

Government introduces legislation to relieve burden on businesses and support economic recovery

The government today (Wednesday 20 May) introduced the Corporate Governance and Insolvency Bill in Parliament, which will put in place a series of measures to amend insolvency and company law to support business to address the challenges resulting from the impact of coronavirus (COVID-19).

The Bill consists of 6 insolvency measures and 2 corporate governance measures.

The insolvency measures will provide vital support to businesses to help them through this period of instability.

Business Secretary Alok Sharma said:

This is a particularly challenging time for businesses right across the UK, and we are doing all we can to support them through this period.

Our proposals have been widely welcomed by business groups. The Bill will help companies that were trading successfully before the COVID-19 emergency to protect jobs and put them in the best possible position to bounce back.

The corporate governance measures will introduce temporary easements and flexibility to businesses where they are coping with reduced resources and restrictions.

This Bill will do this through:

- introducing a new moratorium to give companies breathing space from their creditors while they seek a rescue
- prohibit termination clauses that engage on insolvency, preventing suppliers from ceasing their supply or asking for additional payments while a company is going through a rescue process
- introducing a new restructuring plan that will bind creditors to it
- enabling the insolvency regime to flex to meet the demands of the emergency
- temporarily removing the threat of personal liability for wrongful trading from directors who try to keep their companies afloat through the emergency
- temporarily prohibiting creditors from filing statutory demands and winding up petitions for coronavirus related debts
- temporarily easing burdens on businesses by enabling them to hold closed Annual General Meetings (AGMs), conduct business and communicate with

- members electronically, and by extending filing deadlines
- allowing for the temporary measures to be retrospective so as to be as effective as possible

Jonathan Geldart, Director General of the IoD said:

Directors have significant legal obligations, and this Bill provides some reassurance that those who act responsibly won't be caught out by the insolvency system. It's crucial that directors are able to sustain their organisations and the people who rely on them during these difficult times.

FSB National Chair Mike Cherry said:

The incoming Corporate Insolvency and Governance Bill will be an important step to helping many small firms during this crisis.

The measures will immediately go some way to mitigate some of the problems small businesses are facing, such as the relaxation of wrongful trading rules which will allow directors of struggling companies to continue trading without fear of legal repercussions. The company moratorium, filing extensions and voiding of statutory demands are particularly important for smaller businesses, it is important that these provisions continue for as long as is necessary.

Note to editors

This Bill's 3 main purposes are:

- to introduce new corporate restructuring tools to the insolvency and restructuring regime to give companies the breathing space and tools 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 companies and other bodies with temporary easements on company filing and annual general meetings (which will extend to charitable incorporated organisations and mutual societies) thus allowing them to focus their resources on continuing operations in this uncertain time

The measures in the Bill will support businesses, and where applicable charities and mutual societies, through the coronavirus emergency by:

- introducing a new moratorium to give companies breathing space from their creditors whilst they seek a rescue
- ensuring companies going through a rescue process continue to receive supplies by prohibiting the use of termination clauses by suppliers,

subject to safeguards for suppliers facing hardship and a temporary exemption for small firms during the coronavirus emergency

- introducing a new restructuring plan that will bind creditors to it
- temporarily removing the threat of personal liability for wrongful trading from directors who try to keep their companies afloat through the emergency
- temporarily prohibiting creditors from filing statutory demands and winding-up petitions for coronavirus related debts
- temporarily easing burdens on businesses by enabling them to hold closed AGMs, conduct business and communicate with members electronically, and by extending filing deadlines
- allowing for the temporary measures to be retrospective from their respective dates of announcement so as to provide as much relief to business as possible

Other measures in place to support business and workers during the coronavirus emergency:

- the Coronavirus Job Retention Scheme where small and large employers can apply for a government grant of 80% of workers' salaries up to £2,500 a month; the scheme is backdated to 1 March and has now been extended until October
- deferral of the next quarter of VAT payments for firms, until the end of June – representing a £30 billion injection into the economy
- a Bounce Back Loans scheme, which will provide loans of up to £50,000 to benefit small businesses with a 100% government-backed guarantee for lenders; these loans will be interest free for the first 12 months and businesses can apply online through a short and simple form
- a Self-Employed Income Support Scheme will help eligible freelance workers receive up to £2,500 per month in grants for at least 3 months

Further information about the measures

Insolvency

Company moratorium

The first measure designed to support companies in this crisis is the introduction of a company moratorium. This will provide struggling businesses a formal breathing space 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 opportunity 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.

Termination clauses

The Bill also introduces a permanent change to the use of termination clauses in supply contracts. As a result of the measure, 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 with the company, 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.

Suppliers and other creditors will benefit if more companies are able to survive and repay more of their debts by implementing a rescue plan. The measure also contains safeguards to ensure that suppliers can be relieved of the requirement to supply if it causes hardship to their business. There will also be a temporary exemption for small company suppliers during the emergency.

Restructuring

The Bill also introduces 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 for companies that are suffering financially. 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 cramdown 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.

This new plan will support more companies to be rescued, rather than going through a value destructive liquidation process, giving a better return for creditors, preserving jobs and maintaining productivity.

Statutory demands

This Bill introduces 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 otherwise viable companies struggling because of coronavirus.

Suspension of wrongful trading

The Bill will 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 coronavirus period without the threat of personal liability for wrongful trading should the company ultimately become insolvent.

All the other checks and duties on directors remain in place.

Financial services firms

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 certain of these firms. Those regimes reflect the complexity of dealing with these firms where they are at risk of failing. In addition, the way that goods and services are traded in the financial sector is often different to the rest of the economy.

The Bill's exclusions for financial services will ensure that these existing special insolvency regimes are unaffected, and that financial market participants have the legal certainty needed to facilitate the efficient functioning of financial markets.

The company moratorium will not be available to certain financial services firms, and will not affect certain financial contracts. The new termination clauses measures will also not apply to financial contracts or to financial services firms. This is to ensure legal certainty and support the efficient functioning of financial markets. The suspension of wrongful trading will also not apply to certain financial services firms.

Financial services firms will however have access to the new restructuring plan, though with appropriate safeguards including a role for the financial services regulators.

There are no exclusions for financial services firms for the other measures provided in the Bill.

Annual General Meetings (AGMs) and general meetings (GMs)

The Bill temporarily allows 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.

Retrospectivity

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

Shareholder rights

The measures will not prevent shareholders from exercising their right to

vote on resolutions or other matters brought before the meeting, though they may be prevented from voting in person (rather than by post or by electronic means)

Extension of filings

The Bill enables the Secretary of State to make regulations to extend deadlines for 3 types of filing:

- accounts
- confirmation statements (including event-driven filings that are required to be submitted in advance of the confirmation statement)
- 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.

This measure will 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.

Additional quotes

Jennifer Marshall, Chair of the CLLS Sub-Committee and former President of the Insolvency Lawyers Association said:

The CLLS and the ILA support the addition of new tools to the restructuring toolbox; the moratorium, in particular, should help businesses struggling due to COVID and the ability to cram down a class is a useful addition to the scheme of arrangement. These are the most significant reforms of UK insolvency law for a decade and we will be digesting the detail with interest.