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Briefing Note: 2 April 2020

COVID-19: Summary of measures to assist UK businesses

The UK Government has announced a series of financial measures that will provide some support for employers and businesses through the Coronavirus crisis. Included within the proposal are new insolvency measures and why they are considered necessary to help companies survive the pandemic.

With so much information flying around, as well as plenty of misinformation, we felt it pertinent to provide a summary of the proposals as they currently stand, which we have outlined in this briefing note, along with commentary from BM Advisory Partner, Andy Pear.

This is a fast-changing situation and it is anticipated that the new measures announced, and the corporate insolvency framework, will continue to evolve in the coming weeks.

1. VAT Deferral Scheme

- The Chancellor announced a VAT payments deferral on 20 March to support businesses with cash flow during the COVID-19 pandemic.
- This means that all businesses with a UK VAT registration have the option to defer VAT payments due between 20 March and 30 June.
- Businesses therefore have until 31 March 2021 to pay any VAT deferred as a result of this announcement.
- You do not need to inform HMRC if you wish to defer payment. You can opt in to the deferral simply by not making VAT payments due in this period. If you pay by Direct Debit you should cancel this with your bank. You should do so in sufficient time so that HMRC does not attempt to automatically collect on receipt of their VAT return.

- Should you wish, you can continue to make payments as normal during the deferral period. HMRC will also continue to pay repayment claims as normal. You must continue to submit VAT returns as normal.

- For more information please visit gov.uk.

Andy Pear comments: This is a welcome initiative to assist cashflow during the crisis, however the VAT is being deferred rather than written off, so businesses will need to prepare financial forecasts through to 31 March 2021 to assess the impact.

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2. Coronavirus Business Interruption Loan Scheme (CBILS)

- The government has announced a package of loans and guarantees of more than £330billion to help firms continue operating.

- These include government backed loans of up to £5m interest free for 12 months for businesses with annual turnover up to £45m. CBILS loans are limited to 25% of 2019 turnover or twice the annual wage bill whichever is greater.

- The government will also make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments.

- The government will provide lenders with a guarantee of 80% on each loan (subject to pre-lender cap on claims) to give lenders further confidence in continuing to provide finance to SMEs. The scheme will be delivered through more than 40 accredited lenders, backed by the government-owned British Business Bank.

- More information about these loans is available via the British Business Bank.

- Further measures for larger businesses will be available via the COVID Commercial Finance Facility from the Bank of England.

Andy Pear comments: These are loans and not grants. All lenders will expect borrowers to be responsible for repayment of 100% of the loan facility as opposed to the 20% that is not guaranteed by the government. Where default occurs, lenders are likely to follow their standard recovery processes.

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3. Business Rates concessions

- The Government is introducing a 'business rates holiday' for the tax year 2020/21. This means that qualifying businesses will not have to pay business rates for the entire 12 months. The scheme is not subject to turnover or any further restrictions, and the aim of this concession is to help the sectors which will be hit hardest by the COVID-19 restrictions. The qualifying sectors are retail, hospitality and leisure or a nursery business, based in England and liable for business rates.

- Eligible properties in the retail, hospitality and leisure sector could include shops, restaurants, pubs, cinemas, music venues and leisure centres, and hospitality premises. Eligible properties for nursery businesses could include those occupied by providers of Ofsted's Early Years Register or those which are mainly used for the provision of the Early Years Foundation Stage. At the moment there seems to be no limit to the number of eligible properties a single business can have.

- Local authorities should send eligible properties a letter in the coming weeks to alert them to their entitlement to the scheme. However, there is certainly an urgency, so we recommend chasing the local authority for this. The local authority may need to issue a new bill to ensure the business receives this support, but every case is different. For some larger businesses in the retail, hospitality and leisure sector a Business Grant of £25,000 for businesses with a rateable value between £15,000 and £51,000 is also available from local authorities.

Andy Pear comments: A welcome initiative targeted at some of the hardest hit sectors. Local authorities should be issuing letters confirming eligibility this month.

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4. Support for businesses that pay little or no business rates

- There will be additional Small Business Grant Scheme funding which is likely to come in the form of a single grant of £10,000 and is intended to assist businesses with ongoing costs. This support is available to small businesses based in England which were paying either Small Business Rate Relief (if the property's rateable value is less than £15,000 or possibly if it uses only one property), Rural Rate Relief (this could apply if the business is in a rural area with a population below 3,000) or Tapered Business Rate Relief (this may apply if the business has a rateable value below £51,000) on 11 March 2020.

- Local authorities should confirm whether a business is eligible.

Andy Pear comments: This initiative, aimed at smaller SME's, is certainly welcomed. Being grants rather than loans they are not repayable. Once again access to the scheme is via local authorities.

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5. Coronavirus Job Retention Scheme

The Government will reimburse 80% of the wages of those who would otherwise be laid off by their employers because of the impact of COVID-19. The affected employees will be put on "Furlough Leave**".** A basic overview of the scheme is as follows:

- All UK employers can access the scheme (e.g. limited companies, sole traders, LLPs, charities etc).

- The scheme is designed to help employers retain those employees who would be otherwise "laid off", by which we understand to mean made redundant or put on a period of "lay off" (an employment law term meaning a temporary period when employees are required to take unpaid leave because of a downturn in work).

- Employees will have to be designated by their employers as "furloughed" and notified of this designation.

- Furlough Leave has to be agreed between employer and employee. In other words, the employee cannot simply choose to be furloughed and the employer cannot furlough an employee without their agreement. However, if employers ask employees to agree to Furlough Leave, if faced with the choice of being furloughed (and receiving 80% of pay up to a specified cap) or being laid off without pay or made redundant, employees are likely to choose the furlough option.

- The vast majority of contracts of employment will not contain the right of employers to put employees on Furlough Leave. Therefore, employers wanting to make use of the scheme will have to obtain employee consent to vary their contracts of employment to allow the Furlough Leave. This is likely to be achieved by asking employees to sign Letters of Variation of Contract containing the right to put them on Furlough Leave.

- Employers can use a portal to claim for 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.

- The employer can choose to make up the remaining 20% of salary themselves. If they decide not to do this or are not in a position to do this, the Letter of Variation of Contract should make it clear that the employee also consents to a deduction to their salary of 20%.

- In order to participate in the scheme, the employer should submit information to HMRC about the employees in question and details of their earnings via a new online Portal (still to be set up).

- HMRC will reimburse 80% of employment costs (thought to include employer pension contributions and employer national insurance contributions) up to £2,500 per employee per month.

- To qualify the employee must not carry out any work for the employer for the furlough period.

- The scheme will run for three months from 1 March 2020, but the Government has said it will be extended if necessary.

- The Government has also introduced changes to statutory sick pay to help those sick and self-isolating, and various measures to help businesses with fewer than 250 employees.

Andy Pear comments:
- We expect this to be one of the most wide-reaching initiatives when the economy is so reliant on the services sector.
- Our understanding is that directors remunerated under PAYE can furlough themselves although it should be borne in mind that any remuneration via dividends will be excluded from the scheme.

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6. Coronavirus Support for the Self-Employed

Following the wide-ranging package of measures aimed at employees, the Government introduced a second wave of measures to include protection for the self-employed under an amendment to the Coronavirus Bill. It proposes that freelancers and self-employed workers should receive guaranteed earnings of (whichever is the lower):

- 80% of their monthly net earnings, averaged over the last 3 years; or
- £2,917 per month

Andy Pear comments:
- It is pleasing to see that millions of self-employed workers have not been left behind following the extensive measures afforded under the Job Retention Scheme.
- The scheme is driven by HMRC based upon historic tax returns so self-employed workers should await the communication from HMRC confirming entitlement with the amount expected to be paid as a lump sum in June.

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7. Insolvency Law reform fast-tracked: substantive changes ahead

Business Secretary Alok Sharma has announced the imminent introduction of substantive amendments to the UK's insolvency framework. These amendments are intended to support business in the grip of an extraordinary set of circumstances but, also see an early delivery on the Government's August 2018 response to a consultation process undertaken in 2016. Headlines below:

- A pre-insolvency moratorium or breathing space within which creditors will be unable to take enforcement action. This is likely to be from 28 days to 3 months, but further detail is awaited.

- Supply line protection facilitating trade during the moratorium.

- A new form of restructuring plan.

- A temporary suspension of wrongful trading provisions is now in effect with a 3 month suspension commencing 1 March 2020.

Andy Pear comments:
- Further details are awaited in relation to the eligibility and term of the proposed moratorium, but this has to be a welcome addition to the tool kit for rescuing a business.
- Existing laws for fraudulent trading (where the director knowingly carries on business with intent to defraud creditors for a fraudulent purpose) remain in place, alongside the threat of director disqualification for director misconduct. This has to be welcome news to avoid a fraudsters charter.

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8. Block Adjournment of Winding up Petitions

On 23 March 2020, Insolvency and Companies Court Judge Mullen set out the Court's emergency response to managing winding up hearings during the COVID-19 lockdown.

Upon considering the current situation it was decided that the general winding up list cannot presently be conducted remotely. The court ordered, by the courts own motion, that existing winding-up petitions should be adjourned to ensure the safety of all. Existing petitions were adjourned in blocks to future dates ranging from 17 June to 5 August 2020.

The court also gave permission to any party to seek dismissal of a petition before the adjourned hearing takes place. Such applications must be made by notice to the other party and to any party intending to appear and must be supported by evidence, clearly stating the reasons of dismissal and setting out details of persons who indicated an intention to appear. Such applications will be listed in a general dismissal list, which will be conducted remotely by video conferencing technology, such as Skype.

The above order does not preclude a petitioner from withdrawing a petition where notice of the petition has not been given and no notice in support or opposition has been received.

Applications to withdraw will be most likely granted on paper.

Andy Pear comments: This is effectively 'pause and delay'. So, whilst it is still possible to issue a winding-up petition to enforce a debt, it will take some time for a hearing date to take place. One option around this would be to produce a Certificate of Urgency when applying for a Court hearing date.

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9. IR35 changes delayed due to coronavirus

- HMRC has confirmed that changes to the off-payroll working regime will not take effect until April 2021 due to the coronavirus pandemic, HMRC has confirmed.

- In light of the coronavirus pandemic, changes due on 6 April 2020 will now be implemented from 6 April 2021, meaning that the existing off-payroll working rules will continue for a further year. This gives businesses a further year to make the necessary changes.

- For those which have already made changes to reflect the new rules, HMRC has said that Status Determination Statements (SDS) will have no standing in law and will not be used as evidence in any enquiry dispute during the coming year.

- The legislation implementing changes to off-payroll working is now expected to be published later this year and HMRC will be updating its Employment Status Manual to reflect this as soon as possible.

Andy Pear comments: Perhaps not a surprising development given the massive redeployment of HMRC resources to tackle the pandemic. This may provide a welcome breathing space for businesses to plan ahead.

Further detail is available on the R3 website and from gov.uk.

The team at BM Advisory is on hand to guide business owners, lenders and investors through the weeks and months ahead, where the survival of as many businesses as possible will be paramount to protecting the UK economy.

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