SQUIRE PATTON BOGGS

Impact of COVID-19 on Insolvency Laws:

How Countries Are Revamping Their Insolvency and Restructuring Laws to Combat COVID-19

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Around the globe, our lawyers are receiving a large number of enquiries about mitigating the impact of the coronavirus disease 2019 (COVID-19) on companies' business operations and finances. Governments in several countries have reacted quickly to try to mitigate COVID-19's impact by changing or amending their insolvency laws. This memorandum is an overview of the key changes in restructuring and insolvency laws that select countries have undertaken in response to the COVID-19 pandemic.

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1. Australia

The Australian government has taken swift action to enact new legislation that significantly changes the insolvency laws relevant to all business as a result of the ongoing developments related to COVID-19.

The Coronavirus Economic Response Package Omnibus Act 2020 (the Response Act) became effective on March 25, 2020, and is an effort to provide temporary relief to companies experiencing financial distress as a result of the ongoing and rapidly changing economic slowdown caused by COVID-19.

The COVID-19 Response Act

The amendments of the Response Act are temporary and will apply for six months until September 23, 2020. However, subject to economic and health developments, the provisions may be expanded in both their application and scope.

The key aspects of the Act include:

Safe Harbor for Insolvent Trading

The most significant temporary relief relates to directors' duties to prevent insolvent trading. The Response Act adds a new section to the Corporations Act 2001 (the Corps Act), providing directors with a new safe harbor during the six-month period, which protects them from incurring personal liability for insolvent trading for debts incurred in the ordinary course of their businesses. The new relief measures protect directors from personal liability, provided that the transactions that the company enters into (i) are in the ordinary course of business after the enactment of the Response Act, and (ii) occurs prior to the engagement or appointment of any external administrator.[1]

Increase in Dollar Thresholds and Extension of Deadlines

- The minimum dollar threshold to issue a creditors' statutory demand[2] is raised from AU$2,000 to AU$20,000.
- The deadline for a company to respond to a creditors' statutory demand is increased from 21 days to six months.
- The minimum dollar threshold for a creditor to initiate bankruptcy proceedings against a debtor is raised from AU$5,000 to AU$20,000.
- The deadline for a company to respond to a creditors' initiation of the bankruptcy proceedings is extended from 21 days to six months.
- The protection under the declaration of intention[3] is extended from 21 days to six months.

The amendments implemented by the Response Act recognize that if companies are to survive the challenges posed by the virus and its associated economic slowdown, directors will need to address the financial challenges of their businesses in new and potentially expanded ways, including obtaining new debt, seeking credit, raising equity and moving business operations away from traditional headquarters while retaining and enabling a more mobile workforce.

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[1] Administrator are similar to trustees and/or receivers in the US.

[2] Creditors with undisputed debt of a minimum dollar threshold (originally of AU$2,000; now, temporarily, AU$20,000) may issue a formal demand for payment of their debt. If the company fails to pay the debt by the deadline (originally of 21 days; now, temporarily, of six months), the company will be deemed insolvent.

[3] A declaration of intention provides the company with a period of time (originally 21 days; now, temporarily, six months), during which the debtor can decide whether it wants to declare bankruptcy. During this time, unsecured creditors cannot take action against the debtor.

Ordinary course of business?

It is noteworthy that the relief under the new measures will only be afforded to new debts incurred in the "ordinary course of business". Accordingly, much will depend on the scope and application of that term to different types of businesses. The explanatory memorandum to the Response Act provides that:

> "A director is taken to incur a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business during the six-month period that begins on commencement of the subparagraph. This could include, for example, a director taking out a loan to move some business operations online. It could also include debts incurred through continuing to pay employees during the coronavirus pandemic"

Given the wide-ranging impacts of the virus and consequent economic slowdown, businesses in different sectors may be affected in varying ways and magnitudes. Directors should seek appropriate advice before taking on any significantly new or different types of debt.

Further Regulations and Guidance

The Response Act will be supplemented by regulations, which have not yet been released. The regulations will likely provide more guidance and clarify the circumstances in which the relief measures apply.

Directors should seek appropriate advice on both the newly enacted temporary relief and the regulations before they take action.

Further, directors should note that none of the relief measures are intended to, or permit, the delay of debts payments during the relief period. Accordingly, where debts cannot be paid as and when they become due, directors should seek appropriate advice and otherwise engage with their stakeholders and in particular, their priority creditors under the Corps Act.

Statutory Lodgement[4] and Reporting Obligations

Traditional safe harbor protections under the Corps Act are predicated on companies' compliance with statutory lodgement and reporting obligations to appropriate authorities, including, but not limited to, the Australian Taxation Office. These prerequisites have not been extended to the new safe harbor protections under the Response Act. However, directors should endeavor to discharge their reporting and priority creditor obligations as appropriate.

[4] This term is used to refer to the filing of documents with the relevant authority.

2. China

While there have been no changes to the insolvency laws in the People's Republic of China (PRC) in response to the COVID-19 pandemic, numerous government authorities in China have adopted measures and policies to aid businesses in their efforts to reduce operational costs and survive the economic downturn.

In addition, some PRC courts have issued guidance on how bankruptcy cases initiated in response to COVID-19 should be handled.

Governmental Measures and Policies

Bank and Insurance Regulatory Commission

Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the epidemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of epidemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly.

State Administration of Taxation and Ministry of Finance

A series of tax incentives have been granted to businesses affected by the epidemic to be exempted from, reduce or defer tax payments.

National Development and Reform Commission and Ministry of Industry and Information Technology

Reductions in the prices of utilities, including power, water and gas, and payment deferral will also be permitted.

Municipal/Local Governments

From February to June, pension, unemployment insurance and labor injury insurance contributions by employers are now exempted or reduced by half, depending on the type and location of the business. Governments are also encouraging landlords to reduce rent obligations. The Shanghai government has implemented a rent exemption for small and medium businesses for February and March, which is applicable if the leased property is owned by state-owned entities, which occurs mostly in development and industrial sectors.

Courts' Guidance for Bankruptcy Cases

Heightened Reluctance to Initiate of Bankruptcy Proceedings

Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the epidemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of epidemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly.

Support for Businesses Engaged in the Manufacture and Sales of Materials for Epidemic Prevention and Control

According to Article 26 of the PRC Bankruptcy Law, before the first creditors' meeting, a bankruptcy administrator may decide to continue or halt the business of the debtor, subject to the court's approval. In such circumstances, many courts are encouraging those debtors engaged in the manufacture, sale, or logistics of materials for epidemic prevention and control to continue their businesses, and the courts seem inclined to approve such business continuance when decided by bankruptcy administrators.

Encouragement of Conversion of Bankruptcy Liquidation to Restructuring/Reorganization or Settlement

According to Articles 70 and 95 of the PRC Bankruptcy Law, after a court accepts a bankruptcy application but before the court declares the bankruptcy of the debtor, the debtor may apply to the court to convert the bankruptcy liquidation process to a restructuring or settlement process. In the present circumstances, many courts are encouraging such conversions to help the debtors survive. This is particularly true for debtors engaged in the manufacture, sale or logistics of materials for epidemic prevention and control.

Procedural Updates

During the pandemic prevention and control period, courts are prioritizing an online process for handling bankruptcy matters, such as hearings, creditors' rights declaration and reviews, bankrupt business property investigations and creditors' meetings. Courts are also permitting time extensions for relevant procedures in case of any delay caused by the epidemic to protect the interests of the parties involved.

3. Czech Republic

The Czech Republic has made several proposals to modify its insolvency laws in response to the economic turmoil caused by the COVID-19. The proposals are expected to be approved by the Czech Parliament in the first week of April 2020.

The key proposed amendments are as follows:

- Introduction of a “special moratorium” that can be requested by a debtor until August 31, 2020.
- Suspension of the obligation to file for insolvency in case of over-indebtedness by the debtor until six months after the COVID-19 special measures are terminated, with a final deadline of December 31, 2020. This suspension will not apply to over-indebtedness that occurred before the COVID-19 special measures were adopted or to over-indebtedness that was caused by reasons other than the COVID-19.
- Suspension of the lenders’ rights to file debtors for insolvency in case of over-indebtedness of a debtor until August 31, 2020.
- In addition to the changes in the insolvency laws, on April 1, 2020, the Czech government approved the rescheduling of loan payments. As such, loan payments, inclusive of interests in the case of natural persons, will be postponed for three to six months. The rescheduling of loan payments is an opt-in protection, and the borrowers must request the rescheduling and establish that their inability to pay on time is caused by the COVID-19 pandemic.

4. France

On March 23, 2020, the French government enacted a statute establishing a "state of health emergency," which authorizes it to take all measures to combat the effects of the COVID-19 pandemic, including making temporary amendments to the French Commercial Code and insolvency laws.

The state of health emergency came into effect on March 24, 2020, and is currently scheduled to expire on May 24, 2020.

In addition to the financial and social support measures for companies that have been previously announced, an order dated March 27, 2020 (the Order), put in place several temporary changes to the French insolvency laws. The Order is applicable to all insolvency proceedings pending throughout France, including in the regions of Moselle, Bas-Rhin, Haut-Rhin, Wallis and Futuna, which are usually subject to specific local rules. These measures are summarized below.

Fixing the Date of "Cessation of Payments" to March 12, 2020

Pursuant to French insolvency laws, debtors are generally required to file for bankruptcy within 45 days of cessation des paiements, i.e., the inability to pay debts as they become due (cessation of payments). In recognition of the impending economic downturn due to COVID-19, Article 1 of the Order fixed the date of cessation of payments to March 12, 2020, for the period of the state of health emergency plus three months (or until August 24, 2020, under the current schedule). In other words, if a company was not deemed to be in cessation of payments on March 12, 2020, it will be protected from filing for bankruptcy at least until August 24, 2020. The measure also protects legal representatives of the distressed companies from legal proceedings and personal sanctions for not declaring insolvency (dépôt de bilan) in due course during this period.

However, if a company's distress worsens during the state of health emergency or if the financial operations of the business require it, the company may voluntarily seek bankruptcy protection, and initiate restructuring or liquidation proceedings. A company may also request the suspension of legal proceedings or to obtain public funds for the payment of certain employees through the wage-guarantee insurance (AGS).

The Order does not prevent the Commercial Court (*Tribunal de Commerce*) from fixing this date to an earlier date pursuant to article L.631-8 of the Commercial Code.

Other Measures

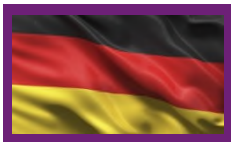
- Extension of the "conciliation"[5] period (article L.611-6 of the Commercial Code) for the duration corresponding with the state of health emergency plus three months.
- Extension of the "safeguard"[6] plans (article L.626-12 of the Commercial Code) and recovery plans (article L.631-19 of the Commercial Code) may be ordered by the President of the Commercial Court, either (i) at the request of the court-appointed official responsible for the safeguard plan's implementation (*commissaire à l'exécution du plan*, or the Commissioner) for a duration corresponding to the period of state of health emergency plus three months, or (ii) at the request of the prosecutor, for a maximum duration of one year. An additional plan extension for a maximum duration of one year can also be ordered by the court after the expiration of these first periods at the request of the Commissioner, or for six months at the request of the prosecutor.

[5] "Conciliation" proceeding is a pre-insolvency proceeding in which the company and its main creditors aim to agree to a restructuring agreement. Ordinarily, the conciliation period is limited to four months and can be extended by one month.
[6] "Safeguard" proceedings are initiated by the debtor to restructure its debt. Generally, the plan must be made available and be put to vote by the creditors within six months of the opening of the safeguard proceedings.

- Suspension of the two-month deadline for the court to rule on the continuation of the "observation periods,"[7] as set out by article L631-15 I of the Commercial Code.
- Prioritization of electronic communications and encouragement of remote work and confinement measures. Article 2 of the Order provides that any claims and submissions to the courts shall be made in writing and communicated "by any means" and that decisions may be rendered without a hearing. The same shall apply to communications between insolvency practitioners with the court.
- Simplification of the claims assessment process by the AGS.
- Extension of certain deadlines:
- The periods of guarantee of the AGS for certain employee claims
- The deadlines imposed on judicial administrators, judicial agents or liquidators, until the expiry of the state of health emergency plus three months with, however, an analysis on a case-by-case basis, and the durations of observation periods, plans, continuations of activity and simplified judicial liquidation proceedings, for the same period

[7] It is the period during which the debtor is continuing operations and developing an exit plan in safeguard and restructuring proceedings.

5. Germany



Germany has made a number of changes to its insolvency and related laws as a result of COVID-19 including suspending the obligation to file for bankruptcy.

Suspension of the Obligation to File for Bankruptcy

Under German insolvency laws, an entity has an obligation to file for bankruptcy within three weeks after the entity become either insolvent or over-indebted.[8] Insolvency is defined as the entity's inability to pay its debts as they come due (i.e., cash-flow insolvency), and over-indebtedness is defined as the state in which a company's total liabilities outweigh its total assets (i.e., balance-sheet insolvency).

The Federal Ministry of Justice and Consumer Protection (BMJV) suspended this obligation to file for bankruptcy, retrospectively from March 1, 2020 until September 30, 2020 (the "suspension period"). The BMJV may extend this suspension period by statutory order until March 31, 2021.

Previously, the violation of the obligation to file for insolvency could result in criminal penalties and civil liabilities for the managing directors of limited liability companies (GmbH, GmbH & Co. KG, AG, UG), and in civil liabilities for executive boards of associations. There are, however, two exceptions to the suspension. The obligation to file for insolvency remains in force if (i) the reasons for insolvency (i.e., the inability to pay or over-indebtedness) are not the result of the COVID-19 pandemic, and (ii) there are no prospects of eliminating the inability to pay.

The burden of proof on whether these two exceptions apply lies with the party claiming that there has been a breach of the obligation to file for insolvency, typically an insolvency administrator or a creditor. Moreover, the standard of proof has also been heightened to favor the debtor. According to the explanatory memorandum to the law, a rebuttal can only be considered in cases where there is "no doubt" that there has been a breach of the obligation. If the debtor was not insolvent on December 31, 2019, there is a presumption that the grounds for insolvency have arisen from the effects of the COVID-19 pandemic and that there are prospects of eliminating any existing insolvency.

Additional Regulations

In order to give affected companies the opportunity to continue their business and eliminate insolvency risks, the suspension of the obligation to file for insolvency is aided by additional regulations.

- **Corporate law prohibits certain payments when grounds for insolvency exist**[9] – These prohibitions have been relaxed. Transactions made in the ordinary court of business, especially those that serve to maintain business operations or to implement a restructuring, are presumed to be made with the diligence of a prudent and conscientious manager, and will not trigger any liability for the manager. The same exceptions to the suspension of the obligation also apply here.
- **Newly granted loans from banks and other lenders will be protected in order to motivate them to provide additional liquidity to companies in distress** – Repayments on loan granted during the suspension period, as well as the secured collateral for such loans, cannot be challenged until September 30, 2023. This will also apply to new loans; mere extensions of preexisting loans will be protected.

[8] Section 15a of the German Insolvency Code (InsO) and Section 42(2) of the German Civil Code (BGB).
[9] Section 64 sentence 1 GmbHG, Section 92(2) sentence 1 AktG, Section 130a(1) sentence 1 HGB, also in conjunction with Section 177a sentence 1 HGB and Section 99 sentence 1 GenG.

- **Newly granted loans by shareholders will also have additional protections** – Repayments of such loans until September 30, 2023, will not be considered disadvantageous to creditors, and cannot be challenged. Such loans will also no longer be subject to subordination in insolvency proceedings pursuant to Section 39(1) no. 5 InsO.
- **Provisions have also been made to alleviate the concerns of distressed companies' contractual counterparties (such as suppliers, landlords and lessors)** – Contractual counterparties' receipt of payment (whether through the settlement or claims or through the seizure of collateral) while the debtor was insolvent or over-indebted will be protected and cannot be avoided in the event the debtor's restructuring efforts fail and the debtor commences bankruptcy proceedings. The protection will apply to any performance in lieu of or on account of performance, payments made by a third party on account the debtor's instructions, the seizure of collateral other than that which was originally agreed to, the shortening of payment terms and the granting of payment facilities. This restriction on avoidance actions also applies to companies that are not obligated to file an application (such as sole traders and limited partnerships with a natural person as the general partner) and debtors who are neither insolvent nor over-indebted.
- **A new law entered into on April 1, 2020, temporarily suspends landlords' rights to terminate leases due to outstanding rent payments until the end of June 2020**, if "the failure to pay is due to the effects of the COVID-19 pandemic." If the pandemic continues to worsen, the federal government is authorized to extend the time of suspension of the right of termination until September 30, 2020.
- **Finally, for a three-month transitional period, the right of creditors to apply for the commencement of bankruptcy proceedings is also suspended**. During the three months after the law is enacted, creditors may only apply for bankruptcy if the reason for insolvency (e.g., inability to pay or over-indebtedness) already existed on March 1, 2020.

6. Japan

Japan does not have specific law governing insolvency, but various aspects of civil and commercial law form the basis of insolvency protection in Japan.

Accordingly, there have not been wholesale revisions to existing laws aimed specifically at providing relief from the impact of COVID-19.

Instead, the Japanese government and, to some extent, the private industry, have taken other steps aimed at mitigating the economic and financial hardship brought about by the COVID-19 pandemic.

Relief for Payment of Taxes and Utilities

On March 13, 2020, the National Tax Agency of Japan announced that, pursuant to Japan's National Tax Collection Act, it may (a) grant extensions of tax payment terms for one year or less to those who have been unable to make tax payments due to the effects of COVID-19; and (b) waive obligations to pay tax for people who have been infected with COVID-19.

In addition, on March 19, 2020, the Ministry of Internal Affairs and Communications of Japan requested the local governments managing water, sewer and gas supply businesses to give a moratorium on bill payments for people suffering financially due to the COVID-19 outbreak, stating that, under the current situation, such moratorium will be allowed without local ordinances under the current Local Autonomy Act.

Changes in Delisting Criteria for Publicly Traded Companies

Under Article 601.1.(5) of the Tokyo Stock Exchange Securities Listing Regulations, a listed company on the Tokyo Stock Exchange (the TSE) is delisted when the company is insolvent as of the end of a fiscal year and its insolvency continues for an additional one-year period.

On March 18, 2020, the Tokyo Stock Exchange announced that in response to the COVID-19 pandemic, it will extend the delisting grace period from one year to two years for listed companies that have become insolvent due to COVID-19.

Similarly, despite Article 601.1.(11), the TSE will not consider delisting a company for which an outside auditor expresses an "adverse opinion" or "no opinion" in the company's quarterly financial statements as long as the company has been impacted by COVID-19.

Changes in Reassignment Criteria

Relatedly, the TSE has announced it will relax its reassignment criteria for companies adversely affected by COVID-19. Under the current rule, a company in Section 1 of the TSE is reassigned to Section 2 when the company is insolvent as of the end of a fiscal year. The TSE announced that Section 1 companies will be given a one-year grace period before reassignment.

Implementation Plan

The TSE has announced that it will collect public comments on these changes in its rules until April 14, 2020, and hopes to implement changed rules immediately thereafter.

Private Sector Response

At the private level, a number of companies have indicated that they will implement policies designed to offer financial support to customers affected by the COVID-19 pandemic:

- **Insurance industry** – Aflac and Meiji Yasuda Life granted extension of payment of premiums for periods of up to six months.
- **Communication industry** – Softbank and KDDI have granted extension of payment of service fees until the end of May 2020, and are considering further extensions.
- **Financial industry** – Sumitomo Mitsui Banking Corporation and Sumitomo Mitsui Trust Bank have offered to negotiate repayment conditions. Hokuriku Bank has waived fees in connection with amendment of repayment conditions.

7. Poland

The Polish government is planning the implementation of certain measures affecting the process of restructuring businesses.

These measure would modify the rules for restructuring as provided for under the Restructuring Act of May 15, 2015 (Prawo restrukturyzacyjne) (the Act), potentially providing distressed businesses with financial support from the state.

A draft of the relevant Act was submitted to Parliament on March 26, 2020, but has not yet been approved.

The proposed Act provides for three types of states aid for distressed companies, or "enterprises in difficulties," as defined by the "Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty" (Guidelines), which has been implemented into the Polish Restructuring Law.

Aid may be granted to reduce social difficulties or to overcome market imperfections.

The proposed Act expressly lists the COVID-19 pandemic as causing the risk of a business failing as one of the "social difficulties or market imperfections."

Rescue Aid

Rescue aid may be granted for the time necessary to allow continuance of the business for the period needed to work out a restructuring plan or liquidation. It may be granted in the form of a collateralized, interest-bearing loan that may be extended in an amount not higher than what is necessary to maintain basic operational activity, and cannot last longer than six months.

Temporary Restructuring Aid

Temporary restructuring aid will be made available only to micro, small and medium businesses as defined of the Guidelines, and would be provided to enable the company to conduct business for the time necessary to implement restructuring measures aimed at restoring its long-term ability to compete in the market. This aid would be provided in the form of a loan. Terms and conditions of this loan will be applicable mutatis mutandis.

Restructuring Aid

- Restructuring aid will be made available to all distressed companies, in order to implement a restructuring plan that would allow the restoration of the business so that it can compete in the market on a long-term basis. This aid may take various forms, such as loans, injection of share equity by the state, purchase of bonds, change of loan repayment terms to the entity provided restructuring id, a debt-to-equity swap, as well as cancellation or postponement of payment of administrative penalties or interest thereon. This aid is subject to implementation of the restructuring plan as defined in the Polish Restructuring Law.
- All three types of aid would be granted by the Minister of Economy who may assign all implementation authority to the Industrial Development Agency (Polish: Agencja Rozwoju Przemysłu S.A.). The aid will be granted upon the application by the businesses, which will be evaluated for compliance with aid criteria.
- The proposed Act states that the amount of government expenditure under the Act may not exceed PLN120 million (approximately US$29 million) each year and PLN1.2 billion (approximately US$290 million) over the period from 2020 to 2029.

8. Russia

In connection with the coronavirus pandemic and to ensure the economic stability in case of an emergency situation, the Russian state authorities adopted the Federal Law No. 98-FZ (the Law) dated April 1, 2020, introducing amendments in licensing, healthcare, procurement and bankruptcy legislation.

With respect to the bankruptcy legislation, the Law supplemented the Federal Law "On Insolvency (Bankruptcy)" No. 127-FZ (the Bankruptcy Law) dated October 26, 2002, with a new provision (Article 9.1) authorizing the Russian government to introduce a moratorium on the initiation of bankruptcy cases (by the creditors) in case of emergencies or a natural disaster.

Moratorium on Bankruptcy Proceedings

- A moratorium on bankruptcy proceedings is introduced for a period determined by the government. The moratorium may be extended if circumstances that served as the basis for its introduction remain in force. The specific provisions of the moratorium are summarized below:
- During the moratorium, any applications on the initiation of bankruptcy proceedings filed by the creditors with the court, as well as submitted before the date of the moratorium but not considered or resolved by the date of the moratorium, will be returned back to the applicant by the court.
- During the moratorium, creditors are not permitted to levy an execution on the pledged property, such as seize property collateral, including through out-of-court procedure.
- Enforcement proceedings relating to the execution against a debtor's property are suspended with respect to the claims that arose before the moratorium. However, seizure of and other restrictions on debtors' property that have already been imposed through enforcement proceedings are not lifted.
- The composition and size of monetary obligations, claims for severance payments and/or salaries under an employment contract, and mandatory payments arising prior to the date of the moratorium and claimed after the court has accepted the application for declaring the debtor bankrupt, are determined on the date of introduction of the moratorium. The amount of the respective monetary obligations denominated in foreign currency that arose prior to the date of the moratorium is determined in rubles at the lowest rate established on the date of the moratorium or on the date of bankruptcy proceedings.
- The debtor's transactions of transferring property and undertaking obligations during the moratorium are considered null and void. This provision shall not apply to the transactions in the normal course of business if the price of the property transferred under one or several interrelated transactions or the size of the obligations does not exceed 1% of the value of the debtor's assets.
- During the moratorium, meetings of creditors, a committee of creditors, former employees of any debtor will be held by the decision of the administrator in absentia.
- If during the moratorium period, the creditor gives its written consent to the amicable agreement, then when counting the votes at the meeting of creditors when deciding on the conclusion of an amicable agreement, the creditor is considered to have voted for such an amicable agreement.

Additional Regulations

- The new Law also cancels any governmental inspections for the period from April 1 to December 31, 2020, inclusively for small- and medium-sized businesses. In addition, in 2020, the Russian government will have the right to establish rules for organizing and conducting the federal state control (or supervision) proposed by the Law.
- By the governmental acts (the Information letter of the Russian General Prosecutor General dated March 26, 2020, and the Order of the Russian Federal Tax Service dated March 20, 2020, No. ED-7-2 1812) from March 18, 2020 until May 1, 2020, the federal authorities will not start tax audits, or customs and prosecutor's inspections.
- According to the Order of the Government of the Russian Federation dated March 18, 2020, from March 20, 2020 to May 1, 2020, business entities working in tourism, air transportation, physical education, sports, art, culture and cinema will be granted "tax holidays" – a deferral of payment of taxes and other contributions.
- The Central Bank of the Russian Federation has also recommended to the credit organizations to consider the restructuring of loans of small- and medium-sized businesses, including the provision of deferrals for the repayment of principal and interest, as a priority measure to prevent overdue debt or to resolve.
- Finally, from March 19, 2020 to April 10, 2020, access to all courts is limited. Only cases of an urgent nature, as well as cases of simplified and procedural proceedings, will be considered by the courts.

9. Spain

The Spanish government has implemented a series of measures after declaring a “state of alert” nationwide in response to the COVID-19.

Most significantly, the obligation to file for bankruptcy has been suspended.

Suspension of the Obligation to File for Bankruptcy

Generally, a debtor must file for bankruptcy within two months of becoming insolvent. Under the new regulation, this obligation is suspended for the duration of the state of alert.

The suspension also applies to the debtors who had become insolvent prior to the state of alert, but had not yet filed for insolvency during the statutory two-month period before the state of alert was implemented.

Companies that have informed courts of their restructuring or refinancing negotiations will also not be required to declare bankruptcy as long as the state of alert is in force.

While companies may file voluntary bankruptcy applications, courts will not process involuntary bankruptcy applications submitted during the state of alert.

Other Rules Affecting Insolvency Proceedings

The General Council of the Judiciary, which regulates the activity of judges in Spain, has issued a series of rules that affect insolvency proceedings as follows:

- **Insolvency proceedings already declared** – Only urgent and procedural actions necessary to avoid irreparable damage will be carried out.
- **Voluntary insolvency proceedings pending declaration** – Judges may declare insolvency if waiting until the end of the alert state can cause irreparable damage.
- **Involuntary insolvency proceedings pending declaration** – Presumed not urgent.
- **Communications for the negotiation of restructuring or refinancing agreements** – Not considered urgent.
- **Communications of negotiation of restructuring or refinancing agreements submitted and processed** – Interim orders are not considered urgent

10. United Arab Emirates

There have been no changes to the bankruptcy laws of the United Arab Emirates (UAE).

Similarly, there have been no amendments to the insolvency laws of the UAE's two common law financial free zones, the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), which operate under their own internal laws.

However, there have been some developments in the UAE that indirectly affect insolvent debtors and creditors in the country.

Closure of Courts in the UAE

Commencing from March 22, 2020, the federal courts of the UAE were declared closed with proceedings suspended until April 26, 2020. Three of the seven Emirates – Abu Dhabi, Dubai and Ras Al Khaimah – maintain their own court systems and have separately announced closures for periods ranging from April 16 to April 26, 2020. Suspensions until April 26 were also announced by the ADGM and DIFC authorities. All such closures remain subject to extension.

The Bankruptcy Law of the UAE [Federal Law No. 9 of 2016, as amended]

Provides for a court-dominated process for insolvency or restructuring and rescue proceedings. During the period of these closures, practically, it is impossible for creditors or insolvent debtors to avail themselves of their rights or to fulfil their obligations under the Bankruptcy Law. This has particular application to insolvent companies and their directors or managers. Article 68 of the Law requires insolvent debtors to initiate bankruptcy proceedings within 30 days of insolvency. Penalties for failure to comply consist of fines and prison terms. These provisions have not been amended or waived to date.

Prohibitions Against Exercising Certain Rights

Various decrees have had the effect of suspending certain rights of creditors. On March 25, 2020, the UAE federal government and the government of the Emirate of Abu Dhabi issued a general prohibition against enforcement action in civil cases (presumably under orders issued prior to March 22).

11. United Kingdom

The measures announced in the UK include a temporary relaxation of the laws around wrongful trading for a period of three months, but also permanent changes to the UK's insolvency regime including a new moratorium, protection of supplies and a new restructuring plan.

Relaxation of Wrongful Trading Provisions

Under current UK law, if a director continues to trade a business while it is technically insolvent, they may be liable for wrongful trading if the business ultimately enters administration or insolvent liquidation, and by continuing to trade the net deficiency to creditors' increases. The offer of financial help from the government had placed directors in a very difficult position, because by taking out additional loans in an effort to save the business, they could potentially expose themselves to personal liability if it ultimately fails.

However, under the new rules the wrongful trading provisions will be temporarily suspended. This change should encourage businesses to take advantage of the financial packages offered by the UK government, but directors must still ensure that they comply with their duties as directors when making decisions about the viability of the business and seek professional advice. While new legislation is required to make the temporary change to the provisions on wrongful trading, once enacted, the changes will apply retrospectively from March 1, 2020, for a period of three months.

New Insolvency Tools and Moratorium

In addition to temporary changes, the UK is expected to implement permanent measures based on proposed changes to UK insolvency laws announced in 2018. These measures will include:

New Moratorium for Companies

Currently a company or director can only obtain the benefit of a moratorium when filing a notice of intention to appoint administrators, and that moratorium lasts for 10 business days. If the new measures take the form previously suggested then this new moratorium will be a quick and easy way for companies to obtain the benefit of a moratorium for an initial 28 days with the option to extend that by a further 28 days. Similar to a Chapter 11 restructuring in the United States, the company remains in the directors' control during the period of the moratorium but instead of decisions being monitored by the Court an insolvency practitioner will monitor the position.

Protection of Supplies to Enable a Company to Continue Trading During the Moratorium

This would prevent a supplier from terminating a contract on insolvency and jeopardizing the rescue of a business.

New Restructuring Plan

If this new process takes the form previously suggested, then this would enable companies to bind all creditors (including secured creditors) whether or not they vote in favor of the plan, through the use of "cross-class cram down" – a process used in the US in Chapter 11 proceedings – the effect of which enables companies to bind dissenting creditors.

The new law may also include safeguards for creditors and suppliers to ensure they are paid during the moratorium months.

Other Measures

Other key measures to support UK businesses include:

- **Financial packages** – The UK government has announced a number of financial support packages, including government-backed loans of up to £25 million and grants of up to £25,000.
- **Support for employers and employees** – There are a number of measures in place to support employment, including refunding up to two weeks of statutory sick pay and a government-backed job retention scheme. The scheme takes effect from March 1, 2020, and is available until June 1, 2020. Under the scheme, the UK government will refund 80% of employees' wages up to a maximum of £2,500 where employees are furloughed.
- **Tax** – To alleviate cash flow pressures, some industries (largely retail, hospitality and leisure) will benefit from business rates relief. VAT payments for the next quarter (March 20, 2020 – June 30, 2020) are deferred until March 31, 2021, and businesses can contact HM Revenue and Customs (HMRC) to agree a time to pay agreement in respect of existing tax liabilities.
- **Protection from eviction** – Commercial tenants who cannot pay their rent because of COVID-19 will be protected from eviction and will not automatically forfeit their lease if they miss a payment for an initial period of three months until June 30, 2020.

12. United States

The US has not implemented direct changes to its insolvency laws. However, on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law, which presents some businesses with additional financing options to mitigate risks. The CARES Act includes a roughly US$2 trillion stimulus package – the biggest economic stimulus in recent US history. This economic relief provides expanded protections for American families, workers and businesses affected by the public health and economic crisis.

The key measures included in the package are:

Bailouts for Distressed Companies

A US$500 billion fund controlled by the Federal Reserve will be available for a government lending program directed at distressed companies. Of this total amount, US$46 billion is set aside for industry-specific loans, including US$25 billion for passenger airlines, US$4 billion for cargo air carriers and US$17 billion for businesses critical to national security.

Small Business Protection

A US$350 billion fund will be available to support small businesses. The relief includes new Small Business Administration (SBA) loan programs. Significantly, in the bankruptcy arena, under the CARES Act, the threshold allowing businesses to take advantage of the streamlined bankruptcy protections available to small businesses will be raised from approximately US$2,725,625 to US$7,500,000.

Direct Payments to Taxpayers

Taxpayers with incomes up to US$75,000 per year will receive US$1,200 in direct payment, before phasing out for those earning more than US$99,000 per year. Qualifying families will receive an additional US$500 per child. These payments are excluded from the definition of “income” in the Bankruptcy Code for Chapters 7 and 13.

Expansion of Unemployment Benefits

Jobless insurance will be extended by 13 weeks and include a four-month enhancement of benefits. Individuals who are typically excluded from unemployment benefits (such as independent contractors) may be eligible for benefits.

Grants for Healthcare Providers

A new grant program of US$100 billion will be created in support of healthcare providers.

The stimulus package presents businesses with new avenues for obtaining capital and seeking remedies in the current unprecedented climate. However, it is important to plan in order to secure the full benefits of the new stimulus. Thoughtful restructuring strategies are essential to implement deployment of the funds in the most impactful way. At a minimum, in order to fully take advantage of the benefits of the stimulus and to minimize loss and volatility, companies need to enter this crisis with a plan on how they can integrate the stimulus relief into a long-term strategy that will help them navigate this crisis and emerge in the best possible financial condition.

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