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Insolvency Laws:

How Countries Have Revamped Their Insolvency and Restructuring Laws

January 2022

Contents

During 2020 and 2021, many countries revamped their insolvency laws, introducing temporary or permanent measures to aid and assist companies in financial distress. Governments acted quickly to put in place measures that changed laws, relaxed or suspended legal obligations and introduced new provisions aimed at supporting businesses during the pandemic and avoiding large scale insolvencies.

Many countries still retain temporary measures to support businesses as they emerge from the pandemic and this guide focuses on the key changes in restructuring and insolvency laws in those countries listed in this guide.

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Australia

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The Australian government took swift action to enact new legislation that significantly changed the insolvency laws relevant to all businesses as a result of the developments related to COVID-19.

The Coronavirus Economic Response Package Omnibus Act 2020 (Response Act) became effective on 25 March 2020, and was an effort to provide temporary relief to companies experiencing financial distress as a result of the ongoing and rapidly changing economic slowdown caused by COVID-19.

The COVID-19 Response Act

The amendments of the Response Act were temporary and applied for six months, until 23 September 2020. However, subject to economic and health developments, the provisions may be expanded in both their application and scope.

Key Aspects of the Response Act	
Increase in Dollar Thresholds and Extension of Deadlines	The minimum dollar threshold to issue a creditors' statutory demand[1] was permanently increased from AUS$2,000 to AUS$4,000. The minimum dollar threshold for a creditor to initiate bankruptcy proceedings against a debtor was permanently increased from AU$5,000 to AUS$10,000 Course of Business? It is noteworthy that the relief under the temporary measures was only afforded to new debts incurred in the "ordinary course of business". Accordingly, in terms of potential future insolvencies or litigation on the incurring of debts, much will depend on the scope and application of that term to different types of businesses. The explanatory memorandum to the Response Act provided that: "A director is taken to incur a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business during the six-month period that begins on commencement of the subparagraph. This could include, for example, a director taking out a loan to move some business operations online. It could also include debts incurred through continuing to pay employees during the coronavirus pandemic." **Given the wide-ranging impacts of the virus and consequent economic slowdown, businesses in different sectors may be affected in varying ways and magnitudes. Directors should seek appropriate advice before taking on any significantly new or different types of debt or in relation to decisions to appoint external administrators who will be required to examine past transactions.**

1 Creditors with undisputed debts of a minimum dollar threshold (originally of AU$2,000; now, temporarily, AU$20,000) may issue a formal demand for payment of their debt. If the company fails to pay the debt by the deadline (originally of 21 days; now, temporarily, of six months), the company will be deemed insolvent.

China

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While there were no changes to the insolvency laws in the People's Republic of China (PRC) in response to the COVID-19 pandemic, numerous government authorities in China adopted measures and policies to aid businesses in their efforts to reduce operational costs and survive the economic downturn.

In addition, some PRC courts issued guidance on how bankruptcy cases initiated in response to COVID-19 should be handled. On 15 May 2020 the Supreme People's Court consolidated this guidance into: Guiding Opinions (II) on the Proper Handling of Civil Cases in response to COVID-19 in accordance with Laws, which enforced this guidance across the whole nation.

Governmental Measures and Policies	
Bank and Insurance Regulatory Commission	Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the pandemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of pandemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly.
State Administration of Taxation and Ministry of Finance	A series of tax/social insurance incentives were granted to businesses affected by the pandemic that exempted from, reduce or defer the payments. Such incentives are valid until the end of April 2022 but are subject to the government's further determination whether to further extend the incentives or not.

Courts' Guidance for Bankruptcy Cases	
Heightened Reluctance to Initiate Bankruptcy Proceedings	Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the pandemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of pandemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly. In cases where a creditor initiates bankruptcy proceedings, courts shall actively guide negotiation between creditors and debtors to eliminate the need for bankruptcy proceedings by means of installment payments, extensions of the performance period for liabilities and changes of contract price, etc. When the courts are determining the eligibility of a debtor for bankruptcy acceptance, it will consider if the pandemic was the root cause of a debtors financial distress. The factors the court will take into account are: i. the ability of the debtor to continuously operate ii. the viability of the industry in which it operates as a whole (among other things) The purpose of this is to avoid bankruptcy proceedings for those debtors that could survive were it not for the impact of the pandemic.

China

Support for Businesses Engaged in the Manufacture and Sale of Materials for Pandemic Prevention and Control	According to Article 26 of the PRC Bankruptcy Law, before the first creditors' meeting, a bankruptcy administrator may decide to continue or halt the business of the debtor, subject to the court's approval. In such circumstances, courts are encouraging those debtors engaged in the manufacture, sale or logistics of materials that help control the pandemic to continue their businesses, and the courts seem inclined to approve such business continuance when decided by bankruptcy administrators.
Encouragement of Conversion of Bankruptcy Liquidation to Restructuring/ Reorganisation or Settlement	According to Articles 70 and 95 of the PRC Bankruptcy Law, after a court accepts a bankruptcy application but before the court declares the bankruptcy of the debtor, the debtor may apply to the court to convert the bankruptcy liquidation process to a restructuring or settlement process. In the present circumstances, courts are encouraging such conversions to help the debtors survive. This is particularly true for debtors engaged in the manufacture, sale or logistics of materials that help control the pandemic. In case of a bankruptcy restructuring/reorganisation, if no new investors can be found, due diligence was unable to be performed and negotiation could not be conducted due to the pandemic. The courts can however, extend the timeframe for a restructuring/reorganisation proposal by up to six months, on the application of a debtor or the bankruptcy administrator.
Procedural Updates	During the pandemic prevention and control period, courts are prioritising an online process for handling bankruptcy matters, such as hearings, creditors' rights declaration and reviews, bankrupt business property investigations and creditors' meetings. Courts are also permitting time extensions for relevant procedures in case of any delay caused by the pandemic to protect the interests of the parties involved, especially the interests of the creditors.

Czech Republic

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The Czech Republic does not have any temporary measures in place and pre-COVID-19 insolvency rules and regulations now apply to all companies.

France

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On 23 March 2020, and on 14 November 2020, France established a "state of health emergency" authorizing the government to take all necessary measures to combat the effects of the COVID-19 pandemic, including making temporary amendments to the French Commercial Code and the country's insolvency laws. The government's legislative powers and the measures, that have not already been reviewed or definitively integrated in the Code, ceased on 31 December 2021.

In parallel, on 15 September 2021, France also introduced (i) a reform of the insolvency regime in its Commercial Code, as well as (ii) a new insolvency procedure (called "crisis exit procedure") dedicated to assisting companies to exit support of the COVID-measures.

Several changes to French insolvency laws have been implemented since the beginning of the pandemic, first in 2020 with emergency measures (Orders of 27 March and 20 May), then in 2021 (Law of 31 May, Order of 15 September, Decree of 23 September and Decree of 16 October). The most recent measures in 2021 implement the EU Insolvency Directive No. 2019/1023 dated 20 June 2019 and amend certain sections of the Commercial Code, while definitively enacting some of the COVID-19 related measures. This reform entered into force on 1 October 2021.

The measures that may support French companies in overcoming the current crisis have been summarised below.

Improved Detection of Weak Businesses	France introduced an increased alert mechanism through various actors such as external auditors, financial institutions, tax authorities etc., in order to allow an early detection of financial difficulties so that these difficulties can be addressed in the most effective manner. The Presidents of the French Commercial Courts received increased powers to assist in such detection.
Increased Attractiveness of Preventive Procedures	France has introduced measures to increase the interest of preventive measures, such as the "conciliation" procedure, which is carried out when companies are facing financial difficulties, but are not yet insolvent. The attractiveness is increased through various measures: • Suspension of enforceability of receivables of creditors during the conciliation ("*délai de grâce*"), even prior to any formal notice or legal action from the creditors. Payments due can be suspended or paid through installments during the conciliation process. Guarantors can also benefit from the suspension of claims during the conciliation. • Securities can now be granted during the conciliation period and be fully effective in the event of insolvency. • The confidentiality of the conciliation process has also been reinforced. • The recourse to a 3-month *ad hoc* administrator is now possible during the 18 months that follow the signature of the restructuring plan if the company has less than 10 employees and is facing issues caused by the pandemic. The cost of this procedure has been set at €1,500 for companies of less than five employees and €3,000 for companies of 5 to 10 employees.
Assistance in Debt Restructuring	This measure has been designed for large corporations or companies with particularities in their field. Businesses that have more than 50 employees or are in need of debt restructuring may be assisted by a debt restructuring and insolvency prevention officer "*le commissaire aux restructurations et à la prevention des difficultés*". Companies of more than 400 employees may benefit from the assistance of the interministerial committee for industrial restructuring "*comité interministériel de restructuration industrielle*".

France

Increased Efficiency of Safeguard Proceedings	• The duration of safeguard proceedings to agree on a restructuring plan, which are available to solvent companies facing serious difficulties (before administration or liquidation proceedings), has been reduced from 18 to 12 months. The rule is now that any extension granted after the first 6 months can only be up to a maximum of another 6-month period and may only be granted upon a duly reasoned request for extension. • The payments under the safeguard restructuring plan must be of a minimum of 5% of the amount of each receivable after the third year and 10% after the sixth year. • Possibility to give security during the proceedings. • Facilitated possibility of disposing of certain non-essential assets of the company. • Secured creditors must declare their receivables (also in administration proceedings). • Any "classes of interested parties" constituted under the new regime in the context of safeguard proceedings remain the same in case of conversion into administration proceedings.
Extension of "Accelerated" Safeguard Proceedings	France has extended the use of accelerated safeguard proceedings as introduced during the COVID-19 pandemic. This procedure is now available to all companies irrespective of their size. It can concern all or only part of the creditors of the debtor. It can be initiated only by a company that is not yet insolvent (but facing financial difficulties) and which has been under prior conciliation. The company must be able to propose a restructuring plan within 2 months (with a possible extension to 4 months maximum), which means that an agreement with creditors must be reached in a very short period. Another novelty is the obligation to constitute "classes of interest parties" for these proceedings. In case of failure (no restructuring plan voted), the proceedings end. Since 1 January 2022, this measure is no longer available to natural persons whose assets do not include any real estate.
Security in case of Injection of New Money	In the context of safeguard and administration proceedings, any injection of cash into the business is rewarded with a special security (paid in second rank). The investment must be authorised by the court and made public. This measure promotes the injection of new money into the business to maintain and boost activity.

France

Increased protection and participation of creditors	The French reform created an obligation for: i. Companies under accelerated safeguard proceedings ii. Companies of more than 250 employees and more than 20 M€ turnover or companies with more than 40M€ turnover, to establish classes of affected parties These include creditors (secured and unsecured), as well as shareholders. The administrator establishes those classes based on the nature of the claim (as opposed to the nature of the creditor). The classes then vote at a majority of 2/3 of expressed votes on the proposed plan (or can propose an alternative plan in administration proceedings). The Tribunal exercise special control where an effected party or a class has refused to vote the plan and can, in certain circumstances, adopt the plan despite the rejection by certain classes of affected parties. In this assessment, the court takes into account the best interests of affected parties and the priority of creditors with securities or of a higher rank, which must be fully paid before any other creditor of lower rank is paid.
Silence equals Acceptance	In the event of an amendment of a restructuring plan (in safeguard or administration proceedings), the silence of creditors on the proposed plan now amounts to acceptance. This measure is not applicable where classes of interested parties have been constituted.
Facilitation of Professional Recovery/Second chance	This procedure, which allows debtors to erase their debts in under 4 months, has been improved by excluding the exempt property from the calculation of the debtor's assets. The measures aim at giving a second chance to honest directors of distressed or insolvent companies.
Financial Support	Some of the financial support measures which remain available to distressed companies are: • Solidarity Funds • Government-guaranteed loans (Available to all businesses that have suffered losses during October 2021 – these businesses must file their request before 31 January 2022) • Exceptional loans (Available for small companies of less than 50 employees, which could not benefit from a government-guaranteed loan) • Rescheduling of bank loans • Furlough of employees
Health Crisis Exit Procedure	This procedure has been available since 2 June 2021[1], and may be commenced only at the debtor's initiative and is aimed at small and medium-sized companies which have less than 20 employees and a total balance sheet below €3 million that have ceased all payments. The debtor lists all of his debts that will be taken into account in the restructuring plan. The procedure lasts no longer than 3 months. The plan, adopted within 3 months from the opening of the proceedings, is enforceable against both the debtor's guarantors and its co-obligors. The procedure has no impact on the employees, which continue to be paid by the debtor. This procedure is available until 2 June 2023.

1 Established by Article 13 of Law No 2021-689 dated 31 May 2021.

Germany

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Germany made a number of changes to its insolvency and related laws as a result of COVID-19, some of these have now expired including suspending the obligation to file for bankruptcy, however some measures still apply.

General Amendments to the German Insolvency laws	German insolvency laws were generally amended with effect from 1 January 2021: • The timeline to file for insolvency in case of over indebtedness has been extended to up to 6 weeks (instead of 3 weeks as applicable until the end of 2020). • When assessing over-indebtedness, the timeline for a positive going-concern prognosis will generally be set to 12 months. • A new preventive restructuring framework for enterprises has been introduced (implementation of the European Directive on the Preventive Restructuring Framework).
Ongoing Protection of Measures that Occurred During the Suspension Period	In order to give affected companies the opportunity to continue their business and eliminate insolvency risks, the suspension of the obligation to file for insolvency was suspended for certain COVID-19 triggered insolvencies as of 1 March 2020. The suspension period expired (on 30 April 2021). However, the suspension was supported by additional regulations that will also be recognised in future insolvency proceedings: • Corporate law prohibits certain payments when grounds for insolvency exist. These prohibitions have been relaxed during the applicable suspension period. Transactions made in the ordinary court of business, especially those that serve to maintain business operations or to implement a restructuring plan, are deemed to be made with the diligence of a prudent manager, and will not trigger any liability for the manager. • New loans granted during the applicable suspension period by banks and other lenders will be protected as follows: i. Repayments of such loans made until 30 September 2023. ii. Loans granted during the applicable suspension period, as well as the secured collateral for such loans, cannot be challenged in a subsequent insolvency. This will only apply to new loans; mere extensions of preexisting loans will not be protected. Collateral granted for such loans is also protected accordingly.

Germany

- Newly granted loans by shareholders during an applicable suspension period also have additional protections – repayments of such loans made until 30 September 2023 will not be considered disadvantageous to creditors, and cannot be challenged. Such loans will also not be subject to subordination in insolvency proceedings pursuant to Section 39(1) no. 5 of the German Insolvency Code in case such subsequent insolvency will have been opened until 30 September 2023. However, such protection does not apply to collateral granted for such loans.
- In cases where a company's creditor agreed prior to 28 February 2021 to defer payments, and will receive payment of such deferred liability prior to 1 April 2022, such payment will not be subject to any voidance claims of the insolvency administrator in case of the company's subsequent insolvency.
- Provisions have also been made to alleviate the concerns of distressed companies' contractual counterparties (such as suppliers, landlords and lessors). Contractual counterparties' receipt of payment (whether through the settlement of claims or through the furnishing of collateral) while the debtor was insolvent during the suspension period will be protected and cannot be voided in the event that the debtor's restructuring efforts fail and the debtor commences bankruptcy proceedings. The protection will apply to any performance in lieu of or on account of performance, payments made by a third party at the debtor's instruction, the furnishing of collateral other than that which was originally agreed if it is not of greater value, the shortening of time allowed for payment and the relaxation of payment terms. This restriction on avoidance actions also applies to companies that are not obliged to file an application (such as sole traders and limited partnerships with a natural person as the general partner) and debtors who are neither insolvent nor over-indebted. However, the restrictions of avoidance do not apply where the other party was aware that the debtor's efforts to restructure and finance the company were not suited to remedying the insolvency that occurred.

Italy

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Italy made a number of changes to its insolvency and related laws as a result of COVID-19, some of these have now expired while others still apply.

Measures Concerning Arrangements With Creditors and Restructuring Agreements	Petitions aimed at terminating concordato preventivo agreements and appeals filed for declarations of bankruptcy proposed in respect of companies which submitted their request for concordato preventivo con continuità aziendale, approved after 1 January 2019, are inadmissible. Until 31 December 2022, debtors that have requested admission to an arrangement with creditors without a defined plan, or agreements on debt restructuring, can withdraw their request provided that they have filed a debt recovery plan with the Companies Register, subject to court approval. The withdrawal request can be submitted within a deadline set by the court, ranging from 60 to 120 days from the beginning of the proceedings and extendable by 60 days.
New Insolvency Code	The new Insolvency Code enters into force on 15 May 2022, although certain rules relating to certain crisis resolution procedures are not scheduled to come into force until 31 December 2023.

Japan

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Unlike many other countries, Japan does not have specific laws governing insolvency, but rather there are various aspects of civil and commercial law that form the basis for insolvency in Japan. Accordingly, there have not been wholesale revisions to existing laws aimed specifically at providing relief from the impacts of COVID-19. Instead, the Japanese government, and to some extent private industry, have taken other steps aimed at mitigating the economic and financial hardship brought about by the COVID-19 pandemic.

Relief for Payment of Taxes and Utilities	On 30 April 2020, Japan amended its Act on General Rules for National Taxes and Local Tax Act. The amended act grants a 1 year grace period for payment of national taxes and local taxes if the taxpayer is experiencing financial hardship due to COVID-19 and its income has been reduced by approximately 20% or more compared with the same period of the previous year. Additionally, no overdue interest will be assessed against the taxpayer, and no security will be required. It is available for individuals or any entities and for any national taxes and local taxes. In addition, on 19 March 2020, the Ministry of Internal Affairs and Communications of Japan requested the local governments managing water, sewer and gas supply businesses to give a moratorium on bill payments for people suffering financially due to the COVID-19 outbreak, informing that, under the current situation, such moratorium will be allowed without local ordinances under the current Local Autonomy Act. The National Tax Agency has also provided for an extension of its corporate tax filing for a reasonable period if a corporation's 2021 annual shareholders' meeting is postponed due to COVID-19. In 2021 the National Tax Agency granted a one month extension of the filing and payment due dates for individual income tax, individual consumption tax and gift tax due to the COVID-19 pandemic. The National Tax Agency has not granted such an extension in 2022.
Subsidy to Support Companies that have Suspended Employees Due to COVID-19	The Ministry of Health, Labour and Welfare of Japan (MHLW) has expanded the Employment Adjustment Subsidy (*Koyo Chosei Jyoseikin*) program for companies to encourage and support the continued employment of their employees during the company's temporary suspension of business due to the economic downturn caused by COVID-19. Under Japanese law, a company that suspends their employees due to suspension of its business, for a "reason attributable to the employer," is required to compensate the employee for the time absent from work. The Employment Adjustment Subsidy provides subsidies to companies for this compensation and the expansion announced by MHLW expands the eligibility criteria to cover companies affected by COVID-19 and also increases the amount of subsidies for those companies. The expanded program will be available until 31 March 2022.
Changes in Delisting Criteria for Publicly Traded Companies	Under pre-revision Article 601.1.(5) of the Tokyo Stock Exchange Securities Listing Regulations, a listed company on the Tokyo Stock Exchange (TSE) was delisted when the company was insolvent as of the end of a fiscal year and its insolvency continued for an additional 1 year period. In response to the COVID-19 pandemic, from 21 April 2020, the TSE extended the delisting grace period from 1 year to 2 years for listed companies that have fallen into insolvency due to COVID-19. The TSE has clarified that it will not consider delisting a company to which an outside auditor expresses an "adverse opinion" or "no opinion" in the company's quarterly financial statements, as long as the company has been impacted by COVID-19.

Japan

Changes in Reassignment Criteria	The TSE has relaxed its reassignment criteria for companies adversely affected by COVID-19. Under the previous rule (Article 311.1.(5)), a company listed on Section 1 of the TSE could be reassigned to Section 2 if the company was insolvent as of the end of a fiscal year. Section 1 companies have been given a 1 year grace period before reassignment.
Are There New Moratoria on Debt Collection?	Financial industry – Sumitomo Mitsui Banking Corporation and Sumitomo Mitsui Trust Bank have offered to negotiate repayment conditions; Hokuriku Bank has waived fees in connection with amendment of repayment conditions.

Poland

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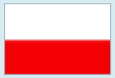

Poland has temporarily suspended bankruptcy filing obligations as a result of COVID-19 and implemented certain measures to allow restructuring.

Suspension of the Obligation to File for Bankruptcy	According to Polish law, a debtor needs to file for insolvency within 30 days following the occurrence of insolvency, i.e., (i) it has lost the ability to pay its debts when they mature or to discharge its debts (there is a presumption that the debtor is insolvent if the delay in payment exceeds three months); or (ii) certain cash liabilities exceed a debtor's assets and such state of affairs persists for more than 24 months. Following the Act of 16 April 2020, on Specific Support Instruments in Connection With the Spread of the COVID-19 Virus during the pandemic emergency or pandemic (as declared in compliance with applicable legislation) the term for insolvency filing is currently suspended and if the 30 day period had already commenced, it is halted and will start again. For a debtor company, the temporary suspension of filing obligations releases the representatives of the debtor (e.g., the members of the management board of the companies) from liability for a delayed insolvency filing. However, it does not release the members of the board from considering and filing a motion for a restructuring proceeding as provided for under the Restructuring Law. The legislation also provides that, if bankruptcy occurs during the period of the pandemic emergency or pandemic, it is deemed to be caused by COVID-19 and it extends the periods provided for by the Bankruptcy Law, the calculation of which is dependent upon the day of the bankruptcy filing. The Polish government declared a state of pandemic in Poland on 20 March 2020 that is still in force.
Introduction of Electronic Insolvency and Restructuring Proceedings	Since 1 December 2021, all applications for declaration of bankruptcy (both by the debtor or by the creditor) or opening any type of restructuring proceedings should be filed through the electronic portal maintained by the Minister of Justice. All subsequent correspondence in the proceedings will be delivered through the portal and should be submitted through the portal. Such applications should be signed electronically either by qualified electronic signature or by trusted signature (ePuaP). Further, the portal provides access to one register, which discloses data on persons and entities against whom restructuring and bankruptcy proceedings are conducted, as well as persons against whom enforcement was conducted, which was discontinued due to ineffectiveness, and natural persons against whom enforcement is pending maintenance and enforcement of state budget receivables arising from benefits paid in the event of ineffectiveness of the enforcement of alimony in arrears, with the fulfillment of these benefits for a period longer than 3 months.The portal with access to all bankruptcy and restructuring proceedings discloses applications filed after 30 November 2021 and disclosable after this date.

Slovak Republic

Home

In response to COVID-19, Slovakia currently provides temporary protection against insolvency.

Temporary Protection	To address negative economic impacts of COVID-19 on businesses, the Slovak Ministry of Justice adopted a number of temporary protections for companies from insolvency that became effective on 1 January 2021. In particular, the law is intended to prevent job losses, the loss of know-how of the endangered company and to bring a higher degree of satisfaction to creditors' claims. Entrepreneurs who have the centre of their main interests in the territory of the Slovak Republic are entitled to apply for the temporary protection.[1] The effects of temporary protection for businesses are: • Protection against creditors' insolvency petitions. • Suspension of the debtor's obligation to file for bankruptcy; the same applies for natural persons and legal entities who are required to file a bankruptcy petition on the debtor's behalf. • The prohibition of enforcement action against rights or other property belonging to the property, unless it would be the recovery of unjustified state aid or EU funds. • Temporary ban on pledge enforcement. • Prohibition to set-off receivables arising after granting the temporary protection against receivables of an affiliated person which arose prior to the temporary protection. • A party may not terminate a contract, withdraw from a contract or refuse to perform under a contract with an entrepreneur under the temporary protection for the reason of entrepreneur's delay in performance of its obligations under the contract occurring prior to granting the protection. Exceptions apply. • Periods for raising a claim against a protected company, including periods for raising claims against a debtor under claw-back provisions, are suspended for the duration of the temporary protection. A business can apply for temporary protection from insolvency proceedings by submitting an application to the competent court. The application can be sent exclusively in electronic form to the electronic mailbox of the relevant court.

1 Certain exceptions apply, e.g., for banks, insurance companies, reinsurance companies, health insurance companies, pension management companies and others.

Slovak Republic

	The applicant shall, *inter alia*, declare in the application that: • Temporary protection is agreed by an absolute majority of applicant's creditors, calculated according to the amount of their claims. • If an applicant is a legal entity, the applicant must declare that it is not aware of any legal reasons for its winding-up/ termination. • The applicant is not obliged to file an insolvency petition. • Granting the temporary protection shall not have the same effects as the commencement of insolvency proceedings, the declaration of insolvency, the commencement of restructuring proceedings or the authorisation of restructuring. • There are no enforcement proceedings pending against the applicant. • The enforcement of pledge right has not commenced against the applicant's business, movable assets, rights or other property belonging to the business. • The applicant has not distributed any profit or other of its own resources in the last 12 months prior to the application. • The applicant has not taken any measures to jeopardise the financial stability of its company in the last 12 months prior to the application. • The applicant keeps proper accounts and duly files separate financial statements and extraordinary financial statements. • The applicant has not applied for temporary protection in the last 48 months. • The applicant is registered with the Register of Public Sector Partners, should the applicant be a legal entity. Temporary protection will last for three months. This can be extended by three months if more time is required.

Spain

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The Spanish government implemented a series of measures after declaring a nationwide "state of alert" in response to COVID-19.

Most significantly, the obligation to file for bankruptcy has been suspended.

Suspension of the Obligation to File for Bankruptcy	Generally, a debtor must file for bankruptcy within two months of becoming insolvent but this obligation is currently suspended until 30 June 2022. The suspension also applies to debtors who had become insolvent prior to the state of alert, but had not yet filed for insolvency during the statutory 2 month period before the state of alert was implemented. While companies may file voluntary bankruptcy applications, the courts will not process involuntary bankruptcy applications submitted until 30 June 2022.
Other Rules Affecting Insolvency Proceedings	• Financing and payments made by persons especially related to the debtor: – In insolvency proceedings declared up to and including 14 March 2022, loans granted to the debtor by those who have the status of persons specially related to the insolvent party will be considered ordinary credits. Under normal conditions, they would be considered as subordinated credits.
Other Measures	• Suspension of the cause of dissolution for losses. – For the sole purpose of determining the concurrence of the cause of dissolution of companies, losses for the years 2020 and 2021 will not be taken into consideration.

UK

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The Corporate Insolvency and Governance Act (the 'Act') included a temporary relaxation of the laws around wrongful trading, a temporary ban on winding up petitions and orders where non-payment is COVID-19 related and also permanent changes to the UK's insolvency regime, including a new moratorium, protection of supplies (introducing an ipso facto regime) and a restructuring plan. Some of these provisions no longer apply.

Temporary Restrictions on Statutory Demands, Winding up Petitions and Orders	The position in the UK up until 1 October 2021 was that there was a temporary ban on winding up petitions unless the petitioner could overcome the coronavirus test. This meant that the petitioner would have to show that the financial effects of the coronavirus had no impact on the debtor company. However from 1 October 2021 petitions can now be presented, subject to certain conditions being met. There remains a prohibition on presenting a petition in relation to any debt due under a Landlord and Tenant Act 1954 lease, if the debt is unpaid due the financial effects of coronavirus. These temporary conditions are in place until 31 March 2022. Accordingly from 1 October 2021 to 31 March 2022 petitions for non-rent debts can be presented once the below four conditions have been met: • **Condition one**: the petition debt must (a) be for a liquidated amount, (b) have fallen due and (c) not be an 'excluded debt' (for commercial lease rent) • **Condition two:** the creditor must deliver written notice, seeking the debtor company's proposals for the payment of the debt: • The court may waive this condition upon application by the petitioning creditor • **Condition three**: a satisfactory proposal (in the opinion of the petitioning creditor) for the payment of debts has not been made within 21 days of providing written notice • **Condition four**: the debt (or debts) is £10,000 or more Excluded debt has been defined as any debt falling due under a relevant business tenancy, which is unpaid due to the financial effect of the coronavirus. This means that tenants who hold a commercial business tenancy, remain protected from any aggressive landlord action that could be taken against them due to unpaid rent. Although these provisions are in place until 31 March 2022, when the Bill (further details of which are set out below) is enacted that will prohibit a landlord from presenting a winding up petition for a further 6 months if the debt is a protected rent debt.

Insolvency Tools and Moratorium	The Act implemented permanent changes to the UK insolvency laws including: **Moratorium for Companies** The moratorium provides a simple way for companies who cannot or are unlikely to be able to pay its debts, to obtain the benefit of a moratorium for an initial 20 business days, with the option to extend that by a further 20 business days. The moratorium can be extended for up to 12 months with court and/or creditor consent. Similar to a Chapter 11 restructuring in the US, the company remains in the directors' control during the period of the moratorium, but instead of decisions being monitored by the court an insolvency practitioner will monitor the position. This is a standalone process and is designed to give companies breathing space from creditor pressure and a payment holiday from some creditors, enabling a company time to consider its rescue options which may include refinancing, administration, CVA, liquidation or proposing a restructuring plan. **Protection of Supplies to Enable a Company to Continue Trading** The Act introduced a provision to the Insolvency Act 1986 that prevents a supplier from terminating a contract because of an insolvency event or because of a pre-existing right to terminate that has not been exercised before the company enters into an insolvency process. The so called 'ipso facto regime' prevents suppliers terminating a contract and jeopardising the rescue of a business and applies to UK insolvency procedures including administrations, CVAs, liquidations as well as the moratorium. To protect suppliers impacted by this prohibition, any supplies made post insolvency will be paid by the company and if the supplier will suffer hardship as a consequence, the supplier can apply to court for an exemption to this provision. **Restructuring Plan** This tool enables companies to propose a plan that (subject to obtaining requisite consent and court approval) will bind all creditors (including secured creditors) whether or not they vote in favour of the plan, through the use of "cross-class cram down". The process is similar to a scheme of arrangement but enables companies to bind dissenting and secured creditors. The plan can be used in conjunction with the moratorium.

Recovery of Commercial Rent Arrears	There are a number of existing measures that impact commercial landlords seeking to recover unpaid commercial rent arrears as well as proposed new legislation that will introduce a binding rent arbitration scheme. Details of these measures are set out below: **Prohibition on Forfeiture and CRAR** Commercial landlords are prohibited from exercising their right to forfeit a commercial tenancy for non-payment of rent until 25 March, 2022, whether by proceedings or peaceable re-entry into the property. Commercial landlords are also prohibited from using commercial rent arrears recovery (CRAR) until then. There will be further restrictions on CRAR and forfeiture when the Bill (see further on this below) becomes law, if the rent debt is a protected rent debt under the Bill. For protected rent debts the moratorium on forfeiture and CRAR will remain in place for a further period of 6 months from the date that the Bill is enacted. **Code of Practice** The UK government has published an updated voluntary Code of Practice (the code) that encourages commercial landlords and tenants to negotiate and agree how unpaid rent (largely accrued during the COVID-19 pandemic) will be paid. The code sets out a number of principles that will also underpin the new rent arbitration scheme once that becomes law, but envisages that tenants should pay rent if they can.If they cannot, andlords should consider waiving or reducing rent to avoid viable businesses ceasing to trade. The UK government hopes that the code will encourage landlords and tenants to discuss and negotiate a solution before the Bill becomes law, but the code will continue to apply to those tenancies and rent arrears that do not fall within the remit of the Bill once that becomes law. The code encourages negotiating and sets out that tenants should negotiate with their landlord in the expectation that the landlord either waives some or all rent arrears where they are able to. If the Bill passes, on or around a current proposed date of 25 March 2022, the parties will be able to begin a legally binding arbitration process where an agreement has not yet been reached in relation to payment of any rent arrears (including service charges, insurance rent and interest on these sums). The process involves each party submitting proposals following which a counter-proposal can be submitted within 14 days, for the arbitrator to review. The arbitrator will assess the proposals in terms of viability and affordability of the business having looked at the business as a whole, taking into account a range of factors. An arbitrator may then decide to provide an award where the debtor is given a reduction in rent debt or extra time to pay, where the maximum time allowed will be 24 months.

	Commercial Rents (Coronavirus) Bill (the Bill) The Bill seeks to provide a mechanism to resolve disputes between commercial landlords and tenants in respect of unpaid rent arrears by introducing a legally-binding arbitration process. The Bill (as currently drafted) will apply to unpaid commercial rent arrears falling due between 21 March 2020 and 18 July 2020 that relate to business tenancies for the period during which the business was mandated to close their premises. The draft legislation is expected to become law in March 2022. **Court proceedings** Landlords can commence court proceedings to recover unpaid rent arrears, but in respect of proceedings issued after 11 November 2021 those proceedings may be impacted by the provisions of the Bill once it becomes law if the claim relates to debts that fall within the scope of the Bill i.e protected rent debts. Once the Bill becomes law, it will: • Prohibit landlords from enforcing judgment if the judgment relates to a protected rent debt, for a period of 6 months • Enable either party to apply to stay ongoing proceedings to enable the matter to be resolved by arbitration • Allow either party to apply for relief under the arbitration scheme in respect of a judgment for a protected rent debt • Prohibit a landlord from forfeiting, exercising CRAR (and other rights arising under the lease) and presenting a winding up petition if the debt is a protected rent debt.
Other Measures	• Support for employers and employees – There are a number of measures in place to support employment, including refunding up to 2 weeks of statutory sick pay and a government-backed job retention scheme. The scheme took effect from 1 March 2020, and was available until the end of September 2021. Under the scheme, the UK government agreed to refund 80% of employees' wages, up to a maximum of £2,500, where employees were furloughed, although the government backing was tapered from 1 July 2021 onwards. • Tax – To alleviate cash flow pressures, some industries (largely retail, hospitality and leisure) will benefit from business rates relief and reduced rate VAT. There is a VAT deferral scheme, and businesses can contact HM Revenue and Customs (HMRC) to agree a time to pay existing tax liabilities. • Protection from eviction – Commercial tenants who could not pay their rent because of COVID-19 were protected from eviction and did not automatically forfeit their lease if they missed a payment until 30 June 2021.

US

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The US has not implemented direct changes to its insolvency laws. However, on 27 March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law, which presented some businesses with additional financing options to mitigate risks. The CARES Act included a roughly US$2 trillion stimulus package – the biggest economic stimulus in recent US history. This economic relief provided expanded protections for US families, workers and businesses affected by the public health and economic crisis. Further, on 27 December 2020, the Consolidated Appropriation Act (CAA) was signed into law. The CAA included approximately US$900 billion in further emergency relief for the pandemic. Finally, on 27 March 2021, President Biden signed the COVID-19 Bankruptcy Relief Extension Act 2021, extending the bankruptcy relief provisions enacted in the CARES Act until 27 March 2022.

Key Measures Included in the Package	
Bailouts for Distressed Companies	Under the CARES Act, a US$500 billion fund controlled by the Federal Reserve was made available for a government lending program directed at distressed companies. Of this total amount, US$46 billion was set aside for industry-specific loans, including US$25 billion for passenger airlines, US$4 billion for cargo air carriers and US$17 billion for businesses critical to national security.
Small Business Protection	Under the CARES Act, a total of an approximate US$670 billion fund was made available to support small businesses, through the Small Business Administration (SBA) loan program: the Paycheck Protection Program (PPP). Significantly, in the bankruptcy arena, under the CARES Act, the threshold allowing businesses to take advantage of the streamlined bankruptcy protections available to small businesses will be raised from approximately US$2,725,625 to US$7,500,000. Although neither the CARES Act nor the Small Business Act preclude Chapter 11 debtors from receiving the PPP, SBA has promulgated loan applications and policies requiring PPP applicants to not be currently involved in bankruptcies. Courts were divided on whether SBA had the authority to create this bankruptcy-related requirement for PPP applicants. The CAA amended section 364 of the Bankruptcy Code to permit PPP loans to certain debtors and trustees. However, the CAA amendment also included a provision stating that the relevant amendment would only go into effect at the SBA's discretion. The CAA also amended section 541 of the Bankruptcy Code to exempt stimulus payments from the property of the estate.
Direct Payments to Taxpayers	Under the CARES Act, taxpayers with incomes up to US$75,000 per year received US$1,200 in direct payment, before phasing out for those earning more than US$99,000 per year. Qualifying families will receive an additional US$500 per child. These payments are excluded from the definition of "income" in the Bankruptcy Code for Chapters 7 and 13.
Expansion of Unemployment Benefits	Under the CARES Act, jobless insurance was extended by 13 weeks and includes a four-month enhancement of benefits. Individuals who are typically excluded from unemployment benefits (such as independent contractors) may be eligible for benefits.
Grants for Healthcare Providers	Under the CARES Act, a new grant program of US$100 billion was made available in support of healthcare providers. The stimulus package presented businesses with new avenues for obtaining capital and seeking remedies in the current unprecedented climate. However, it is important to plan in order to secure the full benefits of the new stimulus. Thoughtful restructuring strategies are essential to implement deployment of the funds in the most impactful way. At a minimum, in order to fully take advantage of the benefits of the stimulus and to minimise loss and volatility, companies need to enter this crisis with a plan on how they can integrate the stimulus relief into a long-term strategy that will help them navigate this crisis and emerge in the best possible financial condition.

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