

## INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—British Virgin Islands

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**Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of the British Virgin Islands prompted by the coronavirus (COVID-19) pandemic. Written by Justine Lau, Partner, Mourant Ozannes.**

### Introduction

In the British Virgin Islands (BVI), the government has implemented special measures for the conduct, operation, continuity, administration and transaction of financial services business generally (see *Financial Services (Exceptional Circumstances) Act, 2020*) and the following measures to support the local economy:

- [Economic Stimulus Response Plan](#)—a phased plan including the allocation of \$US 62.9m of assistance to be provided to the local economy across various areas including grants to businesses generally, to support the hospitality industry and BVI infrastructure
- [Unemployment Relief Support](#)—again, as part of the government’s phased economic response plan, giving eligible persons compensation on a case by case basis for a period not exceeding three months
- [Government and United Nations Development Programme](#)—financial assistance of up to \$US 40,000 to ten micro, small and medium enterprises within the BVI restaurant industry to transition these businesses to a digital platform
- [Economic Stimulus for Farmers and Fisherfolk](#)—giving eligible businesses the ability to apply for a grant from the government, and
- [Deferral of certain utilities charges](#) for eligible individuals and businesses for a period of three months

In addition, all of the six major lending institutions in the BVI have said they will [extend loan moratoriums](#) to their customers experiencing hardship because of the ongoing coronavirus pandemic; however, as at the time of publication of this tracker, the government has not announced any formal measures in respect of insolvency specific legislative reform.

In the meantime, it is noteworthy that the BVI’s insolvent trading provisions (see section 256 of the Insolvency Act, 2003) are more relaxed than the equivalent UK provisions. Once a director concludes (or should have concluded) that there was no reasonable prospect of the company avoiding insolvent liquidation, the director has a duty to take every step reasonably open to the director to minimise the potential loss to the company’s creditors. By contrast, in the UK the equivalent test is that the director must take every step.

As for access to justice, the BVI court remains open for business, virtually. The Eastern Caribbean Supreme Court (the ECSC) has issued COVID-19 Emergency Guidelines and a COVID-19 Emergency Measures Practice Direction. Both put in place a number of measures to ensure continuity of service while maintaining appropriate physical distancing measures, notably:

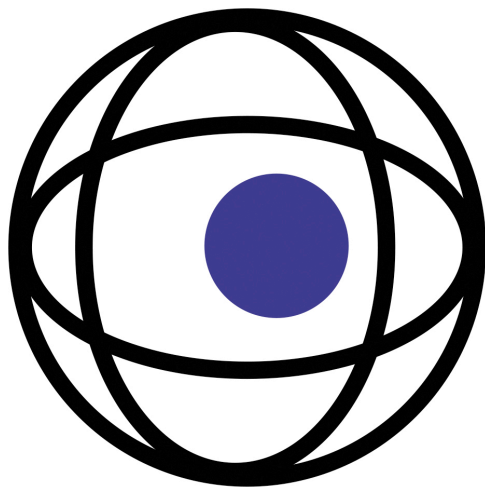
- the BVI court already has e-filing in all new matters via its e-litigation portal
- for matters which are not yet on the e-litigation portal, the Practice Direction permits documents to be filed by email (and sets out a procedure for doing so)—there are also provisions in a separate Practice Direction to transition older extant matters to the e-litigation portal (see Practice Guide 1 of 2020 ‘Migration of Court of Appeal, Civil, and Commercial Matters manually filed prior to the implementation of the Electronic Litigation Portal’)
- the Practice Direction also permits service of court documents by email

The BVI court continues to sit, utilising telephone and video conference equipment. Specifically:

- the Commercial Court matters are in principle being heard by telephone and/or video conference
- hearings with in person attendance will only be permitted in exceptional circumstances, where the Judge has deemed the matter fit for such a hearing
- where, in the discretion of a Commercial Court Judge, determinations can be made in the absence of oral representations, the applications will be disposed of on paper, and
- the Practice Direction provides for the preparation of electronic hearing bundles

### **INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms**

A tracker of insolvency reforms globally produced by LexisNexis in partnership with INSOL Europe is now available—[Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



# INSOL EUROPE

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.

### **INSOL Europe webinars: COVID coffee breaks**

INSOL Europe in partnership with LexisPSL are pleased to present a series of free webinars: 'COVID Coffee Breaks'.

The COVID Coffee Breaks are short, 20 minutes webinars, in which two or three INSOL Europe Country Coordinators†share their personal experiences of the coronavirus crisis in their countries and give highlights of reforms and changes to their national insolvency framework to address the current crisis.

The webinars published to date (and available on demand) are accessible on INSOL Europe's website here: <https://www.insol-europe.org/publications/web-series>.