

A collaborative report in the times of the Coronavirus:

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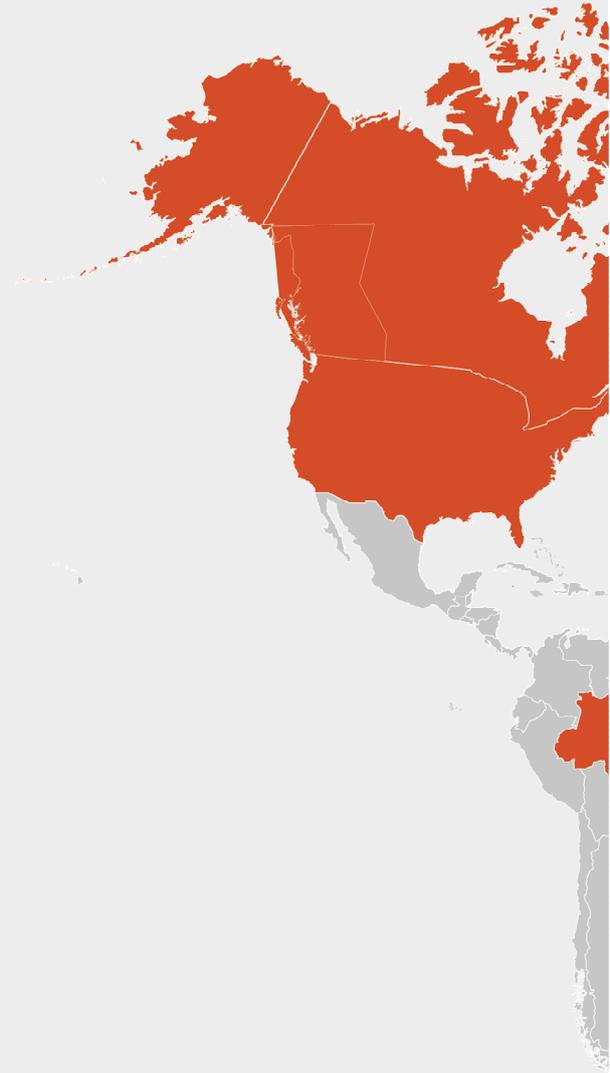
# Government measures in key jurisdictions: 5th edition



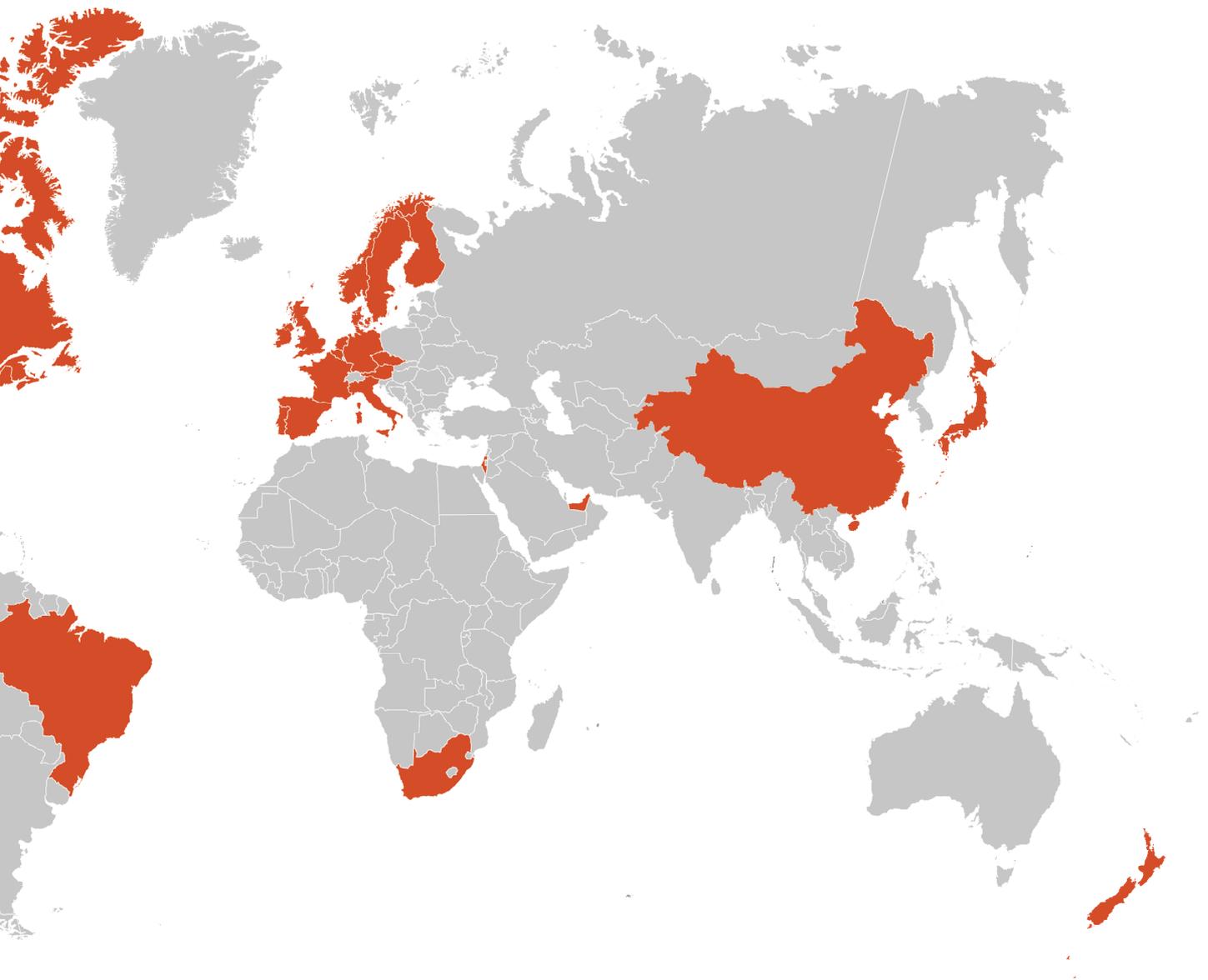
# Introduction

Since the last publication of this bulletin covering the position to 31 August 2020, the situation regarding Covid-19 has continued to develop. Many countries emerged from lockdown, but this resulted in a spike in the virus in some of those jurisdictions which led to further lockdowns. We have also seen approval given to a wide range of vaccines, but the production and roll-out of vaccines has not gone as smoothly as hoped. In some countries, the crisis is deepening with spikes in infections and a return to pressure on health services. As the world enters the second year of the global pandemic, we thought it would be valuable to take stock of where we are and update you on the interventionist role that Governments are continuing to take to mitigate the economic impact of the virus.

We hope you continue to find it a useful tool to guide you and your business through these ever-changing times.



Please note, this bulletin does not constitute legal advice. It is accurate to 15 February 2021. We recommend that the latest government guidance is checked as this is changing daily. This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.



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## Loans and financial support

Has the government put in place any new bank funding schemes?

Financial assistance is available under several schemes that have been introduced in Austria, such as:

- EUR 15 billion emergency fund which is primarily intended for companies in sectors particularly affected by the crisis. A combination of governmental guarantees for new loans and grants for the coverage of fixed costs provided to companies which suffered a loss of turnover of at least 40% in 2020 caused by the crisis will be made available to ensure the liquidity of the companies. The companies must be located in Austria and the fixed costs must have arisen from operating activities in Austria. Grants do not have to be repaid. However, the companies are required to take all reasonable measures to reduce fixed costs and maintain jobs, in particular, the distribution of dividends is not permitted. It can be applied for the grants from 20 May 2020.
- AWS State guarantee in the amount of 80% in order to secure credit facilities of up to EUR 2.5 million granted to the SME by its house bank. Not eligible are associations and SMEs (i) with an annual turnover of more than EUR 50 million, (ii) in need of reorganisation, (iii) meet the statutory requirements for the opening of insolvency proceedings at the request of creditors, (iv) in the tourism and leisure industry, (v) in the banking and insurance sector, (vi) in the real estate sector, and (vii) in the fishing and aquaculture industry or in the primary agricultural sector.
- ÖHT State guarantee to be granted only to SMEs in the tourism and leisure industry (SMEs with mixed business operations are also eligible). Guarantee in the amount of 80% in order to secure bridging loans (overdraft facilities) granted to the SME by its house bank.
- OeKB credit line granted to export companies is based on a bill guarantee. Conditions of the assumption of liability are determined individually. The amount of the loan is limited to 10% (large companies) or 15% (SMEs) of the company's last year export turnover. The individual loan is subject to a maximum upper limit of EUR 60 million per company group.
- [Corona Relief Fund – Guidelines for the issuance of guarantees and direct loans from the EUR 15 billion Corona-Relief Fund.](#)

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The main wage subsidy program implemented due to the Coronavirus crisis is the Short Time Work model (STW) as a temporary reduction of normal working hours due to economic difficulties. This scheme provides for state financial aid to compensate for the loss of work performance on working days. The goal is to bridge the current difficult economic situation by way of a subsidy without having to reduce the workforce. The normal working hours are reduced (shortened normal working time). Employees receive STW aid (*Kurzarbeitsunterstützung*) from the employer for the non-worked hours to bring their income closer to their normal salary level. In order to do so, the employer receives a STW subsidy (*Kurzarbeitsbeihilfe*) from the state. Under the STW model a reduction in working hours down to an average of 30-80% is possible (in some cases to 10% or even less). Even a reduction to 0% for a period of time is possible under certain circumstances if the applicable average for working time loss for the STW period is met. The STW subsidy paid from the Austrian Employment Market Authority (AMS) to the employer in general do not have to be paid back, unless the employer violates the applicable rules and restrictions of the STW scheme

## 3

## Insolvency

Has the government made any changes to insolvency legislation?

- The duty to file for bankruptcy due to over-indebtedness is suspended until 31 March 2021.

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- Loans entered into prior to 15 March 2020 and granted to a consumer or a microenterprise (i.e. a company which employs less than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.) will be subject to a moratorium to the extent the consumer has suffered a loss of income due to the Covid-19 crisis as a result of which it cannot be expected to continue the debt repayment or the microenterprise is unable to continue the debt repayment or it cannot be expected to continue the debt repayment without impairment the economic basis of its business due to the Covid-19 crisis. This regulation encompasses any payment obligation under the relevant loans which fell due between 1 April 2020 and 31 January 2021. The mentioned payment obligations are deferred for a period of ten months from the initial due date and the lender may not terminate the loan on the grounds of a material adverse change or the non-payment during the period of the moratorium.
- To the extent a party under an agreement entered into prior to 1 April 2020 fails to make a payment which fell due between 1 April 2020 and 30 June 2020 as a result of a material impairment of its economic basis due to the Covid-19 crisis, the other party may not claim an agreed default interest in excess of 4%. Furthermore, such party would not be required to pay out-of-court enforcement costs.
- To the extent a party under an agreement entered into prior to 1 April 2020 defaults on an obligation due to a material impairment of its economic basis as a result of the Covid-19 crisis or due to performance being impossible as a result of the trade restrictions, the other party may not claim a contractually agreed penalty, irrespective of whether it was stipulated to apply irrespective of the obligor's fault or not.
- Covid-19 is generally considered to constitute an event of force majeure under Austrian Law. Various legal doctrines are available to legally assess the legal consequences resulting from the permanent or temporary non-performance of contractual duties caused by Covid-19. However, due to the multitude of possible factual constellations, it is difficult to state in general whether and to which extent Covid-19 provides an exemption from performance obligations. Rather, such analysis depends on the underlying circumstances of or affecting a contractual arrangement or the specific contractual agreements in place.
- [Does Covid-19 constitute Force Majeure?](#)

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- If a tenant does not pay/has not paid rent (or a part thereof) due from 1 April 2020 until 30 June 2020 because he or she has been significantly economically impaired by the crisis, the underlying lease agreement may not be terminated by the landlord solely based on the payment default until expiry of June 2022. Moreover, the landlord is not entitled to enforce these outstanding rent payments until the end of March 2021.
- However, the landlord is entitled to assert claims for default interest as of the due date of the rent payment, whereby the default interest rate is limited to 4% p.a.
- An eviction is to be postponed at the request of the tenant if the apartment is indispensable for urgent housing needs of the tenant and other persons living in the same household, unless the eviction is necessary to avert serious personal or economic disadvantages of the landlord. Before the decision on suspension is made, the landlord shall be given the opportunity to make a written statement.
- Under the Austrian Civil Code tenants may be entitled to a rent relief provided that their premises cannot be used as contractually agreed due to Covid-19; in practice this currently mostly concerns leases in the retail and leisure industry, as most of such businesses had to be closed due to respective ordinances. However, as these provisions of the Civil Code are not mandatory and can therefore be deviated from (which in practice rarely has been the case, though), the question if and to which extent a rent relief actually applies, needs to be reviewed on a case by case basis.

## 6

### Litigation

Are the courts operating?

- In Austria, courts are operating regularly again: the court proceedings take place mainly by attendance of all parties respecting strict measures (wearing FFP2 masks, using partition walls, keeping distance etc.). However, court proceedings take place to a limited extent virtually (video conference). Procedural periods at civil courts and administrative courts, which had not expired as of 22 March 2020 were suspended. These time limits restarted as of 1 May 2020.

## 7

### Tax

Has any new legislation been introduced in light of Covid-19?

- Taxpayers affected by a liquidity shortage due to Covid-19 may apply for a deferral of tax. Between 15 March 2020 and 30 June 2021, no interest is being charged on deferred amounts. Thereafter, the interest rate will be 2% above the base rate (with the base rate currently being -0.62%). If the taxpayer has already been granted a tax deferral after 15 March 2020 due to Covid-19, this deferral is automatically extended until 30 June 2021 by virtue of law.
- Further, a special scheme for payment in instalments was introduced. The scheme has two phases. Taxpayers can apply for phase 1 from 10 June 2021 to 30 June 2021. Pursuant thereto, outstanding taxes which mostly accrued from 15 March 2020 to 30 June 2021 shall be paid in instalments until 30 September 2022. If repayment of the entire outstanding amount is not possible in phase 1, but at least 40% of the outstanding taxes have been paid, then the taxpayer can apply for payment in further instalments until June 2024. Such application must be made by 31 August 2022. Interest is triggered at 2% above the base rate.
- Legal transactions necessary for the proper handling of the Covid-19 crisis are exempt from stamp duty if concluded any time from 1 March 2020 to 30 June 2021 (e.g., sureties granted to ensure the liquidity of a company during the Covid-19 crisis).
- Public grants paid since 1 March 2020 to maintain sustainability during the Covid-19 crisis are partly tax-free.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Meetings of all types of Austrian companies can be held without the physical presence of the participants. In principle, an acoustic and optical connection is necessary in order to hold virtual (general) meetings, whereby a common video conference solution should be sufficient. In exceptional cases, participants can only participate acoustically. Special rules apply, inter alia, to the general meetings of listed companies: submitting an application for a resolution, voting and raising of an objection in the virtual general meeting can only be made by a special proxy instructed by the company. In such case, the company has to propose at least four suitable and independent proxies, whereby at least two of such special proxies must be lawyers or notaries.
- To the extent a notarial deed or a certification is required with respect to e.g. M&A transactions, capital measures and any legal document, notaries are entitled to use electronic tools to render their services.
- The deadline for the ordinary general meetings has been extended to twelve months following the balance sheet date.
- Furthermore, the deadline for submitting the annual financial statements has been extended by three months, so that the annual financial statements of companies must be submitted to the responsible commercial register court no later than twelve months following the balance sheet date.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- In Belgium, the federal and regional governments have put in place numerous financial support measures. Such measures include one-off compensation to enterprises which are required to temporarily close down (such as the hotels and restaurants), deferral payment of bank loans, government guarantees, bridge guarantees and other measures oriented to support specific sectors or SMEs.
- At the federal level, the federal government decided to allow a deferral of payment for existing credits, including corporate loans for viable non-financial enterprises, SMEs, self-employed persons and non-profit organizations. The deferral can be requested at the latest on 31 March 2021 for a maximum period of 9 months for payments due (ending on 30 June 2021). However, the total deferral of payments for 2020 and 2021 together may not exceed 9 months. For companies that have already reached the maximum term of 9 months' payment postponement and financially healthy, it will still be possible to obtain an additional payment extension until 30 June 2021. In addition, a state guarantee scheme has been implemented for new loans with a term of more 12 months and a maximum of 60 months. This guarantee can be granted from 24 July 2020 until 30 June 2021.
- The sectoral organization of insurance companies active on the Belgian market has committed itself to continue the coverage of the collective insurances taken out by the employer without any further formalities. The payment of the premiums by the employer is postponed until 31 March 2021.
- At the regional level, in Flanders, the coverage of PMV (Flemish corona crisis guarantee) has been extended. PMV can now also grant medium-term subordinated loans to healthy SMEs for a term of 3 years (to be applied for before 15 April 2021), with a minimum of €25,000 and a maximum of €2,800,000. From 15 May 2021, you can apply for a restart loan or restart credit at VLAIO (the Flanders Innovation and Entrepreneurship).
- In the Brussels-Capital Region, the enterprises can request loans with reduced interest rate from Finance and Invest Brussels. Emergency loan start-up investment fund can provide loans for cultural and creative enterprises for a maximum duration of 2 years. The Brussels' microcredit has been strengthened in order to boost cash-flow in general under the project "Lening BRUSOC Recover". In addition, Brussels Waarborgfonds (Brussels guarantee fund) also can provide guarantees on bank loans. Brussels has introduced the Proxi loan by decree of 1 October 2020, which allows Brussels self-employed persons and SMEs to borrow money from private individuals who benefit from a tax credit. Under certain conditions, Brussels companies can take out an Oxygen loan of €10,000 to €100,000, with an interest rate of 1.75%, to supplement their working capital, purchase stocks, make investments or pay off arrears.
- In the Walloon Region, there are also similar support measures provided by SRIW, SOWALFIN and Groep SOGÉPA (guarantees, loans and deferrals).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Teleworking will remain compulsory or the norm until at least 30 June 2021. The socially and fiscally exempt office or home working allowance of a maximum of €129.48 per month will be increased to €144.31 in the second quarter of 2021. This is part of the fiscal support measures, but employers are not obliged to grant this allowance. Moreover, it remains to be seen whether the National Social Security Office will accept this increased cost lump sum. A cautious employer will therefore not promise anything to his employees for the time being, or will do so subject to acceptance by the NSSO.

- The simple application procedure for temporary 'corona unemployment' due to force majeure, for all sectors and companies, is maintained until 30 June 2021. This simple procedure will be extended by one quarter.
- The possibility of invoking temporary unemployment for the parent to care for a child in case of quarantine is also extended until 30 June 2021.
- Low-wage workers who have been temporarily unemployed for more than 52 days and who work in a sector that has not yet reopened on 1 March 2021 will receive an additional premium of up to €780 gross. The size of the premium depends on the number of days these persons have been unemployed in the first three months of this year. This premium will mainly benefit hospitality personnel, personnel in the cultural sector, the events sector.
- From now on, it is possible to work in an essential sector while retaining 75% of the temporary unemployment benefit. Previously, this was only possible in limited essential sectors. For the time being, we will have to wait and see how this will be legally elaborated and whether specific conditions will be imposed.
- For the relevant topics, please refer to section Personnel at our [Corona Desk website](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The Royal Decree n° 15 on the suspension of implementing executive measures and other measures in favor of undertakings during the Covid-19 crisis was no longer applicable.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- On April 24, 2020, a number of measures were taken to ensure the continuity of companies during Covid-19, which also have an impact on current contracts: agreements concluded before April 24, 2020 cannot be (unilaterally) terminated or (judicially) dissolved, in case of late payment as a result of Covid-19. The other contractual and/or legal obligations and/or rights of the contracting parties remain in place, such as set-off, the exception of non-execution, the right of retention, etc.
- This measure expired on June 17, 2020 which means that the general legal and contractual provisions apply.
- No other specific legal regulations were taken to reinforce contracts. The parties will have to analyse the applicable contractual provisions in order to establish whether the current governmental measures can be invoked to suspend performance under the contract or to lift liability for non or late performance. Contracts in Belgium often include clauses relating to force majeure or hardship.
- If parties did not include such provisions, Belgian law and jurisprudence of the highest court provide for several mechanisms to protect contracting parties against adverse events. Principles of good faith and obligations to renegotiate contracts can be invoked under strict conditions. Application of these principles are casuistic and must be assessed in detail.
- For more details on this topic, please refer to section Contract at our [Corona Desk website](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- In respect of payment of rent, the current pandemic does not constitute force majeure for tenants. They have to pay rent and may not suspend payment of rent. However, there are measures to mitigate the impacts of this pandemic. For instance, in the Flemish Region:
  - it is possible to extend the lease agreement by e-mail if the agreement is about to expire during the confinement period,
  - a social tenant who has lost his or her income due to temporary unemployment as a result of force majeure will be able to ask the social landlord for a temporary adjustment of the rent, and
  - social landlords will be able to provide temporary shelter, directly or through an intermediary institution, to individual or families in an emergency situation as a result of the Covid-19 virus measures.
- In addition, due to social distancing requirements, some procedures or meetings with physical attendance requirements that have to be organized during the period between 10 March 2020 and 30 June 2020 have been either postponed or allowed for alternative attendance means, this is the case for the participation in the general meeting of association of co-owners.
- The Flemish government has set up a system of commercial lease loans to support companies and is valid from April 2020.
- Tenants who due to liquidity problems have difficulties to pay the commercial rent can apply for a commercial lease loan. The tenant submits an application via the website of the Agency for Innovation and Entrepreneurship before 1 July 2021. An application may relate to several properties of the same landlord, for which the tenant applies for a single commercial lease.
- The following conditions must be met in order to be eligible for a commercial lease loan:
  - The company must have a registered commercial lease,
  - The property must be located in the Flemish Region,
  - The company has been obliged to close all or part of its physical location, and
  - The company had no arrears in the rent for this property on 15 March 2020.
- The regulation consists of the Flemish government advancing a maximum of four months' rent (and a maximum of €60,000 per property), on condition that the landlord remits one or two months' rent.
- The tenant and landlord must sign a model agreement for this, which is made available by the Innovation and Entrepreneurship agency.
- The commercial rental loan is also applicable to companies in the event sector.

## 6

### Litigation

Are the courts operating?

- The College of Courts and Tribunals has updated its guidelines on the operation of the courts and tribunals as of 1 November 2020.
- In principle, all hearings are conducted as normally as possible, taking into account the availability of magistrates and clerks. If not all hearings can be held, reasonable choices have to be made. In any event, all urgent matters are dealt with. Given the exceptional circumstances, the College encourages the use of videoconferencing. The use of the written procedure without oral pleadings is encouraged whenever the case circumstances allow.
- The President of a chamber must be diligent in ensuring that all health regulations are strictly observed in the courtroom.

- The clerk's offices are accessible, subject to the known precautions: the rule of social distancing (1,5m) must be complied with, limiting the number of people in a room, wearing a mouth mask etc. It is best to contact the clerk's offices in advance by telephone or e-mail. Please find the necessary e-mail addresses and telephone numbers on the [website of the court or tribunal](#) concerned.
- Wearing a mouth mask is still compulsory in all courthouses and courtrooms. The President of the courtroom may allow the mask to be taken off if sufficient distance can be kept and if it is necessary for the proper conduct of the hearing. The staff of the court monitors compliance with the corona precautions.
- In summary, the courts continue to function as before, and apply the necessary precautionary measures. Justice is an essential service that will be further ensured in the interest of all. Furthermore, it is advisable to consult the websites of the different courts and tribunals for more news on the different measures taken, as these often differ and are quickly updated.

## Tax

Has any new legislation been introduced in light of Covid-19?

In Belgium, the federal and regional governments have provided many tax supports measures.

### At the federal level:

Law of 15 July 2020 concerning urgent tax provisions due to Covid-19:

- Tax Shelter: tax reduction of 20% for the acquisition of new shares in companies facing a loss of turnover of more than 30% in the period from 2 November 2020 to 31 December 2020 due to the Covid-19 pandemic. This measure will be valid until 31 August 2021.
- Federal Public Services Finance can foresee repayment schemes for existing fiscal debts for businesses that find themselves in difficulties due to the Covid-19 outbreak. It applies to withholding tax, VAT, personal income tax, corporate tax and legal entities tax.
- VAT rate of 6% on the supply, intra-community acquisition and importation of protective equipment until 30 June 2021.
- Covid-19 virus should be considered as an exceptional circumstance justifying the exemption of a write-down on a trade receivable.
- Non-taxable telework compensation up to €144,41 per month to cover costs like electricity and small office supplies, for the period from 1 April 2021 until 30 June 2021.

The Belgian federal government introduced two optional powerful tax measures in response to the Covid-19 crisis;

- carry back of tax losses of companies: deduct the loss of FY2020 from the taxable profit of FY2019; and
- reconstruction reserve in order to improve the solvency of companies in the longer term.

Tax exemption of the compensations granted by the regions, communities, provinces or municipalities due to the Covid-19 crisis until 31 December 2021.

Tax exemption for overtime pay in the critical sectors (including the care sector) for the first and second quarter of 2021. The number of exempted voluntary overtime hours is set at 120 hours for the first and second quarter of 2021 together.

The decrease of the withholding tax up to 15% for the temporarily unemployed.

The non-inclusion of remuneration for student work in the care and education sectors in the calculation of means of subsistence.

No deduction of withholding tax from the remunerations for student work in the care and education sectors for the second quarter.

The exemption for notarial powers of attorney.

## **New measures:**

- Remission of rent: a 30% tax reduction for landlords who remit the rent of tenants who were forced to close their businesses due to the measures. The measure is valid for the rent for the months of March, April and May 2021. A maximum of €5 000 per month per lease can qualify for the tax reduction, and a maximum of €45 000 per landlord. For corporate tax purposes, the benefit is granted in the form of a non-refundable tax credit.
- VAT, customs and excise duties: as for the second quarter of 2021, the late-payment interest and moratorium interest will drop drastically from 9.6% to 4% and 2% respectively. The high VAT fine for late payment will also be reduced from 15% to 10%.
- Lowering of minimum thresholds for the refund of vat: as of 1 January 2021, starting businesses can request a monthly refund of their VAT credit. The VAT refund can be requested as from €400 for periodic declarations and €50 for start-ups or end-of-year declarations.
- Abolition of the December advance payment for vat and withholding tax.
  
- Exceptional teleworking measures for cross-border workers due to Covid-19 virus:
  - the presence of cross-border workers Belgium – Luxembourg in their place of residence will not be taken into account for the calculation of the 24-day period until 31 March 2021;
  - the presence of French cross-border workers in their place of residence in France will not be taken into account for the calculation of the 30-day period until 31 March 2021;
  - the presence of cross-border workers Belgium – the Netherlands in their place of residence due to Corona measures will not be taken into account until 31 March 2021; and
  - the presence of cross-border workers Belgium – Germany in their place of residence due to Corona measures will not be taken into account until 31 March 2021.
  
- For more information, please view [here](#).

## **At the regional level: Flanders**

- Property withholding taxes sent to legal entities for the assessment year 2020 may exceptionally be paid by 30 April 2021.
- For the payment of property withholding taxes sent to sole proprietorships for the assessment year 2020 that relate to real estate used professionally by sole proprietors, a payment plan can be requested, with 30 April 2021 as the final payment date.
- Premium for companies that are obliged to close down completely.
- Extension of periods to meet tax obligations for inheritance tax and registration tax.
- Taxes on automatic relaxation devices are suspended.
- Facilitating repayment plans.
- For more information, please view [here](#).

## **At the regional level: Brussels-Capital**

- Premium for companies that are obliged to close down completely.
- Property withholding taxes for the assessment year 2020 may exceptionally be paid by 30 April 2021.
- Exemption for hotel tax.
- Taxes on automatic relaxation devices are suspended.
- For more information, please view [here](#).

## At the regional level: Wallonia

- Premium for companies that are obliged to close down completely.
- With regard to disputes concerning regional taxes, reimbursements following positive decisions are accelerated.
- Recovery procedures are made more flexible, including at the level of the judicial officers.
- Repayment plans are facilitated.
- Prolongation of the time limit to benefit from the favorable succession tax regime, to submit the declaration of inheritance and to pay the succession rights, up to 4 months if the expiry date is between 1 November 2020 and 31 January 2021.
- Exceptional reduction of the registration fee for mortgage mandates to 0%.
- Prolongation of the time limit to benefit from a favorable registration tax advantage, of the registration deadline and to pay the registration rights, up to 4 months if the expiry date is between 2 November 2020 and 31 January 2021.
- For more information, please view [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

The Belgian government published on 9 April 2020 a Royal Decree to allow deviations from the conditions of convening shareholders' meetings under the Code of Companies and Associations, due to social distancing requirements.

This Royal Decree is no longer applicable.

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

Since the beginning of the outbreak, the government has been taking some important measures to mitigate the effects of the current scenario. The federal government, through Brazilian government-owned banks, has been providing funds to support mostly small and medium-sized companies with respect to employees' payroll and working capital during the period of crisis. The federal government has also been encouraging the Brazilian government owned/development banks (such as BNDES, BNB, CEF and Banco do Brasil) to postpone the payment of principal and interest of existing loans for periods of up to six months. The financial conditions may vary from bank to bank.

Brazilian federal agencies have also issued temporary regulation suspending certain obligations in order to foster loans and issuances in the financial and capital markets (e.g., suspending the obligation of filing and registering certain corporate acts with the Boards of Trade, lifting restrictions for companies to issue the same type of security within four months from its last issuance). The federal government had also suspended the payment of certain taxes applicable to certain financial transactions that were contracted until December 31<sup>st</sup> 2020.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

Currently, there is no financial support from Federal Government to businesses and individuals on employment issues. Last year, however, the government issued a Provisional Measure No. 936, later turned into Law No. 14,020, which provided an allowance called "emergency benefit" to employees who (i) had their employment agreements suspended, and/or (ii) reduced to part-time with a corresponding salary decrease, by means of collective or individual agreements, according to certain requirements set forth therein. Although the financial aid is not currently in place, there are discussions to extend the state of calamity for another six months and, possibly, such benefits as well.

Moreover, at the Federal level, there are pending bills in Congress extending the payment of emergency aids, similar to the previously granted so-called "corona voucher", to microentrepreneurs, autonomous, informal workers and the unemployed, which have been in the centre of intensive budgeting debate.

At the local level, Brazilian States are envisioning their own emergency aid programs for local workers. For example, the governor of São Paulo has recently announced a program proposal that is going to be presented to local Legislators. The State Legislative of Rio de Janeiro is also processing its own initiative.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

Law No. 4,458/2020 was issued on December 24, 2020 ("Law"), amending significant provisions of the Brazilian Judicial Reorganization and Bankruptcy Law currently in force (Law 11,101/2005) "Brazilian Bankruptcy Law", Brazilian Federal Law 10,522/2002 (which provides for the Registry of Defaulted Credits – CADIN), and Law No. 8,929 of August 22, 1994 (which instituted the Rural Product Bond – CPR in Brazil).

The Law is in effect since January 23, 2021, but some provisions, vetoed by the President, shall remain ineffective and unenforceable until further analysis by the Brazilian Congress, which should take place until March 4, 2021 – otherwise, it will be suspended. The Congress will decide to either maintain or overrule the vetoes, and if overruled these provisions will also become part of the Brazilian Bankruptcy Law definitively. The vetoed sections are related to issues such as the protection of acquirers of assets from debtors in judicial reorganization, unenforceability of the judicial reorganization law to credits and guarantees arising from CPRs, tax effects arising from the sale of assets and/or renegotiation of debts, as well as the suspension of labour enforcement proceedings.

Some key points that are addressed in the Law in order to improve the reorganization mechanisms are: (i) a more predictable framework for DIP Finance; (ii) more certainty as to the requirements to ensure lack of successor liability in Distressed M&A; (iii) possibility under certain circumstances of the sale of the whole company without successor liability for acquirer; (iv) possibility of creditors, under certain terms and conditions to present an alternative judicial reorganization plan; (v) adoption of the provisions of UNCITRAL Model Law on Cross-Border Insolvency; (vi) more clarity on requirements for procedural and substantive consolidation; (vii) improvements in the out-of-court reorganization framework; (viii) encouraging parties to resolve disputes related to the insolvency through mediation and preventive negotiation; (ix) protection of early termination events and set-off provisions for derivatives in judicial reorganization proceedings; (x) possibility of judicial reorganization of individual rural producers provided that they have been exercising rural activity for at least 2 years; and (xi) possibility of out-of-court reorganization.

Bankruptcy liquidation proceedings are applicable in case the company's rehabilitation is not possible. In this respect, the Law includes provisions to expedite the liquidation of assets, in order to allow for a faster reintegration of the bankrupt entrepreneur into the market (the so-called fresh start).

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

Brazilian law addresses the general rules regarding force majeure. According to the sole paragraph of Article 393 of the Brazilian Civil Code, force majeure or act of God (provided that such Article treats both concepts equally) is considered to be "the necessary event, whose effects were impossible to avoid or impair". The event must be beyond the [affected] party's control and diligence and must make it impossible to comply with certain contractual obligation(s). Under such provision, if the party has not expressly undertaken liability for force majeure and act of God events, no liability should arise from such events.

To qualify as force majeure, an event must cumulatively satisfy the following requirements: (i) be unforeseeable; (ii) be beyond the party's control; and (iii) prevent the performance of contractual obligation(s). Accordingly, the Covid-19 pandemic may be considered as a force majeure event, to the extent that the Covid-19 pandemic and its related consequences directly affect the party's contractual obligations. In addition, orders enacted by the Brazilian government (or other relevant local authority) in response to the Covid-19 pandemic, which prohibits the agglomeration of individuals at the place of work, for example, may also qualify as force majeure.

Except for contracts ruled by consumer or labour laws, the parties are free to allocate liabilities. Therefore, the proper determination of the parties' liabilities, in case of a force majeure event, must always be made on a case by case analysis and should consider contractual provisions as a key factor.

Should the contract be silent in expressly governing force majeure, or if there are gaps on the contract's terms in that regard, the Brazilian Civil Code will be applicable and will serve as guidance for the interpretation and application of the law by the courts. Considering the Covid-19 pandemic, the parties must pay attention to the contract's provisions and whether the pandemic and/or its consequences (such as lockdown measures; restrictions on travelling and transportation of goods) do in fact impede the compliance with certain contractual undertaking(s).

Among other relevant issues, the parties must verify whether the contract provides for: (i) specific notification proceedings; (ii) the allocation of risk between the parties in case of a force majeure event; (iii) extension of time for the affected party to overcome the delay due to a force majeure event; (iv) specific remediation measures and mitigation of the other party's losses that must be implemented; and (v) termination due to a prolonged force majeure event and consequences.

In such cases, the affected party must comply with the specific notification proceedings provided for under the contract, describing (i) the force majeure event; (ii) which contractual obligations were directly affected; and (iii) the measures adopted to mitigate and reduce the impacts of the force majeure under the contract. In addition, the affected party remains bound to comply with all other contractual obligations which were not affected by the force majeure event.

It is important to highlight that, due to the drastic economic and social consequences of the Covid-19 pandemic, the Brazilian government authorities have been comprehensive with projects that adopt mitigatory measures, such as robust action plans, in line with the determinations and recommendations of the competent health authorities, to prevent the dissemination of Covid-19 in the place of work, allowing for the continuity of these projects in compliance with some restrictions.

In addition, Article 422 of the Brazilian Civil Code establishes that the parties must proceed in good faith when performing the contract. Therefore, in case the parties do not reach an agreement regarding the measures to restore the contract's economic balance, necessary due to Covid-19 pandemic effects.

Articles 317 and 480 of the Brazilian Civil Code provides that, in case supervenient and unforeseeable events arise and cause the obligations of one of the parties to become excessively disproportional in view of the transaction, the courts may take actions, at the request of a party, to restore the economic balance of the contract.

As per the requirements provided under such Articles, in order to interfere in the contractual relationship, courts should assess (i) the (un)foreseeability of the supervenient circumstances and (ii) the disproportion between the obligations of the parties.

Notwithstanding the above, according to the courts' and jurists' prevailing understanding and the Brazilian law, especially in business relations, the extent of the court interference in contractual relations should (i) be restricted and (ii) take into consideration the particularities of the case when assessing the (un)foreseeability and the disproportion between the obligation of the parties, as well as any other circumstances which require their interference. This understanding has gained significant support with the enactment of Provisional Measure No. 881/2019 ("Economic Freedom Act") in May 2019, which was then converted into Federal Law No. 13,874/2019 ("Economic Freedom Law") later in October of the same year.

Article 421 and Article 421-A of the Brazilian Civil Code, as amended by the Economic Freedom Law provide that:

- (i) in private contractual relations, there should be minimum State interference, and contractual revision by external agents should be an exception;
- (ii) the allocation of risk agreed between the Parties should be preserved;
- (iii) in business relationships, the parties are presumed to be equally equipped.

Hence, although Brazilian civil law does allow for court interference to restore the balance of the contract, in business transactions, such interference should be minimum and the parties, which are considered to be sophisticated entities with equal bargaining power, should have their agreements enforced as provided for in the contract.

Given that the Covid-19 pandemic (and its effects on contractual relations) is an extraordinary and recent event, it is important to assess its impacts on each contract, as well as other circumstances of any particular case and of the contract, in order to determine whether or not Covid-19 can lead to the rebalance of a contract.

In this sense, to further regulate the matter, Federal Law No. 14,010/2020 (“Emergency and Transitional Regime for Legal Relations of Private Law”) was enacted, aiming at providing a higher degree of legal certainty to the private relations and upholding certain general principles of private law. Among other provisions, the Emergency and Transitional Regime for Legal Relations of Private Law established that: (i) certain statutory terms were prevented or suspended, as the case may be, until last October 30, 2020; (ii) legal consequences arising from the Covid-19 pandemic in the execution of contracts should not retroact to circumstances previous to the pandemic; and (iii) the increase in inflation, the variation of the exchange rate, the devaluation or replacement of the monetary standard, solely for the purposes of Articles 317, 478, 479 and 480 of the Brazilian Civil Code, shall not be deemed as unpredictable events. The Emergency and Transitional Regime for Legal Relations of Private Law considers, for its purposes, March 20, 2020 as the initial term for the events derived from the Covid-19 pandemic. Please note that that the Emergency and Transitional Regime for Legal Relations of Private Law did not enforce new legal provisions but, instead, it clarified how general principles of law (which were enforceable even prior to the Covid-19 pandemic) would still apply vis-à-vis such extraordinary circumstances, thus assuring greater legal certitude private parties.

# 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

During the Covid-19 pandemic, several bills of law were presented before the National Congress in an effort to counterbalance adverse effects of the pandemic to lease agreements. Some of them aimed to rule suspension of rent enforcement as well as reduction of rental values. None has been effectively approved, except for the measure that prohibits the eviction of lessees in causes filed from March 20th, 2020, amending items of the Article 59, § 1º of the Law No. 8,245 of 1991 (the Lease Law), until October 30th, 2020.

There is no official understanding from the Brazilian courts about the adverse effects of the pandemic to lease agreements. Courts are ruling the matters taking into consideration the particularities of each specific contractual relationship.

There is an effort of the Courts to protect both the lessor and the lessee, assuming that both parties have suffered the impacts of the Covid-19 pandemic, as well as to prevent opportunistic behaviors from the parties.

Upon the analysis of approximately 160 decisions of the Courts of São Paulo and Rio de Janeiro, it is possible to verify that, in cases which Courts decided to reduce the rental values, the discount varied from 30 up to 70 percent for a certain period of time (usually for the period of the lockdown). Most common decisions granted 50 percent discount in the rental values



## Litigation

Are the courts operating?

Most Brazilian Courts are operating through remote work and virtual proceedings, including the Supreme Court and the Superior Court of Justice. The virtual operation of Brazilian Courts is working really well: according to data provided by the Brazilian National Council of Justice, Brazilian Courts are not only maintaining their activities during the pandemic, but are also improving their productivity. This was possible because proceedings that were filed in the past few years in most Brazilian Courts have digital case records, that can be accessed by court staff, lawyers and parties through a website, in which lawyers can also file the petitions. The contact with most judges and Clerk's offices can be made by telephone, e-mail or videoconference during the pandemic and many trials are being held online. Thus, the closure of courthouses over the country due to the pandemic mainly affected (i) the proceedings that do not have digital case records, that have their deadlines suspended and (ii) some acts that cannot be performed virtually (for example, appraisal of real estate, some trials, some attachment orders).

## Tax

Has any new legislation been introduced in light of Covid-19?

The pandemic outbreak triggered tax measures to attend the private sector in different spheres. It is worth pointing out the following measures adopted by Brazilian Federal Government mostly for the year 2020:

(i) Throughout 2020 the government reduced to a zero rate several import taxes such as federal value-added tax on industrialized products (IPI), taxes on gross revenues (PIS/COFINS) and on gross revenues on importation (PIS/COFINS-Importation) mostly related to goods aiming at combating the pandemic resulted from the Covid-19. Most of the temporary benefits were valid only until the beginning of 2021, when the government re-established the previous tax treatment. (ii) Zero rated the tax on financial transactions (IOF) on loans of any nature contracted until December 31<sup>st</sup>, 2020. (iii) Rates of social security tax destined to associations (Sesi, Senai, Senac among others) were reduced. (iv) Deferral of payment for certain federal taxes (e.g., employee's severance fees (FGTS), PIS/COFINS, social security taxes, and taxes on telecommunications services), payment deferral for pending tax instalments and postponement of deadlines to submit certain tax returns by individuals & corporations. (v) Suspension of procedural deadlines at the Federal Revenue Service (RFB) and at federal administrative tax court. Recently, it was ruled procedures enabling online/remote voting for judgment of federal tax proceedings in specific situations. (vi) Simplification of some customs clearance procedures and ancillary obligations (e.g. the validation of tax clearance certificates for ninety days). (vii) Suspension of acts by the General Attorney's office. (viii) Approval of new rules encouraging renegotiation of federal tax debts.

Specific local measures were also introduced by some States and municipalities. However, there are glaring disparities between the measures from twenty-seven States and being even less uniform among the more than 5,000 Brazilian cities. In this sense, it is worth pointing out the following:

(i) Some states granted exemption or reduction of State Value Added Tax (ICMS) on import and internal transactions with goods aiming at combating the pandemic resulted from the Covid-19 (e.g. Rio de Janeiro, Santa Catarina, Maranhão). (ii) Regarding donations transactions: (i) most of Brazilian States granted exemption of ICMS on the remittance of goods aiming at combating the pandemic resulted from the Covid-19 to the public administration or to non-profit assistance entities, and (ii) a few states granted exemption of tax levied on donations (ITCMD) to the public administration (e.g. Ceará and Espírito Santo) or to hospitals (e.g. Minas Gerais). (iii) Deferral of payment for certain taxes in some states and municipalities (e.g. ITCMD in Rio de Janeiro and Amazonas; municipal tax levied on services for specific activities in Recife and Cuiabá). (iv) Payment deferral for pending tax instalments (e.g. Rio de Janeiro) and postponement of deadlines to submit certain tax ancillary obligations (e.g. ITCMD in Goiás). (v) Suspension of certain tax executions registered as an overdue liability (dívida ativa), e.g. São Paulo. (vi) Suspension of procedural deadlines at state and municipal administrative tax courts. Recently, in some states and municipalities, it was ruled procedures enabling online/remote judgment.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

Law No. 14.030, issued by the Federal Government on July 28<sup>th</sup> 2020 (Law No. 14.030), converted into definitive regulations most of the measures that had previously been set forth by Provisional Measure No. 931, issued on March 30<sup>th</sup> 2020 ("Provisional Measure No. 931"). The law confirmed some amendments to the *Brazilian Civil Code* and to the *Brazilian Corporations Law*, among other laws.

One of the rules established by Law No.14.030 is that all corporate meetings may be held digitally. It also determined that shareholders should be able to participate and vote via any electronical means that are appointed by the management, as long as it is secure and enables the identification of the shareholder.

Such rules had previously been established by Provisional Measure No. 931 and by Law No. 14.010, issued by the Federal Government on June 10<sup>th</sup> 2020 to set forth transitional regulations in case the provisional measure wasn't converted to Law before the two-month deadline (Law No. 14.010). But law 14.030 came with news: the possibility of digitally held general meetings no longer has an expiration date, it is now a permanent alteration to the previous regimen, as is the possibility that shareholders participate remotely.

With respect to publicly held corporations, since the issuance of the Brazilian Securities and Exchange Commission ("CVM") Instruction 561/15, which also introduced the distance voting instrument, publicly held companies have already been able to hold "hybrid" meetings, in which there is a face-to-face meeting (similar to a traditional meeting), but with the possibility for shareholders to participate and vote remotely, via electronic system.

As a result of the Covid-19 pandemic, CVM took a further initiative and issued the Normative Instruction No. 622/2020, which allows publicly held companies to hold general meetings exclusively virtually.

Additionally, by relaxing the rule that obliges companies to hold meetings in the headquarters building or, in case of force majeure, in another location in the same Municipality as its headquarters, the CVM now allows, in exceptional situations, that general meetings partially held in digital mode have their "in person portion" held outside the company's headquarters building, and may even occur in another Municipality.

For privately held corporations ("*sociedades por ações*"), and limited liability companies ("*sociedades limitadas*"), the National Department of Business Registration and Integration ("*Departamento Nacional de Registro Empresarial e Integração*") had issued, in April 2020, Normative Instruction No. 79, in order to regulate the digital general meetings with remote participants. Later, Normative Instruction No.81, issued on July 1<sup>st</sup> 2020 by the same department, revoked Normative Instruction No. 79, and established, detailed rules on the way digital or hybrid general meetings should be summoned and held, as well as how participants can take part in the meeting and vote, either participating remotely or via a voting form.

Specifically, regarding the general meetings that were scheduled to be *in locu* but could not be held due to the Covid-19 pandemic, Normative Instruction No.81 established that they can be replaced by a digital meeting, as long as all shareholders are present or expressly agree to the new format.

There are certain requirements the electronic system used to broadcast the meetings must comply with, such as insurance of transparency, confidentiality and security of the meetings, mechanisms to register the attendance of the shareholders, possibility of shareholders to manifest themselves during the meetings; full recording of the meetings and storage of recordings, possibility to access documents presented during the meetings, among others.

To reinforce the above mentioned requirements and give proper attention to the matter, IBGC (Brazilian Institute of Corporate Governance) issued a best practices measures guideline, which could guide companies' management whilst putting in place remote meetings. The overall message is that technology should be used in such way that the remote experience is as close as possible to an in locu meeting – taking all necessary measures to ensure that all available mechanisms that may facilitate the digital meeting are being duly employed.

Other measures have been put in place to accommodate social distancing and the current scenario caused by Covid-19. Among others, Law 14.030 suspended the thirty-day period to file corporate documents with the competent Board of Trade, which will resume once services are regularly re-established.

Furthermore, Covid-19 pandemic has accelerated the digitalization process regarding the registry of corporate documents within boards of trade all over the country. The Normative Instruction No. 81 established that the Boards of Trade may adopt digital registration exclusively or in coexistence with traditional methods. Thus, several Boards of Trade throughout Brazil have been, since mid-2020, taking the appropriate actions in order to digitalize their systems, as it can be verified, for instance, at the Boards of Trade of the States of Paraná, Rio de Janeiro and São Paulo. For instance, while in São Paulo it is expected that the systems will be ready to be entirely digital in the 2nd trimester of 2021, in Rio de Janeiro and Paraná, the Boards of Trade do no longer accept hard-copy registration procedures - procedures regarding the incorporation, transformation and cancelation of companies, for instance, can only be held digitally.

Alongside with the development within the registry of corporate documents, as abovementioned, procedures regarding the authenticity and veracity of digitalized documents have been standardized. According to the Ministry of Economy Circular Letter No. 2.563/2020, directed to the Boards of Trade, an electronically signed document must guarantee proof of the authorship and integrity of the document – in other words, it must be possible to identify the document's signatory, as well as that the document has not undergone any subsequent change.

In addition, any assessment to be conducted by the Boards of Trade with respect to the authenticity and integrity of the documents should be limited to verifying that the document was validly signed and has not been altered.



# 1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- All of the six major lending institutions in the BVI extended loan moratoriums to their customers experiencing hardship at the outset of the Covid-19 pandemic. Banks offered deferred payments, special loan financing and other concessions. Arrangements are currently made on a case by case basis.
- The BVI Government implemented a phased economic stimulus response plan which included the allocation of USD 62.9 million to provide assistance to the local economy across various areas including grants to businesses generally, and to support the hospitality industry and BVI infrastructure.

# 2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The BVI Government has set up an unemployment fund through the Social Security Board called the Covid-19 Unemployment Relief Fund in the sum of USD 10 million. Local businesses experiencing challenges can qualify for a grant in order to keep their staff employed.
- On 3 February 2021, Cabinet approved the Unemployment/Underemployment Benefit Programme Policy via the Covid-19 Phase II Economic Response Stimulus Package in the amount of ten million dollars which will come from the \$40 million grant from the Social Security Board.
- The employee lay off period was extended to 28 February 2021.
- The BVI Government has granted stimulus cheques to over 1,039 businesses with grants ranging from USD1,592 to USD7,955.

# 3

## Insolvency

Has the government made any changes to insolvency legislation?

- The legislation has not been changed as a result of the pandemic but the Charging Orders Act 2020, which was published in the Government Gazette on 26 March 2020, confers jurisdiction on the High Court to make orders imposing a charge for securing the payment of money due under judgments or orders of the High Court. As at 15 February 2021, the Act is not yet in force.

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- We are not aware of any intervention into the workings of contracts governed by BVI law and the normal rules apply.
- The majority of commercial contracts under BVI law will have *force majeure* clauses providing for situations when a party may terminate the contract and/or be excused for failure or delay in complying with the terms of the contract due to a specified event. The contract will usually list force majeure events. The question of whether Covid-19 as a pandemic is a force majeure event will depend on the drafting of the clause in each case.

# 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- On 3 February 2021, Cabinet decided that a period of amnesty of interests accrued on property tax be granted through 31 August 2021.



## Litigation

Are the courts operating?

- Yes, the Eastern Caribbean Supreme Court remains open and fully operational. Measures and practice directions have been put in place to ensure the continuation of court proceedings while protecting the health and safety of the court employees and other court users. These measures include provision for electronic service and filing and remote hearings via video conferencing technology.
- See legal update [here](#).



## Tax

Has any new legislation been introduced in light of Covid-19?

- No.
- See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The BVI Registry of Corporate Affairs is operating as usual with some minor changes to adapt to the Covid-19 pandemic.
- There is no requirement for BVI companies to hold annual general meetings.
- There is also no requirement for board meetings to take place in the BVI or for board members to be in the same physical location. Meetings by telephone or video conference are acceptable, provided that all of the directors participating in the meeting can hear each other clearly.
- The Covid-19 global pandemic has been declared an exceptional circumstance under the Financial Services (Exceptional Circumstances) Act 2020, which provides a framework for stability of financial services operations conducted in and from the BVI during exceptional circumstances. The Act allows regulated persons to relocate outside and elsewhere within the BVI during or after any period of occurrence of an exceptional circumstance and outlines how outstanding regulatory obligations and liabilities are to be applied or modified.
- In relation to economic substance requirements, the BVI International Tax Authority (ITA) has confirmed that only those board meetings relating to a BVI company's "core income generating activities" are required to be physically held in the BVI. Alternate directors based in the BVI may be appointed to attend physical board meetings whilst regular travel is restricted. All directors do not have to attend board meetings in the BVI; only as many as required to make the meeting quorate. Virtual meetings may be preferred to assist with social distancing. If it is still not possible to have a board meeting in the BVI or to meet some other economic substance requirement due to restrictions resulting from the Covid-19 outbreak, BVI entities should retain documentary evidence for the applicable periods of time affected. Individual requests should be made to the ITA for any extension of time within which to comply with notices, along with any supporting evidence.
- Please see our update on [Overcoming barriers to completion of corporate transactions amidst Covid-19 challenges](#) and our [Caribbean Regulatory Update](#).
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

In Canada, the federal government introduced the Covid-19 Economic Response Plan (**CERP**), which includes a comprehensive set of economic measures to help combat the economic effects of the Covid-19 pandemic.

The Business Development Bank of Canada and Export Development Canada is committed to provide more than \$65 billion of support to ensure businesses have credit through the Business Credit Availability Program (**BCAP**), largely targeting small and medium-sized businesses. These entities are also working with private sector lenders to coordinate solutions for individual businesses. The objective of the BCAP is to improve access to financing for credit-worthy Canadian businesses with viable business models whose access to financing would otherwise be restricted.

To access the BCAP, businesses should first contact their financial institutions, which will contact Business Development Bank of Canada and/or Export Development Canada, where appropriate. The BCAP includes:

- **Canada Emergency Business Account:** Under this program, financial institutions are able to provide loans of up to \$64,000 (previously \$40,000) to small businesses and non-profits, which will be guaranteed by the federal government and interest free for the first year. Applicants who received the \$40,000 loan may apply for the expansion which provides eligible businesses with up to an additional \$20,000 in financing. To qualify for these loans, small businesses and non-profits need to have paid between \$20,000 and \$1.5 million in total payroll in 2019 and need to have been operating as of March 1, 2020. Businesses will be forgiven for up to 25% of the loan, up to \$10,000, if the balance of the loan is repaid on or before December 31, 2022. If the loan is not repaid by December 21, 2022, the remaining balance will be converted to a three-year term loan at 5% interest. The funds from this loan can only be used to pay non-deferrable operating expenses, including payroll, rent, utilities, insurance, property tax and regularly scheduled debt service. This program is now available at various financial institutions and credit unions.
- **Loan Guarantee to Small and Medium-Sized Enterprises (SMEs):** Export Development Canada is working with financial institutions to help them issue new operating credit and cash flow term loans up to \$6.25 million to existing SME clients, with 80% guaranteed by Export Development Canada. Export Development Canada is also supporting certain businesses by offering banks a guarantee on loans up to US\$10 million, per business, to ensure these businesses can access cash immediately.
- **Co-Lending Program for SMEs:** The Business Development Bank of Canada is working with financial institutions to co-lend term loans to SMEs to help meet their operational cash flow requirements. The loans available under this program are as follows: (i) loans of up to \$312,500 for businesses with under \$1 million in revenue; (ii) loans of up to \$3.125 million for businesses with revenues between \$1 million and \$50 million; and (iii) loans of up to \$6.25 million for businesses with revenues exceeding \$50 million. The loans under this program are interest-only for the first 12 months, with a 10-year repayment period.

Further discussion on the government funds available for businesses can be found [here](#).

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

As part of the CERP, the federal government originally introduced the Canada Emergency Wage Subsidy (**CEWS**) program on April 11, 2020, which provided a 75% wage subsidy to eligible employers for up to 12 weeks, beginning on March 15, 2020. The program was subsequently extended by regulation until August 29, 2020.

New legislation (Bill C-9) came into force on November 19, 2020 to not only extend, but to redesign CEWS, making it available to a broader group of employers and extending the program until July 2021. More information on the original CEWS program can be found [here](#).

An overview of the key changes to CEWS, including, most importantly, as it relates to determinations of eligibility and the calculation of subsidy entitlements, can be found [here](#).

On August 20, 2020, the federal government announced further actions to help support workers through the next phase of the Covid-19 pandemic. Those actions include an extension of the Canada Emergency Response Benefit (**CERB**), temporary changes to the employment insurance program, and three new income support programs. Further details on these programs can be found [here](#).

The federal government also amended the *Canada Labour Code* by creating a new job-protected leave of absence of up to 16 weeks for employees in federally-regulated workplaces who are unable or unavailable to work for reasons related to Covid-19. Several Canadian provinces have similarly amended the applicable provincial employment standards legislation to create job-protected leaves of absence for employees who are unable to work due to Covid-19.

For more information regarding the amendments to the *Canada Labour Code* and provincial employment standards legislation, please visit the Cassels Comments located [here](#) and [here](#).

The Ontario government also published resources for employers on its website, including sector-specific workplace safety guidelines and posters. At present, guidelines and posters have been published for the construction, food processing, restaurant and food services, agriculture, manufacturing, and long-term care sectors, suggesting that these will be the first “select workplaces” permitted to reopen.

Further information on the Ontario workplace safety guidelines can be found [here](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

While Canada’s main insolvency statutes, the Bankruptcy and Insolvency Act (**BIA**) and Companies’ Creditors Arrangement Act (**CCAA**) have not been amended at the time of writing, new legislation and amendments to existing legislation do impact the insolvency process. In addition, guidance from other participants in the insolvency regulatory process will affect insolvency practice and procedures. The following are some examples:

- As part of the federal government’s CERB program, the income support benefit provided will not be subject to the operation of any law relating to bankruptcy and insolvency.
- Several provinces have enacted legislation to temporarily suspend limitation periods, which apply to the insolvency process.

- The Office of the Superintendent of Bankruptcy Canada, which regulates Licensed Insolvency Trustees (LITs) and is the regulator under the BIA and CCAA, has recommended that LITs work with debtors and third parties to ensure that they are handling insolvencies in a flexible manner that is the least prejudicial to individuals in financial distress. Under the BIA, the courts have broad authority to allow bankruptcy cases to move forward in irregular circumstances if the courts believe it is appropriate.

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

Each Canadian province has its own legislation outlining the requirements for doing business electronically and using eSignatures. In Ontario, British Columbia and Alberta, barring a few important exceptions, eSignatures may be utilized for closing transactions to create binding obligations.

Documents requiring a traditional “wet ink” signature include:

- wills, codicils and trusts created by wills or codicils,
- powers of attorney regarding an individual’s financial affairs or personal care,
- negotiable instruments (such as certificated securities and negotiable promissory notes),
- beneficiary designations (such as for life insurance),
- certain real estate matters, and
- documents that are from time to time prescribed or that belong to a prescribed class.

With regard to real estate matters, parties may use eSignatures to sign documents that create or transfer an interest in land. However, it is important to note that certain restrictions may apply depending on the applicable province.

For a more detailed explanation, see the Cassels Comment located [here](#).

Other contractual matters, including material adverse effect and material adverse change provisions and Force Majeure clauses, have been impacted by the effects of Covid-19.

For more information, see additional Cassels Comments located [here](#) and [here](#).

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

Applications for the federal government program, Canada Emergency Commercial Rent Assistance (**CECRA**) have closed. This program is structured as a forgivable loan for qualifying commercial landlords and is intended to create a mechanism whereby 50% of commercial rent that would otherwise be owed by eligible tenants will be paid through CECRA.

The financial assistance provided by CECRA for small businesses is forgivable as of December 31, 2020, if participation has been and remains in compliance with all program requirements.

As November 2, 2020, the CECRA program has been replaced by a new program, Canada Emergency Rent Subsidy (CERS). This program aims to implement targeted support to help businesses that have experienced reduced revenues and increased costs due to the pandemic. The CERS program will provide support to eligible organizations by subsidizing up to a maximum of 65% of eligible expenses. For more information on the CERS program, see additional Cassels Comment [here](#).

Provinces and municipalities across Canada have implemented various measures providing relief for both landlords and tenants in residential and commercial leasing matters, including:

- municipal property tax relief measures;
- suspension of eviction orders and hearings related to eviction applications for non-urgent issues;
- temporary rental supplements;
- rent freezes;
- deferral of late fees on late rental payments; and
- commercial rent deferral programs.

In British Columbia (**BC**), the provincial government has introduced its \$5 billion Covid-19 Action Plan, which includes a real estate tax reduction for businesses. It is anticipated that this reduction will provide \$500 million in immediate relief for businesses that own their property and will allow commercial landlords to pass these savings onto their tenants in triple-net leases.

Further details on the relief measures implemented in BC can be found [here](#).

In Ontario, the provincial government has introduced the *Coronavirus (Covid-19) Support and Protection Act*, which includes amendments to the *Planning Act* authorizing the Minister to make regulations respecting the calculation of time for development applications in connection with the emergency declared under the *Emergency Management and Civil Protection Act* (**EMCPA**).

On 12 December, 2020, an omnibus budget bill, Bill 229, Protect, Support and Recover from Covid-19 Act (Budget Measures), 2020, was passed by the government of Ontario. Schedule 5 of the Act will provide protection for commercial tenants under Part IV of the Commercial Tenancies Act by establishing a Non-Enforcement Period in respect of certain commercial tenancies. Further details on protections for commercial tenancies can be found [here](#).

Regulations have been released to provide municipalities with additional flexibility during the Covid-19 emergency to process and advance development applications, particularly where there is no dispute, without concern that appeals may be filed on the basis of non-decision. This should also come as welcome news to applicants and new homebuyers, who have faced technical challenges to project delivery and new home closings during this emergency. More information on the provincial legislation in Ontario can be found [here](#).



## Litigation

Are the courts operating?

Most courts across Canada have adopted an essential services model and have limited the manner and types of hearings that can proceed before them, focusing on urgent and essential matters. Many categories of cases have been adjourned indefinitely.

However, as the pandemic has continued, there has been a gradual re-opening of courts and increase of the categories of cases, in particular, non-urgent matters, that can proceed. Courts have implemented email filing measures (with some courts requiring original paper filing to follow) and holding hearings by video or teleconference. But when the courts re-open, they are likely to prioritize criminal cases, because of the constitutional obligation to resolve criminal cases within a reasonable period of time. Access to the court will have to be assessed on a court-by-court basis. Accordingly, you should consult with your legal counsel to assess your options.

Many commercial disputes are well-suited to being resolved through arbitration. Arbitration's traditional advantages of greater speed, lower costs, and greater flexibility as compared to litigation give it an even greater edge when courts are closed.

In Ontario, no new jury selections will take place during the lockdown, as all jury trials are suspended until May 3, 2021. More information can be found [here](#).

As a result of the pandemic, various governments in Canada issued orders suspending limitation periods, which are generally the deadlines by which a person must commence a proceeding in respect of a claim or forever lose their right to do so, and procedural periods in which a litigant must take a step in a proceeding or intended proceeding.

The Ontario government announced that all limitation and procedural time periods that were previously suspended have resumed running as of September 14, 2020. For more information on limitation and procedural timelines in Ontario, see [here](#). Further details on the status of limitation and procedural periods in other provinces can be found [here](#) and [here](#).



## Tax

Has any new legislation been introduced in light of Covid-19?

The Canadian Revenue Agency implemented a number of administrative concessions, including:

- extension of filing deadlines,
- tax audit deferral,
- sales tax and customs duty payment deferrals,
- income tax deferrals, and
- objections and appeals extension.

A summary of the key income tax measures can be found [here](#) and further details regarding GST/HST relief and provincial income tax measures are discussed [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Certain Canadian provinces, including Ontario, have temporarily extended the time frame in which public companies are required to hold annual meetings of shareholders and provided an exemption for corporations to hold virtual meetings despite any restrictions in the articles or by-laws.
- More information related to the extension and the relief for companies to hold virtual meetings can be found [here](#) and commentary on virtual annual general meetings can be found [here](#).

## 1 Loans and financial support

Has the government put in place any new bank funding schemes?

- A Cayman Islands Government Guaranteed Loan Scheme was announced in December 2020. Five local Class-A licensed banks will participate in offering loans of up to KYD750,000 and KYD3,000,000 to 60% Caymanian-owned medium and large businesses respectively to meet their operating and capital expenditure. The maximum interest rate on the Loans will be the prevailing CI Dollar or US Dollar Prime Rate plus, a margin of up to 1.50%. Stamp Duty that may be applicable to any charges placed over assets to provide security for the loans will be waived. There is a one year moratorium period on interest payments for the first year of any loan. The maximum repayment period is seven years.
- The Cayman Islands Development Bank, offers a Low Interest Loans Programme with a fully-backed government guarantee to 100% Caymanian-owned micro and small businesses with loans up to a maximum of KYD50,000 for a small business and KYD20,000 for a micro business. Over KYD1,000,000 has been invested to assist businesses under this programme.

## 2 Employment

What financial support is the government providing to individuals on employment issues?

- The Ministry of Commerce, Planning and Infrastructure has implemented a number of relief measures to support micro and small businesses, including a Micro and Small Business Grant Programme, a Low Interest Loan Programme (as detailed above), a Technical Assistance Programme and a government funded Training Programme.
- In February 2021, the Cayman Islands Government approved a one-time payment of KYD3,000 under their Micro and Small Business Grant Programme as a stipend to business owners who were unsuccessful in receiving funds under previous phases of the programme. Under Phase I of the programme 1,432 businesses benefitted from KYD4,300,000 and under Phase II 370 businesses benefitted from KYD4,500,000.
- The Technical Assistance Programme offers qualified accountants and other professionals to provide technical guidance and coaching to micro and small businesses to help them navigate this difficult period and keep their financial obligations to financial institutions.
- The Government has enacted regulations to extend the period of temporary layoff before which severance pay is payable. This extension enables employers to continue to employ staff rather than terminate their employment and ensures that employees retain more of their earnings while accruing other employee benefits under the Cayman Labour Law.
- The Cayman Islands Needs Assessment Unit is providing financial assistance to individuals in need on a case by case basis.
- From 24 March 2021, a business incubator will house start-ups and business owners who do not currently have a work space from which to operate. The business incubator is a residential space, including laptops and office equipment and access to legal and accountancy services, which will be free of charge for 2 years.

# Cayman Islands

3

## Insolvency

Has the government made any changes to insolvency legislation?

- Not yet. However, a draft bill to amend the Companies Law with the introduction of a dedicated restructuring regime and restructuring officer, is currently in circulation for industry consultation. This has not yet been passed by the Cayman Islands Parliament.
- The introduction of a dedicated restructuring regime in the Cayman Islands has been in the pipeline for some time and is not a direct result of the Covid-19 pandemic.

4

## Contractual Issues

What measures have been taken to reinforce contracts?

- We are not aware of any intervention into the workings of contracts governed by Cayman Islands law and the normal rules apply.
- The majority of commercial contracts under Cayman law will have force majeure clauses providing for situations when a party may terminate the contract and/or be excused for failure or delay in complying with the terms of the contract due to a specified event. The contract will usually list force majeure events. The question of whether Covid-19 as a pandemic is a force majeure event will depend on the drafting of the clause in each case.

5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- No laws have been amended.
- The Cayman Islands Government is urging landlords to be flexible with tenants. As detailed above, most Cayman banks have also offered mortgage relief as a result of the pandemic.

6

## Litigation

Are the courts operating?

- Yes, the Cayman Courts and Judicial Administration remain fully operational. Measures and practice directions have been put in place to ensure the continued administration of justice while protecting the health and safety of the court employees and other court users, including provision for electronic filing and remote hearings via video conferencing technology.
- See our legal update [Litigating in the Cayman Islands during these unprecedented times](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- No. The Cayman Islands does not have any direct taxation.
- See below regarding economic substance.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Cayman Islands Registrar of Companies is operating as usual with some minor changes to adapt to the Covid-19 pandemic such as accepting affidavits or other documents that have been notarised/certified online or utilising audio-video technology during this time.
- Cayman Islands exempted companies are not obliged to hold annual general meetings.
- Where board meetings are required to be held virtually during this period, the Cayman Islands Department for International Tax Cooperation will take that into consideration, on a case-by-case basis, when determining whether an entity has passed or failed the economic substance test in its reporting which is due in 2021.
- Please see our update on [Overcoming barriers to completion of corporate transactions amidst Covid-19 challenges](#) and our [Caribbean Regulatory Update](#).
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

- In February 2020, a government policy is announced to strengthen financial support to enterprises. The central government will subsidize the interest payment of key enterprises engaged in epidemic containment.
- Financial institutions are asked to refrain from arbitrary withdrawing, cutting or delaying loans that are issued to severely affected industries, (e.g., wholesale and retail) and enterprises that are otherwise performing well but are under temporary difficulties due to the epidemic, and small and micro enterprises in particular.
- For enterprises that cannot repay loans on time due to severe impact by the epidemic, loans can be extended or renewed. Meanwhile, measures are taken to lower lending rates and increase unsecured loans and medium and long-term loans to help enterprises handle the impact of the epidemic.
- In 2021, some local governments have put in place financial support for certain industries and enterprises. For instance, Jilin Province announced measures to increase loans for enterprises in the tourism industry and support the loan extension for certain micro and small-sized enterprises.

## Employment

What financial support is the government providing to individuals on employment issues?

The Standing Committee of the State Council on February 18, 2020 adopted national policies to reduce the financial impact of the epidemic on employers as well as to help stabilize employment. Among the policies are the reduction of employer social insurance contributions and the delay of housing fund contributions. The policies have gradually been implemented by national and local notices and policies.

On February 20, 2020, the Ministry of Human Resources and Social Security, together with the Ministry of Finance and the State Taxation Administration announced the following.

- From February 2020, provinces may exempt small and medium-sized enterprises for up to five months from paying the employer portion of contributions for pension, unemployment, and occupational injury insurance.
- Provinces may reduce by 50% the employer contributions for pension, unemployment, and occupational injury insurance for large enterprises for up to three months.
- Hubei province may exempt all employers from paying the employer contributions for pension, unemployment, and occupational injury insurance for up to five months.
- All employers that suffer serious difficulties in production and operation due to the outbreak may apply for deferred payment of contributions for all five types of social insurance for up to six months. Approved employers would not be liable for late payment fees.

### [Further employment policies issued relating Covid-19 epidemic.](#)

On June 22, 2020, the Ministry of Human Resources and Social Security, together with the Ministry of Finance and the State Taxation Administration extended the policy announced on February 20, 2020:

- Provinces may exempt small and medium-sized enterprises from paying the employer portion of contributions for pension, unemployment, and occupational injury insurance until the end of December 2020.
- Provinces may reduce by 50% the employer contributions for pension, unemployment, and occupational injury insurance for large enterprises till the end of June 2020.

All employers that suffer serious difficulties in production and operation due to the outbreak may apply for deferred payment of contributions for all five types of social insurance until the end of December 2020. Approved employers would not be liable for late payment fees.

On July 15, 2020, the Ministry of Human Resources and Social Security, together with the Ministry of Education and the State Council Leading Group Office of Poverty Alleviation and Development announced measures to help students from poor families who graduate from colleges this year secure employment. These measures include providing skill training and career development advice.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- During the Covid-19 outbreak, courts have allowed enterprises in bankruptcy proceedings to take measures such as resumption of production and operation or disposal of assets related to epidemic prevention and control, which has contributed to fighting the epidemic as well as increasing the creditors' debt repayment ratio.
- For additional information on measures taken related to enterprises in bankruptcy proceedings during the Covid-19 epidemic in Chinese, please click [here](#).
- On April 15 2020, the Supreme People's Court issued the opinions on promoting lawful and efficient adjudication of bankruptcy cases, which provides various measures to improve the efficiency and reduce the cost of bankruptcy proceedings.
- On May 15 2020, the Supreme People's Court issued the second guiding opinions in adjudicating civil cases involving the Covid-19 epidemic. The Supreme People's Court asks the courts at different levels to facilitate consultation between the debtor and creditor if a creditor petitions for bankruptcy of an enterprise that fails to meet its debt repayment obligation due to the Covid-19 epidemic. The courts are asked to avoid initiating bankruptcy proceedings for enterprises that fail to meet debt repayment obligation solely because of the impact of Covid-19 epidemic by evaluating the cash flow and asset liability ratio of these enterprises during this special period of time only.

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

- Performance of contractual obligations could be delayed due to the Covid-19 Epidemic. Here is an analysis about if a developer can claim exemption from liability for the breach of contract arising from a delay in delivering houses on schedule.
- In practice, many developers see epidemics, major public health events, universal epidemic diseases, governmental policies and decrees relating to construction as force majeure events, or at least situations where developers are specifically entitled to postpone the time of delivery as agreed upon in their sales contracts. Thus, based on the principle of autonomy of will, sellers and purchasers can enjoy and undertake the rights and obligations to postpone the time of delivery as agreed upon in their contracts if it is valid.
- If there is no valid agreement, developers can apply for a force majeure or use the principle of change of circumstances. However, the legal consequences and outcome of such a declaration will be determined on a case-by-case basis.
- [Special Series regarding the Legal Impact of the Covid-19 Epidemic on the Real Estate Industry. Topic One: the impact of the Covid-19 epidemic on the sale of commodity housing.](#)

- On May 15 2020, the Supreme People’s Court issued the second guiding opinions in adjudicating civil cases involving the Covid-19 epidemic. The Supreme People’s Court states that the courts should not grant the petition of either party to terminate a sales contract if the Covid-19 epidemic is making performance more costly or performance will be later than the time specified in the contract as long as the purpose of the contract is not frustrated. On the other hand, the courts may allow adjustment of price or time of performance based on the actual circumstances of each case and the principle of equity.
- On July 13 2020, the Supreme People's Court, the Ministry of Justice and the Ministry of Culture and Tourism released the Circular about Lawfully and Properly Handling Epidemic-related Travel Contract Disputes, which encourages modification of the contracts such as change of travel dates or replacement of travel package and provides that extra cost for safety measures should be borne by both service providers and tourists and increased lodging and food cost will be borne by stranded tourists.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

Some local governments have introduced support and guidance policies for enterprises affected by the Covid-19 Epidemic, which also include the adjustment of lease agreement relationships. For instance, the Municipal Government of Beijing issued Several Measures on Dealing with the Impact of Covid-19 Epidemic and Promote the Sustainable and Healthy Development of Medium, Small and Micro Enterprise on February 5, 2020.

According to those measures, for medium, small and micro enterprises which rent properties from city-owned or district-owned enterprises:

- the rent in February 2020 shall be exempt if such enterprises (i) rent properties for the purpose of manufacturing or operations; (ii) keep operating or stop operating in accordance with the policies for the prevention and control of the Epidemic; and (iii) do not lay off employees or only lay off few employees,
- the rent in February 2020 shall be reduced to 50% of the original amount if such enterprises rent properties for office work,
- it is encouraged that landlords (property owners) reduce or exempt the rent of other leased properties, which is subject to the negotiation of the contract parties, and
- for landlords that reduce or exempt rent for medium, small and micro enterprises, the municipal or district government would provide subsidies.

Although the policies above are only applicable to qualified “small, medium and micro enterprises”, it may also act as a guide for other leasing parties.

[Special Series regarding the Legal Impact of the Covid-19 Epidemic on the Real Estate Industry. Topic Three: the impact of the Covid-19 epidemic on property lease agreements.](#)

On May 9 2020, the National Development and Reform Commission and seven other central government agencies jointly issued a policy to further support micro and small-sized enterprises and businesses owned by individuals in the service industry to ease the burden of rental payment for coping with the Covid-19 epidemic, including measures such as:

- exemption of rental payment for three months in the first half of the year for those micro and small-sized enterprises and businesses owned by individuals in distress in the service industry if the property are owned by the state,
- property owners other than the state are encouraged to exempt or delay the collection of rent, and
- local governments should establish and improve the mediation and resolution mechanism for rental dispute and help the parties to resolve disputes through consultation.

## Litigation

Are the courts operating?

- A number of courts and arbitration institutions issued notice to encourage online filing and submission of materials. For example, court in Shanghai encouraged parties to initiate mediation and handle litigation related matters through online and mobile platforms. On January 28, 2020, the China International Economic and Trade Arbitration Commission issued a notice encouraging parties to submit arbitration applications and related documents through the online filing system.
- For additional information on the development of diversified dispute resolution mechanism to deal with emergencies in Chinese, please click [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- The Ministry of Finance, the State Taxation Administration and the General Administration of Customs have jointly issued several circulars to support the epidemic's prevention and control, prompt the relevant enterprises' development and lighten the tax burden of the taxpayer affected by this epidemic. According to the contents specified in the relevant circulars, the tax policies can be categorized into the following five categories: 1. Corporate Income Tax ("CIT"); 2. Individual Income Tax ("IIT"); 3. Valued-Added Tax ("VAT"), Consumption Tax ("CT") and other taxes; 4. Imported Materials; and 5. Tax Administration and Collection. Below are selected policies.
- (CIT) Enterprises **significantly affected by the epidemic**: for the tax loss incurred in 2020, the maximum carry forward period is increased from five to eight years.
- (IIT) Medical staff and anti-epidemic workers participating in epidemic prevention and control: the temporary subsidies and bonuses obtained according to the standards specified by governments are exempt from IIT.
- (VAT) Revenue derived from providing public transportation services, consumer services and collection and delivery services for residents' daily necessities is exempted from VAT.
- (Tax Administration and Collection) Taxpayers and withholding agents subject to monthly tax filing (Nationwide): the statutory time limit for tax filing in February 2020 will be extended to February 24, 2020. Taxpayers and withholding agents affected by the epidemic who still face difficulties in filing tax returns after the said time limit extension in February 2020, may apply for a further extension in accordance with the law.
- [Summary of the RPC Tax Regulations issues in response to the Covid-19 Outbreak](#).

- On May 29, 2020, the State Taxation Administration announced a policy that will allow small enterprises (as defined in the State Administration of Taxation Announcement [2019] No. 2) and businesses owned by individuals to delay payment of income tax for the time period from May 1, 2020 to December 31, 2020 until 2021.
- On July 2, 2020, the State Taxation Administration announced Guidelines of Preferential Tax Policies to Support Epidemic Control and Development of the Economy and Society (3.0), which consolidates and updates all the relevant preferential tax policies.
- In 2021, some local governments have extended certain preferential tax policies. For instance, enterprises in industries such as entertainment, transportation, and tourism as well as certain micro and small-sized enterprises in Zhejiang Province do not have to pay property tax and urban land use tax for property and land in use by these enterprises in the first quarter of 2021 and pay 50% property tax and urban land use tax in the second quarter of 2021.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Since the outbreak of Covid-19, China's provinces, autonomous regions and province-level municipalities have successively launched public health emergency plans in their respective administrative regions and taken actions to contain Covid-19. Local governments in regions such as Zhejiang, Gansu, Anhui and Shanghai have set out requirements that enterprises should prepare emergency plans for the prevention and control of Covid-19 in the form of notices on the prevention and control of Covid-19 and the resumption of work. Some notices have emphasized that the responsible person in the enterprise should lead the preparation work personally.
- There are various factors to consider in drafting an emergency plan, namely, (i) regulatory requirements may differ depending on different regions (for instance, we have noticed that some local governments have publicized templates of the emergency plans specifically for enterprises' use, while other local governments have not), (ii) regulatory requirements may vary among different industries, and (iii) business features and characteristics may differ among enterprises.
- [For enterprises that are resuming operations: how to prepare an emergency plan for the prevention and control of Novel Coronavirus Pneumonia.](#)



1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Yes, three waves of emergency loans have been handed to SMEs (small and medium enterprises). The first by way of outright government's bank loans, the second and third by way of guarantees for loans issued by the commercial banks.
- The Czech Export Guarantee and Insurance Agency (EGAP) to guarantee for bank loans provided to businesses which employ more than 250 people including companies operating in transport and tourism sector.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Kurzarbeit / furlough: employers may apply for compensation of payroll costs at a) 100% (capped at approx. 1 900 EUR) if their business was mandated to close; b) 80% (capped at approx. 1 500 EUR) if their employees are quarantined; c) 60%, (capped at approx. 1 000 EUR) if they suffer indirectly (e.g. reduced orders). Aid to be provided until the end of April 2021.
- From March 2021 the compensation will be provided only for the payroll costs of employees that have been employed by the employer for at least 3 months.
- Payments of social security premium and state employment policy contributions for June, July and August 2020 waived for some employers with up to 50 employees.
- The affected self-employed persons are entitled to financial support in the approximate amount of 40 EUR per one day.
- Closed businesses have also been provided with various kinds of financial support to cover their other costs.

3

## Insolvency

Has the government made any changes to insolvency legislation?

- The debtor's duty to file for insolvency (and associated directors' liability for not doing so) is suspended. The suspension applies during the Covid-19 response measures and 6 months after they are terminated, but in no event beyond the end of June 2021. The claw-back periods are not running during the suspension, so a longer period will be effectively available for clawing-back assets in future insolvencies.
- Creditors' right to file for insolvency was suspended until the end of August 2020.
- Extraordinary moratorium can be requested by debtors, until the end of June 2021.

4

## Contractual Issues

What measures have been taken to reinforce contracts?

- NIL.
- Borrowers could request deferral of their debts, which were falling due (but interest continued to accrue) and lenders had to grant such deferral.
- Exorbitant consumer interests were capped.

## 5

**Property**

Have any changes been made to the laws around property, rent and enforcement?

- Tenants (both, commercial and residential) have been temporarily protected from eviction for non-payment.
- Payment of rent by the affected businesses and individuals could have been temporarily deferred.
- State to pay up to 50% of rent for closed business premises (as well as for some other affected business premises) for October, November and December 2020. The landlord's discount is no longer required.

## 6

**Litigation**

Are the courts operating?

- Missing of certain procedural deadlines could now be waived, if caused by Covid-19.

## 7

**Tax**

Has any new legislation been introduced in light of Covid-19?

- In 2020, deadlines for most tax filings have been deferred, a tax loss could have been extraordinarily applied against income from previous years (and the resulting tax overpayments claimed) and some social and health security payments have been waived and others deferred.
- In 2021, deadlines for some tax filings have been deferred so far.
- No new tax imposed and the government even indicated that it would not consider any new taxes or increase of the existing taxes.
- Tax on the acquisition of real estate has been abolished.

## 8

**Company law matters**

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- General meetings and other board meetings can be held remotely by all companies until the end of June 2021.
- Deadlines for approvals of accounts were extended based on individual circumstances up until 31 December 2020.
- According to prevailing opinion and contrary to the rules applicable until the end of last year, directors' terms of office are no longer automatically prolonged.

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Danish government has introduced the following schemes:

- i. a temporary compensation scheme to cover fixed costs of companies, which are particularly affected by the Covid-19 crisis, financed by the Danish state. Previously, all Danish companies with a decline in turnover (Danish turnover) of more than 35% and of minimum 12.500 DKK in the period 9 March 2020 until 8 July 2020 due to Covid-19 could apply for compensation for fixed costs. The compensation scheme was extended until 31 October 2020 for companies subject to restrictions, if the company had fixed costs of at least 8,000 DKK during the compensation period. The compensation scheme has been further extended to 28 February 2021 and now applies to companies with a decline in turnover of more than 30% (for some companies 35%), if the company has fixed costs of at least 4,000 DKK;
- ii. a temporary compensation scheme aimed at self-employed and freelancers with maximum 25 employees. In order to apply for compensation under this scheme, a number of conditions must be met. The compensation will amount to 90% of the expected revenue loss (which must be at least 30%) in the period compared to the average revenue in the last financial year, however, for self-employed and freelancers who are forced to close down, the compensation will amount to 100%. In any event, the compensation may not exceed DKK 23,000 per person per month for each owner with an ownership of 25% or more of the business. This compensation scheme was originally available to all self-employed and freelancers from 9 March 2020 until 8 July 2020 and was first extended to 31 October 2020 for self-employed and freelancers, subject to certain restrictions, and is now extended to 28 February 2021; and
- iii. a guarantee scheme to facilitate financing to small, medium-sized and large companies affected by Covid-19, Under this scheme, the Danish Growth Fund (In Danish: *Vækstfonden*) provides a guarantee of 80-90% for new bank loans to companies which have suffered or expect to suffer a turnover loss of at least 30% as a result of Covid-19. The scheme was first available until 31 December 2020, but has now been extended until 30 April 2021 (the application deadline is on 24 April 2021).

Companies utilising the scheme in item (iii) will be covered by certain restrictions in respect of declaring dividends or initiating share buybacks for the financial years 2020 and 2021. We note that in addition to the above, the Danish government has adopted certain schemes aimed at specific businesses, which are not covered here. Similarly, special schemes aimed at seasonal companies and organizers of events with more than 350 participants have been adopted.

The Danish government has on 20 May 2020 adopted guidelines for a quick and safe payment of the compensation schemes listed in items (i) and (ii). To ensure a quick payment of the compensation, the guidelines introduce a fast track-solution for payment, immediate handling of applications and a solution for applying a digital auditor's statement for endorsement on applications. To ensure a safe payment of the compensation, the guidelines introduce a whistleblower-scheme and increased use of external experts.

Furthermore, the Danish Export Credit Agency has introduced a liquidity guarantee scheme for Danish exporters impacted by Covid-19. The Danish Export Credit Agency provides a guarantee of 80-90% of any loss incurred by banks on new lines of credit. The scheme is available until 26 April 2021.

Similarly, the Danish Travel Guarantee Fund has established a guarantee scheme, which allows affected tour operators to cover cancelled package trips in order to be able to repay customers. The scheme is available until 28 February 2021.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- As many Covid-19 related restrictions have been reintroduced during the autumn and winter of 2020, the Danish government has reintroduced various wage compensation schemes. Currently the following four wage compensation schemes are available:
  - All companies can apply for wage compensation for the period from 9 December 2020 to 7 March 2021, regardless whether the company is affected by the restrictions.
  - Companies that are prohibited from opening can apply for wage compensation for the period from 9 December 2020 to 28 February 2021.
  - Companies that have been prohibited from opening since 6 November 2020 to 28 February 2021 can apply for wage compensation for this period; this mainly applies for nightclubs, music venues etc.
  - Companies that were affected by the specific restrictions in Northern Jutland in the period 6 November 2020 to 26 November 2020 can apply for wage compensation for this period.
- The compensation scheme applies to all private Danish companies regardless of size, however, it is a requirement that the company is facing having to lay-off at least 30 per cent of its employees or more than 50 employees. If this is the case, the company can apply for state salary compensation whereby the Danish state will compensate 75 per cent of the salaries of the employees concerned, but a maximum of DKK 30,000 per employee per month. For hourly wage earners, the state wage compensation amounts to 90 per cent of the salaries of the employees concerned, but a maximum of DKK 30,000 per employee per month.
- It is a condition for receiving compensation under this scheme that the employees are sent home with full salary and that they do not work during the period for which compensation is received.
- Companies receiving compensation under this scheme undertake not to lay-off employees due to financial reasons during the period in which they receive the compensation. If employees are laid-off during the compensation period, compensation of wages will cease as per the date of the dismissals.
- In addition to the compensation scheme, the Danish government has adopted amendments to the Danish Act on Active Social Policy, the Danish Act on Unemployment Insurance and the Danish Act on Sickness Benefit due to Covid-19. Pursuant to the amendments, certain periods are extended for the benefit of the persons covered by the acts, i.e. the period under which the persons covered by the Danish Act on Sickness Benefit are entitled to sickness benefits.
- Furthermore, the Danish government has on 20 May 2020 adopted another amendment to the Danish Act on Sickness Benefit, which entitles employees who themselves are, or who has relatives that are, significantly at risk of getting infected with Covid-19, to remain home from work and receive sickness benefit. The Danish government firstly agreed to prolong the amendment until 31 December 2020, but has now agreed to prolong the amendment until 31 March 2021. In order to receive sickness benefits, the employee must fulfil certain criteria in relation to health, and the workplace must be incapable of arranging the workspace to accommodate the needs of the employee. The employer is from the first day of the employee's absence entitled to get a refund of the sickness benefit.
- Parents whose children are sent home from school or day-care centres due to being positive of Covid-19 or due to being a close contact to someone who is tested positive for Covid-19, can receive 10 days of maternity allowance, if the parents have challenges in staying home from work. The option is available in the period from 1 January 2021 to 31 March 2021.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- On 21 October 2020, the Danish government proposed a bill amending the Danish Bankruptcy Act. The bill aims to improve the ability for companies to continue their business instead of being declared bankrupt, e.g. in the case of temporary financial difficulties, while at the same time protecting the legal position of the creditors. The draft bill is being proposed due to Covid-19 but will also apply to companies that are facing financial difficulties for other reasons than Covid-19, and the bill will also apply after Covid-19. The bill is expected to enter into force in March 2021.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Danish government has not implemented any specific measures to reinforce contracts.
- However, part of the legislation adopted by the Danish government, as a consequence of Covid-19, directly or indirectly affects contracts. As an example, the Danish government has implemented two Executive Orders under which the Danish Medicines Agency has a right to order Danish manufacturers, importers and distributors to supply certain types of medical devices, personal protective equipment and disinfectants to regions and municipalities against payment from the region or the municipality. As the Danish Medicines Agency has a right to decide the terms of payment and delivery, this may potentially have an impact on the companies' ability to enter into other contracts or fulfil existing contracts. Similarly, the Danish government has implemented an Executive Order which gives the Danish Medicines Agency authority to i.e. decide that prices on medicine may not rise. The Executive Orders will remain in force until 28 February 2021.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- The Danish government has not introduced any changes to the laws around property, rent and enforcement
- However, the Danish government had implemented a temporary ban on the opening of shopping malls, department stores, arcades, bazaars etc. and places where food, beverages or tobacco are served. These bans raised a number of issues for both lessors and lessees related to business leaseholds in the retail, catering and tourist industries, i.e. whether the government actions constitute force majeure. It is likely that the government actions can constitute force majeure in relation to some of both lessor's and lessee's obligations under a lease agreement as (i) the fulfillment of terms of the lease agreement can be impossible due to the extraordinary situation created by the outbreak of Covid-19 virus and the bans imposed by the government, and (ii) the extraordinary situation – at least for the lease agreements drafted prior to the outbreak of Covid-19 virus – must be assumed to have been unpredictable for the parties.
- In December 2020, a new temporary ban on the opening of shopping malls, department stores, arcades, bazaars etc. and places where food, beverages and tobacco are served was reintroduced. These restrictions are still in force and will remain in force until 28 February 2021 unless further prolonged.



## Litigation

Are the courts operating?

- The Danish courts are open, however, the Danish government has recommended that the Danish courts follow certain guidelines due to Covid-19. Each court has the authority to decide whether they wish to follow the guidelines issued by the Danish government.
- Amongst other things, it is recommended that the courts only handle cases, where they at all times are able to keep a distance of two metres. As it is difficult to handle the same amount of cases when following the guidelines issued by the Danish government, it is generally recommended that the courts limit the handling of non-urgent cases.

## Tax

Has any new legislation been introduced in light of Covid-19?

The Danish government has within the tax area adopted several measures to help secure small, medium and large companies' liquidity. Many of the measures implemented as an early response to Covid-19 has either been phased out, or the deadline for application has expired. However, new measures have been implemented continuously. The following measures are in force at the moment:

- The following postponements of the deadline for payment of A-tax and labour market contributions (in Danish: *AM-bidrag*) (postponements regarding the payment of VAT are also applicable):

Salary period	Payment date for small and medium sized businesses	Payment date for large businesses
August 2020	29 January 2021	15 January 2021
September 2020	31 March 2021	16 March 2021
October 2020	31 May 2021	17 May 2021
November 2020	10 December 2020	30 November 2020
December 2020	18 January 2021	30 December 2020
January 2021	10 February 2021	29 January 2021
February 2021	10 March 2021	26 February 2021
March 2021	12 April 2021	31 March 2021
April 2021	10 May 2021	29 April 2021

- Interest free loan scheme for loans to small and medium-sized businesses corresponding to the A-tax and labour market contributions (in Danish: *AM-bidrag*) the businesses reported on time for August and December 2020. The application period is from 3 February to 31 March 2021.
  - The deadline for tax return filing has been extended to 31 January 2021 for companies with a tax return filing deadline in October 2020.
- As 1 March 2021 is the deadline for several extended VAT deadlines from 2020, a new VAT loan scheme has been proposed by the Danish government. The scheme (if adopted) will enable small and medium-sized businesses to obtain interest-free loans corresponding to the amount of VAT that they have to file on their VAT return and pay on 1 March 2021.

- The Danish Tax Administration has emphasized that some businesses must pay tax for the contributions they received in relation to the compensation schemes. This is assumed to apply for the following compensation schemes, but is currently being clarified by the Danish Tax Administration:
  - Compensation for loss of turnover (self-employed, freelancers, artists and cultural institutions),
  - Compensation for cancelled events (event organizers),
  - Compensation for expected fixed costs (i.e. rent),
  - Salary compensation for employees,
  - Compensation for freelancers with B-income, and
  - Compensation for freelancers with mixed A- and B-income.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- As a response to Covid-19, the Danish government has multiple times introduced restrictions on large gatherings. As per 6 January 2021, the restrictions on large gatherings has decreased from ten to five people, which until further notice remains in force until 5 April 2021.
- A new Executive Order applicable throughout 2021 has been implemented, which prolongs the possibility introduced in 2020 to hold general meetings partially or completely electronically, irrespective of the fact that the company's articles of association may not provide for this.
- The Executive Order does not postpone the deadline for submitting the annual report of 2020, as was the case for the annual report of 2019.
- Earlier, general meetings was exempted from the restrictions of large gatherings due to it being an activity where people are mostly seated. However, as per 6 January 2021, this exemption no longer applies, which means that general meetings must comply with the restrictions on gatherings of a maximum of five people..
- For additional information about the company law related measures put in place to accommodate social distancing see (in Danish), please view [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Finnish Government has introduced a range of financial schemes for impacted businesses who are experiencing financial difficulties during the Covid-19 pandemic. Several schemes introduced in the beginning of the pandemic have already closed. However, as the spread of the pandemic has in the previous months increased and the financial difficulties caused by the Covid-19 pandemic are expected to continue, the Finnish Government has prolonged some of its measures, particularly the restrictions for consumer credit.

The support schemes that are still available include the following:

- **Finnvera guarantees** - the state guarantees for bank loans, which can be used for working capital needs caused by the Covid-19 pandemic. Guarantees are granted by Finnvera (a state-owned specialised financing company) for up to 80% of the bank loan and no collateral is required. As of 11 September 2020, financiers have been able to apply for the Finnvera guarantee on behalf of the company.
- **Stabilisation programme to support Mid-cap companies** - a funding program to support MidCap companies who are in temporary financial difficulties due to the Covid-19 pandemic. Finnish Industry Investment Ltd (a state-owned investment company) will make capital investments of EUR 1-10 million into companies with a minimum of EUR 10 million turnover and over 50 employees. The company must have the ability to survive the financial difficulties caused by the crisis and the investment is subject to standard due diligence.
- **Support for restaurants and catering businesses** - direct support consisting of two parts:
  - Compensation for restrictions for business: the application for the compensation ended on 31 August 2020.
  - Support for re-employment: EUR 1,000 per employee. The application period for the support ended 31 October 2020.
- **Commercial paper purchase schemes** - both the Bank of Finland and the State Pension Fund of Finland have agreed to increase their investment in domestic corporate papers.
- **Temporary interest-only payments periods** - Finnish banks have agreed to give interest-only payment periods (of up to one year) on mortgages and other loans for individuals and companies in financial difficulties due to the Covid-19 pandemic.
- **Restrictions for consumer credit** - additional temporary restrictions pertaining to consumer credits and direct marketing entered into force on 1 January 2021 and remain in force until 30 September 2021. These restrictions include a temporary interest rate cap of 10% per annum, a prohibition to increase credit costs and certain marketing restrictions. Direct marketing (e.g. marketing by telephone or emails) of consumer credits is temporarily prohibited. The current restrictions apply, in principle, to new consumer credit and new withdrawals made between 1 January 2021 and 30 September 2021.
- **Postponement of certain statutory payments** - In addition to the above financial support, certain payment arrangements have been agreed by the Tax Administration and between the Government and the Pension Insurance Companies. These include measures such as postponement of payments deadlines, extension of tax return deadlines, removal of late payment penalties and temporary reductions of pension insurance payments. The application period for some of these payment arrangements have already ended.

In addition to the above, there are a number of smaller support packages put in place, including support for sole entrepreneurs, for small agricultural businesses and for the primary agricultural sector and fisheries section. Most of these smaller support schemes closed in September 2020.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Employers' statutory pension contribution, which was temporarily reduced from 1 May to 31 December 2020, has now been restored to the level before Covid-19 pandemic. The temporary reduction will be compensated by increasing the employer's statutory pension contribution in 2022-2025.
- Entrepreneurs are temporarily entitled to unemployment security. The temporary amendment is expected to remain in force until 31 March 2021. The temporary improvements on employees' unemployment security expired on 31 December 2020.
- During 2020, the government made several temporary amendments to the Employment Contracts Act and the Act on Co-operation within Undertakings to support businesses and employees, but all the amendments expired on 31 December 2020.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- A temporary Bankruptcy Act came into force in May 2020 and its purpose was to prevent bankruptcies of debtors that had got into payment difficulties due to the coronavirus pandemic. The temporary Act expired at the end of January 2021. To prevent a wave of bankruptcies from February onwards, a second temporary Bankruptcy Act was brought in. This Act will be in force from the start of February until the end of September 2021.
- The new temporary law grants debtors a long period to negotiate their debts with their creditors. Although the so-called insolvency assumption in the event of payment default was reinstated, debtors have up to 30 days from a payment reminder to negotiate payment of their debts. Pursuant to the normal Bankruptcy Act, a debtor is deemed insolvent by the court if the debtor has not repaid a clear and undisputed claim that has fallen due within one week of the receipt of a payment reminder.
- In addition to the above, there have been some temporary amendments to the Enforcement Code in such way that the exceptional circumstances arising from the coronavirus pandemic and the financial difficulties resulting from it could be taken into account in the enforcement proceedings. These temporary amendments are in force until 30 April 2021.

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

- The Finnish government has not introduced new legislation due to the Covid-19 pandemic that would specifically reinforce contracts between commercial entities and the normal contractual rules apply.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- No particular changes have been made to the laws around property or leasing. However, below we have listed some elements worth considering.
- Some tenants, especially within restaurant and hospitality industries, have requested a temporary adjustment to the rent payable under their leases, including rent holidays or deferment. Some of such requests have also been approved by the landlords.
- Construction agreements typically include specific provisions regarding possible delays caused by Covid-19.

## 6

## Litigation

Are the courts operating?

- In general, courts are operating normally in Finland. However, some court hearings may be postponed due to the corona crisis.
- With the consent of both parties, hearings may also be held via video conference.

## Tax

Has any new legislation been introduced in light of Covid-19?

During the Spring of 2020, the Finnish Government introduced several measures within the tax area, especially in the field of VAT, the purpose of which was to help the companies to retain their liquidity.

The following measures have already ended at the latest on 31 August 2020 and thus, can no longer be applied for:

- The Tax Administration refunds VAT already paid by a company between January and March 2020 upon the company's request. These refunds are treated as loans as the companies must repay the amount of the VAT added with interest.
- The late-payment interest and penalty interest on the taxes in the scope of a payment arrangement or extended payment terms was reduced from 7% to 2,5%. The terms of the payment arrangement are also eased.

With reference to the following measure, the Government has decided that the term of validity will be extended until 30 April 2021:

- The VAT Act has been temporarily amended to the domestic sales of goods used for the prevention, testing and treatment of covid-19 infection and these type of acquisitions from other EU member states. The amendment applies to sales to producers of public health and medical care and social welfare services, as well as to organisations approved by Customs. The VAT rate for the sales has been amended to 0%, i.e. sales are considered so-called zero-rated sales. Consequently, VAT included in the purchases made for these sales is deductible.

In addition to the legislative level measures above, the Finnish Tax Administration has e.g. extended filing deadlines of tax returns and outlined that the employees can deduct the expenses for the face masks in taxation and the employers can offer face masks and corona-tests (if relevant for conducting work) for the employees without tax income implications. These expenses are also considered tax-deductible. The employer can also provide food for employees in virtually organised recreational events.

If the company's income has decreased due to Covid-19, the advance tax can now exceptionally be reduced by self-declaration without interim financial statements or other written explanations.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- On 2 October 2020, the Finnish Parliament adopted a temporary act to extend the provisions allowing listed companies to deviate from certain provisions of the Finnish Companies Act relating to the holding of a general meeting of shareholders, in order to prevent the spread of the Covid-19 pandemic. The legislation corresponds to the provisions set out in the previous temporary act adopted on 24 April 2020, which was in force between 1 May 2020 to 30 September 2020. The amended temporary act entered into force on 3 October 2020 and is valid until 30 June 2021.
- The amended temporary act makes it possible for listed companies to hold their annual general meetings remotely so that shareholders may participate in the general meeting only by way of a proxy. The board of directors of the company may appoint one or more proxy representatives for the use of shareholders. Alternatively, an annual general meeting of a listed company can be held remotely so that shareholders may participate in the general meeting only by technical means. A remote meeting can also be held as a combination of a proxy meeting and participation by technical means in which case also shareholders' proxy representatives can participate in the meeting only by technical means.
- Regardless of whether a general meeting is organised by using one of the above options or as a combination of them, a physical general meeting must be held. At least the chairman of the meeting and the person appointed as scrutiniser of minutes must attend the meeting in person.
- As deviation from the previous temporary act in force from 1 May 2020 to 30 September 2020, the amended temporary act does not include provisions on the extension of the deadline by which annual general meetings must be organised.
- As deviation from the previous temporary act in force from 1 May 2020 to 30 September 2020, the amended temporary act does not include provisions on the extension of the deadline by which limited liability companies must prepare their financial statements and annual reports, and no other exceptions to the said deadline are currently in place.

1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- The Government has provided for a guarantee scheme to support bank financing for businesses. Until December 31, 2020, companies (with the exception of property companies & banks) may apply for State-guaranteed bank loans which represent up to 25% of 2019 revenues (or two years of payroll for so-called "innovative" companies or companies created since 1 January 2019). No repayment will be required during the first year of the loan. For companies or groups of companies of important size (>5000 employees or >1.5 billion EUR revenues in France), this loan implies renouncing to distributing dividends in 2020. A decree of 6 May 2020 from the Ministry of the Economy and Finance extended the beneficiaries of this scheme to certain non-trading real estate companies, companies in difficulty since 1 January 2020, "Young Innovative Companies" and loans granted through crowdfunding/ participatory financing platforms.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

The mechanism of "partial unemployment" has been facilitated for companies whose employees cannot work because of the Covid situation. Employers get a reimbursement of 60% of the employee's gross salaries up to a (relatively high) monthly threshold. Employers which must stop their activities because of governmental decision (i.e. restaurant or large shopping centres) get a reimbursement of 70% of the employees gross salaries up to a (relatively high) monthly threshold.

3

## Insolvency

Has the government made any changes to insolvency legislation?

- No substantial rules were enacted on insolvency. Deadlines have been extended to take into account the lockdown situation and commercial courts, who are in charge of insolvency proceedings, have put in place specific emergency procedures in order to be able to handle urgent matters. One specific rule presumes that the financial situation of companies filing for insolvency shall be assessed as it was on March 12, 2020.

4

## Contractual Issues

What measures have been taken to reinforce contracts?

- Specific rules have been enacted to suspend or extend the effects of certain contractual deadlines (except for financial obligations and guarantees listed in art. L211-36 of the French Financial and Monetary Code). The principle is that periodic penalty payments, penalty clauses, termination clauses sanctioning the failure to fulfil an obligation within a specified period shall be deemed not to have commenced or to have taken effect if that period has expired during the "lockdown period" (as defined by the government as a period ending on June 23). They shall take effect from the expiry of a period of one month after the end of that period if the debtor has not performed his obligation before that time. The ending date of the protection period has been set to June 23, 2020. In addition, when an agreement may be terminated only during a specified period or when it is renewed if no termination is notified within a specified period, that period shall be extended, if it expires during the "lockdown period", by two months after the end of the "lockdown period". Further, for agreement which can only be terminated in a defined schedule or which are automatically renewed in the absence of denunciation within a limited period: those periods or deadlines are extended if they expire between 12 March and 2 months after the expiry of the "lockdown period".
- No longer applicable.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- A specific rule has been enacted for companies or businesses that are below certain thresholds: they cannot be held liable for not paying rent and building charges that are due from March 12 to the end of a period of 2 months after the end of the “lockdown period”. The thresholds are relatively low and should only benefit small businesses that are strongly impacted. In particular, they require (i) either that the business activity was stopped by the authorities or that it suffered a loss of 70% of revenues, as well as (ii) various thresholds linked to the size of the business (e.g. less than 10 employees, less than 1 million EUR annual revenues). A tax incentive has been created for landlords in the form of a specific deductibility of rent waivers granted by lessors between 15 April 2020 and 31 December 2020.

## 6

### Litigation

Are the courts operating?

- Courts are operating and emergency regulation has made it easier to hold proceedings remotely, but in practice most courts had simply postponed all hearings and deadlines until further notice and focussed on extremely urgent matters. On a case by case basis, most courts are now organising hearings with or without oral hearing (when the parties agree to it) and sometimes via videoconference.

## 7

### Tax

Has any new legislation been introduced in light of Covid-19?

- Various measures have been adopted to postpone the payment of both taxes and social contributions, in principle for a limited period of a few months (but individual solutions can usually be negotiated with the authorities) without penalties. It has also been announced that the reimbursement of various tax credits would be accelerated. There are no general measures of tax exemption at this stage but such exemptions can be negotiated on a case by case basis in circumstances of severe financial distress.

## 8

### Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- Various legal deadlines applicable under company law have been extended by: (i) 3 months for the approval of accounts when accounts have not been approved before 12 March, (ii) 2 months for the documents to be submitted to the supervisory board per art. L225-68 of the French Commercial Code if the statutory auditor has not submitted his report before 12 March, (iii) 3 months for the liquidator to set the accounts of a company undergoing a liquidation, (iv) 3 months for submission of the financial report by companies who have benefitting from a public subsidiary, and (v) 2 months for companies who have to produce an assessment of assets and liabilities/a cash flow statement/a forecast estimated cash flow statement/a forecast estimated results accounts.
- The decree No. 2020-925 of July 29, 2020 provides that these measures are applicable retroactively since March 12 until November 30, 2020.
- Rules have been enacted in order to facilitate shareholder meetings and board meetings, in particular by allowing the use of written decision, videoconference systems, even when the bylaws do not provide for that possibility.
- The ordinance No. 2020-1497 of December 2, 2020 provides that these measures are extended until April 1, 2021.
- Limitation of payment of dividends: large companies who have benefited from State aids (taxa, social, etc.) as a result of Covid-19 shall commit not to pay dividends unless required by law.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Lending is available under a number of new schemes that have been introduced in Germany. These range from schemes for large corporations to schemes for SMEs, start-ups, micro-enterprises and self-employed individuals. Some of the most relevant schemes are:
  - The “**KfW Instant Loan**” – this scheme provides funding to medium-sized enterprises with more than 10 employees if the enterprise showed profits in 2019 or on average over the last three years. The credit volume per company is up to 25% of the 2019 turnover per business group but max. EUR 800,000 for companies with more than 50 employees, and max. EUR 500,000 for companies with up to 50 employees and a maximum of EUR 300,000 for companies with up to 10 employees. The company must not have been in difficulty as of 31 December 2019 and must have been in orderly financial circumstances at that time. Since 9 November 2020, the “KfW Instant Loan” is also available for self employed individuals and companies with up to 10 employees. Via the companies’ principal banks, the companies can apply for these KfW loans with an amount of up to EUR 300,000 depending on the turnover achieved in 2019. The federal government assumes the full risk for this and releases the house banks from liability. The KfW Instant Loan scheme is (currently) limited until 30 June 2021.
  - The “**KfW Special Programme**” – this scheme was designed for medium-sized enterprises and large companies and is now also available to companies of all sizes. It aims at mobilizing the willingness of companies’ principal banks to grant substantial amounts of loans to strengthen liquidity. Under this scheme, the German state-owned development bank KfW assumes up to 80% of the risk, but no more than 50% of the total debt for large-volume financing. KfW offers 90% risk assumption (indemnification) for small and medium-sized enterprises (up to 50 million annual sales, fewer than 250 employees) and 80% assumption (indemnification) for all enterprises above this limit. The indemnifications are backed by a full federal guarantee. The KfW risk share amounts to at least EUR 25 million and is limited to 25% of the annual turnover in 2019 or double the wage costs in 2019 or the current financing requirements for the next 12 months for large companies or for the next 18 months for small and medium-sized companies. The KfW Special Programme is (currently) limited until 30 June 2021.
  - The “**KfW Entrepreneur Loan**” – this scheme aims at companies that have been on the market for more than five years. The scheme shall increase their chances of being granted a loan commitment. If they apply for a loan for investments and working capital, the German state-owned development bank KfW assumes up to 80% of the bank’s risk for large companies and up to 90% of the bank’s risk for SMEs. Companies can apply for up to EUR 1 billion per company group. A similar program exists for companies that have been on the market for less than five years.
- State-owned banks also offer to guarantee loans provided to companies by their principal banks if the company has not been in financial difficulties. Guarantees may cover max. 90% of the loan risk, i.e., the companies’ respective principal bank must assume at least 10% of exposure.
- In addition to the programs of the federal government, each federal state has put in place accompanying programs to support regional businesses.
- To stabilise the real economy in times of the Covid-19 pandemic, the German parliament has established an Economic Stabilisation Fund (“**WSF**”) as a special fund. The WSF shall overcome liquidity bottlenecks and strengthen the equity base of companies. Instruments of the WSF are (i) guarantees for debt instruments in the amount of EUR 400 billion to bridge liquidity bottlenecks and support the refinancing of companies, (ii) EUR 100 billion to strengthen capital through equity investments in companies (recapitalisation measures) and (iii) EUR 100 billion to refinance KfW special programmes. Stabilisation measures under the WSF are possible until the end of 2021 and shall be the last resort.
- [Establishing an economic stabilization fund for the real economy.](#)

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- Employers may choose to temporarily reduce the working time of their employees if the company is affected by the corona crisis (e.g. if a company is closed down or if there are difficulties in the company due to missing orders or supplies). The remuneration of the employees will be reduced correspondingly. This measure shall avoid layoffs and enable companies to keep qualified workers during the crisis.
- Affected employees can receive so-called "short-time working allowance". This benefit must be applied for by the employer. If granted, the government will generally refund 60% (employees without children) or 67% (employees with children) of the difference between the regular net income and the reduced net income. The German government has introduced legislation to increase the short-time working allowance to 70% or 77% starting from the fourth month and to 80% or 87% starting from the seventh month. Due to new legislation, it is sufficient if at least 10% of the workforce are affected by short-time work.
- [FAQ short time work by corona.](#)
- The German government has passed legislation to facilitate access to the short-time working allowance. Also, the additional income opportunities during short-time work have been extended.
- [Coronavirus: FAQ Employment Law Part 3.](#)
- In case the government orders a (regional) quarantine, the employer pays the regular salary and the regional government will refund the money. After six weeks, the employees will receive sick pay by the government.
- [Coronavirus: FAQ Employment Law.](#)

## Insolvency

Has the government made any changes to insolvency legislation?

- The statutory obligation to file for insolvency within three weeks, after a state of insolvency has been reached, has been suspended for certain companies until 30 April 2021. The legislature's goal is to ensure that disadvantages are avoided for creditors who generously granted deferrals during the Covid-19 pandemic.
- The temporary suspension shall assist companies that have applied for financial aid but have not received it yet. An application for financial aid must have been filed between 1 November 2020 to 28 February 2021. In certain cases, the suspension also applies to companies if the application for financial aid has not been possible in the aforementioned period for legal or factual reasons. In addition, the application must have some prospect for success and the financial aid must be suitable for eliminating insolvency. Also, insolvency proceedings may not have been initiated up to 31 January 2021.
- Payments made by the debtor under the above conditions shall be deemed not to be detrimental to creditors.
- [Suspension of the obligation to file for insolvency until the end of April 2021 if government aid is requested until the end of February 2021; protection against contestation in the event of deferrals.](#)

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

- The German government introduced legislation that grants consumers and small companies the right to refuse performance of a contract (in particular payment) in order to protect them from financial hardship resulting from the measures taken to prevent the spread of infections. Small companies are those with less than 10 employees and less than EUR 2 million annual turnover.
- These measures generally require that it concerns claims from a continuing obligation established before 8 March 2020 which debtors are not able to fulfil due to the Covid-19 pandemic or, due to the Covid-19 pandemic, the fulfilment of such claims would endanger their means of subsistence or the economic basis of their business. At the same time, the creditor must not be unreasonably affected as a consequence. The right to refuse performance for consumers and micro-entrepreneurs, which affects, among other things, essential basic service contracts, was limited to the period from 1 April to 30 June 2020. This means that as of 1 July 2020, the addressees of regulation will no longer be able to defer their payments due to the Covid-19 pandemic and, in the event of non-payment, will be in default and may incur interest on arrears.
- The provisions do not apply to employment contracts, tenancy agreements and loan agreements.
- For consumer loan agreements concluded before 15 March 2020, lenders' claims for interest or repayment of instalments due between April and June 2020 were deferred for a period of three months from the due date if the borrower suffers a loss of income due to extraordinary circumstances caused by the spread of the Covid-19 pandemic which makes it inappropriate for the borrowers to fulfil their obligations. After expiry of this moratorium, the payment obligation will resume. As of 1 July 2020, the deferred monthly loan instalments must therefore be paid again unless consumers have agreed on a different solution with The individual payment dates as well as the end of the term of the loan will be postponed by three months in each case, unless the parties agree otherwise. The regulations are to apply to consumer loan agreements only. However, there is the possibility of extending the scope of application of the law by means of a statutory instrument to small companies as well.
- [Corona info – the legislator acts – we summarize for you](#)
- The Covid-19 pandemic will have a significant influence on how to draft force majeure clauses in the future. For more information, see [here](#).
- Contracts on the acquisition of German companies may in future not be closed anymore while investment control proceedings are still pending if the company is active in a certain sectors (e.g. health care) and a non-EU investor (directly or indirectly) acquires more than 10% of the voting rights. For more information, see our article '[Upcoming changes to German foreign investment control regime](#)'.
- For merger control filings, the review periods have been temporarily extended. For more information, see [here](#).

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- The German government had passed legislation that excludes terminations of tenancy agreements in the event of late payment of rent for the period from 1 April 2020 to 30 June 2020 if the failure to pay was due to the effects of the Covid-19 pandemic. The correlation between the failure to pay and the Covid-19 pandemic was not assumed but had to be shown credibly by the tenant. As of 1 July 2020, this legislation expired and is not applicable anymore. The German government did not make use of the possibility to extend the relevant period until 30 September 2020.
- The exclusion of termination ends on 30 June 2022, i.e. by this date the rent in arrears (including default interest) must be paid to avoid a termination. Other termination rights remain unaffected, i.e. the ordinary termination right for unlimited rental contracts as well as the extraordinary termination. For more information, please see [here](#).

## 6

### Litigation

Are the courts operating?

- In general, the courts are operating normally. Despite of social distancing and travel bans, court deadlines must be met and court hearings have to be attended.
- Currently, court hearings are often postponed due to the corona crisis. With the consent of both parties, the court may switch to written procedure in appropriate proceedings. Alternatively, if the necessary technical equipment is available, hearings may also be permitted via video conference without the consent of the parties. This is seen in practice more and more often.
- [Dispute resolution before state courts and arbitral tribunals in times of the Covid-19 pandemic](#)

## 7

### Tax

Has any new legislation been introduced in light of Covid-19?

- The German Federal Ministry of Finance and the supreme tax authorities of the federal states have issued decrees containing new guidance in light of the corona crisis.
- The tax authorities are instructed to make straightforward and quick adjustments of assessed tax advances upon request (trade tax, corporate income tax, income tax and VAT). On 22 April 2020, it was decided that, with immediate effect, small and medium-sized enterprises can apply to their competent tax office for a refund of amounts paid for 2019, in addition to advance payments already made for 2020, on the basis of a flat-rate loss for the current year. Until 31 December 2021, taxpayers may submit applications for adjustment of advance payments for 2021 income tax and corporate income tax, setting out their circumstances.
- Upon application and to the extent that tax payments cannot be made due to the effects of the Covid-19 pandemic, tax payments due are generally supposed to be deferred without interest until 31 December 2020. There are no tax deferrals for withholding taxes, in particular wage tax and capital gains tax. Companies could submit the application to their tax office until 31 December 2020. For 2021, further relief will be granted in principle with an application by 31 March 2021, and deferrals until 30 June 2021, as well as further extensions for follow-up deferrals. Deferral interest is not charged.

- The tax authorities have been instructed to suspend the enforcement of overdue tax debts (corporate income tax and income tax). Enforcement and late payment penalties for taxes due by 31 March 2021 will be waived until 30 June 2021 if the debtor of a due tax payment is directly and not insignificantly affected by the impact of the Corona pandemic. This relates to income tax, corporate income tax and sales tax. Late payment surcharges incurred as a matter of law shall be waived.
- The regular German VAT rate was cut from 19% to 16% for the period starting from 1 July 2020 until 31 December 2020. The reduced VAT rate was cut from 7% to 5% for the same period.
- VAT on restaurant meals and other food in the catering industry is reduced from 19% to 7% since 1 July 2020 for a limited period until 30 June 2021.
- SMEs may offset expected losses against advance tax payments already made for 2019.
- [Measures under German tax law to create or preserve liquidity.](#)

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- For stock corporations, the German government has passed legislation that allows Annual General Meetings (AGMs) to be held electronically in 2020 and 2021. Numerous small and large stock corporations are already using this possibility.
- There are two options for this: Either a physical meeting can be held with the option of shareholders attending electronically and casting their votes electronically or by letter. Alternatively, a completely virtual AGM can be convened without any shareholders being present. For more information, see our articles "[Special provisions for the current crisis: emergency legislation for general meetings 2020](#)" and "[The extension of the COVID-19 regulations for virtual shareholders/general meetings until the end of 2021 is certain](#)".
- For limited liability companies, the German government has introduced legislation to facilitate the adoption of shareholder resolutions by way of circular resolution. In deviation from the previous position, the possibility is created for the limited liability company to enable a resolution to be adopted in writing even without the consent of all shareholders. Online shareholders' meetings continue to be possible only if all shareholders agree.
- [Facilitations for circular resolutions in the GMBH by the Covid Mitigation Act – overview and open questions.](#)

1

## Loans and financial support

Has the government put in place any new bank funding schemes?

- In the first lockdown period, the States of Guernsey agreed to underwrite 80% of any qualifying loan made by participating banks to any trading business with less than GBP 10 million turnover. This scheme closed on 31 December 2020 and there is no suggestion it will be reopened.
- Businesses regulated by the Guernsey Financial Services Commission (GFSC) were excluded.

2

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The initial payroll co-funding scheme was similar to the UK's and gave employers and the self-employed in certain sectors co-funding payments where they could show their turnover had fallen below certain thresholds. This scheme has been re-introduced in respect of the latest lockdown.
- Other measures to support business include small business grants and the deferral of Social Insurance contributions, local business rates and rent owed to States entities.
- There are also measures to support individuals such as a hardship fund.
- Please follow these links for the most up to date information on financial and business support:
  - [Business support and guidance](#).
  - [Financial support for individuals](#).

3

## Insolvency

Has the government made any changes to insolvency legislation?

- No changes are likely to be made to Guernsey's insolvency laws, in particular regarding wrongful trading. It should be noted that Guernsey's wrongful trading provisions are somewhat more relaxed than the UK equivalent in any event. Once a director concludes (or ought to have concluded) that there was no reasonable prospect of the company avoiding insolvency winding up, the director has a duty to take every step to minimise losses to creditors "he ought reasonably have taken". The Guernsey test introduces a reasonableness qualification on the every step test not expressed in the UK statute.
- Significant amendments to the insolvency laws were passed by the States of Guernsey in January 2020 and are expected to come into effect shortly.
- [Changes to Guernsey's Insolvency Regime](#).

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The Guernsey government has not introduced any legislative measures to deal specifically with contractual issues caused by the Covid-19 pandemic. Any contractual concerns will be dealt with according to Guernsey contract law.
- The main contractual provision which governs the enforceability of a contract upon the existence of an unforeseen event is the force majeure clause. In general terms, the force majeure clause seeks to list the situations in which the parties to a contract may suspend or terminate the contractual relationship due to the occurrence of certain events that are outside the control of the parties.
- Depending on the construction of the force majeure clause in individual contracts, the Covid-19 pandemic may cause the contract to be suspended or terminated.
- Businesses should review their existing contractual relationships and seek legal advice to ensure they are aware and fully understand their ongoing legal obligations and identify any areas of uncertainty.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- No.

## 6

## Litigation

Are the courts operating?

- Royal Court trials and similar matters are being considered on a case by case basis and more urgent matters can be heard virtually.

## Tax

Has any new legislation been introduced in light of Covid-19?

- No.
- See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Guernsey Corporate Registry is operating entirely by email and therefore response times and some services are restricted.
- The GFSC has simplified some of its measures to reflect the changed environment including allowing more time (in addition to the extension granted in the first lockdown) for certain regulatory returns – see '[Commission allows more time for Firms to complete Key Financial Returns](#)' and more flexibility on verifying client identities remotely – see '[Can video calling be used to verify the identity of individuals](#)'.
- In addition, the GFSC has issued guidance on what considerations it would expect licensees to have regard to if their business model were to place greater focus on working from home either temporarily or permanently. See the [Remote working business model](#).
- The Data Protection Commissioner has assured business that it will respond pragmatically to the new challenges arising – see its update [here](#).
- The Guernsey Revenue Service has delayed the deadline for income tax returns until 31 March 2021 – this second extension was granted swiftly after the second lockdown began.
- For guidance on corporate formalities in a world without face to face meetings, see our updates on '[Overcoming Barriers to Completion of Transactions amidst Covid-19 Challenges](#)' and '[ICSA Guidance on holding virtual board meetings](#)'.
- Mourant has produced a [briefing](#) regarding regulatory considerations for licensed financial services businesses in the Channel Islands when responding to the Covid-19 outbreak.
- All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

Yes. The Covid-19 crisis has prompted the Irish Government to announce a range of supports for impacted businesses and individuals who are experiencing financial difficulties during the Covid-19 pandemic. The range of measures introduced by the Irish Government include the follows.

- **The Strategic Banking Corporation of Ireland (“SBCI”) Covid-19 Working Capital Loan Scheme (the “Irish Liquidity Scheme”)** – the Irish Liquidity Scheme is designed to support lending to Irish small and medium enterprises (“SMEs”) only and is not available to larger firms. Loans under the Irish Liquidity Scheme (the “Loans”) can be provided to SME’s to fund future working capital requirements in order to mitigate the impact of the pandemic. The Loans will be available through Allied Irish Banks, p.l.c., Bank of Ireland and Ulster Bank in amounts of between €25,000 and €1.5 million per eligible enterprise, with a maturity of between one and three years. In addition, the Loans will bear a fixed rate of interest negotiated with the lending bank, subject to a maximum of 4% per annum. For Loans of up to €500,000, no security will be required, however any Loans in excess of this amount will require collateral to be posted. The SBCI has stated that a three month interest only option may be available for the initial period of the Loan (depending on the lender’s assessment of the relevant application). For more information on the Irish Liquidity Scheme, please see our recent article available [here](#).
- **Future Growth Loan Scheme (“FGLS”)** – the FGLS was originally established in June 2019 via the SBCI to support the development of SMEs and businesses in the agri sector. In light of the pandemic, the FGLS has recently received a boost of €500 million in funding from the Department of Business Enterprise and Innovation which will be released in tranches to provide long-term loans to businesses impacted by Covid-19. Loan amounts will range from €25,000 to a maximum of €3 million per applicant. In addition, loan terms will range from seven to ten years and loans of up to €500,000 can be unsecured. Interest-only repayments may be available at the start of the loan and interest rates will be capped at 4.5%. Close Brothers and KBC Bank are currently accepting loan applications for the FGLS from businesses meeting SBCI eligibility.
- **The Covid-19 Credit Guarantee Scheme (the “Covid-19 CGS”)** – the Irish Government has repurposed an existing SME Credit Guarantee Scheme which has been in place in various forms since 2012. Under the Covid-19 CGS, the Irish Government will guarantee up to €2 billion of loans provided by Irish banks to SMEs whose businesses have been impacted by the pandemic. The Covid-19 CGS will be available to certain SMEs established and operating in Ireland through a range of financial providers in the form of a State guarantee to the relevant bank against 80% of losses. Loans of €10,000 up to €1 million will be made available for terms of up to five-and-a-half years. It may also be possible to avail of a three to six month interest only period. The Covid-19 CGS has now been brought into law through the enactment of The Credit Guarantee (Amendment) Act 2020. The Covid-19 CGS will be available until the end of June 2021 on a first-come, first-served basis.
- **Microfinance Ireland Covid-19 Business Loan (the “MFI Business Loan”)** – the MFI Business Loan is a Government initiative to support small businesses through the current period of uncertainty and to protect job creation or sustainment in Ireland. The maximum MFI Business Loan available from [Microfinance Ireland](#) has been reduced back down to €25,000 from the previously increased amount of €50,000 by the Government for this phase of the fund. It is still available to specifically deal with exceptional circumstances that micro-enterprises – (sole traders and firms with up to 9 employees) – are facing in order to alleviate the financial pressures arising from Covid-19. In addition, the terms of the MFI Business Loan include a six-month interest free period and a repayment moratorium of up to six months, with the loan then repayable over the remaining 30 months of the 36-month loan period at an interest rate of between 4.5% and 5.5%.

- **Enterprise Ireland Supports** – the Department of Business, Enterprise and Innovation has implemented a €200m package for Enterprise Supports including a Rescue and Restructuring Scheme available through Enterprise Ireland for vulnerable but viable firms that need to restructure or transform their business. In addition, Enterprise Ireland has created a new €180m Sustaining Enterprise Fund (“SEF”) in order to provide manufacturing and internationally traded services companies with capital to help stabilise and rebuild their businesses. The Irish Government has recently approved an additional €90m funding for the SEF, which offers funding of up to €800,000, with €200,000 or 50% in non-repayable grants to eligible manufacturing and internationally traded services companies.
- **Covid-19 Business Aid Scheme (“CBAS”)** – the CBAS was recently launched by the Irish Government in February 2021 and provides grants to self-employed, sole traders, partnerships and companies with a minimum annual turnover of €50,000. In order to qualify for the CBAS, applicants must be ineligible for the Covid-19 Restrictions Support Scheme and the Fáilte Ireland Business Continuity Scheme and have a reduction in turnover of at least 75%. For example, wholesalers, caterers and event suppliers who operate from a building, or similar fixed physical structure on which business rates are payable but which are not open to the public are eligible;
- **Covid-19 Restrictions Support Scheme (“CRSS”)** – the CRSS was introduced to support businesses significantly affected by restrictions introduced to combat the Covid-19 pandemic and applies when Level 3 or higher restrictions are in place. In order to qualify for the CRSS, the relevant business must have been required to prohibit or considerably restrict customers from accessing their business premises. Eligible businesses can make a claim to Revenue for a payment known as an Advance Credit for Trading Expenses (“ACTE”). The ACTE is equal to 10% of the average weekly turnover of the business in 2019 up to a €20,000 limit, plus 5% on turnover over €20,000. The ACTE is payable for each week a business is affected by the restrictions and is subject to a maximum weekly payment of €5,000. The CRSS is expected to be in place until the end of June 2021;
- **Pandemic Stabilisation and Recovery Fund (“PSRF”)** – the PSRF is a €2 billion fund administered by the Irish Strategic Investment Fund to support medium and large enterprises in Ireland "materially impacted" by Covid-19. The PSRF will focus on investment in large and medium enterprises employing more than 250 employees or with an annual turnover in excess of €50 million. Aside from material impact, enterprises must be able to demonstrate that their business was commercially viable prior to Covid-19, and they can return to viability and contribute to the Irish economy.
- **Restart Grant Plus (the “Scheme”)** – the Scheme provides grants between €4,000 and €25,000 to businesses to aid them with costs associated with reopening and reemploying workers following Covid-19 closures. The Scheme replaces and supersedes the existing restart grant schemes (which previously provided grants between €2,000 and €10,000). The Scheme will be available to businesses with a turnover of up to €25 million, with a cap of €100,000 turnover per employee, and employing 250 people or less, which were closed or impacted by at least a 25% reduction in turnover. The Scheme is a contribution towards the cost of reopening or keeping a business operational following the pandemic. In addition, eligible businesses in Kildare, Laois and Offaly affected by the previous increase in Covid-19 restrictions that are eligible for the scheme will be entitled to a 20% top-up with businesses in Kildare to receive a further 20% top-up, equivalent to a 40% uplift overall. This 40% increase will also be available for pubs, bars and nightclubs who have had to remain closed with eligible businesses in Dublin being entitled to a 30% top-up. The Scheme has now been made available to previously precluded ratable sports businesses, trading charity shops, the hospitality sector and tourist attractions, as well as non-rated B&Bs being eligible for the minimum grant of €4,000. Applications for the Scheme closed on 31st October 2020.
- **A 6-month VAT reduction** – there will be a temporary reduction to the standard rate of VAT in Ireland from 23% to 21%. This 2% temporary reduction in the standard rate of VAT is effective from 1 September 2020 for a six month period to 28 February 2021.
- In addition to the above, a range of measures have also been agreed between the Irish retail banks and the Irish Government as follows:

- **A 6-month payment moratorium** – banks, credit unions, retail credit firms and credit servicing firms will grant payment breaks on mortgages, personal loans and business loans for those businesses and individuals experiencing financial difficulties caused by Covid-19. Following ongoing discussions with the Central Bank of Ireland ("CBI"), the Banking & Payments Federation Ireland have extended the original 3-month payment moratorium to six months, which coincides with the majority of the EU and the EBA guidelines. On 8th June, 2020, the CBI sent a [‘Dear CEO’ letter](#) to CEOs of regulated firms that previously granted payment breaks of up to six months to borrowers affected by the pandemic. The [‘Dear CEO’ letter](#) outlines the CBI’s expectations of regulated firms when dealing with borrowers in respect of Covid-19 payment breaks. It also includes the information that should be provided to borrowers regarding Covid-19 payment breaks. As of now, Irish banks are not offering a system-wide right to payment moratoriums, although borrower can be offered breaks according to their individual circumstances.
- **Extensive supports for SME customers** – banks are working to ensure that a wide range of measures are made available to businesses who are trying to manage the financial pressures arising from Covid-19. The measures include the provision of cash flow and credit facilities as well as supply chain supports.
- **A customer focused approach** – banks have committed to providing suitable tailored supports for business including the extension of credit lines, risk guarantees and trade finance.

These supports are intended to complement the range of Government supports, including the Irish Liquidity Scheme detailed above. For more information, please see our recent articles listed here: The ABC and DE of Emergency Liquidity Solutions (available [here](#)), Covid-19: Range of Banking Measures announced due to the Pandemic (available [here](#)), Government Funding Supports for Businesses Impacted by the Covid-19 Pandemic (available [here](#)), and Update: Additional Government Funding Supports for Businesses impacted by Covid-19 (available [here](#)).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

**Employment Wage Subsidy Scheme:** The Employment Wage Subsidy Scheme (EWSS) provides a flat-rate subsidy to qualifying employers based on the numbers of eligible employees on the employer’s payroll and is expected to continue until 31 March 2021. Detailed information in relation to the operation of the scheme can be found on the Revenue website [here](#).

**Covid-19 Pandemic Unemployment Payment (PUP):** This is a payment which is available to employees who either lost their job entirely or were temporarily laid-off, on or after 13 March 2020, as a result of the Covid-19 pandemic. The PUP is also available to self-employed individuals whose trading income has ceased due to Covid-19. From 16 October 2020, the PUP has been divided into 3 categories depending on the amount that the employee used to get paid. The scheme is expected to remain in place until 30 June 2021. Further information can be found on the Revenue website [here](#).

**Return to Work Safely Protocol:** The government has issued a set of guidelines or protocols to enable people to return to work. These are available [here](#). The Health and Safety Authority has also published various templates and checklists to assist employers in complying with the Protocol. Those are available [here](#). Employers need to be aware that they will continue to be bound by their usual obligations as regards the safety and health of their employees (or other visitors to their premises).

[The Workplace Relations Commission](#), which is the forum of first instance for most employment law matters, has postponed all face-to-face Adjudication Hearings, Conciliation Meetings and Mediations for the foreseeable future in response to the reintroduction by the Government of level 5 restrictions for Covid-19. Where in-person services had been scheduled for a future date parties will be offered a virtual service, including remote hearing of adjudications using the Webex platform. Virtual services that were already scheduled will continue to proceed. In the meantime, the WRC remains open - complaints can be submitted electronically or by post and a telephone mediation service is operating. See the WRC’s visitors’ guidance notes [here](#).

- **Lay-Offs and Short Time:** The Government suspension of redundancy provisions in relation to temporary lay-offs and short time during the Covid-19 emergency period has been extended until 31 March 2021. This suspension means that an employee who has been laid off or kept on short-time due to the effects of measures required to be taken by his or her employer in order to comply with government policy to prevent, limit, minimise or slow the spread of infection of Covid-19 cannot give notice of his intention to claim redundancy during that period.
- **Enhanced Illness Benefit:** Employees or unemployed people who receive medical certification that they are unable to work due to a diagnosis of Covid-19, or that they have been instructed to self-isolate, may avail of an enhanced illness benefit of €350 per week. Further information in relation to this benefit can be found [here](#).

## 3 Insolvency

Has the government made any changes to insolvency legislation?

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020, which came into effect on 21 August 2020, has implemented the following changes in the area of insolvency during the “interim period” (which is currently until 9 June 2021):

- (i) **Insolvency:** A company will be deemed to be unable to pay its debts during the interim period, if it fails after 21 days’ notice to pay a debt of €50,000. (In the ordinary course of events, a single debt of €10,000, or aggregate debts of €20,000 would be sufficient).
- (ii) **Examinership:** The duration of the examinership process has been extended by an additional 50 days during the interim period if the examiner has been unable to make his report within the usual 100 days and if “exceptional circumstances exist in respect of the company”.
- (iii) **Meetings of Creditors:** much like virtual board meetings, the liquidator of an insolvent company is given discretion to conduct a meeting of creditors at a physical venue or wholly or in part as an electronic meeting, provided that all attendees have the ability to participate in the meeting. The Act sets down specific information that must be provided to shareholders in the notice of the meeting.

There have also been some changes to legislation in other areas such as, for example, landlord / tenant or employment law that will impact on insolvency practitioners, particularly receivers and liquidators, during this emergency period.

## 4 Contractual Issues

What measures have been taken to reinforce contracts?

There has been no recent legislative intervention in respect of the reinforcement of contracts and the usual contractual rules apply.

Due to the disruption caused by the Covid-19 outbreak and the extensive Government restrictions, many businesses, as a precautionary measure, may wish to review their current contracts in order to determine whether they are protected or can avail of some form of relief, in case they are unable to perform their obligations. Such relief may take the form of a force majeure clause within a contract or relying on the doctrine of frustration if the circumstances permit.

Force majeure clauses are interpreted strictly by the Irish courts, so businesses should evaluate the contents of their clauses in key contracts with their legal advisor in order to ascertain whether they cover the current Covid-19 crisis.

In the absence of a force majeure clause, parties may wish to consider the doctrine of frustration as a possible form of relief, however, the threshold for frustration is extremely high in Ireland and the scope of events which may trigger the doctrine are extremely narrow. Seeking legal advice is recommended.

While a force majeure clause or the doctrine of frustration may, in certain circumstances, be relied upon, we would recommend that businesses first discuss potential commercial workarounds with their contracting partners before attempting to rely on any such forms of relief. For more information, please view [here](#).

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

The outbreak of Covid-19 has resulted in the introduction of the Health (Preservation and Protection and Other Emergency Measures in the Public Interest Act) 2020 Act in Ireland which together with other emergency legislation has had a wide ranging effect on Real Estate transactions in Ireland. We consider certain elements below.

- In Ireland many commercial tenants are no longer able to operate, however leases continue and the obligations of tenants remain. Many tenants have requested a temporary adjustment to the rent payable under their leases, including rent holidays or deferment. A commentary on the current position regarding the collaborative approach required and the possibility of tenants extracting themselves from commercial leases is [here](#).
- The main statutory interventions in the context of real estate have been in relation to residential property which arise primarily from the enactment of the Emergency Measures in the Public Interest (Covid-19) Act 2020. A commentary on the current position for Residential Leases and the legislative amendments is [here](#).
- The construction industry has been severely affected and all construction sites, save those associated with the provision of essential services, have been closed since 27 March 2020. The following article reviews the impact and considerations, from the perspective of the construction sector, arising from the Health (Preservation and Protection and Other Emergency Measures in the Public Interest Act) 2020 Act: [Construction contracts – Covid-19 impacts and considerations](#).

## 6

## Litigation

Are the courts operating?

After a period of gradual re-opening up to January 2021, the Irish Courts have again introduced enhanced Level 5 protocols in response to Covid-19 which are expected to remain in place until at least 15 March 2021. The following is a broad summary of the current position:

- Remote hearings will continue and be extended across the various courts.
- Urgent civil applications will continue to be dealt with subject to strict compliance with all applicable health and safety protocols including physical distancing and wearing face masks. Persons who are required to physically attend court or a court office are regarded as travelling for essential purposes and may travel beyond the currently mandated 5km for that purpose.
- No civil jury actions will take place prior to 12 April 2021.

- Criminal trials due to commence in the Central and Circuit Courts will not start, with the exception of single person trials in the Special Criminal Court which may commence from 1 March 2021. Priority will be given to urgent matters.
- Court offices will continue to accept documents by post, DX, drop-box and e-filing depending on the jurisdiction. An appointment is required to physically attend at court offices.

The situation is very fluid and will continue to be reviewed on a week-by-week and court-by-court basis. Updates may be found on the Courts Service website [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- Irish Revenue introduced an employment wage subsidy scheme ("EWSS") from 1 July 2020 which ran alongside the temporary wage subsidy scheme ("TWSS"), discussed below, until 31 August 2020. From 1 September 2020, the EWSS replaced the TWSS. The EWSS was expected to run until 31 March 2021 but it was announced that the employer supports would continue until the end of 2021. To qualify, employers must be able to demonstrate that their business will experience a 30% reduction in turnover or customer orders between 1 January and 31 July 2021 and this disruption is caused by Covid-19. This reduction is relative to the same period for 2019 where the business operated for the whole of the comparative period in 2019, the date of commencement to 30 June 2019 where trading commenced between 1 January and 1 May 2019 or where a business commenced after 1 May 2019, the projected turnover or customer orders. The scheme also previously applied to the same 30% reduction between 1 July 2020 and 31 December 2020. Under the scheme, a subsidy can be claimed in respect of eligible employees of an impacted business on the payroll. The scheme provides a flat-rate subsidy to qualifying employers based on the numbers of eligible employees on the employer's payroll. Employees are eligible if they are in receipt of weekly gross wages between €151.50 and €1,462. New hires and seasonal workers are eligible and claims can be backdated to 1 July 2020. The scheme will operate on a self-assessment basis with income tax being deducted at payroll. As at 18 February 2021, 48,600 employers are registered for the EWSS and over 526,800 employees had received at least one payment under the EWSS.
- The TWSS enabled certain employers to retain certain staff while at the same time paying staff nothing or a top-up on the Revenue subsidy paid by the Irish Revenue. The scheme operated until 31 August and from 4 May was based on each employee's normal net weekly pay. The subsidy payment is not subject to income tax through payroll but is taxed at year end. In total, 69,500 employers registered for the TWSS and over 663,100 employees had received at least one payment under the TWSS.
- Irish Revenue have introduced temporary income tax relief for self-employed individuals including claims to have their 2020 losses and certain unused capital allowances carried back and deducted from their profits for the year of assessment 2019, subject to a €25,000 limit. There is also an acceleration of the relief allowing self-employed individuals to make interim claims based on the estimated amount of relief available to them.

- Irish Revenue have also introduced a COVID Restrictions Support Scheme (“CRSS”) aimed at businesses impacted by Covid-19 restrictions, such that the business is required to prohibit or considerably restrict customers from accessing its premises. Businesses can make a claim to Revenue for a payment equal to 10% of their average weekly turnover in 2019 up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000, for each week that it is affected by the restrictions. As at 18 February 2021, 20,200 businesses have registered for CRSS.
- The standard VAT rate in Ireland will be reduced from 23% to 21% from 1 September 2020 with the rate reverting back to 23% from 1 March 2021.
- SMEs experiencing cash flow and/or trading difficulties can defer payment of March/April 2020 and May/June 2020 VAT returns (due on 23 May 2020 and 23 July 2020, respectively) and April, May and June 2020 payroll taxes. Non-SMEs are being encouraged to talk to Revenue with a view to similar deferrals if experiencing similar cash flow issues. All debt enforcement activity in respect of SMEs is suspended until further notice.
- Irish Revenue will warehouse unpaid VAT, payroll taxes, self-assessed income tax amounts and TWSS overpayments arising from the Covid-19 crisis. These tax debts will be parked for 12 months after a business resumes normal trading. A lower interest rate of 3% (normally 10%) will apply on the repayment of such debts after this period. The arrangements will ring-fence the debts for the period during which the business is unable to trade or is trading at significantly reduced levels and includes a 2 month period after the business returns to normal trading levels. No interest or debt enforcement will occur with respect to the warehoused debts. The legislation enacting this measure is now in place. As at 13 January 2021, approximately 70,000 businesses are availing of the scheme.
- Revenue has suspended tax audit and other compliance intervention activity on taxpayers' premises until further notice.
- Revenue has indicated that it will continue to prioritise the approval and processing of tax repayments and refunds to taxpayers.
- For income tax purposes, an individual will not be regarded as resident in Ireland where they spend additional days in Ireland due to the pandemic.
- For corporation tax purposes, an individual will not be regarded as resident in or outside of Ireland for a company of which they are an employee, director, service provider or agent where they spend additional days in or outside of Ireland due to the pandemic. See more information [here](#).
- Revenue have subsequently updated the above concession to exclude anyone who travelled to Ireland on or after 6 May 2020 as the occurrence must not have been reasonably foreseen and would not be considered a force majeure circumstance from this date.
- Corporation tax returns for accounting periods ending 30 June 2019 onwards (i.e. due by 23 March 2020 onwards) will not be subject to a late filing surcharge until further notice and late filing due to Covid-19 will not result in the usual restriction of reliefs, such as loss and group relief. In addition, various other tax filing deadlines have been extended, in particular in respect of employer returns regarding certain benefits supplied to employees (such as employee share schemes).
- Irish Revenue have introduced a temporary acceleration of corporation tax loss relief for accounting periods affected by Covid-19. It allows companies to estimate their trading losses for certain accounting periods and to carry back up to 50% of those losses against chargeable profits of the preceding accounting period on an accelerated basis.
- Close companies with accounting periods ending from 30 September 2018 onwards are required to make distributions by 31 March 2020 onwards to avoid a close company surcharge. These companies can apply to extend the 18-month distribution period by 9 months where the company is affected by Covid-19 and needs to retain cash to support the business.

- The reporting deadline for DAC2, CRS and FATCA returns has been extended by 3 months to 30 September 2020 for the 2019 period.
- Irish Revenue have confirmed that Ireland has opted-in to Council Directive 2020/876 to [defer the reporting and exchange of information deadlines under DAC6](#) by 6 months.
- Employers can pay remote workers up to €3.20 per day without deducting income tax to cover electricity, heating and broadband costs. Employees working from home can claim Remote Working Relief to cover a portion of such costs where their employer does not make the above payment.
- A benefit-in-kind will not arise for employees where employers:
  - provide employees with equipment to allow them to work remotely,
  - reimburse flight or holiday cancellations for employees integral to the business until 30 December 2020, or
  - Supply temporary accommodation to employees to mitigate the risk of transmission.
- Due to Covid-19 circumstances, some private healthcare providers may issue a fund of healthcare insurance premiums to an employer/employee and individual policy holders who have personally paid for the policy. The amount taxed as a benefit-in-kind will be reduced to reflect the reduced policy amount.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

In an effort to address the practical difficulties arising from the Covid-19 pandemic, the Irish Government has passed the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (“Act”), which was commenced by the Minister for Business, Enterprise and Innovation on the 21st August 2020. The Act is in force for an “interim period”, initially ending on 31 December 2020, but has been extended by S.I. No. 672/2020, Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2020 to 9 June 2021. The provisions of the Act complement the Covid-19 Workplace Protection and Improvement Guide, which provides recommended practices for the use of technology for video/ virtual meetings and limiting the number of meetings including length and proximity of gathering of employees and others.

### Virtual Meetings:

- A company may hold a general meeting remotely through the use of any technology provided the members can vote and participate in the meeting. However, there is no longer a need for a physical location to be specified in order to hold a meeting. All general meetings for the interim period can be conducted wholly or partially remotely provided attendees have the ability to vote and otherwise participate in the meeting.
- Board meetings are also capable of being convened through electronic means or by passing a written resolution.

**Proxies:** Members are also allowed to appoint another person to vote on their behalf as a proxy. The use of these methods is subject to the provisions found in the company’s constitution. Some constitutions may expressly forbid their use. Notwithstanding anything in the company’s constitution, each member and proxy who participates in a general meeting by electronic means will be counted in the quorum.

**Time Restrictions:** Another change introduced by the Act is the requirement to hold a general meeting within 15 months of the previous AGM (as was required under the Companies Act 2014). The Act provided that an AGM that was due to be held in the interim period may be held on any date up to 31 December 2020, regardless of whether the AGM falls outside the 15 month requirement. Importantly however, this deadline has not been extended to 9 June 2021 and so companies must comply with the statutory requirement to hold an AGM within 15 months of the last one and not later than nine months after the company's financial year end.

**Cancel/Postpone:** Directors of a company can (i) cancel, (ii) change the date or venue, or (iii) change the meeting from a physical to virtual setting (or vice versa), up to the day before the schedule date of the meeting. In exceptional and unexpected circumstances, the meeting may be cancelled at any time prior to holding the meeting. Where it is not possible to give notice of a cancelled/rescheduled meeting, the company may give notice on (i) its website, (ii) by email and (iii) by advertising in a national newspaper. Single member companies and private companies limited by shares may also dispense with the need to hold a general meeting by passing a written resolution.

**Notices:**

- While notice periods for general meetings remain 21 days, where it is being held electronically the notice is required to include details of (i) the electronic platform being used, (ii) the procedure for asking questions during the meeting, (iii) restrictions in place to identify attendees at the meeting, and (iv) procedure for voting.
- Other changes introduced by the Act include:
  - Financial statements - The requirement that financial statements be made to up to a date no earlier than 9 months before the AGM will not apply to an AGM held within the interim period, meaning that the AGM may be held more than 9 months later than a company's financial year end.
  - Dividends - The Act further provides that where a company has previously recommended a dividend, such recommendation may be withdrawn or amended by the directors if after convening the meeting they believe that the consequences or fallout of Covid-19 on the affairs of the Company, would justify such actions.

For more information click [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

Following the initial outbreak of the pandemic, the Israeli government has declared several support initiatives in an aggregate amount exceeding NIS 100 billion. These support initiatives included government-backed loans, governmental grants to businesses implementing social distancing and innovative communication technologies, deferral of tax payments, and cancellation of municipal and other taxes.

Specifically, the government had initially allocated up to NIS 22 billion, which later increased to NIS 40.3 billion, to support loans for businesses by providing funding entities with a guarantee for 95% of any loan amount provided. These monies were and continue to be provided through the government's already existing fund for supporting small-medium businesses, operated by the Ministry of Finance, and are not time-limited.

The funding scheme is divided into two main routes (with a slight overlap between the two). The first route is designated for small-medium entities (SMEs) whose turnover did not exceed NIS 400 million in the previous year. The second route is designated for large entities (LEs) whose turnover exceeded NIS 200 million in the previous year. By December 2020, of the NIS 40.3 billion more than NIS 23 billion had already been approved for more than 57 thousand loan applications.

Under the SME route, each SME may request a loan of up to 40% of its previous year's turnover, limited to up to NIS 20 million. Under the LE route, each LE may request a loan of up to 8% of its previous year's turnover, limited to up to NIS 100 million (while for hi-tech companies the 8% may be based on the company's costs, other than financing costs). The loans for SME's are provided with attractive interest for a period of 10 years, while the loans for LE's are provided with attractive interest for a period of up to five years, with each entity also allowed a 12-month grace period on loan repayment. The government further undertook to finance for SMEs any interest due on the loan during the first 12 months. The loans are also made available to new businesses, who can receive up to the lower of NIS 500 thousand or 16% of their costs.

As a precondition to receipt of the loans, all borrowing entities are required to demonstrate that they experienced cash-flow difficulties due to the Covid-19 pandemic, as well as to provide the financing entities with a deposit equal to 5% of the loan.

The government has also increased the funding of several government aided programs and agencies, such as the Israeli Innovation Authority, aimed at the advancement of advanced technologies to help stimulate the hi-tech industry, and to address the shortage of skilled manpower therein.

Another manner in which the government has provided financial support was through easing of regulations on the banks as well as grant of loans at low interest rates by the Bank of Israel to the banks. One such change in regulation included allowing the banks to reduce their leverage ratio by 0.5%, thereby allowing the banks more freedom in granting loans.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

Encouragement Grant Law, 2020 was passed, enabling employers who recruited or returned to work a "qualifying employee" to be eligible for a grant. A grant of NIS 3,500 will be paid (in monthly installments of NIS 875) if the "qualifying employee" returned to work or was recruited before June 1, 2020. A grant of NIS 7,500 will be paid (in monthly installments of NIS 1,875) if the "qualifying employee" returned to work or was recruited after June 1, 2020.

A "qualifying employee" is an Israeli resident whose monthly salary is at least NIS 3,300 and to whom one of the following applies:

- he/she is between 18 years old and 67 years old,
- one of the following applies:
  - he/she was discharged to unpaid leave between March 1, 2020, and April 30, 2020, or was on parental leave during the aforementioned period, or
  - he/she was eligible for an adjustment grant or income security benefit or unemployment benefit for May 2020.

There have been no extensions of or additions to this law, and the window for placing requests for such grants closed on January 31, 2021.

Eligibility for unemployment benefits has been extended to 30.6.2021 for individuals who were furloughed or dismissed, and who fall into one of the following categories:

- Individuals whose eligibility for unemployment ended on or after 1.3.2020, or
- Individuals whose eligibility for unemployment ended before 1.3.2020, and who stopped working between 1.3.2020-30.6.2021, or
- Individuals whose eligibility for unemployment ended in January or February 2020.

The National Insurance Institute is providing grants to individuals that return to work after having been furloughed or dismissed. Those who return to work for their previous employer or begin working for a new employer for a salary lower than their salary prior to furlough or dismissal are eligible for the grant. So long as they remain employed, individuals may receive the grant for a period of up to four months, from the date of return to work and no later than June 30, 2021.

The grant is calculated per day of work (up to a cap of NIS 200 per day). The size of the grant is determined by an individual's previous salary and their new salary upon return to work. There are separate calculation schemes for those under age 28 and those age 28 and above.

To be eligible for the grant, an individual must meet all of the following criteria:

- The individual was not employed between the dates August 8, 2020 to October 31, 2020 (inclusive);
- The individual received at least 75 days of unemployment insurance, between the March 1, 2020 and October 31, 2020 (whether paid consecutively or not);
- The date the individual returned to work was between November 1, 2020 and February 28, 2021.
- The individual returned to work as an employee for at least 14 days (consecutive or not).

Additionally, the National Insurance Institute has paid one-time grants in an amount of NIS 2,000 to lower-income individuals who received unemployment insurance based on low income for an extended period of time. Individuals were eligible for said grants if the following two criteria were met:

- The individual received unemployment insurance for at least 100 days (consecutively or not), between the March 1, 2020 and October 31, 2020;
- The individual's average daily wage was less than NIS 422.04.

The grants were to have been automatically transferred to eligible individuals by the middle of December, 2020. Additional grants of this type have not been administered.

Finally, although not immediately in the realm of employment, it is important to note that this past summer the government issued one-time grants to all citizens and residents of Israel, as follows:

- 750 NIS to all adults
- An additional grant paid to parents of minors:
  - 500 NIS for each child, up to and including the fourth child
  - 300 NIS for each additional child after the fourth
- Those who are eligible for national insurance benefits (such as supplemental security income or alimony) are eligible for an increased grant of 1,500 NIS
- Individuals whose yearly income in 2019 was above 649,560 NIS (gross) are ineligible for the grant

While there are currently government-level discussions concerning another grant payment, no decision has been made regarding additional individual grants.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

Israel's insolvency legislation has not changed during the Covid-19 pandemic. However, during the month of July 2020, the Israeli Ministry of Justice introduced a draft bill for new regulations, allowing a company additional time to reach an agreement with its creditors. Under the proposed new regulations, courts will have the option to order a stay of proceedings for a period of up to three months for a company experiencing difficulties, prior to declaring such company insolvent. This three-month period will allow the company to reach an agreement with its creditors, while simultaneously prohibiting the withdrawal of funds and assets from the company. However, the new regulations have yet to be adopted, and it is unclear if and when they will be.

Furthermore, additional reliefs were introduced during this period, such as a reduction of the monthly payments due by debtors under receivership and temporary exemptions from these payment obligations. However, all such reliefs were provided on a case-by-case basis, and not as a change to legislation.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

The Israeli government has not implemented any specific measures to reinforce contracts. In Israel, the "freedom of contract" principle is very dominant. Thus, any enforcement of contracts is considered a commercial issue between the parties.

However, a special inter-office governmental team has issued a legislation proposal with respect to specific arrangements regarding certain industries including the entertainment industry, event halls as well as private kindergartens, while noting that they do not believe that they should interfere with all other industries. They recommended that all parties in other industries apply the "good faith" principle when looking to enforce or amend a contract.

Furthermore, while the force majeure principle exists under Israeli contract law, it has been greatly minimized by the courts, and is even deemed by some as a dead letter. A recent decision of the Tel Aviv district court has reinforced this position, as the court failed to see the Covid-19 pandemic as a force majeure event. However, a separate decision by the same court in a different matter did recognize that the Covid-19 pandemic could be deemed a force majeure event in certain circumstances, creating more uncertainty, which shall only be resolved if and when such questions reach the Israeli Supreme Court. That said, the parties are free to agree on any force majeure provisions between themselves, and in such event the contractual agreement would prevail.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

An inter-ministerial committee has been set up to examine the impact of the Covid-19 pandemic on general contract law. In particular, the committee considered if the pandemic constitutes a force majeure event that justifies the breach or cancellation of a contract by one party without the payment of compensation to the other.

According to the committee's report from July 2020, the epidemic and especially its consequences could not have been foreseen and it created exceptional circumstances, which materially impaired the possibility of fulfilling contracts as the parties agreed upon.

However, the committee determines this does not allow the parties to a contract to waive their contractual obligations and they must make every effort to continue to abide by the contracts they have entered into, and negotiate with good faith in order to adapt the contract's terms to the current circumstances.

Furthermore, the committee recommends to legislate individual arrangements for contracts in the field of shows, banquet halls and private kindergartens, and on the other hand it recommends to not interfere with such legislation for complex markets, such as the business rental market.

In due course and according to the committee's conclusions and recommendations, the laws relevant to property and rent may be amended according to the conclusions and recommendations of the committee.

In addition, according to the Israeli Rent Law, tenants might be exempted from rent payment, provided their premises cannot be used due to a reason related to the premises or the access to it. Nevertheless, these provisions are not mandatory for non-residential lease agreements. Many rental agreements for premises serving retail or leisure purposes (which were completely closed due to government orders) do not apply the Rent Law, but even if the Rent Law does apply, most Israeli courts' rulings so far, do not tend to approve such exemption under the Rent Law because of the Covid-19 pandemic and its consequences.

## Litigation

Are the courts operating?

On March 15, 2020, the Minister of Justice (MOJ) signed and issued emergency orders affecting most civil and criminal procedures in Israeli courts. Pursuant to these emergency orders, most hearings in civil cases were halted, except for special cases such as hearings re motions for temporary and interim remedies.

Moreover, the submission of court papers was also postponed, except if a contradicting and overruling decision in a specific case was handed down by the relevant court or if a specific date was given to submit such court papers.

Most of the limitations imposed by the MOJ's emergency orders were lifted on May 10, 2020, thus resuming any submissions halted due to these emergency orders and allowing most procedural matters to return to normal, including the holding of court hearings.

On 7 January 2021, the Court's Administration announced, in light of Israel's third quarantine, during the month of January 2021, the courts will act proactively to postpone hearings, and will be considerate while reaching a decision concerning motion to postpone hearing or motion to postpone submission of court documents.

## Tax

Has any new legislation been introduced in light of Covid-19?

Temporary emergency regulations were published to provide extensions for certain tax-related deadlines as a relief measure due to the Covid-19 pandemic. These include:

- Extensions of the deadlines for reporting and payment of VAT for the months January, April and November-December 2020, with respect to dealers reporting on a monthly and bi-monthly basis;
- Extensions of the deadlines for filing 2018 and 2019 income tax returns for individuals/corporations;
- Extensions of the validity of 2019 withholding tax certificates;
- Extensions of the validity of 2019 tax coordination certificates; and
- Mechanism of double depreciated for assets purchased between 1 September 2020 and 30 June 2021.

In addition, the period between March 22, 2020, and May 31, 2020 (with respect to Israeli Real Estate Taxation Law the period has been extended until June 30, 2021), shall not be counted as calendar days when determining the tax-related deadlines detailed under certain sections of various Israeli tax laws, such as the Israeli Income Tax Ordinance, the Israeli Value Added Tax Law, the Israeli Real Estate Taxation Law etc.

Moreover, according to a new legislations, reimbursement of income tax advances paid for the months of January and February 2020 is now available, if it was proved to the assessing officer that the tax which the taxpayer may owe for 2020 will be less than the amount of advances he owes for that year.

Monetary grants not subject to VAT were also provided to businesses hurt by the Covid-19 pandemic. The grants were doled out in three rounds:

Round #1 – This grant is for self-employed individuals with at least a 25% decrease in revenues during March-April 2020 compared to those months in 2019, subject to certain additional conditions. The grant amount is up to NIS 6,000, and the application for the grant must be submitted by no later than July 1, 2020.

Round #2 – This grant is for self-employed individuals and salaried business owners with at least a 25% decrease in revenues during March-June 2020 compared to those months in 2019, subject to certain additional conditions. The grant amount is up to NIS 10,500, and the application for the grant must be submitted by no later than August 17, 2020.

Round #3 – This grant is for self-employed individuals and corporations for help with fixed expenses and is granted to businesses with an annual turnover of up to NIS 20 million and whose profits were affected by Covid-19 (at least a 25% decrease in revenues during March-April/June 2020 compared with those months in 2019). The grant amount is up to NIS 400,000, and the application for the grant must be submitted by no later than November 15, 2020 (and for "Amendment for existing grant application" intended for cash-based reporters, no later than January 31, 2021).

Furthermore, temporary emergency regulations were published to provide the following additional grants:

1. A special grant for every family; 500 NIS for every child up to the fourth child (and NIS 300 for each additional child), and NIS 750 for each senior citizen above 18. Such grants will not be deemed as income in the hands of the individuals.
2. A special adaption grant to those who have reached the age of 67 and who were dismissed or sent on unpaid leave by their employer between 1.3.2020 and 15.8.2020 for a period of at least 30 days, if they meet the conditions of entitlement. The grant amounts range from NIS 1,000 to NIS 4,000 per month, depending on the level of the employees' income from the pension. The grant does not affect entitlement to an old-age pension.
3. Small business expense bi-monthly grant for self-employed individuals with turnover of up to NIS 300,000 in 2019, whose turnover was affected by the Covid-19 (at least a 40% decrease in revenues during the months May to August 2020 and 25% decrease in revenues during September 2020 to June 2021 (the decrease is determined in comparison with those months in 2019)). The grant amount is up to NIS 6,000 and the application for the grant must be submitted by no later than February 15, 2021 (with respect to September-October 2020 grant).
4. Bi-monthly grants for self-employed individuals and salaried business owners with at least a 40% decrease in revenues during each couple of months between May-December 2020 compared to those months in 2019, subject to certain additional conditions. In addition, there are eligibility periods between January-June 2021 that have not yet been finally approved. The Bi-monthly grant amount is up to NIS 15,000, and the application for the grant must be submitted no later than April 15, 2021 (with respect to November-December 2020).

5. Special bi-monthly grants for self-employed individuals and corporations for help with fixed expenses that have not been spared, despite the decrease in the volume of activity of the business due to Covid-19, such as rent, electricity, water and etc. The grants are granted to businesses with an annual turnover of up to NIS 400 million in 2019 and whose turnover was decreased due to the Covid-19 (25-80% decrease in revenues on a bi-monthly basis during the months May 2020 to June 2021 compared to those in 2019). The grant amount is up to NIS 500,000.
6. Entitlement to tax-free withdrawal of funds from a study fund up to a ceiling of NIS 7,500 per month (even if 6 years have not yet passed since the first deposit to the fund).
7. A one-time grant for self-employed individuals and corporations with turnover up to NIS 400 million and whose turnover was decreased during 2020, due to the prolonged affection by the Covid-19, in at least 25%, compared to the turnover in 2019, subject to certain additional conditions. The grant amount of up to NIS 50,000.

In addition, as part of the government's efforts to strengthen the real estate and construction industry in light of the Covid-19, a reduction of purchase tax brackets for an additional residential apartment (a residential apartment that is not the buyer's single apartment) was approved in order to motivate the real estate market.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

Other than for certain regulatory documents, Israeli law makes no requirements for documents to be signed or submitted in person, and most documents may be executed electronically or by scanned version.

The Israeli Companies Law does not require any corporate meetings to be held in person, and unless specifically noted otherwise in a company's bylaws, all such meetings may be held remotely by means of telecommunication, provided all participants are able to speak and hear one another in parallel.

Furthermore, all regulatory authorities (such as the Israeli Registrar of Companies) have made efforts to accommodate social distancing, by allowing companies and entities to submit reports and documents through the internet or by email. An additional temporary relief includes the ability to verify the signatures of individuals located in Israel remotely by means of telecommunication, instead of in face-to-face meetings.



## Loans and financial support

Has the government put in place any new bank funding schemes?

Financial assistance is available under several schemes that have been introduced in Italy:

- **Central SME Guarantee Fund (“CSGF”)**: the SME guarantee scheme, already existing prior to the Covid-19 outbreak, has been extended by the Italian Government until 30 June 2021 (saved for those companies with a total number of employees not inferior than 250 and no more than 499 for which the CSGF is extended until 28 February 2021). The guarantees will now be issued free of charge and not subject to any credit risk assessment and the maximum guarantee per SME will be increased to €5 million. The guarantee percentage shall be equal to the 90% of the loan for financial transaction with a duration up to six years. In case of loans up to €30k, with a maximum duration of fifteen years, which provides the repayment not earlier than 24 months, the guarantee percentage shall be equal to the 100%. Such scheme is available to SMEs with fewer than 250 employees and annual turnover below €50 million or an annual balance sheet of up to €43 million. SMEs with “unlikely to pay” debt exposures or “in difficulty” can benefit from this scheme. The guarantee may also be issued on transactions already executed. However, this possibility only applies if the loan has been disbursed no more than 3 months before the application to the Guarantee Fund and, in any case, no earlier than 31 January 2020.
- **Support by way of Guarantee by SACE S.p.A. (“SACE”)**: the Italian Government has introduced the possibility for SACE to grant guarantees over new financing granted by banks, financial intermediaries and any other authorised financial entities to Italian companies negatively affected by the Covid-19 outbreak (the “SACE Guarantee”). The total commitment of SACE in relation to the SACE Guarantee will be equal to a maximum amount of €200,000,000,000 (of which, at least €30,000,000,000 is allocated to support SMEs (including self-employed persons and VAT-registered professionals as well as to professional associations and/or professional organisations (*associazioni professionali e alle società tra professionisti*)) provided they have already made full use of the CSGF). The obligations of SACE arising from the granting of the SACE Guarantee are counter-guaranteed by the Italian State. Such scheme is available in relation to financings, granted to companies only after the entry into force of the Law Decree No. 23/2020 and within 30 June 2021:
  - i. with maturity no longer than 6 (six) years (with the possibility to set a pre-amortisation period of up to 36 (thirty-six) months) and, in any case, falling no later than 30 June 2027.
  - ii. which do not exceed the higher of (a) 25% of the turnover (*fatturato*) made by the relevant company during the financial year 2019, as resulting from the relevant approved financial statements or tax declaration and (b) twice as much as the relevant personnel costs (*costi del personale*) incurred during the financial year 2019. In case the same company (or another company belonging to the same group) has already received other financings secured by the SACE Guarantee (or other public guarantee) (the “**Additional Financings**”), the amount of such Additional Financings shall be taken into account for the purposes of the calculation of the abovementioned maximum threshold.
  - iii. whose proceeds will be applied (1) to cover (a) personnel costs (*costi del personale*), (b) investments or (c) working capital, employed in manufacturing facilities (*stabilimenti produttivi*) and business activities (*attività imprenditoriali*) which are located in Italy or (2) to repay an existing financing, provided that (a) the principal amount of the new financing is at least 25% higher than the principal amount of the existing financing to be paid and (b) due to the granting of the SACE Guarantee the new financing benefits from lower costs or a longer maturity than the existing financing to be repaid.
- Companies which benefit from the SACE Guarantee (and any other company of the relevant group, if any) cannot (i) distribute any dividends and/or (ii) repurchase their shares for the 12 months following the granting of the relevant financing (in case the payment of the dividends or the performance of share buyback has already occurred as at the date of request of the financing, such restriction will apply in relation to the 12 months following the abovementioned request). Such companies benefit from the SACE guarantee also in the context of assignment of receivables, either *pro soluto* or *pro solvendo* to banks, financial intermediaries and any other authorized financial entities made after 7 June 2020.

For the avoidance of doubt, the SACE's guarantee is not available to companies which directly or indirectly control (or are controlled by), pursuant to Article 2359 of the Italian Civil Code, a company resident in a country or territory that is not cooperative for tax purposes (as identified in the conclusions of the Council of European Union dated 18 February 2020). Companies with "deteriorated" debt exposures, or "in difficulty" cannot benefit from this scheme.

- **Loan repayment suspension:** SMEs may postpone payment of principal and interest on any loans. Revocable credit lines and factoring facilities cannot be revoked until 30 June 2021 if the SME sends relevant notice to creditors. As to the applicability criteria, the same criteria as per the CSGF paragraph above will apply.

## Employment **The Italian Government introduced the following schemes to support businesses:**

What financial support is the government providing to businesses and to individuals on employment issues?

- **A. Social programs:** if an employer must suspend employees from work since the business activity is suspended or reduced due to the Covid-19 emergency, it can apply for the following social funds (wage subsidy schemes):
  1. Cassa Integrazione Guadagni Ordinaria (CIGO): available to industrial companies staffed with more than 15 employees.
  2. Fondo d'Integrazione Salariale (FIS): available to non-industrial employers enrolled with FIS that are staffed, as an average, with more than 5 employees.
  3. Cassa Integrazione Guadagni in deroga (CIGD): available to all businesses, even very small ones, that are not covered by CIGO/FIS.

Under the above schemes, which normally imply a consultation with the Trade Unions before being implemented, employees who are suspended from work receive an allowance from the social security authority ("INPS") equal to 80% of the lost salary with a cap of €1,129 net per month. These schemes initially covered a period of 18 weeks until 12 July 2020, were then repeatedly extended and are currently expected to last until 30 June 2021 (31 March 2021 for the CIGO).

As an alternative to the use of the above schemes, an exemption from social security contribution obligations has been introduced in favour of employers that have previously used social plans. So employers that used social plans in May/June 2020 but did not apply for social plans in the period from January to March/June 2021 may request this exemption for 2 months.

In parallel with this new range of Covid-19 related social plans, the Italian Government introduced a firing ban which was initially intended to last until 17 August 2020. The ban regards both collective and individual dismissals for redundancy reasons (some categories are excluded, such as executives or domestic employees, and disciplinary dismissals remain of course feasible).

This ban has been repeatedly extended and is currently expected to last until 31 March 2021 with a few exceptions. Indeed, dismissals are now allowed for (i) companies ceasing their business activity and put under a liquidation procedure; (ii) companies which went bankrupt; and (iii) companies which enter into a collective agreement with trade unions providing for the payment of an incentive to leave to those redundant employees who accept to mutually terminate their employment relationship. The possible extension of the ban after 31 March 2021, maybe on a partial and more selected basis, is currently under discussion.

- **B. Review of working time by collective agreement:** company-level or local collective agreements entered into with the Trade Unions may define patterns for the re-modulation of working time (a part of which is to be dedicated to training courses). A special fund called “New Skills Fund”, with an endowment of €430 million for 2020 and €300 million for 2021, will bear the cost for training hours (this measure needs to be implemented by a ministerial decree). The agreement with the Trade Unions has to be entered into before 30 June 2021.
- **C. Funds for the safeguard of occupation:** a specific new fund with an endowment of €300 million for 2020 has been established in order to support the rescue and restructuring of, among others, companies with at least 250 employees that are in economic and financial difficulty.
- **D. Fixed-term employment contracts:** until 31 March 2021 fixed-term employment contracts can be renewed or extended, only once, for a period of 12 months, even without the specific reasons (“*causale*”) that are generally required by law, subject to an overall duration that cannot exceed 24 months. Based on a reasonable interpretation of the provision, the same exemption should apply also to existing fixed-term staff-leasing contracts.
- **E. Other wage subsidies:** regions, other territorial authorities and Chambers of Commerce may adopt aid measures, using their own resources, in order to contribute to the salary and social security costs incurred by companies to avoid redundancies during the Covid-19 pandemic. This subsidy may be granted for a maximum of 12 months and up to 80% of the gross monthly salary (including the social security contributions) and only if the staff benefiting from it continues to work throughout the period for which the aid is granted. It remains to be seen whether the regions and other entities will actually offer such measures, given the likely unavailability of resources.

The Italian Government also introduced the following new and exceptional schemes to support individuals:

- **Paid Parental leave:** in case of parents that live in highly affected geographical areas (so-called “red zones”) where schools children between 11-14 approx. are closed, one of the parents, if prevented from working remotely, can benefit from a parental leave paid by the social security administration at 50% of the salary.
- **Remote Working:** in general, the Italian Government recommends maximizing the use of home work which until 31 March 2021 can be implemented without entering into individual agreements which are otherwise required by law. Also other bureaucratic steps have been lightened (including in terms of health and safety information obligations). In addition, until 30 June 2021, parents of seriously disabled children are entitled to work remotely only if their tasks can be reasonably carried out from home and provided that the other parent is not a non-working parent.
- **Employees affected by Covid-19 or quarantined:** in both cases employees must be considered on sick leave. If Covid-19 has been contracted on the workplace, the periods of quarantine and self-isolation are considered leaves due to accident at work and thus indemnified by the competent public insurance authority (INAIL).
- **Vulnerable Employees:** until 28 February 2021, disabled employees or employees affected by serious diseases had the right to be absent from work and this absence is treated as hospitalization and so this period of absence will be indemnified as sick leave. Alternatively, they are entitled to work remotely for the same period (if possible, their tasks should be changed to be compatible with remote working).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Italian Government has adopted – among others – the following measures:

- the automatic extension by six months of the deadlines for performing/fulfilling composition with creditors plans and debt restructuring agreements already validated by the competent Courts, if expiring after 23 February 2020,
- the possibility to file a new composition with creditors plan/debt restructuring agreement before the validation hearing or to request an extension of the term for the filing of the composition with creditors plan/debt restructuring agreement (if not filed yet), if the procedure is pending as of 23 February 2020;
- the postponement of the entry into force of the new Code of Crisis and Insolvency from 1 September 2021, and
- the disapplication, under certain circumstances, for losses arisen during the fiscal year ending 31 December 2020, of the provisions that require: either the reinstatement of the registered capital, when it has been reduced by more than 1/3<sup>rd</sup> as a consequence of losses, or the winding up of the company. Particularly, the time limit to comply to the obligations indicated and the non-application of the cause for winding up the company is postponed until the fifth year after the year in which the losses emerged,
- Starting from 4 December 2020, the Court can validate the composition with creditors plan and debt restructuring agreement even in absence of a vote by the financial administration or by the bodies that manage compulsory forms of social security or assistance when their approval is decisive for the achievement of the majorities and when the proposal to satisfy the administration or the bodies is convenient with respect to the bankruptcy procedure.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

Under a general provision, any action taken to ensure compliance with the measures adopted by the Italian Government to contain Covid-19 emergency should be taken into account for the purposes of excluding debtor's liability – pursuant to the Italian Civil Code – for delayed or omitted performance, also in relation to the application of any related forfeiture terms or penalties.

Besides the above, all contractual remedies provided for under Italian civil law shall apply.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

A tax credit equal to 60% of the rents due in March, April and May 2020 is granted to tenants of shops and similar properties falling within the C/1 properties category. Such tax credit can be used to offset future liabilities and cannot be claimed for refund.

The statute of limitations for natural persons willing to enjoy the "first home" registration tax regime is suspended between 23 February and 31 December 2020.

As to enforcement of Court measures for the release of properties also for non-residential use are suspended until 30 June 2021 in case of (i) release for failure to pay the rent at the due dates or (ii) release due to transfer of foreclosed properties inhabited by the debtor and its family members. All other measures for the release of properties also for non-residential use were resumed starting from 1 January 2021.

Garnishment proceedings over "first home" properties are suspended until 30 June 2021.

Further, with reference gyms, swimming pools and sports facilities lease agreements, the sport activities suspension set forth during the emergency shall be assessed as factor of “unbalance” between the interests under the agreement, so triggering the relevant remedies provided for under the Italian Civil Code (such as fee reduction).

## Litigation

Are the courts operating?

Courts resumed the ordinary course of business starting from 12 May 2020. At least until the end of the state of emergency (currently set for 30 April 2021) the activity of the judiciary is still managed mainly through virtual and written hearings and remote judicial activities.

In addition, starting from 30 June 2020 parties are required to engage in compulsory mediation as a pre-condition to commencing Court proceedings for contractual disputes where the compliance with the emergency regulations issued in relation to the Covid-19 pandemic is at stake as a reason for the non-fulfilment of contractual obligations.

## Tax

Has any new legislation been introduced in light of Covid-19?

- **Tax credit for rental fees:** A tax credit equal to 60% of monthly rental fees paid in March, April, May and June 2020 (or until 30 April 2021 for entities active in the touristic sector) is granted to enterprises and self-employed workers in connection with rental of real estate assets. This tax credit is available subject to the following conditions: (i) the taxpayer had a total turnover in 2019 not higher than €5 million, (ii) the taxpayer suffered a turnover reduction of at least 50% compared to the relevant months in 2019, (iii) such monthly fees have been fully paid in 2020. This tax credit is limited to 30% if the real estate is available by means of a going concern lease agreement or similar mixed contracts. A tax credit equal to 20% of the rental fees is also granted to entities exceeding the €5 million threshold (in such case, the tax credit is limited to 10% in case of going concern lease). The tax credit can be used to set off tax liabilities, can be assigned to third-parties or can be transferred to the lessor as consideration for the rental fee. For certain entities affected by Covid-19 restrictions (such as restaurants, bars, etc.) such tax credit is also available for the period between October and December 2020, regardless of the aforementioned total turnover threshold mentioned.
- **Revaluation of real estate assets for hotelier activities:** taxpayers that carry out hotelier activities can step-up to the fair market value the tax costs of real estate assets used in their business activity. No substitutive tax is due. This measure allows to minimize the taxable capital gain upon disposal of the above assets.
- **Tax credit for capital increase of medium-size enterprises:** Taxpayers can benefit from a tax credit equal to 20% of any capital increase (up to €2 million) in certain qualified Italian-based companies. In addition to the above, the qualifying Italian-based companies increasing their capital are also themselves entitled to a tax credit (up to a maximum of 30% of the capital increase or to 50% in case of resolution and payment of the capital increase in the first semester of 2021) equal to 50% of the net operating losses exceeding 10% of their net equity. The total amount of benefits is capped to overall €800,000 per company. The tax credit applies subject to the following conditions: (i) the capital increase is resolved and fully paid between 20 May 2020 and

31 December 2020 (or in the first semester of 2021, but in this case only the beneficiary company is entitled to receive the tax credit), (ii) the companies resolving the capital increase had, in 2019, a turnover between €5 million and €50 million (on a group consolidated basis) and suffered a turnover reduction during March and April 2020 of at least 33% compared to the same months of 2019 (on a group consolidated basis).

A recapture mechanism will apply if, before January 2024 (or January 2025 for capital increases occurred in 2021), one of the following cases occurs: (i) transfer of the shares or quotas received upon the capital increase, (ii) distribution of reserves. The implementation of this provision is subject to the authorization of the European Commission.

- **Tax allowance for investment in innovative start-ups:** Individuals investing in one or more innovative start-ups or in innovative small-medium enterprises starting from 19 May 2020 can benefit from an allowance for personal income tax (so-called "IRPEF") purposes equal to 50% of the investment made. This benefit is capped at €300,000 for each tax year. The investment is subject to a lock-up period of 3 years (otherwise a recapture mechanism will apply).
- **Tax allowance for qualified renovation works:** Individuals can set off in 5 yearly instalments an amount equal to 110% of certain qualified renovation expenses (aimed at either increasing the energy efficiency, reducing the seismic risk, installing photovoltaic systems or devices for charging electric vehicles) incurred between 1 July 2020 and 30 June 2022. The tax benefit can be used for either: (i) a discount by the service provider on the agreed fee for the relevant work, since the service provider will be entitled to enjoy a tax credit corresponding to the discount made or to assign for consideration such credit to third parties, or (ii) the conversion of the tax allowance into a tax credit, which could be either enjoyed or assigned for consideration to third parties, including banks and financial intermediaries. The assignees of the tax credit can use the relevant tax benefit to set it off against their own tax liabilities (in the same residual yearly instalments available to the taxpayer prior to the transfer or assignment). Any yearly deductible instalment not used to set off tax liabilities cannot be carried forward or claimed for refund. The benefit is capped to €50,000, €40,000 or to €30,000 per residential unit, depending on the type of buildings.
- **Non-refundable grants:** Lastly, non-refundable cash grants will be paid by the Italian Tax Agency to certain qualified business entities, especial in the retail business.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

All companies are allowed to hold shareholders' meetings (which are convened within the end of the state of emergency and, in any case, no later than 31 March 2021) by means of telecommunication – even in case their by-laws do not set forth specific provisions for such purpose – provided that identification of participants, their attendance and voting rights are guaranteed.

The requirement under which the chairman and the secretary of the meeting shall be in the same location – even when expressly provided for in the company by-laws – is also derogated.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- The Japanese government declared a State of Emergency on 7 April 2020 and the same day the Financial Services Agency (the “**FSA**”), Japan’s financial service regulatory authority, requested financial institutions to support borrowers’ cash-flow by:
  - i. actively providing new loans, and promptly and flexibly rescheduling repayment terms of existing loans in light of changes to borrowers’ ability to repay,
  - ii. cooperating with public credit guarantee associations (funded by local governments) to provide loans with zero interest and no collateral,
  - iii. not automatically triggering acceleration of repayments when borrowers cannot comply with financial covenants but instead promptly and sincerely discussing relaxation of covenants if the borrower requests,
  - iv. closely cooperating with the Japan Finance Corporation (the “**JFC**”), a public financial institution wholly owned by the Japanese government,
  - v. promptly and flexibly changing repayment terms of residential loans or loans for individual borrowers, or guarantees for either of them, and
  - vi. not recording borrowers’ delinquency information with credit information institutions when any default is due to the impact of Covid-19.
- Regarding (ii) and (iv) above, the necessary government funding to public credit guarantee associations through local governments and to the JFC was included in the Emergency Economic Stimulus Package approved by the Cabinet on 7 April and in a budget passed by the Diet on 30 April 2020.
- On 16 April 2020 the FSA requested financial institutions to be flexible and not immediately trigger the suspension of transactions when borrowers fail to pay checks or promissory notes.
- On 17 April 2020 the FSA announced that it will delay raising the minimum leverage ratio requirement for banks whilst also disregarding banks’ deposits with the central bank from the calculation of gross assets as the denominator for calculating a leverage ratio, thus making it easier for banks to provide new loans or reschedule repayment terms for borrowers impacted by Covid-19.
- JFC and Shoko Chukin Bank (“**SCB**”) have been providing various financial support programmes for SMEs and self-employed persons whose sales declined from between 0% to 20% including lending with either no or no preferential interest for an initial 3 years.
- Regarding (iv) above, on 21 April 2020 the FSA explained to private sector financial institutions that the JFC will actively assume exposures to bridge loans provided by them to borrowers for dealing with the impact of the Coronavirus pandemic, and requested them to provide bridge loans to such borrowers with the anticipation that the loan exposures can be assumed by the JFC.
- Regarding (ii) above, on 27 April 2020 the FSA urged private sector financial institutions to provide “zero interest, no collateral and no guarantee fee” financing with guarantees by public credit guarantee institutions to borrowers as promptly and flexibly as possible, with zero interest etc periods of up to 5 years, as one-stop-shops to process all necessary procedures with borrowers, including the guarantee application procedures. This financing support by private sector financial institutions started on 1 May 2020 for SMEs and self-employed persons whose sales declined by 5% or 15% compared to the same period in the preceding year. On 8 December 2020, the Minister of Finance announced that the application period for the financial support has been extended until 3 March 2021.

On 8 May 2020 the FSA addressed the issue of property tenant SMEs and individuals facing difficulties in paying rents and property related- business operators (e.g., hotels and other accommodation service providers, leisure facility businesses, owners of buildings for rent, etc.) facing cash-flow problems due to a decline in their incomes, by:

- a) **requesting lender financial institutions** to support the cash-flow of borrowers who are such tenants or property related-business operators by:
  - promptly and flexibly implementing new or bridge loans, reducing principal and/or interest payments or rescheduling repayment terms of existing loans,
  - ensuring such implementation above especially where the borrowers are landlords who have granted their tenants rent reductions or rescheduled rent payment terms, and
  - considering not charging fees or penalties for changing terms of existing loans.
- b) **requesting managers of REITs** (real estate investment trusts and investment corporations) to take flexible measures such as rent reductions or rescheduling rent payment terms with tenants of properties under their management.
- On 27 May 2020 the FSA addressed the importance of private sector financial institutions' loans (other than those guaranteed by public credit guarantee associations) for supporting borrowers' cash-flow, requesting lenders to make utmost efforts to further ensure prompt and proper support measures for borrowers, such as deferment of principal payments or relaxation of other loan conditions and provision of new loans. The FSA also published the following matters to note:
  - (i) if a financial institution had evaluated a borrower as being financially sound before the pandemic, and the borrower is now facing a deterioration of business conditions due to the pandemic, and the financial institution has now nevertheless decided to maintain the evaluation as before in consideration of the likelihood of their post-corona recovery and effects of the emergency economic package, the FSA will respect such decisions made by the financial institution.
  - (ii) the FSA and Local Finance Bureaus will monitor the balances of private financial institutions' loans (other than those guaranteed by public credit guarantee associations) and conduct hearings concerning the status of their support of borrowers' cash-flow to check whether loan balances are decreasing or not.
  - (iii) active use of borrowings recognisable as capital (borrowed money that is deemed to have the nature of capital through the evaluation of borrowers and that can be treated as capital) is recommended and the FSA will clarify this in its Guidelines for Supervision.
- Regarding (v) above, on 27 May 2020 the FSA requested financial institutions to support borrowers by:
  - (i) actively offering support to customers by deferring principal payments for a sufficient period of time or otherwise modifying loan conditions promptly depending on customers' needs, and refraining from charging fees for modification of loan conditions;
  - (ii) putting in place telephone services dedicated for home loans or establishing consultation offices both to be available even on holidays and to disseminate information on such services broadly to help customers use them more easily;
  - (iii) responding to customers' concerns on other personal loans and flexibly modify loan conditions based on customers' needs.
- On 10 June 2020 the FSA requested financial institutions to support borrowers by:
  - (i) responding appropriately to requests from borrowers as those who have already been provided with loans may want additional loans due to the prolonged impact of Covid-19,

- (ii) promptly and actively providing support having regard to the situation of borrowers, including provision of funds as required until other government-funded support become available to them, and
- (iii) not judging whether to support borrowers only based on pro forma checkpoints, such as financial deficits, excess liabilities or downgrading borrower categorisation, but instead giving utmost consideration to the real situation of the borrowers.
- On 17 July 2020 the FSA announced that it will accept applications and filings made to it by financial institutions via email and without seals or stamps, which had previously been required on original copies before Covid-19.
- On 8 December 2020, following the announcement of “Comprehensive Economic Measures to Secure People’s Lives and Livelihoods toward Relief and Hope” by the Cabinet, the FSA requested financial institutions to support borrowers by:
  - (i) responding to borrower’s requests for financial support by combining various means such as deferment of payments or alteration of other loan conditions, providing loans and using credit guarantee associations so that borrowers will not face serious funding difficulties at the end of the (financial) year.
  - (ii) offering support by utilising funds from the Regional Economy Vitalisation Corporation of Japan and JFC’s subordinated loans.
  - (iii) supporting business by closely collaborating with local governments, credit guarantee associations, JFC, SCB and other governmental financial institutions, as well as the SME Revitalisation Support Committee, tax accountants and local organisations.
- On 8 January, 19 January and 5 February 2021, following the Declaration of State of Emergency (7 January) and the extension of the Declaration (2 February), the FSA requested financial institutions to support borrowers by simplifying lending process, providing loans, utilising subordinated loans, amending conditions of existing loans and others.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

**1. Employment Adjustment Subsidy System:** Japan currently has an “Employment Adjustment Subsidy” (*Koyochousei-Joseikin*) system; this system has been revised by the Japanese government to help businesses suffering as a result of Covid-19. The system is designed to help employers avoid termination by covering part or whole of the Leave Allowance paid by employers to employees who were made to take leave (in Japan, the law requires the employers to pay 60% or more of the average wage of the employees when the employers make its employees take leave (the “Leave Allowance”)) (up to a maximum of JPY15,000 per employee per day and a maximum of 100 days in any 12 months (but disregarding days in the period 1<sup>st</sup> April 2020 to a month following the month which the state of emergency has been lifted if the subsidy was requested in that period)) during the period the employees are furloughed. This revised system shall apply during the period from 1<sup>st</sup> April 2020 to a month following the month which the state of emergency has been lifted. The subsidy will cover up to 100% of the amount paid by employers to their employees for their leave allowance (which is 60 % of their salary) required by law; subject to the satisfaction of the certain requirements. Application for the subsidy is made to the competent Prefectural Labour Bureau or Employment Service Center; it can also be done online application.

**2. Support other than the Employment Adjustment Subsidy System:** The government is providing special benefits to employers that provide extra paid leave for parents who have children affected by school closures relating to the Covid-19 situation for the period from 27th February 2020 to the end of March 2021.

For a summary of issues on employment in the context Covid-19, please visit our website [here](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

As of 15 February 2021, the government has not made any changes to insolvency legislation.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

#### Execution of Contracts

- It is common in Japan for companies to execute contracts by signing and/or affixing a company stamp on paper documents. In many cases, even before Covid-19, contract parties sometimes (i) executed agreements separately and then exchanged PDF copies on the contract date, and then (ii) sent the originals to be combined as a single agreement. This approach is legally effective and would be helpful in the Covid-19 situation.
- On 19 June 2020, the government issued a Q&A about contracts without a stamp on paper documents, which suggests that certain approaches including (i) keeping email exchange records, (ii) keeping a counterparty's KYC information (if it is a new counterparty) and (iii) using electronic signatures or electronic authorisation services would be helpful as evidence of the execution of contracts.
- An electronic contract with electronic signatures without any paper-based documents is also permitted under Japanese law, save for certain exceptions, such as individual guarantees for a third-party business. The Covid-19 pandemic should encourage the greater use of electronic contracts by Japanese companies. On 17 July 2020, the government issued a Q&A about electronic signatures to facilitate the use of electronic contracts.

#### Force Majeure

- For a summary of issues on force majeure and frustration in the context Covid-19, please visit our website [here](#).

#### Subcontractors

- On 10 March 2020, the Ministry of Economy, Trade and Industry ("METI") announced it had requested companies to take special care in transactions with mid- or small-size subcontractors (see more [here](#)), including (i) refraining from actions delaying supplies to them, (ii) bearing appropriate increased costs derived from price increases in raw materials and/or extra work of subcontractors, (iii) making payments on their due date, and (iv) refraining from cancelling or changing purchase orders.
- The Antimonopoly Act and Subcontractors Act also prohibit certain unfair trade practices and would still apply anyhow.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- As of 15 February 2021, there have been no changes to the laws that legally allow tenants to defer rent payments.
- On 14 July 2020, the government announced an office rent subsidy program for self-employed individuals and small and medium enterprises (“SME”) with a capital of less than JPY 1 billion and, for which sales income during 1 May to 31 December had decreased by 50% or more from the same month of the previous year or by 30 % or more in a total of successive three months from the same period of the previous year. The maximum amount of the subsidy is JPY 6 million for SMEs and JPY 3 million for self-employed individuals. This subsidy program ended on 15 February 2021 and will no longer accept new applications.

## 6

## Litigation

Are the courts operating?

- For the purpose of preventing the spread of Covid-19, there may be changes with respect to some services available at courts so it is advisable to check with the court in charge of one’s case before visiting the court.

## 7

## Tax

Has any new legislation been introduced in light of Covid-19?

New tax legislation in relation to Covid-19 has been introduced, including the following measures.

- One year grace period for payment of national and local taxes, and social insurance premiums (whose due date is before 1 February 2021) with no delinquent tax by business operators whose revenues during any period of 1 month or longer commencing after 1 February 2020 have decreased by approximately 20% or more from the same period of the previous year.
- One year grace period for payment of national taxes (whose due date is after 1 February 2021) with reduced delinquent tax by individuals or business operators who (i) will have a risk of difficulty in continuing business or maintaining livelihood due to tax payment, (ii) have the sincere intention to pay the tax, (iii) have submitted their application within six months of the due date and (iv) have no delinquency in payment of taxes other than the national taxes for which the deferment is sought.
- One year grace period for payment of national taxes (whose due date is after 1 February 2021) with no delinquent tax by individuals or business operators (i) who have disposed of their equipment and inventories due to disinfection work conducted at their facility where a Covid outbreak occurred, (ii) who either they themselves, or another family member who also contributes to the household, was infected, (iii) whose business has been closed due to unavoidable circumstances or (iv) whose business has had significant loss due to a decrease in profits etc.
- A tax refund system may be applied to firms capitalized at over 100 million yen but below 1 billion yen through tax loss carrybacks.
- Tax regime for capital investment for teleworking.
- Donation deductions apply to spectators, etc. who give up the right to claim a refund from organizers who cancel an event based on the government’s request for self-restraint.
- Stamp tax shall be exempted for future special loan contracts made by financial institutions to business operators whose business operations have been affected by Covid-19.
- There are also several other minor tax measures implemented in relation to business affected by Covid-19.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

### General Meetings:

- On 26 February 2020, METI issued a [guideline for hybrid virtual general meetings](#).
- Although the guideline did not originally target the Covid-19 pandemic, it is attracting attention from companies seeking to accommodate social distancing for the peak season for annual general meetings in the coming June.
- It is impossible under the Corporate Code to conduct a purely virtual general meeting. However, the following measures can be taken for social distancing:
  - - encourage shareholders not to attend the general meeting but to vote in advance (by a voting paper or online),
  - limit the number of attending shareholders, require pre-registration to attend, and reject attendance by shareholders with symptoms of Covid-19, and
  - hold a hybrid virtual general meeting (i.e., a real meeting with online streaming) pursuant to the METI guideline in order to allow remote attendees to participate in the meeting.

**Board Meetings:** The Corporate Code doesn't require a company to hold a physical board meeting; an online meeting and/or resolution in writing are commonly used by Japanese companies.

**Remote Working:** The Japanese government has been encouraging remote working in light of Covid-19 and it has rapidly developed across the country. There are subsidies for business operators who will introduce or have introduced a remote working system, especially for mid- or small-size businesses.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Jersey has introduced a GBP 50 million business disruption loan guarantee scheme. The Jersey government will guarantee 80% of loans granted under the scheme. Businesses can borrow between GBP 5,000 and GBP 500,000.
- Certain eligibility criteria must be satisfied. This includes the business meeting the viability test, the business engaging in a commercial activity in Jersey which will be the subject of the loan, normal lending must not be available to the business and the business's annual turnover must not be more than GBP 10 million.
- Certain business sectors were initially excluded from the scheme but the scheme has since been expanded to allow all local businesses to apply regardless of their sector and business activity.
- More detailed information on the scheme is available [here](#).
- To assist the tourist sector the Jersey government has introduced the Visitor Accommodation Support Scheme (VASS) and the Visitor Attractions and Events Scheme (VAES). VASS is aimed specifically to provide support for Jersey's registered accommodation providers and VAES seeks to support Jersey's events and attractions providers. Both schemes provide support of up to 80% of designated fixed costs which will be paid on a monthly basis in arrears and cover the period of October 2020 to April 2021. Further details on these schemes can be found [here](#).
- The Jersey government has also introduced the Fixed Costs Support Scheme which makes a financial contribution towards the fixed costs of a business where they have been impacted by Covid-19 related public health measures, including 2 metre physical distancing. The scheme covers the period of January to April 2021. Certain eligibility criteria must be satisfied and the scheme is restricted to certain business sectors. It is possible to claim under the FCSS whilst also benefiting from the Government Co-Funded Payroll Scheme and the Business Disruption Loan Guarantee Scheme. Where a claim has been made under VASS or VAES, a business can opt out of these schemes in order to claim, where eligible, under the FCSS. Further details on the scheme can be found [here](#).
- The Government of Jersey has launched a £50 million Fiscal Stimulus Fund. The funding is aimed at smaller scale projects of up to £5 million per project which would be expected to be completed by the end of 2021. Further details of the scheme can be found [here](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- **Support to businesses:** The Government of Jersey has launched the Government Co-Funded Payroll Scheme, which will refund businesses adversely impacted by the Covid-19 pandemic a proportion of their wage bill. The scheme has been extended to provide continuing financial support to employers and employees affected by Covid-19 and there are now 4 phases of the scheme with Phase 4 covering the period of January to April 2021.
- Mourant has outlined some key questions for employers to consider during the Covid-19 pandemic, which is available [here](#).
- **Support to individuals:** A Covid Related Emergency Support Scheme was previously set up for workers who had lost their jobs due to Covid-19. This scheme was targeted at workers who have not gained their five year residency, as this group would ordinarily not be able to access the pre-existing government income support scheme. The scheme provided weekly payments of between GBP 70 to GBP 150 per person and an additional GBP 50 per child. It was in place until 31 August 2020, when it ended.
- The Government of Jersey has also made various sickness and short-term incapacity benefit provisions for employees who are either sick or isolating due to Covid-19.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The Jersey government has worked with the Viscount (who is the executive officer of the court) and the Jersey Law Society to provide guidance and assistance for directors of Jersey companies in understanding wrongful trading and what directors should be considering when determining whether and how to carry on trading during these financially challenging times.
- Jersey's existing wrongful trading rules (which are more relaxed than the UK) provide that once a director concludes (or should have concluded) that there was no reasonable prospect of the company avoiding a declaration of bankruptcy or an insolvent winding up, the director has a duty to take reasonable steps with a view to minimising the potential loss to the company's creditors (failing which the director may be made personally liable for the company's debts). In the UK the equivalent test is that the director must take every step with a view to minimising the potential loss to the company's creditors.
- The Viscount has issued a [Guidance Note](#) and the Jersey Law Society has issued a [Practice Statement](#). Both publications give helpful guidance to the wrongful trading provisions contained in Jersey legislation. In particular, both publications analyse what constitutes "reasonable steps" and the Jersey Law Society publication also provides practical considerations on the bringing of a claim against a director.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Jersey government has not introduced any legislative measures to deal specifically with contractual issues caused by the Covid-19 pandemic. Any contractual concerns will be dealt with according to Jersey contract law.
- The main contractual provision which governs the enforceability of a contract upon the existence of an unforeseen event is the force majeure clause. In general terms, the force majeure clause seeks to list the situations in which the parties to a contract may suspend or terminate the contractual relationship due to the occurrence of certain events that are outside the control of the parties.
- Depending on the construction of the force majeure clause in individual contracts, the Covid-19 pandemic may cause the contract to be suspended or terminated.
- It is also possible that in certain situations the occurrence of the Covid-19 pandemic may have the effect of rendering a contract "frustrated" i.e. the changes in circumstances caused by the coronavirus pandemic has rendered the obligations under the contract impossible to perform.
- Businesses should review their existing contractual relationships and seek legal advice to ensure they are aware and fully understand their ongoing legal obligations and identify any areas of uncertainty.
- Mourant has set out some of the [contractual issues that arise from Covid-19](#) in Jersey.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

- Temporary amendments to residential and commercial tenancy legislation were passed in Jersey. These made provisions to protect both tenants and landlords, taking into account the possible effects of the Covid-19 pandemic. The regulations expired on 30 September 2020.
- They included the suspension of variations to tenancy agreements, by way of an increase in rent in the period up to 1st October 2020, even where the tenancy agreement allowed for an increase at renewal.

- Another amendment effected was that where a tenant had failed to pay rent because of financial hardship, the breach would not constitute a breach whereby a landlord could have applied for a termination and eviction order.
- The Government of Jersey has published guidance for residential and commercial landlords and tenants and an update for landlords and tenants of commercial property was published on 24 September 2020. The guidance outlines principles that must be adhered to in agreeing concessions and making voluntary arrangements for rent and other payments.



## Litigation

Are the courts operating?

- The Jersey courts have remained open and directions were made for civil cases during the Covid-19 pandemic. The courts continued to hear cases but urgent / public law / family law cases took precedence at the height of the pandemic.
- The Royal Court has given directions on the remote execution of powers of attorney and affidavits.
- The Royal Court has now resumed hearing most cases in person and social distancing is being adhered to.

## Tax

Has any new legislation been introduced in light of Covid-19?

### Deferral of payment of Social Security contributions:

- Small businesses with less than 80 employees are automatically eligible to defer their payments for two years for the first two quarters of 2020, which were due in April and July 2020.
- Businesses with 80 or more employees may apply to defer their payments and will need to show significant adverse impact on them as a result of the Covid-19 pandemic.
- Certain employers and self-employed persons may also defer the payment of social security contributions for the last quarter of 2020 until 15 January 2023 and for the first quarter of 2021 until 15 April 2023.
- A temporary 2% cut to the social security contributions paid by workers has been approved by the Jersey government which means that between 1 October 2020 and 30 June 2021 the contribution will fall from 6% to 4%.

### Deferral of payment of Goods and Service Tax:

- GST payments for periods ending between 31 March and 30 June 2020 may be deferred. Businesses affected by the workplace restrictions introduced in December 2020 can also choose to defer GST payments for periods ending in the last quarter. The repayment period is up to 2 years.
- For individuals, in respect of residential tax status and days spent in Jersey, the Government of Jersey has advised that the local tax authority will discount days spent in Jersey which are as a result of exceptional circumstances related to Covid-19. This includes, for example, where prohibition of travel orders have been made in response to the pandemic. See below regarding economic substance.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Jersey Companies Registry is fully operational and continues to provide a full service. It is demonstrating flexibility in its approach by accepting electronic signatures and the submission of information electronically to assist users during the current situation.
- The Jersey Financial Services Commission has similarly demonstrated a flexible approach in accepting electronic or scanned signatures with applications and filings to help overcome the challenges caused by the travel and social distancing restrictions imposed by the coronavirus pandemic.
- Jersey's Comptroller of Revenue issued guidance to confirm that where companies' operating practices have to be adjusted to compensate for the Covid-19 pandemic, the Comptroller will not determine under Article 6 of the Taxation (Companies – Economic Substance) (Jersey) Law 2019 that a company has failed the economic substance test. Due to the ongoing nature of Covid-19, further guidance was issued in relation to the concession granted in relation to the economic substance test clarifying its application and scope. The further guidance also stated that the concession was temporary in nature and would be withdrawn as soon as circumstances permit.
- Mourant has produced a [briefing](#) regarding regulatory considerations for licensed financial services businesses in the Channel Islands when responding to the Covid-19 outbreak.
- Mourant has also considered [the ways companies can overcome barriers to completing transactions during the Covid-19 pandemic](#). All the most recent Mourant updates relating to Covid-19 are available at [Mourant Covid-19 Updates](#).



## Loans and financial support

Has the government put in place any new bank funding schemes?

The **Business Finance Guarantee Scheme** is being offered by the Government alongside private banks to help provide temporary financial support to businesses.

This scheme is available to small to medium-sized New Zealand business (those with annual turnover of up to \$200 million) facing temporary financial stress due to Covid-19, for a short-term bridging loan from a bank. Originally available for loans of up to \$500,000, from August 2020 this was extended to permit loans up to \$5 million. The Government will carry 80 percent of the credit risk for the scheme, to encourage lending. Loans are otherwise on commercial terms. Loans may be applied for under the scheme until 30 June 2021. Details of the Business Finance Guarantee Scheme are available [here](#).

In addition, the Government has established a **Small Business Cashflow Loan Scheme**, to provide assistance of up to \$100,000 to firms employing 50 or fewer full-time equivalent employees. The scheme is also available to sole-traders and the self-employed. Applications for a loan under this scheme may be made until 31 December 2023.

The Scheme provides loans of up to \$10,000 to every firm and an additional \$1,800 per equivalent full-time employee. These loans will be interest free if they are paid back within two years. After that the interest rate will be 3% for a maximum term of five years. Repayments will not be required for the first two years of the loan. Details of the Small Business Cashflow Loan Scheme are available [here](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

The Government established a **Wage Subsidy Scheme**, providing payments for each employee for twelve weeks. Businesses would qualify for the payment if they experienced a 30 percent loss of income attributable to Covid-19.

An employer also had to agree to use best endeavours to pay the employees named in the application at least 80 per cent of their usual wages or salary. If that isn't possible, employers need to pay at least the full amount of the subsidy to the employee. The original Wage Subsidy Scheme ended in June 2020. Details of the Wage Subsidy Scheme are available [here](#).

After the original scheme expired, the Government made a Wage Subsidy Extension available to employers, including sole traders, who were still significantly effected by Covid-19 after the Wage Subsidy Scheme ended in June 2020. The obligation to pass on the subsidy remained the same, but to be entitled to the extension a business had to show that they suffered, or expected to suffer, a revenue loss of at least 40% (reduced from an original 50%) for the 30 days prior to the application date, compared to the closest period last year.

The Wage Subsidy Extension covered employee's wages for eight weeks. Applications for this scheme expired on 1 September 2020. Details of the Wage Subsidy Extension are available [here](#).

As a result of a resurgence of Covid-19 in August 2020, an additional **Resurgence Wage Subsidy** payment was made available for employers, including self-employed people, who were financially effected. To qualify, a business must show that they have had, or expected to have, a revenue drop of at least 40% because of Covid-19, for a 14 day period between 12 August to 10 September 2020.

Applications for the Resurgence Wage Subsidy were open from 21 August 2020 until 3 September 2020. Details of the Resurgence Wage Subsidy are available [here](#).

The Government has confirmed that if New Zealand experiences a resurgence in Covid-19 cases, a new Wage Subsidy Scheme will be available if any part of the country moves to Alert Level 3 or above for a week or more. To qualify, businesses and the self-employed will need to prove a 40% decline in predicted or actual revenue.

In addition, a **Resurgence Support Payment** will be available if New Zealand is at Alert Level 2 or above for a week or more. Businesses and the self-employed will be eligible if they have been in business for at least six months and experience an actual decline in revenue of 30% over a 14-day period. The decline in revenue must be as a result of the specific Alert Level escalation, not just Covid-19 in general.

Businesses may only receive one Covid-19 subsidy at any one time per employee.

A **Short-Term Absence Payment** is available at all Alert Levels to employers to pay workers who follow public health guidance and stay home while waiting for a Covid-19 test result. To be eligible, workers need to miss at least one shift of work, and be unable to work from home. The payment is \$350 for each worker. Employers or the self-employed can apply for any worker once in any 30-day period.

Similarly, if workers are required by a health official to self-isolate and cannot work from home, the **Covid-19 Leave Support Scheme** provides a payment for two weeks (which can be reapplied for, if required).

Businesses are not required to show an actual or predicted revenue drop or that their ability to support an employee was negatively impacted by Covid-19, to be eligible to access the payment.

Most visitor visas due to expire between 4 September and the end of October 2020 have been extended by five months from the expiry date of their current visa. After that time, the usual rules relating to visas and the right to visit and work in New Zealand apply. Visa holders must leave New Zealand when their visas expire. However, Immigration New Zealand has recently established a **Covid-19 short-term visitor visa**.

Applicants must show they:

- hold a valid passport
- are of good character
- have a genuine reason for remaining in New Zealand
- cannot leave New Zealand now but will make plans to leave at the end of their stay.

Unlike other visas, applicants for a Covid-19 short-term visitor visa do not need to show they have:

- enough money to support their stay in New Zealand
- existing onward travel arrangements
- good health
- met any time-limits for how long they are able to stay in New Zealand on a visitor visa.

This visa will last for two months.

Emergency benefits may also be granted to people who need assistance but would not otherwise qualify for them, including temporary visa holders. More details about the changes for visas are available [here](#).

Since the end of the Covid-19 Alert Level Four lockdown, the New Zealand Government has been encouraging the rebuilding of various industries. Part of this has included an **Immigration Border Exemption** to allow critical workers an exemption to the border closure.

There are various criteria depending on whether the role is short term or long term. To date it has been used to bring to New Zealand key workers for major infrastructure projects, and also workers on projects which aim to boost the New Zealand economy, such as film and television projects and the America's Cup.

Details about the border exemptions are available [here](#).

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Government made two key legislative changes to the Companies Act to prevent solvent businesses facing temporary financial distress from being prematurely placed into liquidation.

The first is the **Business Debt Hibernation regime**, which provides businesses with an option to place existing debts on hold until they can start trading normally again, subject to creditor agreement. This prevents creditors from taking legal action against the company to recover their debt for a period of six months.

Applications to use the Business Debt Hibernation scheme can be made until 31 October 2021. The temporary Covid-19 Business Debt Hibernation provisions are scheduled to be repealed on 31 May 2022.

The second change was the **Safe Harbour regime**, which provided directors with security against a legal claim for failing to meet their insolvency duties under the Companies Act as a direct result of the impact of the Covid-19 pandemic. Under the safe harbour regime, if a director was accused of:

- reckless trading, either by agreeing to the business of the company being carried on in any manner, or causing or allowing the business of the company to be carried on in any manner, which is likely to create a substantial risk of serious loss to the company's creditors; or
- incurring an obligation while being of the opinion that the company has, or in the next six months is likely to have, significant liquidity problems;

she/he was able to invoke the safe harbour by showing that she or he was of the opinion that:

- any significant liquidity problems over the next six months are, or will be, a result of the effects of Covid-19 on the company, its debtors, or its creditors; and
- it is more likely than not that the company will be able to pay its due debts on and after 30 September 2021.

The safe harbour regime expired on 30 September 2020. However, the Government may re-instate the regime if there is a need to do so. The temporary Covid-19 safe harbour legislation is scheduled to be repealed on 31 May 2022. Details of these changes are available [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

There has been no Government intervention in contract law, and the usual rules apply. However there has been an increased focus on contractual small print, including:

- questioning whether the Covid-19 Alert Level Four lockdown period was excluded from working day provisions in a contract (not for most contracts, but for those that determine a working day to be a day that a bank is open for business this was less clear-cut); and
- force majeure clauses, which will suspend the performance of the contract during the force majeure event.

Details of how a **Force Majeure Clause** can affect the performance of a construction contract is available [here](#).

In addition, the Commerce Commission (New Zealand's competition regulator) have recognised the greater need for commercial cooperation during the Covid-19 pandemic.

The Commerce Commission is allowing more flexibility to enable businesses to work together, potentially share resources or otherwise cooperate to ensure consistency of supply of both products and services required by New Zealanders. Detail of the permitted commercial cooperation is available [here](#).

## Property

Have any changes been made to the laws around property, rent and enforcement?

### Commercial property

Many commercial property leases include a clause providing for an abatement of a “fair proportion” of rent and outgoings if the property cannot be used during an emergency. The Covid-19 pandemic is an emergency in terms of those leases, but the question of what is a fair proportion is to be negotiated between the landlord and tenant depending on their own particular circumstances.

The Government has established a commercial rent dispute service, which provides subsidised mediation or arbitration for small businesses if an agreement cannot be reached on the amount of the abatement. A previously announced change to legislation to imply an abatement clause will no longer happen. This service will be available until the end of March 2021.

Details of the operation of the standard lease clause are available [here](#).

The Government has also made changes to the powers under the Property Law Act 2007 (PLA) in respect of Landlords’ rights to terminate commercial leases and the powers for Mortgagees to take possession or sell mortgaged land. The changes mean that a landlord now needs to wait thirty working days (rather than the previous ten working days) before they can cancel a lease for rental arrears. This change will be in place until six months after the Epidemic Preparedness (Covid-19) Notice 2020 expires or is revoked (this is currently due to expire on 22 March 2021, unless it is renewed).

### Residential property

Two significant changes were made to residential property rentals; restrictions on termination, and prohibitions on rental increases. For three months, residential tenancies could not be terminated unless:

- the tenant terminates the tenancy;
- the tenancy is terminated with the written agreement of both the landlord and the tenant;
- the termination is in accordance with some specific provisions such as death of the sole tenant, abandonment, or serious damage; or
- an order is made by the Tenancy Tribunal terminating the tenancy for anti-social behaviour.

Fixed tenancies which expired during this time continued as periodic tenancies and were then subject to the same termination restrictions. This provision ended on 25 June 2020. For six months, rent could not be increased under a residential tenancy. In addition, any increase notified before the commencement date, which had not yet taken effect, no longer applied. The freeze was in effect from 26 March to 25 September 2020.

### Overseas Investment

The Overseas Investments Act regulates the purchase of assets in New Zealand by overseas people, including the purchase of any “sensitive land”. The Government has introduced a temporary emergency notification regime designed to ensure that sales of business assets or business interests to overseas investors as part of the economic recovery phase (particularly “distressed” sales) are in New Zealand’s national interest.

The emergency notification regime requires all share or business asset purchase transactions to be notified to the OIO if an overseas person is: acquiring an ownership interest of more than 25%; increasing an existing ownership interest to or beyond certain ownership thresholds (50%, 75% or 100%); or acquiring business assets representing 25% or more of an existing business. The wording of the change means that the sale of land and buildings could be captured by the emergency notification regime where they are used as part of a business, even if the relevant land is not “sensitive land”.

Details on the changes to the overseas investment regime are available [here](#).



## Litigation

Are the courts operating?

New Zealand operates a Covid-19 Alert Level system, which has different measures at each level. At the lowest level, Covid-19 Alert Level One, the country operates as normal except that borders are closed. Even while New Zealand was at Covid-19 Alert Level Four, the highest level in the alert system, the **courts remained operational**. During the Covid-19 Alert Level Four lockdown courts changed their practices, to allow greater use of remote hearings, and to permit documents to be filed electronically. During this time hearings were held only for urgent proceedings, as it took time for the necessary technology to be implemented. At Covid-19 Alert Level Three:

- there will be no criminal jury trials;
- the court will deal with other criminal work by remote means including first appearances, bail applications and appeals, conviction and sentence appeals, case review hearings, sentence indications, pre-trial matters and sentencings;
- civil fixtures involving witnesses with upcoming hearing dates will be reviewed, and where possible may continue using remote means of participation; and
- the Court will conduct as much of its usual civil business as can be safely supported, including habeas corpus, civil appeals, judicial review, summary judgments, caveats, interlocutory applications, injunctions, and originating applications, with participation generally by remote participation.

At Covid-19 Alert Level Two, the courts operate as usual. Courtrooms are used which are of a suitable size to allow physical distancing between all counsel, parties, and witnesses. To the extent possible, most procedural matters will be dealt with using remote means of participation.

As New Zealand's rates of Covid-19 are at very low levels, New Zealand is usually at Alert Level One. When there are any instances of Covid-19 in the community, regions of New Zealand may be raised to either Level Two or Level Three.

## Tax

Has any new legislation been introduced in light of Covid-19?

The Government introduced a range of tax measures to provide relief to individuals and businesses. These include:

- Restoring building depreciation. This supports businesses and encourages investment in new and existing building by reinstating depreciation deductions for non-residential buildings. It provides business support by improving cashflow in the near-term, and assists with the broader economic recovery by stimulating business investment in new and existing buildings.
- Increasing the provisional tax threshold from \$2,500 to \$5,000. This relieves the compliance burden for small businesses as well as freeing up cashflow. It allows people to delay paying their provisional tax, as they can wait until 7 February in the year following the year they file their return before they have to pay, instead of having to pay in instalments throughout the year. It allows them to retain cash for longer, and will benefit an estimated 95,000 people.
- Allowing immediate low-value asset write offs. To encourage spending, the change will temporarily increase the threshold of the value of assets which can be deducted in the year the asset was purchased. The threshold will increase from \$500 to \$5,000 for assets purchased in the 12 months from 17 March 2020 (reducing to \$1,000 from 17 March 2021).
- Bringing forward broader research and development (R&D) refundability. The proposed amendment would bring planned refundability measures forward by one year, to the 2019–20 income year. This would help relieve cashflow problems, encourage businesses to retain their R&D staff, and (where possible) support these firms to continue their R&D in the current environment.
- Allowing use of money interest to be waived. This allows Inland Revenue to cancel interest on a late tax payment if the taxpayer's ability to make a payment due on or after 14 February 2020 was significantly adversely affected by the Covid-19 outbreak.

- Allowing greater information sharing. This would allow Inland Revenue to share information with a wider group of government agencies to assist the efficient and effective delivery of the Government's Covid-19 response.
- Allowing more access to the in-work tax credit. This would ensure that working families whose working hours are reduced as a result of Covid-19 would not lose their eligibility for the tax credit. Around 19,000 families will benefit.
- Introducing a tax loss carry-back regime to provide cash flow quickly to businesses, by allowing losses to be carried back one year.
- Allowing Inland Revenue to change due dates, timeframes or other procedural requirements for tax returns for taxpayers affected by Covid-19.
- Ensuring the treatment of benefits and pensions paid to New Zealanders stranded overseas is consistent with the treatment of equivalent payments in New Zealand.
- For the 2019/20 income tax year, tax payable up to \$200 will be written off. The usual threshold for writing off tax is \$50. This will reduce tax bills for about 149,000 taxpayers.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

To New Zealand's Companies Act already permitted meetings to take place by means of audio, audio and visual, or electronic communication, as well as in person, subject to any restriction set out in a company's constitution.

The Government has now passed legislation to enable entities (including companies, incorporated societies, charitable trusts, and others) to use electronic means for doing certain things that its constitution or rules would otherwise prevent, and to temporarily modify certain requirements or restrictions in its constitution or rules if it is not reasonably practicable to comply with them.

The matters that may be carried out (wholly or partly) by electronic means are:

- having or recording information in writing;
- calling or holding meetings (including for the purpose of establishing a quorum);
- voting (provided that the entities officers believe that all of those entitled to vote will be able to do so);
- giving or receiving information;
- making or keeping new records;
- providing access to records or information held by or on behalf of the entity;
- signing any instrument; and
- retaining any information.

Temporary modifications to a constitution or rules can relate to:

- how meetings are called or held (including deferring or waiving a requirement to hold a meeting or changing procedures at meetings);
- changing the method or form of voting; and
- deferring auditing, assurance or financial reporting or review requirements.

These provisions, and any temporary modifications made, apply until 31 March 2021, unless the Government decided to further extend this timeframe.

Businesses have also been encouraged to **sign documents electronically**, where permitted, and for deeds to be witnessed using audio-visual links.

Details on signing documents electronically, and on which documents are not permitted to be signed that way, are available [here](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

The Norwegian Government has set up financial aid for businesses, in particular through existing and new liquidity assistance programs.

### A. The State Bond Fund

A NOK 50 billion State Bond Fund has been passed to provide liquidity to larger Norwegian businesses, through government purchases of bonds. The State Bond Fund will invest within all business sectors. A significant portion of the State Bond Fund will be placed in non-financial business, but the mandate also includes investments in bonds issued by banks. The mandate states the investment scope within different sectors. The State Bond Fund will only be mandated to invest in bonds issued by companies incorporated in Norway, i.e. business with their main office in Norway. As of 8 May 2020 the mandate was adjusted to include not only investments in companies with a rating of B- and higher, but also companies with a CCC+ rating.

### B. State Guarantee Scheme

A NOK 50 billion State Guarantee Scheme ("SGS") for small and medium businesses has been passed pursuant to which a state guarantee aimed at facilitating loans to small and medium businesses ("SMB") which have experienced acute liquidity distress as a result of the Covid-19 outbreak. Under the SGS the state guarantees for 90% of each bank loan. SMBs are defined as companies with less than 250 employees and yearly revenues not exceeding EUR 50 million, or companies with a combined balance sheet not exceeding EUR 43 million. The State Guarantee Scheme was on 2 April 2020 expanded to include larger companies not caught up by the definition of SMB. Under the State Guarantee Scheme SMBs are eligible for guarantees on loans up to NOK 50 million and larger companies are eligible for guarantees on loans up to NOK 150 million. On 13 November 2020, the government decided to extend the SGS to 30 June 2021. The government will continue to consider the necessity of the State Guarantee Scheme. Moreover, further extensions must be approved by ESA. The EU recently resolved certain changes to the rules on state funding, including extending the period for group exemptions until 2023, making it possible to offer financial aid, under the group exemption, to businesses suffering financial distress due to Covid-19. Moreover, ESA has resolved similar changes to certain important state guarantee measures, which enhances the likelihood that ESA will approve the further extensions to the SGS.

### C. Reduction of countercyclical capital buffer

The Ministry of Finance has reduced the countercyclical capital buffer requirement from 2.5 to 1% with immediate effect, later combined with proposal to prohibit dividend distributions by Norwegian financial institutions. On 16 December 2020 the Norwegian Central Bank advised the Ministry of Finance not to raise the countercyclical buffer and the countercyclical buffer remains unchanged at 1%. According to the Norwegian Central Bank's assessment of economic developments, advice will be given on increased buffer requirements during 2021. They envisage that the buffer will eventually return to 2.5%.

### D. Guarantee scheme for the aviation industry

A NOK 6 billion State Guarantee Scheme for the aviation transport industry has been passed. The guarantee scheme will be administered by the Norwegian export finance institution GIEK. The scheme entails the state guaranteeing loans up to 90%, with commercial lenders taking on the remaining 10% exposure. The scheme is available to commercial airlines holding Norwegian Air Operator's certificates. Of the total NOK 6 billion, NOK 3 billion has been allocated to Norwegian, NOK 1.5 billion to SAS and NOK 1.5 billion to Widerøe together with some smaller airlines. The government decided to extend the term of the guarantees from two to three years. In addition, the period within which loans may be taken up under this scheme is extended to 30 June 2021.

### E. State Compensation Scheme

The government passed a State Compensation Scheme under which companies which have suffered a minimum of 30% reduction in revenues due to the Covid-19 outbreak can apply for state compensation.

On 29 May 2020 the government announced that the State Compensation Scheme was extended until 31 August 2020. However, this compensation scheme was initially managed by the Norwegian Tax Administration, but has been discontinued and replaced by a new compensation scheme from 1 September 2020 managed by the Brønnøysund Registers (*Nw Brønnøysundregistrene*), which is based on the previous scheme. The new scheme will apply until 30 April 2021. Any grants under the scheme will be calculated for two months at a time. Further extensions must be approved by the ESA. Under the State Compensation Scheme companies experiencing a minimum of 30% reduction in revenues, can apply to the state for the state to cover a portion of the company's overhead expenses. Businesses experiencing a minimum of 30% revenue reduction are eligible for state compensation for up to 70% of their overhead expense in September and October (2020), up to 85% for November and December (2020) and 80% for January, February, March and April (2021).

The deadline to apply for compensation for the first two periods (September/October 2020 and November/December 2020) is 14 March 2021, which the deadline for January and February is 14 May 2021.

### F. Financial aid for entrepreneurs and start-ups

On the 27 March 2020, the government proposed a NOK 2.5 billion financial aid package to entrepreneurs and start-ups, pursuant to which entrepreneurs and start-ups are eligible for various loans, financial subsidies and investment capital.

On 29 January 2021, the government proposed to grant an additional NOK 500 million to entrepreneurs and start-ups.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment issues?

When Covid-19 forced Norway to shut down in March 2020, several measures were implemented by the Norwegian government to help business survive, and to protect jobs. As the labour market is better today, some of the temporary schemes were discontinued on 1 November 2020 and 31 December 2020, while other schemes were extended. An important change from 1 November 2020 was that the temporary lay-off period was extended from 26 to 52 weeks. The extended period for temporary lay-offs allows companies to hold onto employees it expects can be taken back to work when the pandemic is over, and avoid that key employees, important skills and expertise are lost.

The employer must paid the laid-off employee's salary for the first 10 days of the lay-off period. After the first 10 days, the laid-off employees receive unemployed benefits for 30 weeks from the Norwegian government. Then the employer has to pay the laid-off employees' salary for a period of 5 days, before the laid-off employees receive unemployment benefits for an additional 19 weeks.

On 29 January 2021, the government proposed to reduce the minimum of working hours to qualify for unemployment benefits from 50% to 40% of the full-time equivalent, and reduce the threshold for minimum income to qualify for unemployment benefits from 1,5 G to 0,75 G.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Norwegian Parliament passed the Temporary Restructuring Act (nw: rekonstruksjonsloven), which came into force 11 May 2020. The law will remain in effect until January 2022 and replaces the restructuring chapters of the Bankruptcy Act (nw: konkursloven). The new rules will reduce the risk of unnecessary bankruptcies in viable businesses that are now hit by acute revenue failure.

The most important changes in the new law are:

- No requirement for the debtor to be illiquid to open reconstruction negotiations.
- Creditors may, under certain conditions, request the opening of reconstruction.
- New rules to secure financing of the debtor's operations during the reconstruction period.
- Better opportunities for conversion of debt to equity in connection with restructuring.
- New regulations which makes exceptions to the public's priority to claims regarding taxes and VAT.
- The current requirements for equal treatment of creditors in a voluntary reconstruction and the rules for minimum dividend in compulsory restructuring are abolished.
- Changes to the rules on the adoption of the proposal for reconstruction.

It is expected that the law will become a permanent fixture of Norwegian bankruptcy law even after January 2022.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

In general, there has been no change in rules governing contracts.

The fact that there is an epidemic/pandemic that has or may have negative consequences is not in itself sufficient to qualify as force majeure. Whether the effects of the coronavirus can be regarded as force majeure or a material adverse change in a particular contractual relationship must be decided on a case-by-case basis.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

No laws have been amended, however as mentioned above the government has put in place several funding schemes which makes it more likely that tenants (both private and professional) will be able to pay their rent.

Whether a tenant claim force majeure or otherwise demand a reduction in rent, payment deferrals or renegotiation of other contract terms under the lease depends on a specific interpretation of the relevant lease.

## 6

### Litigation

Are the courts operating?

The courts are operating, though with certain Covid-19 restrictions and measures, such as restricted access for spectators, the media, etc. Due to the strict Covid-19 restrictions implemented in March 2020 the courts scaled back operations until 13 April 2020. Most first instance hearings and appeal hearings were postponed and had to be rescheduled.

Nevertheless, certain hearings were conducted as live-link meetings, pursuant to section 13-1, sub-section 3 b), of the Civil Procedure Act, and according to Section 2 of the temporary Corona Act such live-link meetings could be conducted without prior consent, as long as the court found it "necessary and unobjectionable" to conduct court hearings remotely. The temporary Corona Act is extended until 1 June 2021 to make it possible to process cases in the courts while respecting infection control measures. The courts are working hard to get back on schedule and many postponed hearings have been rescheduled. However, the courts are still prioritising criminal proceedings, labour disputes, family disputes, etc.

To reduce the waiting time and to increase the courts' operating capacity at the time of the Corona outbreak, the courts were granted NOK 35,000,000 to install necessary electronic equipment to conduct electronic hearings. In October the courts were allocated an additional NOK 39,000,000 to hire temporary judges, rent more office space and maintain adequate infection control measures. This year, a budget increase of NOK 71,000,000 has been granted to handle the Covid-19 situation, and NOK 42,600,000 to make courts even more digital in 2021.

## Tax

Has any new legislation been introduced in light of Covid-19?

At the Covid-19 outbreak, several changes were adopted in payment deadlines for various taxes and fees. In addition, a simplified scheme for deferred payment of taxes and fees was introduced in June 2020. Self-employed persons, businesses, companies and private individuals who are facing cash-flow issues because of the coronavirus situation may apply for deferred payment of most tax and duty claims, as well as claims handled by the Norwegian National Collection Agency. Those who have been granted the above mentioned deferred payment, will be allowed to pay what they owe in instalments over a period of six months. The first instalment payment falls due on 1 April 2021. The scheme was first decided to apply until the end of 2020, but was later extended to 28 February 2021 and again until 30 June 2021.

The Parliament resolved on 21 March 2020 to lower the reduced VAT rate of 12% applicable to passenger traffic hotels, broadcasting, movie theatres, sporting events, amusement parks and adventure centres, to 6%. The change will be effective as of 1 April 2020 until 30 June 2021. Business registered for Value Added Tax purchasing such as services during this period, who are invoiced with Value Added Tax at rate 12% instead of 6%, will not be entitled to deduct the full Value Added Tax amount – only the part of 6%. To avoid that the non-deductible amount becomes a cost, the purchaser must require the seller to issue a credit note and new invoice with the correct Value Added Tax rate of 6%.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

In particular, the following temporary simplifications in relation to corporate activities have been adopted.

Private limited liability- and public limited liability companies (AS, ASA and SE) may hold both board meetings and general meetings virtually. The board of directors shall ensure that, to the extent possible, all board members participate at the board meetings. Moreover, the board of directors shall ensure that all shareholders can participate at the general meeting and that participation and voting is controlled in a satisfactory manner. The temporary simplifications will remain in effect as it stands until 1 June 2021.

## Loans and financial support

Has the government put in place any new bank funding schemes?

Specific credit lines available for treasury support: credit line of up to €400 million for treasury support under the Capitalizar Covid-19 Programme preferentially for SMEs not covered by the specific credit lines below.

### Credit lines for treasury support of companies in the following specific economic sectors:

- €100 million (tourism sector – microenterprises),
- €600 million (restaurant business),
- €200 million (travel agencies, tourist entertainment and event organisation companies),
- €900 million (touristic developments and accommodation), and
- €4.5 billion (credit line applicable to all companies, irrespective of the economic sector in which they are engaged, and covers, inter alia, textile industry, clothing and footwear, trade and services, transport, real estate, construction, extractive and manufacturing industries, mining and wood industry).

### Specific Portugal 2020 incentives:

- Manufacturing Innovation Covid-19 (Inovação Produtiva Covid-19) (€46 million) for SMEs and large enterprises.
- Research and Development for Companies – Covid-19 (I&D Empresas - Covid-19) (€23 million) for companies and entities part of the National Investigation and Innovation System (Sistema Nacional de I&I).

### Specific financial support measures for Portuguese start-ups:

- Creation of “Startup RH Covid-19”, which is a financial support through an incentive equivalent to 1 minimum wage per employee (up to a maximum of 10 employees per start-up).
- Extension of the “Start-up Voucher” (i.e. a 3-month extension of the benefit already awarded (€2,075 per employee)).
- Creation of the “Vale Incubação – Covid-19”, a financial support for start-ups with less than 5 years of existence, through the hiring of incubation services based on a non-refundable incentive of €1,500.
- Creation of “mezzanine” funding for start-ups through a loan convertible into share capital (shareholder loans), after 12 months, applying a discount rate to avoid dilution of promoters (average investment tickets between €50,000 and €100,000 per start-up).
- Launch of the “Covid-19 - Portugal Ventures” for investments in start-ups, with tickets from €50,000.
- Modification of the already existing fund “Fundo 200M”, which is a co-investment with private investors in Portuguese start-ups and scale-ups, with the minimum public investment of €500,000 and the maximum of €5,000,000.
- Modification of the already existing fund “Fundo coinvestimento para a inovação social”, which is a co-investment with private investors in companies with innovative and social impact projects, with the minimum public investment of €50,000 and the maximum of €2,500,000.

### Incentive package:

- Deferral of 12 months for repayment instalments due up to 30 September 2020 in respect of reimbursable subsidies granted under the incentive schemes of the National Strategic Reference Framework (Quadro de Referência Estratégico Nacional) or Portugal 2020 without interest charges or any other penalty.

- Expenses incurred by beneficiaries of such incentive schemes with events or actions cancelled or postponed as a result of the Covid-19 outbreak, eligible for reimbursement.
- Negative impact of the Covid-19 outbreak causing failure to execute contractual obligations under the Portugal 2020 incentive scheme, may be deemed as force majeure.

**Exceptional and temporary regime applicable to insurance agreements:** aimed at making the payment of insurance premiums more flexible. Under this regime, despite the lack of payment of the premium or fraction thereof on the respective due date, the compulsory insurance cover is maintained in its entirety for a limited period of time (60 days). In situations where there is a significant reduction or even elimination of the risk covered as a direct or indirect result of the legal measures adopted in response to the Covid-19 outbreak, policyholders may request that these circumstances be reflected in the premium and the application of an exceptional regime of fractionated payment.

**“Programa ADAPTAR”:** a safety incentive scheme for micro, small and medium-sized enterprises aimed at reducing the increased costs with the rapid reestablishment of operating conditions for this type of enterprises. Under this incentive scheme, the Portuguese State bears part of the costs with the purchase of personal protective equipment for workers and users, hygiene equipment, disinfection products and of the costs of reorganising workplaces and changing the layout of establishments (for microenterprises investing between €500 and €5,000, the Portuguese State will bear 80% of the costs on a non-refundable basis; for small and medium-sized enterprises investing between €5,000 and €40,000, the Portuguese State will bear 50% of the costs on a non-refundable basis).

**Entrepreneurship and employment incentive scheme:** an incentive scheme aimed at supporting, in a simplified way, the entrepreneurship, creation and maintenance of employment by micro and small enterprises, focusing particularly on national production. This incentive system is aimed at investments of less than €235,000, with (i) remodelling or adaptation works, (ii) acquisition of machinery and equipment, (iii) technological and digital services, (iv) computer equipment and software, and (v) implementation of quality systems and certification systems, and it is available on a non-refundable basis.

**“Programa APOIAR”:** a liquidity incentive scheme aimed at mitigating the negative impacts on the economic activity arising from the public health protection measures taken in the context of the Covid-19 pandemic, and promoting support for liquidity, operational efficiency, employment maintenance and short-term treasury support of companies. This incentive is structured in the following measures:

- “APOIAR.PT” (financing of 20% of the amount of the decrease in turnover, with a maximum limit of (i) €10,000 for micro-enterprises, (ii) €55,000 for small enterprises and (iii) €135,000 for medium-sized enterprises and for enterprises that are not SMEs, because they employ 250 employees or more, but that have an annual turnover of less than €50 million);
- “APOIAR RESTAURAÇÃO” (financing of 20% of the amount of the decrease in turnover);
- “APOIAR + SIMPLES” (financing of 20% of the amount of the decrease in turnover, with a maximum limit of €4,000); and
- “APOIAR RENDAS” (financing (i) of 30% of the value of the reference monthly rent, up to a maximum of €1,200 per month and per establishment, for 6 months, for companies with a decrease in turnover between 25% and 40%; or (ii) of 50% of the value of the reference monthly rent, up to a maximum of €2,000 per month and per establishment, for 6 months, for companies with a decrease in turnover of more than 40%).

With the exception of “APOIAR + SIMPLES”, which is exclusively addressed to sole proprietors without organised accounts, all these measures are addressed to SMEs or to enterprises that are not SMEs, because they employ 250 people or more, but that have an annual turnover of less than €50 million. All these measures are available on a non-refundable basis.

## Specific credit lines available for financial support of Portuguese micro, small and medium-sized enterprises, Small Mid Caps and Mid Caps:

- “Linha de Apoio à Economia Covid-19 – Montagem de eventos” (€50 million, for event organization companies);
- “Linha de Apoio à Economia Covid-19 – Apoio às empresas exportadoras da indústria e do turismo” (€1,050 million, for export companies in industry and tourism);
- “Linha de Apoio à Economia Covid-19 – Apoio às médias empresas, Small Mid Caps e Mid Caps” (€400 million, for medium-sized enterprises, Small Mid Caps and Mid Caps);
- “Linha de Apoio à Economia Covid-19 – Apoio às micro e pequenas empresas” (€1,000 million, for micro and small enterprises); and
- “Linha de Crédito Fundo para a Inovação Social – Apoio às micro, pequenas e médias empresas e entidades da economia social” (€50 million, for micro, small and medium-sized enterprises and entities from the social economy sector promoting innovation and social entrepreneurship initiatives that have been recognised by the Portuguese Social Innovation Mission Structure).

**Export support measures:** increase of credit insurance lines guaranteed (i) for the metallurgical, metal-mechanical and mould sectors (increase from €100 million to €200 million); (ii) for work abroad and other supplies (from €100 million to €200 million; and (iii) for short-term export credit insurance line (from €250 million to €300 million).

**Moratorium on debts:** moratorium on debts until 30 September 2021, which provides for the prohibition of the revocation of contracted credit lines, the extension of credits or the suspension of the reimbursement of credits until the end of September this year.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- **Simplified lay-off:** lay-offs, which comprise the temporary suspension of employment contracts or reduction of the working time, have been given more flexibility and the procedure has eased significantly (“simplified lay-off”). Only available to companies that are still covered by the closure obligation imposed by the Portuguese Government (currently the number of companies forced to close or suspend their activity has increased due to the state of emergency in force and, as such, the Portuguese Government allowed them to access the simplified lay off for the number of days that the order of closure or suspension of activity remains in force). Contrary to what previously happened, if from the compensation payment results an amount lower than the employee’s gross normal remuneration, the amount of compensation paid by the Social Security is increased to the extent strictly necessary to ensure 100% of the employee’s remuneration, up to a maximum of 3 guaranteed minimum monthly salaries (€1,995).
- **Extraordinary Incentive for Business Regularization:** This incentive aims to support the maintenance of employment and to reduce the risks of unemployment for employees working for companies affected by the business crisis, as a result of the pandemic caused by the Covid-19 outbreak. Companies which have benefited from the simplified lay-off regime may accede the extraordinary incentive for the normalization of business activity. The payment of the incentive is made as follows: (i) the payment of the incentive under the **modality of one minimum month wage (€635)**, is made in one installment, within 10 working days as from the date of communication of the approval of the application to the incentive; (ii) the payment of the incentive under the **modality of two minimum month wages (€1,270)**, is made in two installments with the same amount, under the following terms.

- The first installment is paid within 10 working days as from the date of communication of the approval of the application to the incentive;
  - The second installment is paid within 180 days following the last day of application of the extraordinary support for the maintenance of employment contracts (“simplified lay-off”) or the extraordinary training plan.
  - The extraordinary incentive for the normalization of business activity is only granted once to each employer, and only in one of the modalities provided for in the Ordinance no. 170-A/2020 of 13 July. Therefore, only one application should be submitted by each employer. The application is made through electronic submission [here](#) and shall be accompanied by the documents set forth in the applicable legislation. Given the worsening of the current situation in Portugal and the new state of emergency, the Portuguese Government authorized that, as of February 2021, companies that have accessed the Extraordinary Incentive for Business Regularization, regardless of the modality, can access the progressive resumption support measure. Therefore, these support measures have only been mutually excluded until January 2021.
- **Progressive resumption support measure:** This measure is considered a substitute measure (for companies that may no longer resort to the simplified lay-off regime or consider this support measure preferable in comparison to the simplified lay off regime, while this new state of emergency lingers). It applies to employers who have been affected by the Covid-19 pandemic and who are, as a result, in a situation of business crisis, *i.e.*, with a decrease in revenues of 25% or more. Thus, the employer can access the extraordinary support for the progressive resumption of activity with a temporary reduction of the normal work period of all or some of its employees, being able to resort to this reduction and its respective remuneration for one month, with a monthly extension until the date of termination provided for by law (currently until 30 June 2021). The employer is entitled to financial support exclusively for the purpose of paying compensation to employees covered by the reduction of the normal working period. Social security support corresponds to 70% of this compensation, the remaining 30% being provided by the employer. Notwithstanding, if from the remuneration paid for the hours worked and compensation to which the employee is entitled for hours not worked results in a monthly amount lower than that of the employee’s gross normal remuneration, the amount of compensation paid by the Social Security is increased to ensure 100% of the employee’s remuneration, up to a limit of 3 minimum monthly salaries guaranteed (€1,995). In the event of a serious business crisis, with a 75% or more drop in turnover, the employer is also entitled to 35% of the gross remuneration to be paid by the Social Security to the employee for the hours worked. To resort to this support measure, the employer must submit an electronic application, in a proper form, through the Direct Social Security, with the employer’s declaration and the certified accountant’s declaration (Mod. 3058-DGSS) attesting the business crisis situation. The form must be accompanied by a nominative list of the employees to be covered, their social security number, gross normal pay and an indication of the reduction in the normal working period to be applied, in average monthly terms, per employee. Consent must also be given for consultation of the tax standing with the tax authorities, as well as registration of the IBAN to which the financial support will be credited.
  - **Exemption from contributions:** either under the simplified lay-off regime and progressive resumption support measure, the employer has some benefits as regards contribution obligations to which is bound. Specifically regarding the progressive resumption support measure, the employer that is considered to be a micro, small or medium-sized enterprise and that benefits from this support measure has the right (officially recognized by the Social Security Services) to 50% exemption from the payment of contributions for covered employees, related to the compensation to be paid. In relation to the simplified lay-off regime, this support measure provides for a temporary (yet total) exemption from the payment of Social Security contributions due by the employer (the exemption refers to the employer’s contributions related to the total remuneration paid to the covered employees, maintaining the employee’s contribution of 11%).

- **Simplified support for microenterprises for the maintenance of job positions:** a new simplified support measure was made available by the Portuguese Government for micro enterprises in a situation of business crisis situation (decrease in revenues of 25% or more) that have previously accessed the simplified lay-off regime or the progressive resumption of activity measure. The financial support is granted by the IEFP, I.P., upon presentation of the application, paid in phases over 6 months.

Specifically, the payment translates in 2 instalments that coincide with the quarters of 2021, upon verification of the situation of business crisis of the company. The support translates into 2 minimum monthly salaries guaranteed, *i.e.*, €1,330, per employee who was covered in 2020 by the extraordinary support to maintain the employment contract or by the extraordinary support for the progressive resumption of activity.

- **Protection of employment:** under the above mentioned support measures, as well as in the following 60 days, the employer may not terminate the contracts of employees covered by such measures, under collective dismissal and dismissal for termination of the job. Notwithstanding the discussion that has taken place regarding the possibility of executing settlement agreements based on objective reasons (e.g., based on the possibility to promote job extinction or collective dismissal), pending the support measures or within 60 days thereafter, it is recommended that companies do not take this risk (at least until the legislation approved regarding support is changed and this hypothesis is taken into consideration).
- **Justified absences and possibility for employees to execute their activity through telework:** Immunosuppressed employees and those with chronic disease who, according to the guidelines of the health authority, should be included in risk groups (in particular cardiovascular patients, those with chronic respiratory disease, cancer patients and those with renal insufficiency), may justify their absence from work by means of a medical declaration, provided that they cannot perform their activity in a telework regime or through other forms of activity (as this is mandatory, in accordance with the applicable legislation in force). The medical declaration referred to must attest the health condition of the employee that justifies his special protection. Also, taking into account the current closure of schools, absences from work due to urgent assistance to a child under 12 years of age or, regardless of age, with a disability or chronic illness, resulting from the suspension of school and non-teaching classroom activities, are considered justified without loss of rights, except as to remuneration, and are entitled to financial support in the amount of 66% of their salary (with a minimum limit of €665 and maximum of €1,995), paid in equal parts by the employer and the Social Security. Contrary to what happened before, when those who teleworked could not access this support measure, the Portuguese Government has conceded that, in certain situations (single parent household, household with a disabled dependent, with proven incapacity equal to or greater than 60%, regardless of age), the teleworker may interrupt the exercise of his or her activity to provide this assistance to the family, receiving the support provided for this purpose (in certain cases increased up to 100%, in the portion paid by the Social Security). This option must be communicated to the employer 3 days before the interruption date. Nowadays, the telework regime is mandatory, regardless of the employment relationship, whenever the functions in question allow it and the employee has the conditions to perform them, without the need for a written agreement between the employer and the employee. Additionally, in companies with establishments in territorial areas where the epidemiological situation justifies it, as well as in districts considered by the Directorate-General of Health as high, very high and extreme risk, there is a specific teleworking regime. The rule continues to be the same (telework regime is mandatory) but, exceptionally, when the employer considers that the conditions for the development of telework are not met, the employer must communicate his decision to the employee, duly justified and in writing, and it is up to the employer to demonstrate that the functions in question are not compatible with the teleworking regime or the lack of adequate technical conditions for its implementation. The employee may, within 3 working days after the employer's communication, request the Portuguese Labor Authority to verify the requirements and facts invoked by the employer.

## 3

## Insolvency

Has the government made any changes to insolvency legislation?

The suspension of procedural terms and authorised judicial proceedings referred to below is also applicable to insolvency proceedings, notably as regards the term for a debtor to file for insolvency. This suspension, however, does not prevent the courts from ordering the performance of any judicial steps that are necessary to prevent irreparable damage to the legitimate rights and interests of debtors.

As regards insolvency law, an exceptional and temporary regime was created, under which:

- the deadline for concluding negotiations on the approval of a recovery plan or payment arrangement was extended and a deadline has been granted for adapting the proposed insolvency plan in connection with the Covid-19 pandemic;
- the general movable credit privilege granted to creditors who, in the course of the proceedings, finance the companies activity by providing them with capital for their revitalization, was extended to shareholders or any other specially connected persons who finance the activity of the companies during the Special Revitalisation Process;
- companies that are in a state of insolvency as a result of the Covid-19 pandemic are subject to the Extrajudicial Company Recovery Scheme;
- an extraordinary process for the viability of companies affected by the economic crisis resulting from the Covid-19 pandemic was set up;
- an obligation to carry out partial apportionments in all pending insolvency proceedings in which there are liquidation proceeds deposited for a value above €10,000 was set out; and
- priority must be given to the processing of applications for the release of collateral or guarantees provided in the context of insolvency proceedings, special revitalisation proceedings or special proceedings for payment agreements.

The aforementioned exceptional and temporary regime is applicable between 27 November 2020 and 31 December 2021. For more information please visit [here](#).

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- Other than other measures already mentioned herein, there have been limited cases where specific measures aimed at reinforcing contracts have been put in place. It's worthwhile noting that, in relation to public-private partnerships, during the state of emergency, contractual mechanisms allowing financing rebalancing are suspended (such financial rebalancing arising from the pandemic will result in the extension of the duration of the relevant contract).
- With the exception of the abovementioned measures, the Portuguese Government has not taken any further measures to specifically reinforce contracts and, therefore, the normal rules would apply.
- It should be taken into account that the force majeure term relates to the impossibility of the parties to perform their obligations as a result of an event that could not have been foreseen or that, if foreseen, would be inevitable. In this respect, the scope and applicability of force majeure would be subject to the specifics of each case, which shall be, in last instance, examined and determined on a case-by-case basis by judicial courts.
- Likewise, it should be considered that there is a provision on the Portuguese Civil Code that allows contracts to be reviewed or terminated whenever the circumstances in which the parties based their decision to contract have suffered an abnormal change. However, it should also be noted that Portuguese courts tend to apply this provision very cautiously and the impact on the performance of each contract should always be examined on a case-by-case basis.

In the specific case of the impacts generated by the Covid-19 outbreak we are witnessing several cases but no judicial decisions have been issued yet.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

**Prohibition of termination of lease contracts by the landlords due to the mandatory closure of establishments and facilities:** mandatory closure of establishments and facilities and suspension measures determined by the Portuguese Government cannot be invoked as grounds for the termination, early break or other forms of terminating lease contracts for non-residential purposes or other atypical forms of occupational agreements regarding real property, nor as grounds for the eviction from the properties where such establishments or facilities are installed. The Portuguese Government has declared the state of emergency on 8 November 2020, by virtue of the increase in the number of infections and deaths, and in the context thereof approved several measures similar to the ones implemented in March and April 2020. A new lockdown has been enforced, with the closure of business establishments, facilities and services (except those providing essential goods and services; and in case of restaurants and similar establishments, whose activity is limited to take-away and home delivery services) and the imposition of telework regime.

**Suspension of termination of lease contracts and evictions:**

- The duration of lease contracts (residential or non-residential) that would normally expire before 30 June 2021 is extended until such date (except if the tenant agrees to the expiry of the lease at an earlier date).
- The effects of all notices for termination, revocation or opposition to renewal/extension already served by the landlord are suspended until 30 June 2021.
- Eviction proceedings (either judicial or otherwise) are suspended until the termination of the exceptional measures, in the cases where, as a consequence of a potential final eviction decision, the tenant could be put in a “vulnerable situation due to the lack of a place for permanent residence or to another overriding social reason”.
- The obligation of the tenant to return the premises to the landlord following the termination of the lease is also suspended until 30 June 2021.

**Deferral on payment of rents:** eligible tenants will be bound to pay the deferred rental payments in monthly instalments (which shall accrue to the monthly rents due and payable in the same period), with no interest or penalties and landlords shall not be entitled to terminate leases or evict tenants for default on the payment of rents during the deferment period. These measures will apply to standard lease agreements (residential and non-residential) and other atypical forms of occupational agreements regarding real property and limited to the following tenants:

- Certain residential tenants whose household income has been reduced as a result of the Covid-19 outbreak (they shall prove that they have suffered a decrease of more than 20% in their household income, as compared to February 2020, the preceding month or the equivalent period of the previous year; and that the payable rent represents an effort rate above 30% of the reduced monthly household income);
- Retailers and services open to the public who have been forced to shut down or to suspend activity as a result of the state of emergency, or by any other legal or administrative order (including if they keep trading online or through distance sales); and
- Restaurants and similar establishments (even if they keep operating for take-away services or home delivery).

Establishments and facilities installed in shopping centres have in the meantime been expressly excluded from the application of such regime.

- **Residential tenants** eligible for purposes of deferral on the payment of rents, may defer rent payment falling due in the period from 1 April 2020 up to the end of the month following the termination of the state of emergency (i.e. June 2020), and the deferred rents shall be paid in monthly instalments within 12 months after the deferment period lapses. Furthermore, eligible residential tenants who have their “permanent residence” in the property (and student tenants who have their permanent residence more than 50 km away from the let property) may, alternatively, request a loan without interest to the Institute for Housing and Urban Rehabilitation, to cover the difference between the due rent and the amount corresponding to the application of the effort rate of 35% to the household income. Residential tenants with low income with an effort rate destined to the payment of the rent higher than 35% and lower than 100%, shall benefit from a non-refundable subsidy (calculated in accordance to the effort rate); if the effort rate is higher than 100%, the loan is totally converted in a non-refundable subsidy.
- **Non-residential tenants** eligible for purposes of deferral on payment of rents may defer the payment of rents falling due (i) in the months during which the state of emergency is in force, or (ii) up to the end of the 3 months following the reopening or the end of the suspension of its activity (however, the deferral is not applicable to rents falling due beyond 31 December 2020). The deferred rents shall be paid in 24 instalments, from 1 January 2021 up to 31 December 2022. The global amount of deferred rents accrued for purposes of calculation of the due instalments excludes the overdue and paid rents which shall be deemed as settled. The tenants that intend to benefit from such regime shall communicate it to the landlord, which can propose a different payment agreement. Favourable agreements executed between tenants and landlords before or after the amendment to the deferral regime shall prevail over such regime; agreements executed with worse terms and conditions than this regime may be terminated by the tenants by serving a notification to the landlord within 30 days as of 21 August 2020. Any clauses included in agreements entailing the waiver by tenants to rights provided under this regime and the waiver to enforce legal action against the landlord, or entailing the acceptance of increases to rent and duration of lease agreements are deemed null and void.
- Tenants that remain under lockdown (since March 2020 and, at least, until 1 January 2021): (i) the deferred rents due in 2020 shall be paid in 24 instalments from 1 January 2022 to 31 December 2023; (ii) the rents due in 2021 during the period of closure of the establishments shall be deferred and paid in 24 instalments from 1 January 2022 to 31 December 2023.
- **Subsidies (“APOIAR RENDAS”)**: tenants that in 2020 suffered a decrease in turnover between 25% and 40% shall receive a non-refundable support corresponding to 30% of the rent, up to a limit of €1,200 per month; tenants that in 2020 suffered a decrease in turnover higher than 40% shall receive a non-refundable support corresponding to 50% of the rent, up to a limit of €2,000 per month.
- **Applicable regime to shopping centres**: the payment of rents due by tenants of establishments and facilities installed in shopping centres is governed by the Supplementary Budget (approved by Law no. 27-A/2020, of 24 July), which determines that up to 31 December 2020 it is only due the payment by tenants of the variable rent (calculated on the shopkeepers’ sales), accrued with the service charge of common expenses (being excluded the payment of the fixed rent). This regime is applicable to the period between 13 March and 31 December 2020.

- The fixed or minimum monthly rent due by the tenants of establishments installed in shopping centres shall be reduced proportionally to the reduction of the monthly invoicing, up to the limit of 50% of the amount of the monthly invoicing, when such establishments suffer a drop in the monthly sales volume compared to the sales volume of the same month in 2019, or the average sales volume of 6 months preceding the declaration of state of emergency (in March 2020). This regime shall be valid up to 31 March 2021, and the Portuguese Government is entitled to extend it up to 30 June 2021.

## Litigation

Are the courts operating?

Courts are operating, but all procedural terms for all kinds of courts have been suspended and will resume when the state of emergency ends. This suspension is generally applicable to proceedings which are not urgent (notably those where fundamental rights are involved).

For more information, please visit [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

Postponement of CIT/PIT and Stamp Tax payments and obligations: the following deadlines have been extended.

- Extension of the first CIT special payment on account from 31 March 2020 to 30 June 2020.
- Deadline to submit the Corporate Income Tax return (Modelo 22) was extended from 31 May 2020 to 31 July 2020.
- Extension of the first CIT payment on account and additional payment on account from 31 July 2020 to 31 August 2020.
- Deadline to submit the IES statement from 15 July 2020 to 7 August 2020.
- Deadline to deliver to the tax authorities the tax file (when mandatory) from 15 July 2020 to 31 August 2020 (with no penalties).
- Extension of the deadlines to deliver CIT and PIT withholding taxes and Stamp Tax from April and May from 20 May 2020 to 25 May 2020 and from 20 June 2020 to 25 June 2020, respectively.
- Extension of the deadline to deliver Modelo 10 from 10 to 25 February.

**Tax deferrals:** payment of VAT and CIT/PIT withholding taxes due in the 2nd trimester of 2020 may, under certain circumstances, be deferred and paid in 3 or 6 monthly instalments, free of interest and without the need of providing guarantees. The first 1/3 or 1/6 has to be paid on the corresponding legal deadline.

**VAT measures:**

- Several extensions of the deadlines to submit the VAT periodic return (with no penalties) and to pay the corresponding VAT have been approved.

- Simplification procedures for filing of VAT periodic returns of February, March and referring to the 1st trimester of 2020 with no supporting documentation as long as substitutive returns are afterwards presented by 20 December 2020. This measure is only applicable to taxpayers with a turnover lower than €10M in 2019 or whose activity was opened in 2020.
- Application of reduced VAT rate (6% in Mainland Portugal, 5% in Azores and 4% in Madeira) to protective masks and disinfectant gel and VAT exemption on health equipment furnished to hospitals and non-profit health organizations.
- Exceptional recognition of PDF invoices as “electronic invoices” from April 2020 to March 2021 for every legal effect.

**Social Security deferrals:** possibility of, under certain circumstances, reducing to 1/3 the Social Security contributions due between March/April and May/June 2020 for companies and self-employed (the remaining 2/3 should be payable under the same instalment deferral rules set out above, i.e. payable between July and September 2020 or between July and December 2020, depending whether payable in 3 or 6 monthly instalments (free of interest and guarantees)).

**Temporary exemption from Social Security contributions:** exemption which is, under certain circumstances, automatically applicable to entities benefiting from the exceptional and temporary measures set for labor protection in the context of the Covid-19 outbreak.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The use of distance communication mechanisms (i.e. video or teleconference) to hold meetings of the corporate bodies and pass resolutions is also admissible, provided that the participation via such means is duly recorded in the relevant minutes of the meetings.



## Loans and financial support

Has the government put in place any new bank funding schemes?

The Monetary Authority of Singapore (“MAS”) has established the MAS SGD Facility and MAS USD Facility to provide SGD and USD to funding markets in Singapore in order to support their effective functioning.

- The MAS USD Facility, established on 26 March 2020, seeks to provide up to USD60 billion of funding to support stable USD liquidity conditions.
- The MAS SGD Facility is established to provide low costs funding to banks and finance companies on the conditions that such financial institutions commit to pass on the savings in funding costs to small and medium enterprises (“SME”) applying for loans on Enterprise Singapore’s (“ES”) lending schemes for SMEs: the SME Working Capital Loan scheme and the Temporary Bridging Loan Programme. It was announced on 20 April 2020 that MAS will offer near-zero interest rate loans to eligible banks – just 0.1 per cent per annum for a two-year tenor, which will help to lower the cost of loans for these SME lending schemes and help financial institutions make loans to SME borrowers more affordable.
- This has been extended to 31 March 2021.

The SME Capital Working Loan scheme was enhanced pursuant to the Solidarity Budget 2020 for the purpose of aiding SMEs with their working capital and operational cashflow needs.

- The maximum loan quantum was increased from SGD300,000 to SGD1 million.
- The risk-share percentage is enhanced to 90% for new applications made from 8 April 2020 until 31 March 2021, i.e. lending institutions may make a claim against ES in the event of defaults by SME borrowers for 90% of the unrecovered amount.
- SMEs under the enhanced scheme may apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment and approval by the lending institution.

The Temporary Bridging Loan Programme was established in March 2020 for the purpose of providing companies with access to up to SGD5 million working capital for business needs.

- The Interest rate payable on the loan is capped at 5% per annum.
- ES will provide 90% risk-share on loans extended under new applications made from 8 April 2020 until 31 March 2021 i.e. lending institutions may make a claim against ES in the event of defaults by SME borrowers for 90% of the unrecovered amount.
- Companies may apply for up to 1 year deferral of principal repayment to help manage their debt, subject to assessment and approval by the lending institution.

## Employment Individuals

What financial support is the government providing to businesses and to individuals on employment issues?

The Ministry of Social and Family Development launched the Covid-19 Recovery Grant on 18 January 2021, which provides eligible Singapore citizens and permanent residents who remain significantly affected by job or income loss. Those eligible will receive up to:

- \$700 per month for 3 months for employees who have lost their jobs or are placed on involuntary no-pay leave for at least 3 consecutive months; or
- \$500 per month for 3 months for employees and self-employed persons who are facing average income loss of at least 50% for at least 3 consecutive months.

## Businesses

The Jobs Support Scheme (“JSS”) provide wage support to employers to assist them in retaining their local employees.

- The Government will co-fund 75% of the first SGD4,600 of gross monthly wages paid to each local employee until August 2020.
- The Government will co-fund the first SGD4,600 of gross monthly wages paid to each local employee for the months of May to December 2020. The level of co-funding ranges from 50% for sectors classified as Tier 1, 30% for sectors classified as Tier 2 and 10% for sectors classified as Tier 3 up to March 2021:
  - Tier 1 is the aviation and tourism sector, which include airlines, airport ground handlers, airport operators, qualifying licensed hotels, qualifying licensed travel agents, qualifying gated tourist attractions, cruise lines and cruise terminal operators, venue operators of purpose-built meetings, incentives, conferences and exhibitions. As of 26 May 2020, Tier 1 also includes all businesses that are unable to reopen on 2 June 2020, lasting until August 2020 or the date they can reopen, whichever is earlier. Upon resuming operations, JSS payouts will revert to the base tier on a pro-rata basis. New additions to Tier 1 also include: aerospace, airline fleet services, and operators providing pilot and crew training; tourism event organisers; money changers; regional ferry operators; central refund agencies; built environment contractors and consultants (for June to August 2020 wages).
  - Tier 2 is the food services sector, which include licensed food shops and food stalls. As of 26 May 2020, Tier 2 includes: retail; arts and entertainment; land transport; and marine and offshore sectors.
  - Tier 3 is all other sectors not falling within Tiers 1 or 2.
  - Businesses that could not reopen on 2 June 2020 will receive up to 2 months’ additional Foreign Worker Levy waiver and rebate. For June 2020, this will be a 100% waiver and a \$750 rebate – these will be halved in July 2020 (i.e. 50% waiver and \$375 rebate).
  - The JSS has now been extended by up to 6 months to September 2021:

Sectors	Extended Support
Aerospace, aviation, tourism sectors	50% of wages paid to March 2021, before lowering to 30% for wages paid between April to June 2021 and lowering to 10% for wages paid between July 2021 to September 2021.
Built environment sector	50% of wages paid to October 2020, before lowering to 30% for wages paid between November 2020 to September 2021 and lowering to 10% for wages paid between April 2021 to June 2021.
Arts and entertainment, food services, land transport, marine and offshore, and retail sectors	30% of wages paid to March 2021, before lowering to 10% for wages paid between April 2021 to June 2021.
For the large majority of the remaining sectors	10% of wages paid up to March 2021.
For the few sectors that are managing well, such as biomedical sciences, financial services, and ICT sectors	10% of wages paid for four more months, for wages paid up to December 2020

The Job Growth Incentive (“JGI”) was announced on 17 August 2020 and will run until September 2021. It is a \$1 billion scheme to boost hiring of local workers in growth sectors with a special focus on helping older workers.

- Qualifying firms that raise their headcount of local workers over the next 6 months will receive a subsidy for up to 25% on the first SGD \$5,000 of gross monthly wages.
- The SG Government will co-pay up to 50% for workers aged 40 and above, persons with disabilities, or ex-offenders.

The MAS Support Package was announced on 8 April 2020 and is a SGD\$125 million support package to sustain and strengthen capabilities in the financial services and FinTech sectors.

- SGD\$90 million has been allocated to supporting workforce training and manpower costs, through the launch of a new Training Allowance Grant, enhanced course fee subsidies and salary grants to Financial Institutions regulated by MAS of \$2,000 per month for eligible Singapore citizens hired under a structured talent development programme.
- A new Digital Acceleration Grant has been set up to enable Singapore-based financial institutions regulated by MAS and Singapore-based FinTech firms certified by the Singapore FinTech Association (“SFA”) to adopt digital solutions as well as upgrade systems to enable business continuity.
- On 13 May 2020, MAS and the SFA, AMTD Group and AMTD Foundation launched a SGD\$6 million MAS-SFA-AMTD FinTech Solidarity Grant to complement the MAS Support Package. This includes the Business Sustenance Grant which allows eligible Singapore-based FinTech firms to receive a one-time grant up to SGD\$20,000 to cover the wages of their local workers as well as office rental costs. It also includes the Business Growth Grant. Eligible Singapore-based FinTech firms will also receive 100% internship funding for salaries of Singapore citizens and permanent resident undergraduate interns, up to a cap of SGD\$1,000 per month per intern.

## Insolvency

Has the government made any changes to insolvency legislation?

- The Simplified Insolvency Programme (“SIP”) came into effect on 29 January 2021 to cater to micro and small companies (“MSCs”) which have been severely impacted by Covid-19 and require support to restructure their debts to rehabilitate their business or to wind up. Micro and small companies are defined as having annual revenue of less than \$1 million and \$10 million respectively.
- The SIP provides simpler, faster and lower-cost restructuring and insolvency programmes for eligible MSCs. The SIP consists of two separate programmes that eligible MSCs may apply for:
  - Simplified Debt Restructuring Programme: for the restructuring of debts and potential rehabilitation of viable businesses; and
  - Simplified Winding Up Programme: for the orderly winding up of non-viable businesses. The company’s realisable unencumbered assets cannot be more than SGD\$50,000.
- To qualify for the SIP, the number of creditors cannot exceed 50 and the number of employees cannot exceed 30. The company’s annual sales turnover must not exceed SGD\$10 million and its liabilities, including contingent and prospective liabilities, must not exceed SGD\$ 2 million.



## Contractual Issues

What measures have been taken to reinforce contracts?

The Singapore government has enacted legislation providing for temporary relief for the inability to perform a scheduled contract. It provides temporary relief from legal action over the following contracts (entered into before 25 March 2020 with contractual performance due on or after 1 February 2020) up to a certain date:

- Hire-purchase agreements and conditional sale agreements for plant, machinery or fixed assets used for manufacturing, production or other business purposes, or a commercial vehicle excluding those entered into with banks or finance companies regulated by MAS – up till 31 January 2021.
- Rental agreements for commercial equipment or commercial vehicles – up till 31 January 2021.
- Sale and purchase agreements between purchasers and housing developers/commercial developers in respect of one or more units of housing accommodation/commercial property – up till 31 March 2021.
- Construction or supply contracts, or any performance bond granted thereto – up till 31 March 2021.
- Options to purchase issued by housing developers/commercial developers to intending purchasers for one or more units of housing accommodation/commercial property – up till 31 March 2021.

**Moratorium on enforcement:** A debtor under any of these contracts may issue a notification for relief if he finds that an obligation due on or after 1 February 2020 cannot be carried out due to the Covid-19 pandemic. Upon which creditors are prohibited from taking the following actions:

- court, domestic arbitration, and insolvency proceedings, as well as execution proceedings against the debtor's property;
- enforcement of security against immovable/movable property used for business purposes,
- appointing a receiver and manager over the debtor's property;
- calling on a performance bond given for a construction or supply contract;
- terminating a lease or license over immovable property due to non-payment of rent;
- exercising any right of re-entry/forfeiture under a lease or license over immovable property;
- increase of any charges or interest rate payable under the contract unless such increase in charges or interest is specified in the contract and the increase in charges or interest rate is calculated by reference to a formula in the contract (any additional increases will not be allowed without further agreement of the non-performing party);
- imposition of new charges under the contract without the further agreement of the non-performing party;
- requiring any part of a security deposit given pursuant to the contract to be replaced by the non-performing party except with the further agreement of that party.

The aforementioned actions cannot be taken until after the earliest of:

- the expiry of the respective relief period;
- the withdrawal of the notification for relief; or
- a determination by an assessor that the case is not one eligible for the moratorium (note: under the new legislation, if a party is not able to come to an agreement with the other party or parties to the contract for a compromise in relation to his/her obligations covered under the notification for relief, he/she may apply for an assessor's determination of the issues involved).

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

**Temporary relief measures for property developers and individuals:** On 6 May 2020, the SG government announced temporary relief measures for property developers and individuals affected by disruptions to construction timelines and sales of housing units resulting from the Covid-19 pandemic:

- Extension of the Project Completion Period (“**PCP**”) by 6 months for residential, commercial and industrial development projects.
- Extension of time by 6 months for the commencement and completion of residential development, and sale of housing units in residential development projects in relation to the remission of the Additional Buyer’s Stamp Duty (“**ABSD**”) for housing developers.
- Extension of time by 6 months for the sale of the first residential property in relation to the remission of ABSD for the second residential property purchased by a Singaporean married couple.

On 8 October 2020, the temporary relief measures were extended by a further 6 months.

**Concessions for Collective Sale Procedures:** On 6 October 2020, the Covid-19 (Temporary Measures) (Temporary Measures for Conduct of Collective Sale of Property) Order 2020 came into operation on 6 October 2020 which provides concessions for deadlines and procedures specified in the Land-Titles (Strata) Act (“**LTSA**”) on a case-by-case basis.

- Ordinarily, the deadlines specified within the LTSA ensure that Collective Sales Committees (“**CSC**”) implement the collective sale process in a timely manner. However, some CSC’s ability to adhere to deadlines may have been genuinely and materially affected by Covid-19. As such, CSCs may apply for concessions.
- Only CSCs constituted before 25 March 2020 may apply for an extension, and the chairperson of CSCs who are entitled to apply for an extension must submit the necessary forms no later than 25 March 2021.

## 6

## Litigation

Are the courts operating?

- On 29 May 2020, the Supreme Court announced that the Relevant Period (where courts would only hear essential and urgent matters) would end on 1 June 2020.
- Therefore, court hearings have resumed after 1 June 2020, with parties being directed to strictly comply with all safe distancing and other applicable measures required under the laws of Singapore, or prescribed by the Court, to minimise the local transmission of Covid19. These include requirements, such as on the wearing of masks in the Supreme Court premises.
- The Honourable Chief Justice has directed that the use of electronic means of communication to conduct hearings be enhanced. Selected hearings will be conducted by video conferencing or where appropriate, telephone conferencing.
- Where the court determines that physical attendance before the court is appropriate, no more than two lawyers/litigants per party may appear at the hearing, unless parties have been granted an exemption to allow additional attendees.
- Video-conferencing will be the default option for solicitors unless otherwise directed for the following hearings:
  - Case management conferences conducted by a Registrar before the Court of Appeal
  - Civil and Criminal Pre-Trial Conferences before a Registrar

- Civil hearings before a Registrar
- Bankruptcy hearings before a Registrar
- Attendance before a Duty Registrar

## Tax

Has any new legislation been introduced in light of Covid-19?

- There are no new legislation or measures regarding tax.

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- **Extension of deadline for holding Annual General Meetings and filing Annual Reports:** On 7 April 2020, the Accounting and Corporate Regulatory Authority (“ACRA”) announced a 60-day extension of time for all listed and non-listed companies to hold their annual general meetings (“AGMs”) and file their annual returns (“ARs”). The Singapore Exchange Regulation (“SGX RegCo”) also announced that it would automatically extend the deadline by 60 days for all issuers with financial year-end on or before 31 March 2020 to hold their AGMs.
- **Alternative arrangements for AGMs which proceed:** On 7 April 2020, the Covid-19 (Temporary Measures) Act was enacted by Parliament. One of the provisions state that a relevant meeting or class of meetings held on or after 27 March 2020 that complies with alternative arrangements prescribed under the new law will be deemed to satisfy any requirements for the convening, holding or conduct or deferral of such meetings under the relevant written law or legal instrument.
- On 13 April 2020, the Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order was gazetted. The Order sets out alternative arrangements to personal attendance in respect of certain classes of meetings, which include, inter alia, general meetings of companies. Personal attendance can be via electronic means instead.

This Order has been extended to 30 June 2021. It has also been refined to facilitate greater convenience and engagement for virtual meetings, by introducing (1) the provision for real-time electronic voting; (2) real-time Q&A via electronic means; and (3) use of virtual annual general meeting platforms or other electronic means to accept submissions of questions and proxy forms in advance of the meeting.
- On 27 April 2020, the Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Corporate Insolvency) Order (“Insolvency Order”) was gazetted, prescribing alternative arrangements for conducting meetings in respect of insolvency matters of companies, limited liability partnerships and variable capital companies.

The Covid-19 (Temporary Measures) (Alternative Arrangements for Meetings) (Bankruptcy) Order (“**Bankruptcy Order**”) was gazetted as well, prescribing alternative arrangements for conducting meetings in respect of bankruptcy matters. The Orders grant broad flexibility to convenors to either hold meetings virtually, or to deter holding meetings until 30 September 2020. However, the Orders do not apply to all meetings. For example, the Insolvency Order does not apply to, *inter alia*, any meeting held pursuant to an order or a direction of the High Court under section 210(1) of the Singapore Companies Act – meetings of creditors and members in relation to the proposal of a compromise or arrangement.

- On 22 June 2020, following Singapore’s move into phase two of its reopening on 19 June 2020, ACRA has updated its regulatory announcement to clarify that issuers that are permitted to operate will no longer need to submit a notification to the Ministry of Trade and Industry for a time-limited exemption to have temporary operations in the same physical location for the purpose of holding a general meeting.
- The Singapore Stock Exchange is also providing a grant of SGD5,000 per issuer that can only be used for the purpose of implementing Covid-19 measures for AGMs. This ‘AGM Facilitation Grant’ will cover all AGM-related expenses incurred between 16 March 2020 and 15 March 2021, such as augmenting physical AGMs with video conferencing, additional logistics such as on-site temperature taking or pre-AGM shareholder communication, amongst others.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Both the Government of the Republic of South Africa (“RSA”) and the private sector have introduced a number of financial schemes aimed at assisting businesses, in particular small and medium sized enterprises (“SMMEs”), negatively affected by Covid-19. These schemes are being updated from time to time. Some of the schemes have since closed or been fully subscribed.
- The Government has created a number of Covid-19 loan funding schemes which are specifically aimed at SMMEs generally (annual turnover restrictions are dependent on the industry), namely the:
  - SMME Debt Relief Finance Scheme – this scheme is available to SMMEs in order to assist them with existing debt repayments, acquiring raw materials, paying labour and other operational costs, and
  - SMME Business Growth / Resilience Facilities – this scheme is available to SMMEs classified as ‘essential services’ assisting in producing or supplying ‘essential goods’ during the lockdown.
  - Restructuring of SEFA funded loans – the Debt Restructuring Facility is geared towards SMMEs funded by the Small Enterprise Finance Agency (SEFA), which are negatively affected by the pandemic (SMMEs will be required to illustrate the direct linkage). A payment moratorium/holiday will be given to qualifying SMMEs for a maximum period of six months, in an effort to reduce the instalment burden of loan obligations on affected SMMEs.
- Certain industry specific schemes have also been introduced, such as the:
  - Spaza Shop Support Scheme aimed at spaza shop owners and general dealers selling essential goods;
  - National Department of Sports, Arts and Culture Relief Fund aimed at practitioners in the fields of arts, culture, sports and recreation;
  - Covid-19 Tourism Relief Fund provides once-off capped grant assistance to SMMEs in the tourism value chain to ensure their sustainability during, and post, the implementation of government measures to curb the spread of Covid-19 in South Africa. The grant is capped at R50,000 per entity and can be utilised to subsidise expenses towards fixed costs, operational costs, supplies and other pressure cost items.
  - Covid-19 Agricultural disaster support fund for (i) smallholder and communal farmers with a minimum turnover of R20,000, but not exceeding R1million, and (ii) South African citizens who have already been farming for at least 12 months and (in respect of both) that are producing poultry, vegetables, fruits, other livestock and winter field crops. This fund provides grant of up to R50,000;
  - Industrial Development Corporation (IDC) Assistance and IDC MCEP Covid-19 Programme, which provide funding to businesses for the acquisition or manufacturing of essential medical supplies;
  - National Empowerment Fund Black Business Funding Solution, which provides loan funding to black owned SMMEs which manufacture medical products.
- The Government also announced the Covid-19 DTI Relief Fund, which aims to provide R3 billion in relief funding to vulnerable businesses involved in the battle to roll back Covid-19. This fund is not restricted to SMMEs only. Of these funds, R500 million has been allocated for importing medical products and R700 million for financing equipment and working capital requirements.
- In addition to the Government funds which have been in place, a Solidarity Fund has been created (to which the public can donate), a number of prominent business men and women have created dedicated funds and banks have offered certain reprieves to clients (e.g. payment holidays).
- For the duration of the national state of disaster, the Competition Act has been amended to allow banks to provide payment holidays etc. to their debtors.
- The South African Reserve Bank has also reduced the repo rate (with reference to which bank lending rates are determined) on a number of occasions since the start of the Covid-19 crisis.

## 2 Employment

What financial support is the government providing to businesses and to individuals on employment

- The national lockdown imposed by the government of the RSA with effect from 27 March 2020, has 5 levels. With effect from 1 May 2020, the RSA moved from level 5 to level 4 and with effect of 1 June 2020 from level 4 to level 3 and with effect of 18 August 2020 from level 3 to level 2, with effect of 21 September 2020 from level 2 to level 1 and with effect of 28 December 2020 from level 1 to an adjusted level 3 and since 1 March 2021 South Africa has once again moved down to level 1 (level 5 being the most stringent, and 1 being the least stringent). The different levels put in place various restrictions on which industries can operate, either fully or in part. This is presently done by allowing most business to operate. Employers who are able to operate, either fully or in part, are expected to comply with stringent health and safety measures. Presently the majority businesses and services are allowed to operate.
- In the absence of industry specific provisions to the contrary, employees who are unable to render services to their employers because of the lockdown provisions are not entitled to be paid.
- The government has put in place a number of measures aimed at assisting employers and employees, some of which are industry specific. Some of these measures are now coming to an end, in conjunction with the easing of the lockdown. One such measure is the Covid-19 Temporary Employer – Employee Scheme (Covid-19 TERS), which provides for the payment of benefits to employees employed by employers who have had their operations, either partially or entirely, closed due to the lockdown. The benefit also extends to employees with comorbidities and to those over 60 years of age who cannot be reasonably accommodated at work. The minimum benefit payable for each qualifying employee is R3,500 per month and the maximum is R6,638.40 per month. This benefit was available for March 2020, April 2020, May 2020, June 2020, July 2020, August 2020, September 2020 and part of October 2020.
- Du to a subsequent extension of the national lockdown, two additional payment periods have been endorsed by organised labour and business (NEDLAC). The first being from 16 October 2020 – 31 December 2020 and the second from 1 January 2021 – 15 March 2021. The right to claim for this period has, however, not yet been made law.
- Additional measures available for employees include sick leave benefits, illness benefits, reduced work time benefits (where the business is operating but on, for instance, short-time) and particular compensation where employees contract Covid-19. Furthermore, employees who have had to self-isolate or quarantine can claim an income replacement benefit.

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- There have been no changes to the legislation governing insolvencies in RSA, however, the Companies and Intellectual Properties Commission (“CIPC”) has issued various notices under the Companies Act No. 71 of 2008 (“**Companies Act**”) in respect of the procedure relating to companies who are, or will be, in business rescue as a result of financial distress.
- In notice 17 of 2020, the CIPC undertook not to invoke its powers under section 22 of the Companies Act (to issue compliance notices to business trading recklessly) in respect of companies that are trading in temporarily insolvent circumstances as a direct result of the Covid-19 pandemic. This notice will lapse within 60 days of the declaration that the national disaster has been lifted.
- The CIPC also temporarily ceased operating at full capacity as a result of the lockdown and as such no processing of documents or filings could take place from 24 March 2020 to 30 April 2020. In terms of section 129 of the Companies Act, a company’s board resolution to place itself into business rescue only comes into effect when the relevant resolution placing the company in business rescue and supporting documents are filed with the CIPC. The CIPC accordingly provided for a *dies non* period for these dates during which no business would be penalised for its inability to file resolutions and supporting documentation to commence business rescue.

- As such:
  - any business rescue applications filed with the CIPC in the prescribed manner and form during the *dies non* period would be processed to reflect the dates on which it was filed,
  - the appointment of business rescue practitioners filed in the prescribed manner and form during the *dies non* period would be endorsed by the CIPC to reflect the dates on which it was filed, and
  - entities commencing business rescue proceedings (filed in the prescribed manner and form) will automatically receive a five day extension to appoint a business rescue practitioner.
- In terms of Notice 35 of 2020, the CIPC is now issuing certificates without a stamp which evidence either the commencement of business rescue or the appointment of a business rescue practitioner.
- The offices of the Master of the High Court are still only operating in respect of certain services.

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The RSA legal system recognises the principles of sanctity of contract and relaxation in the face of an unforeseen event which justifiably renders the performance of a contractual obligation impossible. There are a number of principles which are available either in common law or commonly in agreements which may offer some options or relief to contracting parties (described briefly below).
- Although businesses have generally been encouraged to, where possible, not invoke force majeure provisions in order to preserve existing contractual arrangements and business, this decision is ultimately dependent on the particular contracting party, industry and surrounding facts and circumstances. Practically, there have been some contracting parties who have sought to invoke these provisions, while others have been willing to hold back on doing so and/or negotiate and agree amendments to contracting arrangements.
- Under the common law, force majeure events include acts of God, war, riots, natural disasters, energy blackouts, lockouts and labour unrest. Material Adverse Change (“MAC”) clauses, like force majeure clauses, are used in contracts to allocate the risk of events that are unforeseen at the time of contracting.
- These provisions usually provide that a party will be able to suspend the performance of their obligations for so long as the force majeure event continues or for a set period of time, whichever is the shorter. Since this is a contractual provision, the extent to which a party will be able to rely upon the clause will depend on the specific wording of each clause. The onus of proving the force majeure will be on the party alleging it and typically that party will have to show that the event was not within its reasonable control, could not have reasonably been avoided and was not a result of an act or omission on their part. While this may seem likely to encompass Covid-19, it is the impact of Covid-19 on the party’s ability to perform that is essential. Force majeure clauses are also likely to include an obligation on the parties to first discuss the effect and potential mitigation of the force majeure, as well as a general obligation on the claiming party to mitigate the impact of the force majeure.
- It is common to see a force majeure clause that will lead to a termination of the contract if the force majeure is not resolved after a certain number of days.
- MAC clauses are contractual and are not regulated by the common law. The contract will define the circumstances in which a material change will be deemed to occur and each contract should be carefully considered with the relevant facts to determine if circumstances exist to invoke a MAC. The burden of proof is similarly on the party alleging the MAC.

- The impact of Covid-19 is severe and there will undoubtedly be parties who seek to avoid their contractual obligations. Whether or not they can be saved by a MAC clause will ultimately depend on the precise wording of the MAC clause and the allocation of risks. It will also depend on the facts and the effect of the pandemic on the business in question.
- When circumstances occur which renders performance under a contract impossible, the principle of supervening impossibility of performance in terms of the common law may also excuse parties from performance. Supervening impossibility of performance occurs when performance was possible on conclusion of the contract, but subsequently has become impossible through no fault of the parties. This could be the result of a *vis major* or *casus fortuitous*.
- The test for performance is that it must be objectively impossible. Where a party can perform, albeit at a higher cost or with economic hardship, the RSA courts are unlikely to consider this supervening impossibility. On the other hand, the courts have also been clear that it is not complete factual impossibility that is required but rather that performance has become so difficult and onerous that it can, under no circumstances, be reasonably expected that a party must comply.
- If supervening impossibility can be proven, the obligations of the parties under the contract will be discharged and the contract will be terminated. This differs from force majeure, which often allows for a suspension of performance and only provides for termination in the event that the force majeure is not resolved within a period of time.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- RSA is now under lockdown level 1 legislation promulgated by the Government of the RSA. Many borrowers are now open but are still struggling to meet their obligations in respect of payment of their rentals. Landlords have however been encouraged to negotiate with tenants in respect of rental and other obligations, and in practice certain retail tenants have, in terms of the common law, refused to pay rental and have been granted discounts or rental free months by landlords.
- The banks and financial institutions have provided relief to certain individuals and entities. This is however not a blanket exclusion in respect of payment holidays to every person and entity. Banks and financial institutions may, for example, either grant a one month or three month payment holiday, depending on the financial position of the individual or entity and provided the individual or entity was not in default with payments when the lockdown started. Other banks have indicated that customers in selected industries who can indicate their income has been affected by Covid-19 may be offered a 6 month payment break.
- The financial institutions are granting further bonds in respect of properties owned and granting bonds to prospective purchasers.
- The Deeds Office that processes the registration of bonds and transfers in terms of the Deeds Registries Act in Cape Town is up to date, resulting in a turnaround time of about 6 to 8 days from date of lodgement to date of registration of the bonds or transfers. Covid cases were reported but this resulted only in the Deeds Office in Cape Town closing for a day in December 2020 and January 2021. Strangely there has been a mini boom in the property market due to Covid and interest rates are at an all time low.
- Turnaround times in the Deeds Office in Pietermaritzburg is approximately 3 weeks due to Covid, but has been picking up after a huge backlog. This has a devastating impact in that transfer and bond registrations cannot transpire speedily which has a detrimental effect on cash flow of individuals and entities. King Williams Town has a turnaround time of 6 – 7 working days and is in the same position as the Deeds Office in Cape Town.

- Evictions are allowed under lockdown legislation currently in force.
- Landlords are, however, struggling to fill vacant space as there is a trend of working from home.



## Litigation

Are the courts operating?

- In the RSA, court proceedings are generally continuing as usual, save that presiding officers in the courts have been given the discretion, and are urged, to use teleconference or videoconference tools where possible in order to keep the court system operational.

## Tax

Has any new legislation been introduced in light of Covid-19?

The Government of the RSA has introduced the following tax relief measures for employers and employees:

- From 1 April 2020, an expanded employment tax incentive of R750 per month for qualifying low-income employees for a period of four months.
- Deferral, for a period of five months, of 35% of employees tax (“**PAYE**”) payable by tax compliant SMMEs (without penalties or interest).
- Increased deductions from PAYE of certain tax-deductible donations made by employers on behalf of employees.
- From 1 May 2020, a four-month holiday for skills development levy contributions (1% of total salaries) applies.
- The Covid-19 TERS provides tax-free unemployment insurance relief through applications to the Unemployment Insurance Fund (“UIF”) for unemployment resulting from Covid-19 closure of businesses.
- Amounts received by employees on behalf of employers from a Covid-19 disaster relief organisation may be deducted or excluded from the calculation of remuneration for purposes of PAYE.

**The following provisional tax relief has been introduced by Government and is available to tax-compliant SMMEs:**

- A deferral, for a period of 12 months, from 1 April 2020 to 31 March 2021, of a portion of provisional tax liabilities.
- The first provisional tax payment is reduced to 15% (as opposed to 50%) of the estimated total tax liability, while the second provisional tax payment is reduced to 65% (as opposed to 100%) of the estimated total tax liability. The remaining 35% tax liability is payable with the third provisional tax payment.
- Deferral relief for qualifying micro businesses with regard to interim payments, similar to the 15% and 65% deferral relief with regard to provisional tax payments for tax-compliant SMMEs.

Other relief measures introduced by the Government:

- Fast-tracking of VAT refunds for smaller VAT vendors that are in a net refund position by permitting the filing of VAT returns monthly instead of every two months without the need to apply to the revenue authority to do so.

- Extension of certain prescribed time periods under tax Acts in which the lockdown period will be regarded as days that have no legal effect and will not be counted for purposes of the calculation of certain time periods. In this regard, the lockdown period is defined as the period of lockdown between 23h59 on 26 March 2020 until 23h59 on 30 April 2020.
- Due to the restrictions on the domestic sale of alcoholic beverages, payments of excise tax due in August 2020 and September 2020 are deferred by 90 days without interest or penalties for excise-compliant businesses.
- The original 90 day deferral period granted in respect of excise tax payments due on tobacco products in May 2020 and June 2020 have been extended to a period of 150 days, without interest or penalties. As such, an additional 60 days have been added to the initial 90 day relief period granted.
- Three-month deferral for the filing and first payment of carbon tax liabilities, which would otherwise have been due by 31 July 2020, has been deferred until 31 October 2020.
- Tax-deductible limit for donations, currently 10% of taxable income, is increased to 20% in respect of donations to the Solidarity Response Fund during the 2020/21 tax year.
- Certain corporate tax measures that were going to be introduced in terms of which the deductibility of interest expenses, as well as the utilisation of assessed losses, would have been limited will be postponed to later legislative cycles.
- An expansion of access to living annuities for a period of four months from 01 May 2020 - 31 August 2020.
- Relief for larger businesses and additional relief for tax-compliant SMMEs. The relief is not enshrined in legislation, but takes the form of an invitation to apply on the revenue authorities' website, which applications can be made by way of email.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Companies Act allows shareholder and board meetings to be held by way of electronic communication, provided that all parties are able to participate in the meeting and communicate concurrently without an intermediary. Meetings were already often held, in whole or in part, by electronic means prior to Covid-19, however, the prevalence thereof has increased substantially since the start of the pandemic.
- In addition to the holding of meetings by electronic means, the Companies Act permits both shareholder and board resolutions to be adopted by means of round robin written resolutions in appropriate circumstances without the need to hold a meeting.
- The Johannesburg Stock Exchange ("**JSE**") has also partnered with The Meeting Specialist to launch the first virtual annual general meetings ("**AGM**") for listed companies in the RSA to enable clients to engage with shareholders while the country is faced with tackling the Covid-19 pandemic.
- If a company holds a virtual-only AGM and does not allow shareholders to ask questions in real time, without moderation, or requires all questions to be submitted in advance, that meeting will not constitute an AGM for the purposes of the Act.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- Government is granting up to €100 billion in guarantees for funding provided by credit institutions. In this respect: net indebtedness limit for the Spanish Official Credit Institute (ICO) raised by €10 billion, to increase ICO facilities providing funding to companies and the self-employed, and the guarantee will cover 80% of new financing operations and renewals for self-employed and SMEs (defined as companies with less than 250 employees, and with an annual turnover that does not exceed EUR 50 million or with an annual balance sheet that does not exceed EUR 43 million). For all other companies, the guarantee will cover 70% in the event of new loan operations and 60% for renewals.
- There is no limit to the amount of guarantee per beneficiary, subject to EU's state aid rules. The insurance premiums may vary whether the beneficiary is an SME or a non-SME, in accordance with de minimis EU regulations.
- A new line of ICO guarantees of € 40 billion (with the possibility of increasing it up to €100 billion) has been activated by the Royal Decree Law 25/2020 ("RD 25/2020") with the purpose of financing companies and self-employed individuals with productive investments.
- The Spanish Export Credit Agency (CESCE) has been authorised to provide insurance cover amounting up to €2 billion for the working capital credit facilities needed by SMEs (excluding micro-companies that are those with less than 10 employees and with an annual turnover or annual balance sheet that does not exceed €2 million) and bigger non-listed companies.
- There is no requirement that the use of the funds be linked to the performance of export contracts and should respond to new financing needs and not to pre-crisis situations. The percentage of credit risk cover shall not exceed 80%.
- The RD 25/2020 has increased the endowment granted to the fund for Foreign Investment (FIEX), managed by COFIDES, from €10 to €100 million.
- The sums in the Fund for "Red Cervera" Technical Provisions and R&D&I projects are allowed to be used to cover any risks that the Centre for Technological and Industrial Development (CDTI) may incur by providing loans to finance R&D&I projects of small and medium enterprises, and of mid-cap companies.
- New Covid-19 fund (*Fondo Covid-19*) managed by the state-owned industrial holding company *Sociedad Estatal de Participaciones Industriales* (SEPI) of €10 billion has been created to provide financial support strategic non-financial companies that have been particularly affected.
- The purpose of *Fondo Covid-19* is to provide temporary public support to strengthen business solvency, in particular through the granting of participating loans, subordinated debt, subscription of shares or other capital instruments, to non-financial companies experiencing severe temporary difficulties because of the Covid-19 pandemic and which are considered strategic for the national or regional production.
- Royal Decree Law 19/2020 ("RD 19/2020") introduces a special legal regime for moratorium agreements offered by lenders. The regulation requires that these agreements -in order to benefit from the provisions established in RD 19/2020- are the result of the lender's adherence to a sectoral framework agreement for deferred payment promoted by the associations representing financial institutions, which must be communicated to the Bank of Spain.
- For further information regarding these moratoriums, please visit [here](#). RD 25/2020 introduces an extraordinary line of financing with the purpose of granting financial support to private companies and self-employed individuals related to the tourism sector and which has been affected by economic losses arising from Covid-19. This financing should be used for digital transformation and innovation projects.

- Royal Decree Law 34/2020 (“**RD 34/2020**”) has extended the application deadline for ICO guarantees from December 31, 2020 to June 31, 2021.
- For more information, please visit: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19](#) and [Preserving and increasing liquidity in the time of Covid-19](#) and [Covid-19: Recommendations for accessing the financing facilities offered under Royal Decree-Law 8/2020](#) and [Release of two new ICO guarantee facility tranches amounting to €2,550 million for companies in the process of fulfilling an arrangement with creditors](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment

- Extension of furloughs procedures (“**ERTEs**”) due to force majeure until March 31, 2021. Royal Decree Law 2/2021, that modifies Royal Decree Law 18/2020 (“**RD 18/2020**”) and Royal Decree Law 24/2020 (“**RD 24/2020**”), allows the ERTes due to force majeure, as well as the exemptions from social security payments to be extended until May 31, 2021 and also defines, inter alia, new exemptions in relation to social security contributions, the scope of the job retention obligation, as well as certain restrictions on the distribution of dividends of companies that have used an ERTE due to force majeure. For further information, please visit [here](#).
- **Furlough procedures (“ERTEs”) as a temporary solution:** The conditions for processing ERTes have eased and can be processed much quicker. ERTes can be processed in case of force majeure and economic, technical, organisational and production-related grounds arising from Covid-19. On May 1, 2020 the Spanish Directorate General of Labour (Dirección General de Trabajo) issued an interpretation report related to the gradually cease of force majeure furloughs. For more information, please visit [here](#).
- **Exemption from contributions in the case of ERTes due to force majeure:** There is a full exemption from the employer’s share of social security contributions for companies with fewer than 50 employees and a 90% exemption for companies with 50 or more employees, until May 1, 2021.
- **ERTes due to limitation to the normal development of the activity:** There is a possibility of requesting an exemption from the employer’s share of social security contributions related to employees under ERTes, due to an activity hindrance reason, starting from February 1, 2021 until May 31, 2021, as follows:
  - a. an exemption equal to 100%, 90%, 85% and 80% of the employer’s share of social security contributions, for the months of February, March, April and May 2021, respectively, applicable to companies with less than 50 employees; and
  - b. an exemption equal to 90%, 80%, 75% and 70%, of the employer’s share of social security contributions, for the months of February, March, April and May 2021, respectively, applicable to companies with 50 or more employees until May 1, 2021.
- **Obligation to maintain employment:** The extraordinary employment-related measures are subject to the company’s obligation to maintain employment for a period of 6 months following the date of resumption of the company’s activity.
- **Rights to adapt and reduce working hours:** This measure is addressed to employees who evidence duties of care with respect to their spouse or equivalent and relatives up to the 2nd degree of consanguinity because of Covid-19.

- **Teleworking:** The official Spanish state gazette (BOE) has published the Royal Decree Law 28/2020, dated September 22, 2020, introducing new regulations related to teleworking. For further details please visit [here](#).
- **Sick leave:** Sick leave due to Covid-19 infections or preventive isolation is treated as an occupational accident for the purposes of benefits.
- **Recoverable paid leave:** There was a time window between March 30 and April 9, 2020, both inclusive, in which employees involved in non-essential activities were not able to go to work as result of the Covid-19 crisis and subsequent State of Emergency. During that period, those affected employees benefited from a mandatory recoverable paid leave (permiso retribuido recuperable). The recovery of the missing working hours by the employees shall be carried out until December 31, 2020, under the conditions to be collectively agreed with their employer, unless there is an agreement between the parties to extend such period.
- **Measures applicable after the end of the state of emergency:** Royal Decree Law 21/2020 ("RD 21/2020") establishes the specific measures and obligations to be adopted at workplaces, related to ventilation and cleaning, work shifts, workspaces or progressive return, among others, as well as the promotion of the use of teleworking and with regard to employees who have symptoms compatible with Covid-19. See [here](#) and below for more information.
- [Spain: Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19.](#)
- [Companies facing the Covid-19 Crisis: 4<sup>th</sup> edition.](#)
- [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020.](#)
- [Workers in non-essential services will be compelled to take recoverable paid leave.](#)
- [Covid-19: Publication of the new extension of ERTes, unemployment protection measures and the 'Plan Mecuida' work/life balance program.](#)
- [The keys to the new telework regulation agreed by the social agents.](#)
- [Teleworking: the importance of a good agreement.](#)

## 3 Insolvency

Has the government made any changes to insolvency legislation?

- The duty to request a voluntary insolvency order has been disabled until March 14, 2021. In this respect, no petitions for necessary insolvency orders filed by creditors against the debtor will be admitted for consideration. However, directors should not lower their guard, since this measure does not mean that they cannot incur liability for causing or aggravating insolvency for the company. For further information about this matter please visit [here](#).
- The Official Spanish State Gazette (BOE) has published a new Spanish Revised Insolvency Law on May 7, 2020, introducing regulation that departs from the existing provisions on restructurings and insolvencies and that will enter into force on September 1, 2020. For further details please visit [here](#).
- For more information please see [here](#) and [here](#) and [here](#).

## 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- There has not been any outstanding measure taken by the Spanish Government regarding the specific reinforcement of contracts, therefore, normal rules would apply.
- When it comes to contract suspensions and reductions in working hours that are directly caused by losses in activity as a result of Covid-19, a legal provision has been included in Royal Decree-law 8/2020, of March 17 (RDL 8/2020) stating that those specific cases shall be considered as force majeure, when duly verified.
- It should be taken into account that the force majeure term relates with the impossibility of the parties to perform their respective obligations due to the existence of an event that could not have been foreseen or that, if foreseen, were inevitable. In this respect, the scope and applicability of the force majeure would be subject to the specifics of each case, which shall be, in last instance, examined and determined one by one by the judicial courts.
- Likewise, if the performance of a contract is significantly affected due to unforeseen circumstances, it should be considered that there is a legal doctrine on hardship created by case law, that allows obligations and contracts to be reviewed when the economic balance of the contract has been upset and the contract has become impossible or very difficult to perform for one of the parties due to those unforeseen circumstances. However, it should be noted that the Spanish courts have hitherto applied hardship principles very cautiously and the specific characteristics of each case must be thoroughly looked at to determine whether it is applicable.
- For more information, please visit: [Companies facing the Covid-19 crisis](#) and [Force majeure and the grounds for suspension of contracts due to Covid-19 cannot be regarded as justifying dismissal](#)

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- RDL 8/2020 incorporates a moratorium in favour of mortgage debtors who are in a particularly vulnerable situation (i.e. the mortgagor becomes unemployed or, in the case of a businessman, suffers a substantial loss of income or a substantial drop in sales, that is, at least 40%).
- If the landlord is an entity or a public housing company (entidad 'pública de vivienda') or a large individual holder (i.e. an individual owning more than 10 properties or owning a built facility bigger than 1,500 sq.m), the tenant may request temporary and extraordinary deferment of the rent of his/her principal residence within one month from the enter into force of Royal Decree-law 11/2020, March 31, provided that said deferment or the total or partial remission of the rent has not already been achieved voluntarily by agreement between both parties. In the event that the agreement had not taken place, the landlord may choose between the following alternatives:
  - a 50% reduction over the rent while the state of emergency is in force, or
  - a moratorium on the payment of the rent that will be applicable during the term of the state of emergency (and which may be extended monthly if that term is insufficient in relation to the situation of vulnerability caused by the Covid-19), and which may not, in any case, exceed four months.
- In line with the above, Royal Decree-Law 15/2020 has extended, in one additional month starting from April 23 2020, the term granted to the tenant to request a moratorium on the rent payment. However, in this case, the moratorium will be automatically binding to the landlord, and the same conditions as indicated above will apply.
- Likewise, measures related to the suspension of the eviction procedures as well as the removals of judicial releases for vulnerable households without alternative housing have been introduced.

- In addition, RD 25/2020 introduces a special legal regime for moratorium agreements offered by lenders to self-employed individuals and legal entities. This special regime aims the protection of the financing related to properties used for tourism purposes and which have not been able to benefit from the above-mentioned moratoriums measures.
- Finally, besides the above regulations introduced by the Spanish government to mitigate the economic impact regarding the Covid-19, the undertakings that need to bear rental payments while their business are closed (retailers, in particular) are requesting to their landlords, on a general basis, rent free periods regarding their lease agreements given the extraordinary nature of the health emergency resulting from Covid-19, based on the *force majeure* and hardship (*rebus sic stantibus*) applicable case law.
- Royal Decree-Law 35/2020 introduces a special legal regime for non residential leasing from December 24, 2020.
- Please note that several regions have developed their own sectoral regulations. For more information, please visit [here](#) and below.
- [Spain: Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19.](#)
- [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020.](#)
- [Covid-19: Approval of measures in relation to non-residential leases.](#)



## Litigation

Are the courts operating?

- Lifting of the suspension of procedural and substantive time periods, and recommencement of judicial proceedings. An order has been enacted to lift, starting on June 4, 2020, the suspension of procedural and substantive time periods determined in additional provisions two and four of Royal Decree-Law 463/2020 (“RD 463/2020”). Also, on that same date, the judicial activities mentioned will start up again, where health-related, organizational and procedural requirements so allow.
- Remote hearings in civil proceedings. For the time being, this is only allowed for hearings with the exclusive participation of professionals, although the courts have not rejected the option of holding other proceedings with parties or witnesses also taking part. This results from putting into practice the permission, envisaged in Law 3/2020 on procedural and organizational measures to confront Covid-19 in the sphere of the justice system, to hold virtual remote hearings until June 20, 2021.
- The General Council of the Spanish Judiciary has published guidelines on holding judicial proceedings remotely. The guidelines provide parameters and recommendations for reconciling the preferred use of these types of technology in the process with the court's plenary session, with the principles and safeguards established in the laws. Over four sections it addresses elements related to the preferred use of remote technology, how the proceedings are to be held, the place and minimum technical requirements that must be taken into account for carrying out the various steps in the process remotely. They are available [here](#).
- For more information please visit our [June Covid-19 special newsletter](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- **Extension of the filing and payment deadline for certain tax returns and self-assessments:** This extension benefits small and medium-sized companies and the self-employed, and relates to be filed between April 15 and May 20, 2020. It applies to taxpayers that had revenues of €600,000 or lower in 2019. For taxpayers with public authority status, including the social security authorities, their latest approved annual budget cannot go above €600,000.
- Exemption in relation to transfer and stamp tax for mortgage transactions.
- **VAT and custom duties exemption:** For imports of any goods necessary for medical treatment of individuals affected by Covid-19 and for avoiding the spread of viruses. In addition, a 0% VAT rate is established temporarily (until April 30, 2021) for domestic supplies, intra EU acquisitions or imports of the goods listed in the annex of the Royal Decree-Law 15/2020, for which the customers are public entities, non-profits and hospitals.
- **Suspension of assessment of VAT and of excise taxes on electricity and on hydrocarbons on the bills or electricity, natural gas and oil products:** Exemption from any obligation to assess and pay VAT and, where relevant, the excise tax on electricity and the excise tax on hydrocarbons relating to bills with suspended payment, until the customer has paid them in full, or 6 months has run from the end of the state of emergency.
- **Measures in relation to the CIT prepayments:** Taxpayers with revenues of €600,000 or lower in 2019 will be entitled to calculate their CIT prepayments using the “tax base method” before May 20, 2020 (deadline for filing the April prepayment for these taxpayers, due to the extension of the period approved by Royal Decree-Law 14/2020). Other taxpayers with net revenues of €6,000,000 or lower in FY19 will be also entitled to calculate their following prepayments (October and December 2020) using the “tax base method”. This measure does not apply to any tax group taxed under the special consolidated tax regime for CIT purposes.
- **Tax credits for donations:** Taking effect from January 1, 2020, a higher tax credit is available for donations made by individuals and by non-resident income taxpayers operating in Spain without a permanent establishment.
- **Corporate income tax credit for investments in cinematographic productions and audiovisual series:** An increase of the tax credit percentages has been approved for the investments and short films are included among the investments giving entitlement to that tax credit.
- **Events of exceptional public interest:** Additional events and programs of exceptional public interest have been included for the purposes of the tax regime for not-for-profit entities and on tax incentives for patronage.
- **Corporate income tax:** Royal Decree-Law 19/2020 (“RD 19/2020”) states that the three month period for preparing the financial statements will start running on June 1, 2020. Likewise, RD 19/2020 has provided a mechanism allowing a new self-assessment to be filed until November 30, 2020 if the approved financial statements differ from the information used in the self-assessment and filed in the voluntary period, without any surcharges, although late-payment interest will accrue. For more information, please visit [here](#).
- **New stamp tax exemption:** RD 19/2020 introduces a new stamp tax exemption for deeds recording the moratorium arrangements under previous Royal Decree-Laws.
- **Telematic tax inspections:** the General Tax Law has been amended to introduce the possibility that administration’s activities within tax application procedures may be dealt with the taxpayers through telematics means.
- **Increase of tax credit for innovation and unrestricted depreciation for certain assets in the automotive industry:** the rate of the tax credit for technological innovation activities goes from 12% to 25% for expenses in technical innovation activities resulting in a technological advancement related to the automotive industry.

- Taxpayers may take unrestricted depreciation over investments on new tangible fixed assets made in 2020 (excluding real estate). The maximum amount of the investment that may qualify for this depreciation regime will be € 500,000. For more information, please visit [here](#).
- For more information, please visit: [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020, Companies facing the Covid-19 crisis](#) and [Spain interactive map for Covid-19](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- **Legislation governing corporate bodies.** The various pieces of legislation published during the state of emergency, such as royal decree laws 8/2020, 11/2020, 16/2020, 21/2020, 25/2020 and 34/2020, among others, together with statements by registrars and by the National Securities Market Commission (CNMV), have created a new exceptional regime governing the corporate bodies of commercial companies, which makes it necessary to structure this new legislation by summarizing the measures and their implications depending on the body concerned and dividing them into listed and unlisted companies.  
**Among the principal measures are, among others: shareholders' and board of directors' meetings may be held via video call even if it is not envisaged in the bylaws (including the notary); modification of the obligatory term for the annual shareholders' meetings that now may be held in the ten months following the fiscal year-end; and the resolutions of the board of directors may be adopted by voting in writing without a meeting even if it is not envisaged in the bylaws, whenever the chairman so decides and with just 2 members in favour.**
- Winding up and right of withdrawal at commercial companies. Some of the key new provisions in connection with the corporate bodies of the Spanish companies affect issues related to winding up and the right of withdrawal of shareholders or members. As a result of that, companies must be aware of to the various grounds for winding up and how the right of withdrawal of shareholders at capital companies and members of cooperative companies has changed. In this regard, according to the new provisions published, losses for fiscal year 2021 shall not be taken into account for the purposes of determining the ground for winding up of a Spanish company.
- For further information regarding winding up and right of withdrawal at commercial companies, please visit our briefing chart [here](#).
- Dividend distribution. Royal Decree-Law 18/2020 ("RD 18/2020") regulates, among others, certain limitations to the distribution of dividends by companies that have gone into furloughs procedures ("ERTEs") due to the economic crisis caused by Covid-19. Commercial companies will have to review whether these limitations apply to them prior to the distribution of dividends. These limitations include the inability to distribute dividends corresponding to the tax year in which the furloughs ("ERTEs") are applied, unless they previously pay the amount corresponding to the exemption applied to social security contributions.
- For further information regarding dividend distribution, please visit [here](#).
- Shareholder's withdrawal right in case of failure to distribute dividends: RD 25/2020 has suspended the shareholder's withdrawal right set forth in section 348bis of the Spanish Capital Companies Act (*Ley de Sociedades de Capital*) until December 31, 2020.

- Drawing up and approval of financial statements. Royal Decree-Law 19/2020 (“RD 19/2020”) modified by Royal Decree-Law 21/2020 (“**RD 21/2020**”), states that the three-month term for drawing up the financial statements and other documents required by law will start running on June 1, 2020 (and not from the end of the state of emergency as planned on RD 8/2020). Additionally, the term for approving financial statements is reduced to two months running from the end of the term for their drawing up.
- For further information regarding financial statements, please visit [here](#).
- For more information please visit: [Royal Decree-Law 8/2020 of March 17, 2020 launches urgent and extraordinary measures to confront the economic and social impact of Covid-19](#), and [Covid-19: Key new legislation introduced in Royal Decree-Law 11/2020](#).

## Loans and financial support

Has the government put in place any new bank funding schemes?

### State loan guarantee programme for SMEs

The Swedish Government has implemented a state guarantee for new loans granted by banks to Swedish companies which have experienced financial distress due to the Covid-19 pandemic. The guarantee is directed towards small to mid-sized enterprises ("SMEs"). There are however no official size limits, but the European Commission has issued a recommendation setting forth that the main factors when determining whether an enterprise is a SME are (i) staff headcount (under 250) and (ii) turnover or balance sheet total (under EUR 50,000,000 in turnover or EUR 43,000,000 in balance sheet total).

The Swedish state guarantees up to 70 per cent of the loan amount, up to SEK 75,000,000 per debtor (with a possibility for the Swedish National Debt Office (Sw. Riksgäldskontoret) to grant exceptions from this limitation). Interest will accrue during the entire credit period, but the debtor's interest payments may be postponed during the first twelve months. No amortisation is required on the loan during the first twelve months and the loan may be free from amortisation during the entire loan period. The guarantee for loans taken under the guarantee program is valid for up to three years. The guarantee applies to loans granted on or prior to 30 June 2021.

### Almi's bridge loan

In order to bridge a period of financial distress resulting from the COVID- 19 pandemic, start-ups and SMEs in Sweden can apply for a bridge loan with Almi, a state-owned non-profit company. Due to COVID- 19, Almi has received an additional SEK 3 billion in order to increase its lending to start-ups and SMEs. The bridge loan is granted for a term ending on or prior to 31 December 2021 with an individual floating interest rate up to 4.69 per cent, no set-up fee and a possibility to apply for interest and amortisation deferrals for up to twelve months. After the end of the initial term, or 31 December 2021 (as applicable), there is a possibility to convert the bridge loan into a new loan with the same terms applied as the terms applied at that time.

### State reorientation support

The Swedish Government has introduced a financial support for companies which have had an annual turnover of at least SEK 250,000 and a loss of turnover due to the Covid-19 pandemic to help cover the company's fixed costs in accordance with the below:

- Companies with a loss of turnover of at least 30 per cent for March and April 2020 compared with the turnover for the same months of 2019. The support may in any event not exceed SEK 150,000,000. The expiry date for applying was 1 September 2020.
- Companies with a loss of turnover of at least 40 per cent for May 2020 compared with the turnover for the same month of 2019. The support may in any event not exceed SEK 75,000,000. The expiry date for applying was 30 November 2020.
- Companies with a loss of turnover of at least 50 per cent for June and July 2020 compared with the turnover for the same months of 2019. The support may in any event not exceed SEK 8,000,000. The expiry date for applying was 30 November 2020.

Regulations with support for the period between August 2020 to February 2021 have been proposed by the Swedish Government and approved by the EU Commission but have not yet entered into force. The support will be divided into three periods of two months and the levels of support depending on period (e.g. a loss of turnover of a minimum of 30 to 40 per cent will be required and the support may in any event not exceed SEK 72,000,000).

Furthermore, the Swedish Government has introduced a financial support for sole proprietorships (Sw. *enskild näringsidkare*) and partnerships (Sw. *handelsbolag*), which have had a loss of turnover due to the Covid-19 pandemic of at least 30, 40 or 50 per cent for periods between March 2020 and February 2020, depending on application period. Support can be granted for up to 75 or 90 per cent of the business's loss of turnover.

**Miscellaneous**

In addition to the schemes mentioned above, the Swedish Government has also implemented certain financial support to the airline, shipping, public transport, travelling and fishing industries and increased the limit on borrowings from the Swedish Export Credit Corporation and extended credit guarantee limited for guarantees granted by the Swedish Export Credit Agency.

**Employment**

What financial support is the government providing to businesses and to individuals on employment

**Short-term work**

Swedish companies can obtain a governmental subsidy for short-term work, meaning that the working hours of the employees can be reduced with up to 60 per cent (however, up to 80 per cent during May and June 2020 and January, February and March 2021), whereas the employees retain approximately 90 per cent of their salary. The government subsidy covers 75 per cent of the costs for this reduction.

In order to qualify for this subsidy, the following criteria must be met:

- The company should be able to demonstrate financial problems resulting from the Covid-19 pandemic;
- In the event that the company is bound by a collective agreement, the short-time work must be agreed upon with the company's signatory trade unions;
- In the event that the company is not bound by any collective agreement, the short-time work must be agreed upon with 70 per cent of the employees at the relevant business unit and the working hours should be reduced with the same level for all employees;
- The company must have made use of other available measures to reduce its costs, such as termination of non-permanent personnel who are not regarded as critical to the business operations (if possible); and
- The company should not be subject to a restructuring or be insolvent.

The former 24-month waiting period following a grant term has been eliminated meaning that companies who previously have received governmental subsidy for short-term work can re-apply in 2021.

Governmental subsidy for short-term work is not applicable if dividends are paid or distributed two months prior to or six months after the grant period. These rules also apply to the parent company.

**Compensation for people belonging to a risk group:** An individual belonging to a risk group who has to refrain from working due to Covid-19 can apply for a temporary compensation (up to SEK 810 per day) for the period 1 July 2020 to 30 April 2021, provided that the individual can submit a doctor's certificate showing that he or she belongs to a risk group, that it is not possible to work from home, and that the situation cannot be solved in any other manner.

**Sick pay:** The government assumed the company's liability for sick pay during April, May, June and July. For the period August 2020 to February 2021, the level of compensation is based on an amount exceeding 0.35 to 1.07 per cent (depending on the employer's total salary costs) of the paid sick pay. Companies will receive reimbursement for sick pay costs after they have filed their monthly PAYE tax return. This period may be extended until 30 April 2021.

**Qualifying period for sick pay:** The government temporarily compensates employees with up to SEK 810 for the deduction from sick pay (i.e. the qualifying period) until 28 February 2021. This period may be extended until 30 April 2021.

**Doctor's certificate:** The requirement to provide a doctor's certificate from day eight in the sick period has been modified, meaning that such certificate is now required after day 21.

**Unemployment insurance:** The qualifying period for obtaining compensation from the unemployment insurance was temporarily reduced during the period March 2020 to December 2021. However, regular rules apply from 1 January 2021. In addition, the compensation will be paid out at a higher level until 31 December 2022, as the cap has temporarily been modified.

**Social contributions:** The social security contributions were reduced between 1 March 2020 and 30 June 2020 (the reduction applies for a maximum number of 30 employees and is capped at SEK 5,300 per employee). Regular social security contributions apply from 1 July 2020. However, social security contributions for young employees (18 to 23-year olds) are reduced between 1 January 2021 and 31 December 2021.

**Tax deferral:** Companies can seek deferral of certain tax payments for the period January to December 2020, however subject to an interest being paid.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

- The Swedish Government has not made any changes to the insolvency legislation due to the Covid-19 pandemic.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Swedish Government has not introduced new legislation due to the Covid-19 pandemic that would specifically reinforce contracts between commercial entities. Normal contractual rules apply.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

#### **New temporary act enables stricter restrictions**

A new act on special restrictions to prevent the spread of Covid-19 (the “**Pandemic Act**”) entered into force on 10 January 2021. The Pandemic Act gives the Swedish Government, or any other authority authorised by the Swedish Government, the competence to issue restrictions in order to reduce the spread of Covid-19.

For *inter alia* shopping centres, department stores, service facilities and other retail venues, as well as gyms, sport facilities and other facilities for leisure or cultural activities that are open to the public, the Swedish Government, or an authorised authority, may issue provisions limiting the opening hours and the number of visitors allowed at the premises. The Pandemic Act also authorises the Swedish Government to prescribe that retail venues and facilities for leisure or cultural activities must be kept completely closed, if other infection control measures are deemed insufficient.

Based on the Pandemic Act, the Swedish Government has prescribed that anyone who professionally uses, leases or lets out premises for an event or other similar private gathering, should only be allowed to do so for a gathering of up to eight participants.

In the same regulation, the Swedish Government authorised the Public Health Agency of Sweden (the "PHAS") (Sw. *Folkhälsomyndigheten*) to issue provisions regarding infection control. The PHAS has announced that the number of visitors at gyms, sport facilities, bathhouses and retail venues shall be limited to a maximum of one visitor per ten square meters.

#### **Temporary reductions of fixed rental costs**

On 16 April 2020, the Swedish Government decided on an ordinance concerning temporary reduction of fixed rental costs in sectors which have been negatively affected by the Covid-19 pandemic. The regulation is believed to mitigate the financial consequences of the virus outbreak. Sectors covered by the ordinance include, *inter alia*, hotel, restaurant and retail sectors as well as consumer services sections such as dentists, physiotherapist practices, and hair and beauty salons. On 2 July 2020, the Swedish Government decided on an amendment to the abovementioned ordinance, to include several additional sectors. The additional sectors covered by the regulation include, *inter alia*, driving school activities, maintenance and repair services of motor vehicles and rental and leasing services of cars and light motor vehicles. In total, the Swedish Government has allocated SEK 5 billion for rent reductions.

If a landlord and a tenant (which is active in a vulnerable sector) have agreed on a reduction of the rent for the period between 1 April 2020 and 30 June 2020, the landlord will be able to seek support to compensate part of the reduction. The compensation provided will be a maximum of 50 per cent of the reduced fixed rent, i.e. the discount that the landlord and tenant have agreed on for the period from 1 April 2020 to 30 June 2020. However, the support can never exceed 25 per cent of the original fixed rent amount. It should further be noted that the agreement on the temporary discount must have been entered into by 30 June 2020. With regard to the new sectors affected by the amendment made on 2 July 2020, the agreement on the temporary discount must have been entered into by 31 July 2020. Furthermore, a tenant (where a group is seen as one and the same tenant) cannot obtain an advantage exceeding EUR 800,000.

Compensation could have been applied for by the landlord from 1 July 2020 until 31 August 2020.

In February 2021, the Swedish Parliament announced that the time period during which it is possible to apply for compensation for rental reductions will be extended to the first quarter of 2021. The formal decision will be made on 25 February 2021. Please note that there is no proposal for compensation regarding the time period between 1 July 2020 and 31 December 2020.

#### **Temporary removal of interest on deferred rental payments**

The Swedish Fortifications Agency (Sw. *Fortifikationsverket*) and the National Property Board Sweden (Sw. *Statens Fastighetsverk*) are temporary exempted from the requirement to charge interest when granting deferment of rental payments. Under Swedish law, public authorities are normally required to charge interest according to the interest rate set forth for each financial year by the National Debt Office (Sw. *Riksgälden*), with an addition of two percentage points when granting credit or deferment with a payment.

The temporary exemption applies to all tenants of the two aforementioned authorities who, in agreement with their landlord, have been allowed to postpone their rental payments in 2020, regardless of whether the tenant is active within the public or private sector and regardless of industry, region or the size of company. The largest proportion of the tenants are state actors. However, the authorities also have private tenants such as technology and real estate companies, industrial companies and restaurants.



## Litigation

Are the courts operating?

### Operation of Swedish Courts

Swedish courts are operating normally, while observing social distancing guidelines and Covid-19-related precautions. A new act on special restrictions to prevent the spread of Covid-19 (the “**Pandemic Act**”) entered into force on 10 January 2021. The Pandemic Act gives the Swedish Government, or any other authority authorised by the Swedish Government, the competence to issue restrictions in order to reduce the spread of Covid-19. The Swedish Government has restricted the number of participants allowed at public gatherings/events, prohibiting gatherings with more than eight participants; however, court hearings are not considered public gatherings, and each court decides on suitable precautions (e.g. the number of audience seats may be limited). The number of hearings being cancelled and postponed has increased slightly in the beginning of the years 2021, but despite this the number of such cancellations has almost returned to pre-Covid-19 levels. The increased digitalization brought on by the pandemic (e.g. the number of hearings being carried out remotely via video conferencing technology has increased by almost 90 per cent compared to the year before) has in fact contributed to the number of adjudicated cases reaching record levels. The Swedish National Courts Administration [produces statistics](#) on how the courts are affected by the Covid-19 pandemic.



## Tax

Has any new legislation been introduced in light of Covid-19?

Please note that we do not have a tax department internally, therefore we may not advise on tax aspects.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

### Remote general meetings

The Swedish Parliament has adopted a temporary law that allows Swedish companies to conduct general meetings with remote participation during the Covid-19 pandemic. The measures included in the temporary law permit companies to collect proxy forms in respect of general meetings and enables companies to allow shareholders to vote by post at general meetings even if such option is originally not included in the company’s articles of association, as well as to conduct general meetings electronically in combination with postal voting, or solely by postal voting. The temporary law is effective throughout 2021.

### The Swedish Corporate Governance Code

The Swedish Corporate Governance Board (Sw. *Kollegiet för Svensk Bolagsstyrning*) has decided that companies do not have to apply section 1.1 - 1.3 of the Swedish Corporate Governance Code (the “**Code**”) throughout 2021. The Code, which applies to publicly listed companies, sets out norms for good corporate governance and applies on a “comply-or-explain” basis. The aforementioned suspended rules contain requirements regarding advance publication of the date of the general meeting, attendance of board members and the CEO at the general meeting and presentation of proposals regarding election of the chair at the general meeting. Consequently, publicly listed companies do not have to comply with these requirements or explain any deviations from the aforementioned rules.



STAY  
HOME

LEGEND	
INDUSTRIAL PLANTS	○
RAILROADS	—
ROADS	—
WATERWAYS	—
COASTAL WATERS	—
SEA LEVEL	—
1000 FT.	—
2000 FT.	—
3000 FT.	—
4000 FT.	—
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8000 FT.	—
9000 FT.	—
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## Loans and financial support

Has the government put in place any new bank funding schemes?

- On April 8 2020, the Dutch government announced that it intends to reinsure supplier credits for the remainder of 2020. This measure is mostly aimed at helping SME retailers and catering establishments that make use of supplier credits and which need to provide a payment insurance to the supplier via a credit insurer. It is estimated that the measure will cost around EUR 12 billion, resulting into a loss of approximately EUR 1 billion for the Dutch government. The reinsurance of supplier credit has been extended until 30 June 2021.
- For the first six months of 2021, all income and costs, including claims, will be divided between the Dutch government and the insurers, in the ration 90/10. There is no longer a maximum to the deductible that the insurers bear. Seven insurers have entered into a reinsurance agreement with the Dutch government.
- The Dutch government has taken measures to expand export credits in order to keep international trade flows going. With this support package, businesses can cover more risks with a state guarantee. This insurance is provided by the Dutch government for transactions which involve risks that cannot be insured by the capital market. Businesses may apply to [Atradius Dutch State Business](#) for the insurance.
- An SME Credit Guarantee Scheme is available for small and medium sized enterprises established in the Netherlands that have substantial activities in the Netherlands (except for undertakings active in agriculture, fisheries, public health care, insurance and finance, and real estate). Under the regular scheme, the government guarantees loans to SMEs up to 50% of the loan provided by the financier. The size of the maximum guarantee has been increased from 50% to 75% for loans with a maximum amount of EUR 266,667. For loans of more than EUR 266,667, the guarantee is capped at 50%. In addition, the maximum loan for which the guarantee applies has been increased from EUR 1 million to EUR 1.5 million. With effect from 28 April 2020, the term of the credit is extended to four years. Furthermore, the scheme has become more accessible due to the use of a turnover test instead of a comprehensive liquidity forecast. The scheme can be used by companies for bridging loans or to increase their current account credit. The premium for the Dutch government guarantee has been decreased from 3.9% to 2% for a loan with a duration of 8 quarters. The premium for a loan with a duration between 9 and 16 quarters has been decreased to 3%. EUR 30 million has been made available for this measure. The budget for this scheme has been increased from EUR 765 million to EUR 1.5 billion. The eligible companies make an application to the accredited financier which is usually a bank. The accredited financiers can submit an application to the *Rijksdienst voor Ondernemend Nederland*. This scheme will continue until 30 June 2022. You can find the eligibility criteria and the list of accredited financiers [here](#).
- A scheme is available for SMEs and large companies that are established in the Netherlands and have substantial activities in the Netherlands (except for undertakings active in agriculture, fisheries, public health care, insurance and finance, and real estate) and have satisfactory prospects regarding their internal rate of return and continuity. The Dutch government helps companies by providing a guarantee on bank loans and bank guarantees. Under the GO Scheme, the maximum amount of the guarantee to be provided by the Dutch government to (i) large companies with a minimum turnover of EUR 50 million is 80% of the related bank loan or bank guarantee; and (ii) SMEs with a maximum turnover of EUR 50 million is 90% of the related bank loan or bank guarantee, provided that the large company or SME (as the case may be) has been affected by the Covid-19 outbreak. Under the regular scheme, this applies to loans and guarantees from EUR 1.5 million up to a maximum of EUR 50 million per undertaking. The Dutch government has increased the maximum amount of any loan or guarantee under the GO Scheme to EUR 150 million per undertaking with a maximum term of six years. The budget of the GO Scheme has been increased from EUR 400 million to EUR 10 billion. The eligible companies can submit an application to an accredited financier which is usually a bank. The accredited financiers can submit an application to the *Rijksdienst voor Ondernemend Nederland*. The scheme runs until 1 April 2021. You can find the eligibility criteria and the list of accredited financiers via [this link](#).

- A broader scheme was introduced under the same GO-C. The GO-C scheme offers businesses the opportunity to secure funding for liquidity caused by corona that would otherwise not have been possible. The scheme is for medium and large companies with substantial activities in the Netherlands and for entrepreneurs on Bonaire, St. Eustatius or Saba. The GO-C scheme allows banks to obtain an 80% or 90% state guarantee on medium and large loans. The percentage of the state guarantee depends on the turnover of the company. Loans of up to €150 million are guaranteed up to €135 million. The state guarantee reduces the risk for banks to provide liquidity financing as a result of the corona and increases their options for lending money. A budget of €2.5 billion (for GO and GO-C together) is available for 2021. The scheme is available until 30 June 2021. A guarantee application may be submitted to the RVO until 15 June 2021.
- A measure is available for businesses and self-employed individuals, named "TVL". On 21 January 2021, the Dutch government announced that the existing TVL Scheme will be expanded with broader support: (i) The TVL will be made available to all companies in the Netherlands. (ii) The subsidy percentage will be further increased to 85% for all entrepreneurs with a loss of turnover from 30%. This was 50% increasing to 70%. (iii) The minimum amount of fixed costs for a company will be reduced to EUR 1,500 per quart. That was EUR 3,000. This gives smaller companies access to the TVL. The share of fixed costs associated with the SBI-code (indicating the business activities), not with the actual fixed costs of the company. (iv) The minimum subsidy amount per quarter will be increased to EUR 1,500. (v) The maximum subsidy amount per quarter will be increased to EUR 330,000 for SMEs (maximum of 250 employees) and EUR 400,000 for non-SMEs (more than 250 employees). (vi) A subsidy for closed non-food retailers ("VGD") will be extended in Q1 2021 and increased by 21% on top of the fixed costs percentage of the TVL, with a maximum compensation of EUR 200,000. (vii) Companies in the travel sector receive an extra compensation for costs that are not refunded in case of cancellations. An extra 3.4% is added one-time only to the percentage of fixed costs and is on top of the TVL subsidy. (viii) Agriculture and horticultural businesses receive an additional compensation for the special costs to keep plants and animals alive. This compensation of 21% is added to the percentage of fixed costs and is provided on top of the TVL subsidy. (ix) There will be a separate subsidy scheme for entrepreneurs who started their business between 30 September 2019 and 30 June 2020. This is still being worked out and is expected to open for applications in the second quarter of 2021.
- The TVL Q1 scheme is available from 15 February 2021 until 30 April 2021. An extra EUR 3.8 billion is made available for the TVL Scheme.
- Bridge financing is available to start-ups and scale-ups that have been affected by the Covid-19 outbreak. Since these companies usually do not have banking relationships, the credit will be provided by Regional Development Agencies (*Regionale Ontwikkelingsmaatschappijen*, "ROM"). The loans provided vary between EUR 50,000 and EUR 2 million. For amounts above EUR 250,000, 25% co-financing is expected from the shareholders or other investors. A uniform interest rate of 3% applies. The government has made EUR 100 million available to support the start-ups and scale ups through this scheme. Applications may be submitted via [this link](#).
- On 29 May 2020, the Dutch government has made EUR 750 million available for SMEs with a minimum turnover of EUR 50,000 and a financing need of between EUR 10,000 and EUR 50,000. The Dutch government will guarantee 95% of the total amount of the loan granted by the financier. The loans can be granted by banks and non-banking accredited financiers and will have an interest rate of maximum 4%. Furthermore, the SMEs have to pay a one-time premium of 2% as compensation and the bridging loan can be used for a maximum term of five years. Rabobank, ABN AMRO Bank, ING Bank, de Volksbank, and Triodos Bank have agreed to offer loans through this scheme. Applying for this loan is possible until the end of June 2021.

# The Netherlands

- A measure named BL-C is available for agricultural SMEs that are established in the Netherlands and have substantial activities in the Netherlands. The Dutch government has decided to temporarily amend the scheme to provide more financial leeway for agricultural SMEs that run into difficulties and need working capital and/or liquidity. The temporary extension is aimed at regular agricultural loans and means that the State guarantees 70% of the total amount of the loan granted by the financier. This temporary extension can be used by agricultural SMEs to obtain a bridging loan or an increase in current account credit from a lender for a maximum term of two years. On 10 April 2020, the measure has also been extended to include fisheries and aquaculture companies. Companies within these sectors can make use of the scheme retroactively per 18 March 2020. Furthermore, the premium for the government guarantee has been decreased from 3% to 1.5% and from 1% to 0.5% for starters. The eligible companies make an application to the accredited financier which is usually a bank. The accredited financiers can submit an application to *Rijksdienst voor Ondernemend Nederland*. Applications may be submitted until 31 March 2021. You can find the eligibility criteria and the list of accredited financiers [here](#).
- The government introduced a scheme with a EUR 650 million budget for the compensation of damages suffered by specific agricultural sectors as a result of the Covid-19 outbreak. Businesses in the ornamental horticulture sector and specific sections of food horticulture with a loss in turnover of at least 30% were compensated for up to 70% of their loss in turnover in March, April, May and June 2020. The benchmark was the average turnover in the same period in three preceding years. As of 11 June 2020 only EUR 156 million of the available EUR 600 million was requested. Chip potato growers received compensation in relation to the quantity of potatoes they still had in storage. The compensation applied to potatoes that can no longer be processed into chips for this season. The total compensation amounted to 40 percent of the average market value of the potatoes over the period from September 2019 up until February 2020. A total of EUR 50 million was made available to this end. The schemes were not extended beyond 18 June 2020. Further details on the measures may be found [here](#) and [here](#).
- A guarantee fund for events will be put into place, to make sure event organisers can start planning and set up their events. 1 July 2021 is being considered as a starting date. At least EUR 300 million has been reserved for this scheme. Further details are still being worked out.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- A subsidy is available for employers that pay Dutch wages and expect to see at least a 20% decline in turnover. The scheme is known as NOW 3.0 and replaces the preceding furlough scheme. The NOW scheme has been extended from 1 October to 1 July 2021. The extension is divided into three intervals of three months. As at 15 February 2021, the application period for the fourth period has started (for January until March 2021). This is the 4<sup>th</sup> application period. It is no longer possible to apply for subsidies for previous periods. The limit for the turnover loss percentage will remain at 20%. The compensation for wages which can be claimed depends on the turnover loss, up to a maximum amount 80% for the period October until December and of 85% of the wage bill for January until late June. Employees must be paid 100%. The compensation must be used to pay wage costs, employer's contributions, holiday allowance, pension contributions and the like.
- The benchmark is the average turnover over the course of four months in 2019 for companies which existed in 2019. Only in the event of a 100% decline in turnover, will 80% or 85% of the total wage bill be paid out. If the decline in turnover is lower, the subsidy will be set at a proportionately lower level.

- Based on the application, the Dutch Employee Insurance Agency (the UWV) will pay an advance payment of 80% of the estimated amount of the subsidy based on the average wage bill of June 2020 and the employers' actual wage costs in time period 3, 4 or 5. A final settlement will take place on the basis of the actual turnover which normally requires an audit opinion. In cases of a composition of legal entities, the decline in turnover is assessed at group level. This means that if a group as a whole has a decline in turnover of less than 20%, the individual members of that group are not eligible for a NOW subsidy. A maximum of twice the maximum daily wage per month per individual employee is taken into account as salary.

Compensation for each individual employee's wage is capped at EUR 9,718 per month. As of June 2020, a correction to the subsidy will be applied in case of dismissals. However, the penalty for making employees redundant will no longer apply. Furthermore, the subsidy may also be used for purposes other than the payment of wage costs. When using the scheme, companies are prohibited, amongst other things, to make profit distributions to shareholders, pay bonuses to the board and management, and/or repurchase their own shares. Furthermore, companies must declare that employees will be encouraged to retrain. Applications may be submitted via [UWV](#).

- A measure is available for the self-employed registered in the business register before 17 March 2020. The support may take the form of a benefit payment up to a certain maximum amount (social minimum) and/or a loan for working capital to solve liquidity problems. No viability test will be applied so that the requests may be processed quickly, i.e. 4 weeks instead of the regular 13-week period. The level of income support depends on income and the household composition but is a maximum of approx. EUR 1,500 per month (net). This income support does not need to be paid back. The accelerated procedure also applies to loan applications for working capital up to a maximum of EUR 10,157. In addition, a lower interest rate than the regular rate will be applied on the loans.
- On 20 May 2020, the Dutch government announced that it intends to extend the scheme, which means that entrepreneurs can apply to their municipality until 1 October 2020. The income support under the extended scheme can only be granted for the period between 1 June 2020 and 1 October 2020. The difference between the schemes is that the income support under the extended scheme is subject to a partner income test. If the household income is above the social minimum, entrepreneurs are not entitled to the income support under the extended scheme. To apply for a loan of working capital, the applicant must declare that no suspension of payment or bankruptcy for the applicant, their company or one of their partners (vennoten) has been applied for or obtained. The amount of working capital granted under the schemes jointly is capped at EUR 10,157.
- On 28 August 2020, the Dutch government announced that it intends to extend the scheme, named Tozo 3, until 1 April 2021. As of 1 October 2020, a maximum savings requirement will be introduced. This entails that entrepreneurs with more than EUR 46,520 in savings will not qualify for Tozo 3. As of 1 January 2021, Tozo has gone into a new phase, where municipalities support applicants where necessary to prepare for the reorientation of business operations. As of 1 February 2021 it is possible to apply for support retroactively for one month prior to the month of application.
- The Dutch government has announced that from 1 April 2021 until 1 July 2021 the scheme will be extended as Tozo 4. Additional information has not been published yet.
- Entrepreneurs can apply to the municipality until 31 March 2021, for a maximum of three months in the period between October 2020 and March 2021. Applications can therefore also be submitted retroactively. You can find the eligibility criteria here.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The Dutch Ministry of Justice and Security published a bill on 8 April 2020 on temporary provisions in the area of the Ministry of Justice and Security in connection with the coronavirus (Covid-19) outbreak (the "**Emergency Act**") and an accompanying Explanatory Memorandum.

The Emergency Act provides for, among other things:

- The facilitation of electronic decision making by temporary derogation from the legal and statutory provisions concerning holding physical meetings of legal entities;
- a temporary limitation on the 'presumptions of proof' for directors' liability in case of bankruptcy if filing the annual accounts is delayed as a result of Covid-19;
- the extension of the period for preparing annual accounts by the management board instead of by the general meeting.

The Emergency Act entered into force on 24 April 2020. All the rules apply retroactively from 16 March 2020, except the regulation on presumptions of proof when annual accounts are filed late. The regulation on presumptions of proof in the event of late filing of annual accounts expires on 1 September 2023, as a directors' liability in bankruptcy can be invoked for up to three years. More information can be found [here](#).

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- There has been no expressive Government intervention into the workings of contracts in the Netherlands and the normal rules apply.
- Delays in production, supply and transportation may result in delay or failure to perform a contract. Therefore, particular attention has been given to existing force majeure clauses within contracts. Contracts usually include a list of force majeure events, including events such as natural disasters, wars, government acts, etc. Whether a 'pandemic' such as the coronavirus and the resulting government measures, is deemed to fall within the scope of the 'force majeure' clause will have to be examined on a case-by-case basis.
- Absent contractual clauses to this effect, Dutch law allows a contracting party to invoke 'force majeure' by relying on various grounds under the statutory provisions of the Dutch Civil Code in case of absence of fault, by virtue of law, a juridical act, or based on common opinion.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

#### Tenants

- The Dutch Government has come to an agreement with housing corporations and associations that the eviction of tenants will be avoided during the Covid-19 crisis. For tenants who are unable to pay the monthly rent despite these measures, landlords will endeavour to provide custom solutions. The number of evictions decreased by more than half in the first half of 2020.

## Litigation

Are the courts operating?

- There is a temporary regulation in place, which is valid until 1 April 2021.
- From 11 May 2020, physical hearings will recommence for cases where the physical presence of the parties is deemed necessary. Criminal, youth, and family matters have priority. From 17 August 2020, the public may, in principle, attend hearings or judgments again, if the respective person signs up at least two days in advance.
- The deadlines for submitting documents to the courts remain unchanged as much as possible, unless the court reports otherwise.
- Whenever possible, courts aim to carry out any other hearings remotely, using various digital aids that have been put into place.
- More information can be found [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- Companies can obtain deferral of payment of income tax, corporate income tax, wage tax and/or value added tax, excises (mineral oils, alcohol, and tobacco), insurance tax, gambling tax, environmental taxes (storage of sustainable energy, energy, coal, waste and tap water) and landlord levy). Businesses can request a tax deferral or request an extension of the deferral until 1 July 2021 and any deferral granted upon such request will also end on 1 July 2021. If a deferral of payment has already been granted, the deferral may be extended until 1 July 2021.
- The Dutch government obliges taxpayers to resume payment of new tax liabilities in accordance with the usual rules as of 1 July 2021, which means that the foregoing Covid-19 related deferral measures will not apply to such tax liabilities. Companies to which a deferral for certain tax liabilities has been granted will in principle have to resume the payment of these tax liabilities from 1 October 2021 onwards, but may request to pay these in 36 monthly instalments. No assurance is necessary for the debt. The exact conditions of this payment arrangement have not yet been disclosed. More information can be found [here](#). The deferral application may be submitted [here](#).
- The tax authorities will not impose default penalties for non-payment or late payment of taxes on taxpayers that have obtained deferral of payment of tax. Default penalties (automatically) imposed will be reversed. Both measures apply since 12 March 2020 and ended as of 1 January 2021. The tax collection interest (*invorderingsrente*) that normally starts after the expiry of the payment term will be temporarily reduced from 4% to 0.01% from 23 March 2020 until 31 December 2021. This applies to all tax debts.
- In addition, the interest rate for unpaid tax (*belastingrente*) was also reduced to 0.01% as of 1 June 2020. For personal income tax, this rate was reduced as of 1 July 2020. The interest rate on unpaid tax (*belastingrente*) has been adjusted to the original rate of 4% as of 1 October 2020. For corporate income tax, the interest rate on unpaid tax (*belastingrente*) will also be set at 4% (instead of the regular rate of 8%) until 31 December 2021. More information can be found [here](#).
- If a preliminary corporate tax assessment has been imposed and the taxable profit is likely to be lower than the taxable profit estimated for the preliminary assessment, a reduction of the preliminary assessment may be requested. This creates a right to a refund (if the preliminary assessment has already been paid in full) or provides for a reduction of the monthly tax due (if the preliminary assessment is paid monthly). The Dutch government has announced that the Dutch tax authorities will grant all requests to reduce preliminary assessments.
- On 24 April 2020, the Dutch government announced that taxpayers may form a reserve ("*fiscal coronavirus reserve*") up to the amount of the expected loss for 2020 in their 2019 corporate income tax return and hence offset the fiscal coronavirus reserve against the 2019 taxable income. The amount of the fiscal coronavirus reserve may not exceed the total taxable income for 2019. The fiscal coronavirus reserve will be mandatorily and fully released in 2020.

- Since forming the fiscal coronavirus reserve will lower the 2019 taxable income, the remaining taxable income in 2019 may be insufficient to (fully) offset historical tax losses as a result of which these may (partially) be forfeited (depending on the year in which those historical losses were realized). The application may be submitted [here](#).
- Directors who are also major shareholders in their own company are deemed to receive a 'customary salary' for Dutch wage tax purposes. The customary salary rules (gebruikelijkloonregeling) aim to avoid artificial structures under which no salary or only a small salary is attributed to directors/major shareholders. The 'customary salary' depends on the director/major shareholder's specific situation, but is in principle at least EUR 47,000 (2021) or equal to the most comparable employee of another company or the highest earning employee of the director/major shareholder's own company. On 24 April 2020, the Dutch government announced that these rules will be changed so that directors/major shareholders may temporarily reduce the 'customary salary' they are deemed to receive in proportion to the turnover losses incurred due to the coronavirus for 2020 and 2021. The "customary salary" for 2021 may only be reduced if the company has lost at least 30% in turnover in 2021 as compared to 2019. Approximately 135,000 directors/major shareholders are expected to benefit from the measure. More information can be found [here](#).
- Until 1 April 2021 the existing fixed travel allowance as granted by the employer before 13 March 2020 can still be reimbursed tax-free by the employer, even if these travel expenses are no longer (entirely) incurred as a result of working from home.
- Under the work-related cost scheme, employers may use a certain percentage of their total wage sum (i.e. the discretionary margin) for tax-free allowances and benefits to employees. As from 1 January 2020, the discretionary margin was increased to 1.7% (instead of 1.2%) for the first EUR 400,000 of the total wage sum. On 24 April 2020, the Dutch government announced to further increase the discretionary margin from 1.7% to 3% for the first EUR 400,000 of the total wage sum for the years 2020 and 2021. For the amount of the total wage sum above the first EUR 400,000 the discretionary margin is 1.2% in 2020 and 1.18% in 2021. More information can be found [here](#).
- On 26 June 2020, the State Secretary of Finance announced a six-month postponement of the reporting deadlines under EU Directive 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6"). The DAC 6 reporting deadline was originally intended to take effect from 1 July 2020. As a result of this postponement, the 30 day period for new reportable cross-border arrangements was deferred from 1 July 2020 to 1 January 2021 (i.e. reportable cross-border arrangements between 1 July 2020 and 1 January 2021 needed to be reported ultimately 31 January 2021). The deadline for reportable cross border arrangements of which the first implementation step occurred between 25 June 2018 and 1 July 2020 was deferred from 31 August 2020 to 28 February 2021.



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- The Dutch Ministry of Justice and Security published a bill on 8 April 2020 on temporary provisions in the area of the Ministry of Justice and Security in connection with the coronavirus (Covid-19) outbreak (the "Emergency Act") and an accompanying Explanatory Memorandum. The Emergency Act provides for, among other things:
  - the facilitation of electronic decision-making by temporary derogation from the legal and statutory provisions concerning holding physical meetings of legal entities,
  - extension of the period for preparing annual accounts by the management board instead of by the general meeting, and
  - a temporary limitation on the 'presumptions of proof' for directors' liability in case of bankruptcy if filing the annual accounts is delayed as a result of Covid-19.
- The Emergency Act entered into force on 24 April 2020. All the rules apply retroactively from 16 March 2020, except the regulation on presumptions of proof when annual accounts are filed late. The Emergency Act will apply until 1 April 2021. More information can be found [here](#).



## Loans and financial support

Has the government put in place any new bank funding schemes?

### UAE Central Bank

The UAE Central Bank issued standards for its Targeted Economic Support Scheme (TESS) with a focus on private sector companies, SMEs and individuals. In summary TESS targets three principal aspects:

- Firstly, funding relief to banks where such banks can avail zero rated facility from the Central Bank as part of the AED 50 billion stimulus package for UAE banks;
- Relaxation in capital buffers prescribed for banks thereby allowing banks to tap into a capital conservation buffer up to 60% and in some instances up to 100%. TESS also imposes a temporary suspension on banks on maximum distributable amount;
- Offers payment deferral of interest and principal of up to 6 months to private sector companies, SMEs and individuals. Also a restriction on banks to charge fees and penalties;
- The Central Bank has announced the extension of the applicability period of the key components of TESS until 30 June 2021.

### Abu Dhabi Fund for Development (ADFD)

ADFD is a multilateral agency which has pledged a COVID 19 soft loan program of AED 1 billion for industrial, healthcare and sectors completely disrupted by COVID 19. Eligibility criterion for availing the soft loans include:

- (a) Annual revenue not less than AED 150 million;
- (b) Asset valuation no less than AED 10 million;
- (c) Audited financials for the last 3 years
- (d) Details of the financial stress on the company proposing to avail the soft loan;
- (e) Operational plan for the utilization of the soft loan and impact on its business; and
- (f) Details of Strategic growth for the next 3 years

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- **Support to Businesses:** No state aid, state wage subsidy and/or state payroll co-funding scheme has been introduced or launched in order to assist employers adversely financially affected by the Covid-19 pandemic and unable to (or facing difficulty in) paying staff wages. Businesses therefore remain solely and exclusively liable for discharging staff wages and other labour-related benefits or entitlements.
- **Support to Individuals:** No state aid and/or unemployment benefit scheme has been introduced in order to assist employees who have lost employment due to the effects of the Covid-19 pandemic.

However, the Ministry of Human Resources and Emiratisation (the “MOHRE”) enacted interim legislation on 26 March 2020 mandating the continuation by employers of contractual allowances and (if applicable) staff accommodation for its terminated staff until the earlier of them being able to exit the country, secure alternative UAE employment or the revocation of such interim legislation. The rationale behind such measures is to ensure a sufficient financial safety net is in place for such staff pending repatriation to their home countries (particularly in the light of travel restrictions and travel embargoes still being in place in certain countries). Whilst this interim legislation applies only to those companies falling under the direct remit of the MOHRE (and so technically excludes the free-zones), a number of free zone authorities have nonetheless adopted its terms either wholesale or in varied form.

## 3

### Insolvency

Has the government made any changes to insolvency legislation?

The UAE issued Insolvency Law No. 19 of 2019 came into effect on 29 November 2019 so is still a relatively new law. The Law aims to provide an enhanced regime for individuals facing financial difficulties. It encourages individuals to seek expert and professional help through a court-led process.

The Insolvency Law only applies to natural persons and the estate of the deceased. It does not apply to merchants, traders, commercial companies and similar persons which fall under the scope of the Bankruptcy Law No. 9 of 2016.

Both laws primarily focus on assisting distressed persons and entities through offering them settlement options.

Federal Law No 9 of 2016 was amended in 2020 to add a new chapter addressing provisions which would apply during a period of Emergency Financial Crisis. The amendment defined an Emergency Financial Crisis as “A general situation that affects trade or investment in the country, such as a pandemic, natural or environmental disaster, war, etc. The UAE Cabinet has now confirmed that an Emergency Financial Crisis shall be deemed to exist during the period from 1 April 2020 until 31 July 2021 due to Covid-19.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

No specific measures have been taken to reinforce contracts in view of the Covid-19 situation. Contracts continue to be governed by the Civil Code and Commercial Transactions law. With regards to force majeure, under UAE law, the concept of force majeure may be pursued by a party to a contract as a matter of law. It is a mandatory rule, as opposed to a default rule, of law that de jure applies even without being expressly set out in a contract.

The UAE Civil Code (Federal Law Number 5 of 1985) sets the definition and boundaries of a Force Majeure event, and the consequences it triggers. In principle, Article 273 of the UAE Civil Code stipulates that in order for an event to be qualified as a force majeure it should be: (a) claimed in a bilateral agreement; and (b) makes the performance of the obligation impossible – not just in hardship

It is anticipated that force majeure claims will be on the rise over the coming days due to Covid-19. However, as the World Health Organization (“WHO”) declared the threat of Covid-19 since it was first reported from Wuhan, China, on 31 December 2019, any defaulting party to a contract that is concluded afterwards is unlikely to succeed in invoking a force majeure claim. As for contracts preceding the WHO declaration, it will be examined on a case-by-case basis in order to determine whether the underlying events meet the criteria set by law and courts practice.

## 5

### Property

Have any changes been made to the laws around property, rent and enforcement?

#### Emirate of Dubai

- The **Dubai Judicial Council** have temporarily suspended all eviction judgments related to residential and commercial facilities in Dubai (except cases of abandoned homes) and imprisonment judgements linked to rental disputes since March 2020 and as far as we are aware this continues until further notice.
- The **Dubai Government** have launched an AED 1.5 billion economic stimulus package to support companies and the business sector in Dubai. Some of the key property initiatives include renewal of commercial licenses without requirement of mandatory renewal of lease agreements.

- The **Dubai Land Department** have launched a CSR initiative called “Together” in cooperation with several jointly owned property management companies in Dubai to support tenants and landlords. Under the initiative, they provide the necessary life supplies (such as food, medicine, sterilisation materials, gloves, paper napkins, and face masks) free of charge to those in need in various projects and freehold areas across Dubai. Additionally, the management companies shall consider extending additional measures including cancellation of fines for 2019 and 2020, provision of flexible instalments to pay service fees, reduction of service costs, and flexible payment options for air conditioning services.

## **Emirate of Ras Al Khaimah**

- The **Ras Al Khaimah government** have announced that all eviction procedures relating to family residential premises have been postponed until end June 2020. The travel ban measurement of a debtor has been temporarily replaced with confinement. There is a further suspension of execution procedures on moveables, properties, shares and bonds. We are unsure of the current status of this and await further updates from the Ras Al Khaimah government.

## **Emirate of Sharjah**

- The **Sharjah Executive Council** have launched a 47 points stimulus package with suggested recommendations to support the Sharjah economy which include real estate suggestions such as (a) resolutions may be issued relating to suspension of eviction judgments and imprisonment rulings on all rental-related cases; (b) exemption from rent payment for tenants in Buildings (1 and 2) of the Sharjah Chamber of Commerce and Industry for a period of 3 months effective from 1 April 2020; (c) exemption for (a) tenants of Expo Centre Sharjah and (b) participants in the Sharjah Centre for Export Development’s permanent national industries exhibition, from payment of rent for a period of 3 months effective from 1 April 2020; (d) exemption for employees of small and medium enterprises (SMEs) in 101 Trade Centre from payment of rent until the end of 2020; (e) exemption for hotel establishments from payment of the 5% municipal fees for a period of three months effective from 1 April 2020; (f) exemption for hotel establishments from payment of accumulated prior violations imposed by the Sharjah Commerce and Tourism Development Authority, during the year 2019 until 31 March 2020; (g) suspension of all pending rental property eviction cases together with executive procedures such as imprisonment, blocking of bank accounts, and seizure of vehicles, stocks and assets for a period of two months; (h) deferment of all current and new cases before the rental committees for 1 month; (i) release of 100 prisoners approximately imprisoned on rental issues and provision of a 3 months’ period to settle overdue amounts; and (j) 50% reduction in rents for restaurants, exchange shops, commercial shops, banks, travel agencies, car rental companies, telecommunications companies and tourist promotion companies for a period of 3 months from 1 April 2020. We are unsure of the current status of this and await further updates from the Sharjah government.

## **Emirate of Umm Al Quwain**

- The **Umm Al Quwain government** have announced that all licensed establishments and companies affected by the decision to suspend their services due to COVID 19 lockdown are exempt from certain fee payments such as fees for renewing licenses and rental contracts, and other fees or fines incurred that are determined by the Executive Council until further notice. We are unsure of the current status of this and await further updates from the Umm Al Quwain government.

## Litigation

Are the courts operating?

Abu Dhabi and Dubai Courts are operating virtually - All hearings are being conducted via Zoom and pleadings are submitted online. Some criminal proceedings are being conducted in person at the discretion of judges.

Sharjah Courts are operating both virtually and in person, at the discretion of the judge and on a case by case basis.

## Tax

Has any new legislation been introduced in light of Covid-19?

VAT – Extension of filing and payment deadline for monthly and quarterly VAT period ending on 31 March from 28 April to 28 May 2020.

Excise tax – Extension of excise tax submission and payment for March 2020 period for one month (i.e. filing and payment deadline for the March/April periods is 17 May 2020 – two returns were required to be filed by this day for both periods.)

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

The concept of remote general meetings is already recognized under UAE company law. In addition, the Ministry of Economy issued a circular governing remote general assembly meetings of private joint stock companies. Pursuant to this circular the Ministry has requested shareholders to adopt written resolutions instead of attending physical meetings.

STAY AT HOME!



## Loans and financial support

Has the government put in place any new bank funding schemes?

Lending is available under five new schemes that have been introduced in the UK:

- The Covid Corporate Financing Facility (**CCFF**) – this scheme provides funding (through commercial paper being issued by the business and purchased by the Bank of England (**BoE**)) to larger businesses and corporates with investment grade credit ratings in order to support their liquidity and working capital issues by helping them to, for example, pay wages and suppliers due to the disruption caused by Covid-19 to their cashflows. The BoE publishes the names of businesses with outstanding commercial paper issued into the CCFF and the amount outstanding. Throughout the pandemic, the CCFF has helped several eligible businesses bridge Covid-19 related temporary disruption to their cash flows. As indicated by the BoE in March 2020, the CCFF was only intended to operate for an initial period of 12 months. In line with that time frame, and in light of the market conditions and usage patterns at that time, on 22 September 2020 the BoE and HM Treasury gave six months' notice of the withdrawal of the CCFF and announced that the CCFF would close for new purchases from issuers with effect from 23 March 2021. This means the CCFF will make no new purchases of commercial paper after 22 March 2021. The CCFF also closed to new applications from counterparties and issuers looking to become eligible on 31 December 2020. Eligible issuers that were already signed up to the CCFF at 31 December 2020 will continue to be able to issue new commercial paper until closure of the CCFF.
- The Coronavirus Business Interruption Loan Scheme (**CBILS**) – this scheme is designed to support lending to SMEs (businesses with a turnover of no more than £45 million), that are experiencing lost or deferred revenues, leading to disruptions in their cashflow. CBILS was initially intended to run for six months from 23 March 2020 to 30 September 2020.
- The Coronavirus Large Business Interruption Loan Scheme (**CLBILS**) – this scheme is designed to support lending to mid-sized and larger UK businesses with a group turnover of more than £45 million (the upper limit for CBILS) that are suffering disruption to their cashflow due to lost or deferred revenues due to the Covid-19 outbreak. Businesses borrowing more than £50 million through CLBILS will have restrictions on payment of dividends, senior pay and share buybacks during the period of the loan, including a ban on dividend payments and cash bonuses, except for where they were previously agreed. CLBILS was initially intended to run for six months from 23 March 2020 to 30 September 2020.
- Bounce Back Loan Scheme (**BBLs**) – this scheme was introduced to help provide financial support to smaller businesses across the UK that are losing revenue and seeing their cashflow impacted by Covid-19. It aims to assist those businesses to borrow between £2,000 and up to 25% of a business' turnover (maximum £50,000). BBLs was initially intended to run until 4 November 2020 with the possibility of being extended by the Government should circumstances warrant it.
- The Future Fund (**FF**) – this scheme was put in place by the Government for start-up businesses as CBILS does not apply to loss making businesses. Under the FF, the Government will match any investment given to start-up businesses by making loans which will be convertible into equity if not repaid. Those businesses must have previously raised £250,000 from private investors in the previous five years. The Government announced on 30 June 2020 that the FF's eligibility criteria was expanded to accommodate businesses that contribute significantly to the UK economy, but do not have their parent company based in the UK because they participated in a non-UK based accelerator programme. These changes allow a wider number of suitable companies to apply, while maintaining scheme protections against fraud and abuse and ensuring that the Future Fund continues to support economic activity in the UK. There are certain restrictions on use of FF proceeds, including limitations on use for repayment of dividends, bonuses and advisory fees in connection with the FF. The FF was initially intended to run until the end of September 2020 with the possibility of being extended by the Government should circumstances warrant it.

- With the exception of **BBLs** and **FF**, these schemes ensure that businesses that were viable prior to the outbreak of Covid-19 will have access to funding. Those businesses who were facing financial difficulty prior to the outbreak, will find it more difficult to get access to this funding.
- For more information, see our articles [Covid-19 Government help for UK businesses](#) and [Covid-19 Government funding for UK businesses update – further help for smaller UK businesses](#)
- A further £750 million will also be available as loans and grants for small businesses focusing on research and development. This support will be available through Innovate UK's grants and loan scheme.

#### UPDATES:

- Following calls for extensions to each of **CBILS**, **CLBILS**, **BBLs** and the **FF** (together, the **Schemes**), in September 2020, as part of the Government's Winter Economy Plan, the Chancellor of the Exchequer announced the extension of the Schemes to 30 November 2020 (Extension 1). This was in response to the likelihood of a second national lockdown being announced in November 2020 due to a second wave of Covid-19 becoming a reality. Those tougher lockdown restrictions would put more UK businesses under pressure without being able to access additional funding to stay afloat.
- Some of the main changes to the Schemes under Extension 1 are summarised as follows: (i) initially loans under **CBILS** were for a maximum term of six years, but lenders are now allowed to extend the term to up to ten years. This will reduce the required monthly repayments business would need to make after the first twelve months; (ii) **CBILS** and **CLBILS** will also benefit from more flexibility on the date of the test of whether or not their business is an "undertaking in difficulty" is assessed. In order to be eligible for this scheme, businesses previously had to demonstrate that they were not an "undertaking in difficulty", a requirement under EU State Aid Law, as of 31 December 2019. The new guidance allows for this assessment to now be determined as at the date of application for **CBILS/CLBILS**. This flexibility means that businesses can take action to convert their debt to equity in order to qualify for **CBILS/CLBILS**, giving them the option to restructure their finances before applying in order to become eligible; and (iii) in order to offer greater flexibility, businesses which borrowed under **BBLs** now have new options to: (a) repay their loans over a period of up to ten years; (b) move temporarily to interest-only payments (no repayment of principal) for six months which businesses will be able to do three times during the term of the loan; or (c) request a full six-month payment holiday for both interest and principle once over the term of the loan, but this is only after the business has made six repayments.
- In order to help keep businesses affected by Covid-19 afloat during the second national lockdown (which commenced on 5 November 2020), the Chancellor announced on 2 November 2020, that the Government would further extend the Schemes to the end of January 2021 (**Extension 2**). Extension 2 was granted in order to give businesses two extra months from to make loan applications (from 30 November 2020 as above).
- The main changes under Extension 2 affected **BBLs** in that businesses which received loans via **BBLs** will now be able to top-up existing loans if they need extra/additional cash. This top-up will help businesses who have borrowed less than the maximum sum available (up to 25% of their turnover up to a maximum of £50,000) in order to avoid them having to take on extra debt. As of 10 November 2020, businesses can request top-ups from their existing **BBLs** lender, but they are only allowed to do so once.

- On 17 December 2020, the Chancellor announced a further extension of **CBILS**, **CLBILS** and **BBLs** until 31 March 2021 (**Extension 3**) meaning more businesses would have more time to benefit from the scheme and access the finance they need. This support was vital due to the economic impact of the tier system and the imposition of the third national lockdown in January 2021 leaving many businesses having to face the first few months of the new year with reduced or no revenue.
- As the Government did not announce an extension to the **FF**, this scheme closed for new applications on 31 January 2021. The **FF** is still processing applications submitted prior to its closure.
- As Extension 3 was announced prior to the Budget (which will take place on 3 March 2021), it is expected that details of a new UK state-guaranteed successor loan scheme to SMEs (to replace the Schemes) will be provided by the Chancellor at the Budget.
- On 8 February 2021, the Government announced further details of the Pay as You Grow (**PAYG**) repayment system, which is designed to provide flexibility for businesses repaying a loan under **BBLs**. This announcement confirms that businesses will be able to pause repayments entirely for up to six months. Previously, the repayment holiday was only expected to be available after six monthly repayments had first been made. As announced previously at Extension 1 (see above), PAYG will, in addition, still give businesses the option to (i) extend the length of the loan from six to ten years; and (ii) make interest-only payments for six months (on up to three occasions). Businesses can take advantage of these repayment options individually, or in combination with each other, however businesses will pay more interest overall if they use one or more of these options, and the length of the loan will increase in line with any repayment holidays taken. Businesses should wait until they are contacted by their **BBLs** lender about PAYG options, and these lenders should be in touch three months before repayments commence. Businesses first began to receive loans under **BBLs** in May 2020, and the first repayments (subject to any repayment holidays) are due from May 2021 onwards.
- With the exception of **BBLs** and **FF**, these schemes ensure that businesses that were viable prior to the outbreak of Covid-19 will have access to funding. Those businesses who were facing financial difficulty prior to the outbreak, will find it more difficult to get access to this funding.
- For more information see [Covid-19 – Government help for UK Businesses](#), [Covid-19 Government funding for UK businesses update – further help for smaller UK businesses](#), [Every good business deserves a \(Government\) favour – the recent extensions of the Government’s Loan Guarantee Schemes](#) and [Further extensions to Government lending schemes – an early Christmas present for SMEs](#).
- A further £750 million will also be available as loans and grants for small businesses focussing on research and development. This support will be available through Innovate UK’s grants and loan scheme.

## Employment

What financial support is the government providing to businesses and to individuals on employment issues?

- The UK Government introduced The Coronavirus Job Retention Scheme (or "furlough scheme") in March 2020 under which employers could access a grant to cover the wages for employees on "furlough" (i.e. still on their employer's payroll but not providing any work). Under the Scheme the grant covers 80% of an employee's wage, up to a maximum of £2,500 per month. To find out more: [Coronavirus Job Retention Scheme](#).
- The Coronavirus Job Retention Scheme was originally intended to last for three months, but has been extended a number of times, most recently until 30 September 2021 (as confirmed by the Chancellor in his Budget speech on 3 March 2021). Currently, the UK Government is contributing 80% of wage costs for hours not worked up to a maximum of £2,500 per month; employers only need to contribute employer National Insurance Contributions and pension contributions. Employers will be expected to start contributing towards the cost of wages for hours not worked by furloughed employees from July onwards, at a rate of 10% in July and 20% in August and September. To find out more: [Coronavirus: Budget 2021 - furlough scheme extended and other employment-related Covid news](#).
- To be eligible, for periods up until 20 April 2021, employees must have been on their employers payroll on 30 October 2020. For periods starting on or after 1 May 2021, employees must have been on payroll on 2 March 2021. It is possible to "flexibly furlough" employees – where an employees work some hours (and receives full pay from their employer for hours worked) and is furloughed the rest of the time. It is not possible to claim a furlough grant for any employee serving a contractual or statutory notice period for their employer. To find out more: [Coronavirus: furlough scheme extended until March](#) and [Coronavirus: quick furlough update – notice periods not covered from December](#).
- The UK Government has also introduced changes to Statutory Sick Pay, which can now be paid both to those who are displaying symptoms of Coronavirus, who live with someone who has symptoms and who have been notified that they have been in contact with someone with Coronavirus. To find out more: [Coronavirus: an update on Statutory Sick Pay](#).
- At the start of the Coronavirus outbreak in 2020, the UK Government announced it would be delaying changes to IR35 (also known as off-payroll working) in the private sector, which have the potential to affect the taxation of payments to consultants and contractors. These changes are due to come into effect on 6 April 2021. To find out more: [IR35 tax rules delayed by 12 months](#).
- The UK Government is continuing to recommend that people should work from home where they can and minimise the number of journeys they make where possible. It is likely that this advice will remain in place until around Step 4 of it's "roadmap out of lockdown", which will take place no earlier than 21 June 2021. For anyone unable to work from home, they are permitted to attend their workplace. Employers are under an obligation to follow "COVID Secure" guidelines. The Government has published a series of guidance documents for employers aimed at helping ensure workplaces are as safe as possible.
- To find out more: [Guidance on making workplaces safe for employees told they "should go to work" - 10 key takeaways](#). And: [Employment updates from 1 August - changes to home working, the furlough scheme and further detail on the Job Retention Bonus](#).
- To assist employers and employees, the UK Government has also amended the Working Time Regulations 1998 (which govern holiday entitlement in the UK) to relax the carrying over of holiday entitlement: under these new rules, workers will be allowed to carry-over up to four weeks' holiday into the next two holiday years. The Government has also published guidance on holiday entitlement and pay during the Coronavirus pandemic. To find out more: [Holiday entitlement and pay during the Covid-19 pandemic and the impact of this on the furlough scheme](#).

## Insolvency

Has the government made any changes to insolvency legislation?

On 25 June 2020, the Corporate Insolvency and Governance Act received royal assent (the Act). It came into force on 26 June 2020.

The Act introduced changes to the UK insolvency laws in order to address the unique circumstances arising from the Coronavirus pandemic.

Measures introduced included:

- **Wrongful trading provisions** – As we outlined in our previous briefing, the Act will temporarily relax the threat of personal liability for wrongful trading from company directors who continue to trade a company through the coronavirus pandemic. The provisions set out in the Act do not provide a blanket suspension of the wrongful trading provisions. Under the Act, directors will not be responsible for any worsening of the financial position of the company or its creditors that occurs during the period 1 March 2020 to 26 November 2020. Following the lockdown measures announced across the UK in November 2020, the temporary measures were re-introduced for the period 26 November 2020 to 30 April 2021. These provisions may help boards where the company is (or was) in financial difficulties and there is significant uncertainty regarding the businesses' financial future. It is worth noting that in theory, a director could be liable for wrongful trading between 1 October 2020 and 25 November 2020, but in reality this would be difficult (but not impossible) to prove.

Whilst directors may not be liable to contribute to the extent the financial position worsens during these periods, it is important to note that this does not apply to the period before and after the pandemic will still be able to be reviewed and will not fall under the protections laid out in the Act. There are likely to be significant challenges "apportioning losses" in this manner. In addition, directors may still be subject to action for misfeasance and fraudulent trading claims for director misbehavior during the Covid-19 period. Further, directors can also still face disqualification. Although these measures have been in force for almost a year at the date of this briefing, it remains to be seen whether the courts will be sympathetic to directors during the pandemic or make examples of those who have sought to take unfair advantage of temporary changes at the expense of others.

- **Company Moratorium** – A proposed moratorium which will give struggling businesses a 20-business day opportunity to consider a rescue plan, extendable by the directors for a further 20 business days or with creditor consent up to a year. The company will remain under the control of its directors during the moratorium, and no legal action can be taken against a company during this period without leave of the court.
- **Restructuring Plan** – The proposed legislation will introduce a Restructuring Plan, allowing struggling companies, or their creditors or members, to propose a new restructuring plan which will provide an alternative rescue option for companies that are suffering financially. The plan will enable complex debt arrangements to be restructured and will support the injection of new finance in order to support a rescue.
- **Winding Up Petitions and Statutory Demands** – The Act introduced temporary provisions prevent aggressive creditor action against companies. Under the Act, statutory demands will not be able to be used as the basis for issuing a winding up petition against a company. This provision applies to all statutory demands served on any company between 1 March 2020 and 31 March 2021. The provision prevents statutory demands served in this period from forming the basis of a winding up petition presented on or after 27 April 2020.

In addition, the Act restricts winding up petitions from 27 April 2020 to 31 March 2021, unless the petitioning creditor has reasonable grounds for believing that the coronavirus crisis has not had a “financial effect” on the company (i.e. that as a consequence of coronavirus or for reasons relating to coronavirus, the debtor’s financial position has worsened).

Although no announcement has been made to date, these changes brought in by the Act have been extended twice since their enactment, and may be subject to further extension should the UK Government see it fit to do so.

## 4

### Contractual Issues

What measures have been taken to reinforce contracts?

- The Government has been reluctant to intervene into the workings of UK contracts between commercial entities and the normal rules apply. The Government is still strongly urging contracting parties to act fairly, reasonably and in the national interest when seeking to enforce contractual rights and remedies, in an attempt to minimise the impact the coronavirus will have on jobs and the wider economy.
- In the UK the focus on contractual small print continues, such as the precise wording of force majeure clauses within contracts. The sort of unforeseen disruption to lives and businesses that we are now seeing is exactly what one imagines a force majeure clause is designed to respond to. In many cases the pandemic or the resulting restrictions and guidelines issued by the Government to limit its spread will fall into a contractual definition of force majeure, however the clause itself will need to be scrutinised carefully in order to determine whether or not it is engaged.
- If a force majeure clause is engaged, typically it will suspend the performance of the affected party’s obligations under the contract, for the duration of the force majeure event. Sometimes, it can also provide a right of termination.
- If performance of a contract may be significantly affected it is crucial to review the terms of your contracts so you understand your rights and obligations and to allow you to scenario-plan accordingly.
- Our article published last year sets out the finer details and analysis of force majeure clauses, and these still apply one year on: [Contracts in the time of Covid-19: Force majeure and frustration](#).
- Particularly with long-standing contracting partners, many businesses are trying to agree a mutually acceptable way forward, including varying contractual obligations and sharing the exposure more fairly (in which case any variations should comply with the formalities required by the original contract).
- Public sector bodies are being strongly encouraged by the Government to provide financial support to their at-risk suppliers to increase the financial resilience of their supply chains. The Government is fearful of a plethora of disputes that could arise as a result of the chaos caused by the coronavirus crisis and is encouraging parties to resolve contractual disputes responsibly, using alternative dispute resolution procedures where possible, before commencing formal litigation.
- The Government is fearful of a plethora of disputes that could arise as a result of the chaos caused by the coronavirus crisis and is encouraging parties to resolve contractual disputes responsibly, using alternative dispute resolution procedures where possible, before commencing formal litigation.
- The Corporate Insolvency and Governance Act (discussed in the *Insolvency* section above) came into force at the end of June 2020. It introduced a restriction on triggering ‘termination for insolvency’-type provisions in contracts as such terminations may jeopardise attempts to rescue companies at risk of insolvency due to the current crisis. The restrictions will only apply to suppliers who have contractual rights to terminate against their customers. It does not apply to termination rights after an insolvency procedure has commenced. There is also a temporary exemption for small suppliers.

- Now that the UK is no longer in the EU, and with the transition period having ended on 31 December 2020, data protection clauses may need to be updated (e.g. from the EU GDPR to the UK GDPR – or both regimes could apply). In addition, following the ‘Schrems II’ judgment and as the UK awaits its impending adequacy decision, data transfers to and from the UK may require careful consideration and/or variations to contracts.
- Generally, we have seen an evident move to ‘future-proof’ commercial contracts. There has been an increase in specific ‘Covid-19 clauses’, cancellation clauses and greater negotiations around termination rights (particularly in the events industry and for contracts regarding the provision of time sensitive goods or services). It is hoped that these provisions will help rather than hinder enforceability in the event that the parties’ obligations under the contracts are impacted by the pandemic.

## 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- Under emergency legislation: landlords of business tenancies are prohibited from re-entering premises (forfeiture) for non-payment of any sums due under the lease, from 26 March 2020 to 31 March 2021 inclusive. This period can be extended by further legislation, and reports suggest the government is planning to extend this to 30 June 2021. Landlords will retain their right to exercise re-entry for these sums at a later date, unless they expressly waive it in writing. Existing court orders for possession of premises may be postponed. Notice periods for terminating most residential tenancies were extended to three months, for the period 26 March 2020 to 31 March 2021.
- The suspension of possession claims which affected residential and commercial property was lifted on 20 September 2020, but claims can only be made subject to various extra requirements. These may include serving a ‘re-activation’ notice and explaining the tenant’s circumstances in relation to Covid, depending on the particular case.
- The enforcement of possession claims in the residential sector is prohibited until 31 March 2021, subject to exemptions in serious cases such as illegal occupation, anti-social behaviour and rent arrears of 6 months or more. Taking control of goods in a dwelling for recovery of rent arrears is prohibited for the same period.
- Commercial Rent Arrears Recovery, the process used to take goods to recover commercial rent arrears, can now only be exercised if 366 days’ rent is due (compared to 7 days in normal times). This applies until 31 March 2021, although there is a suggestion it will be extended until 30 June 2021.
- Many business tenants are now able to open their doors to the public, although some remain closed. Aside from the legislation above and absent any other intervention, leases will continue and the obligations on tenants will carry on as before.
- The most practical route for the majority of tenants will be some form of temporary adjustment to the rent payable under the lease, from a switch from quarterly to monthly rent payments, to a rental holiday or deferment or even a full rent-free period.
- Landlords in the UK are being encouraged to approach negotiations with a degree of flexibility and it may become increasingly difficult for landlords to resist some nod to the gravity of the situation faced by the whole business community.
- A number of practical tips for both landlords and tenants is [here](#).



## Litigation

Are the courts operating?

- In England and Wales, with the help of some technological innovation such as the use of video conferencing tools, the civil courts have been operating largely 'business as usual'.
- On 19 March 2020, the Business and Property Courts of England and Wales issued a protocol regarding remote hearings, providing that remote hearings should take place wherever possible. Where a remote hearing is not possible, then the Court has only two solutions: (1) proceed with the matter in court; or (2) adjourn because a remote hearing is not possible. The protocol emphasises the need for the court and parties to be proactive in relation to forthcoming hearings. Subsequent guidance from the senior judiciary and from case-law has been consistent that remote hearings are to be the norm for the foreseeable future wherever possible even in more complex cross-jurisdictional cases.
- There has recently been a case where remote access to a hearing was provided too widely by one of the law firms dealing with the case. They received a censure from the court and have self-reported themselves to the legal profession's regulator. This illustrates the care with which remote access to hearings should be handled.
- Similar methods are being employed to deal with arbitration hearings. To find out more information, see [here](#).

## Tax

Has any new legislation been introduced in light of Covid-19?

- The cash grants being offered under the UK Government's Coronavirus Job Retention Scheme mentioned is closely linked to HMRC's existed pay-as-you-earn (PAYE) tax withholding system. HMRC is now starting to investigate Covid-19 grant claims in depth, using the investigatory powers given to it in Finance Act 2020. Taxpayers can correct any mistake that they have made without penalty or other sanction, provided they notify HMRC by 20 October 2020, or within 90 days of receiving the grant, whichever is latest.
- Payments of VAT for the period from 20 March 2020 until 30 June 2020 may be deferred until April 2021, regardless of the type or size of business, although the VAT returns must still be made. However, VAT refunds and reclaims will be paid by HMRC as normal to aid businesses' cashflow. HMRC will also consider extending payment deadlines for customs duty and import VAT on a case-by-case basis for importers facing severe financial difficulties as a direct result of Covid-19.
- Businesses that did defer paying VAT can now opt to use the VAT Deferral New Payment Scheme to pay that deferred VAT in up to eleven equal payments from March 2021, rather than one larger payment due by 31 March 2021.
- Income tax self-assessment payments for the self-employed, including individual partners in partnerships, that are otherwise due on 31 July 2020 were deferred until 31 January 2021.
- All businesses in the hospitality and retail sectors irrespective of their rateable value are exempted from paying business rates to 31 March 2021. The government has announced it will continue to provide eligible retail hospitality and leisure properties in England with 100% business rates relief from 1 April 2021 to 30 June 2021. This will be followed by 66% business rates relief for the period from 1 July 2021 to 31 March 2022.
- A £25,000 grant will also be available to businesses with smaller retail, hospitality and leisure premises that have a rateable value between £15,000 and £51,000.
- There have been various support packages for self-employed individuals who make profits of up to £50,000 a year. Two further payments will be made under this scheme with the payment in May based on 80% of average profits and a further payment in July. The newly self-employed who filed a 2019-20 tax return before today can claim these fourth and fifth grants.

- From 15 July 2020, a reduced 5% rate of VAT has applied (previously 20%) to supplies of food and non-alcoholic drinks from restaurants, pubs, bars, cafés and similar premises across the UK. From 15 July 2020, a reduced 5% rate of VAT has applied (previously 20%) to supplies of accommodation and admission to attractions across the UK. The government has now extended the temporary reduced rate of 5% VAT for goods and services supplied by the tourism and hospitality sector until 30 September 2021. To help businesses manage the transition back to the standard 20% rate, a 12.5% rate will apply for the subsequent six months until 31 March 2022.
- There is a temporary increase in the Nil Rate Band of Stamp Duty Land Tax on residential property purchases in England and Northern Ireland from £125,000 to £500,000 until 30 June 2021 which can save up to £15,000 on a purchase. Thereafter from 1 July 2021, the Nil Rate Band will reduce to £250,000 until 30 September 2021 before returning to £125,000 on 1 October 2021.
- [Coronavirus and the UK tax system](#)

## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

- On 20 May 2020, the Corporate Insolvency and Governance Act 2020 introduced temporary measures to allow those companies required by law to hold general meetings to do so by other means (i.e. virtually) even if the company's constitution would not normally allow it.
- Allowing companies not to follow the process set out in the existing articles will ensure that shareholders' rights will be protected by allowing them to vote on issues virtually. This will also ensure that directors are not exposed to liability for a lack of shareholder approval of certain actions taken by the company.
- These measures have been extended and now apply until 30 March 2021. It is likely, at least in the short term, that this timing will not be extended further. As such, companies should seek to hold general meetings before that date to take advantage of the temporary extension.

## Loans and financial support

Has the government put in place any new bank funding schemes?

- The U.S. federal government has embarked on several initiatives to support businesses. At the end of December 2020, the Congress enacted another large relief program. The Consolidated Appropriations Act, 2021, provided approximately \$900 billion in coronavirus (Covid-19) relief, including some \$300 billion in additional Paycheck Protection Program (PPP) funding.
- In this new round of we saw an expansion of permissible expenses for new and existing borrowers AND new categories of borrowers to permit some previously ineligible entities to seek PPP funding. At the same time, however, the legislation narrows eligibility for a few categories of borrowers. In addition to narrowing the size of (now no more than 300 employees) of eligible companies and adding a revenue loss requirement, the new program also makes ineligible publicly traded companies, companies organized in or with significant operations in China or Hong Kong, and companies with board members who are residents of China. For more details, please refer to our client alert [here](#).
- The new legislation also made changes to the Employee Retention Credit (ERC), which was introduced in March 2020 in a prior stimulus package. The ERC uses the tax code to provide economic benefits to struggling businesses. For more details, please refer to our client alert [here](#).
- Perhaps few industries have been as negatively affected by the ongoing pandemic as the performing/visual arts sector. As part of above mentioned recently passed relief program, the U.S. government is providing \$15 billion in support to entities that qualify as a “live venue operator or promoter, theatrical producer, or live performing arts organization operator[;] a relevant museum operator[;] a motion picture theatre operator[;] or a talent representative.” For more details, please refer to our client alert [here](#).

## Employment

What financial support is the government providing to businesses and to individuals on employment

- The 2021 The Consolidated Appropriations Act provided for extended unemployment coverage and a supplemental benefit of \$300 per week. The payment is available to recipients of state unemployment benefits through March 14, 2021. However, the Biden Administration is looking to extend the program until August and increase the additional weekly payments to \$400.
- Also on the employment front, in the U.S. employers can require employees to receive the Covid-19 vaccine; however, there are still some liability risks. Employers can also put in programs to incentivize vaccination by employees; but, thereto, restrictions exist.
- For more details, please refer to our recent [webinar](#).

# 3

## Insolvency

Has the government made any changes to insolvency legislation?

- The CARES Act modifies the Small Business Reorganization Act (SBRA) and greatly expands the restructuring options available to businesses with less than US\$7.5 million in debt through March 27, 2021. It is effective immediately. Previously, only businesses with up to \$2.7 million in debt could use the SBRA's expedited procedures. Small business debtors have traditionally been wary of a reorganization process under Chapter 11 of the Bankruptcy Act (which provides for reorganizations), despite its well-acknowledged benefits, due primarily to the potential cost and disruption it often causes. For those businesses that qualify, the SBRA is intended to alleviate those concerns and to make small business bankruptcies proceed under a faster timeline and at reduced cost.
- We are seeing a major uptick in bankruptcy filings by retailers. Even when the economy was firing on all cylinders, retailers were facing rising expenses, changing consumer shopping habits, and stiff competition-leading many iconic retail brands in the U.S. and around the world into bankruptcy. As the coronavirus (Covid-19) pandemic and economic crisis have taken hold, it is not surprising that even more retailers (whether teetering prior to the pandemic or crippled as a result of state-mandated closures) are considering bankruptcy as a viable strategy for survival.
- For more details, please refer to our client alerts [here](#) & [here](#).

# 4

## Contractual Issues

What measures have been taken to reinforce contracts?

- The Covid-19 pandemic has significantly affected the global supply chain. In addition to duties, liabilities, and defenses created by contract, businesses also need to be conscious of a number of common law duties and obligations that may arise as a result of what is happening around the globe. These can include extra-contractual defences and concepts such as force majeure, impossibility of performance, and frustration of purpose. We are beginning to see litigation begin in earnest, albeit under different circumstances with virtual hearings and other modified protocols. We are encouraging clients to be proactive about their possible disputes. Typically, a party does not have a legally valid breach of contract claim until after a breach occurs. But that does not mean you have to sit idly by when you can see the writing on the wall.
- For more details, please refer to our client alerts [here](#) & [here](#).

# 5

## Property

Have any changes been made to the laws around property, rent and enforcement?

- The impacts of Covid-19 have led many landlords and tenants to consider their options under existing leases to determine the best path forward and what actions to take if someone on the property has contracted the virus. As a result, many states and local jurisdictions have taken action to prohibit certain evictions based on non-payment of rent and to delay foreclosures by mortgage lenders. We are starting to see litigation around these issues; however, many landlords and lessees are still negotiating resolutions of claims. Additional state and local legislation will also likely impact leases (and mortgage) obligations by residential and some commercial tenants. Also, there are special considerations for multi-family residential property owners and property holders in light of the virus.
- For more details, please refer to our client alerts [here](#) and [here](#).

# United States of America



## Litigation

Are the courts operating?

Generally, yes. Federal and state courts are operating, albeit under modified protocols.



## Tax

Has any new legislation been introduced in light of Covid-19?

- Government stimulus policy generally takes two forms: fiscal policy (direct payments to individuals, business subsidies, and tax incentives) and monetary policy (central bank intervention). The U.S. government is using tax policy to stimulate the economy in response to the coronavirus (Covid-19) outbreak. These policy tools are contained in the Coronavirus, Aid, Relief, and Economic Security Act (CARES Act) and Families First Coronavirus Response Act (FFCRA). The CARES Act offers some taxpayers an opportunity to take immediate action to reduce their federal income tax liability as they prepare their 2019 income tax returns. However, much of the CARES tax impact will be delayed until income tax returns are filed for tax periods during the crisis, which, for most U.S. taxpayers, began in 2020. Thus, in many cases, federal income tax refunds (particularly refunds resulting from the carryback of net operating losses (NOLs)) will not become available until income tax returns for 2020 are filed in 2021. Nevertheless, some action may be taken in the short-term to accelerate the ability of taxpayers to obtain income tax refunds this year, and some action may be taken during the balance of 2020 to ensure that income tax refunds will be obtained when 2020 income tax returns are filed in 2021.
- For more details, please refer to our client alert [here](#).



## Company law matters

Have any measures been put in place to accommodate social distancing (such as remote general meetings)?

Yes, in many cases taking advantage of legal concepts already on the books. Generally, U.S. corporate law is specific to the state of incorporation, except for listed companies, where federal securities law considerations are important. State law generally permits adjournment of annual meetings for emergencies, and for the conduct of meetings by remote means. State law generally allows for action by written consent without a meeting in many cases. For private companies, those whose charters contain conflicting provisions are generally reviewing changing them. For public companies, the long-held idea that holding annual meetings online could suppress shareholder democracy has been turned around, with many enthusiastically embracing the idea.

Please note, this bulletin does not constitute legal advice. The law is accurate to 15 February 2021 and the position is moving rapidly. We recommend that the latest government guidance is checked as this is changing daily. This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.