

Restructuring and Insolvency measures in BVI – April 2020

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Background

The British Virgin Islands (BVI) instigated entry restrictions for all visitors in mid-March and is currently operating a full lockdown system for all residents, apart from essential workers.

Financial services firms are working remotely and there has been no interruption to business continuity for the sector.

The Government, the Courts, the Financial Services Commission and the Corporate Registry are all operating, utilising a mixture of remote working and essential worker presence. The BVI has operated successfully on a remote basis in the past, including for periods extending into months. As a country which is affected periodically by extreme weather, including hurricanes, it has a very robust business continuity plan in place which it has invoked a number of times in the past.

As far as financial services is concerned, the Financial Services (Exceptional Circumstances) Act, 2020 (FS Act) was recently passed and this creates increased flexibility for the industry to be able to adjust to the global environment very readily. The Financial Services Commission is able to adopt flexible measures under the FS Act should it so determine. As far as the Courts are concerned, a number of practice directions were issued some weeks ago, with further guidance continuing to follow as the global situation develops.

In terms of the key component parts of the financial services sector, we would note the following, in respect of how any emergency insolvency type measures may feature.

Domestic BVI Business

The BVI Government has discussed publicly a number of relief policies and plans to support individual residents, and has also outlined some of the plans it intends to make to provide support and relief to sole traders, entrepreneurs and small businesses. These stakeholders are

not necessarily, for these purposes, directly involved in the financial services sector as such. It is too early to suggest what some of these policies and plans are likely to look like, including the impact on such stakeholders who are indeed involved directly or indirectly in financial services. Measures in other countries have included relaxations or suspensions of personal bankruptcy and/or corporate insolvency triggers, thresholds and timelines. Whilst hard to predict, some of these types of allowances could potentially feature in the future as they are not inconsistent with the range of possibilities mentioned to date by the Government.

A number of banks within the BVI have introduced, or signalled, repayment deferral schemes or relief plans for personal and small business loans and mortgages.

Regulated BVI Business

The Financial Services Commission oversees and regulates those entities and individuals who operate in the BVI regulatory sphere, including both those who are based within the BVI, as well as those who fall under its auspices but operate internationally. The prime purpose of the FS Act is to give the Financial Services Commission wide powers, within the remit of the FS Act, to implement measures to quickly aid, continue to regulate and assist the industry as global dynamics and domestic circumstances change. It has utilised powers under similar legislation in the past to great effect where necessary, albeit that those measures have tended to relate to practical assistance (including with business operations, where, for example, personnel have in the past been permitted to work remotely in other countries due to hurricane displacement), rather than extending into areas relating to the solvency of licensees or regulated entities, including BVI based banks and insurers.

At this moment in time most BVI practitioners would, most likely, probably not expect the Financial Services Commission to be in a position to need to exercise wide ranging or material measures or changes by using its powers under the FS Act. Any relaxation of solvency type metrics or dynamics would most likely be seen, at this stage, as being highly unlikely. It is more likely that any areas of dispensation would be in respect of practical, administrative matters, such as small delays in filing deadlines for non-material matters.

International BVI Business

The BVI is very much plugged into many of the global markets, not only from a geographic perspective, but also from an industry and sector perspective. Any shock waves in those markets tend to have at least some ripple effects on BVI entities operating in those arenas. This is especially the case for those entities which are outside of the financial services regulatory markets. Many jurisdictions are currently considering amendments to their insolvency regimes to find ways to support businesses through the unprecedented challenges that the world currently faces. The suspension or amendment of some of the core insolvency principles which govern corporate entities in particular are underway in many countries. Some of the planned changes focus on matters like wrongful or insolvent trading, directors duties, vulnerability

tipping points as well as insolvency triggers, thresholds and timelines.

The BVI keeps its corporate and insolvency regimes under constant review, most typically following trends elsewhere and sometimes trying to get ahead of likely developments. As such, the BVI will keep a close watching brief on the laws of the markets in which it operates. Any changes to its own laws cannot run any risk of impacting the planned outcomes of other related, applicable regimes, and requires great care. The BVI will continue to monitor the very latest developments in all key markets across the globe, particular those which are strong trade partners where the BVI's laws need to work in harmony with those of its partners. Any amendments would almost certainly be reactive only in this instance and complementary to other key regime changes elsewhere.

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Meet the Author



[Brian Lacy](#)

Partner

[British Virgin Islands](#)

[Jersey](#)

E: brian.lacy@ogier.com

T: [+44 1534 514493](tel:+441534514493)

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