

# Impact of Covid-19 on M&A

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# Part 1: Global M&A themes

The table below summarises key impacts on global M&A arising from the current coronavirus crisis

Issue	Observation	Examples/additional commentary
<b>Valuation/ purchase price impacts</b>	<p>There is scope for opportunistic purchase price renegotiation by buyers based on the impact and risk of Covid-19 to a target's business. In some cases, however, this may not be linked to an underlying drop in valuation. Sellers will look to characterise impacts as temporary or applicable to the broader sector but not the specific target.</p> <p>Locked-box purchase price models are favoured by sellers as they shift risk between the signing and closing of deals to the buyer. However, to be protected from adverse effects to the target, such as supply shortages, decreased sales or plant closures, which may reduce cash positions, increase financial debt and/or reduce current assets, buyers will prefer closing accounts providing at least for debt/cash/working capital adjustment mechanisms.</p> <p>Determination of 'normalised' working capital levels is a challenge, with businesses forced to re-evaluate working capital and cash flow based on immediate short-term needs and cost control measures and the utility of historical results doubted: collars, floors or different target numbers reflecting alternative future Covid-19 scenarios could mitigate uncertainties.</p> <p>The extent and duration of Covid-19 is prompting buyers to seek earn-outs and deferred consideration/vendor loans to manage cash flow and secure seller participation in boosting profitability post-deal closure. Creative pricing solutions may also bridge pricing gaps, for example, splitting deals into tranches or including profit warranties that, if met, reduce purchase price.</p> <p>Delayed payments involving complex adjustments may create price uncertainty. This may require mitigation of risks post-closing arising from the choices that are made during the Covid-19 crisis.</p>	<p>Various jurisdictions are seeing examples of sellers seeking (non-binding) confirmation that bidders will not revisit offer price as a result of travel and social distancing restrictions.</p>

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<b>Scrip consideration</b>	<p>Share-for-share transactions in particular face difficulties in the Covid-19 context, since not only the valuation of the target business, but also the valuation of the buying entity, may be challenging and/or volatile, especially in the case of listed companies. Mutual safety nets may be appropriate to limit such exposure, to the extent legally permissible.</p> <p>It is very difficult to value scrip in the current market which may render it unattractive to a shareholder in a public company as consideration for a takeover. The movement of the share price is likely to result in large amounts of deal uncertainty. In instances where there is limited cash flow, it may however be a viable alternative.</p>	<p>Regulations, corporations' law provisions, the constitutive documents of the company and tax requirements need to be considered carefully.</p>
<b>Material adverse change (MAC)</b>	<p>The wording of a MAC-clause determines whether and under which circumstances a party will be excused from fulfilling some obligation due to circumstances covered by the MAC or entitled to terminate the relevant agreement. In seller-friendly markets of late, MAC or material adverse effect (MAE) clauses are rare. Sellers are arguing for exclusion of for broad exceptions to MACs. In the current situation, buyers will seek to revisit or include MAC/MAE clauses to mitigate their Covid-19-related risks. Typically, a lot of negotiation takes place regarding whether the MAC is business-specific or whether it encompasses general changes in the economy.</p> <p><i>Existing contracts</i></p> <p>If contracts in existing deals include MAC/MAE clauses, these clauses will often not apply to Covid-19-related effects since adverse effects on general market conditions are usually excluded from the scope of MAC/MAE clauses and terms such as 'epidemic' and 'pandemic' were uncommon MAC carve-outs. Thus, in the case of a typical generic MAC clause, it is at present unlikely that a party will be able successfully to invoke a MAC due to Covid-19. Other remedies may achieve a similar outcome for the party contemplating reliance on a MAC: for example, in financing situations, there may be a remedy where financial covenants are breached due to the impact of Covid-19. In M&amp;A transactions, there may be non-satisfaction of some other condition (contractual or regulatory) or breach of a covenant as to the operation and results of the business since signing transaction documentation. In some jurisdictions, the buyer might appeal to general principles of the governing law (which differ across jurisdictions) such as force majeure, fundamental change of circumstances or frustration/hardship.</p>	<p>Buyer's position (example of a Corona Effects Clause in the form of a closing condition):</p> <p>'From the execution of the agreement until the closing, an effect or change materially adverse to the business, operations, assets, results of operations or financial or other conditions shall not have occurred due to the impact of Covid-19.'</p>

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<b>MAC</b> <i>(continued)</i>	<p><i>New contracts</i></p> <p>For new deals, whether or not parties choose to exercise their MAC is influenced by a number of factors, including: the degree to which the target is insulated from the effects of the virus; the extent and duration of the economic impact on the target; the perceived potential for a rapid recovery with the injection of capital and skills; the extent to which the real driver for the acquisition is the attainment of a long-term strategic objective; the ability to mitigate risk through price adjustments or other innovative drafting; and the extent to which the seller is a forced seller.</p> <p>A seller will likely seek specifically to exclude the impact of Covid-19 or to achieve broad carve-outs. Potential carve-outs (subject to careful review of the clauses in question) include changes generally impacting economic, political, financial or regulatory markets. The carve-outs may also address a view that with global economic markets contracting and many economies facing a recession, a carve-out for measures put in place by governments, financial and regulatory bodies to deal with the contraction of economies and slow-down of trade, such as the cutting of interest rates, may be needed.</p> <p>Potential carve-outs also include changes generally applicable to the markets or industry in which the target operates: for example, carve-out for targets operating in sensitive industries, such as tourism, hospitality, entertainment and air transportation, are experiencing significant changes across the board.</p> <p>Other potential carve-outs include pandemic-specific carve-outs, for example, pandemic carve-outs of general material adverse change provisions and carve-outs for changes in the law.</p> <p>Conversely, the protection the buyer is seeking may be difficult to achieve if a common MAC/MAE clause is used which requires occurrence of a new and yet unknown event or a material change of existing circumstances between signing and closing, since Covid-19 is already a known fact. Protection can therefore be achieved if the MAC/MAE-like clause is clearly tied to Covid-19 causing material deteriorations of the target company's business, the market in which the target company operates or financing conditions after signing ('Corona Effects Clause'). This could be achieved by a closing condition tied to the absence of material deterioration of the target's business due to Covid-19, the market in which the target operates or financing conditions, and by adding new closing conditions (eg, relocation of manufacturing capabilities outside of the 'red zone' or the end of quarantine within a certain timeframe). Also, interim covenants on conduct of business could be reinforced. Generally, it is recommended that MAC provisions are specifically tailored to Covid-19 instead of carving out general provisions.</p>	<p>Seller's position (example of a carve-out to a MAC-clause):</p> <p>“Material Adverse Change” means any result, occurrence, fact, change, event or effect that has a material adverse effect on the business, assets, liabilities, capitalisation, condition (financial or otherwise), results of operations [or prospects] of the Target, but excluding any epidemic, pandemic, disease outbreak or other health crisis or worsening thereof.’</p> <p>Possible carve-out to the exclusion as a compromise: ‘except to the extent of any [material] disproportionate effect on the Target as compared to others in its industry’.</p>

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Issue	Observation	Examples/additional commentary
<b>MAC</b> <i>(continued)</i>	To balance risk between the parties, adding specific thresholds to the Corona Effects Clause can be considered, for example, thresholds for Covid-19-related decline in revenue by a certain percentage, loss of a certain number of customers, shut down periods/length of production downtimes, import/export bans, etc. From a seller's perspective, a Corona Effects Clause should be narrowed to specific risks of the target business arising out of the coronavirus crisis, for example, contracts being terminated or re-negotiated. Buyers may, however, prefer a broader approach. Sellers may insist on receiving a break fee as compensation from the buyer in the event of a withdrawal.	
<b>Closing conditions (new deals)</b>	<p>In addition to MAC/MAE clauses, buyers are seeking specific closing conditions to address Covid-19-related uncertainty, including new regulatory requirements, achievement of specified financial metrics and triggers relating to specific contracts/customers.</p> <p>Factors requiring consideration include:</p> <ul style="list-style-type: none"> <li>• acquisition of local assets or participation in local companies may be subject to governmental review and control: Covid-19 is affecting decisions on foreign investments, in particular in relation to Covid-19-critical businesses and business sales at 'discount' prices;</li> <li>• third-party consents may be delayed, withheld or no longer available;</li> <li>• usual course of business undertakings may need to be adjusted, including to require compliance with specific Covid-19 business continuity plans (typically involving business infrastructure transformations, eg, to support remote working);</li> <li>• long-stop dates need to be carefully considered in light of the affected regulatory approvals timelines and processes; and</li> <li>• buyer-side financing may be less available and financing-out provisions may become relevant.</li> </ul>	In new transactions with private equity sponsors as buyers, investment committee approval has sometimes been included as a broad closing condition.
<b>Closing conditions (existing deals)</b>	<p>Parties are monitoring closely whether they can comply with closing conditions in view of shifting regulatory terrain, financial climate and relevant third-party circumstances – renegotiation of closing conditions or deferred closing may be required in some cases, including where necessary approvals and consents cannot be obtained until after contractual longstop or drop-dead dates.</p> <p>MAC conditions have not yet been widely enforced but may be relied upon by buyers seeking to avoid completion.</p> <p>Transaction document variation procedures will need to be observed by parties adjusting timelines and other conditions.</p>	Some closing dates and long stop dates have been deferred by months to reflect current circumstances.

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<b>Warranty impacts</b>	<p>The new circumstances will call for additional warranties providing comfort with respect to specific Covid-19-related items, such as liquidity planning; business continuity preparedness; healthcare; absence of significant Covid-19 infections among the target company's workforce; and the target company not being subject to specific Covid-19-related governmental orders addressing the target company.</p> <p>Sellers should seek knowledge and materiality qualifiers as well as avoid forward-looking warranties. They should further seek appropriate liability limitations and provide more extensive pre-closing disclosure with regards to Covid-19 effects in order to avoid liability. Certain standard warranties will have to be scrutinised more thoroughly in view of the coronavirus crisis, for example, compliance with new legislation enacted in response to the pandemic.</p> <p>In relation to remedies, consequential damages and lost profits will likely become more important for buyers in view of Covid-19-related effects, which will usually trigger mostly indirect damages but also direct ones. In light of market uncertainties and business disruption, we have seen instances of buyers relaxing requirements on sellers to continue operating the target business with a view to turning a profit. Exceptions have also been introduced to interim covenants to excuse the seller where non-compliance is caused by Covid-19.</p>	<p>Warranties include, for example, the existence and implementation of contingency plans; how customer relationships may have been impacted by Covid-19; changes to pricing terms; accounts receivable; employee issues such as remote working arrangements; and compliance with laws and any changes to laws arising from Covid-19.</p>

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<b>Interim covenants/ conduct of business restrictions</b>	<p>Given the pricing risk for both buyer and seller, and the long-term implications for the buyer, attention should be given to those clauses of the sale agreement governing interim conduct of the business between signing and completion. This is of relevance given that Covid-19 is anything but the ordinary course of business. Many companies are in fact laying off employees, refinancing debt obligations and renegotiating the terms of material contracts in order to mitigate the risks associated with Covid-19 and its impact on business. Due to likely delays in obtaining regulatory approvals, there needs to be more focus on the conduct of business covenant, from both the buy and sell side. The parties should therefore consider inserting flexible emergency Covid-19 clauses, allowing for actions not in the ordinary course of business to deal with unexpected Covid-19 effects and potentially even without potential consent requirements.</p> <p>Sellers may request certain adjustments in order to include a carve-out on conduct of business restrictions, to allow for flexibility regarding any contingency measures the target may undertake without approval of the buyer (such as drawing under credit facilities, plant closures, short-time work, reducing workforce, etc). Both the seller and the target will have to assess to what extent interim covenants can be complied with in light of Covid-19 and will require Covid-19-specific exclusions to interim covenants in order to do so. The parties should openly address these issues and agree on a specific and fair mechanism adequately to navigate the target company through the crisis between signing and closing without relying on the typical 'boilerplate' set of interim covenants. It is necessary to allow for actions to comply with legal or public health requirements or recommendations, and to protect the business – including with respect to employees, contractors, assets, properties, supply chains and customer relationships – without breaching other more general covenants.</p> <p>Sellers and targets should be careful with 'consistent with past practice' statements given that this may no longer be feasible. Generally, it seems difficult to restrict seller/target from taking adequate measures to address Covid-19 impacts, even if outside the ordinary course, especially in cases where buyers are protected under a Corona Effects Clause. Usually, exceptions to 'ordinary course' qualifiers will have to be negotiated to allow for special measures to be undertaken as a result of the risks of Covid-19 to a target's business.</p> <p>Careful consideration should be given to anti-trust/competition considerations. The buyer should have as much insight into the running of the business as is possible at this time, while urgent interventions that are not strictly 'ordinary course' may be required to mitigate the effects of the crisis (extending to enhanced notification requirements and virtual contingency arrangements). However, the business still needs to avoid any shift in control that would contravene merger laws.</p>	

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<b>Sunset dates</b>	<p>Parties are carefully considering allocation of risk in respect of delay in closing as a result of factors including delays in receiving regulatory approval and third-party consents.</p> <p>Parties are looking to agree realistic long-stop dates and mechanisms for extension in view of backlogs and reduced capacity of authorities and other stakeholders involved in necessary regulatory approvals and third-party consents.</p>	For existing deals, negotiation of extensions to sunset dates is under way.
<b>Rep and warranty insurance</b>	<p>Insurance carriers are willing to underwrite insurance cover in distressed scenarios. Some insurers have included Covid-19 exclusions in their insurance policies, particularly in relation to warranties on material contracts and insurances. Many insurers follow a case-by-case approach depending on the business and the relevant locations (eg, exclusions solely for plants in regions that are particularly affected by Covid-19). Questions regarding Covid-19 effects are frequently part of the underwriting process, which may result in additional disclosure requirements for the seller.</p> <p>Current market practice is that most warrant and indemnity (W&amp;I) insurers take a broad carve-out for losses triggered by Covid-19, although some insurers have signalled a willingness to take a more negotiated deal-by-deal approach.</p> <p>Because of the increased reliance on warranties in sale agreements as a result of short sale processes, we might expect a corresponding increase in the use of W&amp;I insurance. W&amp;I insurers normally expect to see a thorough due diligence process before offering cover, so any increase in cover availability may come at a premium, be based on altered conditions or based on prescribed wording for warranties. Where W&amp;I insurance is already in place, insureds should check their policy wording. Many policies include an express exclusion for losses arising out of the coronavirus outbreak.</p> <p>As Covid-19 is now a known risk, it is expected that, going forward, underwriters will specifically exclude any virus- or pandemic-related business losses from W&amp;I policies. As part of their due diligence exercise, underwriters will require that the parties to the deal have proactively assessed all potential losses. In particular, it is expected that underwriters will have a renewed focus on the following: current business continuity plans and projections; supply chain disruption; ability to terminate or suspend material contracts without penalty; and the companies insurance policies and the ability to recover for Covid-19 business losses. Additionally, it is reasonable to expect that underwriters will examine how the parties are addressing the risk of the impact worsening between signing and closing the transaction.</p>	<p>Some insurers are completely excluding any interruptions to business or losses arising from Covid-19, while others are approaching exclusions on a case-by-case basis. For example, while one underwriter seeks to generally carve out any and all impact of Covid-19 from coverage, the insured is negotiating the carve-out to exclude changes that do not disproportionately affect the target compared to other companies in the industries in which it operates.</p> <p>In <b>South Africa</b>, the insurance regulator has issued strict guidance regarding exclusions impacted by Covid-19 – they must be clearly communicated to current and new policyholders; new exclusions must be discussed with the authority; no delay is permitted in claims payments; and no additional costs or fees may be added during this period.</p>



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Issue	Observation	Examples/additional commentary
<b>Due diligence considerations</b>	<p>Where due diligence timescales are tighter, we may see <i>increased reliance on warranties</i> and due diligence exercise focused only on <i>material issues</i> (so-called ‘red flag’ reports). We might also see an increase in buyers’ reliance on vendor due diligence. We have seen an increased focus on financial due diligence to more thoroughly scrutinise whether the target business is likely to hold up in the current environment.</p> <p>The impact of the continued spread of Covid-19 on the operations of a target company will need to be considered by both the seller and the buyer in the due diligence process.</p> <p>Alongside the usual scope, there should be specific focus on the completing the following:</p> <p><i>Legal</i></p> <ul style="list-style-type: none"> <li>• consider the likely impact of the Covid-19 crisis on revenues and whether to re-open discussions on purchase price;</li> <li>• assess solvency and liquidity, especially where the target is in an affected industry, such as hospitality, travel, tourism or retail, and possible insolvency risks;</li> <li>• review target’s implementation of crisis plans (including plans to face any further spread of the virus) and appropriate response to business risk from Covid-19, as well as risk management protocols and contingency arrangements;</li> <li>• review of key contracts to ascertain whether obligations under those contracts are still capable of being met in the current environment, and, in particular, the likely impact of Covid-19 on the ability of key suppliers of the target to perform;</li> <li>• check whether the target may lower its rent based on certain typical provisions under its lease agreement in case of lockdown;</li> <li>• check the possibility of outsourcing certain activities in case of an emergency;</li> <li>• review the contractual rights to suspend performance and termination rights, along with any force majeure provisions or hardship clauses to establish whether the current crisis has a triggering effect;</li> <li>• consider all implications of employees working remotely (if applicable);</li> <li>• review all insurance policies of the target to ascertain whether they specifically exclude/cover any effects of Covid-19 and whether any business interruption provisions apply, as well as evaluate whether there is a requirement to mitigate loss;</li> <li>• review Covid-19-specific laws and regulatory restrictions applicable to the target, and any change of laws or crisis severity in a particular geographic region or regions in which the target operates;</li> <li>• review biosecurity measures adopted by the target to protect employees; and</li> <li>• Assess the target’s IT systems to ensure remote/virtual contingencies are possible.</li> </ul>	

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	<p><i>Financial</i></p> <ul style="list-style-type: none"> <li>• undertake financial due diligence relating to the specific effects of Covid-19 (cash flow/liquidity, review of receivables, additional provisions for doubtful debts, current trading, etc);</li> <li>• investigate whether the target's financing is sound or if finance agreements are subject to (Covid-19-related) force majeure or termination clauses;</li> <li>• assess emergency regulations affecting the target, including whether the target benefits from Covid-19 emergency measures such as emergency lending schemes, and how efficient the pay-out mechanism is, in order to ensure sufficient liquidity or any state-backed indemnities for short-time work of employees.</li> </ul> <p><i>Operational</i></p> <ul style="list-style-type: none"> <li>• undertake operational due diligence to assess the target company's supply chain, IT systems and general robustness operate sustainably under Covid-19 circumstances;</li> <li>• outline due diligence logistics, as increased due diligence time will likely be needed due to: <ul style="list-style-type: none"> <li>- challenges in creating and populating a data room, because employees may not have full access to all files from home;</li> <li>- inability to have in-person management sessions/due diligence sessions;</li> <li>- increased due diligence requirements by financiers and insurers; and</li> </ul> </li> <li>• (from the seller's perspective), undertake due diligence relating to the buyer's financing, that is, whether it is sound or subject to (Covid-19-related) force majeure or termination clauses.</li> </ul>	
<b>Financing issues</b>	<p>Reduced availability, increased pricing and delay of financing is causing buyers to seek closing conditions in relation to financing, including financing out conditions and conditions addressing the risk of financing being withdrawn. Buyers are being encouraged to keep regular lines of communication open with lenders to maximise visibility over financing changes, and to discuss in advance any potential issues relating to compliance with financial covenants.</p> <p>Creditors are enhancing analysis of and monitoring debtor solvency. Companies may therefore need to consider alternative financing sources and other revenue raising options. Deferred consideration/vendor loans are being considered to bridge funding gaps, and sellers will seek to have purchase price payment secured with appropriate collateral.</p> <p>Maintaining sufficient liquidity and preserving cash are the current priorities of most companies.</p>	<p>Buying opportunities may arise where over-gearred and cash-strapped companies seek equity injections; however, it will be important to consider events of default, cross-default, insolvency and distress.</p> <p>Borrower default can be addressed by financial covenants, alternative qualifying security and financial MAC clauses. <i>Part 1: slide 10</i></p>

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Issue	Observation	Examples/additional commentary
<b>Deal logistics</b>	<p>Restrictions in travel and gatherings resulting from Covid-19 may make it difficult or impossible for the directors of a company to physically hold a directors' meeting. It may be possible for the directors to act by way of a written resolution instead of holding a physical meeting, or for the directors to meet by remote means. Companies need to check their organisational documents (eg, constitution, articles of association, etc) as well as company law in their jurisdiction to understand what is permitted.</p> <p>The physical separation required by Covid-19 has also given a much greater focus to electronic signatures and many companies are using electronic signatures to execute agreements. Pursuant to quarantine measures adopted in certain countries, there may be difficulties in executing documents or carrying out procedures before certain authorities (eg, documents that need to be executed before a public notary, as required under the apostille process, among others), which may delay the timing of transactions. While electronic signatures will be of use in a great number of situations, their use does require careful consideration, particularly while a new market practice develops. Where a transaction involves more than one jurisdiction, the use of e-signatures should be considered with local counsel in each jurisdiction.</p> <p>It is likely that deal logistics and transaction timetables will require a longer timeframe, due to delayed regulatory responses/approvals, travel restrictions (lack of ability to perform onsite technical due diligence), and delays in acquisition financing, etc.</p>	<p>Absent any company-specific restrictions, English law allows boards to take decisions by virtual means or unanimously in written form (including by email), and shareholders can take decisions by written resolution. This was commonplace before the coronavirus pandemic and continues to occur. If anything, it has become more prolific. Under English law, certain documents need to be signed in the presence of a witness. This has become increasingly difficult considering social distancing restrictions in place in the United Kingdom. As a matter of general practice, firms advise against allowing a family member to act as a witness for this purpose. However, this is not a rule of law and it appears that firms are becoming more relaxed about this recommendation in the current circumstances. Unsurprisingly, we have seen some transactions delayed or cancelled. Social distancing restrictions in place in the UK have led to a significant increase in electronic signing solutions for the execution of M&amp;A transactions.</p>

# Global M&A themes

Issue	Observation	Examples/additional commentary
<b>Employees</b>	<p>The extent to which employees within a target business can work remotely will impact on the target's performance. It is important for the buyer to ensure all insurance policies are in place given the likelihood of Covid-19-related claims from target employees.</p> <p>In the case of new transactions, it may be necessary for the buyer to check whether the target is complying with laws and obligations towards its employees as well as data protection laws and regulations.</p> <p>Regulatory obligations may override certain contractual provisions. These should be understood and catered for in agreements.</p>	
<b>Regulatory approvals</b>	Regulatory approvals are being delayed by increased application traffic, altered regulator priorities, adjusted regulations, contextual uncertainty and changed regulator operations. Therefore, longer periods for obtaining regulatory approval are being agreed between parties.	<b>Australia:</b> dollar thresholds for foreign investment approvals have been temporarily reduced to \$0 in most cases (see further below).
<b>Hostile bids</b>	<p>Tumultuous market conditions have increased pressure on activists, who are facing losses in their holdings and a lack of attractive exit opportunities. Already, several high-profile activist campaigns and hostile takeover efforts have been abandoned.</p> <p>In recent years, M&amp;A has been a dominant theme in many activist campaigns. Given the limited prospects for M&amp;A in the current environment, the level of M&amp;A-related activism can be expected to decrease significantly. Other common activist demands, such as increased capital return to shareholders, long-term operational improvements and management shake-ups, are less likely to gain traction as companies focus their efforts on coping with near-term challenges posed by the pandemic.</p> <p>Activists may also find it difficult to maintain the attention of investors necessary to prevail in a campaign. Still, activists with a longer-term view may use depressed prices as an entry point to take position and wait for the markets to stabilise before advocating for M&amp;A or pressing forward with a campaign</p>	In recent years in the <b>United States</b> , M&A has been a dominant theme in many activist campaigns. Given the limited prospects for M&A in the current environment, the level of M&A-related activism can be expected to decrease significantly.

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Issue	Observation	Examples/additional commentary
<b>Force majeure</b>	<p>For many businesses contending with the Covid-19 pandemic, a key priority will be seeking to suspend or be excused from contractual obligations. Assessing whether a force majeure clause has been triggered requires detailed and careful interpretation of the specific terms of the force majeure clause and of the wider contract, as well as consideration of the circumstances.</p> <p>While 'Covid-19' will not appear in existing agreements, perhaps the force majeure clause includes terms such as 'Act of God', 'action taken by a government or public authority', 'epidemic' or other similar term(s). This will depend on the precise wording of the clause and may well end in a dispute between the parties. Courts tend to interpret such clauses strictly (ie, in the event of any ambiguity, it is unlikely that the clause will apply).</p> <p>Renegotiations under force majeure-like concepts may be considered but are unlikely to succeed under typical terms in most European jurisdictions.</p>	<p><b>Ireland:</b> if contracts do not include a force majeure clause, or if the clause arguably does not cover Covid-19, parties seeking protection may be able to rely on the doctrine of frustration at common law (ie, where it becomes impossible or illegal to perform the contract).</p>

# Part 2: Country-specific impact

The table below identifies certain impacts of coronavirus being seen in specific jurisdictions

Country	Area of impact	Details
<b>United States</b>  Contributed by:  <b>Nanette C Heide</b> <i>Duane Morris, New York</i> <b>ncheide@duanemorris.com</b>  <b>Steven Cohen</b> <i>Wachtell, Lipton, Rosen &amp; Katz, New York</i> <b>sacohen@wlrk.com</b>	<b>Overall observations</b>	<p>While much of the story remains to unfold, it is already clear that the Covid-19 pandemic and resulting economic disruption have had a pronounced negative effect on United States and global M&amp;A activity. After nearly a decade of growth, global M&amp;A activity in the first quarter of 2020 is down 39.1 per cent by total signed transaction value compared to the first quarter of 2019, according to a report by Mergermarket. The US M&amp;A market's decline has been even steeper, at 57 per cent by value of signed deals. While the majority of pending transactions have proceeded as planned so far, many deal discussions and sales processes have been placed on indefinite hold or abandoned altogether.</p> <p>M&amp;A activity is likely to remain soft overall so long as the crisis persists. It remains to be seen whether cash-rich acquirers and investors, including private equity funds and hedge fund activists, will seek to take advantage of lower equity prices once things begin to stabilise, or whether a greater level of balance sheet management and conservatism will persist.</p>
	<b>Effects on pending deals</b>	<p><i>Deal terminations beginning to appear</i></p> <p>According to an 8 April 2020 Bloomberg report, 66 M&amp;A transactions have been terminated since 11 March 2020, when the World Health Organization (WHO) declared Covid-19 a pandemic. This is more than the number of terminations reported in January and February combined. The majority (63 per cent) of these were all-cash deals. Only a small minority (15 per cent) were all-stock deals, including the abandoned \$14bn merger of equals between Woodward Inc and Hexcel Corp. All-cash deals are likely to continue representing most terminated deals as companies facing the immediate and sharp downturn in sales turn their attention to preserving cash, and because both parties to all-stock deals may have experienced similar declines in their share prices.</p> <p><i>Potential for litigation</i></p> <p>Some buyers are considering the implications of Covid-19 under their transaction agreements, and in particular, whether the pandemic may be a contractual excuse. Litigation can be expected to result. Nearly every US M&amp;A agreement includes a defined term for a MAE or similar concept and provides that the occurrence of a MAE can give rise to transaction termination rights or excuse a party from closing the transaction. Although there have not yet been any instances of parties publicly asserting a MAE based on Covid-19, this may change if current conditions persist. While proving a MAE has traditionally proved difficult, it is possible that the impact of Covid-19 may be so unprecedented that legal precedent on this issue will fail to give clear answers. As discussed in more detail below, the success of any MAE claim will depend on the specific language of the contract. In addition, as many companies are forced to take extraordinary measures to protect their business and operations, a heightened focus among parties can be expected on compliance with interim operating covenants, which generally require the target to operate in the ordinary course and consistent with past practice.</p>

# Country-specific impact

Country	Area of impact	Details
United States (continued)	Effects on pending deals (continued)	<p><i>Financing uncertainty</i></p> <p>So far, there have been no reports of deals being terminated based on a buyer's failure to obtain committed financing as a result of the coronavirus crisis. Depending on the length of the crisis, however, it is possible that some lenders and other financing sources will seek justification for reneging on commitments to fund deals at closing. In doing so, lenders may make arguments similar to a buyer seeking to walk away from a deal. Often, debt financing provisions contain a similar or identical MAE definition as in the associated M&amp;A agreement. In deals conditioned on the buyer obtaining financing, often a target company's only remedy if the required financing is not obtained is to collect a reverse termination fee from the buyer. In other cases, lenders may encourage deal parties to restructure pending transactions or reduce the purchase price. Regardless, potential buyers are likely to consider the effect of prolonged uncertainty about the availability of financing when considering transactions requiring significant financing to fund the consideration.</p> <p><i>Delays in regulatory review</i></p> <p>Especially in the near term, while much of the US population – including government officials – remain under 'stay-at-home' orders and other restrictions, the timing of regulatory approvals has become difficult to predict. For example, Waste Management announced on 18 March 2020 that its pending \$4.9bn merger with Advanced Disposal Service would not close on the parties' anticipated timeline due to Covid-19-related delays impacting the Department of Justice's antitrust review. While the Federal Trade Commission has resumed granting early termination of the waiting period under the Hart-Scott-Rodino Act (typically 30 days) after initially suspending it in March, it is likely that such grants will be fewer and slower. As similar delays across agencies persist, parties may consider the impact of these delays on their ability to obtain required regulatory approvals in a timely manner, especially given that in many agreements, the failure to do so by a specified 'end date' or 'outside date' may provide independent grounds for termination or excuse a party's failure to close.</p>
	Effects on future deals	<p><i>Prudence and optics</i></p> <p>Such a sudden and severe drop in economic activity has not been seen in many years. The result in the US has been shocking unemployment numbers, enormous drops in revenue for many businesses – especially those in retail, hospitality and travel – in addition to enhanced health risks. In such an environment, naturally, a trend toward more conservatively managed balance sheets, avoiding incremental risks and trying to avoid the appearance of voluntary staffing cuts will likely emerge. Therefore, it is likely that many transactions involving personnel synergies or substantial borrowings which may have made commercial sense prior to the crisis will no longer be possible, at least in the short term. Whether this dampening impact on deal activity persists for a few months, quarters or years is an open question, and there is little historical precedent of relevance to help predict the answer.</p>

# Country-specific impact

Country	Area of impact	Details
United States (continued)	Effects on future deals (continued)	<p><i>Valuation difficulties</i></p> <p>Even under normal conditions, achieving alignment on valuation can be challenging. The current market volatility has dramatically increased the likelihood of a meaningful valuation gap, as the effects of the crisis on valuations, projections, working capital, liquidity and long-term strategic plans continue to be sorted out. Bearing in mind the continually evolving nature of the crisis and its uncertain aftermath, quantifying these effects will be challenging, potentially leading to prolonged purchase price negotiations and ultimately contributing to a decrease in parties coming to terms.</p> <p><i>Longer and expanded diligence</i></p> <p>Parties should expect longer diligence processes with an increased focus on certain areas. While public health restrictions are in place, the pandemic is causing logistical challenges for the traditional M&amp;A diligence process. Among other issues, most parties will not be able to conduct in-person diligence visits for some time, and the process of gathering documents and other diligence materials may be delayed. Substantively, Covid-19 has sharpened parties' focus on a target's ability to weather not only the present crisis but also future pandemics and other crises, alongside its vulnerability to various forms of business disruption. Parties may value, for example, the stability of a target's supply chain and distribution chains, the ability of the target to operate its business 'remotely' should the need arise, the adequacy of the target's insurance coverage (eg, business interruption insurance) and the ability of a target to enforce its material contracts in the face of potential non-performance or assertions of termination rights by counterparties citing force majeure or similar clauses.</p> <p><i>Drafting trends</i></p> <p>The pandemic has already affected parties' drafting of transaction agreements, particularly MAE definitions. According to a study by law professors Matthew Jennejohn, Julian Nyarko and Eric Talley, of 1,128 MAE definitions in acquisitions signed between January 2003 and March 2018 across 21 industries, only 8.3 per cent <i>explicitly carved out pandemics from the definition</i>. The majority of MAE definitions (around 60 per cent), <i>did not even address a pandemic</i> or similar event with either explicit terms or generic terms such as 'act of God' or 'force majeure', which may be interpreted to cover pandemics. Since 2008, however, pandemics have increasingly been carved out of MAE definitions, and in the wake of Covid-19, that trend has accelerated dramatically. According to Deal Point Data, since 1 February 2020, the majority of public company M&amp;A agreements carved out pandemics or similar events from the MAE definition (around 75 per cent), with some deals, such as Aon's combination with Willis Towers Watson and Morgan Stanley's acquisition of E*Trade, specifically carving out Covid-19. As parties consider (and potentially litigate) assertions of MAEs, they can be expected to focus on issues such as whether generic carve-outs are sufficiently broad to apply to Covid-19 and, since targets generally cannot rely on MAE carve-outs if they are disproportionately affected, the proper reference group for measuring disproportionate impact. As always, these issues are heavily dependent on the language of the agreement and other transaction-specific factors.</p>



# Country-specific impact

Country	Area of impact	Details
United States (continued)	Public companies: effects on shareholder activism	<p><i>Increased opportunities with public companies due to depressed share prices</i></p> <p>Shareholder activism has declined but not disappeared. While global activist campaign activity in the first quarter of 2020 has lagged compared to previous years, an uptick in activity in March suggests that the rest of the year could see elevated levels of activism. Activists have amassed record-setting levels of capital over the past several years and are constantly looking for opportunities. With many companies' share prices artificially depressed, some activists and other opportunistic investors may seek to acquire high-quality assets at meaningful discounts to intrinsic value. Companies that have suffered disproportionate declines relative to their industry peers are likely to be particularly vulnerable. In anticipation of this threat, companies are adopting shareholder rights plans at an accelerated pace, and many others are preparing 'on the shelf' rights plans that can be deployed on short notice if necessary. Between 1 March 2020 and 8 April 2020, 27 companies adopted shareholder rights plans, compared to seven companies over the same period in 2019.</p> <p><i>Increased pressure on activists and hostile bidders</i></p> <p>Tumultuous market conditions have also increased pressure on activists, who are facing losses in their holdings and a lack of attractive exit opportunities. Already, several high-profile activist campaigns and hostile takeover efforts have been abandoned, including Elliott Management's campaign in opposition to CapGemini's acquisition of Altran Technologies and Xerox's hostile bid for HP.</p> <p><i>Unfriendly environment for most activist themes</i></p> <p>In recent years, M&amp;A has been a dominant theme in many activist campaigns. Given the limited prospects for M&amp;A in the current environment, the level of M&amp;A-related activism can be expected to decrease significantly. Other common activist demands, such as increased capital return to shareholders, long-term operational improvements and management shake-ups, are less likely to gain traction as companies focus their efforts on coping with near-term challenges posed by the pandemic. Activists may also find it difficult to maintain the attention of investors necessary to prevail in a campaign. Still, activists with a longer-term view may use depressed prices as an entry point to take positions and wait for the markets to stabilise before advocating for M&amp;A or pressing forward with a campaign.</p>

# Country-specific impact

Country	Area of impact	Details
United States (continued)	Economic relief provided by US government	<p><i>Applications for economic relief under CARES Act</i></p> <p>On 27 March 2020, the US Congress and President enacted the Coronavirus Aid, Relief and Economic Security Act (CARES Act), the largest economic stimulus package in American history, providing \$2tn in essential financial and medical assistance to industries, businesses and individuals affected by the crisis. Included in the CARES Act is a provision for Paycheck Protection Program (PPP) loans. Many 'small businesses' in the US (primarily those with 500 or fewer employees) have taken advantage of PPP loans. The application for the loan requires a certification from the borrower that '[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant'. During due diligence in a subsequent M&amp;A transaction, such a loan application could raise questions as to the financial integrity of the business. Moreover, a loan application should be reviewed for consistency with prior representations, including management presentations. Finally, commentators have stated that there will be significant oversight of the funds distributed pursuant to PPP loans, including private individuals who may seek to exercise their rights under the Freedom of Information Act (FOIA) with a view to publicising those who, in their view, were not the intended beneficiaries of the PPP. In an M&amp;A transaction – particularly for those with smaller and private companies who are availing themselves of PPP to survive during this challenging period – this could give rise to negotiations for additional indemnities for these risks. Additionally, we may see innovative structures arising as businesses find themselves illiquid despite CARES Act aid and there becomes a need to re-finance or sell without clarity on liabilities in a rapid timeframe.</p> <p><i>Other economic relief through government programmes</i></p> <p>In addition to PPP loans, other avenues of economic relief include the Main Street Expanded Loan Facility, which deals with additional loan tranches under existing credit facilities, and the Main Street New Loan Facility, which deals with origination of new lending facilities. There are also tax credits and deferrals, general loan forbearance, and structures for employee layoffs and furloughs. These programmes are unprecedented in scale and reach – including junk bond credit support and asset-backed support. For example, these programmes may create availability for financing that would otherwise be unavailable or carry lower interest costs and thereby support deal activity. In addition, for companies that participate in these programmes, there could be risks not only related to the proper certification and implementation by the company, but also to the spending and use of the funds. Care should be taken to review any government updates or questions, as well as any audits of the company participating in any of these programmes. The economic relief received by a company should be reviewed in light of compensation paid to board members, executives, recent capital raises, distributions to shareholders and so forth. These factors may be weighed in assessing valuation and risk allocation through the M&amp;A transaction documents.</p>

# Country-specific impact

Country	Area of impact	Details
<b>The Netherlands</b>  Contributed by:  <b>Hans Witteveen</b> <i>Stibbe, London</i> <b>hans.witteveen@stibbe.com</b>	<b>Wage compensation</b>	If a Dutch company can demonstrate a 20 per cent or more reduction in expected turnover as a result of Covid-19, they may consider applying for a temporary reduction of wage costs. The Dutch government will then compensate up to 90 per cent of the employer's wage costs (the applicable percentage corresponds with the expected loss of turnover) for three months with a possible extension for another three months. Two conditions apply: 1) the employer must continue to pay the employees 100 per cent of their wages; and 2) the employer cannot terminate employees for redundancy reasons while it receives the governmental support.
	<b>Tax support</b>	The Dutch government has announced extraordinary tax measures to mitigate the economic impact of Covid-19, including deferral of tax payments, reduction of interest payable on taxes due and reduction of advance tax payments on provisional tax assessments.
	<b>Court proceedings</b>	The ability to obtain relief in a Dutch court on short notice may be impacted as a result of Covid-19, given that Dutch courts are, generally speaking, only dealing with matters of a sufficiently urgent nature that cannot be postponed to later than 28 April 2020. This may change depending on how Covid-19 progresses in the coming months.

# Country-specific impact

Country	Area of impact	Details
<b>Japan</b>  Contributed by: <b>Takashi Toichi</b> <i>TMI Associates, Tokyo</i>  <i>ttoichi@tmi.gr.jp</i>	<b>Reporting obligations under the Foreign Exchange and Foreign Trade Act</b>	Under the Ministerial Ordinance Concerning Reporting of Foreign Exchange Transactions, etc (Ordinance of the Ministry of Finance No. 29 of 1998, as amended), which came into effect on 12 March 2020, if it is impossible to comply with reporting obligations thereunder on or after 25 February 2020 (eg, a report of certain capital transactions and outward direct investment, etc, not including inward direct investment) due to unavoidable circumstances resulting from the Covid-19 pandemic, there is no requirement to do so. Such reporting obligations must be performed without delay once it becomes possible to do so.
	<b>Annual securities and other reports</b>	On 10 February 2020, the Financial Services Agency announced that: 1) if annual securities reports, internal control reports, quarterly securities reports and semi-annual securities reports cannot be submitted by the deadline due to unavoidable reasons resulting from the impact of the Covid-19 pandemic, the submission deadline may be extended via the approval of the head of the local finance bureau or its branch office; and 2) if a company cannot prepare an extraordinary report itself due to the impact of the Covid-19 pandemic, after the circumstances causing the delay end, the company shall submit the report as soon as possible, and the report shall be deemed to have been submitted without delay.

# Country-specific impact

Country	Area of impact	Details
<b>Denmark</b> Contributed by:  <b>Henrik Rossing Lønberg</b> <i>Plesner, Copenhagen</i> <a href="mailto:hrl@plesner.com">hrl@plesner.com</a>  <b>Finn Lerno</b> <i>Plesner, Copenhagen</i> <a href="mailto:fjl@plesner.com">fjl@plesner.com</a>	<b>Regulatory approvals</b>	<p>The Danish Competition and Consumer Authority (DCCA) has officially announced a temporary suspension of the deadlines for processing merger control filings. The Danish Financial Supervisory Authority (FSA) has informally indicated that the same is the case with respect to approval of transfers of a controlling interest in a financial business. The effect of the suspension is that there will be a delay in closing M&amp;A transactions that are subject to regulatory approval.</p> <p>To preserve European Union companies and critical assets, especially in areas of health, medical research, biotechnology and infrastructures, the European Commission on 26 March 2020 issued guidelines to ensure that in a time of public health crisis and economic vulnerability, a strong EU-wide approach to foreign investment screening is used.</p> <p>National foreign direct investments (FDI) screening mechanisms are currently in place in 14 Member States, but not in Denmark. The Danish government is currently contemplating whether or not to exercise the authority in the current EU rules to screen FDI from non-EU countries.</p> <p>The European Commission has called on the remaining Member States, including Denmark, to set up a fully fledged screening mechanism and, in the meantime, to consider all options in compliance with EU law and international obligations and to address potential cases where the acquisition or control by a foreign investor of a particular business, infrastructure or technology would create a risk.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Chile</b>  Contributed by: <b>Pablo Iacobelli Carey,</b> <i>Santiago</i> <b>piacobelli@carey.cl</b>	<b>Flexibilities granted by the CMF for corporations subject to supervision</b>	<p>The Commission for the Financial Market (CMF) has authorised the use of technological means to ensure participation and voting of shareholders in shareholder meetings of public corporations and public funds as well as of bondholders in bondholder meetings.</p> <p>The CMF has extended by 15 additional calendar days the maximum timeframe to file annual reports and annual audited financial statements that supervised entities must disclose and file with the CMF during March 2020.</p>
	<b>Delays in procedures before public services</b>	<p>Pursuant to quarantine measures, many public services are closed or working remotely, and are thus experiencing delays in procedures taken before them. For instance, delays have been experienced 1) in the execution of public documents before notaries; 2) in the registration of documents before public registries; and 3) regarding procedures to be taken before the Chilean Internal Revenue Service (IRS), among others.</p>
	<b>Merger control process</b>	<p>Regarding the merger control process, the Chilean National Economic Prosecutor's Office (FNE) has adopted certain exceptional measures to facilitate procedures before such entity due to the pandemic, including:</p> <ul style="list-style-type: none"> <li>• allowing power of attorneys to be signed with electronic signature or to be granted via email;</li> <li>• communications with the FNE to be made via email;</li> <li>• citations to depositions to be sent via e-mail and depositions to take place remotely by videoconference. After the deposition, the declarant is to send an email to the FNE indicating whether he/she ratifies his/her testimony, attaching a copy of his/her identity card; and</li> <li>• mergers shall be notified physically or via e-mail. Communications and queries with the Pre-Notification team should be made by email.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
Chile (continued)	<b>New labour laws to be taken into consideration during the due diligence process</b>	<ul style="list-style-type: none"><li>• The Telework Law, which regulates all labour matters on teleworking, such as rights of employees, working tools, and health and safety obligations, among others.</li><li>• The Employment Protection Law, which seeks to protect the labour source of workers, allowing them to access the benefits and complements of severance insurance when the following situations arise: 1) the employment contract is suspended by an act of authority (quarantine); 2) an agreement is reached to suspend the employment contract; or 3) a temporary reduction of the working hours is agreed.</li></ul>
	<b>Theory of Unforeseen Events in Contracts under Chilean law</b>	The Supreme Chilean Court has traditionally rejected the application of the Theory of Unforeseen Events in Contracts, under which a party who is prejudiced by unforeseeable events beyond its control (but not qualifying as force majeure), resulting in an excessive burden for the performance of the contract's obligations, may request the court to review or terminate the contract. However, parties may expressly include a clause authorising the application of such theory on agreements executed under Chilean law. Therefore, contracts may not be revised in order to adjust obligations pursuant to the pandemic, unless it was expressly agreed by the parties under the relevant contract.

# Country-specific impact

Country	Area of impact	Details
<b>Germany</b> Contributed by:  <b>Ralf Morshäuser</b> <i>Gleiss Lutz, Munich</i> <b>ralf.morshaeuser@gleisslutz.com</b>	<b>Covid-19-Abmilderungsgesetz (Covid-19 Mitigation Act)</b>	<p><i>Frustration of commercial contracts</i></p> <p>Where a consumer or a microenterprise is the debtor of a material long-term obligation, such party has the right to refuse performance under a contract until 30 June 2020 if:</p> <ul style="list-style-type: none"> <li>• the contract was concluded before 8 March 2020; and</li> <li>• performance is impossible or not possible without risking the reasonable livelihood or the economic basis of the business.</li> </ul> <p><i>Lease agreements</i></p> <ul style="list-style-type: none"> <li>• A temporary suspension of termination right due to non-payment or reduced payment of rent has been introduced from 1 April to 30 June 2020, but the tenant is obliged to settle open payments from this period until 30 June 2022. The tenant must provide credible evidence that non-performance is due to Covid-19 pandemic.</li> </ul>
	<b>COVInsAG (COVID Insolvency Suspension Act)</b>	<p><i>Filing obligation</i></p> <ul style="list-style-type: none"> <li>• Filing obligation is suspended until 30 September 2020, unless:               <ul style="list-style-type: none"> <li>- insolvency was not caused by the effects of the Covid-19 pandemic; or</li> <li>- there is no prospect of eliminating the inability to pay; and</li> </ul> </li> <li>• the suspension also applies to opening of insolvency proceedings based on filings by creditors made between 28 March and 28 June 2020 if the insolvency trigger occurred after 1 March 2020.</li> </ul> <p><i>Easing payment restrictions and facilitation of external funding</i></p> <ul style="list-style-type: none"> <li>• permission is granted for all payments in ordinary course of business, no potential 'lender's liability' for shareholder and external loans newly granted or extended and privileges for 'fresh money' loans.</li> </ul>
	<b>Annual general meeting of the German Stock Corporation</b>	<p>An extension period to hold annual general meetings has been granted for up to one year after end of financial year. Virtual-only general meetings are permitted. There are restrictions on shareholders' right to challenge resolutions, whereas the advanced distribution of dividends has been permitted.</p>



# Country-specific impact

Country	Area of impact	Details
Germany (continued)	<b>Wirtschaftsstabilisierungsfonds (WSF) (Economic Stabilisation Fund)</b>	<p>This complements the credit programmes set-up by the Kreditanstalt für Wiederaufbau (KfW). Eligible companies need to exceed two of the following thresholds:</p> <ul style="list-style-type: none"> <li>• €43m balance sheet total;</li> <li>• €50m annual turnover;</li> <li>• 249 employees; or</li> <li>• companies acting within certain strategically relevant sectors.</li> </ul> <p>Guarantees for senior debt/other liabilities include a pool of EUR 400bn for the provision of guarantees. An 'appropriate' fee to be paid for guarantee, and may cover debt instruments which are issued after the effective date of new law and until 31 December 2021, and which have a term not exceeding 60 months.</p> <p>An pool of €100bn for recapitalisation is available for all capital measures, including issuance of new shares, subordinated bonds, convertible bonds, hybrid bonds, silent participations, etc. However, these are subject to qualified minority rights, and there is a cap on both management fees and dividend pay out.</p> <p>Conditions to access the fund include: the Federal government has an important interest in company's stabilisation; other financing sources are not available to the respective company; the company has a positive 'prognosis' for the time after the pandemic; and the company was not 'in difficulties' at the end of 2019.</p>
	<b>Foreign direct investments (FDI)</b>	<p>Fourteen Member States have already implemented FDI screening schemes (regardless of Covid-19). EU Member States can generally ban (certain) foreign investments or request security-related mitigation measures if the FDI is likely to endanger public order or security.</p> <p>The European Commission has issued a communication on FDI screening and the protection of Europe's strategic assets and technologies, calling upon Member States to implement and use such FDI screening schemes to the fullest extent to prevent a sell-off of strategic EU assets, with a focus on healthcare, medical research, biotechnology and related critical infrastructure.</p>
	<b>Termination/adjustment of contract based on contract disruption</b>	<p>Pursuant to German law, the principle of a disruption of the <i>Störung der Geschäftsgrundlage</i> (basis of a transaction) allows for the termination or adjustment of a contract, if, inter alia, the circumstances that became the basis of the contract have changed significantly after the conclusion of the contract.</p> <p>Parties usually expressly exclude the use of this principle in M&amp;A transactions, limiting its applicability to very rare cases.</p> <p>If the principle is not excluded, it may only be applicable if the parties: 1) have not agreed on a MAC/MAE clause; and 2) have not expressly assigned the risk of frustrated economic expectations to one of the parties. Even in such circumstances, a buyer's chances of successfully invoking the principle are uncertain, as the buyer usually bears the risk of frustrated economic expectations.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Canada</b>  Contributed by:  <b>André Dufour</b> Borden Ladner Gervais, Montreal <b>adufour@blg.com</b>	<b>Merger reviews</b>	On 18 March 2020, the Commissioner of Competition under the Competition Act advised that there may be delays with respect to merger reviews due to the difficulty of drafting contacts in a timely manner, and the challenges parties may face when preparing the necessary information for the Competition Bureau to review. The Commissioner of Competition has stated that the Competition Bureau will prioritise matters to maximise its resources and will communicate realistic timelines to parties. The Competition Bureau will also prioritise urgent marketplace issues that require immediate action to protect Canadians.
	<b>Business Credit Availability Program (BCAP)</b>	The Business Credit Availability Program was launched by Export Development Canada (EDC) and the Business Development Bank of Canada (BDC). <ul style="list-style-type: none"> <li>• Canada Emergency Business Account: \$25bn programme to ensure that small businesses have access to the capital they need to see them through the current challenges, which will be implemented by eligible financial institutions in cooperation with EDC:               <ul style="list-style-type: none"> <li>- there is a need to demonstrate that the business paid between \$50,000 to \$1m in total payroll in 2019;</li> <li>- interest-free loans of up to \$40,000 are available to help cover operating costs during a period where revenues have been temporarily reduced;</li> <li>- repaying the balance of the loan on or before 31 December 2022 will result in loan forgiveness of 25 per cent (up to \$10,000); and</li> <li>- There is zero per cent interest for the first year.</li> </ul> </li> <li>• Loan guarantee for small and medium-sized enterprises (SMEs):               <ul style="list-style-type: none"> <li>- the EDC is working with financial institutions to issue new operating credit and cash flow term loans of up to \$6.25m;</li> <li>- there is commercial interest rate; and</li> <li>- there is a ten-year repayment period.</li> </ul> </li> <li>• Co-lending programme for SMEs:               <ul style="list-style-type: none"> <li>- the BDC is working with financial institutions to co-lend term loans to SMEs for their operational cash flow requirements; and</li> <li>- incremental credit amounts are available of up to \$6.25m.</li> </ul> </li> </ul>
	<b>Bank adjustments</b>	The Governor of the Bank of Canada has reduced the interest rate to 0.25 per cent. The Superintendent of Financial Institutions has announced measures in support of an additional \$300bn in lending capacity by major banks.

# Country-specific impact

Country	Area of impact	Details
Canada (continued)	<b>Deferral of taxes</b>	<p>The Canada Revenue Authority (CRA) is allowing all businesses to defer, until after 31 August 2020, the payment of any income tax amounts, including tax balances due, as well as instalments, under Part I of the Income Tax Act (Canada), that become owing on or after 18 March 2020 and before 1 September 2020, without any interest or penalties applicable to any such amounts during the prescribed period.</p> <p><i>Deferral of Goods and Services Tax (GST)/Harmonized Sales Tax (HST) Remittances</i></p> <ul style="list-style-type: none"> <li>• Payments of GST/HST, as well as customs duties owing on imports, are deferred until 30 June 2020.</li> </ul> <p><i>Deferral of income tax filing until 1 June 2020</i></p> <ul style="list-style-type: none"> <li>• T2: corporations that would otherwise have an income tax filing due date after 18 March and before 1 June 2020 can file until 1 June 2020; and</li> <li>• T1044: other information returns that would otherwise be due after 18 March 2020, and before June 2020, can be filed until 1 June 2020.</li> </ul>
	<b>Canada Emergency Wage Subsidy (CEWS)</b>	<p>The Government of Canada is to provide a 75 per cent wage subsidy to eligible employers for up to 12 weeks, retroactive to 15 March 2020. To access the subsidy, employers must demonstrate a drop in gross revenues of at least 30 per cent in March, April or May, when compared to the same month in 2019.</p> <p>The subsidy amount for a given employee on eligible remuneration paid between 15 March and 6 June 2020 would be the greater of:</p> <ul style="list-style-type: none"> <li>• 75 per cent of the amount of remuneration paid, up to a maximum benefit of \$847 per week; and</li> <li>• the amount of remuneration paid, up to a maximum benefit of \$847 per week or 75 per cent of the employee's pre-crisis weekly remuneration, whichever is less.</li> </ul>
	<b>Suspension of limitation periods and procedural timelines</b>	<p>With court closures and social distancing measures in place across the country, the issuing, serving and filing of legal documents has become difficult, if not impossible. Several Canadian jurisdictions have responded to these changes by pausing limitation periods and/or certain procedural timelines in civil legal proceedings.</p>

# Country-specific impact

Country	Area of impact	Details
<b>United Kingdom</b>  <i>Contributed by:</i>  <b>Charles Martin Macfarlanes, London</b> <b>charles.martin@macfarlanes.com</b>	<b>Merger control</b>	<p>The European Commission, which oversees the EU merger control regime (to which, for the time being, the UK remains subject) has urged organisations to hold off making new merger control applications where at all possible due to a lack of resourcing at the European Commission.</p> <p>The Competition and Markets Authority (CMA), which oversees the UK's domestic merger control regime, has, however, advised that statutory timescales remain unaffected.</p>
	<b>Foreign direct investment</b>	<p>The UK government has the power to intervene in major acquisitions on certain grounds. It does so infrequently and has not indicated any immediate intention to increase scrutiny. However:</p> <ul style="list-style-type: none"> <li>the government has already tabled proposals to significantly increase its ability to intervene in all kinds of transaction in the UK involving investment in a sector with a national security dimension; and</li> <li>the European Commission has urged EU Member States (which, for the time being, is treated as including the UK) to use screening powers to scrutinise FDI in the healthcare sector.</li> </ul>
	<b>Completing transfers</b>	<p>Transfer tax (stamp duty) is payable on the sale of securities in a UK company. HM Revenue &amp; Customs has announced temporary measures to accept electronic submissions for this purpose, but staffing constraints mean that paying tax (and, hence, registering a transfer of shares) may take longer than usual.</p> <p>Various matters in connection with the sale of a UK business need to be registered (and some become effective only once registered) at public authorities, including Companies House and HM Land Registry. Current constraints around staffing and the ability to submit documents electronically mean that wait times will be longer than usual.</p>
	<b>Transaction execution</b>	<p>Current travel and social-distancing restrictions have created obstacles around signing and executing documents. Organisations are increasingly examining electronic signing solutions as a way to resolve this. The law in the UK around electronic execution is somewhat relaxed and these solutions should be easy to implement.</p> <p>There is generally no need in the UK for documents to be notarised in order to take effect, but this may be required to enforce documents overseas. Due to staffing constraints, notarisation and legalisation (apostille) services are currently delayed and restricted.</p>
	<b>Employee furloughing</b>	<p>The UK government has announced a scheme under which employers can furlough workers with no work and the government will underwrite 80 per cent of the worker's regular salary. This is becoming a focus of due diligence.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Australia</b> Contributed by:  <b>Nicola Charlston</b> <i>King &amp; Wood Mallets,</i> <i>Melbourne</i> <b>nicola.charlston@au.kwm.com</b>	<b>Foreign investment approvals</b>	<p>The Australian government has made certain changes to Australia's foreign investment regulatory framework which will apply for the duration of the Covid-19 crisis. The changes, which became effective from 22:30 (AEDT) on Sunday 29 March 2020, include:</p> <ul style="list-style-type: none"> <li>• all proposed foreign investments into Australia subject to the Foreign Acquisitions and Takeovers Act 1975 ('the Act') require approval, regardless of value or the nature of the foreign investor; and</li> <li>• the Foreign Investment Review Board application review timeframe has been extended to up to six months (previously approximately 40 days, although that was often subject to extension).</li> </ul> <p>The government has stated that it will prioritise urgent applications for investments that directly protect and support Australian businesses and Australian jobs, taking account of any commercial deadlines related to those proposed investments.</p>
	<b>Competition regulation</b>	<p>The Australian Competition and Consumer Commission has announced that it will actively engage with governments and businesses regarding authorisations to support coordination between competitors which is in the public interest at this time. It has granted authorisations to date including in respect of banks and lenders, supermarkets, medical technology companies, medicine wholesalers, telecommunications operators, insurance providers, shopping centre owners, electricity providers, oil refiners and private hospitals.</p>
	<b>Restructuring &amp; insolvency</b>	<p>Insolvency and bankruptcy laws have been temporarily relaxed, including by raising the threshold at which creditors can issue a statutory demand on a company or start bankruptcy proceedings against an individual, and by relieving company directors from personal liability for insolvent trading.</p>
	<b>Corporate governance, reporting and disclosure</b>	<p>The Australian Securities &amp; Investments Commission (ASIC) announced that it will extend the deadline for unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act 2001 (Cth) by one month for balance dates from 31 December 2019 to 31 March 2020.</p> <p>For listed and unlisted public companies with 31 December balance dates that are required to hold an annual general meeting (AGM) by 31 May 2020, the ASIC has also confirmed that it will take no action if the AGMs are postponed for two months (until the end of July) and that it supports the holding of AGMs using appropriate technology.</p> <p>The Australian Securities Exchange (ASX) has clarified that listed entities' continuous disclosure obligations do not require them to predict the unpredictable and entities will not be expected to make forward-looking announcements to the market without a clear and reasonable basis, including in relation to previous guidance. Entities are required to notify ASX, and explain the legal basis for their decision, if they decide not to pay an anticipated dividend.</p>

# Country-specific impact

Country	Area of impact	Details
Australia (continued)	<b>Employment</b>	<p>The Australian government has announced that eligible employers will be paid \$1,500 'JobKeeper' payments per employee to keep individuals employed. To access the payments, the employer must show that, among other things:</p> <ul style="list-style-type: none"> <li>• it has an aggregated turnover of less than \$1bn (for income tax purposes) and estimates its Goods and Services Tax (GST) turnover has fallen or will likely fall by 30 per cent or more in the relevant period relative to their turnover a year earlier; or</li> <li>• it has an aggregated turnover of \$1bn or more (for income tax purposes) and estimates a GST turnover fall of 50 per cent or more.</li> </ul> <p>The employer is required to ensure eligible employees receive at least \$1,500 per fortnight (before tax) (including those that have been stood down). The payment cannot be paid to businesses that are in liquidation.</p> <p>The Fair Work Commission has also proposed temporary updates to 103 Awards, which would provide an entitlement to unpaid pandemic leave and allow employees to take annual leave at half-pay.</p>
	<b>Capital raisings</b>	<p>The ASIC and the ASX have announced that each will grant temporary capital raising relief to facilitate emergency capital raisings for ASX-listed entities. ASIC has issued legislative instruments permitting listed entities to make certain offers (including rights offers, placements and share purchase plans) despite having been suspended from trading for a total of up to ten days in the previous 12-month period. The ASX has also issued class order waivers, allowing companies two consecutive back-to-back (four-day) trading halts to consider a capital raising, raising annual placement capacity to 25 per cent and relaxing the one-for-one non-renounceable entitlement offer cap.</p>
	<b>Financial services</b>	<p>The Australian Prudential Regulation Authority (APRA) has suspended issuing new banking or insurance and superannuation licences for at least six months and has expressed an expectation that authorised deposit-taking institutions (ADIs) and insurers will limit discretionary capital distributions in the months ahead, to preserve capacity to continue to lend and underwrite insurance. The APRA has also announced temporary changes to its expectations on bank capital ratios to encourage lending.</p> <p>The Reserve Bank of Australia (RBA) has provided a funding facility for ADIs to encourage business lending, with a particular focus on lending to small businesses. The Australian government has allocated additional funding for loans to small institutions not eligible to access the RBA fund. It will also guarantee certain loans to small and medium enterprises.</p>

# Country-specific impact

Country	Area of impact	Details
Australia (continued)	Real estate	The Australian government has approved principles for a mandatory code to apply for commercial tenancies. This imposes a set of good faith leasing principles for application to commercial tenancies between owners/operators/other landlords and tenants, including concepts of a proportionality to rent reductions based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants, but there will be a moratorium on evicting tenants.
	Tax	<p>The Australian Taxation Office (ATO) will not implement a blanket approach to its large business compliance programme and will instead focus on the individual circumstances of each business. For example, thin capitalisation rules will be administered flexibly, with alternative testing options provided for calculating maximum allowable debt. Specific measures implemented include:</p> <ul style="list-style-type: none"><li>• allowing businesses to defer the payment of tax amounts due up to 12 September 2020 by up to six months;</li><li>• GST and excise relief have also been provided in relation to certain essential products and supplies and cancelled events. Payments by employers for emergency accommodation, meals, food supplies, transport or other assistance for employees who are, or are at risk of becoming, unwell with Covid-19 will generally be Fringe Benefits Tax exempt, as will provision of equipment to enable staff to work from home or from another location;</li><li>• businesses pausing operations are permitted to retain ABN and GST registrations;</li><li>• foreign-incorporated companies will not be considered to have Australian tax residency only by reason of holding board meetings and having employees present in Australia where necessary as a result of travel restrictions; and</li><li>• increased thresholds for instant asset write-offs accelerated depreciation deductions have been introduced to support business investing.</li></ul>

# Country-specific impact

Country	Area of impact	Details
<b>Austria</b> Contributed by:  <b>Martin Brodey</b> DORDA, Vienna martin.brodey@dorda.at	<b>Corona-relief package</b>	<p>The Austrian Federal Government has launched a comprehensive relief package of €38bn to stabilise the economy and to protect jobs. In brief, the package comprises:</p> <ul style="list-style-type: none"> <li>• establishment of Härtefallfonds (an Emergency Aid and Hardship Fund), aimed at sole entrepreneurs and small companies;</li> <li>• the establishment of Corona Hilfs-Fonds (a Corona Aid Fund), aimed at medium-sized and larger enterprises; and</li> <li>• tax deferrals.</li> </ul> <p>Aid provided to companies through these funds is delivered by way of loan guarantees issued by the Austrian Federal Government and direct cash contributions to companies.</p>
	<b>Corona Immediate Assistance-Short Time Flex</b>	<p>Short-time work (furlough) is generally understood to be the temporary, foreseeable reduction in normal working hours (by at least 10 per cent to a maximum of 90 per cent). With Corona Immediate Assistance Short-Time Flex, working hours may be reduced to zero. Corona Immediate Assistance Short-Time Flex also provides that both existing time credits and old vacation entitlements must be used in full immediately.</p> <p>The 'net replacement rate' is the amount that employees receive when they work reduced hours. The net replacement rate for the new short-time working model is between 80 and 90 per cent, with low earners having the highest net replacement rate. It includes remuneration (for the reduced working time) and support payments/allowance. The Austrian Labour Market Service bears the additional costs up to the maximum contribution (at gross €5,370 per month).</p>
	<b>Dividend/employee termination restrictions for subsidised companies</b>	<p>Austrian companies using public aid payments (now being offered to businesses in Austria) that have suffered a decrease in sales of at least 40 per cent will have to comply with two substantial restrictions for the subsequent 12 months:</p> <ul style="list-style-type: none"> <li>• a prohibition on any dividend payments; and</li> <li>• no termination of employment agreements for companies with more than 250 employees (if such companies want to reduce their workforce, the only available option is to resort to short-term work).</li> </ul>
	<b>Restrictions on FDIs</b>	<p>The Austrian Federal Government plans to enact an Investment Control Act to protect strategic Austrian assets.</p>



# Country-specific impact

Country	Area of impact	Details
<b>Austria</b> <i>(continued)</i>	<b>Suspension of obligation to file for insolvency</b>	<p>The obligation to file for insolvency on the grounds of <i>Überschuldung</i> (over-indebtedness) has been suspended until 30 June 2020. Also, no insolvency proceedings can be opened based on filings by creditors claiming over-indebtedness of a company until such date.</p> <p>The obligation to file for insolvency in case of default on <i>Zahlungsunfähigkeit</i> (due payment obligations) is not suspended.</p>
	<b>Funding of companies via shareholder loans</b>	Under the existing Austrian Equity Replacement Act (EKEG), loans granted by shareholders are potentially considered as equity (and therefore subject to certain repayment restrictions), inter alia, if they were granted for more than 60 days. In order to encourage the granting of loans by shareholders during the Covid-19 pandemic, this period is extended to 120 days for loans granted between 5 April 2020 and 30 June 2020, if none of the company's assets are provided for as collateral.
	<b>AGM – Austrian Stock Corporation/LLC</b>	<p>The following relaxations apply:</p> <ul style="list-style-type: none"> <li>• extension of period to hold the AGM of an Austrian Stock Corporation to 12 months after end of the financial year;</li> <li>• extension of period to hold the AGM of an Austrian LLC, in which the financial statement of the company for the previous financial year is approved, to 12 months after the end of financial year;</li> <li>• permission to hold virtual AGMs and the Austrian Federal Government has also introduced regulations to allow virtual notarisations and the execution of electronic notarial deeds; and</li> <li>• extension of deadlines for companies' management to prepare financial statements.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
<b>Czech Republic</b>  Contributed by: <b>Dagmar Dubecká</b> <i>Kocián Šolc</i> <i>Balaščík, Prague</i> <b>ksbp@ksb.cz</b>	<b>All business in the Czech Republic, (including FDI) – impact on tax, employment, government subsidy, visa applications and general business operations</b>	<p>Under a new government antivirus programme, the Ministry of Labour and Social Affairs (MLSA) has prepared several types of compensation for employers to enable them to maintain their workforce during the Covid-19 crisis, by providing up to 80 per cent of employee wage costs in certain cases .</p> <p>The Czech government has approved two liberation tax packages aimed at mitigating the consequences of the emergency for both corporate businesses and individuals, allowing for, inter alia, late filing of tax returns and waiver of penalties. A loss carryback mechanism for personal and corporate income tax for the year 2020 is also to be introduced.</p> <p>The Ministry of Finance is proposing that real estate acquisition tax, which currently stands at four per cent of the total purchase price, be cancelled.</p> <p><i>Foreign investors – Covid-19 impact on business travel and relocation</i></p> <p>All applications for long-term visas residence permits, employee cards and short-term Schengen visas are temporarily suspended at embassies and consulates of the Czech Republic abroad.</p> <p>The current state of emergency in the Czech Republic has been extended until 30 April 2020; during this time foreigners without residency permits may not enter the Czech Republic. It is expected that these restrictions will be eased subsequently.</p> <p>Czech government regulations and Covid-19 programmes to aid business during the Covid-19 crisis are being updated constantly. For regular real-time updates, see the KSB Covid-19 blog, ‘Legal implications for business in the Czech Republic’, available at <a href="http://www.ksb.cz/covid">www.ksb.cz/covid</a>.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Ireland</b> Contributed by:  <b>Gary McSharry</b> <i>McCann  FitzGerald, New  York</i> gary.mcsharry@mccannfitzgerald.com	<b>Competition law</b>	<p>In Ireland, the Competition and Consumer Protection Commission (CCPC) has posted on its website a statement by the European Competition Network (ECN), which is comprised of the national competition authorities of the EU27. In its statement, the ECN pledges that it 'will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply'. The statement enables certain competitors to work together/cooperate to ensure continued supply of essential products and services to consumers during the pandemic.</p> <p>On a procedural level, the CCPC has issued guidance on how it will review transactions notified to it before and during the Covid-19 outbreak. The CCPC is encouraging merging parties where possible to delay merger filings until further notice and is establishing a temporary process for electronic notification of mergers. Similar guidance has been issued by regulators across Europe and in the US.</p>
	<b>State aid</b>	<p>The European Commission has published a Temporary Framework for state aid measures to support the economy during the Covid-19 outbreak. The temporary measures are considered compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU). Article 107(3)(b) permits a Member State to implement measures, subject to European Commission approval, to remedy a severe disturbance in its economy. This Treaty basis is interpreted narrowly and its most notable use, until now, was during the global financial crisis.</p> <p>In light of the sudden liquidity shortages facing businesses, the European Commission has decided that the situation created by Covid-19 is grave enough to meet this threshold throughout the whole of the EU, including Ireland. On that basis, for a limited period, the European Commission considers that aid to remedy the liquidity shortages faced by undertakings, particularly small- to medium-sized enterprises (SMEs), and to ensure that disruptions caused by the outbreak do not undermine their viability, can be declared compatible with the internal market.</p> <p>The European Commission has found a €200m Irish government scheme to support companies affected by the coronavirus outbreak to be in line with EU state aid rules.</p>
	<b>FDI</b>	<p>As a direct response to the Covid-19 crisis, the European Commission has issued guidance calling on Member States to ramp up screening of FDI to protect against foreign acquisition of assets. The guidance shows that the European Commission is highly conscious of the potential for foreign firms to pursue strategic takeovers of European companies central to the EU's fight against Covid-19.</p> <p>For those Member States that do not operate screening regimes (such as Ireland), the European Commission calls on governments 'to set up a fully-fledged screening mechanism and in the meantime to use all other available options to address cases where the acquisition or control of a particular business, infrastructure or technology would create a risk to security or public order in the EU, including a risk to critical health infrastructures and supply of critical inputs'.</p> <p>So far, there has been no indication that Ireland intends to establish its own FDI screening regime. However, the Commission's explicit calls for FDI screening by all Member States may make it difficult for the Irish government to maintain this position.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Ireland</b> <i>(continued)</i>	<b>Employment</b>	The Irish government has introduced a wage subsidy scheme that allows employers (excluding public services and the non-commercial semi-state sector) to continue to pay their employees during the Covid-19 pandemic through financial support from the government. The goal is to keep employees registered and on payroll so that they can return to work as soon as possible following the pandemic. The scheme is open to employers that have lost a minimum of 25 per cent of turnover as a result of the Covid-19 pandemic.

# Country-specific impact

Country	Area of impact	Details
<b>Luxembourg</b> Contributed by:  <b>Guy Harles</b> Arendt & Medernach SA, Luxembourg guy.harles@arendt.com  <b>Fouzia Benyahia</b> Arendt & Medernach SA, Luxembourg fouzia.benyahia@arendt.com	<b>State economic measures</b>	<p>The Luxembourg government has taken an ambitious set of measures to help self-employed people and companies including SMEs and entrepreneurs manage the economic consequences of the Covid-19 pandemic. These measures involve:</p> <ul style="list-style-type: none"> <li>• tax payment deadlines being extended;</li> <li>• advance refunds of VAT and deadline extensions;</li> <li>• a state-backed guarantee facility for new bank loans to SMEs and large corporates up to a maximum of six years;</li> <li>• financial relief; and</li> <li>• partial unemployment.</li> </ul> <p>For details of the support package see: <a href="https://meco.gouvernement.lu/dam-assets/dossiers/SupportPackageEN.pdf">https://meco.gouvernement.lu/dam-assets/dossiers/SupportPackageEN.pdf</a>.</p>
	<b>Distributions to shareholders</b>	<p>Distributions to shareholders are not recommended in the financial and insurance sectors.</p> <p><i>Recommendation of the European Central Bank (ECB) of 27 March 2020 on dividend distributions during the Covid-19 pandemic and repealing Recommendation (ECB/2020/1)</i></p> <p>The ECB recommends that at least until 1 October 2020, no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by the credit institutions for the financial year 2019 and 2020, and that credit institutions refrain from share buy-backs aimed at remunerating shareholders. In accordance with such recommendation, the Luxembourg Commission de Surveillance du Secteur Financier (CSSF – Luxembourg National Supervision Council of the Financial Sector) has specified that in cases where convening to general meetings have already been sent out and have included a dividend distribution, the corresponding resolutions should be amended.</p> <p>On 2 April 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a statement on dividends distribution and variable remuneration policies in the context of Covid-19. Taking due account of the current level of uncertainty on the depth, magnitude and duration of the impacts of Covid-19 in financial markets and on the economy, the EIOPA urges (re)insurers to temporarily suspend all discretionary dividend distributions and share buy-backs aimed at remunerating shareholders.</p>

# Country-specific impact

Country	Area of impact	Details
Luxembourg (continued)	Shareholders' and board meetings	<p>Pursuant to a government decree issued on 20 March 2020, irrespective of contrary provisions in companies' articles of association, board meetings may now proceed by way of unanimous written board resolutions or by videoconference or any other means of telecommunication enabling participating board members to be identified.</p> <p>Shareholders can be invited to participate in general meetings by way of proxies given to independent proxyholders. Independent proxyholders are chosen by the companies themselves and may be internal persons (eg, a representative of the board) or external persons (eg, a lawyer or an auditor). Shareholders may also be asked to exercise their rights by a distance vote in writing or in an electronic format. Lastly, if the technical means at their disposal so allow, companies may also hold shareholder meetings by videoconference or any other means of telecommunication.</p>
	Extension of deadlines	<p>Companies have an additional administrative period of four months to make their financial data filings for the financial year 2019 at the Luxembourg Trade and Companies' Register, at the standard rate. The surcharge for late filing of financial data is exceptionally suspended until 30 November 2020 for filing delays of up to four months included.</p> <p>The CSSF has issued a Q&amp;A and various positions pursuant to which deadlines for certain filings are automatically extended or may be extended upon reasonable request sent to the CSSF, as well as recommendations regarding the internal organisation of the supervised entities encouraging home office. The CSSF has also decided to limit enforcement measures in case reporting obligations are not complied with in due time due to operational difficulties linked with the Covid-19 situation and duly explained. Given the impact of the Covid-19 pandemic on issuers and their financial statements, the CSSF has decided that it will not prioritise supervisory actions against public issuers in respect of the upcoming publication deadlines for periodic information.</p> <p>On 20 March 2020, the European Insurance and Occupational Pensions Authority (EIOPA) issued recommendations addressed to national competent authorities on supervisory flexibility regarding the deadline of supervisory reporting and public disclosure in light of the coronavirus crisis. These include:</p> <ul style="list-style-type: none"> <li>• a two- or eight-week delay is accepted for annual reporting referring to year end occurring on 31 December 2019 or year end after that date but before 1 April 2020;</li> <li>• a one-or four-week delay is accepted for quarterly reporting referring to first quarter 2020-end occurring on 31 March 2020 or after that date but before 30 June 2020; and</li> <li>• a two-or eight-week delay is accepted for Solvency and Financial Condition Report referring to year-end occurring on 31 December 2019 or year-end after that date but before 1 April 2020.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
<b>Luxembourg</b> <i>(continued)</i>	<b>Extension of deadlines</b> <i>(continued)</i>	<p>The Commissariat aux Assurances (CAA – Insurance Commission) decided on 25 March 2020 to follow such instructions and issued an information note on 2 April 2020, pursuant to which it will:</p> <ul style="list-style-type: none"><li>• extend by eight weeks the deadlines for the submission of documents and files in relation to the annual reporting for the financial year 2019; and</li><li>• maintain the deadline for the submission of the first quarter 2020 reporting with regard to the quarterly statement of assets covering technical provisions, but to extend the period of validity of this statement by three months for the submission of the other quarterly reporting statements.</li></ul>

# Country-specific impact

Country	Area of impact	Details
<b>Russia</b> Contributed by:  <b>Alexander Zharskiy</b> <i>ALRUD Law Firm, Moscow</i> azharskiy@alrud.com	<b>Anti-monopoly and strategic investments clearances</b>	<p>There are no specific changes to the anti-monopoly or strategic investments clearances procedure in connection with the Covid-19 outbreak. At the same time, the Russian Federal Antimonopoly Service (FAS) has made certain changes in its day-to-day working process following the President's Order on a non-working period until 30 April 2020. A number of FAS officials are now working remotely with electronic document flow (where possible).</p> <p>No extraordinary delays or suspensions in the anti-monopoly or strategic investments clearances process have been announced so far. The FAS is currently planning to review the applications within the statutory deadlines.</p> <p>However, technical delays in review of transactions/issuance of decisions are possible due to the limited number of FAS officials present at the office, and the general focus of the FAS officials on addressing price gouging, cartel arrangements in healthcare and state aid measures, rather than merger control. As the situation changes regularly, further changes cannot be excluded.</p>
	<b>Practicalities of closing in Russian M&amp;A deals</b>	<p>It is important to take care of the practical issues of closing, especially considering that the process of transferring both shares (with respect to Russian joint stock companies (JSCs)) and participatory interests (with respect to Russian limited liability companies (LLCs)) requires the involvement of third parties – a registrar (depository) and public notaries.</p> <p>Irrespective of Covid-19, there remain public notaries on duty who continue to certify transactions with participatory interests of LLCs. As for registrars (depositories), for the duration of the Covid-19 situation each registrar (depository) may set up their own methods of transferring shares (eg, some have established virtual procedures for the signing and processing of an instrument of transfer or the opening a shareholder account).</p>
	<b>Annual shareholders' and participants' meetings</b>	<p>In response to the Covid-19 situation, new legislation has come into force adjusting corporate procedures in Russian JSCs and LLCs, including:</p> <ul style="list-style-type: none"> <li>• the deadlines for conducting annual shareholders' and participants' meetings in JSCs and LLCs are now extended to 30 September 2020; and</li> <li>• all shareholders' meetings in JSCs can be conducted in the form of absentee voting. There is a draft law to implement the same absentee voting for LLCs.</li> </ul>



# Country-specific impact

Country	Area of impact	Details
<b>South Africa</b>  Contributed by:  <b>Ezra Davids</b> <i>Bowmans,</i> <i>Johannesburg</i> <b>ezra.davids@bowmanslaw.com</b>	<b>Economic impact on businesses/ability to conduct business/valuations/interim period undertakings/material adverse change provisions/force majeure provisions/warranty provisions/logistics</b>	<p>Pursuant to the WHO declaring Covid-19 a pandemic, President Cyril Ramaphosa declared a national state of disaster in South Africa under the terms of the Disaster Management Act, 2002. The President has released numerous bold regulations and directions in this regard. Among other things, a 21-day lockdown, restricting freedom of movement and other rights, was made effective from 26 March to 16 April 2020, which has subsequently been extended until the end of April, subject to a phased recovery of the economy.</p> <p>The most relevant changes to M&amp;A include the following:</p> <ul style="list-style-type: none"> <li>• all businesses and other entities must cease operations, except for any business or entity involved in the manufacturing, supply or provision of an essential good or service, save where operations are provided from outside of South Africa or can be provided remotely by a person from their normal place of residence. What constitutes an 'essential good' or 'service' has been the subject of much debate and is an evolving area of law. Absolute prohibitions have been implemented for certain business (ie, the sale of alcohol). Registration requirements have been put in place for business that fall within the exemptions and 'permits' are required for essential employees;</li> <li>• material restrictions on movement have been introduced (including between provinces);</li> <li>• border closures and certain export bans have been put in place; and</li> <li>• many sectors have new mandatory codes of good practice and directives (most notably, the telecommunications sector, retail, healthcare, banking, mining, commercial property, etc).</li> </ul>
	<b>Regulatory approvals</b>	<p>A number of regulatory bodies have closed for the duration of the lockdown or are significantly scaling down operations (ie, the competition/antitrust authorities are discouraging the filing of mergers except for those involving failing firms and firms in distress). Additional time is therefore required for the majority of filings. Early engagement with regulators is critical.</p> <p>The Takeover Regulation Panel, the Johannesburg Stock Exchange Limited (JSE), the primary securities exchange in South Africa, and the Reserve Bank, which is responsible for exchange control approvals, remain open during this period.</p>

# Country-specific impact

Country	Area of impact	Details
South Africa (continued)	<b>Corporate actions and approvals/signing and closing deliverables</b>	<p>'Gatherings' are prohibited by law, such that the holding of physical shareholder meetings is no longer legally possible. The JSE has given permission to companies to provide for purely electronic shareholder meetings using appropriate voting technology.</p> <p>Due to the scaling-down of operations at the Companies Office during this period, the ability to make certain filings is no longer possible. This may impact the timing of transactions where, for instance, the filing of new constitutive documents is required as a condition to closing. This is a requirement in South Africa since these documents take precedence over shareholder agreements. This may also impact certain warranties pertaining to the corporate affairs of the entity being up to date and in order (ie, where the annual return of the company has not been filed in a timely manner).</p> <p>Declaration of dividends may no longer be possible in light of solvency and liquidity requirements. For listed entities, the cancellation, postponement or amendment of dividend declarations must comply with recent pronouncements by the listing authority and the corporate actions timetable. In respect of banks, the Prudential Authority has outlined restrictions on the distribution of dividends and payment of cash bonuses (in the interests of capital conservation and in view of the substantive relief provided to banks during this period).</p> <p>Electronic signatures are permissible in South Africa (subject to certain requirements).</p>
	<b>Enhanced reporting coupled with relief measures</b>	<p>Although the impact of Covid-19 is likely to trigger enhanced reporting obligations (ie, risk factor disclosures, price-sensitive information disclosures and trading statement disclosures, etc) and financial consequences, certain relief measures have been put in place, including:</p> <ul style="list-style-type: none"> <li>• a number of concessions by the Financial Sector Conduct Authority (FSCA), the JSE and the Companies Office regarding reporting and other requirements (ie, as they pertain to auditing accounting records and financial returns, filing of annual returns and the release of trading statements). Issuers are encouraged to engage with regulators through sponsors;</li> <li>• the Companies Office has temporarily relaxed its approach to 'reckless trading', where companies that are temporarily insolvent due to Covid-19 continue to do business or trade;</li> <li>• certain block exemptions have been put in place from restrictive vertical and horizontal practices in the competition/antitrust space (ie, the banking, retail and healthcare sectors);</li> <li>• certain tax relief packages have been granted; and</li> <li>• liquidity coverage ratios for banks have been relaxed.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
<b>Brazil</b> Contributed by:  <b>Rodrigo Ferreira Figueiredo</b> Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados, São Paulo rff@matthosfilho.com.br	<b>Corporate matters</b>	<p><i>Corporate approvals</i></p> <p>Shareholders' meetings, typically held in person, are moving either partially or completely to a virtual environment. Previously, only publicly held companies could hold a hybrid (physical and online) shareholders' meeting. Recent legal rules (still subject to ratification by the Brazilian Congress), however, have allowed all companies to hold hybrid and virtual-only meetings, although subject to further regulations that are yet to be enacted (drafts of such regulations are currently open to comments by the civil society). Board of directors' meetings have more flexible attendance requirements and many companies are amending their internal rules to expressly allow for virtual-only meetings.</p> <p><i>Commercial registry</i></p> <p>Registration of corporate documents with boards of trade (entities run by Brazilian states) have been impacted by the suspension of physical services ordered by local state regulations, with only a portion of boards of trade providing digital services. Recent laws have provided for alternative solutions and remedies to address such constraints while they persist. Registration with the board of trade is a requirement for corporate documents to be effective against third parties and the unavailability of the registration service may lead to uncertainty relating to the legal consequences arising thereof, delaying arrangements (including closing steps) to be made in the context of M&amp;A transactions.</p>
<b>Switzerland</b> Contributed by:  <b>Lorenzo Olgiati</b> Schellenberg Wittmer, Zurich lorenzo.olgiati@swlegal.ch	<b>Emergency legislation</b>	<p>The Swiss government has adopted emergency legislation applicable for the duration of the Covid-19 pandemic. M&amp;A-related issues include:</p> <ul style="list-style-type: none"> <li>• in-person AGMs are banned until 26 April 2020 and are likely to be subject to continued restrictions thereafter. Companies can nevertheless hold their meetings by requiring that shareholders vote in writing, electronically or via an independent representative;</li> <li>• a CHF 40bn state-guaranteed lending scheme to support small businesses, enacted on 25 March 2020, is proving to be very efficient; for example, in its first week of operating, it had disbursed more than CHF 15bn through the Swiss banking system to 76,034 businesses; and</li> <li>• employers have been granted simplified access to indemnities for short-time work of employees based on existing compulsory unemployment insurance regulation.</li> </ul>
	<b>Deal logistics</b>	<p>Swiss regulators, including the Takeover Board, commercial registers and other government agencies, remain fully functional and accessible during the Covid-19 lockdown.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Spain</b> Contributed by:  <b>Christian Hoedl</b> <i>Uriá, Madrid</i> <b>christian.hoedl@uria.com</b>	<b>Foreign investment approvals</b>	<p>From 18 March 2020, prior approval from the Spanish Council of Ministers is required for the following FDIs:</p> <ul style="list-style-type: none"> <li>• investments (in excess of €1m) that result in the investor reaching a stake greater than or equal to ten per cent of the share capital of a Spanish company, or consisting in any corporate, business or legal transaction that enables effective participation in the management or control of a Spanish company;</li> <li>• made by either non-EU and non-European Free Trade Association (EFTA) residents; or EU or EFTA investors beneficially owned by non-EU and non-EFTA residents (where beneficial ownership is defined as holding greater than 25 per cent of the share capital or voting rights, or otherwise directly or indirectly controlling the EU or EFTA investor);</li> <li>• in certain critical sectors relating to public order, public health and national security sectors, namely critical infrastructures; critical technology and dual use items; supply of critical inputs, including energy, raw materials and food security; access to sensitive information, including personal data; and media; or</li> <li>• in any sector if the investor is controlled by a foreign government; has invested or 'participated in activities' in sectors relating to public order, public health and national security in another EU Member State; or is subject to ongoing proceedings for criminal or illegal activities in any jurisdiction.</li> </ul> <p>A fast-track 30-day procedure resolved by a lower-tier authority applies to investments 1) agreed but not closed prior to 18 March 2020; or 2) below €5m.</p> <p>Consequences for breach of this regime are: 1) the transaction is considered invalid and without any legal effect (until the approval is obtained); and 2) significant fines (up to the transaction value).</p>
	<b>Material adverse change (MAC)/Material adverse effect (MAE)</b>	<p>While MAC/MAE clauses are uncommon (or at least not prevalent) in Spanish M&amp;A transactions, buyers might try to oppose or seek to postpone closing, or pretend to renegotiate the deal terms on the basis of force majeure (if the buyer evidences that it is unable to complete the transaction on the agreed terms), or the <i>rebus sic stantibus</i> doctrine (if the buyer alleges that the risks related to Covid-19 were unforeseeable and not assumed by the buyer under the purchase agreement, and completing the transaction on the agreed terms would be unduly onerous for the buyer).</p> <p>Unless the purchase agreement includes a financing-out condition (which is very uncommon), failure to obtain or drawdown financing would not enable the buyer to terminate the purchase agreement but might justify a postponement of completion.</p>

# Country-specific impact

Country	Area of impact	Details
<b>India</b> Contributed by:  <b>Rabindra Jhunjhunwala</b> <i>Khaitan &amp; Co,</i> <i>Mumbai, India</i> <i>rabindra.jhunjhunwala@khaitanco.com</i>  <b>Sameer Sah</b> <i>Khaitan &amp; Co</i> <i>Mumbai, India</i> <i>Sameer.sah@khaitanco.com</i>	<b>Overall observations</b>	<ul style="list-style-type: none"> <li>India has been in lockdown since 26 March 2020 and this will continue (as a result of two extensions) up until 17 May 2020. There is a chance that this might be extended further. Mumbai, the financial capital of the country, has the highest number of Covid-19 cases - and it is likely, given the topography, demography, and population density, that Mumbai's lockdown will last longer than most other parts of the country.</li> <li>The International Monetary Fund (IMF) slashed India's growth estimate for FY21 to 1.9 per cent due to the Covid-19 crises and its economic fallout, but India will register growth compared to other countries.</li> <li>India stock market indices spiralled down to valuations available around four-five years back.</li> <li>The government is functioning only on an essentials basis, <i>albeit</i>, certain aspects related to deal activity are also being catered to. However, this is clearly not a priority at the moment.</li> <li>The lockdown is being relaxed in phases, but each state (India's equivalent of a province) and local area have to take their own assessment of the perceived threat. For instance, from 4 May 2020, revised guidelines are released allowing manufacturing and service industries to function depending on risk profiling (red, green, orange zones) with capacity restrictions and safety measures.</li> <li>Manufacturing and other businesses will face a hurdle to restart as a lot of migrant workers have fled to their respective places of origin and it will take some time for them to return to their workplace.</li> <li>There has been an adjournment of oral hearings, an extension of timelines for statutory filings and a shift to an e-filing system by Indian courts and tribunals.</li> <li>Several states have issued cautions against wage deduction/termination during the lockdown.</li> </ul>
	<b>Economic relief provided by Indian government to businesses</b>	<ul style="list-style-type: none"> <li>The Reserve Bank of India reduced the repo and reserve repo rates under liquidity adjustment facility and cash reserve ratio requirements, significantly boosting liquidity across the banking system.</li> <li>No specific economic relief package has been announced by way of wage subsidisation or otherwise for industries.</li> <li>All economic packages thus far (as of 4 May 2020) have focussed on marginal and poorer sections of society, including direct cash transfers, free food and rations, etc.</li> <li>The government has announced regulatory relaxations (such as relaxations in certain filings and compliances, but no specific economic relief package).</li> <li>As a result, Indian businesses are essentially – as of now – left to fend for themselves in relation to the impact of this virus. This will affect valuations and provided there is a willing seller or investee company, opportunistic buyers should still be able to find deals.</li> <li>Social security contributions are being made for three months by the Indian government to a limited workforce. Employees are allowed to withdraw amounts up to specified limits from their social security accounts.</li> <li>Banks/lending institutions are permitted to allow three months moratorium on repayments of loans. The margin requirements for working capital facilities have been eased out, giving more drawing power to borrowers.</li> <li>A wide range of health workers are to be covered under medical insurance worth INR 5m per individual.</li> </ul>

# Country-specific impacts (cont.)

Country	Area of impact	Details
<b>India</b> <i>(continued)</i>	Foreign direct investment from countries sharing a land border	<ul style="list-style-type: none"> <li>With effect from 22 April 2020, foreign direct investment from countries sharing a land border with India (Afghanistan, Bangladesh, Bhutan, China, Myanmar, Nepal, and Pakistan) have been placed entirely under the 'Government Route' – ie, prior government approval is required for an investor located in these countries or for an investment (whether by fresh investment or purchase of existing securities) where the 'beneficial owner' of the investment will be located in or be a citizen of these countries.</li> <li>While the government press note relating to this refers to avoiding opportunistic takeovers, it is widely believed that this was meant to stave off predatory acquisitions by Chinese enterprises. The government denies this – however, from amongst the seven countries affected, China is a far bigger investor into India (in fact, bigger than all other six countries combined).</li> </ul>
	Regulatory approvals (including merger control)	<ul style="list-style-type: none"> <li>Certain approvals (for instance, foreign investment related approvals, tax approvals, merger control approvals, etc) are being processed by the government – however, the pace is glacial at best.</li> <li>Given the impending lockdown, physical meetings with regulators and government authorities have become impossible. These are sometimes required for a meaningful engagement.</li> </ul>
	Direct and indirect tax relaxations	<ul style="list-style-type: none"> <li>The deadline for availing benefit of the recently introduced Direct Tax Dispute Resolution Scheme (Vivad se Vishwas Scheme) has been extended from 31 March 2020 to 30 June 2020, without any requirement to pay additional 10 per cent of the tax, which was otherwise payable.</li> <li>Due dates for filing belated or revised returns extended till 30 June 2020.</li> <li>The due date for exporters located in Special Economic Zones to commence manufacture or production to claim a tax exemption has been extended to 30 June 2020.</li> <li>While due dates for tax payments (such as withholding tax, advance tax, tax collected at source, equalisation levy (essentially tax on specified digital transactions) have not been extended, the rate of penal interest for the delay has been reduced to nine per cent per annum instead of 12 per cent/18 per cent per annum. Further, the late/penalty fee will be waived and prosecution shall not be sanctioned in respect thereof.</li> <li>The due date for the filing of returns and depositing Goods and Service Tax (GST) has been relaxed with a partial waiver of interest and complete waiver of late fee. The validity of e-way bills (which are mandatory to accompany movement of goods) has also been extended.</li> </ul>
	Real Estate	<ul style="list-style-type: none"> <li>The central government and a few state government authorities has waived lease/rents for three to four months or extended due dates for payment of lease or rent regarding premises leased by these authorities to the private sector.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
<b>India</b> <i>(continued)</i>	<b>Corporate actions and approvals/ signing deliverables/ stamp duty payments</b>	<ul style="list-style-type: none"> <li>• General relaxations to address issues arising from working remotely (meetings through videoconferencing or other audiovisual means, minimum residency for director, independent director participation).</li> <li>• Physical shareholder meetings are no longer legally possible during the lockdown.</li> <li>• Fresh Start Scheme for waiver of late filing fees and limited immunity from prosecution for delayed filings.</li> <li>• Extended timelines for maturing deposits, commencement of new businesses, periodic filings and disclosures by listed companies.</li> <li>• Due to the scaling-down of operations at the Registrars of Companies during this period, the processing of filings is slower. This may impact the timing of transactions where for instance the filing of preferential allotment documents for a capital raise is required as a condition to closing.</li> <li>• Electronic signatures are permissible in India (subject to certain requirements). Otherwise, it is common to simply exchange signed pages in PDF over email.</li> <li>• India requires payment of stamp duties on contracts. There are some challenges to this process as each state has its own procedures. This requires careful planning upfront.</li> <li>• There is generally no need in India for documents to be notarised in order to take effect (except powers of attorney, which require notarisation).</li> <li>• Exemptions to listed companies from newspaper advertisements for limited period.</li> <li>• Threshold for initiating insolvency increased to INR 10m.</li> <li>• Lockdown period excluded from insolvency timelines.</li> </ul>
	<b>Court proceedings/ arbitration proceedings</b>	<ul style="list-style-type: none"> <li>• Due to the lockdown, most courts are not functioning.</li> <li>• Several courts are trying to consider urgent proceedings through e-courts/videoconferencing, but things are far from business as usual.</li> <li>• Arbitration proceedings have similar challenges.</li> </ul>
	<b>Completing transfers</b>	<ul style="list-style-type: none"> <li>• For share transfers, if shares are held in physical form (represented by a share certificate), then the share transfer requires a physical handover of the share certificate, and the share transfer form must be tabled before the target company's board for approval. This process is facing some challenges in the current lockdown scenario.</li> <li>• Where shares are held in electronic (dematerialised) form, the first hurdle is whether a buyer has a dematerialised account to hold such shares or not. Where this is not a hurdle, the method of operating such accounts (whether through physical signatures or otherwise) may pose a challenge.</li> <li>• Asset transfer agreements are physically challenging to implement in terms of inventory, delivery, custody, etc, during the lockdown.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
<b>Sweden</b> Contributed by: <b>Mats Dahlberg,</b> <i>Advokatfirman Delphi KB, Stockholm, Sweden</i>  <i>Mats.dahlberg@ delphi.se</i>	<b>Absence of complete lock- down</b>	<p>Unlike the rest of Europe (with potential other exceptions), Sweden has not experienced a complete lockdown. Certain governmental measures have been taken to increase social distancing, but generally these have not been as strict as in other countries (eg, there has been no closure of day-care, elementary schools or middle schools, no closure of restaurants, stores or pubs, and limitations of gatherings are to a maximum of 50 individuals).</p> <p>Even though Sweden has chosen a different virus-restricting measures than most other countries, the implications on the markets are basically the same across Europe (Sweden included). It is likely that Sweden will continue to be highly impacted by the general European M&amp;A activity during these times.</p> <p>Sweden has recently experienced re-negotiations on existing deals. Our assessment is that M&amp;A activity has slowed down in general, but we expect that high-quality companies and assets will continue to be attractive even in uncertain times. In addition, we expect to see distressed sales and fire sales of assets.</p>



# Country-specific impact

Country	Area of impact	Details
Sweden (continued)	<b>Stimulus of the bond market</b>	<p>Aligned with the doctrine of the ECB, the Swedish Central Bank (the 'Riksbank') is stimulating the bond market in order to support economic development and mitigate risks in the credit supply, leading to further aggravation of the economic consequences of the coronavirus pandemic. We deem that the measures are mainly aimed at keeping interest rates low.</p> <p>Of course, the above does not only have an impact on the Swedish M&amp;A market, but rather on the entire Swedish economy. However, as in most economies, low interest rates fuel prices and also increase spending. From an M&amp;A perspective, accessible loans and credit are essential, and we therefore consider the Riksbank's stimulus of the bond market to be worthwhile to the Swedish M&amp;A market.</p>
	<b>Merger filings and informal guidance on cooperation initiatives</b>	<p>Following the remote working measures taken as of 16 March 2020, the EU Commission has encouraged companies that have not yet notified planned concentrations to delay the notification, if possible. In practice, this means that it is not currently possible to obtain such a review other than in exceptional cases. Furthermore, the European Commission has announced that electronic submissions of merger notifications will be temporarily accepted and are in fact encouraged under current circumstances (normally, a merger notification must be submitted in physical form).</p> <p>The Swedish Competition Authority will provide 'informal guidance' for companies on any queries regarding temporary cooperation initiatives during the coronavirus outbreak, such as securing access to pharmaceuticals and fair rationing of scarce goods to consumers.</p>
	<b>Shareholder meetings</b>	<p>To limit the spread of the coronavirus, the Swedish government has put in place increasing restrictions on the ability of people to convene physically in groups, but Swedish private and publicly listed limited companies must still hold their AGMs during these times. However, fully digital AGMs and EGMs are not possible under the Swedish Companies Act for these companies; the meeting must always be 'held' at a physical location even though certain shareholders attend and partake digitally.</p> <p>Temporary legislation applicable from 15 April 2020 until the end of 2020 will allow for postal voting and collection of proxies, regardless of whether the company's articles of association or the meeting notice include such alternatives. In a noteworthy precedent, Swedish clothing retailer H&amp;M has recently published its notice to attend the May AGM and stated that 'in the main – participants [may] attend only remotely: by computer or other internet-enabled device (or by proxy or postal vote)'. Swedish companies and advisers are currently evaluating different virtual meeting software to see which solutions allow shareholders to securely participate and digitally vote at AGMs/EGMs.</p>

# Country-specific impact

Country	Area of impact	Details
<b>Italy</b>  Contributed by:  <b>Gabriella Covino</b> <i>Gianni, Origoni, Grippo, Capelli &amp; Partners IT, Rome</i>  <i>gcovino@gop.it</i>	<b>Government powers of scrutiny and veto on foreign investments</b>	<p>The Italian government has introduced significant changes to so-called ‘golden power rules’, by granting increased powers to the government, which can be exercised if the protection of the essential interests of the state are not adequately guaranteed by the existence of a specific sector regulation.</p> <p>The following rules will apply until 31 December 2020:</p> <ul style="list-style-type: none"> <li>• the duty to notify acquisitions of controlling interests by non-EU entities is extended to all strategic sectors referred to in EU Regulation 452/2019 (the ‘strategic sectors’);</li> <li>• an additional notification duty is required for any resolutions, acts or transactions that results in a change of ownership, control, availability or destination of assets and relationships in the strategic sectors;</li> <li>• the notification duty for the acquisition of controlling interests in the strategic sectors is extended to EU entities;</li> <li>• non-EU persons are obliged to notify acquisitions of equity investments in the strategic sectors which, considered cumulatively with the stakes already held, allow them to reach a threshold of voting rights or share capital equal to 10, 15, 20, 25 and 50 per cent, provided that the value of the investment is at least equal to €1m; and</li> <li>• the rules on disclosure of significant shareholdings and disclosure of intent for acquisitions of significant stakes in listed companies have been strengthened.</li> </ul>
	<b>Measures to support company’s liquidity</b>	<p>The government has introduced several measures to support small, medium and large companies’ liquidity, by allowing their access to credit lines and guarantees on loans. In particular: 1) investment bank Cassa Depositi e Prestiti SpA and export credit agency SACE SpA have been allowed to grant guarantees, upon certain conditions, to companies that have suffered from the Covid-19 emergency; and 2) a new temporary framework for guarantees issued by the Central Guarantee Fund for SMEs has been introduced.</p>
	<b>Suspension of terms of regulatory and administrative procedures</b>	<p>All the terms for the obtainment of regulatory and administrative approvals and/or authorisations before any independent authority are suspended until 11 May 2020.</p>

# Country-specific impact

Country	Area of impact	Details
<b>China</b>  Contributed by:  <b>ZHOU Yun</b> <i>Zhong Lun Law Firm, China</i>	<b>Tax</b>	<p><i>Tax declaration</i></p> <p>The State Taxation Administration (STA) has announced an extension of the monthly tax declaration deadline for February, March, April and May in light of the need for the implementation of coronavirus spread prevention measures and for work to resume. Further extensions may be available to the taxpayer and withholding agent if they experience difficulties in submitting their declaration within the extended deadline. In addition, an extension of the deadline for the declaration of individual business income tax has been announced by certain provincial tax bureaus.</p> <p>The STA also encourages local tax bureaus to handle tax affairs in a non-contact manner, through channels such as e-tax bureaus, mobile apps and a self-service tax-handling system. In Shanghai, around 270 tax-related items can be handled through online channels, including matters related to personal income tax filing and enterprise income tax filing, etc. An online tax system has been launched and fully implemented in Beijing, through which 139 tax-related items can be handled online.</p> <p><i>Preferential tax policies</i></p> <p>On 11 February 2020, the STA enacted the <i>Guidelines for Preferential Tax Policies in Favor of Prevention and Control of the Novel Coronavirus Pneumonia</i> (the 'Guidelines'), which include 12 policies covering four principles with respect to preferential tax policies issued by the STA and the State Ministry of Finance. The principles are:</p> <ol style="list-style-type: none"> <li>1. support for medical protection and treatment – eg, subsidies and bonuses obtained due to engagement in pandemic prevention and control, which are calculated at the fee rate within the limit as stipulated by the government, are temporarily exempt from individual income tax;</li> <li>2. support for the supply of materials – eg, incremental tax credits and incremental retained tax of VAT are fully refunded to the manufacturing enterprises of key pandemic prevention and control materials;</li> <li>3. advocacy of public-benefit donations – eg, cash and items donated through public welfare organisations or governmental departments in response to pandemic prevention and control may be deducted from the enterprise income tax or individual income tax; and</li> <li>4. support for resumption of work and production – eg, enterprises engaging in industries seriously hit by the pandemic are allowed to carry forward the losses incurred in 2020 to, at most, the next eight years.</li> </ol>

# Country-specific impact

Country	Area of impact	Details
China (continued)	Financing	<p><i>Financing support from the People's Bank of China</i></p> <p>The People's Bank of China (PBC) has announced that it will provide sufficient liquidity through open market operation, standing lending facility, relending and re-discounting, as well as other multiple monetary policy instruments, to maintain reasonable and sufficient liquidity in the financial market and to ensure the smooth running of interest rates on the capital market. The PBC is also providing low-cost funds for financial institutions through special re-lending, and is supporting financial institutions to offer credit support at preferential interest rates for enterprises in relation to pandemic prevention and control. For regions, industries and enterprises greatly affected by the pandemic, the PBC has adopted differentiated and preferential financial measures, including maintaining the loan growth rate, reducing comprehensive financing cost and increasing the supply of medium- and long-term loans to manufacturing fields.</p> <p><i>Foreign exchange management</i></p> <p>On 27 January 2020, the State Administration of Foreign Exchange (SAFE) issued the <i>Circular on the Establishment of a Green Channel of Foreign Exchange Policy to Support the Prevention and Control of Pneumonia Epidemic Caused by Novel Coronavirus</i>, the main policies of which include:</p> <ul style="list-style-type: none"> <li>• for donated funds in foreign exchange for the purpose of supporting outbreak prevention and control, banks may handle the formalities for entry of donated funds into accounts and foreign exchange settlement directly through the existing foreign exchange settlement accounts under the current accounts of the entities receiving the donations. The requirement to open a special foreign exchange account for the donation shall be suspended;</li> <li>• in handling the foreign exchange settlement and payment of income under a capital account relating to outbreak prevention and control, enterprises shall not be required to submit relevant transaction documents and certificates in advance (as was previously required) and banks shall strengthen the post inspection of the authenticity of the use of funds by the enterprises;</li> <li>• if required for outbreak prevention and control, the limit for borrowing foreign debts by enterprises can be exceeded and the application for registration of foreign debts can be filed online; and</li> <li>• for other special cross-border business relating to outbreak prevention and control, the bank may handle the business at its sole discretion first and report the same to local branches of the State Administration of Foreign Exchange for record-filing.</li> </ul>

# Country-specific impact

Country	Area of impact	Details
China (continued)	Employment	<p><i>Salary payment</i></p> <p>The Ministry of Human Resources and Social Security (MHRSS) requires enterprises to continue to pay salaries to employees throughout the quarantine observation period and medical treatment period. Where an enterprise shuts down for a period shorter than the salary payment period as provided in the employment contract, the enterprise shall pay salaries to its employees according to the standards stipulated in the employment contract. Where the shutdown exceeds such period, if the employee works as required based on his/her duties, the salary shall not be lower than the local minimum wage standard. If the employee is not required to work during the shut down period, the enterprise still needs to pay him/her a basic living wage, which shall be calculated based on the minimum wage according to local standards.</p> <p><i>Termination of employment contract</i></p> <p>The MHRSS prohibits enterprises from terminating employment contracts with employees who are novel coronavirus pneumonia patients, suspected patients or close contacts during their treatment or quarantine period. If the employment contract expires during such period, the term of such employment contract shall be extended accordingly.</p> <p><i>Economic layoff</i></p> <p>The MHRSS does not recommend enterprises to carry out economic layoffs. Where an enterprise has difficulties in production or operation due to the impact of the pandemic, it may, through consultation with its employees, maintain the original positions by means of salary adjustment, rotation of shifts or reduction of working hours, and must attempt to avoid lay off or, at a minimum, reduce layoffs.</p>
	Force majeure	<p><i>Interpretation</i></p> <p>Many provincial Higher People's Courts have provided interpretations explaining that Covid-19 could constitute a force majeure event if relevant agreement could not be performed by the parties. Opinions on which agreements could be rescinded for the reason of a force majeure event and how to handle such agreements – the performance of which are influenced by Covid-19 – are also provided in such interpretations. Despite certain differences in these opinions, general principles with respect to the handling of relevant cases remain the same: a strict attitude will be applied to any rescission of the agreements. Whether the court will support the rescission of the agreement shall depend on the impact of Covid-19 on the performance and material purposes of the agreement, based on a review of such impact on a case-by-case basis.</p>

# Country-specific impact

Country	Area of impact	Details
China (continued)	Force majeure (continued)	<p><i>Period of the force majeure</i></p> <p>In determining the period of the force majeure, the courts shall consider the actual impact of the coronavirus pandemic on the performance and purposes of the agreement, as well as the contractual rights therein. Generally, the period could be determined based on when the provincial government of the place where the agreement is performed or where the parties reside announces the commencement and end of the public health emergency.</p> <p><i>Application of force majeure</i></p> <p>According to the impact on the performance and purposes of the agreement, parties may be exempt from all or part of the liabilities under the agreement. General rules under the interpretations are:</p> <ul style="list-style-type: none"> <li>• in the event that the performance of only part of the agreement is affected without material impact on the performance and realisation of the purposes of the agreement, the court will not support the claim for rescission of the contract. The parties might be requested to undertake relevant liabilities based on the reasons for such incapability in performing corresponding obligations under the agreement; and</li> <li>• in the event that the purpose of the contract is rendered impossible to achieve due to the coronavirus pandemic, the court may support the rescission of the agreement and encourage the parties to share relevant losses based on friendly consultation. If no agreement can be reached with regard to the loss allocation between the parties, the court may rule on the allocation of the losses based on the principle of equity.</li> </ul>
	Distressed assets	<p>With the impact of the coronavirus pandemic on the economy, the scale of distressed assets in China will increase. This provides new opportunities for foreign investors to acquire distressed assets in China. According to the <i>Phase I China-US Trade Agreement</i> signed on 15 January 2020, China shall allow US financial service providers to apply for assets management company (AMC) licences at the provincial level, so that they may acquire non-performing loans directly from Chinese banks. Currently, the common methods for foreign financial institutions to invest in AMCs include establishing or acquiring local AMCs, and acquiring shares in the existing five national AMCs through capital increase or share transfer.</p>

# Country-specific impact

Country	Area of impact	Details
China (continued)	Administrative registrations, filings and civil legal proceedings	<p><i>Administration for Market Regulation (AMR)</i></p> <p>An online platform is used widely for the registration and filing of formalities, as well as lodging inquiries with the competent AMR. It is suggested that documents are submitted via post. However, because appointments are required by most AMRs before any onsite visit to the competent AMR:</p> <ul style="list-style-type: none"><li>• for business licences and other permits that expire during the pandemic period in Hubei Province, the effective period may be extended to the months after the period ends. The renewal of expired licences or permits and the filing of changes with the AMR may be applied for online within the extended period.</li><li>• the Shanghai AMR has announced that from 8 February 2020 to the end of the pandemic, 1) matters concerning the registration of enterprises, the registration of advertising release, the production licence of important industrial products, and the licence for special equipment, etc, will be handled online; 2) for matters concerning the review of advertisements for drugs, health food, formula food for special medical use and medical equipment, the applicant shall submit all materials by post; 3) for matters that must be handled onsite, eg, the application for permits of alcohol wholesale, the applicant shall make an appointment in advance; and 4) for all non-urgent matters, the applicant is advised to postpone such applications.</li></ul> <p><i>Stock exchange</i></p> <p>The deadline for the online submission of enterprises' 2019 annual reports has been extended to 30 April 2020. If, due to the impact of coronavirus pandemic, the temporary disclosure or other corporate matters cannot be disclosed or completed on time, the enterprise may apply for an extension with the exchange regulatory authorities, for example, when the major investment is suspended, the performance of a major agreement is affected, or there are difficulties in convening the AGM of shareholders or board meeting.</p>

# Country-specific impact

Country	Area of impact	Details
<b>China</b> <i>(continued)</i>	<b>Administrative registrations, filings and civil legal proceedings</b> <i>(continued)</i>	<p><i>Court and Arbitration Commission</i></p> <p>Hearings, investigations, and other litigation and arbitration activities have been temporarily suspended during the outbreak. Courts and arbitration commissions have suggested that any application or inquiry be conducted via post, telephone or online platforms. Some courts have adopted online hearing and online mediation proceedings. The Supreme Court promulgated the <i>Notice of the Supreme People's Court on Strengthening and Standardizing the Online Litigation Work during the Period of Prevention and Control of the Outbreak of Novel Coronavirus Pneumonia</i> on 14 February 2020, providing that people's courts at all levels shall actively popularise and standardise online court hearings, as well as determine whether to adopt an online court hearing method by taking into comprehensive consideration factors such as technical conditions, case situation and the intention of the parties concerned. With the decline of Covid-19 in China, most courts and arbitration commissions have gradually returned to offline work.</p>