that, from 1 July 2020, employers can bring back to work employees that have previously been furloughed for any amount of time and any shift pattern, while still being able to claim a CJRS grant for their normal hours not worked. The scheme is intended to close to new entrants from 30 June 2020 and so employees will need to be placed on furlough on or prior to 10 June 2020 to be eligible. From August 2020, the level of Government grant provided through the CJRS will be slowly tapered to reflect that people will be returning to work, with businesses then being asked to contribute more.

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

The Self-Employment Income Support Scheme for self-employed workers opened on 13 May 2020 ahead of schedule but, on 29 May 2020, the Government announced that the scheme would be extended to August 2020. 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 £6,750 for the second and final grant (the first grant was capped at £7,500).

### **Discretionary Grant Fund**

The Government has announced the launch of the Discretionary Grant Fund to support small and micro businesses that are not eligible for other grant schemes. Grants of £25,000, £10,000 or any amount under £10,000 available to small and micro businesses based in England with fewer than 50 employees, with fixed building costs and that have been adversely impacted by the coronavirus pandemic. Local authorities in England are administering the fund and applications are to be made directly to those local authorities.

## **11. Insolvency**

No update to our COVID-19 UK Bulletin – 20 May 2020.

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

No update to our COVID-19 UK Bulletin – 20 May 2020.

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## **13. Lockdown and Public Law Issues**

### **Lockdown easing**

Following an announcement by Boris Johnson on 28 May 2020, regulations were announced to amend the existing lockdown restrictions in place since 26 March 2020 even further. The amendment, The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020, came into force on 1 June 2020 and makes provisions for: replacing the prohibition on movement outside one's home without a reasonable excuse with a prohibition on staying overnight in a place other than where a person lives; permitting gatherings of up to six people outdoors; re-opening outdoor markets, vehicle showrooms, and certain outdoor sports amenities such as water sports, golf courses, and stables; and permitting elite athletes to return to training and re-opening related facilities with an eye towards restarting live televised sport. The amendment also extends the Government's mandatory review of lockdown measures to once every 28 days, with the next review due by 25 June 2020. The Prime Minister separately made provision for some pupils to return to schools starting 1 June 2020 and signalled the Government's intention to reopen other non-essential retail on 15 June 2020.

### **Virtual Parliament**

The House of Commons has been recalled on 2 June 2020 as the temporary Standing Orders on hybrid proceedings, including remote voting, have lapsed. The Speaker has deemed the traditional in-person voting method to not meet social distancing standards and the House must decide on a new method if parliamentary business is to proceed.

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## **14. M&A and Private Equity**

Reports have emerged that many private equity backed companies operating in the EU continue to struggle to access state-backed financial support schemes, such as the coronavirus business interruption loans scheme in the UK. This is due to EU state aid rules that prevent member states from providing support to any entity which is considered to be an "undertaking in difficulty" (i.e. businesses whose

accumulated losses exceed 50 per cent of its share capital). Due to the funding structures utilised by private equity firms when acquiring companies, which leverage shareholder and third party debt and minimise share capital, many operating companies fail the “undertaking in difficulty” test on a technical basis despite having been considered to be highly creditworthy prior to the COVID-19 crisis. In addition to private equity and venture backed companies, high-growth businesses, which typically operate at a loss in order to drive growth, have been unable to access governmental support in the EU for the same reason. Industry bodies, such as the British Private Equity and Venture Capital Association and Invest Europe, have called on the EU Commission to offer some flexibility to member states so that support can be made accessible to such struggling companies.

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## 15. Real Estate

### Government measures

The Government has announced the easing of lockdown, with outdoor markets and car showrooms opening on 1 June and the rest of non-essential shops opening on 15 June. The easing is, however, “contingent on progress in the fight against coronavirus”, and smaller shops have warned that the cost of preparing their premises to comply with social distancing may not be financially viable in any case.

The Government has set up a working group, consisting of a mix of landlords and retail tenants, to produce a code of practice on payment of rents. The code intends to provide clarity and set out a way to cooperate, particularly important as Vivienne King, CEO of Revo, a retail landlord and member of the working group, suspects that June quarter day will see even lower rent rates paid than seen on March quarter date, reported on [here](#). The group will produce a temporary, non-binding code to apply across the UK, and is aiming for it to be released by the June quarter date. The Government may look into making the code mandatory. Kate Nicholls, CEO of UK Hospitality, which represents many large hospitality tenants and is another member of the group, has commented that “this code could be pivotal in protecting communities and high streets from mass closures and job losses”.

The [Corporate Insolvency and Governance Bill](#), last reported on [here](#), was introduced to Parliament on 20 May 2020 restricting the use of certain landlord’s remedies when collecting rent. Importantly, the draft currently prohibits a creditor from presenting a winding-up petition unless the creditor has reasonable grounds to believe that (a) the business has not been financially effected by COVID-19, or (b) the business would not have been able to pay irrespective of those effects. “Financial effect” is defined as the company’s financial position worsening as a result of COVID-19 or related reasons.

### Market activity

Pret A Manger is calling in consultants for an overhaul of the business, but is also planning to open over 300 stores with the lockdown easing.

UK REIT M&A is back. Market participants are taking advantage of historically low REIT share prices to acquire significant positions. Recent examples include Apollo making a recommended cash offer for

Atlantic Leaf, Capco's acquisition of a c 26% stake in Shaftesbury and Brookfield buying a c 7% stake in British Land.

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## **16. UK Tax**

### **Updated HMRC guidance relating to self-assessment payments on account**

HMRC has published new guidance on deferring the self-assessment second payment on account for the 2019–20 tax year due to the impact of COVID-19. HMRC has confirmed that it will not charge interest or penalties on any amount of the deferred payment on account, provided it is paid on or before 31 January 2021. Those opting to defer their payment on account do not need to inform HMRC. Those who normally make payment on account by direct debit should cancel their direct debit as soon as possible to avoid the payment being taken from their account automatically. See [here](#) for further details.

### **HMRC publishes consultation on the taxation of COVID-19 support payments**

HMRC have launched a consultation on draft legislation to introduce rules on the taxation of COVID-19 business support grants. The legislation will also give HMRC powers to recover payments to which recipients were not entitled to under the Self-Employment Income Support Scheme or the Coronavirus Job Retention Scheme (CJRS) payment or, where a CJRS payment has not been used to pay employees, make pensions contributions, pay PAYE or National Insurance contributions. HMRC will be able to do this by raising income tax assessments or requiring taxpayers to submit a self-assessment tax return. HMRC will also be able to charge a penalty in cases of deliberate non-compliance. For further details, see [here](#).

### **Proposals to amend loan charge provisions**

In light of COVID-19 the Government has proposed amendments to the Finance Bill 2020 which are intended (i) to enable HMRC to extend the election deadline (currently set at 1 October 2020) for a group of specified individuals, rather than on a case-by-case basis; and (ii) to enable HMRC to extend, by regulations, the interest-free period during which taxpayers liable to the loan charge may discharge their income tax and capital gains tax liabilities for the tax year 2018-19 (currently due to expire on 30 September 2020).

### **Scotland and Wales ban tax haven companies from COVID-10 bailouts**

Schedule 4 to the Coronavirus (Scotland) (No. 2) Bill “other measures in response to coronavirus” has been amended during its passage through the Scottish Parliament to prevent coronavirus support grants being paid to companies based in tax havens. The definition of “tax haven” is based on the EU list of non-cooperative tax jurisdictions (the EU “blacklist”). The amendments require Scottish ministers, before providing a coronavirus-related grant, to “take steps to satisfy themselves” that the recipient: (i) is not based in a tax haven; (ii) is not the subsidiary of a company based in a tax haven; (iii) does not have a subsidiary based in a tax haven; (iv) is not party to an arrangement under which any of its profits

are subject to the tax regime of a tax haven. The Welsh Government has also announced that “businesses owned by a company or individual living in a 100% tax haven will not be eligible for financial support from the Welsh Government’s economic resilience fund”. For further details see [here](#).

## **OECD’s report on tax administration**

The OECD Forum on Tax Administration, in collaboration with the Intra-European Organisation of Tax Administrations and the Inter-American Center of Tax Administrations, has published a report “Tax Administration Responses to COVID-19: Recovery Period Planning”, outlining how tax administrations can prepare for the potentially prolonged, uncertain and complex recovery period from the COVID-19 pandemic. See [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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Force Majeure	<b>Patrick Doris</b> – <a href="mailto:pdoris@gibsondunn.com">pdoris@gibsondunn.com</a>
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