SPECIAL REPORT

COVID-19 UPDATE

Addressing Liquidity Risk

April 2020

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This document provides a summary of the policy changes that have been announced in multiple jurisdictions in response to the COVID-19 crisis.

We have selected the most relevant topics, which may be of interest for managing the liquidity risks that businesses are now facing due to the outbreak of the virus in the following jurisdictions:

As developments are unfolding at different times in individual jurisdictions, please refer to the relevant date in each section

ITALY

Date of last update:	04/09/2020

Topic	Brief description
Tax	<u>Suspension/extension of tax payments' terms:</u> <u>For Italian entrepreneurs/companies and professionals</u>: suspension of VAT, social security contributions and certain withholding tax payments due in April and May → new deadline, 30 June 2020 (possible to pay taxes due at such date in instalments). The suspension is available for: •Italian entrepreneurs/companies and professionals that realized <u>less than €50 million revenues in 2019</u> and whose turnover realized in March and April 2020 <u>is down by 33%</u> compared to March and April 2019 and •Italian entrepreneurs/companies and professionals that realized <u>more than €50 million revenues in 2019</u> and whose turnover realized in March and April 2020 <u>is down by 50%</u> compared to March and April 2019. Special provisions are applicable to start-ups and those located in certain territories in northern Italy who were the first affected by COVID-19. In general, <u>for all taxpayers</u>, a suspension is provided for payments, deriving from notice of payment ("*cartella di pagamento*") and certain tax assessments notices (*e.g.*, immediately enforceable tax assessment notice - "*avvisi di accertamento esecutivi*" - in respect of income taxes, regional tax and VAT and under specific conditions), due from 8 March to 31 May 2020 → new deadline, 30 June 2020. The abovementioned suspension should not include irregularity notices ("*avviso bonario*") and tax settlement agreements ("*accordi di adesione*"). Special provisions are applicable with reference to certain territories in northern Italy who were the first affected by COVID-19, as well as to certain industries (*e.g.*, hospitality, management of theatres and cinemas, organization of events, transportation, sports clubs). The suspension generally lasts up until 31 May 2020 (possible to pay taxes due at such date in instalments). <u>For all taxpayers</u>: •Penalties and interest are not applicable if advanced payments for IRPEF, IRES and IRAP purposes differ from the amount eventually due by less than 20% and •Payments (including payments of social contributions) in favour of the public administration due on 16 March 2020 → new deadline, 16 April 2020. <u>Tax incentives:</u> Companies (with no restrictions per industries, *i.e.*, not only for banks/financial institutions) can convert DTAs relating to (a) tax losses carried forward ("TLCF") and (b) unused Notional Interest Deduction ("eccedenze ACE", "NID") into a tax credit.

ITALY

Date of last update:	04/09/2020

Topic	Brief description
Tax	<u>Tax incentives (cont.):</u> To access the DTA conversion, it is required that: • The company has bad debts (“BDs”). To this extent, BDs are those past due for more than 90 days; • The BDs are assigned (assignments to related parties are not relevant) by 31 December 2020. In this case: • The TLCF/unused NID can be converted for an amount up to 20% of the nominal value of the relevant assigned BDs subject to the additional condition that the BDs’ assignments are relevant up until the threshold of €2 billion (to be computed at group level) and • DTAs can be converted into a tax credit even if not effectively booked in the financial statements. The conversion occurs at the effective date of the disposal of the BDs and the tax credit can be (i) used to offset tax debts (“*compensazione*”); (ii) assigned; (iii) reimbursed. A specific option (as per Article 11 of Law Decree n. 59/2016) shall be exercised. <u>For entrepreneurs and companies</u>: Tax relief of 60% of lease fees for shops (excluding particular activities) due for the month of March 2020 and only if the shop is an immovable property with cadastral category C/1. <u>For entrepreneurs/companies and professionals</u>: Tax relief (for 2020) of 50% of the costs of workplace sanitation and for the purchase of personal protective equipment/safety devices to protect workers from the Coronavirus disease (with a threshold of €20.000 and a general cap at the national level of €50 million. <u>For entrepreneurs/companies, professionals and non-profit entities</u>: For 2020, the tax credit relating to certain investments in advertising campaigns in daily/periodical newspapers and on local television and radio stations has been enhanced.
Employment law	Employers can make use of social shock-absorbers, either to entirely suspend employees’ working activity or reduce their working time. During the period in which the social shock-absorbers are in place (generally for up to nine weeks, which cannot exceed August 2020), the Italian social security authority (“INPS”) will take care of paying the salary of the affected employees, up to certain thresholds (in general, the highest bracket corresponds to a monthly “substitutive” salary of approx. €1.200). There are different types of social shock-absorbers, depending on the headcount and on the business sector in which the company operates, and each is governed by different rules and procedures.

ITALY

Date of last update:	04/09/2020

Topic	Brief description
Insolvency law	The application of the new “code of insolvency” is postponed to 1 September 2021. The obligations deriving from certain insolvency procedures (*i.e.*, “*concordati preventivi*” and “*accordi di ristrutturazione*”) to be carried out between 23 February 2020 and 31 December 2021 are postponed by six months. Specific provisions (*i.e.*, terms extension) apply to insolvency procedures pending as of 23 February 2020. In general, no bankruptcy procedures can be started during the period from 9 March 2020 to 30 June 2020.
Financial aid	<u>Increase of the capacity of the Italian Central Fund for guarantees for SMEs:</u> Until 31 December 2020, SMEs (enterprises having fewer than 250 persons employed and an annual turnover of up to €50 million, or a balance sheet total of no more than €43 million) and "enterprises having no more than 499 employees" may benefit, free of charge, from guarantees from the Italian Central Fund covering (in general) 90% of financing for an amount up to €5 million per enterprise (from €2,5 million), with a maturity not exceeding six years. The amount of the financing shall not anyway exceed, alternatively: • 2x the "personnel expenses" (including social security and expenses for personnel working at the enterprise premises but formally included in the subcontractor payroll) incurred by the enterprise in 2019 (or in the last available financial year); • 25% of the "annual turnover" realized by the enterprise in 2019; • The expected amount of working capital and capital expenditures in the next 18 months for SMEs (12 months for enterprises having no more than 499 employees). Certain small enterprises may receive financing with a very streamlined process and 100% guarantees. <u>Suspension of loan instalments for SMEs:</u> Italian SMEs (same definition as above), having financial exposure towards banks / financial institutions with lending capability in Italy not classified as “non-performing,” may opt for an extraordinary suspension of mortgages and loan instalments up until 30 September 2020. Such companies can also defer the term of loan reimbursements not payable in instalments up until the same date. The option for the suspension / deferral above to apply may be exercised by submitting to the lender a self-declaration in which the borrower states that it has suffered a liquidity deficit due to COVID-19. Borrowers submitting such self-declarations are also entitled to retain, up until 30 September 2020, lines of credit granted based on receivables / conditions existing as of 29 February 2020.

ITALY

Date of last update:	04/09/2020

Topic	Brief description
Financial aid	<u>SACE guarantees for loans to Italian enterprises:</u> Enterprises having (legal) "seat" in Italy, which, as of 31 December 2019, did not have non-performing loans towards banks ("*crediti deteriorati*") and did not qualify as "undertaking in difficulty" under EU definitions, may benefit from guarantees from the Italian Export Credit Agency (SACE) on financing from banks / credit institutions. SMEs under the EU definition may request financing guaranteed by SACE to the extent that they have fully used the plafond (€5 million) available to them under the Italian Central Fund for guarantees for SMEs (not clear if this applies also to non-SMEs having no more than 499 employees). The percentage of financing guaranteed ranges from 70% to 90%, depending on the size of the borrower. The amount of the guaranteed financing shall not exceed the higher amount between: • 25% of the "annual turnover" realized by the enterprise in 2019 (based on financial statements or tax returns) and • 2x the "personnel expenses" incurred by the enterprise in 2019 (based on financial statements of or in certified accounts, if the financial statements are not yet available). The above amounts are relevant to the extent that they are realized / incurred "in Italy." The financing maturity shall not exceed six years, with the possibility to request a grace period lasting up to 24 months. The other terms of the financing (*e.g.*, interest rate) will ultimately be determined by the bank funding the enterprise. Enterprises whose revenues do not exceed €1,5 billion and have fewer than 5.000 employees will receive financing through a streamlined process. Other requirements: • Commitment by the enterprise (and by all the Italian enterprises belonging to its group) not to resolve any dividend distribution or shares buyback during the year 2020; • Commitment by the enterprise to manage its employment levels in agreement with the relevant union representatives ("*accordi sindacali*"); • The financing covered by the guarantee shall be used to fund employment expenses, investments or working capital to be used in business activities located in Italy (to be documented by the enterprise's legal representative).

UNITED KINGDOM

Date of last update:	04/02/2020

Topic	Brief description
Tax	Direct tax credits/incentives: 100% relief from business rates (local property taxes) for the 2020/21 financial year for all businesses in retail, leisure and hospitality sectors. Grants of £10.000 will be made available to businesses eligible for small business rate relief, and a further £25.000 will be made available to businesses in the retail, leisure and hospitality sectors that operate from smaller premises. Suspension/extension of tax payments' terms: VAT payments due between 20 March and 30 June 2020 will be deferred for three months. Individual income tax self-assessment payments that are due on 31 July 2020 will be deferred until 31 January 2021. This primarily benefits self-employed individuals, as payments to employees are made under deduction of tax. Existing "time to pay" facility remains in place, enabling HMRC to agree to deferral of tax payments and waivers of interest and penalties on a case-by-case basis for affected businesses. Additional resources have been allocated to address anticipated demand for this facility.
Employment law	Coronavirus Job Retention Scheme ("Furlough Leave"): The UK government announced a scheme to support employers to continue paying part of their employees' salaries where those employees would otherwise have been laid off. As a government scheme, there is unlikely to be legislation, and so we must rely on the government's own guidance, which does not yet comprehensively explain the scheme. However, the guidance does make clear the following: • This scheme will apply to employees who are not working but are being retained on the payroll – but only employees who were on the employer's PAYE payroll system as of 28 February 2020 (this can even include employees made redundant since 28 February if they are rehired); • HMRC will reimburse the employer for 80% of the wages of such employees, up to a maximum of £2.500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrollment employer pension contributions on the reduced salary – this means employers must still be paying employees before receiving this reimbursement, unless otherwise agreed, so there may be a limited immediate cash flow effect; • All UK businesses are eligible, as long as there was a PAYE payroll scheme in place on or before 28 February 2020 and it has a UK bank account; • It is currently intended that the scheme will apply for three months, with the effect backdated to 1 March 2020, but would be extended if necessary – however, the online service for making claims is not expected to be available until the end of April 2020.

UNITED KINGDOM

Date of last update:	04/02/2020

Topic	Brief description

Employment law	Coronavirus Job Retention Scheme (“Furlough Leave”):
	• To access the scheme, the employer will need to:
	  • Designate affected employees as “furloughed” workers and notify the employees of the change – this is subject to existing law regarding change of status, and so you will need an express right in the employment contract to “lay off” or reduce pay, or negotiate and agree to the position with the relevant employees;
	  • Submit information to HMRC regarding the employees who have been furloughed and their earnings on a new online portal – which is currently being set up by HMRC, and we await detail as to exactly what information will be required.
	Support for businesses paying Statutory Sick Pay (SSP):
	UK-based employers with fewer than 250 employees as of 28 February 2020 will be able to reclaim SSP paid for sickness absence due to coronavirus, up to a maximum of two weeks’ SSP per eligible employee – we await the statutory regulations that will put this in place.

Insolvency law	On 28 March 2020, it was announced that the provisions affecting directors concerning wrongful trading were suspended (to take effect retrospectively from 1 March 2020), and a moratorium was introduced for businesses undergoing a restructuring process. The intention of both measures is to assist companies to trade through the financial distress caused by the loss of business during the COVID-19 crisis. There is currently little detail on when and how this legislation will be introduced, currently specifying "at the earliest opportunity." Suspension of wrongful trading provisions should allow directors the comfort to determine more easily whether it is appropriate to draw down unutilized revolving credit lines and help with cash flow. It should be noted that directors must, in any event, continue to act in accordance with their duties, both fiduciary and those enshrined in the Companies Acts. The moratorium for businesses needing to undergo financial restructuring is intended to allow those companies to keep trading for an extended period of time free from the risk of creditor action. Current legislation only protects small businesses (being 50 or fewer employees, turnover under £10,1 million and balance sheets assets of less than £5,1 million) when they are pursuing a Company Voluntary Arrangement (CVA), and there is no protection for companies looking at a Scheme of Arrangement. There is no detail yet as to which companies may become eligible under this proposal, but additional protection has been mooted for some time even before COVID-19 struck.

UNITED KINGDOM

Date of last update:	04/02/2020

Topic	Brief description
Real Estate	<u>Business tenancies:</u> Until 30 June 2020, a landlord will be unable to forfeit a lease if a tenant fails to pay rent (or other sums including service charge and insurance rent). It is expected that this will only delay a landlord's right to forfeit. Therefore, as the legislation currently stands, tenants will still be liable for payment of this accrued rent following 30 June 2020. Enforcement action for non-payment of rent already issued by landlords will be suspended until 30 June 2020. <u>Residential tenancies:</u> Until 30 September 2020, the notice period for evictions is extended to three months. Such concessions do not appear to cover those occupying premises on a licence, those on commercial contracts or other arrangements. <u>Residential mortgages:</u> The government has published guidance which urges financial institutions to provide lenders with a mortgage payment holiday to residential homeowners and buy-to-let landlords for the next three months.
Financial aid	<u>Covid Corporate Financing Facility "CCFF" (essentially aimed at UK PLCs):</u> Eligibility is determined by Bank of England risk management team. It is based on the companies' financial strength pre-COVID and is subject to ratings tests, based on the rating on 1 March 2020, (short term if available and, failing that, long term) of A-3, P-3, F-3 and may not be available if they had a negative outlook at that time (BoE discretion). If they subsequently are downgraded below this level, then again, it is at BoE discretion as to whether to continue to buy their CP. For companies that did not have a rating at the time, they can apply to one of the rating agencies to get a rating now for that date specifically for CCFF. Have to issue a commercial paper (between one week and one year maturity) on terms comparable to what was available in the market before the pandemic. The Fund buys that paper at a rate which would make the overall costs in line with rates prevailing before the pandemic. Will be unlikely to be acceptable if subject to subordination, so it will not sit well with companies who are looking to raise or have standard third-party bank/lender debt in the usual way. NOT available for "leveraged investment vehicles" or companies in groups, which are primarily banks, investment banks and building societies. Paper shall be issued in Sterling only, and if issued by a finance subsidiary, it has to be guaranteed by the parent. Activity of eligible companies does not have to be solely in the UK but has to satisfy the criteria from its UK business.

UNITED KINGDOM

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	<u>Coronavirus Business Interruption Loan Scheme "CBILS" (designed for SMEs):</u> Provided for the government by a stable of 40 banks (members of the British Business Banks). All loans are government-guaranteed on the principal, and the government will pay the first six months of interest payments. Borrower remains liable for capital repayment, and the maximum amount of the loan is £5 million. Available to SMEs who: • Are UK-based with maximum £41 million turnover; • Are on an approved list of business types (most are, other than a small number that would otherwise fall afoul of EU state aid rules); • Have a sound borrowing proposal to insufficient security to meet a traditional lender's requirements; • Three months to 10 years for term loans and up to three years for revolving facilities and invoice facilities.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Tax	Deferral of tax payments: The tax authorities (in the case of trade tax: municipalities) should defer taxes if the collection would be a considerable hardship because of COVID-19. In principle, this also applies to sales tax. The fiscal authorities have been instructed to impose less stringent requirements. Waiver of deferral interest. Reduction of advance payments: Where it is clear that income is likely to be lower. Waiver of enforcement measures and remission of late fees until 31 December 2020: Condition: Tax debtor is directly affected by the effects of COVID-19. Refund of the special advance payment of sales tax (individual federal states): Authorities have been instructed to make appropriate allowances for other taxes (*e.g.*, energy tax, air traffic tax, insurance tax, turnover tax).
Employment law	Short-time work: Temporary reduction of working time (even down to "zero") with subsequent return to the original amount of working time; employee is entitled to short-time allowance as compensation for the reduced remuneration claim. New regulations: • Only 10% of a company’s employees need to be affected by the reduction in working hours (instead of 1/3 of the staff); • Full refund of social security contributions; • Short-time allowance also possible for employees in temporary employment; • With companies offering flex-time arrangements, no negative working-time accounts will be generated; • Extension of the maximum subscription period to 24 months possible (instead of the regular 12 months). [See https://www.bmas.de/DE/Themen/Arbeitsmarkt/Arbeitsfoerderung/kug.html].

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Employment law	Simplified procedure for reporting short-time work at some job centres [see Merkblatt der Arbeitsagentur]: • Fully completed notification form on short-time allowance (“KUG”), • List of workers (m/f) affected, • Stating reasons for the application of KUG (more than keyword COVID-19), • List of working-time accounts (existing overtime accounts; are there credit balances? etc.), required even if non-existent, • Reduction of recreational leave 2019. Practice still unclear: • Recreational leave 2020? • Will one employee in the company with (remaining) recreational leave prevent short-time allowance for all the others? • To be recommended: Differentiation between departments (Section 97 sentence 2 SGB III), • Case law on company vacation? (Duty of notice?), • Due to current excessive workload: online application possible. [See https://www.arbeitsagentur.de/unternehmen/finanziell/kurzarbeitergeld-video] Introduction of short-time requires contractual basis: Employment agreement, works agreement or collective bargaining agreement; if necessary, termination due to altered conditions. Co-determination rights of the works council to be observed both with regard to the introduction of short-time itself and the scope of it: Avoid exclusion of termination for operational reasons, if possible. NOTE: The works council still has to meet physically (1.50m distance between the participants) and in quorum size, although virtual work council meetings via Skype, GoToMeeting, etc., are recommended. Current information: [See https://www.arbeitsagentur.de/news/corona-virus-informationen-fuer-unternehmen-zum-kurzarbeitergeld]

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Insolvency law	<u>Obligation to file for insolvency generally suspended until 30 September 2020.</u> Beware! This does not apply if: • The insolvency trigger is not due to the COVID-19 pandemic, or • There is no prospect of eliminating an existing illiquidity insolvency. <u>Rebuttable presumption that there are no back exemptions:</u> If the debtor was still solvent on 31 December 2019, it is assumed that (i) insolvency maturity is due to the consequences of the pandemic and (ii) there are prospects of remedying an existing illiquidity. <u>Creditor insolvency applications restricted for three months.</u> <u>Creditor applications require that the reason for insolvency already existed on 1 March 2020.</u> The amendments to the obligations to file for insolvency could be extended until 31 March 2021 by legislative regulation if the circumstances require it. <u>Supplementary regulation concerning payment prohibitions and liability of managing directors:</u> Insofar as the obligation to file for insolvency is suspended, payments which serve to maintain or resume business operations or to implement a restructuring concept are not prohibited within the meaning of Section 64 sentence 2 GmbHG, Section 92 paragraph 2 AktG, Section 130a paragraph 1 HGB (also in conjunction with Section 177a sentence 1 HGB) and Section 99 sentence 2 GenG. Managers who arrange for payments and economically corresponding actions are therefore not acting in breach of duty and are not obliged to compensate for the payments.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Insolvency law	Privileged treatment of new loans/new collateral: Insofar as the obligation to file for insolvency is suspended: •The repayment of loans granted during the suspension period does not constitute a disadvantage to creditors until 30 September 2023. •The provision of collateral for loans granted during the suspension period shall not constitute a disadvantage to creditors. → Contestation in a later insolvency is excluded. This also applies to new shareholder loans and economically corresponding legal acts (but not to their collateralization), which are granted during the suspension period; for these, the legal subordination in insolvency proceedings applied for by 30 September 2023 is also lifted. Loans granted and collateral provided during the suspension period are not contestable under the principles of "immoral" restructuring loans (*aiding and abetting to defer application*). Restructuring opinions are therefore generally not required for legal protection. Facilitations of the right of contestation: Legal acts which have granted or allowed the other party security or satisfaction (so-called congruent acts) are generally not contestable in subsequent insolvency proceedings. Exception: The other party was aware that the debtor's restructuring and financing efforts were not suitable for remedying an inability to pay that had occurred. The same applies to: •Shortening of payment terms/granting of payment facilities; •Provision of other, but not valuable, collateral; •Performance in lieu of performance or on account of performance/payments by third parties on the instruction of the debtor.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	The Economic Stabilization Fund Act (“WSF” or “WStFG”) accompanies the GAFCoV and the planned state aid programs by the KfW. Legal basis to implement targeted measures to stabilize the German economy and safeguard jobs for a limited period of time. These include large-volume aid measures to overcome liquidity shortages and strengthen the equity base of distressed companies as a result of the COVID-19 pandemic: • Guarantee framework (in total up to €400 billion) for debt instruments and liabilities of affected companies with a maximum term of 60 months and in exchange for a market-oriented remuneration; • Credit authorization for (subsidiary) recapitalization measures, *i.e.*, the direct acquisition of subordinated debt instruments, bonds (also convertible and hybrid bonds), profit participation rights, silent partnerships, shares in affected companies (in total up to €100 billion); • KfW loan to refinance the KfW special programs (up to €100 billion). Joint responsibility of the Federal Ministry of Finance (BMF) and the Federal Ministry of Economics and Energy (BMWi) for decisions on stabilization measures (inter-ministerial WSF Committee). Eligibility: Companies of the real economy (no companies of the financial sector); for financial institutions, SoFFin is still in place. Application requirements (... "too big to fail" ...): • Balance sheet total > €43 million, turnover > €50 million and at least 250 employees on an annual average (two of three criteria in the last two completed financial years); smaller companies from sectors of Section 55 of the Foreign Trade and Payments Regulation with significance for critical infrastructure; • The company in question must not already have been an “undertaking in difficulty” on 31 December 2019 (see EU definition, Official Journal EU C 249/1 of 31 July 2014); • Precise, continuation prognosis on a stand-alone basis after overcoming the COVID-19 pandemic; • Guarantee for a sound and prudent business policy (contribution to stabilizing production chains and securing jobs); • Selective, temporary modifications of company law with facilitations to speed up proceedings (fast-track capital increases).

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Approval criteria: • Stabilization measures are ultima ratio; *i.e.*, the company in question must not have access to other financing sources; • Importance of the company for the German economy; • High urgency; • Effects on the labour market and competition; and • Consideration of the principle of economic use of WSF funds. In order to ensure that the application requirements are met, conditions may be imposed in connection with the stabilization measures: • On the use of funds; • Restrictions to take out additional loans; • With regard to the remuneration of the executive bodies (executive board and supervisory board); • Restrictions for dividend payments; • Sector-specific restructuring requirements; • Measures to avoid any distortions of competition. The WSF must be approved by the EU Commission as a state aid scheme; individual stabilization measures of the WSF do not have to be approved again. Stabilization measures by the WSF are, at the moment, only possible until 31 December 2021. Further details will be regulated in a legal regulation.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Modifications of corporate law: • Issuance of shares with profit and liquidation preference or non-payable preference; • Settlement of advance contributions; • Reduction of the majority requirements for the use of a stabilization measure (simple majority); exclusion of subscription rights with a 2/3 majority if half of the share capital is represented; • Granting of profit participation rights, bonds with qualified subordination to the WSF as well as silent partnership require a resolution of the general meeting to the extent rights for conversion into shares are intended; • The validity of stabilization measures is independent of their entry in the commercial register; actions for annulment do not have a blocking effect; • The WSF is exempt from mandatory offers; a squeeze-out of minority shareholders is permitted if the WSF owns 90% of the share capital. Shareholders who delay or jeopardize stabilization measures in order to secure unjustified advantages for themselves are liable for damages. The WSF may require the benefiting company to repay, sell or change the investment acquired in the course of a recapitalization; the costs for public or non-public offers of shares or other financial instruments, as well as risks from prospectus liability, shall be borne by the company (in deviation from Section 57 AktG).

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Coronavirus rescue fund of the German government (€600 billion): • Guarantees for private sector liabilities; • Direct financial contributions; • *De facto* partial privatisations. Liquidity aid at federal level (scope [unlimited]): • (New) KfW special programs 2020; • (Existing) KfW funding programs: extensions and facilitations; • Guarantees of the Federal Government; • Export credit guarantees (Hermes) and the KfW program for refinancing export transactions. In almost all programs, an essential condition for additional financing is proof that the crisis situation was caused by COVID-19 and that the company was not previously a restructuring case. Liquidity aid on a federal level (KfW Programs): Risk assumption by KfW: The loan is provided by the house bank, which assumes the remaining risk of 10% (SMEs) or 20%. The house bank collects the full interest on the entire loan as remuneration for the risk assessment, also in favour of KfW. KfW Special Program 2020 (new): • Increase of KfW risk assumption (indemnity against liability) for working capital up to 80%; • Increase of KfW risk assumption (indemnity against liability) for investments up to 90%; • Special Program Direct Participation for Syndicated Financing starting at €25 million (assumption of up to 80% of the risk, but no more than 50% of the risks of total debt, turnover limit €5 billion).

GERMANY

Date of last update:	04/02/2020

Topic	Brief description

Financial aid	Other forms of financial aid:
	• Companies that have been on the market for more than five years:
	  • KfW Entrepreneur Loan Program,
	  • KfW Growth Loan Program;
	• Companies that have been on the market for fewer than five years: ERP Start-up Loan – Universal;
	• Other KfW Loan;
	• Guarantees provided by the Federal Government.
	Status:
	• Launch of the special programs from 23 March 2020;
	• State aid approval of the KfW special programs granted by the EU Commission on 22 March 2020; individual approval still required for aid measures granted outside the programs. It can be assumed that the EU Commission will process such procedures as quickly as possible. The usual time limits in the context of state aid proceedings are de facto suspended;
	• Liquidity aid at state level (*e.g.*, Bavarian rescue fund for companies worthy of protection, LfA programs);
	• Emergency aid fund for small and mid-sized enterprises (SMEs; "Coronavirus Emergency Aid").

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Applications for a KfW program must be submitted to KfW via the house bank or another financing partner (house bank principle) binding information since 23 March 2020 (*e.g.,* KfW information sheets): • Fundamentally viable business model, credit rating, no insolvency prior to COVID-19 crisis; • Willingness of the house bank(s) to include the liquidity aid in the overall financing concept; • Coherent consolidation concept, liquidity plan, restructuring opinion IDW S6 not mandatory (see changes in insolvency law in the GAFCoV). Eligible to apply: • Privately owned commercial enterprises. We assume that this condition is also met if there is no beneficial owner (*i.e.,* no indirect shareholder > 25%, regardless of whether they are private sector companies or state companies, *e.g.,* pension funds); • Larger companies: Annual turnover > €50 million, > 250 employees and balance sheet total > €43 million; KfW program 037; • Small and medium-sized enterprises (SMEs): Annual turnover < €50 million, < 250 employees and balance sheet total < €43 million; KfW program 047. The turnover is determined for the group of companies. The turnover of the affiliated companies is added together, *i.e.,* of companies in which the applicant has a direct or indirect share of > 50% and also of companies which have a direct or indirect share of > 50% in the applicant (§ 290 HGB). Application requirements (applications may be submitted from 23 March 2020): • The company in question must not have been in financial distress until 31 December 2019 (it is then assumed, however rebuttable, that the crisis was caused by the COVID-19 pandemic); • Furthermore, the house bank must not have been aware of unregulated payment arrears of more than 30 days, of deferral agreements or of so-called covenant breaches; • At the time of application, the company must be expected to be fully financed until 31 December 2020 in accordance with current planning (assumption: on the basis of an overall economic situation returning to normal, as before the "crisis"), and on this basis there must be a positive forecast for its continued existence.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description

Financial aid	KfW/PwC reviews the documents and makes the decision on the approval:
	• Considerable streamlining and acceleration of the application process;
	• Loans up to €3 million no risk assessment by KfW (risk assessment is only performed by the house bank);
	• Loans up to €10 million with simplified assessment by KfW.
	The loan agreement is then concluded with the house bank.
	Credit agreement (draw-down requests possible from 14 April 2020):
	• No minimum loan amount (except for the growth company program, €25 million);
	• Entrepreneur Loan, Growth Loan: maximum €200 million ("favourability check”):
	    • 25% of the annual turnover in 2019;
	    • Current financing requirements for the next 12 months for large enterprises and 18 months for small and medium-sized enterprises (depending on wage costs);
	    • Twice the wage costs of 2019;
	    • Growth Loan, Special Program Direct Participation for Consortium Finance: maximum €1 billion;
	• Purpose (investment loan, working capital loan, no refinancing with the exception of short-term liabilities, current accounts and supplier credits);
	• Interest: variable, depending on credit rating (for larger companies, 2,0-2,12% p.a.; for SMEs, 1,0-1,46% p.a.);
	• Maturities, repayment: different maturities (up to five years; *e.g.,* two years with final maturity for working capital loans);
	• Ranking: *pari passu* (generally);
	• Securities, shareholder, sponsor contribution: TBD.
	→ Review: Leverage financing banks or unitranche (debt funds) and implications, interfaces, structuring.

GERMANY

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Large Guarantee Program of the Federal Government (parallel joint Federal/State Guarantees): Extension to companies in all regions (before restricted to structurally weak regions). Eligibility: Companies with sustainable business models before the crisis. Scope: Cover for working capital financing and investments from a volume of €20 million up to 50% and up to 80% from a volume of €50 million (guarantees to a lesser extent via the state guarantee banks and development agencies of the federal states). Responsibility: The German guarantee banks in cooperation with the Federal Government and the Federal state funding agencies. Guarantees provided by the guarantee banks: Scope: • Increase of the guarantee cap to €2,5 million (before €1,25 million); • Risk assumption by the Federal Government increased from 52% to 62%; • The 35% upper limit with respect to the proportion of working capital in the total exposure of the guarantee banks to be increased to 50%. Guarantee banks are free to make their own guarantee decisions within three days up to an amount of €250.000 (guarantee decisions in excess of such amount require involving the Federal Government). Responsibility: Financing bank in cooperation with the respective guarantee bank.

USA

Date of last update:	04/02/2020

Topic	Brief description
Tax	Direct tax credits / incentives: The Families First Coronavirus Response Act, signed into law on 18 March 2020, provides several benefits to works relating to sick leave, including a tax credit against payroll taxes for employers offering paid sick and paid family and medical leave. The CARES Act provides a refundable, one-year only credit against an employer's 6,2% share of Social Security Payroll credits. Suspension / extension of tax payments' terms: All federal income tax payments that were due on 15 April 2020, in respect of 2019, and all first quarter estimated income taxes that were due on 15 April 2020, are now due 15 July 2020. Deferred payments include transition tax instalment obligations under IRC 965 that were due on 15 April 2020. Additionally, an employer's and a self-employed individual's payment of the employer share of the Social Security tax they are otherwise responsible for paying to the Federal Government with respect to their employees or self-employment activities is deferred until 31 December 2020. State and Local Tax updates: Many states have issued guidance in response to COVID-19. Subjects covered include, *inter alia*, payment extensions and penalty waivers.
Employment law	Title II of the CARES Act expands unemployment insurance benefits: • Unemployment benefits will be available for those unemployed as a result of Coronavirus (COVID-19) between 27 January 2020 and 31 December 2020; this will include those who are not traditionally able to qualify for benefits, including the self-employed and independent contractors; • There will be an extra $600 per week in benefits through 31 July 2020; • There will be funding to eliminate the traditional waiting period; • Thirteen extra weeks of benefits will be added onto the existing number of weeks of benefits; • $100 million of funding will be directed to states to support "short-term compensation" programs, where employers reduce workers' hours instead of laying off workers, and those workers whose hours are reduced are eligible to receive a pro-rated unemployment benefit. This funding is available through 31 December 2020.

USA

Date of last update:	04/02/2020

Topic	Brief description
Employment law	Title II of the CARES Act also affects employer Social Security taxes: • First, Section 2302 grants significant latitude to delay paying the employer portion of Social Security taxes (6,2% tax paid on wages up to the 2020 annual limit of $137.700). Employers may defer payments of those payroll taxes for 2020 over the following two years, with half of the amount required to be paid by 31 December 2021, and the other half by 31 December 2022. However, businesses that receive loan forgiveness under the CARES Act (available under Sections 1106 or 1109) will be ineligible for these deferred tax payments; • Second, Section 2301 separately offers an "employee retention" tax credit: A 50% tax credit for wages paid (a) in a calendar quarter where revenues are less than 50% of the prior calendar year quarter, or (b) in a calendar quarter where the business has been fully or partially suspended due to government orders limiting commerce, travel or group meetings. These credits apply to wages paid after 12 March 2020; • The availability of these credits depends on the number of employees. For employers of 100 or more employees, the tax credit applies in either qualifying period, but only to wages paid "for which the qualifying employee is not providing services" due to the circumstances noted in the preceding paragraph. For employers of fewer than 100, however, the tax credit applies even when the employees are working; • In determining which entities should be aggregated for counting employer size for this purpose, "[a]ll persons treated as a single employer under … the Internal Revenue Code of 1986 … shall be treated as one employer for purposes of this section." Title III of the CARES Act revisits the Families First Coronavirus Relief Act (FFCRA): • The CARES Act adds technical amendments. These amendments restate the limits on paid FMLA leave (but without appearing to change the $200 per day/per employee and $10.000 total per employee). These amendments also restate the limits on paid sick leave (but again without appearing to change the dollar limits); • More importantly, these FFCRA amendments grant paid FMLA leave to rehired employees, *i.e.*, employees laid off on or after 1 March 2020, but who are subsequently rehired. For all FFCRA payments, these amendments waive penalties for failure to deposit taxes, where employers anticipate taking the tax credits under the FFCRA for either the FMLA paid leave or the paid sick leave.

USA

Date of last update:	04/02/2020

Topic	Brief description
Employment law	<u>Title IV of the CARES Act attaches employment-specific conditions to available loans:</u> • Section 4003 makes $500 billion of stimulus money available. It earmarks a portion for loans at no more than 2% interest to businesses with a workforce between 500 and 10.000 employees. There are, however, conditions attached to such loans that need to be carefully considered before applying. These conditions include promises concerning union relationships: (1) to “remain neutral in any union organizing effort for the term of the loan” and (2) to continue existing collective bargaining agreements until two years after the loan is repaid; • These commitments also include other employment promises, such as: “not to offshore or outsource jobs” until two years after the loan is repaid; to restore 90% of the 1 February 2020 workforce within four months following this public health emergency; and to retain 90% of the existing workforce at full wages/benefits through 30 September 2020.
Insolvency law	The Small Business Reorganization Act has been amended to increase the eligibility threshold to file under subchapter V of chapter 11 of the US Bankruptcy Code to businesses with less than $7.500.000 of debt. This increase sunsets after one year.
Financial aid	<u>7(a) Paycheck Protection Program</u> The CARES Act will increase the maximum 7(a) loan amount to $10 million and will expand allowable uses of 7(a) loans to include payroll costs, costs related to group healthcare benefits during periods of paid sick, medical or family leave, and insurance premiums, as well as employee salaries, mortgage interest payments, rent, utilities and interest on other debt obligations. Loan amounts will total the lesser of: (1) $10 million or (2) 2,5 times an applicant’s average total monthly payments for payroll costs incurred during the one-year period before the date on which the loan is made, plus the outstanding amount of any 7(a) loan, made available between 31 January 2020 and when a covered loan is made available that is to be refinanced under a covered loan. Loan amounts for seasonal employers and other applicants that were not in business during the period between 15 February 2019 and 30 June 2019 will be determined using a modified version of such formula.

USA

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	<u>7(a) Paycheck Protection Program:</u> Under the CARES Act, the covered loan period for this program will begin on 15 February 2020 and end on 30 June 2020. The legislation increases eligibility for certain small businesses and organizations, including: • Small businesses, 501(c)(3) nonprofit organizations, 501(c)(19) veterans organizations and tribal businesses with fewer than 500 employees (unless the covered industry's SBA size standard allows more than 500 employees); • Sole proprietors, independent contractors and self-employed individuals; • Businesses in the hospitality and restaurant industries with more than one physical location and with no more than 500 employees per physical location. The legislation also waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory and small businesses that receive financing through the Small Business Investment Company program. For the purpose of determining whether a business, nonprofit, veterans organization or tribal business employs no more than 500 employees, the term "employee" includes individuals employed on a full-time, part-time or other basis. The legislation gives approved lenders the delegated authority to make and approve loans. In evaluating a borrower's eligibility, a lender must consider: whether a business was operational on 15 February 2020 and had employees for whom it paid salaries and payroll taxes, or paid independent contractors. Eligible borrowers will be required to make good faith certifications that the uncertainty of current economic conditions make the loan request necessary to support ongoing operations and that they will use funds to retain workers and maintain payroll and other debt obligations. A borrower must also certify that it does not have an application pending for a loan for the same purpose and duplicative of amounts applied for or received under a covered loan, nor has it received such a loan between 15 February 2020 and 31 December 2020. Additional details include the following: • A borrower that receives a 7(a) loan for employee salaries, payroll support, mortgage payments and/or other debt obligations will not be able to receive an SBA economic injury disaster loan (EIDL) for the same purpose; • Interest rates are capped at 4%.

USA

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	7(a) Paycheck Protection Program (cont.): • Both borrower and lender fees for 7(a) loans will be waived; • The “credit elsewhere” test and personal guarantee and collateral requirements will be waived during the covered period; • The legislation provides that SBA affiliation rules apply to eligible nonprofits as they do to small businesses; • Lenders are required to provide complete deferment of 7(a) loan payments for not less than six months and not more than one year, including payment of principal, interest and fees. SBA is required to disseminate guidance on the deferment process within 30 days; • Existing 7(a) loans made between 31 January 2020 and the date on which covered loans are made available may be refinanced as part of a covered loan; • The legislation also provides guidance on loans sold in the secondary market; • The maximum loan for an SBA Express loan will be increased from $350.000 to $1 million through 31 December 2020, after which point the Express loan will have a maximum of $500.000. Other Provisions Loan Forgiveness: Provides a process by which borrowers will be eligible for loan forgiveness in an amount equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on the following items: • Payroll costs; • Interest payment on any mortgage incurred prior to 15 February 2020; • Payment of rent on any lease in force prior to 15 February 2020; • Payment on any utility for which service began before 15 February 2020. The amount forgiven will be reduced in proportion to any reduction in employees retained compared to the prior year and to the reduction in pay of any employee beyond 25% of their prior year compensation. To incentivize employers to rehire employees already laid off due to COVID-19, borrowers that rehire workers previously laid off will not be penalized for having reduced payroll at the beginning of the period.

USA

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	Emergency EIDL Grants: Establishes an emergency grant to allow an eligible entity that has applied for an EIDL loan due to COVID-19 to request an advance on that loan of no more than $10.000, which the SBA must distribute within three days. An applicant will not be required to repay such an advance payment, even if it is subsequently denied an EIDL loan. Eligible entities include startups, tribal businesses, cooperatives and ESOPs with fewer than 500 employees, and any individual operating as a sole proprietor or an independent contractor during the covered period (31 January 2020 to 31 December 2020). For EIDL loans made in response to COVID-19 before 31 December 2020, the SBA must waive any personal guarantee on advances and loans below $200.000, as well as the requirement that an applicant be in business for the one-year period before the disaster and the “credit elsewhere” requirement. Entrepreneurial Development: Authorizes the SBA to provide additional financial awards to resource partners (including Small Business Development Centres and Women’s Business Centres) to provide counselling, training and education on SBA resources and business resiliency to small business owners affected by COVID-19. State Trade Expansion Program (STEP) Grants: Allows for STEP grant recipients to be reimbursed for losses relating to cancelled events due to COVID-19, as long as the reimbursement does not exceed the recipient’s grant funding. Waiver of Matching Funds Requirement Under the Women’s Business Centre Program: Eliminates the non-federal match requirement for three months. Minority Business Development Agency: Authorizes $10 million for grants to Minority Business Centres and Minority Chambers of Commerce for the purpose of providing counselling, training and education on federal resources and business response to COVID-19 for small businesses. Eliminates the non-federal match requirement for three months and allows centres to waive fee-for-service requirements through September 2021. US Treasury Program Management Authority: Allows the Department of Treasury, the Farm Credit Administration and other federal financial regulatory agencies to establish a process by which lending institutions that are not currently authorized to offer SBA loan products are able to participate in the Paycheck Protection Program. Allows the US Treasury to write regulations and guidance as needed, including to allow additional lenders to originate loans and establish terms. Allows all 7(a) lenders to opt in to participate in the Paycheck Protection Program. Subsidy for Certain Loan Repayments: Requires the SBA to pay the principal, interest and any associated fees that are owed on the covered loans for a six-month period starting on the next payment due date. Loans that are already in deferment will include an additional six months of payment by the SBA beginning with the next payment. Loans made up until six months after the enactment of the legislation will also receive a full six months of loan payments by the SBA. Defines eligible loans as existing 7(a) (including Community Advantage), 504 and microloan products. Paycheck Protection Program loans are not covered.

FRANCE

Date of last update:	04/02/2020

Topic	Brief description
Tax & Social security contributions	Deferral of direct tax payments: All upcoming payment of direct taxes (CIT, payroll tax, etc.) can be deferred for three months without justification or prior authorization; tax payments for the month of March, if already made, can be refunded; penalties should not apply. It is unclear whether late payment interest at 0,2% per month will apply. Monthly payment plans of land and property taxes (including business property taxes) can be deferred; penalties should not apply. It is unclear whether late payment interest at 0,2% per month will apply. For other tax payments, the French tax authorities will facilitate instalment plans or deadline extensions. Instalment plans and payment deadline extensions do not preclude the application of late payment interest at 0,2% per month or the 5% penalty for the late payment of corporate tax, VAT or business taxes. However, the French tax authorities usually waive late payment penalties (but not late payment interest) if the company complies with the instalment plan. Direct tax refunds: Exceptional direct tax refunds may be granted on a case-by-case basis. Acceleration of payment of tax credits: Payment of refundable tax credits (such as VAT credits) should be accelerated. Deferral of social security contribution payment: Payment of social security contributions (employer and employee contributions, and supplementary pension contributions Agirc-Arrco) for the month of March can be deferred for three months without justification or prior authorization; penalties should not apply. For subsequent payments of social security contributions, the French social security authorities should facilitate instalment plans or deadline extensions. Instalment plans and payment deadline extensions should not preclude the application of the 5% penalty for the late payment of social security contributions or the application of supplemental penalties of 0,2% per month. However, the French social security authorities usually waive late payment penalties under certain circumstances, especially if companies demonstrate exceptional and unforeseeable temporary difficulties.

FRANCE

Date of last update:	04/02/2020

Topic	Brief description
Employment law	Use of paid vacation / rest days: "RTT" days, rest days and any days saved in the Time Savings Account ("*Compte épargne temps*"): Employee consent not required, one-day notice, maximum 10 days. Paid vacation days: Requires a collective bargaining agreement at the industry or company level (unlikely), employee consent not required, one-day notice, maximum six days. These requirements do not apply to changing paid vacation dates that had already been approved. Sick leave – partial payment of salaries by French social security: Not at the company's discretion, but can be suggested to some employees (i) who cannot work remotely because of children at home or (ii) who have a pre-existing medical condition that would likely result in a severe form of COVID-19. Partial activity ("*Activité partielle*") – State aid: Maximum 12 months for companies suffering from COVID-19 (*e.g.,* less business, inability to implement measures to protect employees). Requires the administration's approval (https://activitepartielle.emploi.gouv.fr/aparts/) given on a case-by-case basis - lacking a reply within two days, it is deemed to have been accepted. Consultation of the works council within two months is required. Employee's consent is not required unless that person is a protected employee. Company pays 70% of the employee's usual gross remuneration for each unworked hour (exempted from social security contributions) and is compensated by the state up to 4,5 times the French minimum wage (the "*SMIC*"). Deferred social security contribution payments - payments can be deferred for three months: Through the "DSN" declaration - for contributions due on the 5th of each month, this can be done until 5 April before midnight. Company can keep paying employee social security contributions but request deferred payment of company social security contributions (this can be carried out on the urssaf.fr website or by calling 3957). Profit-sharing payments ("*accord de participation*" and/or "*accord d'intéressement*"): 2020 profit sharing payments to be paid before 1 June 2020 can be postponed until 31 December 2020.

FRANCE

Date of last update:	04/02/2020

Topic	Brief description
Insolvency law	Amicable / out-of-court proceedings: Ability to file for the appointment of an *ad hoc* representative or opening of a conciliation proceeding remains unaffected. For the purpose of the implementation of the cash-flow insolvency test, judges will examine the situation of the company as of 12 March 2020. Therefore, if a company has not been in a state of cessation of payments for more than 45 days as of 12 March, it may file for an amicable proceeding. Maximum duration of a conciliation proceeding is extended by approximately five to six months (the duration of the general containment measure + three months). The waiting period between two conciliation proceedings is not applied. Pre-insolvency and insolvency / court-assisted proceedings: Ability to file for the opening of an insolvency proceeding (safeguard, rehabilitation or liquidation proceedings) remains unaffected. For the purpose of the implementation of the cash-flow insolvency test, judges will examine the situation of the company as of 12 March 2020. Specific deadlines (*e.g.,* observation period, safeguard or rehabilitation plans) are automatically extended by approximately three to four months (the duration of the general containment measure + one month). Adjustment of the procedural rules: Filing of out-of-court and court-assisted proceedings is made by any means (*e.g.,* via electronic communications). Where attendance in person is not possible, hearings are held by way of videoconference. For every safeguard, rehabilitation and liquidation proceedings opened fewer than two months before 12 March 2020, the period within which each creditor has to file a proof of claim is extended until end of August 2020 (the duration of the general containment measure + three months).
Financial aid	Acceleration of payment of receivables on public entities: The payment of receivables on public entities (the French Treasury or local authorities) should be accelerated. State-sponsored negotiation of instalment plans with credit facility providers and financial support: The French Central Bank and Bpifrance (a French state-controlled investment bank) will facilitate the negotiation of instalment plans with credit facility providers and provide financial support to companies facing cash shortages. French banks have also committed to defer for six months the payment of company debt instalments without penalties.

FRANCE

Date of last update:	04/02/2020

Topic	Brief description
Financial aid	State guarantee on short-term liquidity loans: The French government will guarantee short-term liquidity loans granted by banks between 16 March 2020 and 31 December 2020 to companies facing cash shortages. Force majeure on government contracts: The French government has officially stated that the epidemic will be considered as a force majeure case for the purposes of government contracts. State aid to small businesses: The French mutual aid fund will grant financial support to small businesses. Deferral of utility bill payments: Companies facing cash shortages may request a deferral of the payment of their utility bills from their utility provider.

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Emidio Cacciapuoti focuses his practice in tax and regulatory aspects of funds, alternative investment fund structures and carried-interest schemes. He also deals with a wide range of tax issues related to financing, multinational enterprises and private individuals.

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Recognition

- *Chambers Europe* said: “The talented Emidio Cacciapuoti … gains substantial client praise for his excellent technical skills and prompt response times.”
- According to *Legal 500*: “[their] responses use the appropriate language in each case. It assisted with local tax aspects of the structuring of a private equity fund. Emidio Cacciapuoti ‘gives the advice we need’, say clients.”

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