

Commercial  
Case Law Update  
Rosling King LLP



We summarise below some of the key COVID-19 initiatives being rolled out by the UK Government. Please note that this is for information purposes only and should you require legal advice on any of these schemes, or generally in relation to matters concerning COVID-19 which are impacting your business, please contact the RK partner with whom you usually deal.

#### Coronavirus Job Retention Scheme - Furlough Leave

- Allows employers to claim 80% of employees' wages (up to £2,500 pcm) who are kept on the payroll, but are not working (plus associated employer national insurance contributions on that wage).
- Scheme is backdated to 1 March 2020 and open for at least 3 months.
- A furloughed worker cannot carry out any further work for the employer during the furlough period. Minimum furlough period is 3 weeks.
- Furlough leave must be confirmed to the employee in writing in order for employer to be eligible to make a claim.
- The employer is not obliged to continue paying full pay during furlough leave, but the employee must consent to this as otherwise the employer runs the risk of claims for unlawful deductions of wages and/or breach of contract claims.
- Further information: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

#### Protection from eviction/ freeze on tenant forfeiture – Coronavirus Act 2020

- Commercial Tenancies – landlords are prohibited from enforcing their rights of re-entry and forfeiture for non-payment of rent for the relevant period (currently set to end on 30 June 2020) and no orders requiring the tenant to give up possession can be made during the relevant period.
- Residential Tenants – during the relevant period (currently set to end 30 September 2020) landlords must give a minimum notice period of 3 months which may be extended to 6 months.
- Tenants remain liable to pay rent and should pay this as usual. Any difficulties to make payments should be discussed with the landlord as soon as possible to work towards a solution.

#### HMRC Time to Pay service

- Open to businesses and self-employed individuals with outstanding tax liabilities which are in financial distress due to COVID-19.
- Assessed on a case by case basis and individuals and businesses should contact the HMRC dedicated helpline: 0800 024 1222.

#### Business Rate Relief

- 100% business rates holiday for retail, hospitality and leisure businesses based in England for the 202/2021 tax year where the properties are wholly or mainly being used

as restaurants, shops, cinemas, hotels etc.

- Will be automatically applied to next council tax bill in April 2020.
- Relief has been extended to estate agents, letting agents and bingo halls.

#### Deferment of VAT payments

- UK VAT registered businesses which have a VAT payment due between 20 March 2020 and 30 June 2020 have the option to defer the payment until a later date. Businesses do not need to apply to benefit from the offer.
- VAT MOSS or import VAT are not covered by the scheme and VAT returns must still be filed with HMRC on time.
- Further information: <https://www.gov.uk/guidance/deferral-of-vat-payments-due-to-coronavirus-covid-19>

#### Coronavirus Business Interruption Loan Scheme (“CBILS”)

- CBILS are business purpose loans of up to £5 million and are operated by the British Business Bank via its accredited lenders. They can be in the form of term loans, overdrafts, invoice finance or asset finance.
- Applicants must be smaller UK businesses (SMEs) with an annual turnover of no more than £45m who have been adversely impacted by COVID-19 and the loan should support trading primarily in the UK. In order to be eligible, businesses must also generate more than 50% of their turnover from trading activity.
- The businesses remain fully liable for the debts, but the CBILS give the lender a government-backed guarantee for loan repayments.
- No personal guarantees for loans of under £250,000. Personal guarantees required (at the lender’s discretion) for loans above £250,000 will be capped at 20% of outstanding CBILS facility after proceeds of business assets have been applied.
- Accredited lenders have full discretion as to whether or not to provide finance.
- **Insufficient security is no longer a condition to access the scheme.**
- Further information: <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils-2/>

#### Coronavirus Large Business Interruption Loan Scheme (“CLBILS”)

- The government will provide a guarantee of 80% to enable commercial lenders to make loans of up to £25 million to large UK based businesses impacted by coronavirus with an annual turnover of between £45 million and £500 million and who are unable to secure regular commercial financing.
- The business will need to have a borrowing proposal which the lender would (i) consider viable were it not for the COVID-19 pandemic and (ii) believes will enable the business to trade out of any short term to medium term difficulty.
- Facilities will be offered at commercial rates of interest and the business will remain liable for all of the debt.
- The scheme will not open to banks, building societies, insurers, reinsurers or public-

sector organisations, including state-funded schools.

- Information on how the scheme may be accessed and when it is to open is awaited, but it is expected to be launched before the end of April 2020.
- Further information: <https://www.businesssupport.gov.uk/coronavirus-large-business-interruption-loan-scheme/>

#### COVID Corporate Financing Facility (“CCFF”)

- Joint HM Treasury and Bank of England lending facility to support liquidity among larger UK firms.
- The Bank of England will purchase short term unsecured debt by way of commercial paper issued from larger non-financial companies which are making a material contribution to the UK economy and which had an investment grade rating from the main agencies on 1 March 2020.
- Where a rating is not available the company may apply to the Bank of England to ask if it considers the company to be of investment grade rating equivalent or contact one of the main ratings agencies for a rating (explaining that this is in conjunction with the CCFF). If companies have different ratings with agencies and one is below investment grade, the company will not be eligible.
- Criteria for the commercial paper include that it must be in sterling, maturity of between one week and 12 months, issued directly into Clearstream and/or Euroclear, must not include non-standard features (e.g. subordination), must have a minimum amount of £1 million, must be issued through an agent and the company must not have any financial covenant breach under other facilities (or caused by the proposed borrowing).
- Commercial paper issued by public bodies or authorities governed by public law or public undertakings (where the state has direct or indirect dominant control) will not be eligible.
- Companies who participate will need to sign confidentiality agreements with the Bank as the names of the issuers and securities purchased or eligible will not be made public.
- Further information: <https://www.bankofengland.co.uk/news/2020/march/the-covid-corporate-financing-facility>

Should you like to discuss the implications of this guidance, Covid-19 and the implications it could have on the corporate governance of your business, please contact [Alexander Pelopidas](#) or any other member of the Rosling King team.

*Alexander Pelopidas is a Partner at Rosling King LLP and provides advice to a wide range of clients in relation to finance, corporate and commercial matters.*