GIBSON DUNN

Daily COVID-19 Bulletin – April 21, 2020

Publications | April 21, 2020

Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's **Coronavirus (COVID-19) Response Team**.

GLOBAL OVERVIEW

The Impact of Coronavirus on the Operations of Financial Institutions: Key Guidance Issued by U.S. Financial Regulators

Since the early stages of the coronavirus (COVID-19) pandemic, U.S. financial regulators have issued a flurry of guidance. This Alert analyzes select guidance from regulators to date on three key issues: (1) the additional planning that financial institutions should undertake going forward, (2) how financial institutions should adjust day-to-day banking operations during coronavirus, including complying with their Bank Secrecy Act/anti-money laundering ("BSA/AML") obligations, and (3) how COVID-19 affects oversight of financial institutions, including supervisory priorities and deadlines.

Key U.S. financial regulators presently appear focused on ensuring safety, soundness, and liquidity, but are acting with flexibility given the operational challenges facing, and the increased demands imposed on, U.S. financial institutions. We will continue to monitor developments, including whether regulators maintain this approach over the long term with respect to any COVID-19 performance gaps, as well as potential supervisory and enforcement options.
Read more

Covid-19, the CARES Act and Tax Planning for Real Estate and Passthrough Businesses

The pandemic caused by Covid-19 has affected the lives of people across the globe. Widespread lockdowns and government restrictions on travel, commerce, and social gatherings have reduced or temporarily eliminated revenues for many businesses and led to numerous layoffs. The pandemic has had and will continue to create challenging conditions for the real estate industry including, for example, empty hotels, restaurants and offices, delays in construction projects, and missed rent or mortgage payments.

In March, Congress passed stimulus bills to provide emergency relief to individuals and businesses adversely impacted by Covid-19. During that process a number of tax related proposals emerged. Real estate investment trusts (REITs), for example, sought temporary relief from distribution requirements, noting that enforcing those requirements during this unprecedented economic period could force a choice between solvency and maintaining REIT status. In addition, real estate businesses sought to correct a drafting error from the 2017 Tax Act involving qualified improvement property (QIP) (i.e., certain improvements to the interior of a non-residential building that occur after the building is placed in service) that would allow the immediate and full deduction (via bonus depreciation) of the cost of QIP, consistent with other similar tangible personal property.
Read more

New Risks Resulting from COVID-19 Analyzed under Spectrum of German Criminal, Regulatory and Civil Exposure

After more than one month of widespread measures to fight the Coronavirus, we can observe the first enforcement actions throughout Europe for alleged misconduct illustrating the wide spectrum of issues facing enforcement agencies. For instance, on April 2, 2020, the Public Prosecutor's Office of Braunschweig announced that it is investigating the COVID-19-related deaths of elderly people in a nursing home in Wolfsburg/Germany under the suspicion of negligent homicide. On the other end of the spectrum, courts in the United Kingdom and the Netherlands have recently sentenced defendants for assault/threatening to custodial sentences because they coughed/threatened to cough at policemen. These are drastic cases, but they illustrate that with the proceeding of the COVID-19 crisis new exposure arises for business leaders and compliance officers alike.

The changing enforcement and risk landscape is partly a result of the quick adjustment of enforcement agencies to the “new normal” under restrictive measures stipulated through a series of *ad hoc* regulations that dramatically change the way businesses and their employees used to operate a few weeks ago. Under German law, liability can be of criminal, regulatory or civil law nature.
Read more