

COVID-19 UK Bulletin – April 16, 2020

Client Alert | April 16, 2020

This weekly bulletin provides a brief summary of English law legal developments during the current COVID-19 pandemic in the following key areas:

- [1. Competition and Consumers](#)
- [2. Corporate Governance \(including accounts, disclosure and reporting obligations\)](#)
- [3. Cybersecurity and Data Protection](#)
- [4. Disputes](#)
- [5. Employment](#)
- [6. Energy](#)
- [7. Finance](#)
- [8. Financial Regulatory](#)
- [9. Force Majeure](#)
- [10. Government Support Schemes](#)
- [11. Insolvency](#)
- [12. International Trade Agreements \(private and public\)](#)
- [13. Lockdown and Public Law issues](#)
- [14. M&A and Private Equity](#)
- [15. Real Estate](#)
- [16. UK Tax](#)

Links to various English law alerts prepared by Gibson Dunn during this period are also included in the relevant sections.

As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's **Coronavirus (COVID-19) Response Team**, or the co-leads of the UK COVID-19 Taskforce:

Charles Falconer – London (+44 (0)20 7071 4270, cfalconer@gibsondunn.com)

Anna Howell – London (+44 (0)20 7071 4241, ahowell@gibsondunn.com)

1. COMPETITION AND CONSUMERS

Merger Control – the European Commission (the Commission) stands ready to deal with new cases where firms show compelling reasons to proceed without delay

New guidance on notifications

- The Commission has issued a statement encouraging parties to discuss the timing of notifications with the relevant case team. It is understood that reviews of simplified procedure cases should not raise complexities. However, for non-simplified cases, parties are being encouraged to discuss timing sufficiently in advance.
- The Commission has suggested that it stands ready to deal with cases where firms can show “very compelling reasons to proceed with a merger notification without delay”. Companies rushing to notify, when not necessary, may encounter delays further into the process.
- The consequences of this, as previously mentioned, is that companies will likely

Related People

[Charles Falconer](#)

[Anna Howell](#)

face delays in the pre-notification stage, unless there are compelling reasons to proceed without delay.

- The Commission has also mentioned that, in some cases, it is facing practical difficulties in collecting information from the notifying parties and third parties. Although it is pro-actively trying to deal with these challenges, such difficulties can have timing impacts and expand review timelines.

Watch this space

- The Commission has said that it will continue to provide updated information as the situation develops about their working practices – so we will keep you updated.

Antitrust – New Commission Guidance and Comfort Letters

New Temporary Framework

- The Commission published on 8 April 2020 a new Temporary Framework which aims to provide antitrust guidance to companies willing to temporarily co-operate and co-ordinate to address or avoid shortages of essential scarce products and services resulting from unprecedented surges in demand due to the pandemic, in particular urgently needed medical supplies. The framework is focused on co-operation for critical hospital medicines and medical equipment used to treat and test coronavirus patients. Although the Commission has recognised that supply emergencies may arise outside the health sector. The Temporary Framework Communication explains the main criteria that the Commission will apply in assessing possible co-operation projects. It also explains when and how firms can obtain guidance or written comfort.

Engagement and comfort letters

- The Commission has been engaging with companies and trade associations to help them in assessing the legality of co-operation plans, and assisting with putting in place adequate safeguards to guard against longer-term anticompetitive effects. It has set up a dedicated webpage and mailbox that can be used to seek informal guidance on specific initiatives. In most situations, oral guidance has been given to companies. However, the Commission has also shown willingness to exceptionally provide (at its discretion) written comfort letters concerning specific co-operation projects.
- A comfort letter was issued for the first time on 8 April 2020 to “Medicines for Europe”, formerly the “European Generics Medicines Association” (EGA). This addressed a specific voluntary co-operation project amongst pharmaceutical producers – both members and non-members of the association - aimed at avoiding situations of shortages of critical hospital medicines for the treatment of coronavirus patients. It is reported that the Commission reacted quickly to the request for guidance, i.e. the association formally submitted its proposal on 6 April 2020 and the comfort letter was sent back just two days later. *As mentioned previously, whilst some co-operation may be tolerated in the current environment, this is not without limits. Careful assessment is required as to whether the co-operation will be tolerated and safeguards must be put in place to ensure that the co-operation goes no further than strictly necessary to deal with critical issues. Companies facing issues with supply or distribution or considering co-operating with competitors should consult with counsel.*

State aid

- On 9 April 2020, the European Commission announced that it had started a consultation with member states on a proposal to further expand the Temporary Framework for State aid measures to support the economy in the current

COVID-19 outbreak. The new amendment, if adopted, would enable member states, under certain conditions, to recapitalise companies in need. A recapitalisation would lead to some level of state ownership or nationalisation of the companies concerned and, according to the Commission's announcement, should remain a measure of last-resort.

- For further details, see our [COVID-19 UK Bulletin – 8 April 2020](#).

2. CORPORATE GOVERNANCE (INCLUDING ACCOUNTS, DISCLOSURE AND REPORTING OBLIGATIONS)

FCA Statement of Policy in relation to listed companies and recapitalisation issuances during the COVID-19 crisis

The FCA has [announced](#), in a statement of policy, a series of measures aimed at assisting London listed companies to raise new share capital during the COVID-19 crisis. Key highlights are as follows:

- **Smaller share issues.** The FCA urges market participants to review and consider carefully the recent Pre-Emption Group [statement](#), which recommends that investors, on a case-by-case basis, consider supporting issuances by London listed companies of up to 20% of their issued share capital, on a temporary basis (for further details regarding this statement, see our [COVID-19 UK Bulletin – 8 April 2020](#)). One condition of the additional flexibility is that a company must undertake a proper consultation with a representative sample of its major shareholders. The FCA notes the benefit of complying with the MAR Market Sounding provisions (set out in Article 11 of MAR and in related [technical standards](#) and [regulatory technical standards](#)) when conducting the consultation. Another condition is that, so far as possible, the issue should be made on a “soft-pre-emptive” basis. The FCA encourages companies to contribute to delivering “soft pre-emptive rights” by exercising their right to be consulted on, and to direct, allocation policies under MIFID II related regulations. The Pre-emption Group statement is designed to allow a company to conduct the largest possible placing to qualified investors without requiring the production of a prospectus (i.e. up to 19.99% of issued share capital over a 12 month period). Where such a placing exceeds the level of a company's existing disapplication of pre-emption rights, it will need to be implemented using a “cashbox” structure.
- **Shorter form prospectuses.** The FCA notes that London listed companies (and their advisors) may wish to consider using the new simplified prospectus, introduced in July 2019 when the new Prospectus Regulation came into force, when issuing new equity. This form of prospectus is designed for secondary issuances by companies that have been admitted to trading on a regulated market (or a SME Growth Market, such as AIM) for at least 18 months, and requires reduced disclosure (compared to a normal prospectus). It may not be suitable where an offer is targeting investors outside the UK and EU.
- **Working capital statements.** For the duration of the COVID-19 crisis, London listed companies will be permitted to disclose, in an otherwise clean working capital statement, key modelling assumptions underpinning the reasonable worst-case scenario, provided that such assumptions are related to coronavirus. Such assumptions must be clear, concise and comprehensible. Non-coronavirus assumptions may not be included. In all other respects, the working capital statement must be prepared in accordance with the [ESMA Recommendations](#) and the [FCA technical supplement](#) (published alongside the FCA statement of policy), and a statement confirming this must be included.
- **General meeting requirements under the Listing Rules.** The FCA proposes to temporarily modify the Listing Rules, on a case by case basis, with regard to Class 1 transactions and Related Party transactions. Premium listed companies

undertaking a transaction within the scope of the FCA proposal may apply to the FCA for a dispensation from the requirement to hold a general meeting. It will still be necessary for a company to publish a shareholder circular and the circular will need to contain certain disclosures relating to the dispensation. In order to receive the dispensation, amongst other things, companies will need to have obtained, or will need to obtain, written undertakings from shareholders (who are eligible to vote under the Listing Rules) that they approve the proposed transaction and would vote in favour of a resolution to approve the transaction if a general meeting were to be held. A sufficient number of undertakings to meet the relevant shareholder approval threshold must be obtained. If this happens following publication of the shareholder circular, the company will be required to inform the market. Where companies have provisions in place in their constitutional documents to provide for holding virtual general meetings, the FCA will continue to support this as a means for gaining shareholder approval. Further information can be accessed [here](#).

The Investment Association offers guidance to Chairs of FTSE 350 companies

The Investment Association (IA) has sent a [letter](#) to the Chairs of all FTSE 350 companies in the context of the COVID-19 pandemic. The letter includes IA member views in relation to:

- **Engagement and communication.** They ask that companies maintain as open a dialogue as possible and note that they support firms who place their primary focus on maintaining a business that is sustainable over the long term.
- **Financial reporting.** They note that companies should use the additional two month flexibility provided by the FCA to publish annual accounts, if needed. See our [COVID-19 UK Bulletin – 8 April 2020](#) for further details regarding the FCA's [policy](#).
- **AGMs.** They welcome the ICSA / The Chartered Governance Institute guidance on holding AGMs under the “Stay at Home measures” and encourage companies to consider how to effectively engage with their retail and institutional shareholders in lieu of the normal AGM meeting. See our [COVID-19 UK Bulletin – 8 April 2020](#) for further details regarding this [guidance](#).
- **Dividends.** They support the FRC [guidance](#) stating that firms should consider the position of the company at the time a dividend is paid, not just when it is declared. They also note that dividends are an important income stream and that shareholders would expect companies who do decide to suspend their dividends, to restart the dividend payments as soon as it is prudent to do so.
- **Executive pay.** They note that if companies are cancelling dividend payments or making changes to their workforce pay, IA members will support Boards and Remuneration Committees that demonstrate how this should be reflected in their approach to executive pay.
- **Capital raisings.** They note that in exceptional circumstances a cashbox placing may be the only approach suitable, and that they support the recent Pre-emption Group statement allowing companies additional flexibility under the Pre-emption Group's guidelines on a case-by-case basis for a limited time period. They also provide additional views of IA members regarding the use of that flexibility. See our [COVID-19 UK Bulletin – 8 April 2020](#) for further details regarding the Pre-emption Group [statement](#). The full text of the IA letter containing further information is available [here](#).

Global proxy provider, Institutional Shareholder Services (ISS), issues COVID-19 guidance

ISS has issued [guidance](#) to London listed companies on how its standard proxy voting guidelines should be applied in light of the COVID-19 pandemic. The guidance looks at a

number of listed company issues including the postponement of AGMs and should be read in conjunction with [ISS's UK and Ireland Voting Guidelines](#). A full summary of the guidance will be provided in our next bulletin.

3. CYBERSECURITY AND DATA PROTECTION

Cybersecurity

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

Data protection

- The European Commission has adopted a [Recommendation](#) on a common EU approach to using technology including smartphone apps and anonymised mobility data for the COVID-19 crisis, facilitating targeted social distancing measures and virus modelling. The Commission and the European Data Protection Supervisor (EDPS) have stressed privacy and data protection in connection with this project. Member states, the Commission, and the European Data Protection Board (EDPB) will develop a “toolbox”; member states should report on and share measures taken; and the Commission will assess progress and recommend phasing out redundant measures. The UK is reportedly exploring using anonymised location data to monitor social distancing measures and viral spread.
- Recommendations are a means for EU institutions to make their views known but do not have binding legal force. The EDPS is a supervisory authority that monitors EU institutions' and bodies' personal data processing and reviews EU legislation that affects data protection; the EDPB is comprised of the heads of each member state's supervisory authority and the EDPS and ensures data protection law is consistently applied. The Commission's press release on the Recommendation is available [here](#).

4. DISPUTES

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

5. EMPLOYMENT

Social distancing in the workplace

- BEIS and PHE have updated their guidance for UK employers on social distancing and other measures, both generally [Guidance for employers and businesses on coronavirus \(COVID-19\)](#) and by sector (including manufacturing, transport, farming, and shipping) [Social distancing in the workplace during coronavirus \(COVID-19\): sector](#).

CJRS

The Government has published further [guidance](#) on the Coronavirus Job Retention Scheme (CJRS). The key points are:

- New employers can claim under the CJRS in respect of employees transferred under the TUPE or PAYE business succession rules, even where the change in business ownership occurred after 28 February 2020.
- Employers can switch employees from statutory sick pay (SSP) to furlough and vice versa, but furlough should not be used to top-up SSP for short-term absences. Employers can use both the SSP and CJRS rebate schemes for the same employee but not for the same period of time. Also, employers can furlough “shielding” employees rather than placing them on SSP.

- Administrators can access the CJRS, but should only use it if there is a reasonable likelihood of rehiring the workers (e.g. where a sale of the business is anticipated). (On 13 April 2020, the High Court [held](#) that administrators will be taken to have “adopted” the contracts of employees who consented to furlough for the purposes of insolvency law when they eventually apply for funding under the CJRS, so monies paid under the scheme can be paid to employees in priority over administrators’ fees and expenses and the distribution of assets to floating charge and unsecured creditors.)
- Employees cannot work for organisations that are linked to the employer, as well as not working for the employer, when on furlough.
- Employers that engaged in payroll consolidation schemes after 28 February 2020 can place employees on furlough.
- Employers must pay the entire grant to the employee (with no deductions for fees, administration charges etc.). Employers cannot net off any part of the reclaimed grant to fund benefits in kind or salary sacrifice schemes. Furloughed employees should continue to receive these benefits in addition to their furlough salary.
- Employers must continue to pay employer National Insurance and pension contributions on behalf of furloughed employees. However, the reclaimable National Insurance contributions are on the furlough salary, not the “topped-up” normal salary; employers cannot claim for pension contributions they make above the mandatory level. HMRC has advised that the CJRS is due to open 20 April 2020 and it aims to make payment within four to six working days after claims are submitted.

Tribunals

- The EAT Rules have been amended to permit oral hearings by electronic communication. From 16 April 2020, the EAT will hold hearings in a limited number of appeals via telephone, Skype or other internet-based platforms. The EAT will consider whether a remote hearing might be practicable and the parties will be consulted, including on whether electronic bundles can be provided. An EAT judge will decide whether to hold a remote hearing. If that is not practicable, the case will be postponed. Parties can expect to be informed by 4 pm on the seventh day before their hearing is due to commence, failing which they should contact the EAT. Any remote hearing that would have been conducted in open court will be accessible to members of the public and the media, who can observe but not participate in or record proceedings. The time limits for instituting appeals, and the requirements for the proper and effective institution of an appeal, remain as set out in the [EAT's Rules and Practice Direction](#). The London Central employment tribunal has stated it intends to reopen for remote hearings (preliminary hearings and mediations) on 14 April 2020, via telephone and video.

6. ENERGY

OPEC agrees to record output cut

After substantial political pressure on all sides, OPEC+ reached a deal to cut oil output, with 23 countries in total agreeing for the next two months to collectively withhold 9.7 million barrels of oil a day from the market. Despite the record size of the cut in output, many market observers worry that the deal does not go far enough (in particular in addressing the impacts of COVID-19 on demand) and there is doubt in many quarters that the deal represents a lasting end to the recent price wars. The price of oil fell by 5% during the last phase of negotiations, so the results of the deal are yet to materialise, but the most likely impact is to create a floor.

The Railroad Commission of Texas (RRC), the state’s oil and gas regulator, held an-all

day online hearing on 14 April 2020 to determine whether to order pro-rata production cuts (proration would mean that the government would cut production for all Texas producers by a set percentage). It is unclear when a final decision on regulations will be announced, given the RRC has to consider nearly 60 testimonies from industry leaders and market experts arguing for or against proration. The RRC has not limited production in Texas since 1973. Many observers consider that proration will not move the needle in terms of the oil price, given the size of the production of Texas compared to the global market, but may act to prevent permanent shut-ins in the state.

Impact of COVID-19 on energy sector workforce

As greater numbers of workers (including offshore workers) test positive for COVID-19, we are seeing delays, lockdowns and other issues arising on a number of different projects and facilities globally. Use of furloughs is also increasing (particularly in the services sector). A few specific examples include:

- Petrofac announced it would furlough around 200 employees and is aiming to cut a fifth of its staff. It has not commented on which jobs are most likely to be affected.
- A Total employee on the Mozambique LNG site was diagnosed with the virus and other workers are being quarantined on site.
- The Hummingbird Spirit FPSO, owned by Teekay and operating in the UK North Sea, has ceased production as one of its workers was flown to shore following testing positive for the virus on 4 April 2020. It is now undergoing deep-cleaning.
- Ten workers have tested positive on Chevron's Tengiz field onshore Kazakhstan and the workers' accommodation camp is now in lockdown.
- Shell will be delaying a number of its ongoing UK North Sea projects into next year as a result of COVID-19 and the slump in prices.

7. FINANCE

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

8. FINANCIAL SERVICES REGULATORY

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

9. FORCE MAJEURE

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

10. GOVERNMENT SUPPORT SCHEMES

Additional support for frontline charities

On 8 April 2020, the Government announced support of £750 million for frontline charities, hospices and community care schemes across the UK to ensure they can continue their vital work during the COVID-19 outbreak. As part of the support, £360 million will be directly allocated by Government departments to charities providing key services and supporting vulnerable people. A further £370 million is available for small and medium-sized charities, including through a grant to the National Lottery Community Fund for those in England, in order to support community organisations that are delivering food, essential medicines and providing financial advice. The support announced is in addition to some of the other measures and schemes that UK charities can access, such as the Coronavirus Job Retention Scheme, the statutory sick pay reclaim scheme and the deferral of VAT payments.

11. INSOLVENCY

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

12. INTERNATIONAL TRADE AGREEMENTS (PRIVATE AND PUBLIC)

No update to our [COVID-19 UK Bulletin – 8 April 2020](#).

13. LOCKDOWN AND PUBLIC LAW ISSUES

Review of lockdown restrictions

Under the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) the Government is required to review the appropriateness of the lockdown restrictions, with the first review taking place by 16 April 2020. [In recent news](#), Foreign Secretary Dominic Raab has said that the Government does not expect to make changes to the lockdown restrictions this week and that they could continue at least another [month](#).

Local government and democracy

Exercising powers under the [Coronavirus Act 2020](#), under which it had already postponed all regularly scheduled elections until 2021, the Government issued regulations [postponing](#) all other elections such as by-elections and local referenda. The Government also issued regulations giving flexibility to local authorities over frequency and format of [meetings](#), relaxing local authority accounts and audit [deadlines](#), and granting emergency planning [permissions](#) to local authorities and health service bodies.

Administration of justice

The Government has also used its powers under the [Coronavirus Act 2020](#) to make regulations [accelerating](#) the appointment of temporary Judicial Commissioners “to ensure that warrants can continue to be approved”. Under the [Investigatory Powers Act 2016](#), Government warrants for obtaining communications data—usually in matters of national security or serious crime—must also be approved by a Judicial Commissioner. To that end, the time limit for such review has also been extended. Similarly, regulations have been issued extending time periods for retention of [biometric data for certain counter-terrorism purposes](#).

Police enforcement data

The National Police Chiefs Council has said that it will publish lockdown regulation enforcement [data](#) every fortnight during the crisis. The first data are expected to be released this week.

Temporary release of prisoners

To enable greater distancing in prisons and young offender institutions to help prevent the spread of Coronavirus, the Government has issued regulations allowing for the temporary release of [prisoners](#) in specific circumstances. Regulations also make provision for such individuals to have access to means-tested [benefits](#) during their release.

14. M&A AND PRIVATE EQUITY

Checklist for executing documents

Although signing is not a formality required for most contracts, signature is the clearest

GIBSON DUNN

way of signifying assent to the agreement. The applicable execution formalities will depend on document type (e.g. contract or deed) and the legal personality of the executing party (e.g. the formalities regarding the execution of deeds and documents by English companies are set out in sections 43-52 Companies Act 2006).

In practice, there are essentially three methods used when executing commercial contracts or deeds:

- **Wet ink signatures:** each signatory signs hard-copy document by parties who are present at the same signing meeting.
- **Virtual signing:** each signatory signing a hard-copy document in wet-ink, converting the document and signature into electronic form (e.g. by scanning or photocopying it) and sending it by email.
- **E-signing:** one or more parties using an electronic signature to execute the document. This may involve the use of a web-based e-signing platform, such as DocuSign. With increasing numbers of people working at home during the current pandemic, we have seen the use of electronic signatures becoming more common and have created a helpful checklist to keep in mind when arranging for a document to be signed electronically and/or where signatories are working remotely.

For simple commercial contracts

- **Use of electronic signatures:** Consider the use of an electronic signature for signatories that are unable to execute using wet ink. Where a simple contract is required by statute to be in writing and signed, an electronic signature can be used to execute to contract. Electronic signatures can take a number of different forms, including:
 - a person typing his or her name into a contract or into an email containing the terms of a contract;
 - a person electronically pasting his or her signature (e.g. in the form of an image) into an electronic (i.e. soft copy) version of the contract in the appropriate place (e.g. next to the relevant party's signature block);
 - a person accessing a contract through a web-based e-signature platform and clicking to have his or her name in a typed or handwriting font automatically inserted into the contract in the appropriate place (e.g. next to the relevant party's signature block); and
 - a person using a finger, light pen or stylus and a touchscreen to write his or her name electronically in the appropriate place (e.g. next to the relevant party's signature block) in the contract.
- **Counterparts:** Consider whether the contract will be signed electronically in counterparts or on the same "soft copy" of the contract. Either is acceptable under English law.
- **Signature blocks:** Ensure that the signatory inserts his or her signature into the relevant signature block with the intention of authenticating the document.
- **Scanning signatures:** Where a signatory executes a document virtually but does not have access to a scanner to create a soft-copy of the signature, a camera phone may be used to produce an electronic image of the signed document. The image(s) must be of a sufficient quality and the text clearly legible. The inclusion of a document identification number is also recommended.

For deeds

- **Is a deed necessary?:** (Re)consider using simple contracts instead of deeds

where possible. Very few contracts are required to be deeds as a matter of law (except, for example, powers of attorney and agreements entered into without consideration).

- **Additional wet ink signature formalities:** Electronic signatures may be used to execute the deed in the same way as a simple contract BUT remember that the wet ink signature formalities apply:
 - the deed can be validly executed by an individual if it is electronically signed by (i) the individual in the presence of a witness who attests the signature; or (ii) at the direction and in the presence of the individual and the presence of two witnesses who each attest the signature.
 - the deed can be validly executed by a company if it electronically signed by (i) two authorised signatories (e.g. director or secretary); or (ii) an authorised signatory in the presence of a witness that attests the signature (see below for more details).
- **Counterparts:** Consider whether the deed will be signed electronically in counterparts or on the same “soft copy” of the deed – either is acceptable under English law.
- **Signature blocks:** Ensure that the signatory inserts his or her signature into the relevant signature block with the intention of authenticating the document.
- **Alternatives to witnessed signatures:** If locating an independent witness appears problematic, consider suitable alternative arrangements, e.g. for the deed to be executed by the signature of two directors, or a director and the company secretary, to avoid the need for a witness.

Witnessing signatures

- **How to witness:** An individual may witness a signature by witnessing the signatory insert his or her electronic signature into the relevant signature block, by whatever method that is selected by that signatory (i.e. wet ink or electronic signatures).
- **Who can be a witness?:** Where possible, seek an independent witness that is unrelated to the signatory to avoid doubts as to the veracity of the witness’ evidence.
- **Confidentiality:** Consider the signatories’ confidentiality obligations when selecting the witness.
- **Who cannot be a witness:** There is no requirement under the Companies Act for the witness not to be a family member BUT remember to:
 - ensure that the witness is not a party to the deed;
 - avoid minors acting as a witness, or ensure that the minor is of sufficient maturity and understanding for their evidence to be regarded as reliable;
 - keep a note with the deed of the practical reasons for the witness being related to the signatory.
- **Witness physical presence requirement:** Ensure that the witness is physically present with the signatory (pursuant to [recent Law Commission guidance](#)). If a potential signatory is at home alone, the best option might be to find another signatory.

Signatories in other jurisdictions

- **Corporate electronic signatures:** Ensure that an overseas company signature can (electronically) execute the contract under the authority of the company. Note:

- where an overseas company is required to execute an English law contract, an electronic signature can be effective provided that under the laws of the territory in which the company is incorporated, the signatory is acting under the authority (express or implied) of the company;
 - it may be prudent to obtain a legal opinion from a lawyer practising in the jurisdiction in which the overseas company is incorporated to confirm that the signatories have the authority to bind the overseas company using an electronic signature.
- **Are electronic signatures valid?** Consider the effectiveness of electronic signatures for contracts governed by the law of another jurisdiction. For example, certain contracts governed by German law require notarisation and therefore do not permit the use of electronic signatures.
 - **Enforcement issues:** Consider the terms of the contract's dispute resolution clause. Electronic signatures will not be appropriate for documents that may be enforced in jurisdictions outside England and Wales that require wet-ink original documents.
 - **Conditions subsequent.** Where required signatories are unable to execute a document using a wet ink signature or electronic signature, consider agreeing with the other side to the transaction making certain documents a condition subsequent deliverable as soon as practically feasible.

Filing a document with a particular authority or registry

- **Are electronic signatures acceptable?:** Check whether the authority or registry accepts electronic signatures. For example, the Land Registry requires a wet-ink signature on a paper version of any document submitted to it for registration.
- **Location of signatory or document:** If the place of signature or the location of the document has particular legal consequences (e.g. in relation to the payment of stamp duty), the parties should check that a document executed using an electronic signature will be treated as having been executed or located in that jurisdiction.

15. REAL ESTATE

Levels of rent paid on 25 March quarter day

A recent survey of 18,350 UK properties indicates that just 48% of rent due was collected on 25 March 2020, rising to 57% a week later. The 2019 figures of the same survey were 79% and 90% respectively. The [report](#) notes that the 57% of rent paid was spread unevenly across sectors: 47% in retail, 71% in office and 62% in industrial. Hotel rents are significantly more challenged. Further, over half of the service charge payments due on the rent quarter date remained unpaid a week after the due date.

This continues to present significant challenges to investors/landlords who have ongoing debt service obligations to lenders. Fractious discussions are opening up between landlords and tenants (particularly with retail tenants in the supermarket and pharmacy sector who continue to be open for trade) which (subject to the [previously reported](#) non- eviction regulations which are set currently to expire in June 2020) will likely result in litigation (including winding-up petitions, debt recovery and bailiffs being sent to distrain). Given social distancing, however, the use of bailiffs, whilst not explicitly restricted by the [Coronavirus Act 2020](#), is unlikely to be practicable, and remains a legal grey area.

Guidance on Energy Performance Certificates (EPCs)

On 2 April 2020, the Ministry of Housing, Communities and Local Government (MHCLG) published [guidance](#) on complying with the legal requirement to issue a valid EPC when

selling or letting a property. Crucially, the legal obligation to issue an EPC remains in place but the guidance adds conditions for how EPC assessments can be conducted safely, and, if one is not possible, suggests the parties agree to conduct the assessment as soon as normal movement has been restored.

16. UK TAX

HMRC's Coronavirus Insolvency Guidance

HMRC has relaxed its position in relation to its powers to enforce the collection of outstanding tax liabilities as a petitioning creditor and confirmed:

- All insolvency activity (i.e. whether arising as a result of COVID-19 or not) has been paused. HMRC will not petition for bankruptcy or winding up orders (other than essential circumstances such as those involving fraud or other criminal activity).
- HMRC will continue to consider new proposals for Company Voluntary Arrangements, Administrations, Individual Voluntary Arrangements and Trust Deeds to allow those businesses who need financial support to get access to the appropriate insolvency regime.
- HMRC will support a three month deferral of voluntary arrangement contributions where the supervising insolvency practitioner considers the business is unable to maintain payments. There is no need to contact HMRC to request this deferment. On conclusion of the initial three months deferment, depending on the COVID-19 situation, further guidance will be issued. For further details see [HMRC's Coronavirus Insolvency Guidance](#).

© 2020 Gibson, Dunn & Crutcher LLP

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.