EMPEA

# Legal & Regulatory Bulletin

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## About EMPEA

EMPEA is the global industry association for private capital in emerging markets. An independent, non-profit organization, the association brings together 300+ firms—including institutional investors, fund managers, and industry advisors—who manage more than USD5 trillion in assets across 130 countries. EMPEA supports its members globally through authoritative research and intelligence, investor meetings, education, and advocacy.

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This issue of the EMPEA Legal and Regulatory Bulletin comes at a time when our industry and the markets where we invest are facing particular challenges due to the impact of the COVID-19 pandemic. EMPEA members, including members of the Legal and Regulatory Council, have provided some of their insights and expertise to help fellow members navigate these challenges. We have included in this edition a breadth of perspectives and market coverage, including deliberations from the LP side; considerations for GPs investing in India or similar markets; preparations for trends in distressed and special situation investments, particularly in Brazil; suggestions for due diligence in a COVID-19 and post-COVID-19 world; implications for the rising sector of fintech; and, insights into select emerging markets' state-sponsored relief programs that may benefit portfolio companies. This is not intended to be an exhaustive resource, but rather alert you to what trends fellow members are seeing and highlight the expertise that exists in our community to overcome the challenges and create opportunities.

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# COVID-19: Deliberations of a Private Fund LP

By Mark Kenderdine-Davies, EMPEA Board Member and Legal and Regulatory Council Chair; Chief Legal Officer, CDC Group plc.

*Note: The views expressed in this article are the views of the author alone and not the official views of his employer, CDC Group plc.*

## Introduction

In this article, I summarize how CDC Group plc, (CDC), the UK's development finance institution (DFI), is responding to the impact of COVID-19 on its private funds investment program (Portfolio) given the commercial and strategic challenges faced by the managers (GPs) of many of its investee private credit and equity funds (Funds).

I focus on our engagement with GPs and suggest ways private fund investors (LPs) might help GPs to safeguard portfolio companies (Portfolio Companies), which are likely to experience severe liquidity issues in the coming months. But some context first…

## Background

CDC has been committing capital to funds for the past twenty-five years. We are currently invested in 225 funds managed by 129 GPs and indirectly invested in 1,228 portfolio companies. We provide equity and debt to companies and projects directly too. Our portfolio companies operate businesses across Africa; from Egypt, Morocco and Tunisia in the north to Mozambique and South Africa in the south; and Asia; from Pakistan in the west to Bangladesh, Myanmar and Vietnam in the east.

We are beginning to understand the impact of the pandemic in our priority countries through our GPs and African and Asian offices, which is increasingly significant in some countries; limited or, yet unseen in others.

## Priorities

As a long-term investor, our primary priorities are preserving the value of our portfolio and helping our GPs, borrowers, and direct portfolio companies to weather the pandemic.

When we are considering how best to preserve the value and long-term impact of our portfolio, we think defensively. However, we do want to respond actively to the economic and health challenges of the pandemic. Thus, we are reviewing potential investments in and loans to companies, projects, and partnerships that can directly mitigate the consequences of the pandemic.

Finally, we shall want to re-enter countries quickly once the worst effects of the pandemic have passed to help rebuild businesses and economies and mobilize capital from others.

I now turn to a key priority; supporting partners through the crisis.

"When we are considering how best to preserve the value and long-term impact of our portfolio, we think defensively. However, we do want to respond actively to the economic and health challenges of the pandemic."

## Initiatives

We have produced various guidance notes to help GPs support their portfolio companies. These notes cover, amongst other things, business integrity, customer protection, employer responsibilities, gender considerations, job protection, and the management of risks in the construction sector risks. All are accessible here and more are on the way: www.cdcgroup.com/en.

We have also launched two technical assistance facilities. The first, the COVID-19 Business Response Facility, will

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provide grants (of up to GBP165,000) to help portfolio companies adapt/ scale up as part of their response to the pandemic. The second, the COVID-19 Emergency Technical Assistance Facility, will provide expertise, advisory, and capital building (up to GBP25,000) to support our GPs' portfolio companies as they navigate the pandemic (e.g. crisis planning, HR and financial planning support, ESG support, etc.).

Other DFIs and multilateral finance institutions (MFIs) have launched facilities of their own. All are accessible via their websites. The DFIs of 16 OECD countries, grouped under the DFI Alliance, have issued a joint statement to announce they will work together to respond to the pandemic. These DFIs are working to bring liquidity to the market, support companies impacted by the pandemic, and promote new investment in global health, safety, and economic sustainability. Announcements to follow.

## Liquidity

We have also been considering how to address liquidity issues at funds and portfolio companies. When, for example, might it be appropriate to "vary" or "flex" the terms of a fund to increase a GP's liquidity options, paying close attention to portfolio companies facing specific COVID-19 related issues, particularly tight liquidity and/or significant revenue reductions?

CDC and like-minded LPs are reviewing the financial and legal tools at their disposal, which include varying the terms of funds to permit greater flexibility in the use of uncalled capital commitments and fund-level leverage, providing new capital to funds via equity "top ups" or direct lending to portfolio companies.

Any variation or flex of an existing contractual arrangement will, of course, require an amended limited partnership, shareholder and/or side letter agreement (collectively, Agreements), which typically require supermajority LP approval. Liquidity solutions require persuasion and are unlikely to be achieved overnight.

## Deeper Dive

I now look more closely at the legal tools mentioned above, noting that it can take a long time for GPs and LPs to negotiate the terms of emerging/ frontier market private funds. Given their ubiquity in the market and custodianship responsibilities, DFI and MFI LPs tend to look longer and harder at terms than many LPs. Historically, they have generally been unwilling to revisit terms after close. However, due to the pandemic, we foresee a greater willingness to do this, selectively, than in the past.

> "If a fund has uncalled capital commitments, then LPs might consider loosening restrictions on how those commitments are used to provide greater liquidity."

If a fund has uncalled capital commitments, then LPs might consider loosening restrictions on how those commitments are used to provide greater liquidity. If, by way of contrast, a fund is fully drawn and thus "dry", it might be appropriate for the fund to obtain debt capital from its LPs or third-party lenders or, alternatively, for LPs (or a sub-set of LPs) to provide new equity capital. Another alternative might be LPs providing a direct loan to a portfolio company.

LPs could consider varying other terms. Examples might include less stringent reinvestment restrictions, which would allow a GP to recycle a greater percentage of capital otherwise available for distribution to LPs; enhanced follow-on investment rights; less stringent diversification restrictions; the use of capital for broader purposes, especially in the case of follow-on investments (e.g. the provision of short term liquidity facilities to Investees); an enhanced ability to borrow at fund level or below, etc.

LPs might also be open to permitting a GP to use (more) leverage if the fund has no uncalled capital commitments depending on their assessment of the GP's credit skills, ability to manage leverage, and proposed use of leverage. The agreements for many funds, particularly those managed by first time GPs, limit/prohibit the use of leverage, so they would need to be amended.

A further option might be the provision of a debt facility to the fund on terms to be agreed in relation to tenor, pricing, ranking (senior or pari passu with the equity LPs and any other leverage providers?), collateral, and waterfall impact.

Equity "top ups" might be feasible if a fund has no uncalled capital commitments. LPs will consider the choice of investment structure (existing fund, annex fund, or co-invest fund), whether the "top up" is temporary or permanent, whether the fund is still operating in its commitment period (and if not, the implications of that), likely LP participation (and the treatment of non- participating LPs), the proposed use of the new capital (for some or all portfolio companies?), the terms on which the new capital is provided, and how conflicts are managed.

Finally, LPs might consider lending directly to portfolio companies in exceptional circumstances. A practical issue, however, is the inability of LPs to undertake full due diligence on a prospective borrower, with whom they have an indirect relationship, due to COVID-19-related travel restrictions.

> “We are thinking creatively about the support that can be provided to GPs facing pandemic-related issues. Funds, though, have numerous LPs. It’s difficult to know how the LPs of any given fund will react to a GP’s request for ‘flexibility.’ Some LPs will worry about good money following bad; others will worry about GPs using the pandemic to improve their own financial positions.”

We are thinking creatively about the support that can be provided to GPs facing pandemic-related issues. Funds, though, have numerous LPs. It’s difficult to know how the LPs of any given fund will react to a GP’s request for “flexibility.” Some LPs will worry about good money following bad; others will worry about GPs using the pandemic to improve their own financial positions.

There is, however, a willingness in the DFI/MFI LP community to support GPs, who evidence genuine business needs.

## LP Expectations

LPs will consider GP requests on a case-by-case basis. Liquidity issues differ from fund to fund so GPs should engage with their LPs early, communicating their (and their portfolio companies’) concerns and needs clearly, fully, and honestly. They (and their lawyers) should review the relevant agreements prior to a discussion on how a proposed course of action might address a liquidity issue.

## Business Integrity

I now move to another topic: the importance of good governance during times of crisis. We firmly believe that pandemics increase business integrity risks, which, if not managed carefully, can significantly impact a GP’s reputation as well as portfolio value. A crisis mentality might lead GPs and the management of portfolio companies to take greater risks, shortcutting procedural safeguards, and circumventing controls.

We strongly recommend that GPs continue to: (a) allocate appropriate resources to business risk assessment and management; (b) monitor changing regulatory requirements; (c) comply with existing policies; (d) develop new policies and procedures for expedited decision-making if urgent decisions are required on short notice; (e) keep reporting to LPs; and (f) continue messaging expectations of high integrity standards to the management of portfolio companies.

## Conclusion

LPs recognize that this is a difficult time for many GPs. DFI LPs are open to discussions that will support their GPs and preserve the value of their portfolios. Honest communication and openness are essential during times like these. We are in this together; we shall get out of this together.

## About the Author

**Mark Kenderdine-Davies**, EMPEA Board Member and Legal and Regulatory Council Chair; Chief Legal Officer, CDC Group plc

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# Weathering the Storm: What Indian PE Fund Managers Should Consider

By Pallabi Ghosal and Kashish Bhatia, Partners at AZB & Partners

## Introduction

The Sanskrit phrase *"Vasudhaiva Kutumbakam"* (the world is one family) has never been as relevant as it is today and the Indian economy with its close linkages to the global economy is already staring at a big challenge ahead of itself.

Fund managers on their part are readying themselves to take harsh steps and face harsher consequences. Irrespective of the stage of a fund cycle that a fund manager finds itself in, it is time to chalk out a "COVID-19 roadmap," both at the fund and the portfolio company level, that will help fund managers and their investors navigate the path ahead.

## Fund Level Steps

1. **Fund Raise or Offering Period:** Given the delays in the offering process and with many investors potentially reconsidering their commitment/ commitment amounts, fund managers may want to consider extending the offering periods for their fund. It can be at the fund managers' discretion or coupled with investor advisory committee approval.
2. **Investment or Commitment Period:** Fund managers nearing the end of their investment period need to reconsider the time they will need to deploy capital given the lockdown in India. Active steps in engaging with investors and seeking extensions in a judicious manner would be key. Further, fund managers may need to consider the valuation and terms of investments that are in process and work with portfolio companies to preserve the value of potential investments of the fund.
3. **Term:** As per the regulations regulating alternative investment funds in India (AIF Regulations), a fund is permitted only two extensions of one year each with the consent of 66.67 percent of investors by value of their investment, once the fund term as stated in the placement document (Fund Term) comes to an end. Thereafter, the AIF Regulations require the fund to wind down its operations within 12 months. While there is sufficient latitude given under the AIF Regulations for funds to extend their Fund Term on account of this pandemic, this still might not be enough. If a fund is in the sunset phase, fund managers will need to assess the impact of the lockdown on the exit horizon of portfolio companies. Given the Indian securities market regulators' (SEBI) general reluctance to allow fund managers to amend their Fund Term, it is critical that fund managers of funds in the sunset phase engage with investors and SEBI over extending the fund term. Other options such as undertaking a secondary transaction may also be considered.

"Fund managers on their part are readying themselves to take harsh steps and face harsher consequences. Irrespective of the stage of a fund cycle that a fund manager finds itself in, it is time to chalk out a "COVID-19 roadmap," both at the fund and the portfolio company level, that will help fund managers and their investors navigate the path ahead."

4. **Investment Objective and Strategy:** For fund managers who have a narrow investment objective and strategy (such as specific sectors and/or instruments), it is critical to revisit this and expand the scope if required. The AIF Regulations require consent of 66.67 percent of investors by value of their investment to alter the investment objective and strategy. For fund managers considering this option, it is important to consider ancillary sectors along with the primary focus sectors and take a well-thought-through and implementable plan to investors.
5. **Re-investment and Follow-on Investment:** Ailing portfolio companies may need more infusion of capital or debt. Fund managers may be required to bridge the funding gap by providing interim financing or making follow-on investments and re-investments. Given that, typically, there are limits (both time and quantum) on the capital that can be deployed for re-investments and follow-on investments; this is the time when those limits need to be revisited. In doing so, fund managers will need to keep in mind the concentration norm prescribed by SEBI, which is that no more than 25 percent of the investible funds (defined to mean the total binding commitment received from investors net of estimated expenses) can be invested in a single portfolio company.
6. **Leverage at the Fund Level:** Alternative investment funds in India are severely challenged with regards to their ability to seek leverage. AIF Regulations do not permit funds to borrow directly or indirectly or engage in any leverage except for meeting temporary funding requirements for not more than 30 days, on not more than 4 occasions in a year and not more than 10 percent of the investible funds. In light of this limitation, the option of seeking loans from investors directly at the portfolio level will need to be explored.
7. **Reporting to SEBI and Investors:** Per the AIF Regulations, funds are inter alia required to provide quarterly reports to SEBI and annual report to investors within 180 days from the financial year end in relation to the fund, including financial information of portfolio companies. In light of the COVID-19 pandemic, SEBI has extended the reporting timelines for regulatory filings for the periods ending March 31, 2020 and April 30, 2020 by two months. In addition, should fund managers be unable to provide reports/information that is typical for investors to seek under the fund documents, fund managers should nonetheless make reasonable efforts to provide those and keep investors informed of situations where they are unable to do so and the reasons for the same. Fund managers should be seen as being proactive and communicative during these times.

## Portfolio-Level Considerations:

1. **Lockdown Compliances:** Given the national lockdown and various state-level-lockdowns, care must be taken that the portfolio-level entities are properly advised and aware of their obligations under various central- and state-level directives and advisories. The violation of such directives and advisories could expose the company (as well as their directors) to legal consequences.
2. **Labor and Employment Law Compliances:** Most businesses are facing cash flow concerns with the extended lockdown and seeking ways to reduce their outflow. Employee and labor costs are a substantial expense. It must be borne in mind that there are national- and state-level directives as well as advisories in place on employee/labor related issues. Further, any steps in relation to lay-offs, unpaid leave, and wage deferment could in the current atmosphere create a negative reputational risk. It is important that portfolio companies are guided to ensure that their approach is not only humane and tempered, but also in accordance with applicable laws (as any breaches could entail liabilities for the company and/or its directors).

> “It is important that portfolio companies are guided to ensure that their approach is not only humane and tempered, but also in accordance with applicable laws (as any breaches could entail liabilities for the company and/or its directors).”

3. **Contractual Obligations:** Businesses have a plethora of payment and other obligations under lease agreements, customer agreements, supply agreements, and distribution agreements. In the current atmosphere of lockdowns and business uncertainty, it is important for businesses to review all such obligations and, where required, take steps to follow any force majeure procedures, if applicable, and where no such exemptions exist or apply, consider options for ensuring that they are not staring at a liability for breach of contract.
4. **Regulatory and Statutory Compliances:** Various ministries and regulators are providing exemptions and extensions in relation to compliance requirements. It is important that the portfolio companies be nudged to keep track of the compliance calendar and, where necessary, take active steps to take advantage of any such exemptions. Where no exemptions/extensions are available, portfolio companies should actively reach out to the concerned

> “With fund managers facing a host of challenges, including dealing with a team that is facing both professional and personal challenges of a lockdown in India, it is imperative that, at the fund level, the investors work together with fund managers and, at the portfolio level, the fund managers work with their portfolio companies in navigating through these challenging times.”

authorities and regulators and highlight the challenges faced and seek leeways.

5. **Work from Home Models:** With there being very few exceptions to the lockdown, most businesses have either suspended operations or are continuing to operate under the work from home model, where possible. These changes impact various contractual as well regulatory obligations of the company. For instance, specific compliance requirements apply to companies with an OSP license if they are implementing a work from home model, and such models also raise concerns on confidentiality and delivery constraints under contractual obligations. Therefore, any work from home models must be carefully designed to address any such concerns.
6. **Business Continuity Plans:** It is important for investors to have portfolio companies consider all of the above issues and any other sector/geographically specific concerns and put in place appropriate business continuity plans, to ride through the crisis and evaluate how value may be preserved through this period and beyond.

Fund managers and investors, with the benefit of specialized advice and experience across various businesses, sectors, and geographies, can play an important role in guiding portfolio companies on the appropriate approach for each of the above issues. That will allow such companies to focus on immediate day-to-day ground-level concerns.

## Conclusion

The aspects highlighted above are by no stretch exhaustive and more often than not, difficult to implement. With fund managers facing a host of challenges, including dealing with a team that is facing both professional and personal challenges of a lockdown in India, it is imperative that, at the fund level, the investors work together with fund managers and, at the portfolio level, the fund managers work with their portfolio companies in navigating through these challenging times. It is time for fund managers to be steadfast, tenacious, and innovative.

No one could have foreseen the scale of this crisis and therefore, we cannot go back and make a new beginning. However, one can start today and make a new ending. As investors keep close watch, fund managers who are able to calmly tackle the current challenges and not seek opportunistic leeway, will be poised to benefit in the long run.

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# Fintech Investments: Regulatory Challenges in Asia, Africa, and Latin America

By Natalie Stafford, Head of Deal Advisory, Toby Thomas, Director, Deal Advisory, Alice Shone, Associate Director, Deal Advisory, and Francisco Ambrogi, Associate, Deal Advisory at S-RM

The last two years have seen a significant increase in private equity and venture capital investment into fintech, as valuations and opportunities for returns grow. Emerging market fintech attracted a record USD18.4b in private equity-led investment in 2018, according to EMPEA data. 2019 saw another record toppled—this time, transaction volume—with 249 private equity-led fintech deals completed in emerging markets.

This investment has driven the development of businesses as diverse as payment and issuer processing, mobile payments, insuretech, blockchain, and peer-to-peer lending. DFIs and impact investors are drawn to the fintech sector for the opportunities it offers to improve financial inclusion levels. As Udayan Goyal, Managing Partner of Apis Partners, which recently closed a USD550m fund focused on fintech in Asia and Africa, points out, "There is an undisputed correlation between financial inclusion and GDP growth," making a clear impact case for investment in the sector. Stewart Langdon, Partner at LeapFrog Investments, which manages a USD700m impact fund, agrees, adding that 90 percent of the population in many emerging markets do not have access to the financial services they need. In the wake of behavioral changes resulting from the COVID-19 pandemic, demand for fintech solutions globally is only expected to increase.

At S-RM, our regional specialists in Asia, Africa, and Latin America have seen a corresponding increase in integrity due diligence requests in the sector. Regulatory environments can present a key risk to fintech investors in emerging markets, and we are often also asked to provide insight on anticipated regulatory changes. Below, we provide a comparative overview of regulatory environments in Asia, Africa, and Latin America, before reflecting on common challenges faced by investors, and assessing how COVID-19 may have altered the picture. Our insight is sourced from S-RM's regional network in addition to EMPEA investment data and interviews with several leading investors in the space.

## Asia

In 2018 and 2019, the emerging Asian fintech sector received nearly USD20b across almost 300 private equity-led investments. Asia is a global leader in fintech adoption and boasts some of the world's most advanced fintech markets, led by China, India, South Korea, and Singapore. This is due in part to high levels of government support. Regulators across much of the region are taking a flexible, "light touch" approach aimed at encouraging growth and innovation. "Asian regulators are broadly more progressive—they are cautious, but they try not to put obstructive regulations in place," says Goyal of Apis Partners.

> "Asian regulators are broadly more progressive—they are cautious, but they try not to put obstructive regulations in place."

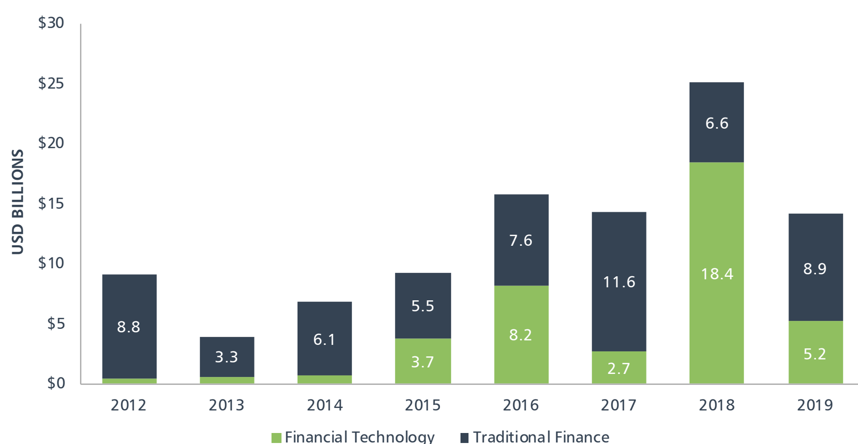
The prominent exception to this trend has been China, where investment in fintech has dropped significantly since 2018, as the country has grappled with the effects of the US-China trade war and attempted to rein in its massive shadow banking sector. In the pursuit of financial stability, cryptocurrencies and peer-to-peer lending have been hit hard by regulations. A ban on Initial Coin Offerings introduced in 2017 remains in place, and last year the central bank launched a series of shutdowns and new restrictions on Bitcoin traders. A similar crackdown took place in the crowdfunding sector following a series of high-profile scandals. Despite the turbulence caused by these interventions, however, investment in fintech-based payments

and asset management solutions has continued unabated and the effect is likely to be stabilizing in the long run. The government has introduced positive measures to encourage foreign participation in fintech and more extensive use of blockchain technologies.

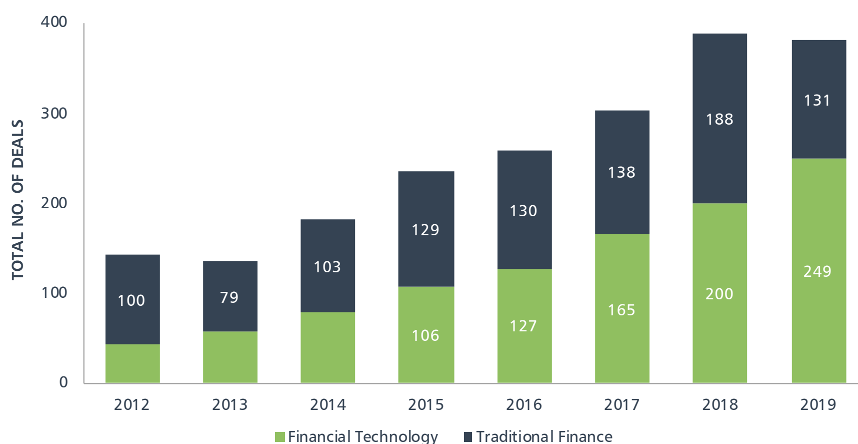
Elsewhere in the region, India and Singapore stand out as two of the most attractive markets. Singapore's regulatory system is viewed as best-in-class, a result of the fact that developing fintech is central to its Smart Nation initiative. It was the first country in the region to set up a regulatory sandbox, and has recently introduced the Sandbox Express to expedite approval processes and attract more participants. India's regulations for the non-banking financial services sector are also reasonably progressive, but its key attraction is its digital infrastructure. Goyal highlights two state-led innovations in particular: Aadhaar–a central biometric ID system—which enables KYC and authentication issues to be resolved through a central database; and UPI—a real-time inter-bank mobile payment system—which allows people to transfer money and pay bills without entering card or bank account details.

While Singapore and India are leading the way, and other major markets such as Indonesia and Thailand are rapidly catching up, some shortfalls continue to exist in the region outside China. Regulators in countries such as Bangladesh continue to require wet-ink signatures as part of the financial transaction process, which constitute a core impediment to developing digital payments infrastructure. In Vietnam and Myanmar, legal frameworks around crowdfunding are underdeveloped. This has led to a proliferation of scammers in the Vietnamese peer-to-peer lending industry, deterring investors and threatening the reputation of legitimate actors.

**Fintech & Financials Investment, 2012-2019 (Total Transaction Value)**




**Fintech & Financials Investment, 2012-2019 (No. of Deals)**




## Africa

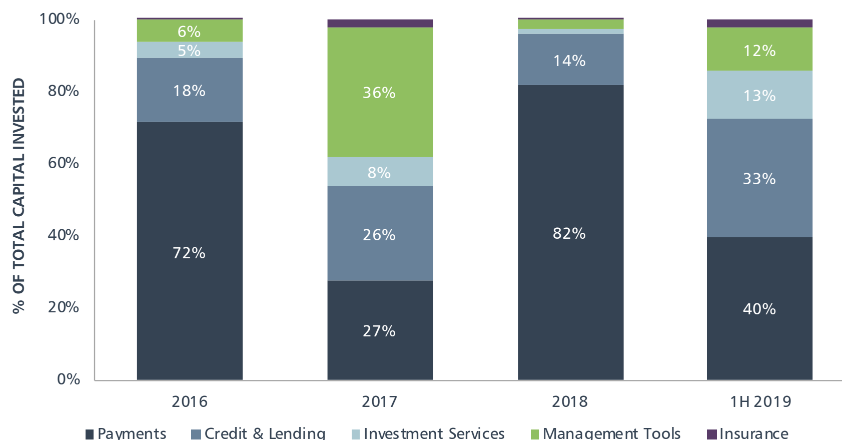
Africa is the world's leading adopter of mobile money, with payment processing and digital lending emerging as high-growth sectors too. Given its lower GDP relative to Asia, the continent attracts a predictably smaller sum of fintech investment, with USD400m split across 35 private equity-led transactions between 2018 and 2019. While African central banks are generally supportive of fintech's ability to extend financial inclusion to their heavily under-banked populations, regulatory volatility has been a headline risk for investors in the region. With over half the continent's jurisdictions yet to implement data protection regulations and uncertainty over interest rate caps hanging over many others, this threat is set to persevere.

Despite Nigeria's vibrant startup scene, pressure from the country's politically influential traditional banking sector has helped delay the adoption of forward-looking regulations. This prohibited the onset of mobile money in Africa's largest economy for over a decade, and has turned investors off potential disruptors to banks. Headwinds have been lighter for those fintech companies which complement rather than threaten

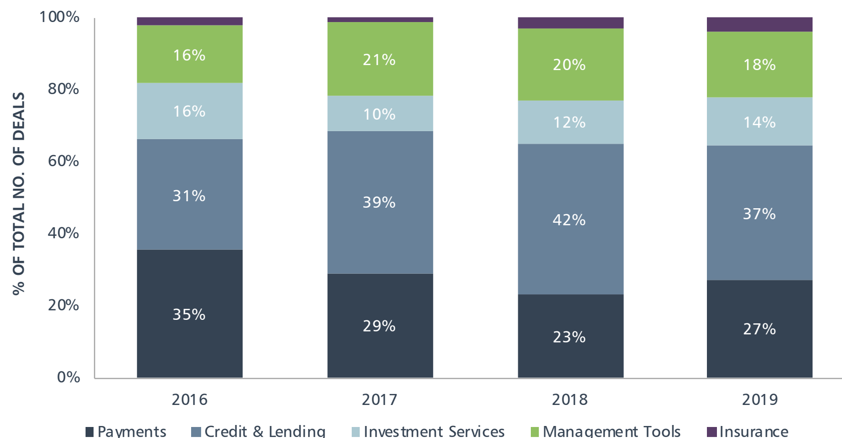
Nigeria's traditional banks, with payment processors Interswitch and Opay emerging as market leaders, and now sighting expansion across the continent.

Eastern African regulators have gained a reputation for being forward-looking in nurturing the mobile money sector since the late 2000s, enabling the emergence of market leader M-Pesa which now processes a transaction volume equivalent to 40 percent of Kenya's GDP. Concerns continue to exist, however, regarding future regulatory interventions in the sub-region. The exit of California-headquartered mobile lender Tala from Tanzania last year occurred following threats of interest rate caps imposed on lenders by the country's regulator. In Kenya, draft legislation introduced in 2019 threatens to place mobile lenders under central bank supervision, following the bank governor's public criticism of their allegedly usurious behavior. While impact investors generally welcome the curbing of predatory lending practices, populist targeting of fintech solutions and the accompanying potential for capricious regulatory change presents a concern.

**Fintech Investment by Business Segment, 2016-2019 (% of Total Capital Invested)**




**Fintech Investment by Business Segment, 2016-2019 (% of No. of Deals)**




## Latin America

Latin American fintech has recently attracted record levels of private equity-led investment, with USD2.7b split across almost 100 transactions between 2018 and 2019. Brazil has been the single largest recipient, with Mexico and Colombia also strongly represented.

This inflow has been enabled by recent regulatory reform. Christian Lesmes of Kandeo Fund, a Latin America-focused financial services investor, has been broadly impressed with fintech regulations across the six markets he has had significant exposure to. He is especially encouraged by Mexico's adoption, and Brazil's proposed adoption, of Open Banking, which enables the sharing of account details to fintech providers. Lesmes also points to Colombia as providing a leading example of a high-quality regulatory sandbox, enabling operators to experiment without fear of undue retribution. Stewart Langdon of LeapFrog Investments described the efforts made by Brazil as exemplary, praising in particular its smooth licensing processes, its early adoption of data analytics for credit scoring, and its ability to create a level playing field between fintech players and the country's five traditional banks.

The region is not without operational hurdles, however. In Mexico, the success in developing the first fintech regulatory framework in Latin America is understood to have resulted in a glut of license applications from new startups, which overwhelmed the system, leading to approval delays. A high-profile dispute between telecommunications and anti-trust regulators over the sale of e-commerce start-up Cornershop to Uber has delayed the proposed investment substantially, and, will constitute cause for concern for fintech operators who rely on smoothly regulated ancillary sectors such as e-commerce. The regulatory dynamic of traditional lenders lobbying against fintech insurgents is apparent in the region too. In February 2020, the Argentinian banking sector lobbied the central bank to approve a resolution

> “As the economic challenges grow, many such customers are defaulting, leaving startups exposed and capital adequacy ratios under threat. Investors will be watching regulators’ responses carefully...”

prohibiting the direct debit of loans originating from non-banking entities, and in May, the Argentinian government decided not to transfer pensions to digital accounts, a move that had been proposed by local fintech companies due to the impact of COVID-19.

## Common Challenges

According to LeapFrog’s Langdon, there are five key characteristics of a welcoming fintech regulator: certainty around data regulation, openness towards digital signatures, prioritization of digital payments, a rapid licensing process, and, finally, open-mindedness to innovation. This provides a compelling framework for analyzing regulators, and despite the existence of several exemplary regulatory regimes discussed above, many others do not yet satisfy all of the considerations.

The onset of the COVID-19 pandemic has added a sixth test—the agility of regulators in the face of unparalleled demand for many fintech services. Despite the resistance of Argentinian regulators cited above, other markets are seeing more promising signs. Government responses to the crisis in Brazil and Singapore contain explicit provisions supporting the fintech sector. The Indian Reserve Bank has urged citizens to switch from cash to digital payments, and Kenyan regulators have encouraged the mobile money transaction cap to be removed on M-Pesa.

But the growing adoption of fintech during the pandemic brings with it additional threats. With increased digitization comes increased cyber security risk. Equally, digital lenders and insuretech operators have typically targeted customers who are under-served by more risk-averse competitors. As the economic challenges grow, many such customers are defaulting, leaving startups exposed and capital adequacy ratios under threat. Investors will be watching regulators’ responses carefully: pragmatic reactions which eschew draconian fines will likely see their tolerance ultimately rewarded in the form of renewed investor commitment.

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# Potential Trends Brought by COVID-19

By Antonio Felix de Araujo Cintra and João Busin, Partners at TozziniFreire Advogados

We write this article at a point where it is close to impossible to make any predictions about the real extent of the COVID-19 crisis and its actual impacts on the global economy. A few questions start to consistently pop up in the webinars, live events, and crisis committees' discussion forums that became part of our daily routine: how will businesses in general look post-crisis? Are there any sectors that will simply disappear? What are the sectors that will fare better? How will the alternatives industry react and adjust to challenges imposed by the "new normal"? Are there any strategies that will gain more traction in this context?

Although answering most of these questions is still a "best guess" effort, players across the whole alternatives spectrum would be better off having these guesses in mind. It seems that there is no right answer, but they help alternatives investors and managers to assess and reassess how they may adjust their strategy in ways that might have been even unthinkable before.

The common sense is that many businesses (especially those that are already under severe financial constraints with low or no activity at all, such as airlines, tourism, and leisure facilities) will need a lot more than government stimulus programs and borrowing from the traditional financial system in order to persevere through the crisis. Government support may partly contribute to streamline the liquidity shortfall in the very short term. Traditional debt has become expensive over the years with more stringent financial institutions that have grown less amenable to risk as a lesson learned out of 2008's credit crunch.

It is time for a profound operational reshape. In an emerging economy like Brazil where companies are constantly in this process, COVID-19 brought an overall sense of urgency, possibly accelerating a few trends.

We anticipated one of these trends in a feature we wrote for last year's summer edition of EMPEA's Legal & Regulatory Bulletin: *Private Credit Strategies and the Brazilian Restructuring Law*. Because of COVID-19 many Brazilian companies and groups will potentially undergo the effects of a variety of special situations, most of them motivated by low liquidity. Larger economic groups may need to dispose of non-core assets because of scarcity and higher costs of traditional sources of debt, companies may turn to private lending, and some other companies may file for judicial reorganization under the Brazilian Bankruptcy and Insolvency Act.

This is the perfect landscape for greater focus on distressed and special situations investments, offering numerous opportunities for the whole spectrum, such as acquisitions of non-performing loans (NPLs), debtor-in-possession (DIP) financing, acquisition of separate business units

"In an emerging economy like Brazil where companies are constantly in this process, COVID-19 brought an overall sense of urgency, possibly accelerating a few trends."

(*unidades produtivas isolada – UPI*) in the context of judicial reorganization, acquisition of legal claims, private lending, amongst others.

Another intuitive trend is private investments in public equities (PIPEs). Many Brazilian companies that operate in sectors heavily impacted by the current crisis are listed in stock exchange or over-the-counter markets in Brazil and/or abroad. Some examples are airlines, online travel companies, gym chains, and retail. The beauty of PIPEs is that they do not demand peculiar abilities or substantially detouring from a more traditional private equity strategy in comparison to the distressed and special situations' environment. Besides, completion of a PIPE is relatively fast because there is more information available about the target business, streamlining discussions around due diligence and valuation.

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Although there are still just a few players with a proven track-record and the necessary skillset to operate in these asset classes in Brazil, it would not come as a surprise if we see firms that traditionally focus on growth, development, and buyout strategies starting to look for opportunities in these segments. Not because their underlying strategies will fade, but rather as a means of balancing portfolio risks. One of the key takeaways of this crisis is that diversification is key to players in the alternatives space, both in terms of sector and strategy.

Private Equity Bay (Pebay) recently released an article comprising an assessment of the risk profile of 10 of Brazil's largest private equity managers in the context of COVID-19, based on publicly available information regarding companies belonging to their portfolios. The analysis took into account financial and operational metrics, as well as potential performance under different stress scenarios (the so-called "stress test"). Eight out of the ten managers offer their investors moderate risks. The common element to all these eight managers is that they offer sector diversification from moderate to high. One of the managers presenting a high risk was a consequence of being focused in a sector largely exposed to the crisis. The remaining one presented a low risk, as it is exposed to only one asset that belongs to a crisis-resilient sector.

In parallel, strategy diversification may help unlock value generation even in choppy times.

Yet, there will continue to be a lot of room for pure private equity, infrastructure, real estate, and venture capital in Brazil, especially in the aftermath. The unprecedented low benchmark interest in Brazil and the favorable foreign exchange rates will make Brazilian assets comparatively attractive for foreign investors. In addition, statutory admission of electronic transactions means for signing documents, making certain filings and also holding shareholders' meetings, all forced by social distancing imposed by COVID-19, come as a welcome relief to the red tape that has historically been one of the chief danger zones in Brazil's business environment. However, while screening for opportunities amid the crisis, players should focus on:

a) Choosing sectors that may recover in a reasonable timeframe for executing an exit at the expected level of return. Investing in sectors that are crisis resilient may well be tricky, as some of them may have their real value inflated as a consequence of increased competition amid the crisis, not necessarily presenting a growth curve that is consistent with the expected returns;

b) Crafting pricing structures that address uncertainties about how certain companies will perform in the long run (earn-out arrangements have become an interesting tool in this context, despite all complexities they may bring along);

c) Negotiating risk allocation and carve-outs in respect of material adverse effect and conduct of business provisions vis-à-vis *force majeure* and other principles of local civil law; and,

d) Planning on fulfilment of conditions precedent. Having a reasonable longstop date may help lift some of the pressure brought by access limitations. Although many governmental authorities have been working from home as well, responsiveness tends not to be the same as in the pre-crisis scenario.

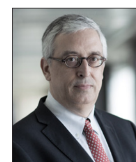
Just as an example, amid the crisis, Vivante, an outsourcing services company belonging to Axxon Group's portfolio, a well-reputed Brazilian private equity firm, closed a deal to sell its stake in Hospital Novo Metropolitano, a Brazilian hospital in the State of Minas Gerais, to OPY Health, the health care platform of a fund of IG4, another Brazilian private equity champion. Closing was on April 15, 2020, nearly a month after the government of the state of São Paulo, Brazil, officially determined to put the whole state on quarantine as a protective measure against the wide spread of COVID-19 (although the hospital is located in Minas Gerais, most of the parties involved in the deal are based in São Paulo). The closing meeting was fully remote, carried out through video conferences. Parties signed the transaction documents at the end of 2019 and closing was dependent on the fulfilment of certain conditions precedent, including regulatory approvals.

In addition, against all odds, the Brazilian parking lot company Estapar, controlled by the Brazilian investment bank BTG Pactual, and with funds from private equity firms Equity International and Crescera Capital amongst the company's shareholders, launched an initial public offering (IPO) on April 22, 2020. The underwriters were banks BTG Pactual itself, Bradesco BBI, Banco do Brasil, and Santander. The company placed 28,600,000 shares on primary offer, whilst the shareholders placed 1,234,430 on secondary offer. It was the first ever fully remote IPO with B3 on the Brazilian stock exchange.

Obviously, these are all nothing but possible trends that may, however, serve as good insight for those who are somehow exposed to Brazilian alternatives' industry or those who see the current situation as an opportunity. The only thing we know for sure is that there will be deal activity in Brazil. There is still dry powder for Brazil-focused and/or broader Latin America strategies. Managers need to make the allocations.

The moment demands caution, flexibility, and some level of creativity, but, despite the difficulties brought by uncertainty, the legacy of this crisis will consist of invaluable lessons that hopefully will create a stronger and more realistic/resilient business environment.

## About the Authors

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# How Pre-Deal Due Diligence Investigating Is Changing with the COVID-19 Pandemic

By Randal Phillips, Partner, Mintz Group

Among the many corporate functions upended by the coronavirus crisis is M&A due diligence. After all, deals used to start with a handshake, with assurance conveyed by a touch. But now handshakes, management meetings, dinners, and rounds of golf have been replaced by faces in Zoom boxes. And that's just the beginning of how due diligence is adapting, particularly for cross-border deals facing newly hostile borders.

To a greater degree now, taking advantage of cross-border deal opportunities means doing business with people you do not know, and will likely not even meet for a while. In risky times, being skillful at independent fact-gathering—diligence—is more important than ever.

We have noted on many occasions how investigation is the job of a private equity deal team. How successful investing depends on deep investigating—gathering independent facts that deal teams need to test the representations being made to them across the table.

Well, in the age of coronavirus, your investigations just got harder and more complex. We hope this article helps by highlighting some specific due-diligence considerations in these changing times. After all, it's not the first time that diligence has had to adapt to new risks (think 9/11 and terrorist financing).

"To a greater degree now, taking advantage of cross-border deal opportunities means doing business with people you do not know, and will likely not even meet for a while. In risky times, being skillful at independent fact-gathering—diligence—is more important than ever."

As due diligence professionals with experience helping private equity and other institutional investors, we want to offer four observations, a sort of report from the front on how an investigative due diligence firm and its clients are adapting to the coronavirus crisis, a few months in:

## 1. Check the Politics

Recent unprecedented events have shaken industries the world over, and deal diligence is racing to keep pace. For example, governments are speeding to erect barriers against foreign investment, out of concern about protecting increasingly vulnerable local industries. This protectionism is adding a layer of complexity to pre-transaction due diligence.

Some governments are taking "drastic" steps to repel foreign investors, according to Baker McKenzie's Samantha Mobley, in a recent *Legal Business* column. Spain, for example, is requiring non-EU players to get Madrid's approval to invest in strategic sectors such as technology, health care, and even media.

"These developments highlight the need for investors to carefully consider foreign investment review risks at this highly-sensitive and volatile time both for deals currently underway and transactions being contemplated," Ms. Mobley said. "Never has it been more relevant for [investment] companies to keep in mind the age-old advice for acquirers: buyer beware."

Luigi de Vecchi, Chairman of EMEA banking capital markets advisory at Citigroup, has predicted "a return of state intervention, triggered not only by protectionist moves to deter unwanted takeovers, but by the sheer necessity to rescue entire industries, revive strategic assets, and, where possible, create domestic champions through consolidation."

While there have always been prospective transactions that drew scrutiny from host governments, depending on the industry and origin of investment, we are now faced with many governments erecting barriers and reviews, apparently overnight, and often without announcement or explanation.

In addition to such direct expressions of political concern, we can see the likelihood of indirect effects of the virus crisis; we would predict, for example, that the concept of "politically sensitive persons" will effectively be broadened in this new environment.

Among the issues that we have been asked to investigate over recent months:

- Beyond official, Committee on Foreign Investment in the United States (CFIUS)-like standards on deal approval, will unannounced anti-foreign standards be informally applied?
- Which competitors, merchants' associations or gadflies will stir up opposition to deals like ours?
- Does the company's lobbyist have a good reputation locally?

## 2. Frauds & Exaggerations Are Flourishing

Cross-border deal diligence began adapting the day that the first deal team canceled plans to fly out and lay eyes on a business. The challenge is to understand with whom one is really dealing, without handshakes, dinners, and management meetings.

With borders and air travel restricted, there is now a premium on local and hyper-local resources who can lay eyes on something for you, without needing to go through an airport.

A due diligence team who has "boots on the ground" can still ask around locally as an independent check on what a party claims. We tell our clients: You invest globally, we investigate locally.

Those local inquiries often encounter shades of gray—less often finding an outright scam (although they do happen) and more often uncovering exaggeration and artful omission. (Like the out-of-work holes in résumés that we find have been filled in by self-created "employers.")

> "In the current environment, everyone assumes that claims of solvency and buoyancy are at least out of date, if not outright optimistic. At a time like this, almost every company is stressed or distressed. Don't trust until you verify."

The best sources for a detailed, nuanced view of a local businessperson's reputation are often former employees and former partners —identify them in social media, local records, and industry directories; and then go knock on their doors.

During the pandemic, contacting and interviewing sources has gotten both harder and easier. Harder because lives have been turned upside down, but easier because, working from home, people now have more time than ever to chat with us.

Our experience would confirm the conventional wisdom that downturns expose frauds; most famously, Bernie Madoff confessed in December 2008. But THIS downturn seems to be launching as many frauds as it exposes.

Our lives are more online than ever, and so is fraud. We note a rise in completely fabricated identities (the ink isn't dry on their LinkedIn profiles); "supporters" whose social media profiles were all created by the company they endorsed; online bios with aspirational (stock) photos; and, countless other snares for those not careful.

We use a wide range of open-source and proprietary tools to dig up information, and you can incorporate some of these into your own diligence. The Internet Archive —commonly known as the "Wayback Machine"—is a database of past versions of websites. You can use it to see whether the company you are looking to acquire has changed management or focus over the years, and if the representations they are making to you actually match reality. If they've been in business for nine years, why did their 2016 website say they were founded last year? Would you be as confident in your thesis if the lighting company you are looking at was selling used books two years ago?

In other words, web-savvy diligence needs to keep pace with web-savvy fraud.

## 3. Each Party Is Checking the Depth of the Other's Pockets

Creditors have always asked our investigative due diligence company to check on a company's or individual's assets and financial wherewithal, but in this new environment, that particular assignment is even more common.

And we are asked by companies to check the financial bona fides of investors. We recently reported to a client that the fund offering to finance them was itself tapped out, and that the financing was actually coming from another party.

In the current environment, everyone assumes that claims of solvency and buoyancy are at least out of date, if not outright optimistic. At a time like this, almost every company is stressed or distressed. Don't trust until you verify.

## 4. Supply Chain Is a Business Issue, a Political Issue, and an ESG Issue

The pandemic has accelerated the rethinking of supply chains, and, again, diligence is running to keep pace. Let's say your client is thinking of investing in a company that is in the process of

## Case Study: Supply Chain Diversification from China to Ethiopia

Before COVID-19, some manufacturers were already looking to shift their supply chains away from China, due mostly to rising costs, and in part from the pressure of the escalating trade war. The pandemic has fueled this trend further, as recent factory closures in China and logistical challenges forced manufacturers to seek greater diversity in their supplier bases.

In recent months, we have helped clients diligence new supply chains as they consider moving production from China to countries like Vietnam and Ethiopia. Export manufacturing zones such as Ethiopia's industrial parks—with favorable tax treatment, foreign ownership allowances, and generous staff visa requirements—present attractive opportunities, especially in the textile and garment industry. But supply chain diversification carries with it a variety of concerns that corporations and investors will want to face with their eyes wide open:

- **Business-related concerns:** Turnkey factories may be of a high standard, but industrial parks are often located in regions hungry for economic development. Local infrastructure deficiencies (e.g., electricity, road and transport links, and labor availability) can easily hamstring state-of-the-art facilities, and thus a holistic diligence process is required.
- **Political concerns:** Export manufacturing programs are usually popular at the national level, but regional support can be mixed. With national industrial policy crafted by the capital, some facilities face opposition from local leaders, which may involve protests or labor strikes. One approach is to perform a stakeholder mapping exercise, and then to conduct interviews with key actors to identify sensitive issues.
- **ESG-related concerns:** In addition to concerns around wages, housing, and working conditions, national industrial programs have faced repeated allegations of land grabs and wide-scale—sometimes violent—displacement of local groups. For one client that was facing damaging accusations in the media, we conducted a comprehensive investigation of the raw materials in its supply chain. We were able to prove that none of the cotton supplying its factory came from farms that had forcibly displaced the local community, and our client was able to use our findings to refute the accusations.

As firms increasingly seek to diversify their supply chains to Myanmar, Vietnam, Mexico, and Ethiopia, the need arises to apply multiple layers of diligence that are informed by on-the-ground knowledge of the local business, political, and ESG landscapes.

moving their supply chain from China to Vietnam. Of course, we would want to check the legitimacy and solvency of the new vendors in Vietnam. (At this point, that country's business environment is so overheated that one issue might be whether they're too busy to fulfill a new customer's orders.)

But these days, an additional issue could arise from the China side in this hypothetical: Is the jurisdiction being abandoned (China) likely to impede the company's departure, with tax penalties or holding inventory hostage? And when Chinese joint-venture partners have felt aggrieved by a Western partner moving on, local security forces have even detained departing managers. To assess these risks, you will want eyes and ears on the ground to provide local knowledge and context, such as how the government has responded in similar previous cases.

Due diligence investigating —though more difficult during the pandemic — is more important than ever. And we investigators —and I mean you too, investors —are ready to meet the new challenges.

### About the Author

**Randal Phillips** is a Partner based in Mintz Group's Beijing office. Randy spent 28 years with the Central Intelligence Agency, most recently serving as the Chief CIA representative in China.

Founded in 1994, the Mintz Group has conducted more than 10,000 investigations in more than 100 countries, from internal fraud investigations in Dubai to due diligence background checks in China.

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# Africa and Middle East:

## An Overview of Select Markets' Government Response to COVID-19 and State-Sponsored Relief Programs

Contributed by EMPEA Leadership Circle and Legal and Regulatory Council member, Debevoise & Plimpton

## Nigeria

The Nigerian government has launched a number of measures aimed at stimulating the economy and readying its health care systems.

- A fiscal stimulus of USD1.5b has been approved to support health care facilities, provide relief for taxpayers, and incentivize employers to retain and recruit staff;
- A "COVID-19 Basket Fund" has been implemented in collaboration with the UN system in Nigeria to distribute funding to health care companies to procure medical goods. The fund will serve as a financing and investment platform for diverse stakeholders to channel financial support;
- The Central Bank of Nigeria has announced, amongst other measures, an unprecedented USD3b stimulus package for critical sectors of the economy, the creation of a USD140m targeted credit facility for households and SMEs, credit support for the health care industry, regulatory forbearance to banks to restructure terms of facilities, and extensions of credit to the private sector;
- Moratoriums on all federal government-funded loans, a one-year extension of a moratorium on principal repayments for Central Bank of Nigeria intervention facilities, and a three-month repayment moratorium for all TraderMoni, MarketMoni, and FarmerMoni loans;
- Extensions on the filing due date for VAT and a one month filing extension for companies filing Companies Income Tax returns;
- An Emergency Economic Stimulus Bill to protect employees by giving tax rebates of up to 50% on the total amount due for companies that do not lay off their employees from March 1 to December 31, 2020; and
- A planned reduction in the federal government 2020 budget by USD4.9b and a reduction in the crude oil benchmark price from USD57 to USD30 to combat the effect of a global reduction in oil demand because of COVID-19;
- A fund of USD260,000 provided for pharmaceutical companies to expand drug manufacturing plants, and hospitals and health care providers to expand existing facilities or build new ones;
- The Nigerian Stock Exchange has granted Dealing Member Firms an additional 60 days for the submission of their annual audited financial accounts; and,
- An import duty waiver proposed on medical equipment, personal protective equipment, and other medical necessities.

## Kenya

USD375m in funds have been earmarked for the COVID-19 response by the Kenyan government. These funds have been designated mainly for additional health expenditure; however, there are planned funds available for expediting payments of existing obligations to maintain cash flow for businesses – many of the measures have not been confirmed.

- Economic relief in the form of a USD5m fund to support the tourism industry;
- A package of tax measures, including a reduction of the turnover tax rate on small businesses from 3% to 1% and of the standard VAT rate from 16% to 14% as well as a reduction of the resident corporate income tax from 30% to 25%. The Kenyan government have also implemented full income tax relief for individuals earning below USD225 per month and a reduction in the top PAYE rate from 30% to 25%;
- The government encouraged all domestic commercial banks to restructure nonperforming loans caused by COVID-19 and to be flexible regarding loan classification as nonperforming. In addition, the Kenyan Bankers Association has encouraged lenders to provide relief and other restructuring arrangements to borrowers whose loan repayments were up to date as of March 2, 2020;
- A temporary suspension of the listing of negative credit information for borrowers on the Credit Reference Bureaus whose loans became non-performing after April 1, 2020;
- Central bank policy changes which allow SMEs to make larger mobile money transfers;
- The central bank cut its policy rate from 8.25% to 7%, reduced the cash reserve ratio from 5.25% to 4.25% to improve access to liquidity in the market, and increased the maximum tenor of repurchase agreements from 28 to 91 days; and,
- Negotiations with the IMF and the World Bank; the IMF has approved a USD739m package in an emergency fiscal intervention in Kenya under their Rapid Credit Facility. The funding is expected to be used to support the Kenyan government's liquidity requirements and cover its balance of payments gap in 2020. The World Bank has also provided a USD50m interest free loan to Kenya as part of their global response to COVID-19.

## South Africa

The South African government has announced a range of measures to fortify businesses, including a USD26.5b package. The package, equivalent to 10% of the South African GDP, is set to finance a wide range of measures and encompasses both social and economic relief.

- The Industrial Development Corporation in partnership with the Department of Trade, Industry and Competition has put together a USD163m package for industrial funding to companies critical to national efforts to fight COVID-19. This package will comprise of the provision of working capital, bridging finance, and trade finance. There will be a further allocation of USD163m in Q2 to continue this support. The funding will only be available for businesses which are 100% owned by South African citizens;
- A Debt Relief Fund: The funds will provide debt relief for SMEs for existing debts and repayments. The Debt Relief Fund will also assist SMEs in acquiring raw materials and paying labor and other operational costs. SMEs will only be eligible if a company is 100% owned by South African citizens, has 70% South African employees, and is registered with the appropriate regulatory bodies;
- A Business Growth and Resilience Facility: This facility available to SMEs will offer working capital, stock, bridging finance, order finance, and equipment finance. SMEs will only be eligible if a company is 100% owned by South African citizens, has 70% South African employees, and is registered with the appropriate regulatory bodies;
- A "Blended Finance Program" provided by a partnership of the Small Enterprise Finance Agency and the Small Enterprise Development Agency. The program is aimed at supporting SMEs in acquiring business equipment, tools, and machinery, and will also provide non-financial development advice. Finance is now being provided by loan funding from the Small Enterprise Development Agency alongside direct grant funding from the Small Enterprise Finance Agency;
- The Unemployment Insurance Fund developed a temporary Employer/Employee Relief Scheme of USD2b. The scheme will directly assist employers, sectoral associations, and bargaining councils who are unable to pay a full salary to their workers because of lockdown measures; the fund will top up the salary payments up to a minimum of USD185 and maximum of USD938 a month;
- A Loan Guarantee Scheme for SMEs: The government-backed loan scheme will be initially provided by domestic banks to businesses with an annual turnover of less than USD15.9m to meet operational expenses. The National Treasury has initially provided a guarantee of USD5.3b with optionality to increase the guarantee to USD10.8b dependent on scheme success;
- A concessionary loan scheme for qualifying SMEs. The South African Future Trust (an independent charitable trust) has partnered with several domestic banks to extend assistance to SMEs in need of financial support. The initial fund of USD53m will be disbursed by the domestic partnership banks to eligible SMEs with a turnover of less than USD1.3m;
- The Solidarity Response Fund: The pro bono organization set up by the South African Government to channel donations from corporate entities and individuals to procure testing kits, PPE equipment, and ventilators;
- The central bank announcing temporary relief on bank capital requirements and also issuing guidance on dividends and cash bonus distribution (to ensure sufficient levels of capital preservation), a reduction in the liquidity coverage ration requirements from 100% to 80%, reducing the central bank rate to 4.25%, a program to purchase government securities on the secondary market, a reduction in the repo rate from 6.25% to 5.25%, and a commitment to raise the size of the central bank's main weekly refinancing operations;
- The National Empowerment Fund setting aside USD10.5m to create a loan facility for South African entities. This facility is aimed at entrepreneurs who manufacture and supply medical products. The loans of up to USD527,000 will be offered at 0% interest for the first year and thereafter at 2.5% per annum for a term of up to five years;
- Domestic banks offering three-month debt payment holidays;
- A temporary competition exemptions for the banking and retail sector to allow banks and businesses to work together to devise relief measures; and
- Relief for tax-compliant businesses with an annual turnover of less than USD2m. Eligible businesses will be able to delay their corporate income tax payments without penalties or interest over the next six months; they may also delay 35% of their pay-as-you-earn liabilities over the next four months. Additional tax relief measures also include a four-month holiday for companies' skills development levy contributions, fast-tracing VAT refunds, and a three-month delay for filing and first payment of carbon tax. Various other temporary employment tax-relief measures have been enacted to encourage employers to continue to maintain their workforce.

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## Egypt

The Egyptian government has earmarked a USD6.13b stimulus package equating to 1.8% of GDP to cushion the economic impact of COVID-19.

- A USD3.17b fund to support industries in the tourism sector:
- Lowering energy costs for the entire industrial sector (the price of natural gas has been lowered by 25% for cement manufacturers and 18% for ceramics and metallurgy manufacturers);
- An allocation of USD1.2b to shore up the Egyptian stock exchange and significant tax reliefs on transactions to support equity investors. Foreign investors will pay stamp tax at a reduced rate of 0.125% from 0.15%, and all spot transactions will be exempt from stamp tax. Foreign investors will be permanently exempt from capital gains tax with domestic investor's capital gains tax postponed until January 1, 2022. Investors will also now pay a withholding tax on dividend payouts from listed companies, a reduction of 5%;
- Real estate tax relief for business in the industrial and tourism sectors. The tax relief includes a three-month tax holiday on real estate with permission to pay any outstanding liabilities in monthly instalments over the next six months;
- A 3% cut in the central bank rate from 13.25% to 10.25%. The central bank has also instructed domestic banks to provide the credit limits necessary to finance working capital requirements of existing business customers and has launched a USD1.2b stock-purchase program; and
- The central bank giving SMEs a six-month exemption on credit repayments and the fast tracking of the SME Act through Egyptian parliament to give further relief to SMEs. The central bank have also made changes to the overnight deposit rate and rate of main operation, changing the rates to 9.25% and 9.75% respectively.

## UAE

The United Arab Emirates have so far announced an extensive range of measures at a federal government level including a USD69b central bank stimulus. At a state level, the free zones and local government have introduced various measures to relieve the pressures facing businesses.

- At a federal level the central bank has announced a "Targeted Economic Support Scheme." The scheme, which has been put in place for a year, comprises two aid strands. The first strand of the scheme is a zero cost facility aimed at providing USD13b of liquidity support to domestic banks who are in turn providing temporary loan and interest repayment holidays on loans. The liquidity support is being distributed through 0% interest collateralized loans. The second strand is aimed at providing relief from lender "capital buffer" requirements; lenders will now be able to offer facilities against some of the capital they hold in reserve. This measure is estimated to cost USD13b and will halve reserve requirements to 7%. In order to participate in the schemes, domestic banks and finance companies are expected to extend deferrals of principal and interest payments to customers for a period of up to six months for all private sector corporate customers and retail clients;
- The central bank has also limited bank fees for SMEs, introduced a temporary six-month waiver of all payment service fees charged, and reduced the policy interest rate to 1.5%;
- Abu Dhabi's government has allocated USD810m to an SME credit guarantee scheme managed by the Abu Dhabi Investment Office. The scheme will provide a government-backed guarantee of up to 80% of the value of the loan to SMEs through partnership banks. The loans will provide working capital for up to a three-month duration or longer term loans of up to four years. Abu Dhabi has also implemented a USD270m market marker fund; the fund is aimed at enhancing liquidity and sustaining balance between supply and demand for stocks;
- Further measures include Abu Dhabi providing USD1.3b to subsidize water and electricity fees for individual, commercial, and industrial activities; the funding will also subsidize electricity connection fees for startups for 2020. The government has also suspended bid bonds, waived industrial and commercial penalties, accelerated the payment of government invoices, provided for up to a 20% rebate on rental values for the restaurant, tourism, and entertainment sectors, exempted all commercial and industrial activities from Tawtheeq fees until 2021, and reduced industrial land leasing fees by 25% for new contracts among other measures;
- Dubai's government launched a USD405m economic stimulus package aimed at providing liquidity to companies and businesses in Dubai. The package includes a temporary freeze of the 2.5% market fees for all facilities operating in Dubai; a refund of 20% of customs fees imposed on imported products sold in the Dubai domestic market; the cancellation of the USD13,500 bank guarantee or cash requirement needed in order to undertake customs clearance activities; permission to renew commercial licenses without mandatory renewal of lease contracts; cancellation of the 25% down payment required for requesting instalment-based payment of government fees for obtaining or renewing licenses; and among other measures, a 10% reduction of water and electricity bills for three months;
- Dubai's domestic banks have announced measures aimed at supporting the central bank's initiatives. The measures include allowing customers who have been financially impacted by COVID-19 to request to defer up to 3 monthly payment instalments without fees on existing and new financing facilities among other measures aimed at supporting the business sector in Dubai;
- The Dubai Free Zones Council announced an economic stimulus package to complement the Dubai Government's efforts. The package covers five key areas: postponing rent payments by a period of 6 months, facilitating instalments for payments, refunding security deposits and guarantees, cancelling fines for companies, and permitting temporary individuals contracts that allow the free movement of labor between companies operating in the free zones to continue for the rest of the year;
- Dubai and Abu Dhabi have temporarily suspended eviction for tenants struggling to pay rent during COVID-19.

# Asia:

## An Overview of Select Markets' Government Response to COVID-19 and State-Sponsored Relief Programs

Contributed by EMPEA Legal and Regulatory Council members, Debevoise & Plimpton and AZB Partners (India)

## India

With the outbreak of COVID-19 in March 2020 and an exponential rise in the number of cases by the day, the economic impact of the virus has been largely disruptive. However, India has fared better on a comparative scale with International Monetary Fund's 1.9% Gross Domestic Product (GDP) growth projection (for the FY 2020-2021), among the highest for G-20 nations.

In order to absorb the shock of the nationwide lockdown imposed to contain the virus, the government has been instrumental in taking policy measures pertaining to food security, health care, employee welfare, reduced compliance burden, securities market, tax incentives, special finance to DFIs, etc., with the Prime Minister issuing a clarion call to strive towards 'economic self-reliance.'

State governments have also been taking steps at local level to address the impact of the pandemic, especially in relation to employee welfare.

The judiciary has also, on a case-by-case basis, been giving relief to various borrowers and employees and issuing directions to central and state governments to address the impact of the pandemic.

Atma-nirbhar Bharat Abhiyaan (Self-Reliant India Campaign): A comprehensive economic package amounting to approximately INR20 lakh crore (approx. USD265b), which equals almost 10% of India's GDP, was announced, with a focus on the five pillars of self-reliant India: economy, infrastructure, system, vibrant demography, and demand. The package contains a slew of measures including reforms, infrastructure building, support to distressed businesses, and a certain amount of direct cash support. The scheme was unveiled by the Finance Minister in five phases; the key announcements are outlined below:

**Phase I:**

- INR1.70 lakh crore relief package under Pradhan Mantri Garib Kalyan Yojana (Prime Minister's Welfare Package for the Poor) containing inter alia insurance cover of up to INR50 lakh per health worker, distribution of grains, pulses, and gas cylinders for three months, increase in wages under the National Rural Employment Guarantee Act of 2005 from INR182 a day to INR202 a day;
- Reduction in cash reserve ratio of banks resulting in liquidity enhancement of INR1,37,000 crore.
- Targeted Long Term Repo Operations (TLTRO) of INR1,05,000 crore for fresh deployment in investment grade corporate bonds, commercial papers, non-convertible debentures;
- 3 month moratorium on installments and interest on working capital facilities in respect of all term loans;
- INR20,000 subordinate debt for stressed Micro, Small and Medium Enterprises (MSMEs);
- INR50,000 crore equity infusion through fund of funds;
- Definition of MSME revised with elimination of distinction between manufacturing and service and revised investment limit;
- INR30,000 crore Special Liquidity Scheme for Non-Banking Finance Companies (NBFC)/Housing Finance Companies (HFC)/Micro Finance Institutions (MFI) along with INR 45,000 partial credit guarantee scheme;
- INR90,000 liquidity injection to stressed electricity distribution companies against receivables; and
- COVID-19 to be treated as force majeure resulting in suo moto extension in existing deadline for completion of real estate projects without the need for individual applications.

**Phase II**

- INR30,000 crore emergency working capital facility for MSMEs;
- Collateral free lending of INR 20 lakh for women self-help groups;
- Constitution of a District Mineral Fund for supplementing and augmenting facilities of medical testing and screening, and Credit Linked Subsidy Scheme extended until March 2021—expected to attract investment to the tune of INR70,000 crore in the housing sector and thereby creating a demand for steel, cement, transport, and other construction materials; and,
- Creation of Compensatory Afforestation Management and Planning Authority and mobilization of funds to the tune of INR6,000 crore.

**Phase III**

- A special drive to provide concessional credit to PM-KISAN beneficiaries (including farmers and fisherman) through Kisan Credit Cards expected to inject INR 2,00,000 crore to 2.5 crore farmers and an additional INR 30,000 crore emergency working capital being made available to small and marginal farmers through the National Bank for Agriculture and Rural Development;
- Financing facility of INR1,00,000 crore to be provided for funding agricultural infrastructure projects at farm-gate and aggregation points;
- Drafting a legislative framework to promote inter-state trade and e-trading of agriculture produce, and enable farmers to engage with processors, aggregators, large retailers, and exporters in a fair and transparent manner.

**Phase IV**

- Fast track investment clearance through Empowered Group of Secretaries;
- Ranking of states on investment attractiveness to compete for new investments;
- Promotion of new champion sectors such as solar PV manufacturing, advanced cell battery storage, etc.;
- The upgrading of industrial infrastructure in states with the availability of industrial land/land bank for promoting new investments and making information available on Industrial Information System with Geographic Information System mapping;

## India
*(Continued)*

- Introduction of commercial mining in coal sector, allocation of 50 coal blocks for auction and infusion of INR50,000 crore towards evacuation infrastructure; foreign direct investment in defense manufacturing under automatic route increased from 49% to 74%. Announcement of intent to allow private participation in space and atomic energy sector;
- Establishment of a research reactor in the Personal Protective Equipment model for production of medical isotopes to provide affordable treatment for cancer and other diseases; and
- INR8,100 crore for viability gap funding in social infrastructure by increasing the quantum from 20% to 30%.

**Phase V**

- Suspension of fresh initiation of insolvency proceedings up to one year (depending upon the pandemic situation), exclusion of COVID-19 related debt from the definition of default under the extant insolvency laws and minimum threshold to initiate insolvency proceedings raised from INR1 lakh to INR1 crore (aimed at protecting MSMEs);
- Promoting ease of doing business in India including decriminalization of minor technical defaults under the Companies Act of 2013 (such as shortcomings in corporate social responsibility reporting, inadequacies in board report, filing defaults, and delay in holding annual general meetings) along with lower penalties for defaults by small companies, producer companies, one-person companies, and startups;
- Laws to be introduced to allow listing of Indian public companies in permissible foreign jurisdictions;
- Implementation of National Digital Health Blueprint;
- New national curriculum and pedagogical framework for school including electronic content;
- Additionally, the Ministry of Corporate Affairs has permitted companies to hold extraordinary general meetings and annual general meetings through video conferencing and granted relaxations from timelines for filings and certain other compliances;
- In order to curb opportunistic takeovers/acquisitions of Indian companies due to COVID-19, the Central Government has amended the rules governing non-debt foreign investment whereby any investment by an entity which shares a land border with India or the beneficial owner of an investment in India who is situated or is a citizen of any such country shall invest only with approval of the government. The approval would also apply in case of transfer of any existing or future foreign direct investment in an Indian entity, directly or indirectly, resulting in beneficial ownership falling within the restriction or purview of the foregoing;
- Extension in deadline for implementation of stewardship code for alternative investment funds (AIFs) and mutual funds from April 01, 2020 to July 01, 2020;
- Temporary relaxation in compliance with requirements pertaining to AIFs and Venture Capital Funds by 2 months;
- Relaxation in compliance pertaining to portfolio managers by 2 months;
- Temporary relaxation in processing of documents pertaining to Foreign Portfolio Investors by allowing Designated Depository Participants to allow acceptance of scanned copies of documents instead of originals;
- Exempting capital and debt market participants from temporary closure imposed by lockdown;
- Credit Rating Agencies permitted to create differentiation in treatment of defaults if the delay in payment of principal or interest is account of lockdown;
- Reduction in continuing compliances under the takeover regulations;
- Reduction in compliance burden on listed entities and market participants;
- Relaxation in timelines for compliance with regulatory requirements pertaining to reporting of beneficial owner grievance report, reporting of artificial intelligence and machine learning applications, half yearly internal audit report, risk based supervision and systems audit by depositories and depository participant;
- Restriction on fresh fund raising by companies after the buyback period slashed to six months from one year (applicable till December 31, 2020);
- India's central bank, the Reserve Bank of India (RBI) has permitted lending institutions to provide a three month moratorium on payment of all installments in relation to term loans falling due between March 01, 2020 and May 31, 2020. In addition to TLTRO, RBI has also announced INR50,000 special refinance facilities for DFIs. In order to help states with temporary mismatches in cash flow, the RBI, under its credit policy, has increased the current advance limit by 60%;
- The Competition Commission of India recognized the need for businesses (including those involved in critical health care and essential commodities) to coordinate certain activities to ensure continued supply and fair distribution of products;
- Ministry of New and Renewable Energy (MNRE) has clarified that any delay in projects on account of disruption of supply from countries affected by COVD-19 would be treated as force majeure or an Act of God and renewable energy producers would be entitled to claim consequent extension of time.

# China

Since January 2020, the central and local governments of the People's Republic of China have promulgated a series of incentive measures to support businesses, in particular SMEs, in combating the financial stresses and difficulties caused by the COVID-19 outbreak.

**Financial Assistance Measures:**

- A plan by China's central bank to provide commercial banks with CNY300b (USD43b) for lending, at a preferential and subsidized interest rate, to companies that are key to the prevention and control of the COVID-19 outbreak;
- A re-lending and re-discounting scheme by China's central bank that will provide CNY500b (USD71b) of additional funds available for commercial banks to lend to SMEs;
- SMEs and micro enterprises affected by COVID-19 may apply for the deferral of repayment of principal and interest from January 25 to June 30, 2020, and overdue loan repayments during this period will not be subject to penalties;
- Government-controlled financing guarantee and re-guarantee institutions are required to coordinate with other financial institutions to extend loans to SMEs in a prompt manner, and the fees to be charged to SMEs by local government-controlled financing guarantee and re-guarantee institutions for 2020 shall be reduced by 50%;
- Enterprises with good credit are encouraged to issue corporate bonds for liquidity support, and enterprises severely affected by the COVID-19 outbreak may benefit from an accelerated and simplified regulatory review process for bond issuances;
- To ease the liquidity difficulties caused by the COVID-19 outbreak, enterprises are allowed to apply for a temporary increase of their foreign debt quota restriction, which is capped based on their corresponding registered capital amount and/or net asset value.

**Preferential Tax Measures:**

- From March 1 to the end of 2020, small-scale taxpayers in Hubei (the province hardest hit by COVID-19 in China) are exempt from VAT, and the VAT rate outside of Hubei province is reduced from 3% to 1%;
- Losses incurred in 2020 by enterprises in certain industries severely affected by the COVID-19 outbreak (including transportation, catering, accommodation, and tourism) are permitted to enjoy a longer tax loss carry-forward period—i.e., eight years, instead of the standard five years;
- Certain expenditures, such as investment in equipment to expand production capacity by enterprises engaged in manufacturing key supplies related to COVID-19 protection and containment ("Key Supplies Manufactures"), may be deducted in one lump sum for corporate income tax purposes. Previously, such deduction was allowed only if the expenditure does not exceed CNY5m;
- Key Supplies Manufacturers may apply for a refund of incremental retained VAT on a monthly basis. A VAT exemption also will apply to income derived from transportation of key supplies related to COVID-19 protection and containment, public transportation service, express delivery services, and the so-called "life services" (which include medical services, catering, and personal services, such as hairdressing and laundry).

**Social Security Contribution Reliefs:**

- From February to June 2020, SMEs and micro enterprises outside Hubei province and all the enterprises in Hubei province are exempted from making employer contributions to the mandatory pension, unemployment, and work-related injury insurance programs (the "Social Insurance Programs");
- Enterprises affected by the COVID-19 outbreak with significant difficulties in production and operation may apply for deferred payment of social insurance fees of up to six months, and no penalty interest will be imposed;
- Enterprises may apply for deferred contribution to the mandatory public housing fund until the end of June 2020. During this period, employees will not be subject to late payment penalties;
- SMEs and micro enterprises are eligible for a refund of unemployment insurance contributions if they limit employee layoffs to a certain extent.

**Regional and Industry Supporting Policies:**

- In addition to the preferential measures promulgated by the central government, the provincial and municipal governments released a variety of policies, such as fee breaks, fiscal subsidies, rental relief, and additional social security refunds, to support local businesses. The regional governments also introduced a number of industry-specific supporting measures, and some examples are set forth below:
  - SMEs that lease operating property from state-owned enterprises in Shanghai to engage in production and operating activities were exempted from February and March rents;
  - If, by the end of April 2020, the average number of employees in a Beijing SME increased by 20% or more compared with the previous year, such enterprise will be granted a one-time subsidy equal to 50% of three months' social insurance contributions;
  - By the end of June 2020, domestic and foreign airlines companies that do not suspend international flights to or from China may apply for certain cash subsidies;
  - Electricity prices for commercial and industrial consumers, except for energy-intensive sectors such as steel and aluminum, are reduced by 5% for the period from February 1 to June 30, 2020.

## Singapore

To overcome the challenges faced by Singapore's economy and society brought by COVID-19, the Singapore government has introduced relief measures through three budgets presented between February to April 2020—the "Unity Budget," the "Supplementary Budget," and the "Solidarity Budget."

- Automatic deferral of income tax payments for 3 months—for companies, taxes due from April to June 2020 would become payable from July to September 2020, and self-employed persons would pay income tax from August 2020 instead of May 2020;
- Various levels of property tax rebates for different types of properties to property owners, who would be legally required to pass them on to tenants. There will be 100% rebate for qualifying commercial properties, 60% rebate for integrated resorts, and 30% rebate for other non-residential properties;
- The Enterprise Financing Scheme – Trade Loan with a maximum loan size of SGD10m, the Enterprise Financing Scheme – SME Working Capital Loan with a maximum loan size of SGD1m, and the Temporary Bridge Loan Program covering all sectors with a maximum loan size of SGD5m, each with the Government sharing in 90% of the default risk, will be provided for all loans initiated from April 8, 2020 to March 31, 2021. In addition, SMEs may opt to defer principal payment on their secured term loans, and banks and finance companies may apply for low-cost funding through a new Singapore Dollar facility operated by the Monetary Authority of Singapore under the Enterprise Financing Scheme – SME Working Capital Loan and Temporary Bridging Loan Program, provided that such banks and finance companies undertake to pass on savings to the borrowers;
- To allow employers to retain their workers, the Singapore government introduced the Jobs Support Scheme under which it will co-fund the first SGD4,600 of gross monthly wages paid to each local employee for 9 months from February 2020, with payouts in April, July, and October 2020. For the month of April 2020, the government paid 75% on the first SGD4,600 for every local employee. From May 2020 onwards, the government will continue to provide wage support to different sectors, which are 75% for the aviation, accommodation and tourism sectors, 50% for the food services sector, and 25% for all other sectors;
- Foreign worker levies for the month of April 2020 were waived in order to reduce costs and ease cash flow, and rebates of SGD750 for each Work Permit or S-Pass Holder from levies paid in 2020 will be granted to employers;
- A Temporary Relief Fund for the month of April 2020 allowing those who required immediate assistance to apply for a one-off cash grant of SGD500, and a COVID-19 Support Grant for lower- and middle-income Singaporeans who require urgent help with basic living expenses to apply for cash grants of SGD800 a month for three months from May 1, 2020 onwards;
- A one-off solidarity payment of SGD600 was paid to all Singaporeans aged 21 and above in April 2020. The remaining cash payouts under the Enhanced Care and Support scheme will be made from June 2020 onwards, together with the SGD300 payment for each parent with at least one Singaporean child aged 20 and below in 2020, and SGD100 cash for Singaporeans aged 50 and above in 2020; and
- No increase in government fees and charges for one year from April 1, 2020 to March 31, 2021.

# Latin America:

## An Overview of Select Markets' Government Response to COVID-19 and State-Sponsored Relief Programs

Contributed by EMPEA Leadership Circle and Legal and Regulatory Council member, Debevoise & Plimpton

## Brazil

Currently, Brazil is Latin America's hardest hit country and is on the run-up to becoming one of the world's next COVID-19 hot spots. The health crisis has and continues to profoundly impact the country`s economy, which only recently had come out of one of its worst recessions in recent history.

As of May 2020, Economic Minister Paulo Guedes projects an economic downturn of at least 4.7% in GDP contraction in 2020. Deutsche Bank, JP Morgan, and Societé Générale projected GDP contraction of 6.2%, 7.0%, and 7.4%, respectively.

On May 7, 2020, after approval by the Senate, the Lower House of Congress approved on a first vote the Constitutional Amendment 106/2020, known as the "War Budget." If finally passed, the War Budget will segregate public spending to combat COVID-19 from the Federal Government's budget and its Constitutional ceiling, creating an extraordinary regime that would allow expansion of governmental spending. In addition, the special budget bill would authorize the Federal Government to issue bonds to pay interests on public debt, and the Brazilian Central Bank (BACEN) to buy and sell Treasury bonds in the secondary market.

- A USD60b swap line with the US Federal Reserve for at least six months;
- A set of central bank measures to release USD640bn to the economy, including special guarantees for bank borrowings, flexibility on agribusiness credit, anti-exchange rate volatility measures, and relaxing banks' capital requirements to increase overall credit availability;
- Deferral or suspension of certain federal debts, including those of states and municipalities;
- A relief package for airlines and airport concessionaires with postponement of air tariffs collection and concession fees;
- A new credit line for the health care & life sciences manufacturers for the production of ventilators, health monitors, medical masks, and new ICU units provided by the State-owned development bank, BNDES;
- Facilitated access to credit and deferred payments to businesses in the tourism sector;
- USD100m relief plan to small agricultural producers and family-owned farms;
- USD1b federal government program (PROGER/FAT) for the development and modernization of micro and small businesses;
- USD29.8b credit line to small and medium-sized businesses for working capital and payroll loans provided by the State-owned Federal Savings Bank, Caixa Econômica Federal, including grace periods and flexible payment conditions;
- USD20b credit line provided by State-owned bank, Banco do Brasil, for working capital, investments, prepayment of receivables, agribusiness and credit to individuals;
- USD1b BNDES credit for small and medium-sized businesses;
- BNDES also committed to a six-month suspension of outstanding loan payments with no late interest payment;
- Federal Government emergency credit line to finance payroll in exchange for companies committing not to fire employees for two months, including grace period, low interest rates, and flexible payment conditions;
- Temporary exemption of tax on financial transactions (IOF) on credit operations;
- Reduction or deferral of certain employee-related social contributions to support companies avoid layoffs;
- Relaxation of federal labor laws to authorize reduction of working hours and wages;
- Three months emergency aid of BRL600 (USD120) to informal workers and unemployed individuals of low-income families;
- Granting of other labor financial support to individuals, such as anticipation of the legally mandatory 13th salary, bonus allowance, and unemployment insurance for certain individuals;
- Exemption for approximately 9,000,000 low-income families from paying electricity bills between April 1, 2020 and June 30, 2020;
- Expansion of Bolsa Familia, a social welfare program of the federal government, to low-income families with the inclusion of more than one million new beneficiaries;
- Postponement of the income tax filing for two months.

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# Mexico

The Mexican government reportedly downplayed and resisted taking aggressive actions to fight the crisis caused by the pandemic, generating criticism from health experts, the business community, and analysts who hoped for earlier and more assertive responses.

The forecasts of local economic pundits and credit agencies paint an alarming prognosis for the Mexican economy, with GDP expected to contract by at least 6.7% in 2020, according to Citibanamex analysts at the end of April, 2020.

Experts believe that Mexico delayed response—it officially declared a state of emergency at the end of March—may have severe consequences on how the economic downturn unfolds. But, despite the rising number of cases, the President has recently announced that the government is preparing to reopen the economy.

- A USD60b swap line with the US Federal Reserve for at least six months;
- Grants of one million loans of MXN25,000 to entrepreneurs without any charge;
- Temporary suspension of labor obligations due to sanitary emergency on the grounds of force majeure;
- Banco de México, the Mexican central bank, unveiled a support program of approximately USD31b for the financial system, including the cut of borrowing costs and other stimulus to banks lending to small and medium-sized businesses and individuals;
- The central bank reduced the benchmark interest rate by 50 basis points in April to a three-year low of 6% and lowered the cost of repos to provide banks with additional liquidity;
- The central bank has taken provisional measures to support financial institutions, including extending the term for compliance with certain periodic reporting obligations and agreeing to a limited standstill on certain administrative procedures;
- Larger banks have deferred credit payments between four and six months. The Inter-American Development Bank (IDB) and the Mexican Business Council (CMN), in turn, announced a loan that will provide up to USD12b a year to small and medium-sized businesses and offer revolving credit lines with an average term of 90 days;
- The deadline to file individual tax returns for 2019 was extended until June 30. The government is considering deferring social security payments for up to 48 months with low interest rates to both employers and workers;
- A fund of MXN35b from the Institute of Security and Social Services for State Workers (ISSSTE - Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado) is expected to be available to grant personal loans ranging from MXN20,000 to MXN56,000 to 671,000 workers at the service of the State;
- MXN175b to housing loans aimed at benefiting 442,500 workers;
- VAT reimbursements to taxpayers;
- Advance pension payments in the sum of MXN42b to the elderly, in the amount of MXN5,240 each;
- Some local authorities are also taking additional measures. In Mexico City, for example, the mayor announced a support line of MXN200m to small businesses, including grants of 50,000 microcredit loans of up to MXN10,000 each with 0% interest for a period ranging from four months to two years.

# Russia:

## An Overview of Select Markets' Government Response to COVID-19 and State-Sponsored Relief Programs

Contributed by EMPEA Leadership Circle and Legal and Regulatory Council member, Debevoise & Plimpton

## Russia

To mitigate the impact of the COVID-19 outbreak on the Russian economy and society, the Russian government has implemented a number of measures, expected to cost up to RUB300b (about USD4b), to support businesses. These measures include measures that are available to businesses generally, and specific measures targeted at the most vulnerable enterprises, namely entities operating in the economic sectors most affected by the COVID-19 pandemic ("Vulnerable Sectors"), small and medium-sized enterprises ("SMEs") and systemically important companies ("Systemic Companies").

**General Measures:**

- A six-month moratorium on bankruptcy claims against certain companies, including but not limited to SMEs operating in Vulnerable Sectors and Systemic Companies. The companies subject to the moratorium have a right to opt-out of it;
- An open market share buyback procedure for public joint stock companies, the price of shares and the securities market index of which in any three months from March 1, 2020 decreased by 20% as compared with the price of shares and the securities market index in any three months starting from October 1, 2019.

**Specific Measures:**

- An interest-free loan from banks, available to enterprises operating in Vulnerable Sectors. The term of such loans will be six months. To be eligible for the loan, a medium or a large-sized enterprise must retain 90% of its employees;
- A loan at reduced interest rate of 5% per annum for Systemic Companies. The loan amount will depend on the average monthly earnings, amortization, and profits of the borrower, but will not exceed RUB3b. The loan must be used for the purposes determined by the Russian government (which include paying salaries, leasing of premises and equipment, and the servicing of equipment);
- A direct subsidy for emergency needs for SMEs (the amount subsidized depends on the number of employees of the business) operating in Vulnerable Sectors. The subsidy may be granted only to SMEs who retain 90% of their workforce;
- An up to six-month grace period for SMEs to perform or comply with their obligations under loan agreements;
- Grace periods for tenant SMEs, operating in the Vulnerable Sectors, for the payment of rent, a reduction of their rental payments or the full release from paying rent for leasing certain property, such as federal state-owned property in particular;
- A reduction in social insurance contributions for SMEs and a grace period for the payment of certain taxes and insurance contributions by enterprises operating in Vulnerable Sectors. The grace period is available to companies that meet certain criteria, such as a decrease of income by 10% or more and the incurrence of losses. The length of the grace period is dependent on the total amount of the income and losses.

**Proposed Measures:**

- Complete exemption from paying taxes (other than VAT) and insurance contributions for Q2 2020 for SMEs operating in Vulnerable Sectors;
- Loan program at 2% interest rate to support employment for companies operating in Vulnerable Sectors. Companies that retain 90% or more of their workforce may enjoy complete exemption from repaying the loan and interest at the expense of the state.

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