

UK Government Introduces COVID-19 Bill to Aid Businesses and Reform Restructuring Law

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Dominic McCahill

Partner / London
44.20.7519.7018
dominic.mccahill@skadden.com

Peter Newman

Partner / London
44.20.7519.7061
peter.newman@skadden.com

James D. Falconer

Counsel / London
44.20.7519.7214
james.falconer@skadden.com

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One Manhattan West
New York, NY 10001
212.735.3000

40 Bank Street, Canary Wharf
London, E14 5DS
44.20.7519.7000

On 20 May 2020, the U.K. government published the Corporate Insolvency and Governance Bill (the bill), which includes measures designed to help businesses through the COVID-19 pandemic and features important substantive reforms to U.K. restructuring law, whose introduction has been accelerated by the crisis.

COVID-19-Related Measures

The key temporary measures introduced by the bill are:

Statutory Demands and Winding up Petitions

Creditors frequently press companies to pay debts by issuing statutory demands followed by winding up petitions. Most recently, some landlords have been pursuing this route because of the temporary ban on the forfeiture of leases introduced by the Coronavirus Act 2020. The bill prevents a creditor from issuing a winding up petition based on a statutory demand issued between 1 March and 30 June 2020.

Suspension of Wrongful Trading Provisions

Directors of an insolvent company may be ordered to contribute to the company's assets where creditors are worse off as a result of a company continuing to trade when the directors knew — or should have known — that there was no reasonable prospect of avoiding insolvent liquidation. The bill states that the court must assume that the directors are not responsible for any worsening of the financial position of the company that occurs between 1 March 2020 and 30 June 2020.

However, it is important to note the limited time period that can be disregarded and that directors have a duty to take the interests of creditors into account (alongside the interests of all other stakeholders) when they know or should know that a company is insolvent or is likely to become insolvent.

Company Meetings and Filings

The bill also addresses the difficulties faced by companies in complying with their normal governance requirements.

Until 30 September 2020, company meetings may be held by electronic or other means. During this period, shareholders will not have the right to attend in person or to participate in a meeting other than by voting. Any company obliged to hold an annual general meeting between 26 March and 30 September 2020 may postpone the meeting until 30

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September 2020. Regulations may be made to extend deadlines for filing various documents with Companies House and secured creditors will have more time to register a charge.

The bill provides that certain of the dates set out may be extended.

Restructuring Law Reforms

The principal permanent reforms to U.K. restructuring law proposed in the bill are:

New Restructuring Scheme of Arrangement With Cross-Class Cram-Down

New provisions will be added to the Companies Act 2006 to add a new type of scheme of arrangement specifically for companies facing financial difficulty. Importantly, it will enable a scheme to be implemented without the approval of classes of creditors or members who do not have an economic interest in the company (*i.e.*, those who are “out of the money”). The requirement that a majority in number of creditors/members voting in a class must approve a scheme has not been included. The sole requirement is that holders representing 75% in value of those voting approve the scheme.

A further important difference from the existing scheme jurisdiction is that the court will be able to sanction a scheme where one or more classes have not approved it, provided that (a) none of the dissenting class or classes would be worse off under the scheme than under the likely alternative scenario (*e.g.*, liquidation) and (b) the scheme has been approved by at least one class that would receive a payment or have an economic interest under the alternative scenario.

Introduction of a Free-Standing Moratorium

A new moratorium will be introduced that does not require a company to begin any other insolvency proceedings. Thus, the company would remain under the control of the directors but an insolvency practitioner would be involved as a “monitor.”

A moratorium will be available where a company is, or is likely to become, unable to pay its debts and it is likely that the moratorium would result in the rescue of the company. A moratorium will be commenced by the company filing papers at court and the initial moratorium period will be 20 business days, though this can be extended with creditor approval for up to a year in total. During the moratorium, no insolvency proceedings may be commenced except by the company and the secretary of state. Secured creditors will not be able to take enforcement action(s) and floating charges will not crystallise. The company also will be required to meet its trading liabilities incurred during the moratorium as they fall due.

Restriction on Suppliers' Ability to Terminate Contracts With Distressed Businesses

The Insolvency Act 1986 will be amended to prevent a supplier to a company from relying on a contractual provision to terminate the supply of goods or services because the company has entered into an insolvency process. A supplier will not be able to withhold goods and services unless prior debts are satisfied; however, the company must pay for goods and services supplied from the commencement of the insolvency process. In case of hardship, a supplier may apply to court.