



COVID-19

Relieving the burden on businesses

KPMG Board Leadership Centre

The Government has introduced a Corporate Insolvency and Governance Bill in Parliament which is intended to put in place a series of measures to support companies in addressing the challenges resulting from the impact of COVID-19. The Bill consists of six insolvency measures designed to help businesses through this period of instability; and two corporate governance measures which provide temporary easements and flexibility to businesses challenged by reduced resources and restrictions.

The Bill's three primary objectives are:

- to introduce new corporate restructuring tools to the insolvency and restructuring regime to give companies the breathing space required to maximise their chance of survival
- to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability, and to protect companies from aggressive creditor action
- to amend Company Law and other legislation to provide temporary easements on company filing and annual general meetings (which will extend to charitable incorporated organisations and mutual societies) thus allowing to focus resources on continuing operations in this uncertain time

On the insolvency front, the measures in the Bill will support businesses, and where applicable charities and mutual societies, by:

- **Introducing a new moratorium** to give companies the opportunity to pursue a rescue plan during which time no legal action can be taken against a company without leave of the court.

This measure will give businesses a 20 business day period to consider a rescue plan, extendable to 40 business days, with further extensions at the agreement of creditors or the court. The company will remain under the control of its directors during the moratorium, but the process will be overseen by a monitor who must be a licensed insolvency practitioner.

- **Introducing a permanent change to the use of termination clauses** in supply contracts. Where a company has entered an insolvency or restructuring procedure, or obtains a moratorium during this period of crisis, the company's suppliers will not be able to rely on contractual terms to stop supplying, or vary the contract terms, for example increasing the price of supplies. The customer is required to pay for any supplies made once it is in the insolvency process but is not required to pay outstanding amounts due for past supplies, while it is arranging its rescue plan.

The measure also contains safeguards to ensure that suppliers can be relieved from their requirements if they cause hardship to their business with a temporary exemption for small company suppliers during the emergency.

- **Introducing a new restructuring plan** as an option for companies in financial difficulty. The measure will allow struggling companies, or their creditors or members, to propose a new restructuring plan which will provide an alternative rescue option. The plan will enable complex debt arrangements to be restructured and will support the injection of new rescue finance.

It will introduce a cross-class cram-down mechanism that will allow dissenting classes of creditors to be bound by the plan, if sanctioned by the court as fair and equitable, and if the court is satisfied that those creditors would be no worse off than if the company entered an alternative insolvency procedure.

- **Introducing temporary provisions to void statutory demands** made between 1 March 2020 and 30 June. The Bill will also restrict winding up petitions from 27 April 2020 to 30 June 2020. These temporary measures are intended to prevent aggressive creditor action against viable companies struggling because of coronavirus.
- **Temporarily remove the threat of personal liability for wrongful trading** from company directors while they make their best efforts to continue to trade.

This will be for any period of trading between 1 March to 30 June. As we have already announced, directors can be assured that they can use their best endeavours to trade through during the COVID-19 period without the threat of personal liability for wrongful trading, should the company ultimately become insolvent.

Certain financial services firms and contracts have been excluded from some of the reforms. The financial services regulators have existing powers to intervene in the business of financial services firms in distress, and the UK has a number of existing special insolvency regimes for a number of these firms. Those regimes reflect the complexity of dealing with these firms where they are at risk of failing.

On the governance front, the measures in the Bill will support businesses, and where applicable charities and mutual societies, by:

- **Temporarily allowing those companies that are under a legal duty to hold an AGM or GM to hold a meeting by other means** even if their constitution would not normally allow it. As a result, directors will not be exposed to liability for measures that need shareholder endorsement, and shareholders rights are preserved.

The measures relating to company meetings are intended to be retrospective from 26 March so that any company that has already had to hold an AGM in a way that adhered to social distancing measures, but that, as a result, did not meet relevant obligations in their constitution, will have done so in accordance with the law. Companies who were forced to postpone AGMs which were due to be held after 26 March, will be given a limited period after the Bill is passed to hold those AGMs using the new flexibilities

- **Enabling the Secretary of State to make regulations to extend the filing deadlines** for accounts; confirmation statements (including event-driven filings that are required to be submitted in advance of the confirmation statement); and registrations of charges

Currently failure to file certain information with Companies House by the relevant deadline can result in the company paying a late filing penalty or the directors being prosecuted. Even though Companies House is taking a proportionate approach to compliance, a failure to meet statutory deadlines can have broader impacts on a company's record or credit rating.

The new measure is intended to reduce pressure on companies that are currently unable to meet their filing deadlines allowing them to focus their resources on keeping their businesses going in this uncertain time but ensuring that the data is filed with Companies House within a reasonable time.

The KPMG Board Leadership Centre

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