



# COVID related debt: be prepared

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## Supporting the retail sector

There's no doubt that the retail sector has been through unprecedented change as a result of the pandemic and will continue to transform for the foreseeable future. Whether it's revolutionising your digital offering, transforming your supply chain, assisting you with your property portfolio, dealing with disputes, or helping you restructure, we're on hand to guide you through these changing times. Helping clients in the retail sector transform their business and mitigate risk is at the heart of what we do.

## Moratorium

It is clear from a new Code of Practice and from draft legislation published by the government on 9 November 2021 that the current moratorium restricting a landlord's ability to recover rents will remain in place until at least 25 March 2022. After that date the protection available will be significantly eroded.

## Arbitration scheme

The draft legislation provides for the creation of a new arbitration scheme to deal with arrears of rents (which include service charges and insurance rent) relating to a period when a business was mandated to close as a result of COVID-19. Whilst an arbitrator will have power to effectively waive all or part of the rent, the Code of Practice makes it clear that tenants who can afford to pay any arrears should do so. When assessing affordability the arbitrator cannot take into account the possibility of borrowing additional funds or restructuring and will be looking at whether the arrears can be paid over a 24 month period. It is also clear that the tenant's business must be viable or the arbitration scheme will not apply. It is intended that the arbitration scheme will be available from 25th March 2022 and the protections currently available to tenants will start falling away from that date. If you do have rent arrears then it is therefore crucial that you put a plan in place for how you are going to deal with those arrears prior to 25 March 2022.

We are already helping a number of clients with negotiations of rent holidays, rent reductions and so on during the upheaval and we will also be able to help you navigate the arbitration process if either you or one of your landlords decides to go down this route. At the same time we are keeping a close eye on developments in the legislation.

We appreciate that there are always challenges to overcome and opportunities to explore when running a business. We have been discussing how we can help our clients with other professionals and with that in mind we attach a pamphlet prepared by the global management consulting firm, Alvarez & Marsal highlighting some of the issues you may wish to consider now.

## Key contacts



**Elizabeth Alibhai**  
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Elizabeth has over 14 years' experience across all aspects of commercial property work, having commenced her career at leading real estate firm Boodle Hatfield working on the management of Grosvenor's Mayfair and Belgravia Estates before moving to international firms and working on high-value transactions across a number of sectors including offices, retail, healthcare, hotels and logistics. She also acts for developers, especially in the residential and retail sectors.



## Key contacts cont



**Finella Fogarty**  
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Finella specialises in advising insolvency practitioners, corporates, directors and funds on both contentious and non-contentious restructuring, formal insolvency and turnaround situations.

With over 19 years' experience, Finella has a broad range of experience advising on a number of complex and high profile domestic and multi-jurisdictional matters including trading administrations, HNW bankruptcy and receiverships to fraud and syndicated restructures. Finella is a member of the R3 Association of Business Recovery Professionals and the Insolvency Lawyers Association.



**Mike Kilner**  
Consultant  
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Mike advises institutional investors, nation states, corporate occupiers, high net worth individuals and financial institutions in a variety of complex high value disputes arising out of real estate.

Mike advises in connection with all aspects of real estate litigation including business tenancy lease renewals, dilapidations claims, break notice cases, rights to light disputes, resolving development issues and building exit strategy. Mike has advised across a number of sectors including industrial and logistics, retail, professional, financial services and education. As well as being experienced in conducting matters to trial Mike also uses mediation and other forms of alternative dispute resolution in order to resolve issues quickly and cost effectively for clients.



**Simon Edwards**  
Partner  
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Simon is a Partner in RPC's top ranked Commercial team, with over, 15 years' experience advising on and negotiating commercial contracts. Simon also co-leads our "stores of the future" stream and is a Commercial Partner.

Simon acts for various clients in the sector including Azzurri Group, McArthurGlen, Frasers Group, Game Retail and Coca-Cola European Partners, and specialises in advising on complex supply arrangements. He has spent over a year in-house on secondments to Coca-Cola European Partners, Reckitt Benckiser and the Lucozade/Ribena division of GlaxoSmithKline. Simon is heavily involved in our Retail sector team, being a member of our Executive Committee, as well as heading up our work with the British Retail Consortium and leading on our flagship monthly publication "The Changing Face of Retail". He has been named as a "Star Lawyer" by Acritas from 2018-2021.



**Paul Bagon**  
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Paul specialises in advising stakeholders in all aspects of cross-border and domestic insolvencies, financial restructurings, corporate turnarounds, group reorganisation and rationalisations, complex workouts and recovery mandates.

Paul's recent work includes advising companies in relation to LBO and JV restructurings, distressed debtors on successful turnaround strategies and regulated companies on complex resolution planning arrangements.

Paul has worked on restructurings in the aviation, retail, leisure and oil and gas sectors and has also advised in connection with a number of large CVAs and a scheme of arrangement. Paul is a member of the R3 Association of Business Recovery Professionals, the Insolvency Lawyers Association and INSOL.