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CORONAVIRUS RESOURCE CENTER

COVID-19—Review of State-Sponsored Help for European Companies

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Table of Contents

EU 2

UK 6

Germany 11

France 17

Italy 20

Countries across Europe are experiencing a significant surge in rates of infection, resulting in the reimposition of stricter public health measures including lockdowns. This complicates the road to recovery for commercial undertakings trying to deal with the economic downturn whilst adapting to the "new normal" of life with COVID-19.

Governments across Europe have indicated that the unprecedented state-sponsored packages currently in place will continue and be supplemented to aid businesses. For many businesses, quantifying the long-term economic impact of COVID-19 will take time. However, the depth and scale of the economic shock caused by the pandemic on economies across Europe is becoming clearer with many countries across the continent on the brink of deep recessions.

The vast majority of existing measures are open to any company with domestic employees and impose relatively few restrictions based on the size or nationality of the ultimate beneficial owner. This means that help is on hand for multinational companies or PE-owned portfolio companies with operations in Europe. The measures are

heterogeneous in nature, ranging from tax forbearance to state-subsidised temporary staff layoffs.

The procedures for applying for and receiving the different reliefs vary, and we can help guide you through them.

MEASURES IN THE MAIN EUROPEAN ECONOMIES

EU

The European institutions have launched a number of measures, which include:

- A €37 billion investment package aimed at supporting Member States' responses to the pandemic, SMEs, healthcare operators and companies in the most affected sectors (including hospitality and tourism); this package will also be funded by relinquishing the Commission's obligation to request refunding of unspent pre-financing for European structural and investment funds currently held by Member States to quickly direct €25 billion to deal with the fallout of the crisis. Most of these funds will be deployed directly by the relevant Member States;

- Sector-specific adjustments to EU policies and interpretation of EU laws, including a relaxation of the state-aid rules and the slot regulation affecting airlines, as well as additional support for agriculture, agri-food and fishing; and

- A relaxation of prudential rules for the banking system aimed at increasing access to credit for firms in need.

As regards the state-aid rules, the Commission has already turned words into actions. On 12 March 2020, the Commission approved a Danish state-aid scheme within 24 hours of its adoption to compensate for damages caused by the COVID-19 outbreak. The Commission has since continued to approve state-aid schemes notified to it in a swift and expedited manner, benefitting from its experience gained during the financial crisis in 2008 and moving faster than it did then as a result. The average length of time it takes for a state-aid scheme to be approved is 24-48 hours. In the past weeks, all 27 Member States, as well as the United Kingdom, have received approvals for state-aid schemes. The Commission has also reassigned additional staff to its state-aid units to help during this initial crisis period.

On 19 March 2020, the Commission adopted a "Temporary Framework" (the "Framework") for state aid that allows Member States to provide five types of aid to support the economy: (i) direct grants, selective tax advantages and advance payments

(up to €800,000 per company), (ii) state guarantees for loans taken by companies, (iii) subsidised public loans to companies, (iv) safeguards for banks that channel state aid to the real economy and (v) flexibility to enable short-term export credit insurance. This was supplemented with the first amendment to the Framework on 3 April 2020. The first amendment extends the Framework and allows Member States to give zero-interest loans and guarantees on loans that cover 100% of the risk or to provide equity. Member States are permitted to provide such direct aid up to the nominal value of €800,000 per company.

The amendment also includes five additional types of aid measures: (i) targeted deferrals of tax or suspension of social security contributions, (ii) targeted support in the form of wage subsidies for employees, (iii) support for COVID-19 research and development, (iv) support for the construction and upscaling of testing facilities and (v) support for the production of products relevant to tackling the COVID-19 outbreak.

On 8 May 2020, almost a month after it was initially proposed, the Commission adopted a second amendment to the Framework. The second amendment extends the Framework to allow Member States to provide subordinated debt and recapitalisation aid to companies in need—as a last resort—in return for equity. As this is intended to be a measure of last resort, the amendment sets out a number of safeguards to avoid the distortion of competition. This includes: (i) conditions on the necessity, appropriateness and size of intervention, (ii) conditions on the Member State's entry in the capital of the company and remuneration, (iii) conditions regarding the exit (including time limits) of the Member State from the capital of the company, (iv) governance conditions and (v) the prohibition of cross-subsidisation and acquisitions. In order to maintain transparency, Member States must publish the identity of recipients of recapitalisation aid within three months. The second amendment is an important development as it will allow national governments to buy stakes in companies in trouble (*e.g.*, in the airline sector) as they did during the 2008 financial crisis. Italy has already indicated it will renationalise Alitalia, and Germany has confirmed that it will take a stake in Lufthansa.

The Commission has so far approved over 170 national measures, amounting to over €1.9 trillion in state aid to the EU economy. The amended Framework will continue to apply to measures put in place between 1 February and 31 December 2020. However, the Commission has decided to extend the recapitalisation measures until the end of June 2021 to ensure legal certainty.

On 29 June 2020, the Commission adopted a third amendment to the Framework. The amendment extends the scope of the Framework to support small enterprises (including start-ups) that were already in difficulty before 31 December 2019. This means that support is now available to all micro and small companies unless the company is in insolvency proceedings, has already received rescue aid that has not been

repaid or is subject to a restructuring plan under the state-aid rules. The amendment also provides incentives for private investors to participate in recapitalisation measures. If a private investor contributes at least 30% of the new equity (at the same conditions as the state) then some of the recapitalisation restrictions applicable under the Framework are relaxed. For example, the acquisition ban and the cap on remuneration of the management are limited to three years, and the dividend ban is lifted for certain shareholders. The third amendment is another important development for the Commission because the Framework had previously been criticised for allowing start-ups and small high-growth companies to "fall through the gaps". However, following the adoption of the third amendment, many small companies who previously did not qualify for support will now be able to access aid under the Framework.

For the first time, the Commission has proposed a new instrument to mitigate unemployment risks and has temporarily implemented the Support to Mitigate Unemployment Risks in an Emergency ("SURE"). SURE is a short-time work scheme designed to reduce the working hours of employees while at the same time providing them with income support for hours not worked. SURE aims to avoid redundancies and ensure readiness of personnel once the economy is recovering from the pandemic. Under SURE, the Commission grants Member States €100 billion in the form of loans on favourable terms so that they can create or extend their national short-time work schemes and implement similar measures for those who are self-employed. To finance these loans, the Commission will borrow on financial markets, and the Member States will therefore benefit from the Commission's strong credit rating and low borrowing costs. In August 2020, the Commission presented its proposals to grant financial support of €81.4 billion to 15 Member States under the SURE instrument. SURE will launch once the Member States have provided cumulative guarantees of €25 billion, pending Council approval. The Commission has also put forward a proposal to support Portugal separately and is expected to do the same for Hungary.

The new EU framework for the monitoring of foreign investment in the European Union, the FDI Regulation, came into force on 11 October 2020. The cooperation mechanism between Member States and the Commission equips the EU such that it can identify risks related to acquisition or control of strategic assets that threaten security or public order. The COVID-19 outbreak forced the Commission to publish interim guidance encouraging Member States to either adopt or vigorously enforce screening mechanisms during this time to protect European companies from opportunistic acquirers. EU governments are also being urged to start "informal" cooperation with the Commission before the bloc-wide monitoring system comes into force—in order to prevent predatory takeovers of key European companies struggling during the pandemic. This proposal has found support from all Member State governments, with France, Germany, Italy and Spain in particular advocating closer cooperation and information sharing between countries.

Further, on 17 June 2020, the Commission adopted a White Paper regarding the distortive effects caused by foreign subsidies in the Single Market. The White Paper sets out three modules that set out solutions to prevent distortion from: (i) companies in the EU benefiting from foreign subsidies, (ii) foreign subsidies facilitating the acquisition of EU companies and (iii) the effect of foreign subsidies on EU public procurement procedures.

On 27 May 2020, the Commission proposed a new Solvency Support Instrument (the "SSI") to help kick-start the European economy and prevent otherwise healthy companies from going insolvent because of the pandemic. The SSI builds upon the existing European Fund for Strategic Investments and proposes the use of up to €300 billion of the EU budget to support equity investments in companies which have solvency problems. The SSI is a temporary measure that will have an investment period that runs until the end of 2024. The Commission intends that the SSI will help to create a level playing field in the Single Market by targeting companies that operate in Member States and sectors that have been particularly impacted by the pandemic.

On 2 July 2020, the Commission announced that it will extend certain state-aid rules, which were due to expire in 2020, in order to provide legal certainty. The Commission simultaneously announced its intention to temporarily amend the state-aid rules in direct response to the COVID-19 pandemic. The General Block Exemption Regulation will be amended to allow companies to receive aid, even if they are regarded as an "undertaking in difficulty" between 1 January 2020 and 30 June 2021, provided that they were not "in difficulty" on 31 December 2019. This extension came into effect on 27 July 2020. A further amendment will also be made to ensure that companies who have previously given relocation commitments when receiving regional aid will not be deemed to have breached those commitments if they have had to lay off staff as a result of COVID-19.

UK

The UK government has announced an unprecedented package of measures including:

- Employment support:
  - A scheme providing government grants to UK businesses to pay employees' salaries. The "Coronavirus Job Retention Scheme", which originally launched on 20 April 2020, is also accessible by companies in administration (subject to certain conditions) and has been revised on a number of occasions. The scheme was previously closed to new entrants from 30 June 2020 and was due to end on 31 October 2020, but the government announced, in the wake of the second national lockdown on 5 November, that the scheme will now run until the end of March 2021, under the same conditions as when it was initially rolled out (80% of wages for unworked hours, up to a maximum of £2,500), removing the requirement which applied during September and October 2020 for employers to pay part of the amounts received by employees. As part of the revised scheme applying from 1 November 2020, anyone employed as at 31 October 2020 can be covered, even if not previously furloughed, and those made redundant after 23 September can be rehired and placed back on furlough. The extension will be subject to a review in January, to determine whether the level of employer contributions (80%) remains appropriate or should be changed. The government is reviewing whether employers should be eligible to claim for employees serving contractual or statutory notice periods and will change the approach for claim periods starting on or after 1 December 2020, with further guidance published in late November. In a new development, from December 2020, HMRC will publish employer names of those who have made claims under the scheme for the month of December onwards;
  - From February 2021, the UK government was due to pay businesses a further £1,000 for each employee who returns to work from furlough and remains employed as at the end of January 2021, though the extension of the Coronavirus Job Retention Scheme until the end of March has rendered this redundant for now. The Chancellor, in his address of 5 November, said the Job Retention Bonus would be reintroduced at the appropriate time;
  - On 24 September 2020, the Chancellor announced a new Job Support Scheme to come into effect on 1 November to protect viable jobs in businesses that are facing lower demand over the winter months due to the COVID-19 crisis. Following criticism, it was announced on 22 October 2020 that the scheme would be amended, however, with the extension of the original Job Retention Scheme, the Job Support Scheme has now been withdrawn, at least temporarily;

    - The Chancellor has been forced to cancel the government's Comprehensive Spending Review, in order to focus on implementing its "Plan for Jobs". He will instead set out a stop-gap one-year review in November; and

    - As part of the government's "Plan for Jobs", the Kickstart Scheme provides funding to employers to create new six-month job placements for young people who are currently on Universal Credit and at risk of long-term unemployment.

- Measures for the self-employed:

    - The Self Employment Income Support Scheme Grant ("SEISS") is being extended in a similar vein as the Job Retention Scheme. The government's announcement on 5 November has since increased the level of the taxable grant to 80% of average trading profits, up to a maximum of £7,500, up from 55% and before that 20%;

    - Increases to the universal credit standard allowance and extension of universal credit to the self-employed; and

    - A deferral of individual self-assessment tax payments to January 2021 and the ability to apply to postpone filing annual audited accounts by three months. Announced as part of the Winter Economy Plan, the "Enhanced Time to Pay" initiative allows self-employed taxpayers to defer full payment of their self assessment liabilities due in January 2021 until January 2022. A suitable payment plan must be agreed with HMRC's Time to Pay facility, and eligibility is subject to a total self-assessment liability limit of £30,000.

- Tax support/deferrals for businesses:

    - A deferral of VAT payments by businesses. Though these VAT bills were to become due in March 2021, they can now be spread over 11 interest-free payments so to offer greater flexibility. Businesses wishing to take advantage of the "New Payment Scheme" will need to opt in, with details of this process to be unveiled by HMRC in early 2021. On 8 July 2020, the UK government announced a VAT rates cut from 20% to 5% for the hospitality and tourism sectors. The temporary cut, initially set to last for six months, has now been extended until 31 March 2021;

    - A waiver of business rates (*i.e.*, taxes on occupancy of commercial properties) for one year for retail, hospitality and leisure businesses. Also available are cash grants administered by local authorities for the same types of businesses; and

- Additional flexibility to agree to additional time to settle outstanding tax bills via a HMRC helpline.

- Commercial property:

  - A temporary ban on landlords evicting commercial tenants for unpaid rent that started on 23 March 2020 has been extended until the end of the year, to ease them through the Christmas period. Commercial tenants will remain liable for rent due, and it is intended that a landlord's right to forfeiture will be reinstated at the end of the period;

  - Measures to safeguard commercial tenants against aggressive debt-recovery actions by landlords including (i) voidance of statutory demands and winding-up petitions against tenants and (ii) changes to the use of Commercial Rent Arrears Recovery; and

  - Businesses in England who have been forced to close due to local lockdowns are now eligible for grants worth up to £1,500 for every three weeks they are shut. The government has recently made the Local Restrictions Support Grant scheme more generous by increasing the maximum grant to £3,000 per month, and allowing business to claim after just two weeks of closure rather than the original three.

- Monetary policy and business loans:

  - A business interruption loan scheme managed by the British Business Bank (the "CBILS"), which launched on 23 March 2020, allowing SMEs with an annual turnover of less than £45 million to borrow up to £5 million with a government guarantee covering 80% of the loan. The loan will only be available from accredited lenders, and the initial year will be interest free, with the government to meet any associated fees during this period. Companies classed as "undertakings in difficulty" (including PE-owned portfolio companies) can now access the CBILS, provided that they have: (i) fewer than 50 employees and (ii) a turnover of £9 million or less.;

  - A large business interruption loan scheme (the "CLBILS"), which launched on 20 April 2020, to provide government guarantees of 80% of the loan amount. Under the scheme, companies with a turnover of between £45 million and £250 million can borrow up to £25 million, and companies with a turnover in excess of £250 million may borrow up to £50 million. The loans will be provided only through accredited lenders to businesses that have been unable to secure regular commercial financing and will be offered at commercial rates of interest. The UK

government has announced changes to this scheme taking effect from 26 May 2020;

- A government guarantee on all commercial paper issued by undertakings making a material contribution to the UK economy that had an investment-grade rating prior to the crisis, lasting for 12 months and for as long as steps are needed to relieve cash flow pressures;

- A scheme that launched on 20 May 2020 to issue convertible government loans to start-ups. Unlisted UK-registered companies which have raised at least £250,000 in the last five years in aggregate from private third-party investors will be eligible through the "Future Fund" for loans of up to £5 million. The Treasury has extended this scheme, as well as the Bounce Back Loan Scheme (below), the CBILS and the CLBILS, allowing employers to top-up their borrowing during the second national lockdown. The application deadline for the Future Fund and other loan schemes is now 31 January 2021;

- The "Bounce Back Loan", an admin-light scheme allowing SMEs affected by the pandemic to receive loans of up to 25% of their annual turnover (with a cap of £50,000) from accredited lenders. These loans will have a term of up to 10 years and will benefit from a payment holiday during the first year. The "Pay As You Grow" scheme announced on 24 September will almost halve monthly repayments in some cases, allowing those businesses worst affected to suspend repayments for up to six months without any impact on their credit rating. The UK government will guarantee the amounts provided under these loans, and borrowers will not have to pay any fees or interest during the first 12 months;

- Under the COVID-19 Corporate Finance Facility (CCFF), the Bank of England will buy short-term debt from large companies. The scheme allows companies to finance their short-term liabilities through commercial lenders backed by the Bank of England. It will operate for at least 12 months and for as long as steps are needed to relieve cash flow pressures on firms that make a material contribution to the UK economy;

- Measures aimed at increasing the provision of U.S.-dollar liquidity;

- The Bank of England (the "BoE") has promised increased support for banks lending to the "real economy" and is due to unveil new incentives for banks to increase their lending to SMEs. In particular, under the term funding scheme for SMEs ("TFSME"), the BoE is offering four-year collateralised loans to cover "at least 10% of … real economy lending at interest rates at, or very close to, Bank Rate" and "additional funding" to banks that increase lending to SMEs;

    - The BoE announced plans to inject a further £200 billion into the UK economy by increasing their holdings in UK government bonds and sterling nonfinancial investment-grade corporate bonds. The BoE recently announced an increase of £100 billion to its bond-buying programme, taking the total commitment to £745 billion;

    - In a further measure aimed at stimulating the economy, it has reduced the Bank Rate to an all-time low of 0.1%; and

    - In addition, the size of the "*Ways and Means*" banking facility of the UK government at the BoE has been increased. This will allow the UK government to finance itself through the BoE without recourse to the bond markets, as was the case during the 2008 financial crisis.

- Changes to employment regulations:

    - A relaxation of annual leave rules that will allow up to four weeks of unused statutory annual leave to be carried over for two years; and

    - The ability for SMEs (up to 250 employees) to reclaim up to two weeks of statutory sick pay paid for coronavirus-related sick leave.

The Corporate Insolvency and Governance Act came into force on 26 June 2020. The legislation will provide significant changes to the UK insolvency framework including introducing new corporate restructuring tools to the insolvency regime, temporary suspension of the existing insolvency regime and temporary easements on filing requirements and flexibility on the holding of Annual General Meetings. The restructuring tools include a "company moratorium" allowing companies to establish a rescue plan for 20 business days (extendable to 40 business days) without creditors being able to take legal action, a new restructuring plan mechanism that would allow the UK courts to sanction a rescue plan which would bind dissenting creditors and a change to restrict the suppliers of goods or services to an insolvent company from terminating contracts to aid in its rescue.

Changes to the Enterprise Act 2002 have been implemented as of 23 June 2020. The changes are set to increase the UK government's powers to scrutinise and, if necessary, intervene in foreign investment transactions to ensure they do not threaten the UK's ability to combat a public health emergency. The protection is particularly directed at those businesses involved in a pandemic response. In addition, these changes will expand the UK government's powers to scrutinise and intervene in mergers in three sectors of the UK economy central to national security: artificial intelligence, cryptographic authentication technology and advanced materials.

On 19 May 2020, the UK government announced changes to the CLBILS. Under the revised rules, companies with a turnover in excess of £250 million will be able to borrow up to 25% of turnover and up to a maximum amount of £200 million. Companies borrowing under the revamped CLBILS will be subject to: (i) a ban from making any dividend payments other than those that have already been declared, (ii) a ban on share buybacks and (iii) a restriction on paying cash bonuses or any pay rises to senior management unless certain terms have been met.

Although the UK government has dismissed the prospect of State bailouts of companies or State rescue plans, the government has indicated it will aid companies strategically important to the UK economy regardless of their sector in "exceptionally rare" circumstances under a plan dubbed "Project Birch". The Chancellor has indicated that viable companies that have exhausted all other options, including the CBILS and CLBILS, and whose failure would disproportionately harm the economy, could apply for assistance.

On 24 September 2020, the UK government announced a relaxation of the rules governing the CBILS, extending the government guarantee up to 10 years and pushing back the application deadline to 30 November, before a successor scheme takes effect in January 2021.

Note that any support granted by the UK government will need to comply with the EU state-aid rules during the Brexit transition period.

Germany

The German government has launched a number of measures aimed at helping companies in financial difficulties due to the pandemic, including:

- State funding
    - A far-reaching stimulus package with a total value of €130 billion. The package is *inter alia* geared towards climate protection and promotion of future technologies. €50 billion of the package is earmarked to support the development of quantum computing and artificial intelligence as well as supporting an increased use of electric vehicles and hydrogen energy;
    - Special subsidies are available to companies and organisations of all sizes (subject to certain exceptions) which had to discontinue all or a substantial part of their business activities as a result of the pandemic and thus suffered from a loss of sales amounting to at least 60% in April and May 2020 on average compared to the same period in 2019. Companies that do not meet this requirement but

suffered severe losses in 2020 and generally face strong seasonal fluctuations due to the nature of their businesses may be eligible as well. Companies may receive a monthly non-repayable operating grant for a maximum of three months covering June, July and August 2020. The exact amount is calculated individually for each month on the basis of the experienced drop in sales in the aforementioned period in relation to the respective reference months in 2019. If the loss of sales in one month is less than 40% compared to the same month in 2019, subsidies will not be granted with respect to this month. The maximum subsidy is C 50,000 per month (*i.e.*, C 150,000 in total), and applications may ultimately be made until 9 October 2020 (Phase I). The government decided to extend the subsidies scheme until December 2020 (Phase II); after 9 October 2020, applicants may be entitled to receive grants if they have experienced either (i) a loss in sales of at least 50% in two consecutive months in the period from April to August 2020 or (ii) a loss in sales of at least 30% on average in the months from April to August 2020 (both compared to the respective months in 2019). As in Phase I, the maximum subsidy in Phase II is C 50,000 per month (*i.e.*, C 200,000 in total). Regarding both Phases, application may only be made by tax consultants, auditors, certified accountants or lawyers via an online portal;

- In addition to the above, the German government decided on "extraordinary economic aid" measures to compensate companies affected by the temporary lockdown currently imposed for financial losses incurred as a result. For companies with up to 50 employees, the compensation amount shall be 75% of the turnover of the previous year's corresponding month. For companies founded after November 2019, the revenue of October 2020 will be taken as the benchmark. For companies with more than 50 employees, the percentage is to be determined according to the limits of the relevant state aid regulations. Further assistance, *e.g.*, short-time work compensation or financial aid from Phase I or II (above), will be deducted from the reimbursement amount. The extraordinary economic aid is to be paid for each state-ordered week of the ongoing lockdown. It is also intended to include companies that are indirectly affected by the lockdown, *i.e.*, if the company has regularly generated 80% of its turnover with companies affected by the lockdown;

- The KfW, the German development bank, has launched a "Special Programme 2020" available until the end of 2020. The programme's funds are unlimited and available to SMEs as well as large enterprises. Companies may take out KfW-backed loans at very low interest rates through their house banks. Loans of up to €3 million will be assessed by KfW directly. Loans between €3 million and €10 million will benefit from a simplified risk assessment by the borrower's house bank. In addition, the KfW assumes up to 90% (for SMEs) or 80% (for large companies) of the credit default risks. Companies may apply for loans of up to

€100 million per company group subject to further conditions. KfW loans are available only for companies that were not in financial difficulty on 31 December 2019;

- In addition, for projects in Germany, the KfW offers syndicated large-scale financing for investments and working capital for domestic and foreign medium-sized enterprises and large companies which are mainly privately owned. The scheme assumes up to 80% of the credit risk of the financing but no more than 50% of the applying company's total debt;

- A KfW "instant loan" (*KfW-Schnellkredit*) is available to mainly privately owned medium-sized companies based in Germany (i) with more than 10 employees and (ii) that have been active on the market since at least 1 January 2019. The maximum loan amount available per company is up to three monthly turnovers in 2019. This amount is further capped at a maximum of €500,000 for companies with up to 50 employees and a maximum of €800,000 for companies with more than 50 employees. Eligible companies must not have been in financial difficulty as of 31 December 2019 and must have reported profits in 2019 or over the last three years. The KfW covers 100% of the credit risk of the applicant's house bank. The German government also decided in the wake of the November lockdown to make the loan available to companies with less than 10 employees, but in this case with a maximum loan amount of EUR 300,000;

- The German government supports venture capital ("VC") financing for German start-ups with a package worth €2 billion. VC funds will receive additional public funding by means of a "Corona Matching Facility" ("CMF") which is backed by the European Investment Fund ("EIF") and KfW Capital, the KfW VC subsidiary. The CMF aims at providing necessary liquidity to German-based start-ups and young companies in the portfolio of professional private VC funds that have faced liquidity problems in the wake of the crisis. VC funds audited by KfW Capital or EIF are eligible to apply. Start-ups and smaller companies not eligible under the CMF may receive mezzanine or venture capital funding through promotional institutes of the German Federal States (*Bundesländer*); and

- The German government has also set up the Economic Stabilisation Fund (the "ESF"), an extensive rescue package providing additional support in particular for larger companies if such companies (i) have found no other alternative for funding to cope with the pandemic and (ii) have a clear continuity plan in place to overcome their challenges. Grants are approved by the Federal Ministry of Economics. Where necessary, the ESF may participate in the recapitalisation of companies by means of subordinated debt instruments, hybrid bonds, profit participation certificates, silent partnerships, convertible bonds or even corporate

shares. The ESF has a volume of approximately €600 billion in total (€400 billion has been earmarked to provide loan guarantees to companies, €100 billion for investments and recapitalisation and up to €100 billion to refinance the KfW Special Programme 2020). Fund resources are available to larger companies in the "real economy" (*Realwirtschaft*), *i.e.*, commercial enterprises that are neither companies in the financial sector nor credit institutions and which meet two of the following three criteria: (i) a balance sheet total of more than €43 million, (ii) turnover of more than €50 million and (iii) at least 250 employees per annum. Irrespective of these criteria, access to the fund is also available for companies active in critical infrastructure sectors.

- Guarantee Schemes
  - Companies may also use guarantee schemes through their house banks. Under those schemes, guarantees are provided by special German guarantee banks (*Bürgschaftsbanken*) which receive counter-guarantees from the federal government and the German Federal States (*Bundesländer*). For companies that had sustainable business models until the crisis, guarantees may be provided for working capital and investment financing. Up to an amount of €2.5 million, these are processed by the guarantee banks directly; above €2.5 million, the federal states or their development institutions are responsible. The government is now also opening up its Large Guarantee Programme beyond structurally weak regions to provide guarantees for surety requirements upwards of €50 million (within structurally weak regions still upwards of €20 million, as before);
  - For a limited period of time until 31 December 2020, export transactions may also be covered by official export credit guarantees of the federal government ("*Hermesdeckungen*") on short payment terms of up to 24 months within the European Union and in certain OECD countries. With immediate effect, guarantees are available for transactions in the field of renewable energies that include up to 70% foreign-sourced goods or services. Usually, the share of foreign-sourced goods and services is capped at 49%; and
  - The government, in coordination with credit insurers, has rolled out a protective shield to safeguard German businesses' supplier credits. The government will guarantee €30 billion worth of compensation payments by credit insurers from March to the end of 2020. In return, credit insurers commit to maintaining their current level of coverage of roughly €400 billion worth of credit lines. On top of that, credit insurers will cover losses of up to €500 million themselves, bear the default risks in excess of the government guarantees and transfer two-thirds of total premiums for 2020 to the government.

- Employment

    - Extended access to the *Kurzarbeit*, a state-subsidised scheme that allows companies to reduce the working hours of their employees without having to terminate their employment. Under this scheme, employees receive 60% (67% in case of parenthood) of their lost net salary from the state, which might be increased to up to 80% (87% in the case of parenthood) if short-time work is necessary for a longer period. As many employers are topping up their employees' salary under the scheme to mitigate social hardship, the German government recently decided that the top-ups will remain tax-free up to a level of 80% of the employee's (gross) salary and will not be regarded as taxable income until 31 December 2020. On September 16, 2020, the government further decided to extend respective measures. In particular, for companies having initiated *Kurzarbeit* by December 31, 2020 the period for which short-time working compensation is paid will be extended to up to 24 months (but not beyond December 31, 2021).

- Tax Mitigation

    - The ability to defer tax payments in order to support taxpayers' liquidity. Tax authorities are able to defer income and corporate taxes as well as VAT, if their collection would lead to significant hardship for the taxpayer. The tax authorities are instructed not to impose strict conditions in this respect. If companies are unable to make tax payments that are due this year as an economic consequence of the COVID 19 pandemic, then such payments shall be deferred upon request for a limited period of time and without interest. Companies may file a respective application until 31 December 2020. Enforcement measures related to tax payments and late-payment penalties will be waived until 31 December 2020 if the debtor of a pending tax payment is directly affected by COVID-19. Similar measures apply to insurance taxes as well as energy and aviation taxes. The measures do not directly apply to payroll taxes, withholding taxes or local taxes such as property taxes;

    - It has also been made easier to reduce tax pre-payments (income, corporate and business taxes) due in 2020 on the condition that a taxpayer's income in the current year is projected to be lower than in the previous year. On the basis of a lump-sum loss carryback, the advance payments for 2019 may also be reduced retroactively if the taxpayer makes a corresponding claim for reimbursement of payments. The government recently adopted further tax measures providing *inter alia* for a loss carry-back and a VAT reduction (from 19% to 16% for the regular VAT rate and from 7% to 5% for the so-called "reduced VAT rate"). The measures also include improved depreciation options for operating assets in 2020 and 2021.

In addition, in October 2020, the German government published a draft law aiming to reform the existing restructuring and insolvency framework. The draft law focuses on the introduction of a new German pre-insolvency restructuring regime in accordance with the underlying European Directive on preventive restructuring frameworks (Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019) which will *inter alia* introduce the option of a restructuring plan in a way that combines the English scheme of arrangement amongst creditors with U.S. Chapter 11 proceedings;

- In the future, companies or consumers in debt shall be able to exit (private) insolvency proceedings after a maximum of three years (as opposed to five and six years respectively). Settling the claims of a minimum quota of creditors (35%) and/or paying the costs of the proceedings will no longer be a precondition to exiting proceedings prematurely. The new rules shall apply to all insolvency filings made as of 1 October 2020. For insolvency proceedings filed between 17 December 2019 and 30 September 2020, a transitional provision shall apply. In these cases, the current regular period of six years before discharge of residual debt will be reduced by the number of full months between the underlying EU directive (2019/1023, effective as of 16 July 2019) and the respective insolvency filing; and

- The Federal Act to Mitigate the Consequences of the COVID-19 Pandemic in Civil, Insolvency and Criminal Proceedings (COVID-19 Mitigation Act, the "Mitigation Act"), passed by the German legislative bodies in March 2020, contains a number of support measures for companies and citizens who are currently unable to meet payment obligations as a result of the COVID-19 pandemic. This includes, for example, restrictions on the right to terminate leases, payment/performance moratoriums and deferrals of loan payments. The obligation to file for insolvency has been suspended until 30 September 2020 on the precondition that there is a prospect of the illiquidity being resolved. The German government recently agreed to extend this suspension until the end of this year; however, the extension only applies to insolvencies due to over-indebtedness (*Überschuldung*) and not due to a company's inability to meet its payment obligations (*Zahlungsunfähigkeit*). A company is considered being over-indebted if its assets are no longer sufficient to cover its existing liabilities. If a company becomes unable to meet due payment obligations, it will thus have to file for insolvency after 30 September 2020.

France

The French government has deployed or will deploy an ambitious set of measures, including:

- Tax forbearance (spanning both social contributions and income taxes);
- Direct tax rebates for businesses facing important economic difficulties;
- The possibility for deferred payment of rent and electricity and fuel supply invoices for small businesses; 30% tax credits for landlords who were forced to abandon at least a month of rent between October and December 2020 owed by small businesses in the hospitality and restoration sectors affected by the restrictions in place since 30 October Lump payments of €1,500 for the self-employed or very small companies; eligible businesses are those which have, *inter alia*, a turnover of less than €1 million or are subject to mandatory closure and have experienced a decrease of turnover of at least 50% in March, April or May 2020 (compared to the same month in the previous year). Businesses facing the biggest financial difficulties may benefit from additional aid of up to €10,000 if the company is from a priority sector and has experienced a decrease in turnover of at least 80% between 15 March and 15 May 2020 (compared to the same period in the previous year); The lump payments out of this solidarity fund have been reactivated for the self-employed and very small companies (now with up to 50 employees) who experienced a decrease in turnover due to administrative closures, curfew and the second national lockdown measures between September and November 2020. The priority sector list for eligible companies has been extended and the fund will also compensate companies that are authorised to remain open but whose business is affected. Payments are adapted to the specific situation of each company (degree of decrease in turnover, applicable measures and curfew zones). The solidarity fund payments compensate the decrease in monthly turnover and can go up to €10,000. An interactive map for the solidarity fund can be found on the website of the Ministry of the Economy (here).
- State-assisted refinancing of existing debt and access to new lines of credit from the French development bank;
- A State guarantee of up to €300 billion for bank credits to nonfinancial businesses of all sizes (certain real estate companies, however, are not eligible) until 31 July 2021. Subject to certain exceptions, the guaranteed loan shall not exceed 25% of the latest annual turnover. The state guarantee will cover a percentage of the capital, interest and accessories of the loan set at: (i) 90% for businesses that have less than 5,000 employees and a turnover of less than €1.5 billion, (ii) 80% for other businesses with a turnover between €1.5 and €5 billion or (iii) 70% for remaining businesses; plus an

additional year to pay back the credits has been granted to the businesses which will not have recovered by spring 2021.

- €500 million in advances by the French government. Small companies with up to 10 employees are eligible for advances of up to €10,000 and companies with 11 to 49 employees for advances up to €50,000. Larger companies with over 50 employees are eligible for advances up to the equivalent of a three-month turnover in 2019.

- Support from the French development bank in negotiating a rescheduling of bank loans;

- Simplified and reinforced short-time working arrangements to maintain employment (French equivalent of the *Kurzarbeit*); extended to 31 December 2020 for companies in the tourism, hospitality, restoration, sports, transport, event and cultural sectors as well as for companies affected by specific restrictions due to the curfew in place since 17 October 2020.

- Support for the handling of disputes between customers and suppliers by an official ombudsman appointed by the French State;

- For those undertaking work as contractors or suppliers for the French State, a state of *force majeure* for all public contracts that disapplies all penalties for late delivery/performance;

- Exceptional financial aid for craftsmen and business owners corresponding to the amount of the supplementary pension contribution paid on the basis of their income in 2018 that may amount up to €1,250; and

- Payment plans for tax debts to allow small and medium-sized businesses to spread out tax payments which would have occurred between 1 March and 31 May 2020 over a period of a maximum of three years.

A ban on payment of dividends or repurchase of shares by large companies (*i.e.*, those employing at least 5,000 employees in France and with a turnover of at least €1.5 billion in France) that benefit from state-aid guarantees or tax forbearance was announced on 27 March 2020. A special emergency plan for start-ups has also been announced: start-ups will benefit, *inter alia*, under certain conditions, from a short-term refinancing scheme through bond issues and specific conditions for State guarantees for bank credits.

A special support plan for exportation companies has been enforced (including a State guarantee for pre-financing export schemes to reinforce cash flow, extension of

prospection insurance for an additional year and additional capacity of €2 billion for export credit insurance).

A special support plan for the automotive sector was set up on 26 May 2020. With over €8 billion of aid, direct investments and loans, the French government seeks to make the French car industry greener and more competitive. It will increase its subsidies for the purchase of electric and hybrid cars by private individuals and companies, as well as accelerate the renewal of public vehicle fleets and expand the network of electric charging stations. Additionally, the creation of a €1 billion Future Fund will support the modernisation of production lines and boost innovation in the sector.

A special support plan for tech companies was set up on 5 June 2020 with the creation of a special investment fund named "French Tech Souveraineté" benefitting future-oriented companies (*e.g.*, cybersecurity, AI, health, etc.) with business activity in France or start-ups. This fund will hold €150 million at first, with the option of reaching €500 million in 2021. This special plan also includes measures like additional financing through public investment funds, state aid and loan offers for start-ups which cannot benefit from State-guaranteed loans. Pre-existing start-up funds such as "French Tech Bridge" and PSIM are also being refueled with €80 million and €120 million respectively.

A special support plan for the aeronautical industry was announced on 9 June 2020. This plan includes a moratorium on principal repayments of export credits for 12 months starting from the end of March 2020 (as a counterpart, airlines are subject to a ban on payment of dividends or others to their shareholders), a temporary easing of the repayment terms for new aircraft purchases and an increase in financial support through a public export insurance company. To support French aircraft manufacturing, the government decided on the creation of a €1 billion aeronautical investment fund to support small and medium-sized businesses in their R&D and automation (€500 million available already in July 2020). On top of that, France supports the green transition of aircraft manufacturing with a €300 million fund over a three-year period.

The French government has also announced a specific investment plan for certain large listed companies facing difficulties and has adapted the French legal framework and implemented specific interim modifications to labour law, business and company law and the functioning of the French justice system (for further details see our update here).

A plan to support independent book shops was announced on 10 June. It includes a €25 million relief fund to offset financial difficulties due to the coronavirus crisis, a €5 million fund to support medium-sized publishers and a €12 million fund to modernize book shops and develop their competitiveness. Additionally, over €100 million will be

raised by the French government for the Institute for the Financing of Cinema and the Cultural Industries, of which €40 million will be available for the book industry.

Italy

Italy has been heavily hit by the pandemic so far. Its government has issued an initial decree (named the "Cure Italy Decree"), which was followed by a second and third one. These decrees have introduced support measures for businesses that largely mirror the German and French ones, including:

- Direct capital injections from the state either: (i) through unilateral funding from the Italian State investment bank (the "*Cassa Depositi e Prestiti*") for businesses with a turnover of over €50 million or (ii) with state funding matching any capital injection by private investors for businesses with a turnover between €10 million and €50 million. Businesses using this scheme will be subject to certain conditions including a bar on dividends;

- Grants for smaller businesses with a turnover of up to €5 million. These grants will be proportional to the difference in turnover between April 2020 and April 2019;

- Cancellation of the June instalment of the IRAP tax (a regional tax on turnover) for all companies with a turnover of up to €250 million and autonomous workers;

- Suspension of the local real estate tax (the "IMU") for hotels;

- Deferral of tax payments until 16 September 2020. The deferred payments must be paid either as a lump sum on this date, or in up to four monthly instalments, the first of which was due on 16 September;

- The possibility for companies to convert deferred tax assets into tax credits;

- Enhanced access to the *Cassa Integrazione*, the Italian equivalent of the *Kurzarbeit*, until October 2020;

- Reduction of utility bills for small and medium enterprises;

- Prohibitions on the revocation of credit to SMEs until 30 September 2020 (known as the "Extraordinary Moratorium");

- Government-guaranteed loans at advantageous rates for companies in need of liquidity. The loans will be guaranteed by the government in the following percentages:

- 100% for loans of up to €800,000; and
- 90% for loans of up to €5 million;
- An extension of the sectors in which the government can restrict direct foreign investment into Italian companies; and
- An additional €400 million in State-guaranteed loans (through the Italian government's investment bank) to struggling companies (details of the scheme remain to be determined).

Local governments (including regional and municipal ones) are also deploying their own relief measures aimed at businesses.

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For more information regarding the legal impacts of the coronavirus, please visit our Coronavirus Resource Center.

Please do not hesitate to contact us with any questions.

We at Debevoise are available to help access these measures; please reach out to the following contacts if you need any assistance:

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