

Insolvency Alert: Corporate Insolvency and Governance Act 2020 Becomes Law

July 10, 2020

The UK Corporate Insolvency and Governance Act 2020 (the “Act”) became law on 25 June 2020. The Act underwent only minor revisions from the proposed Bill published on 20 May 2020 (the “Bill”) on which we reported: [COVID-19: Corporate Insolvency and Governance Bill](#).

In summary, the Act introduces the following significant innovations to the UK’s insolvency regime:

- A new **restructuring plan** that includes a novel “cross-class cram-down” procedure;
- A new **moratorium** for distressed companies outside of a formal insolvency process; and
- Measures preventing suppliers from relying on **termination (ipso facto) clauses** in contracts solely by reason of the counterparty’s insolvency.

In addition, the Act introduces temporary measures with the aim of helping companies that are in financial distress because of COVID-19, with the key ones being:

- Prohibition of statutory demands issued against companies between 1 March 2020 and **30 September 2020*** being used as the basis for a winding-up petition;
- Prohibition of winding-up petitions being presented against companies between 27 April 2020 and **30 September 2020*** on the ground of the company being unable to pay its debts, unless the petitioner has reasonable grounds to believe that such inability to pay is not the result of COVID-19 (and even then there are limitations on the jurisdiction of the court to make a winding-up order taking into account the impact of COVID-19); and
- Amendments to wrongful trading provisions to remove potential personal liability for directors for any worsening of the company’s financial position in the period between 1 March and **30 September 2020*** (but in all other respects, directors’ duties and responsibilities remain unaffected).

* Each of the above can be extended beyond 30 September 2020 by up to six months (if the Secretary of State considers it reasonable to do so to mitigate the effect of COVID-19).

Amendments to the Bill

The Act was passed on an accelerated timetable because of the COVID-19 pandemic and there was minimal opportunity for amendments. We flag below a couple of changes from the original draft Bill.

- A new category of “priority pre-moratorium debts” is created, specifying those pre-moratorium debts that obtain super priority in an administration or liquidation commencing within 12 weeks of the moratorium (it includes, for example, any pre-moratorium debt that is payable in respect of the monitor’s remuneration or expenses). This category does not include financial debt that has been accelerated, which will not therefore have super priority. However, such accelerated financial debt is still (as was the case in the Bill) classed as pre-moratorium debt without a payment holiday, and it is a condition of the moratorium continuing that such debt continues to be paid (so it will be possible for lenders who do not support the moratorium to bring it to an end).
- The Pensions Regulator and the Pension Protection Fund (“**PPF**”) are given rights to be sent notifications and documents that are sent to creditors in respect of a moratorium or restructuring plan. The PPF is also granted standing to challenge the actions of the monitor or the directors during the moratorium.

Authored By



Solomon Noh
Partner, Restructuring
London
+44 20 7184 7337
solomon.noh@dechert.com



Alastair Goldrein
Partner, Restructuring
London
+44 20 7184 7456
alastair.goldrein@dechert.com



Giles Belsey
Partner, Restructuring
London
+44 20 7184 7353
giles.belsey@dechert.com



Michelle Gordon
Senior Associate, Restructuring
London
+44 20 7184 7567
michelle.gordon@dechert.com



Chris Horrocks
Senior Associate, Restructuring
London
+44 20 7184 7579
chris.horrocks@dechert.com