

UK Corporate Insolvency and Governance Bill

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On 20 May 2020, the Government introduced the Corporate Insolvency and Governance Bill in Parliament. The Bill is a much awaited development following the Secretary of State for Business, Energy and Industrial Strategy's statement on 28 March 2020 announcing key measures to help businesses address the challenges resulting from the impact of coronavirus.

Financial services firms subject to special insolvency regimes supervised by the FCA, PRA, and other financial services regulators have been largely excluded by the Bill.

The key measures envisaged by the Bill are set out below.

Company Moratorium

- The moratorium gives companies that are at risk of insolvency a breathing space to implement a restructuring or refinancing by restricting certain creditor and other action for a period of 20 business days, which can be extended. It effectively places companies on a payment holiday and prevents creditors from enforcing their debts. The moratorium will freeze petitions, orders, and resolutions for winding up, appointments of administrative receivers and administrators and the crystallisation of floating charges.
- The moratorium will be managed by a monitor who must be a licensed insolvency practitioner. The directors remain in charge of the day to day running of the business. The monitor has to approve the grant of any new security and sale of non-trading assets.
- Companies on moratoriums will be subject to certain restrictions, including: obtaining credit of £500 or more without disclosing to the creditor that the company is on a moratorium, granting security over assets without the monitor's consent, entering into market contracts, and disposing property without obtaining the necessary consents.
- Companies that are not eligible for the moratorium include, amongst others: insurance companies, banks, electronic money institutions, investment banks / firms, and companies subject to, or recently subject to, moratorium or an insolvency procedure.

Restructuring

- A new restructuring procedure has been proposed for companies that have encountered, or are likely to encounter, financial difficulties which are affecting, or will or may affect their ability to carry on business. The procedure will also be available where a compromise or arrangement is proposed between the company and its creditors or its members to eliminate, reduce, prevent, or mitigate the effect of any financial difficulty facing the company. This will be available to both solvent and insolvent companies.
- The plan will require the approval of a minimum of 75% of each class voting and court approval. However, a court may grant approval even if one or more classes do not vote in favour if it is of the opinion that the plan is fair and equitable and in the interests of creditors.
- The court may order, in relation to companies in administration or being wound up: that the appointment of the administrator or liquidator ceases to have effect, and/or that proceedings in the administration or winding up cease.

Other key measures

- **Wrongful trading:** Courts asked to determine a director's monetary contribution to a company's assets following wrongful trading are to assume that the director is not responsible for any worsening of the financial position of the company or its creditors during the period between 1 March 2020 and 30 June 2020 or one month after the Act comes into force, if later. Although the new rules give directors greater confidence to continue trading during the pandemic, it does not grant them carte blanche. Directors' duties continue and the wrongful trading suspension will not prevent an administrator or liquidator bringing a claim against a director for breach of duty.
- **Prohibition on winding-up petitions:** no petition for the winding up of a company may be presented on or after 27 April 2020 for debts exceeding £750 on the ground that a company has failed to satisfy a statutory demand where the

demand to obtain payment was served between 1 March 2020 and 30 June 2020 . Creditors may petition for the winding up of companies in limited circumstances, such as where the creditor has reasonable grounds for believing that coronavirus has not had a financial effect on the company, or where the debt would have arisen regardless of the financial crisis brought by the coronavirus.

- **Termination clauses in supply contracts:** suppliers will be prevented, in certain circumstances, from exercising their contractual right to halt their supply of goods to companies simply because of their insolvency. Companies will still be required to pay for goods, although outstanding amounts due for past supplies will not be payable whilst rescue plans are being implemented.
- **Periods for providing information to the registrar of Companies House:** the Bill authorises the Secretary of State to enact regulations extending filing deadlines. The filing period must not exceed 42 days, in a case where the existing period is 21 days or fewer, and 12 months, in a case where the existing period is 3, 6 or 9 months.
- **General Meetings and Annual General Meetings:** general meetings and annual general meetings to be held between 26 March 2020 and 30 September 2020 need not be held at any particular place. Meetings may be held, and votes may be cast, by electronic or other means.

Shareholders lose their right to attend the meeting in person and to participate in the meeting other than by voting.

The period required by a company to hold its annual general meeting is extended as if the deadline had always required such company to hold its annual general meeting between (1) the period originally intended to apply, and (2) 30 September 2020. By way of example, a company required to hold its annual general meeting no later than 31 May 2020 may now hold such meeting on a day prior to 30 September 2020.

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