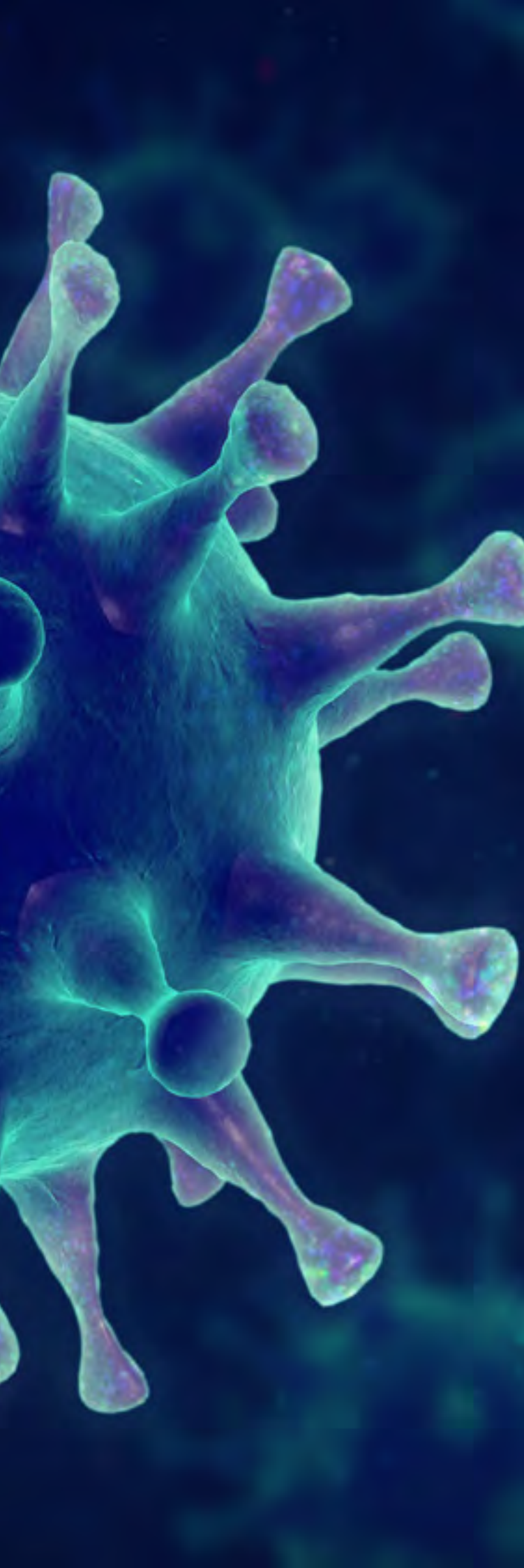




KEY COVID-19 CONSIDERATIONS FOR YOUR BUSINESS

AN UPDATE ON OUR MULTI-JURISDICTIONAL OVERVIEW



CONTENTS

ENGLAND AND WALES	1
FRANCE	4
UNITED ARAB EMIRATES	6
RUSSIA	9
SINGAPORE	11
CHINA	13
CANADA	14
KEY CONTACTS	17

ENGLAND AND WALES

CONTRACTS

Both COVID-19 itself and the severe financial impact the virus and associated lockdown has had on the UK economy, have led not only to a large number of UK businesses re-examining the contractual terms on which they do business but also to a spike in disputes. Some matters which have been prominent in current disputes, and which are therefore key considerations for business both in looking at their existing contracts and planning for the future, include the following:

- What termination provisions do they have in their contracts? Do these include robust provisions that will allow for termination/renegotiation in the event of a counterparty suffering an insolvency event or being financially weakened such that it is unable to perform its obligations as anticipated? For supply contracts, recent insolvency reforms (see section opposite) may make terminating a contract where a supplier is insolvent much harder.
- Has a force majeure clause been included? Will COVID-19 itself as an event constitute a force majeure event enabling a party to terminate and/or claim relief? Is a party able to invoke the doctrine of frustration to terminate a contract?
- What insurance protection is available and do policy terms seek to exclude pandemics? Will the economic impact of COVID-19 be covered and how is that changing as the Government increasingly opens up the UK economy?
- For joint ventures and other business partnerships, what are the contractual consequences of one party suffering financial difficulties? This might often include a right for the 'innocent' party to buy out the 'guilty' party but is exercising that right either desirable or affordable? That will be a question both of the contract and circumstances.

If you are considering your options under an existing contract, including the impact of force majeure; are about to enter into a new significant arrangement or would simply like to review your standard form contracts to ensure they include robust protections to cover future unprecedented circumstances, our commercial specialists would be delighted to assist.

INSOLVENCY & DIRECTORS' DUTIES

The Government has identified a risk of large-scale corporate insolvencies of what are, in the long term, many otherwise viable businesses. Accordingly, the Government has launched a number of initiatives to give companies vital breathing space to help stave off short-term insolvency risks. The Corporate Governance and Insolvency Act 2020 incorporates a range of insolvency reforms (both temporary and permanent), including:

- a temporary suspension of the wrongful trading regime and protecting directors from personal liability;
- a new insolvency process that allows a company's directors to retain control of the company, albeit scrutinised by an insolvency practitioner 'monitor';
- a moratorium from a company's creditors for 20 business days (extendable in certain circumstances) where there is a reasonable chance that it cannot pay its debts but where a moratorium could facilitate a reasonable prospect of a rescue;
- restrictions on winding up petitions and statutory demands being effectively issued for a period of time;
- in certain circumstances, changes to allow restructuring related schemes of arrangements to be sanctioned by a court even if they have not met the usual creditor majority thresholds; and
- changes to supply contracts that would prevent a supplier terminating a supply contract on a customer's insolvency.

The new regime may offer important breathing space for businesses, but, as this is brand new legislation, obtaining professional advice is of paramount importance. Our restructuring and insolvency specialists can assist you in navigating these challenging times.

Directors' duties

For directors of a business that may be facing financial difficulties, save in respect of wrongful trading, core directors' duties remain unchanged. It should be noted that breaches of duty can attract personal liability even with the relaxation of wrongful trading rules.

When seeking further capital, directors must consider the interests of the company's shareholders or, where the company is in

distress, the interests of its creditors as a whole. This is a tricky and subjective area and so any company that faces the threat of insolvency should proceed with caution before any decisions or steps are taken, especially with regard to additional borrowing and providing assurances to lenders; paying intra-group dividends or other transactions with affiliated entities. It is of critical importance that companies in this position obtain regular advice as their situation evolves. Our team of corporate, restructuring and insolvency specialists are ideally placed to help steer businesses through these sometimes turbulent situations.

GOVERNMENT ECONOMIC SUPPORT

The Government has presided over a gradual reopening of the economy with most sectors now operating in some way and a road map to 'get back to (a new) normal' by December. However, reopening in many sectors has not meant a return to how things were before. Consumer-facing businesses that were closed or moribund face particular challenges. Recognising this, Government is seeking to stimulate trade for those businesses whilst boosting consumer confidence generally. The recent Summer Statement delivered by the Chancellor was devoted to this objective. Headline measures introduced by the Government have included:

- a temporary (until January 2021) VAT cut from 20% to 5% for the hospitality and tourism sectors on food, accommodation, attractions etc. Note that there is no obligation on businesses to pass this on to their customers;
- a job retention bonus (see Employment section overleaf);
- job creation and apprenticeship schemes (see Employment section overleaf);
- increases in infrastructure spending, including green measures like a commitment to decarbonise Government buildings and schemes to support householders with the costs of adopting energy-saving home improvements;
- a temporary (until March 2021) cut in stamp duty payable by buyers of residential (not commercial) property in England such that no stamp duty is payable on transactions up to £500,000, to boost demand in the housing market and construction; and
- a 'help out to eat out' voucher scheme where the Government will pay up to 50% of the costs of meals (up to a maximum of £10 per diner) in participating restaurants in August.

Other relevant measures, beyond the Summer Statement, recently announced by the Government include:

- making the wearing of facemasks compulsory on public transport and in shops, which is designed as both a COVID-19 protection measure and to encourage shoppers to feel safe visiting traditional 'bricks and mortar' retailers;

- a change of emphasis towards employers, rather than the Government, determining whether, when and how employees should return to work in their normal working environment as opposed to working from home; and
- a broader roadmap towards a return to the 'new normal' and an end to social distancing restrictions by December 2020.

In addition, large financial support schemes announced at the height of the COVID-19 outbreak remain in place, including:

- COVID-19 Corporate Financing Facility - the Bank of England is buying short-term debt in the form of 'commercial paper' in investment grade companies other than financial companies, (including those with foreign incorporated parents with a material business in the UK) and those that can demonstrate sound prior financial health. It is intended that this facility will be in place for at least 12 months;
- Coronavirus Business Interruption Loan Scheme - larger and SME variants can access this financing scheme to borrow up to 25% of turnover (large companies) or up to £5 million (SMEs). Large companies borrowing more than £50 million will be subject to certain restrictions on dividends, executive pay and buy backs. For SMEs, the Government will cover the first 12 months of interest payments and fees. Schemes to run until October;
- £500 million Future Fund for high-growth equity financed companies who can obtain between £125,000 and £5 million in convertible debt funding from the Government where private investors at least match this commitment. The scheme is currently scheduled to run until the end of September 2020; and
- a raft of other measures such as deferral of VAT payments, business rates relief and grants focussed on R&D intensive SMEs and badly affected sectors like retail and hospitality.

Our Banking and Finance Team can advise further on the eligibility requirements and application processes for each of these schemes.

EMPLOYMENT

The Government has confirmed that the Coronavirus Job Retention Scheme (furlough), in which an estimated 9 million UK workers have participated, will not be extended. Changes since 1 July have seen the scheme closed to new entrants and given employers the flexibility to bring furloughed staff back to work part-time while still receiving furlough payments. CJRS will gradually be tapered off: support payments will reduce each month between July and October until the scheme ends on 31 October.

There has been extensive commentary predicting a surge in unemployment to coincide with the end of furlough (furlough having been said to allow employers to put off redundancies that they would otherwise have been made). Some large employers, particularly in

the worst affected sectors like aviation, hospitality and retail have already announced significant closures and redundancies.

To try to counteract this, the Government is continuing to support both the wider economy and the labour market. See previous page for broader measures taken but, specifically on employment:

- a new, job retention bonus where employers will be paid £1,000 for each furloughed employee that returns to work following the end of furlough and remains employed until at least 31 January 2021;
- a kickstart six month job creation scheme which will see the Government funding salaries of employees aged 16-24 starting a new job which provides training and support, up to the level of the national minimum wage, for a maximum of 25 hours a week; and
- a significant expansion of apprenticeship opportunities funded directly by the Government.

Employers have broadly welcomed the changes.

Employers have faced new challenges as the economy has emerged from lockdown and employers have reopened or considered reopening workplaces, including:

- new health and safety requirements (which have often involved significant additional cost or which entail reduced productivity) such as adopting COVID-19 control measures like social distancing, reduced access to communal areas etc. to minimise the spread of the virus and maintain a safe environment for employees (as well as additional health and safety measures for customer-facing businesses such as retail and hospitality);
- the onus being placed on employers that have until now had staff working from home to determine whether, when and how such employees can or should return to their normal place of work;
- accommodating more and more varied requests for flexible working than previously (often driven by childcare issues as most children will not return to school until September); and
- extra caution needed in the operation of more conventional employee relations matters given the fluid and uncertain nature of the regulatory and social environment.

In these rapidly changing times, our employment specialists will keep up with developments and they are ideally placed to advise you on managing the impact of the end of furlough, and any other matters affecting your business as employees begin to return to the workplace.

FRANCE

CONTRACTS

At the beginning of the COVID-19 crisis in France, the French Government set out a series of interim rules on general contract law, notably in relation to suspension of sanctions applicable to a party in breach of contract and regarding the means of terminating or renewing contracts (Order 2020-306 of 25 March 2020).

As France has been gradually coming out of lockdown, this so-called "protection period", which ran from 12 March 2020, has now terminated as at 23 June 2020. As a result, parties to private law contracts can generally recommence their enforcement. However, time periods that became suspended during the protection period, recommence as of 23 June.

Our Contracts team can also advise you, on a case-by-case basis, whether the COVID-19 outbreak can justify:

- termination, suspension or adjustment of your contract based on force majeure or Orders No. 2020-306 or No. 2020-316; or
- renegotiation of your contract based on hardship, in the event of a change in circumstances unforeseeable at the time of the execution of the contract making its performance excessively onerous for a party that did not agree to assume such risk.

In all likelihood, there will be a series of litigations following the end of the protection period, in which the courts will be asked to take very difficult decisions as to the applicability of the above legal principles. Indeed, as several of these principles were only introduced into French law in 2016, the case law is likely to be substantially developed as a result of the COVID-19 crisis. There is likely to be uncertainty, therefore, in bringing legal proceedings, and our Contracts team can advise on the risks of bringing proceedings and the opportunity to reach negotiated settlements.

INSOLVENCY & DIRECTORS' DUTIES

The initial measures at the beginning of the crisis were set out in Order No. 2020-341 of 23 March 2020 which modified the provisions of the Commercial Code on insolvency proceedings by:

- stipulating that the test of a company's "insolvency" ("cessation des paiements") is assessed as at the date of 12 March 2020 until 23 August 2020, thus temporarily modifying the general rule on corporate officers to file for a judicial recovery or

liquidation proceeding or a conciliation proceeding within 45 days of the insolvency and preventing creditors from petitioning the court for the commencement of a judicial recovery or liquidation proceeding;

- extending conciliation proceedings in progress; and
- increasing the duration of the so-called observation period or plan of safeguard/recovery proceedings as well as the period of liquidation proceedings.

Subsequent changes, and notably the Order No. 2020-596 of 20 May 2020, have reinforced the above measures to assist companies in difficulty and to avoid the courts becoming clogged-up by a large number of cases. The main additional measures are as follows.

- The power of auditors, up until 31 December 2020, to alert the President of the Commercial Court where it appears that the adoption of immediate measures have become urgent and the corporate officers refuse to propose appropriate measures.
- Reinforcement of measures (for example, conciliation proceedings are extended to a 5-months period where they were terminating by 23 August 2020).
- Facilitation and acceleration in adopting measures within insolvency proceedings.
- Possible extension of up to 2 years of safeguard or recovery measures that were under threat from the consequences of COVID-19.

The above is a summary of the main measures taken and our Insolvency team is at your disposal to advise on legal obligations and strategies for companies facing financial difficulties.

GOVERNMENT ECONOMIC SUPPORT

From the outset of the COVID-19 crisis, the French Government set up the following measures to assist French businesses:

- French businesses that were not previously in difficulty can seek State-guaranteed loans for up to (as a general rule) 25% of their 2019 turnover. For businesses with less than 5,000 employees and less than 1.5 billion EUR turnover, the State guarantees 90%

of the loan and the bank cannot ask for additional guarantees or collateral except credit life/disability insurance.

- BPIFrance Financement makes available a number of special credit facilities.
- Most banks will accept postponements to capital repayments or finance lease rents given the protection given to borrowers by Order No. 2020-306.

A Decree of 12 June 2020 (No. 2020-712) set out additional aid and support measures for businesses whose cash flow have been damaged during the crisis. In particular, the Decree institutes a system for making reimbursable cash advances and loans at favourable interest rates to small and mid-size companies which have not been able to find financing solutions through their bank or private financiers. As with the initial system above, BPIFrance Financement has been given the responsibility of the operational management of these state aids.

Our Banking and Finance Team can advise further on the eligibility requirements and application processes for each of these schemes.

EMPLOYMENT

Of all the areas in French law affected by the COVID-19 crisis, none is more impacted than employment law. Not only is emphasis being placed by the Government on safeguarding employment but the obligation of French employers to provide safe working conditions for their employees has required a series of measures to be implemented to protect the work place. As France goes back to work, these measures are of crucial importance for the future of the economy and public health.

Initially, at the beginning of the crisis, French employers had to consider a series of measures including the following:

- Implementation of a partial working scheme (principles, procedure, justification of the request etc.).
- COVID-19 sick leave regime (parent of a child under 16, high-risk employees, etc.).
- Employer's obligations relating to the employees' health.
- Obligations related to the implementation of home working.
- Return to work: assistance with employee representative bodies, action plan and measures put in place to protect employees' health and safety.
- Collective performance agreement: assistance in negotiating with unions or other employee representatives at company level to organise working time, wages as well as the terms

and conditions for the internal professional and geographical mobility of employees 'to meet the needs related to the operation of the company or to safeguard or develop employment'.

- Possibility to unilaterally require or change "RTT" (additional paid leave) dates or deferred vacation pay.
- Derogation from regulation relating to working time, weekly rest periods and Sunday rest for companies in strategic sectors.

The above measures have been complemented by the enacting of the Law of 10 June 2020 relating to the health crisis.

Our Employment team is at your disposal to advise on all aspects of French employment law linked to the COVID-19 crisis, bearing in mind that the Law of 10 June 2020 contains significant provisions regarding employment law including:

- new rules to adapt partial working time to various sectors of activity and category of employees;
- the possibility for collective agreements to compensate loss of remuneration linked to partial activity by the payment or gift of rest days or holidays;
- possibility to liberalise the use of fixed-term employment contracts and interim employment up to 31 December 2020;
- extension of the mandates of certain employee representatives that would otherwise have terminated between 12 March and 31 July 2020; and
- extension of certain working authorisations for foreigners.

Our team is available to advise you on the full range of measures being implemented.

UNITED ARAB EMIRATES

CONTRACTS

The key challenge arising for businesses operating in the UAE as we enter the post lockdown period is a squeeze on liquidity and excessive delays in the flow of payments across the supply chain. This has had a dramatic effect on business conditions even to the extent that it threatens businesses with insolvency. In some instances, payment delays can be attributable to temporary suspensions to the performance of contracts meaning payment can only be released once performance is completed. This is most relevant in the construction sector where the performance of construction work on site may have been abandoned or postponed pending the release of restrictions on labour movement and work permits. Now that those restrictions are being relaxed, we anticipate performance of contracts to re-commence and pressure on the supply chain to ease. Despite this, it is important all businesses keep their operations (and debtor days) under scrutiny and adopt a strict strategy for contract management in the UAE. This strict strategy should include the following:

- Analysis of any causes of force majeure (or other reasons for delay in performance) and agreement with contract counterparties as to the remedy of such force majeure including the extent of delay and increased costs (if any).
- If the partial payment of invoices is not in dispute, creditors should demand payment of such undisputed amounts and refer the disputed element to dispute resolution in accordance with the terms of contract or applicable law if no dispute resolution process is in place.

If there are concerns around the credit risk of a customer, businesses need to act swiftly to protect their interests including issuing letters before action (in accordance with court protocol) demanding payment and issuing proceedings for payment in the applicable courts. Given the risk in default, it is also important to consider a strategy for securing payment. This could involve engaging UAE legal counsel to obtain a precautionary attachment over a debtor's assets. Businesses should also consider revising their credit terms and consider obtaining advance payment of any new orders, post-dated cheques (for an amount in excess of AED 200,000) in order to facilitate criminal action should payment not clear and/or request liquidity support in the form of letters of credit or other bank instruments.

For businesses involved in the government sector, government counterparties may be approached with a request to release bid bonds. Where contract works need to be certified by the Government or an independent third party, such third parties should be approached and be asked to expedite payment of monies due to contractors.

Both the Abu Dhabi and Dubai Governments have announced expedited measures to make payments to contractors and to return financial guarantees.

INSOLVENCY & DIRECTORS' DUTIES

Given the squeeze on the supply chain and cash-flow, it is likely that UAE based companies will suffer liquidity issues. There is no uniform regime on insolvency in the UAE which addresses insolvency. The laws applicable to non-DIFC and ADGM companies differ from other companies that are governed by the UAE Commercial Companies Law.

Outside of the DIFC and ADGM, the liquidity constraint will cause an insolvency concern if the company has either (i) stopped paying its debts when due for a period in excess of 30 consecutive working days or (ii) its liabilities exceed its assets. In each case, a director of a UAE company is obliged to file for insolvency in the local courts.

Alternatively, a creditor may petition for insolvency if a debt of AED 100,000 (approximately USD 27,200) is overdue by 30 business days.

Directors and managers of companies trading in the UAE should be aware of penalties that can be enforced against them in their personal capacity if a company is declared insolvent. This includes criminal liability in instances where there is:

- a failure to maintain satisfactory financial records that reflect the company's true financial position;
- a failure to supply information on request to a court or trustee;
- a sale of assets at an undervalue to delay the suspension of debt payments or to delay any declaration of insolvency;
- an attempt to hide company property from creditors; or
- a payment to one creditor in preference to others.

Directors (and managers) should also keep a watchful eye on the company's balance sheet as the UAE Commercial Companies Law requires that all companies have assets that are equal to at least 20% of their total liabilities. If the assets fall below this value, then directors and managers can be made jointly or severally liable for all or any part of the outstanding debt of the company. It is important directors inform shareholders of the company's balance sheet position so that measures can be put in place to remedy a negative position.

Within the DIFC and ADGM, the board of a company needs to be mindful of not committing any act of wrongful trading. If there is no reasonable prospect of avoiding insolvency, expenditure by the company should cease or otherwise directors should take prudent steps to minimise the potential loss to the company's creditors based on their knowledge, skill and experience.

The DIFC suspended the wrongful trading provisions in its insolvency regime for a temporary period which expires on 31 July 2020. Directors of DIFC Companies therefore need to exercise enhanced caution when considering expenditure plans as the relief from liability for wrongful trading will no longer be available. The ADGM insolvency regime did not suspend any provisions on wrongful trading, so directors need to maintain caution as has always been the case.

In addition to wrongful trading, the DIFC and ADGM each has insolvency regimes in place to deal with directors' misfeasance and breach of fiduciary duties. A director can be ordered to repay the company any losses suffered and/or make contributions to the company's assets for any shortfall. For example, under the DIFC insolvency regime a director can be liable for concealing or fraudulently removing any property worth over US\$200 or pledging, pawning or disposing of any property obtained on credit which has not been paid for, unless conducted in the ordinary course of business.

GOVERNMENT ECONOMIC SUPPORT

Government economic support in the UAE has been structured in two ways, (i) encouraging local banks to make funds more accessible to businesses and (ii) reducing the costs of doing business.

The Central Bank, in conjunction with the UAE Government, announced the "Targeted Economic Support Scheme" on 15 March 2020. This scheme aims to provide temporary relief from the payments of principal and interest on loans due from companies affected by COVID-19. Under the scheme, the federal Government has released AED 50 billion to local banks. The funds are to be made available to UAE businesses. In addition, the Central Bank has released AED 50 billion from the banks' capital maintenance

requirements with the aim that these funds will be distributed in the market.

With regard to reducing the direct costs of business, measures adopted by the Department of Economic Development, the Free-Zone Authorities, private and Government sector property owners still continue to apply reductions on licensing and rental costs. In all cases, business applying for licence renewals should seek to obtain discounts or waivers to their fees based on the policies of the Government authority responsible for licensing their operations. By way of example, the ADGM has announced a deferral of all rental payments and service charges for office tenants throughout 2020 and anticipates a reduction or waiver of all commercial licence fees. The DIFC has deferred payment plans on property purchased in the DIFC and reduced the transfer fee on DIFC property transfers from 5% to 4%.

Other free-zones have announced they will continue to waive fines on expired licences, allow rent payments to be deferred and refund security deposits on real estate leasing and employee visas.

In general, we recommend specific inquiries are made to each licensing department to ensure costs of licensing and rent payments reflect measures announced by the respective free-zone or other Government department.

EMPLOYMENT

The UAE Ministry of Human Resources & Emiratization and the Dubai International Financial Centre Authority each announced measures that allowed UAE based employers to take preventive steps on a temporary basis to ease the effects of the COVID-19 lockdown.

The measures introduced in the Dubai International Financial Centre ("DIFC") will expire on 31 July 2020. Those measures included allowing employers in the DIFC to make salary cuts without an employee's approval, placing employees on paid or unpaid leave and restricting access to the workplace. From 1 August 2020, any changes to an employee's terms and conditions of employment will require consent and therefore any proposal to continue with these measures will require prior consultation and acceptance by each employee.

With regard to movement of workers back into the work place, it is important to keep under observation information advisory notices issued by the Supreme Committee of Crisis and Disaster Management Recovery in Dubai, the Federal Government authorities and the respective free-zone departments.

The UAE Government has announced that government sector employees will lead the way with respect to returning to work, with 100% capacity expected by mid-June 2020. The private

sector may now follow this rule. However, it remains the case that social distancing must take place and employees wear face masks. Employers are advised to undertake a risk assessment before opening the work place and to re-arrangement office and work place layouts to ensure social distancing can the place.

Immigration policies are currently subject to change on a day-to-day basis. The sponsorship of employees from overseas has always required prior approval of the UAE immigration authorities but in light of COVID -19 more stringent measures have been put into place which restricts the entry of employees from overseas countries. Prior to making an application for an entry visa for new employees, companies should consult the immigration authorities to be sure an entry visa and work permit will be allowed.

RUSSIA

CONTRACTS

General overview

The restrictive measures introduced by the Russian President as a result of the COVID-19 pandemic led to the temporary suspension of business activity in many industries across the country. Application of these measures immediately raised questions about the timely fulfilment of contractual obligations and exemptions from liability for breach of contract.

The Supreme Court of the Russian Federation prepared two Judicial Reviews on the impact of the COVID-19 situation on contractual liability of market participants which, *inter alia*, addressed the following.

Force majeure

In the absence of a general approach, the courts should decide, on a case-by-case basis, whether the COVID-19 pandemic could be considered a force majeure. Among other factors, the term of the contract, the nature of the unfulfilled obligation, the debtor's good faith and the local COVID-19 related regulations, should be taken into consideration. For example, pursuant to the Moscow Mayor's Decree, the COVID-19 pandemic was declared a force majeure in the City of Moscow; thus, the parties to the contracts which list Moscow as the place of performance are entitled to claim release of liability for contractual breach based on the force majeure clause.

To prove a force majeure event for international transactions, the company should request a respective certificate from the Russian Chamber of Commerce.

Non-working days

Due to the COVID-19 pandemic, the Russian President declared March 30 - May 11 as non-working days. That, however, cannot be the basis for an extension of the contractual term.

No liability

A company that is unable to fulfil its contractual payment obligation can be exempted from liability if it proves that, as a reasonable party to the contract, it could not have avoided the adverse financial consequences caused by the restrictive measures during the COVID-19 pandemic.

INSOLVENCY & DIRECTORS' DUTIES

In accordance with a temporary 6-month moratorium that is in effect until October 2020, creditors cannot file for bankruptcy for the following companies:

- companies that operate in spheres most affected by the COVID-19 pandemic, e.g., catering, non-food retail, mass media and hotels;
- the so-called "systemically important" companies which are major companies in a certain industry or a specific territory approved by the Government; and
- State-owned companies in strategically important sectors of the economy ("strategic companies") which have been designated by the President or the Government.

The following restrictions apply during the moratorium:

- conclusion of agreements outside the scope of the company's normal business activity (e.g., the sale of property) is prohibited, as is the offset of liabilities;
- foreclosure on the pledged property is prohibited;
- payment of dividends to shareholders and division of shares is prohibited; and
- enforcement proceedings against property claims that occurred before the moratorium are suspended.

CEOs are exempt from liability for non-filing for bankruptcy during the moratorium.

GOVERNMENT ECONOMIC SUPPORT

Payments to social funds. The amount of insurance payments to pension and social funds has been reduced from 30% to 15% for small and medium enterprises.

Lease payments

Organizations and enterprises that operate in industries affected by COVID-19 can obtain a deferral on lease payments. The lessors who have granted a deferral on the lease payment are entitled to property tax, land tax or personal property tax exemptions on the leased property for the respective period.

Interest-free loans

Companies in the most affected industries (e.g., hotels, catering and non-food retail) can receive an interest-free 6-month loan to cover the employees' salaries.

License renewals

Certain types of licences (e.g., subsoil and telecom) are automatically renewed for one year.

Tax holidays

The Government has allowed a deferred payment of the taxes including CIT, corporate property tax and land tax for companies in the most affected industries.

Support for "systemically important" companies

Support measures for "systemically important" companies are available only to companies with a foreign share not exceeding 50%.

In addition to the abovementioned measures, "systemically important" companies are entitled to receive:

- subsidies to cover production costs, as well as Government guarantees for restructuring of existing or new loans and bonded loans; and
- loans at preferential rates (also available for their subsidiaries and parent companies).

EMPLOYMENT

Staff redundancy

The grounds for layoff have not changed during the COVID-19 pandemic. The Russian Labor Code allows dismissal of employees on certain legal grounds including dissolution of the organization, staff reduction due to organizational and technological changes, etc. No new grounds have been added because of COVID-19 and employers are obligated to adhere to the strict legal restrictions when it comes to reducing the number of employees.

Employers are now obligated to post information about a planned dissolution, staff redundancy or termination of employment contracts on the State-run website.

Short-term work

Although dismissal of employees is not possible because of the economic downfall that has resulted from COVID-19, the Labor Code allows for the introduction of reduced working hours with a proportional reduction of the employees' compensation.

Safety measures

Employees are entitled to refuse to perform work that threatens their lives and health, such as working in an office during the quarantine or taking business trips to locations where the epidemiological situation is unfavourable.

Remote work

In light of the COVID-19 pandemic, most employers were forced to suspend work in the offices and transfer their employees to remote work. However, even if an employee cannot shift to remote work or be sent on paid leave, employers are still obligated to compensate these employees for their idle hours.

SINGAPORE

CONTRACTS

COVID-19 (Temporary Measures) Act 2020 (the "Act")

The Act was passed on 7 April 2020 and provides temporary relief to businesses and individuals by applying retroactively and covering contractual obligations performed on or after 1 February 2020. The measures under the Act will be in place for a period of six months from the commencement of the Act (i.e., until 6 October 2020) and applies to the following contracts:

- loan facilities granted by a bank or finance company to enterprises where the loans are fully or partially secured against commercial or industrial immovable property, plants, machinery or fixed assets located in Singapore;
- supply or construction contracts;
- hire-purchase agreements or conditional sales agreements over any plant, machinery, fixed asset or commercial vehicle in Singapore;
- contracts for provision of goods and services for events;
- contracts related to tourism or the promotion of tourism in Singapore; and
- leases or licences of non-residential immovable property.

Eligibility

The temporary relief from repayment obligations to a bank or finance company is only available to enterprises established and carrying on business in Singapore with a turnover not exceeding S\$100 million in the latest financial year, and which are at least 30% owned by citizens of Singapore or permanent residents of Singapore or both.

Avoiding the cliff

The Monetary Authority of Singapore (the "MAS") announced on 16 July 2020 that they are in discussions with financial institutions on how borrowers can gradually resume repayments on the above obligations, while avoiding a cliff effect when the above measures draw to a close. Details will be announced at a later date.

INSOLVENCY & DIRECTORS' DUTIES

COVID-19 (Temporary Measures) Act 2020

The Act further amends the insolvency and bankruptcy regime in Singapore by making the changes set out below.

- For companies - The monetary threshold for a corporate insolvency is increased from S\$10,000 to S\$100,000.
- For individuals - The monetary threshold for personal bankruptcy is increased from \$15,000 to \$60,000. In addition, an individual's applicability for a debt repayment scheme, in order to avoid bankruptcy, is increased from \$100,000 to \$250,000.
- The period to respond to a statutory demand from a creditor before the presumption of insolvency will arise is increased from 21 days to 6 months.

All directors shall be temporarily relieved from their obligations to prevent their companies trading while insolvent if the debts are incurred in the company's ordinary course of business and during the period that the Act is in effect. However, it should be emphasised that directors will remain criminally liable if such debts are incurred fraudulently.

GOVERNMENT ECONOMIC SUPPORT

Government measures to support businesses during the COVID-19 crisis include the following:

- Enhanced Productivity Solutions Grant ("PSG") (Effective date/duration - The support level of 80% is applicable from 1 April 2020 – 31 December 2020) - The PSG provides funding support to enterprises for the adoption of off-the-shelf productivity solutions and equipment that have been pre-approved by the Government, at a maximum support level of 80% (up from 70%).
- Financial Sector - The MAS had announced a S\$125 million package to help financial institutions and fintech companies to strengthen long-term capabilities.
- Aviation Sector – The Ministry of Finance has announced a S\$350 million package to support the aviation sector in the forms of rebates and waiver of charges.

- Enhanced SMEs Go Digital Programme (Effective date/duration: 1 April 2020 – 31 December 2020) - SMEs can receive funding support for the adoption of preapproved digital solutions through the PSG. The expanded scope of pre-approved solutions from 1 April 2020 to 31 December 2020, will cover online collaboration tools, virtual meeting and telephony tools, queue management systems and temperature screening solutions.

EMPLOYMENT

On 17 July 2020, the Ministry of Manpower issued the following advisory on work environments, salary and leave arrangements:

- Opening of Offices - All designated lower risks businesses were able to reopen their businesses with effect from 19 June 2020, provided that safe management measures (including the wearing of face masks while in the office) are implemented.
- Cost-Saving Measures – Companies that have been adversely affected by COVID-19 and have worked out cost-saving measures with their employees and unions may continue applying such arrangements.
- Full Time Work – Employees who have continued to work fully must continue to be paid their prevailing salaries and benefits.
- Excess Manpower– Businesses that take time to resume full operations or need to trim their manpower because of excess capacity are encouraged to take a long-term view of their manpower needs and, where necessary, to implement the cost-saving measures outlined in the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (TANEM).
- Second Job – Where employees are affected by a loss of income, employers are encouraged to allow and support their employees in taking a second job (part time or temporary job with another employer).
- Notification to Ministry of Manpower – Companies with at least 10 employees who implement cost-saving measures that result in the loss of 25% or more of any employee's salary, should notify the Ministry of Manpower of such measures.

CHINA

CONTRACTS

Further to the COVID-19 global epidemic crisis generally turning into a global economic crisis, there has been a surge in contractual disputes in China over the past few months, including defaults in deliveries and/or payments. Chinese law provides for different legal bases to either revise or enforce contracts in difficult times, mainly: force majeure, hardship or principle of fairness.

Nevertheless, the chances of winning a litigation or arbitration are low in practice if there isn't any written contract duly signed between the parties and/or proper documentation issued by the defendant itself. It is all the more important nowadays, when doing business in China, to conduct some preliminary due diligence on suppliers or clients, as well as to conclude a written contract with detailed provisions in bilingual English/Chinese versions. This not only helps from a strict legal point of view in case of litigation, but also allows the parties to reach a better understanding of each other's expectations and it may hopefully prevent disputes from occurring.

INSOLVENCY & DIRECTORS' DUTIES

Shareholders of companies incorporated in China may want to end their operations because of the epidemic outbreak, global economic crisis or for other reasons. Irrespective of the reasons, they cannot simply walk away. If they did creditors could go after the assets not only of the company, but also of its shareholders by "piercing the corporate veil" with the support of the local People's Court.

The directors and legal representative of bankrupt companies can also face personal liability in China if the closure procedures have not been properly conducted from legal, tax and administrative perspectives.

Our local team can find a tailored solution for your situation, restructure debts, take or release securities, advise on corporate governance, and mitigate risks of penalties for the company and its executives.

GOVERNMENT ECONOMIC SUPPORT

As part of the economic stimulus package, the State Council and different local Governments have issued preferential policies for companies, including the following:

- Social insurance - waiver of employer's contributions to basic old-age, unemployment and work-related injury social insurances for SMEs by 31 December 2020. Companies whose production and operation is seriously difficult may apply to postpone payment of social insurance premiums for no more than 6 months in principal without late fees being charged.
- Corporate income tax - postponement of deadlines for filing tax returns and payments, and the ability to carry forward losses up to 8 years instead of 5 for companies in sectors specially hit by the COVID-19 crisis (tourism, catering, transport etc.).
- VAT - reduction or exemption of VAT for key emergency supplies and services.
- Customs duties - facilitation of clearance for the import of medical goods, and the postponement of special tariffs against US products.
- Subsidies for online training of employees.

It is worth noting that according to the new Foreign Investment Law (in force since 1 January, 2020), foreign invested enterprises can legally enjoy these subsidies under the same conditions as Chinese owned enterprises, thanks to the new principle of national treatment.

EMPLOYMENT

Employers have the duty to promptly adapt to new COVID-19 outbreaks. For example, when the number of new cases exploded in June at the Beijing Xinfadi market, five related authorities of Beijing jointly issued a notice on 14 June 2020, requiring that employers prevent employees coming back to the work place for several weeks if they had been to the Xinfadi market on or before 30 May 2020. Moreover companies need to be careful in handling their employees' personal and health information. In accordance with local laws and regulations, employers actually have the obligation to collect employees' personal information for COVID-19 prevention purposes. However, employers must also follow basic principles related to data collection, such as notification and consent, minimum and necessary, and security and confidentiality. Employers also need to consider if they are compliant when transferring personal data and especially health information from subsidiaries in China to headquarters abroad.

CANADA

CONTRACTS

The pandemic is generating a host of new legal disputes, including class actions. Class action activity in the first few months of the pandemic already includes:

- privacy claims (e.g., alleging failure of a video-conferencing platform to protect personal information);
- personal injury claims (e.g., alleging failure to protect against COVID-19);
- employment claims (e.g., for mass layoffs, unsafe working conditions);
- securities disclosure claims (e.g., alleging failure to disclose the effect of the pandemic on the organization in a timely fashion);
- consumer protection claims (e.g., for not refunding payments relating to purchases that could not be fulfilled); and
- insurance claims (e.g., for not providing coverage for certain types of losses);

The range of class actions that COVID-19 is generating will continue to grow. Successfully defending some of these class actions will be vital for the organization being targeted - that is, the significance of the claim may be such that the survival of the organization depends on either successfully defending against it, or negotiating a compromise resolution that allows the organization to continue. The leverage for class counsel, and the determination of defendants, are heightened.

The pandemic is also producing a range of new inter-party commercial disputes, such as novel force majeure claims affecting supply chain and construction contracts, claims through which buyers seek to terminate corporate acquisition agreements based on material adverse effect clauses, interim operating covenants, bring down requirements or other alleged breaches, whistleblower suits relating to improper receipt of Government funds, and cybersecurity claims, among a variety of others.

Many of these claims will likewise be of heightened importance for defendants (businesses), for at least two reasons. First, less material disputes are now more likely to be resolved at the business level, given cash scarcity, a less efficient justice system and the need to

prioritize business continuity. Second, the pandemic is generating "bet the farm" litigation at a higher rate. The breaches of material contracts are more frequent; the dollar values of the losses are higher.

A related trend in the non-class action litigation space may be increased use of private arbitration and other alternative dispute resolution mechanisms outside the traditional court process. In the short term, this consequence is arising from the shutting down of the court system. In the longer term, it is expected that some commercial parties will prefer private dispute resolution, with the goal (if not always the effect) of expediting the process, controlling the costs, and achieving greater certainty of outcome.

Outside counsel can help companies manage potential litigation issues by being proactive with trends and being prepared to assist with the relevant issues: To help our clients anticipate and protect against the threat of litigation in these already difficult times, we are monitoring all COVID-19 related litigation filings and assembling the collective knowledge and experience of our lawyers across Gowling WLG's global practices, sectors and jurisdictions in order to anticipate future trends, and proactively partner with our clients.

The supply chain

Supply chain disruptions may lead to contractual disputes and defaults. Many contracts have lengthy schedules to accompany boilerplate clauses. It may be the case that technical issues or defaults could provide options for the parties, which may include the option to terminate the contract. Companies should take care before terminating a contract, as there may be significant legal risks associated.

Global value chains (GVCs) have become increasingly vulnerable to systemic disruptions, including environmental, geopolitical, and economic shocks. Such supply chain disruptions are especially costly, as they create what is known as the "domino effect", in which the effects of risk spread along the value adding processes along the supply chain, affecting more than one chain link and hindering their performance temporarily.

INSOLVENCY & DIRECTORS' DUTIES

The two key duties of Canadian directors – (1) a fiduciary duty to act honestly and in good faith with a view to the best interest of the corporation; and (2) a duty of care to make reasonable business decisions in light of all the circumstances – have not changed in the context of the COVID-19 pandemic.

Amidst the COVID-19 pandemic, directors have greater difficulty discharging these two duties due to the conflicting interests of corporate stakeholders and the need for directors to act very quickly on limited available information. Further complicating the ability of directors to discharge their duties is the influx of [Government relief programs for which corporations can apply](#).

Insolvency is of particular concern for directors coming out of COVID-19. Generally, directors face a heightened risk of personal liability if their corporation conducts business while insolvent; and COVID-19 has accelerated the usual timeline that corporations enter insolvency. It is imperative that directors are aware of their liquidity status.

Coming out of COVID-19, directors must ensure that the corporation is only operating if it can meet its financial liabilities as they become due and there is a reasonable expectation of newly incurred obligations being satisfied. The decisions directors make should balance short-term liquidity needs with long-term viability considerations; in particular, directors should seriously consider the relief options available to corporations through the federal and provincial Governments or through various stakeholders and lenders. Directors should take measures to protect the corporation by seeking legal advice. Finally, directors should also take measures to protect themselves from personal liability by retaining independent legal counsel.

GOVERNMENT ECONOMIC SUPPORT

Canada's COVID-19 Economic Response Plan includes a number of measures designed to support businesses emerging from this challenging period. Many of these programs are intended to have a lasting effect as we emerge from the lockdown, and are still accepting applications. The federal Government's COVID-19 Economic Response Plan represents nearly 14% of the gross domestic product. For a fiscal breakdown of the federal programs offered, see the [Government of Canada's Economic and Fiscal Snapshot](#).

The key Government economic supports in place to assist businesses emerging from lockdown measures include:

Canada Emergency Response Benefit (CERB), Canada Emergency Wage Subsidy (CEWS), and Large Employer Emergency Financing Facility (LEEFF)

CERB provides financial support to employed/self-employed Canadians affected by COVID-19 by providing a direct payment to eligible Canadians. CERB has been extended to October 3, 2020 and currently provides \$500 CAD per week for a maximum of 24 weeks.

CEWS provides eligible employers with a wage subsidy to help employers retain employees. CEWS has been extended to December 19, 2020 and currently provides subsidy based on the employer's revenue reduction percentage.

LEEFF provides bridge financing to large for-profit businesses – with the exception of those in the financial sector – and certain not-for-profit businesses, with annual revenues of \$300 million CAD or higher.

Business Credit Availability Program (BCAP) and Canada Emergency Business Account (CEBA)

BCAP offers additional credit support to small and medium-sized businesses across all sectors. Through this program, Export Development Canada and the Business Development Bank of Canada are working with private sector financial institutions to provide direct lending of up to \$60 million CAD per company and guarantees of up to \$80 million CAD.

CEBA provides small businesses up to \$40,000 CAD in interest-free loans to support non-deferrable costs during the COVID-19 pandemic. Applications are accepted until 31 August 2020.

Canada Emergency Commercial Rent Assistance (CECRA)

CECRA provides unsecured, forgivable loans worth 50% of the value of rent received from small business tenants to eligible commercial property owners. To be eligible for CECRA, commercial property owners must rent to impacted small business tenants, and enter into a legally binding rent reduction agreement for the period of April – July 2020, that reduces the small business tenant's rent by at least 75%.

Tax relief

The Canada Revenue Agency has extended the payment date of income tax for corporations and self-employed individuals to August 31, 2020. Penalties and interest on such payments will not accumulate during this deferral period. Businesses can defer the payment of the Goods and Services Tax/Harmonized Sales Tax and customs duties owing on their imports until June 30, 2020.

Industry-Specific programs and provincially implemented programs

The Government of Canada has announced a number of industry-specific measures for businesses operating in specified sectors, often operating in collaboration with the Provinces.

For a detailed breakdown of industry or province-specific programs, visit [Gowling WLG \(Canada\) LLP's COVID-19: Guide to Federal and Provincial Relief Programs](#).

EMPLOYMENT

Provincial Governments have started phased openings in all jurisdictions. There are detailed sector-specific requirements regarding health and safety precautions that must be undertaken. Common measures include graduated return-to-work measures, temperature screening, mandatory use of masks, social distancing, hand-washing/sanitizers and self-monitoring. Certain employers have had to reconfigure their workplaces, including reconfiguring work stations and factory floors, closing or limiting common spaces, installing plexiglass/glass screens, and improving air ventilation.

In almost all jurisdictions, public health authorities are able to test anyone needing or wanting a test on a same-day basis, although results may take 24 to 48 hours. Various jurisdictions are supplementing the usual contact tracing measures with a variety of apps, which has raised many privacy concerns.

Back to work efforts have been impeded by the lack of day care and other forms of child care, such as summer camps. Many parents are finding it impossible to balance childcare responsibilities and their obligation to return to work. Given that CERB benefits pay up to \$500 CAD/week, many parents are choosing not to return to work. Parents are entitled to Government-protected leave to take care of minor children.

KEY CONTACTS

SUNIL KAKKAD

Partner - UK

+44 20 7759 6584
+44 7836 284603
sunil.kakkad@gowlingwlg.com



SIMON LOWE

Partner - France

+33 1 42 99 35 75
+33 6 85 73 46 80
simon.lowe@gowlingwlg.com



TIM CASBEN

Partner - UAE

+971 4 437 5111
+971 50 240 2718
tim.casben@gowlingwlg.com



YULIA YARNYKH

Partner - Russia

+7 495 502 12 59
yulia.yarnykh@gowlingwlg.com



CHOON LENG TAN

Partner - Singapore

+65 6521 3586
+65 8168 4311
choonleng.tan@jurisiasiallc.com



VIVIAN DESMONTS

Partner - China

+86 20 3810 3783
+86 136 6007 1329
vivian.desmonts@gowlingwlg.com



JurisAsia LLC is an independent Singapore law firm exclusively associated with Gowling WLG

WENDY WAGNER

Partner - Canada

+1 613 786 0213
wendy.wagner@gowlingwlg.com



Gowling WLG, Official Legal Advisers -
Birmingham 2022 Commonwealth Games.

gowlingwlg.com

Gowling WLG is an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at www.gowlingwlg.com/legal

DESIGN0001720

