

DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Completed acquisition by Circle Health Holdings Limited of GHG Healthcare Holdings Limited

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 20 December 2019

We refer to your letter dated 31 January 2020, requesting that the CMA consent to derogations to the Initial Enforcement Order of 20 December 2019 (the "**Initial Order**"). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Circle Health Holdings Limited and Circle Health 4 Limited ("**Circle**") are required to hold separate the Circle business from the business of GHG Healthcare Holdings Limited ("**GHG**") and its subsidiaries, and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. GHG is the parent company of BMI Healthcare Limited. GHG and its subsidiaries, including BMI Healthcare Limited are collectively referred to in this derogation as "**BMI**".

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Circle may carry out the following actions, in respect of the specific paragraphs of the Initial Order:

1. Management of the coronavirus – paragraphs 5 and 6 of the Initial Order

The CMA understands that there has been an outbreak of the coronavirus in Wuhan, China, and that on 31 January 2020, the UK Government confirmed that two patients had tested positive for the virus in the UK. Given the speed with which the coronavirus can spread, all UK healthcare providers are required to adopt contingency plans. Based on the information provided to the CMA, the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. On this basis, in order

to ensure that Circle and BMI can respond rapidly to, and manage the impacts of, any potential outbreak of the coronavirus in the UK, the CMA consents to:

- (a) BMI providing (i) reports to [X] (Circle's Head of Governance and Quality) and [X] (Circle's Medical Director) in the event that a positive test for the coronavirus is reported in a BMI hospital or involving BMI patients or staff; and (ii) updates on the measures being taken by BMI hospitals in response to any such cases;
- (b) [X] (Circle's Head of Governance and Quality) and [X] (Circle's Medical Director) engaging in discussions and sharing information with [X] (BMI's Head of Quality Improvement), [X] (BMI's Head of Medical Performance) and [X] (BMI's Medical Director) for the purpose of preparing for and managing any outbreak of the coronavirus in the UK;
- (c) [X] (Circle's Head of Governance and Quality) and [X] (Circle's Medical Director) escalating serious incidents involving the coronavirus if necessary to [X] (Circle's CEO);
- (d) [X] (Circle Legal Counsel) receiving a copy of any notification or communication required to be provided by BMI to any of its insurers in relation to the coronavirus outbreak; and
- (e) [X] updating the Circle Board and financial providers regarding the potential impact of any detected coronavirus in a BMI facility and or any decision to close or curtail services at BMI facilities as a consequence of the virus.

This derogation is granted pursuant to the following conditions:

- (a) discussions between Circle and BMI would only occur between the named individuals above;
- (b) all identified individuals will sign (or have already signed) a suitable confidentiality undertaking in a form agreed with the CMA;
- (c) Circle will ensure that firewall measures are put in place to prevent any other Circle employee from accessing the BMI information;
- (d) the information shared would be limited to that strictly necessary for the purposes of:
 - (i) managing any outbreak of the coronavirus in the UK, preparations/contingency planning for any such outbreak, and managing any consequences of the outbreak; and
 - (ii) managing any positive tests reported in a BMI hospital or involving BMI patients or staff, preparations/contingency planning for any such detection, and managing any consequences of the detection;

(e) in the event that escalation is required to [X] (Circle's CEO), Circle will ensure that:

- (i) it notifies the CMA in parallel that a report is required to be made to [X];
- (ii) communication of any BMI information is strictly limited to that necessary for Circle to understand the nature of the incident and the measures BMI is taking in response; and
- (iii) [X] will sign (or has already signed) a suitable confidentiality undertaking in a form agreed with the CMA.

Alexandra Zachmann

Assistant Legal Director, Mergers

31 January 2020