

April 2020

## Going concerns

Restructuring and insolvency



## Surviving the lockdown

Covid-19 has brought about much uncertainty for businesses worldwide and it is timely for a special edition of Going Concerns to provide a “survival guide” in the following jurisdictions - Singapore, the People’s Republic of China (“**PRC**”), Hong Kong, United Kingdom and the United Arab Emirates (“**UAE**”). This special edition will also touch on recent legislation and stimulus packages introduced by governments of the above (where applicable) in response to the Covid-19 outbreak, which will impact both creditors and debtors.

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## Know the players – Creditors and the statutory threshold for winding up



It is vital to identify the players involved and in particular from a debtor's perspective, it is imperative to be aware of all creditors and the remedies which they will resort to where the debtor is in financial distress. This can range from applying for judicial management (Singapore), commencing administration proceedings (in United Kingdom) to winding up. On winding up, please note that there is a statutory threshold which would entitle a creditor to wind up a company - see table below in this regard for Singapore, the PRC, Hong Kong, United Kingdom and the UAE.

Country	Statutory threshold to bring a winding up application
Singapore	S\$10,000 (although set to change to S\$100,000 with the introduction of the Singapore COVID-19 Act – see below).
PRC	No statutory threshold. The tests for a court to grant a winding up application are where: <ol style="list-style-type: none"> <li>1. the debtor is unable to repay its debts due; and</li> <li>2. the assets of the debtor are insufficient to pay off all debt (no matter whether the debts are due or not) or the debtor is obviously incapable of paying its debts in full.</li> </ol>
Hong Kong	HK\$10,000
United Kingdom	£750
UAE	AED 100,000 (approx. US\$ 27,225)

## Limit your exposure – Directors' liability



Other than the liabilities owed by the company to its creditors, officers (usually directors) of a company should be mindful of potential personal liabilities if the company is approaching insolvency.

### Singapore

While there is no one test for insolvency, the cash flow (i.e. the company being able to pay its debts as they fall due) or the balance sheet tests (i.e. where the value of the company's assets exceed the value of its liabilities) are useful barometers. When entering into new deals during the time of financial distress, officers of the company must be wary of being found guilty of insolvent trading where he/she knows that the company has no reasonable or probable ground of expectation that the company will be able to pay the debt at the time the debt was contracted. If found guilty of insolvent trading, the officer may be convicted to a fine not exceeding S\$2,000 or to imprisonment for a term not exceeding 3 months. However, please note the relaxation on insolvent trading with the introduction of the Singapore COVID-19 Act – see below.

Further, while directors owe no fiduciary duties to the company's creditors when the company is solvent, directors have to take the creditors' interest where the company is in a state of near insolvency or it is perilously close to being insolvent. The greater the concern over the company's financial health, the more weight the directors must accord to the interests of the

company's creditors over those of the company's shareholders. These fiduciary duties will require directors to ensure that the company's assets are not dissipated or exploited for their own benefit to the prejudice of the creditors' interests.

For more details on the potential personal liabilities that directors may face when his/her company is on the brink of insolvency in Singapore, please refer to our [July 2019 edition of the going concerns](#).

### PRC

Under the PRC law, the officers owe fiduciary duties and duty of care to the company in general.

If officers breach their fiduciary duties, or duty of care, they may be subject to civil liability to any loss or damage suffered by the company, administrative fine or even criminal charge. Further, if the breach leads the company into bankruptcy, they are disqualified to serve as director, supervisor or senior officer of any company for three years from the day of completion of such company's bankruptcy procedures.

In bankruptcy cases, the typical scenarios of the officers' breach could be,

1. improper disposal of company's property in the previous one-year period before the court's acceptance of bankruptcy application, including:
  - a. transferring property without consideration;
  - b. carrying transactions at an unreasonable price;
  - c. providing security for unsecured debts;
  - d. early repayment of undue debts;
  - e. renouncing creditor's claims.
2. carrying out improper or illegal activities, such as:
  - a. repaying debts of specific creditor within six months before the court's accepting bankruptcy application knowing the company will be insolvent;
  - b. concealing or transferring assets of the company;
  - c. fabricating any debt or acknowledging any unreal debts;
  - d. obtaining abnormal incoming from the company or embezzles any company assets.

### Hong Kong

There is no insolvent trading legislation in Hong Kong. That said, it does not mean that directors are free from risks or liability if they continue to trade knowing that the company is insolvent. Directors may still be exposed to proceedings such as misfeasance or fraudulent trading.

If in the course of winding up, a director has misapplied any money of the company, has been guilty of misfeasance, breach of duty or breach of trust, then misfeasance proceedings can be taken out by the liquidators to compel the director to repay or restore the money.

If a director is a knowing party to the carrying on of business with intent to defraud the company's creditors or for any fraudulent purpose, the director may be liable for fraudulent trading with both criminal and civil liabilities. The criminal penalties are harsh (maximum penalty is 5 years of imprisonment and an unlimited fine) and a court can impose personal liability for the debts of a company. However, in practice, it is rarely invoked before the Hong Kong court because of the high threshold.

Further, directors are criminally liable if they consent to, connive in or are negligent to the non-payment of

employees' wages, and the maximum penalty is HK\$100,000.

### United Kingdom

As a general rule, directors will not be liable personally for the company's debts or liabilities unless they are found to have acted improperly or in breach of their duties. In normal circumstances, directors may find it relatively simple to identify and avoid conduct of that nature.

Directors owe duties to the company and must act in the company's best interests (depending on financial position). This duty applies to all directors – including e.g. non-executive directors. They also apply to people not formally appointed but who act as a director (e.g. shadow directors). These are, in summary, to:

1. act within powers;
2. exercise independent judgment;
3. exercise reasonable care, skill and diligence (objective and subjective elements);
4. avoid conflicts of interest;
5. promote success of the company for the benefit of shareholders;
6. not to accept benefits from third parties; and
7. declare any interest in a proposed transaction or arrangement with the company.

The potential insolvency of a company has an impact on director's duties. At the time that directors 'know or should know that the company is or is likely to become insolvent', their duty switches from the shareholders to all of the creditors of the company when.

There is a sliding scale of when this point is:

1. once insolvency is 'probable', the directors must start to consider all interests – creditors and shareholders – alongside each other;
2. once it is clear that the company is / will become insolvent, the directors must only consider the interests of creditors and actively seek to minimise losses.

A company becomes insolvent when it becomes unable to pay its debts (the cash-flow test) or when its liabilities exceed its assets, taking into account its contingent and prospective liabilities (the balance sheet test).

There is potentially a heightened risk of personal liability where the company faces financial difficulties.

The shift in directors' duties described above may require a material change in the decision-making process and conduct. The main concern for directors in this situation will be liability for wrongful trading, while more serious misdeeds might even amount to fraudulent trading or misfeasance. Whilst the wrongful trading regime has been temporarily suspended (to be retrospectively effective from 1 March 2020), the general duties to creditors remain important and as relevant as ever.

The sanctions for breach of directors' duties can be serious, namely disqualification and/or personal liability. However, it is important to stress at the outset that the risks for the directors will be mitigated considerably if they can demonstrate that they have considered all relevant facts, taken and acted on appropriate advice and made decisions on a reasonable basis. Directors of a company in the "zone of insolvency" should therefore seek advice without delay.

## UAE

The UAE insolvency regime modernised by a new Bankruptcy Law that came into effect in 2016, as further amended and recently complemented by a sister legislation in 2019 to address the insolvency of individuals; recognizes both the cash flow test and the balance sheet test when establishing a debtor's insolvency.

Under the cash flow test, the debtor would be deemed insolvent upon cessation of payment of statutory debts as they fall due for more than 30 consecutive business days.

Under the balance sheet test, the Bankruptcy Law refers to the debtor being "over-indebted" where assets, at any given time, do not cover the liabilities.

The preventive composition relief is available only to a debtor not having become insolvent under either of the above tests.

On the other hand, where insolvency occurs under either tests before the debtor takes any steps to file for preventive composition, it will no longer be eligible to do so. Rather the debtor will be under a statutory obligation to file for bankruptcy, at which point the only recourse available under the law to rescue the company as a going concern would be through a restructuring scheme.

Whilst the failure to file for bankruptcy within the statutory period no longer carries any criminal liability in and of itself, the liability that such failure may trigger remains open to interpretation, and depends on

whether or not it may be considered (or lead to) wrongful trading or similar acts punishable by law. In this respect, the insolvency regime provides for a raft of heavy penalties (both custodian and monetary) that apply to both the debtor and the members of its management, for acts that could be due either negligence or fault (e.g. failing to keep adequate commercial books to reflect the real financial position of the company) to fraud (e.g. embezzling or concealing company assets with the intention to cause harm to the creditors).

On conviction, the debtor (and/or members of management) will be recorded in the commercial register (or register of professionals in the case of civil company). The court may prohibit the debtor (and members of management) from directly operating, managing, monitoring or having any part in the management of any company, or carrying on any commercial activity for a period of up to 5 years from the date of completion of the bankruptcy and liquidation procedures.

Whether or not the mere failure to file for bankruptcy within the statutory period could trigger the liability of the debtor and its management remains unclear in a largely untested new regime. However, to err on the side of caution, we believe it is crucial for businesses in the UAE to maintain a clear and accurate view of their financial situation, by regularly preparing and maintaining books and accounts, allowing management to anticipate and make an application for preventive composition on time if need be. This is particularly important in the present context and the critical impact that the coronavirus pandemic is having on most companies and businesses in the UAE.



## Seek shelter – Possible restructuring options



It may come to a point where the company is simply unable to reach an amicable compromise with each and every creditor and the company faces a real risk of being sued, or worse, wound up. Fret not, as many jurisdictions have court mandated regimes to provide shelter while a company's assets and liabilities are restructured. We go through the options available in each jurisdiction in this section.

### **Singapore**

In Singapore, there are principally two court sanctioned regimes – scheme of arrangement and judicial management.

#### **Scheme of arrangement**

A scheme of arrangement is a court sanctioned compromise which would enable the company to compromise all claims against it (subject to having the necessary support from the creditors for the scheme) and the company can, leading up to the scheme application, make a moratorium application whereby creditors, amongst others, will not be able to commence or continue proceedings against the company and restrained from taking any step to enforce security over any property of the company. An automatic 30 days moratorium arises at filing of application and the moratorium can be extended. For more details on the Singapore scheme of arrangement procedure, please refer to our [October 2017 briefing](#)

[note](#) which provides a quick overview of the enhanced Singapore scheme of arrangement regime.

#### **Judicial management**

An alternative to the scheme of arrangement process would be judicial management. While the management would retain control of the company in a scheme of arrangement, a judicial manager will take over the company in a judicial management. A company may apply for judicial management where the company is or will be unable to pay its debts and there is a reasonable probability of rehabilitating the company or that the interests of creditors would be better served in a judicial management than through a winding up. Similarly, once a judicial management application is made, no steps may be taken to enforce any charge on or security over the company's property and no creditor may commence or continue proceedings against the company. This would provide the company with some breathing room to restructure its assets and liabilities.

## PRC

Under the PRC Enterprise Insolvency Law, there are two regimes that may help an insolvent company to recover from business crisis or financial stress.

### Restructuring

Either the debtor (i.e. the company itself) or a creditor may apply directly to the court for restructuring the company before its bankruptcy being declared. Within maximum 9-months' time of restructuring application, the debtor or the administrator shall submit a draft restructure plan to the court and the creditors' meeting for approval.

The draft restructure plan shall include the debtor's business plan, the categories of creditor's claims, the plan on the credit adjustment and repayment schedules for adjusted credit, duration of the restructuring plan, etc. If the draft restructuring plan will be approved by all the creditors' groups divided by nature of the credits and the court, the debtor will be able to continue to carry on its business under the supervisor of the administrators. If the performance of the restructure plan will be successful, the company will survive.

### Settlement

Apart from restructuring, the debtor can voluntarily apply to the court for settlement with a draft settlement plan.

If approved by the creditors' meeting and the court, the settlement plan will have binding force on the company and the unsecured creditors, and the secured creditors can exercise their secured credit rights immediately.

Also, the company will survive if settlement plan will be performed successfully.

Under either regime, during the whole procedures before the bankruptcy case comes to an end, the company will enjoy the shelter of statutory bankruptcy protection, such as putting all on-going litigation procedures and court enforcement procedures on stay, releasing all assets of the company from preservation orders, etc.

While the restructuring aims to surviving the company from financial distress, which provides more flexibilities on business operations and asset management, the settlement is more focus on adjustment of debt relationship and having the creditors comprise with the debtor, the result of which is binding on the debtor and unsecured debtors at the time the court accepts insolvency application.

## Hong Kong

### Scheme of arrangement

In Hong Kong, companies in financial difficulty can use a scheme of arrangement to give effect to a debt restructuring. The Hong Kong process does not include a moratorium (like in Singapore). Frequently, it will be possible for the company to enter into a standstill arrangement with all or key creditors while negotiations take place, and generally, creditors are often willing to agree to a compromise, especially where they understand that the alternative may be an insolvency process. Although the substantive terms of the restructuring proposal are negotiated between the company and key creditors, the procedure for approving the scheme of arrangement is substantially driven by the court.

One of the key advantages to a scheme of arrangement is that it only requires the approval of 50% in number and 75% in value of the creditors who actually vote at the creditor's meeting. Once approved by the court (at the second court hearing), a scheme of arrangement will bind all creditors, irrespective of whether they voted. As such, a compromise can be effected without the consent of 100% of the creditors.

For more details on the Hong Kong scheme of arrangement procedure, please refer to our [August 2016 insight](#).

In a decision handed down in March 2020 the Hong Kong court has confirmed that a Hong Kong scheme can in (certain circumstances) be used to compromise PRC governed debt (for more information, click [here](#)).



## United Kingdom

### Administration

The primary route for those seeking shelter from creditors in the UK is the process of administration. The effect of administration is to place the company into the control of a licensed insolvency practitioner (or more commonly, two or three insolvency practitioners).

Once the administrator is appointed, the directors of the company have no further authority to act on behalf of the company, save to the extent agreed by the administrator. The administrator will manage the business and assets of the company to achieve the “statutory purpose”.

In administrations, the statutory purpose can be achieved via a series of hierarchical objectives:

1. to seek the rescue of the company;
2. obtain a better result of creditors than if the company had gone straight into liquidation; or
3. make distributions to secured or preferential creditors.

Once a company is in administration, a moratorium exists. Creditors are prohibited from taking or pursuing legal proceedings against the company, giving it the protection of a shield from hostile action. An interim moratorium will also apply before the administration starts; from the time an application is made to the court for an administration order, or, if the out of court route is used, from the time a notice of intention to appoint administrators is filed in court.

The UK government is currently working to introduce a further moratorium process to give companies “breathing space” from creditors. It is not known when this will be implemented, but it is expected fairly imminently.

### Company Voluntary Arrangement

In addition to administration, a company can take advantage of other processes to come to agreement with creditors as to their debts. The Company Voluntary Arrangement process (“**CVA**”) is a commonly-used tool to propose a global compromise of all or certain debts of unsecured creditors. A CVA proposal is voted on by the unsecured creditors. If passed, it becomes binding on all unsecured creditors, and replaces the terms of

the existing debt with the CVA terms. The company will remain in the control of the directors, but the CVA is managed by an insolvency practitioner, who will collect the sums due to funds the CVA and then distribute them to creditors. There is no protection equivalent of the administration moratorium, and the proposal of a CVA often amounts to a default under commercial contracts, triggering various event of default entitlements. Nevertheless, in certain situations, CVAs are a powerful tool, often coupled with new investment into the company alongside the balance sheet being restructured. In recent times they have been used extensively to rationalise companies’ leasehold property portfolios.

### Scheme of arrangement

The scheme of arrangement is a statutory procedure by which a company can compromise or make an arrangement with its members or creditors (or any class thereof) which, once approval and sanctioned by the court, binds all affected members or creditors. The terms of a scheme and scope of a scheme are unlimited, subject only to approval of the majority in number and relevant percentage of each class of members and/or creditors, and sanction by the court. Whilst the scheme process does not itself offer a moratorium, schemes often include a term to this effect, which, once passed, is binding on all those subject to the scheme. Unlike a CVA, a scheme can be used by a foreign company that does not have its centre of main interest in England and Wales, provided that it can demonstrate to the court a “sufficient connection” to the jurisdiction.

## UAE

Pursuant to the Bankruptcy Law of 2016 (as amended), there are two official court-supervised procedures to rescue a business a going-concern:

### Preventive composition

The preventive composition, pursuant to which a debtor in distress but not yet insolvent can request the court’s protection and help in reaching a compromise with its creditors, and carry out a plan to salvage the business and pay such creditors over a period of time (typically 1 year). The characteristic of such procedure is that, if approved, the court allows the debtor’s management to remain in place and in control of the implementation of the preventive composition plan. A trustee is appointed to supervise the process and take such measures as may be necessary (subject to the court’s approval) to safeguard the company and support the preventive composition plan.

### Restructuring scheme

The restructuring scheme, pursuant to which a debtor found insolvent may be found by the court-appointed trustee capable of being rescued as a going concern. In such case, the Law sets out a process pursuant to which a restructuring scheme is elaborated by the court-appointed trustee which, if approved, would effectively be carried out by the court-appointed trustee over a period of up to 5 years (which can then be extended by 3 more years).

Both procedures have the effect of suspending and setting aside all claims by the unsecured creditors against the debtor and preventing any new ones. Such moratorium starts when the application for either procedures is accepted by the court and until the court's decision regarding the same is issued. If the court approves the plan, the moratorium will then continue throughout the implementation period. Secured creditors, in respect of whom the moratorium does not apply, would still need to apply to the court to enforce their securities, and the court generally would have a wide discretion to approve or reject such applications.

Notwithstanding the above law-recognized, court-protected rescue procedures, it should be noted that so far they remain largely untested, and the general trend in the UAE – outside of the Dubai International Financial Centre and the Abu Dhabi Global Market financial free zones, both Common Law jurisdictions applying an insolvency regime substantially based on English Law – remains for out-of-court settlements. Perhaps this may now change as these rescue measures may become valuable means to recover from the financial impact of the pandemic.



## Be aware of your surroundings – Recent insolvency legislation and stimulus packages in response to COVID-19



Many governments around the world are bracing the inevitable economic fallout by introducing stimulus packages or by temporarily relaxing insolvency legislation amidst the Covid-19 outbreak. As mentioned above, an officer of a company is typically exposed to personal liability should it continue trading while the company is insolvent. Thankfully, many governments are identifying this issue and are introducing new legislative measures to ensure businesses are able to tide over the Covid-19 crisis.

For example, the Australian federal government announced temporary measures for distressed businesses, increasing the threshold to commence personal bankruptcy (from A\$5,000 to A\$20,000) and corporate insolvency proceedings (from A\$2,000 to A\$20,000) as well as increasing the time required of companies or individuals to respond to statutory demands or bankruptcy notices from 21 days to 6 months. Further, directors are relieved from their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of the company's business, albeit with some caveats.

Similarly, the Spanish government has restricted creditors' petitions for compulsory liquidation until 2 months have passed after the state of emergency has ended.

Germany has also implemented a comprehensive set of measures designed to provide businesses with sufficient liquidity to allow businesses to survive the Covid-19 crisis. In particular, there are plans to suspend the legal obligation to file for insolvency in time up to 30 September 2020.

## Singapore

On 7 April 2020, the Singapore government passed the Covid-19 (Temporary Measures) Act ("[Singapore COVID-19 Act](#)") to provide temporary cash-flow relief for businesses who may otherwise have to pay damages or risk having their deposit or assets forfeited. The key points to take note of from a restructuring and insolvency perspective are as follows:

1. Temporary relief from court / arbitration actions when you are unable to perform a contract
2. Increased statutory threshold for winding up – Quantum and Duration
3. Relaxation of the Insolvent Trading prohibition on directors

### 1. Temporary relief from court / arbitration actions when you are unable to perform a contract

The Singapore COVID-19 Act aims to protect companies if they are unable to perform their contractual obligations (being an obligation that is to be performed on or after 1 February 2020) due to a COVID-19 event to a material extent. In particular, guarantors or sureties may also rely on the protection offered by the Singapore COVID-19 Act.

#### How to qualify?

Contracts under which one may obtain such temporary relief are:

1. certain loan facilities granted by banks to small and medium enterprises (i.e. turnover not more than S\$100 million in the latest financial year) where the loans are secured against commercial or industrial immovable property, plant, machinery or other equipment used for business purposes in Singapore;
2. hire-purchase agreements relating to plant, machinery or other fixed assets used for manufacturing or a commercial vehicle;
3. event contracts – i.e. catering contracts, exhibition / sales event contracts or wedding contracts;

4. tourism related contracts – i.e. airline ticket contracts or hotel contracts;
5. construction contracts; or
6. a lease or licence of non-residential immovable property.

There must also be an inability to perform the contract caused by a COVID-19 event to a "material extent". Whether "material extent" has been demonstrated can be an issue for dispute between parties and may have to be determined by assessors (appointed by the Minister of Law).

To kick start this process, the company must serve a notification for relief on the other contractual parties as well as any guarantor or surety for the company's obligation in the contract. In the event of any dispute, such dispute will be referred to the appointed assessor - parties will not be allowed to be represented by lawyers and there will no costs orders given. The decisions of the assessors are also final and non-appealable.

### What are the reliefs?

If you qualify for relief, your contractual counterparty will be prevented from commencing or continuing an action in the Singapore court or a local arbitration against your company or your company's guarantor or surety. Further, the Singapore COVID-19 Act prevents the contractual counterparty from making an application calling for a scheme of arrangement, a judicial management, a winding up application or the appointment of receivers over the debtor company or the debtor company's guarantor or surety. Finally, the Singapore COVID-19 Act also prevents the commencement of execution, distress or legal process as well as the enforcement of a judgment of court or arbitral award against your company or your company's guarantor or surety (except with the leave of court)

If your contractual counterparty ignores the decision of the assessor and commences an application against your company in the court or tries to enforce his security, in addition to his actions being dismissed or being void, he may be subject to a fine not exceeding S\$1,000.

### 2. Increased statutory threshold for winding up – Quantum and Duration

As mentioned above, the current statutory threshold for a winding up application in Singapore is S\$10,000 and a company would have 21 days to respond to a

statutory demand. With the introduction of the Singapore COVID-19 Act, the statutory threshold will be increased to S\$100,000 and the period for the company to respond to the statutory demand will be 6 months.

### 3. Relaxation of the Insolvent Trading prohibition on directors

Under the Act, directors will not be treated as having no reasonable or probable ground of expectation of the company being able to pay a debt if the debt is incurred in the ordinary course of the company's business, during the prescribed period and before the appointment of a judicial manager or liquidator of the company. The prescribed period has not yet been set by the Singapore government but will not be for a period exceeding 6 months.

#### PRC

Since the outbreak of COVID-19 in China in January 2020, the PRC government has launched a diversity of relief measures in finance, taxation, human resources and social security areas to support materials supply and work and production resumption. The Chinese courts are also taking measures to ease pain of companies in stress or in bankruptcy procedures in the hope of lowering economic losses as much as possible, such as allowing extension to legal procedures, more cautious examination on approving or enforcing court injunction orders, such as asset detention, freezing accounts, etc.

#### Hong Kong

Following months of political unrest in the latter half of 2019, the Covid-19 crisis has hit the economy hard. In particular the tourism, hotel, hospitality, consumer and retail sectors. The government's 2020-2021 Budget announced in late February includes a raft of fiscal measures intended to stimulate the economy. However, there have been no legislative changes or temporary measures announced which will affect corporate or personal insolvency regimes. Given the glacial pace of statutory reform in corporate insolvency in Hong Kong, this is unsurprising.

That said, because Hong Kong does not have an insolvent (or wrongful) trading regime and there are not harsh penalties on directors in allowing businesses to continue trading in an insolvent scenario, temporary suspensions to the existing statutory regime (like we have seen in Germany, Australia and the UK) are not as crucial as other jurisdictions.

#### United Kingdom

The UK government has begun implementing significant fiscal support and legislative changes to deal with insolvency issues arising for companies affected by COVID-19. The Department for Business, Energy and Industrial Strategy ("BEIS") has recently announced a number of proposed changes in response to the Covid-19 crisis.

As referenced above, wrongful trading is one pillar of risk for directors of companies trading in the "zone of insolvency". BEIS has announced the temporary suspension of wrongful trading rules under the Insolvency Act 1986, applicable retrospectively from 1 March 2020, for an initial three month period. It is important that directors note that, whilst the amendments are likely to temporarily suspend wrongful trading provisions, they will not alter the directors' duties to companies and their creditors and directors must remain mindful of these duties.

Other measures announced by the government include the creation of a series of new measures to protect companies in financial distress. These include the "business rescue moratorium", protection of a company's supplies, and a new standalone restructuring regime which is expected to facilitate "cross-class" cram down. Whilst the details of these proposal are not yet certain and do not yet form part of English law, it appears that they are an acceleration of plans proposed in 2016 and reported on by BEIS in August 2018<sup>1</sup>:

1. the "business rescue moratorium" is widely expected to provide for a moratorium on creditor action akin to the current administration moratorium. It is expected that certain eligibility criteria will apply for companies wishing to enter into a moratorium and that the eligibility and eventual moratorium will be "monitored" by an insolvency practitioner to protect creditors' interests. The company's operations will remain in the hands of the directors during this moratorium period;

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/736163/ICG\\_-\\_Government\\_response\\_doc\\_-\\_24\\_Aug\\_clean\\_version\\_with\\_Minister\\_s\\_photo\\_and\\_signature.AC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version_with_Minister_s_photo_and_signature.AC.pdf)

2. preventing the enforcement of contractual termination rights to ensure the continued supply of important goods or services to companies that are subject to insolvency proceedings (including the new moratorium);
3. a new restructuring regime which enables a company to implement a restructuring plan with power to bind all creditors across all classes.

It is clear that the UK government is intent on protecting companies affected by the current economic consequences of the COVID-19 pandemic. These legislative changes will take some time to be introduced and it is likely that accelerated plans will still need to be revisited to provide for the specific circumstances of COVID-19. In the meantime, directors must at all times be mindful of their duties and seek appropriate advice as their company's situation develops.

The Financial Reporting Council, the Financial Conduct Authority and the PRA released a joint statement on 26 March 2020 urging lenders and other users of financial statements to demonstrate good faith when responding to potential breaches of covenants arising directly from the Covid-19 pandemic, including considering waiving any resultant breaches and avoiding imposing new restrictions and charges following such a breach.

There have also been accommodations relating to filing by companies of their audited accounts.

## UAE

Whilst to date the UAE federal government has not issued any new laws, amendments or regulations with respect to the insolvency regime since the COVID-19 outbreak, several stimulus measures and packages have been adopted since early March 2020 across the UAE and in the different free zones to assist residents and businesses to address the challenges of caused by the pandemic.

Such measures include (among other things)<sup>2</sup>:

1. the Central Bank cutting interest rates and issuing a multi-billion Dirham economic stimulus to enable local banks to provide temporary relief from payments of principal and interest on outstanding loans for all private sector companies and retail customers in the UAE affected by the pandemic;

2. the UAE cabinet issuing a multi-billion Dirham economic stimulus to allow a 6-month suspension of work permit fees and reduction of labor and other charges (major sources of government revenue) to cut the cost of doing business, support small business and accelerate major infrastructure projects;
3. the UAE cabinet taking a series of other decisions aiming to reduce water and electricity bill of shopping malls, commercial shops, hotels, hotel apartments, and plants by 20% for a period of 3 months starting from April 2020;
4. similar measures by the different free-zone authorities to waive renewal charges as well as penalties on late renewal of the licenses and office leases of free-zone companies, as well as large discounts on new registration fees.

Please note that the details of the stimulus packages set out above are based on information released by the Emirates News Agency and other third party sources (e.g. Lexis Nexis) as no official or legal sources were available at the time of preparing this note.

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<sup>2</sup> based on information available via the Emirates News Agency and other official sources  
<http://www.wam.ae/en/details/1395302830686>  
<https://www.dmcc.ae/news/dmcc-announces-support-package-business-boost-uaes-economic-resilience>  
<https://www.difc.ae/business-stimulus-initiatives>

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