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3CS Bulletin

Litigation

Corporate Insolvency and Governance Act 2020 - Reforming the UK's Insolvency Landscape in response to COVID-19 (PART 1)

The Corporate Insolvency and Governance Act ("the Act") became law on 26 June 2020. This reform to the UK's insolvency procedures has been rushed through parliament in response to the COVID-19 pandemic to help companies weather the storm and survive in these uncertain times.

The Act has introduced a series of permanent and temporary measures, and this newsletter will be the first of a two-part bulletin looking at the permanent changes that have been made.

Permanent Measures

- a new moratorium on enforcement action;
- a new "restructuring plan" process; and
- the disapplication of "supplier termination of contract" provisions for insolvency.

New Moratorium

The Act has introduced a moratorium (a temporary suspension) to struggling companies to give them time to attempt a rescue or restructure. Businesses will be able to trade in the ordinary course while the moratorium is in place.

A moratorium can be obtained by filing the following items at court:

- a notice that the directors wish to receive a moratorium;
- a statement from an insolvency practitioner that they are qualified to act and consent to work as a monitor to protect the creditors' interests;
- a statement from the directors of the company that, in their view, the company is or is likely to become, unable to pay its debts; and
- a statement from the proposed monitor that the company is an "eligible company" and, in the proposed monitor's view, a moratorium will likely result in the rescue of the company as a going concern.

The moratorium will be effective upon filing, except in the case of companies that are subject to a winding-up petition or are overseas companies, where the moratorium will only take effect on the court's ruling.

The Act provides for an initial 20 business days' moratorium, with an option to extend by a further 20 business days (without creditor consent) or up to one year (with creditor consent or as ruled by the court).

Importantly, during this period, trade creditors and other lenders will not be able to start insolvency or other legal proceedings. And landlords will be unable to forfeit leases.

New Restructuring Plan

The Act introduces a new tool to the UK's insolvency and restructuring framework under Part 26A of the Companies Act 2006. This process is in addition to the existing creditor co-operation procedure available in the UK - Company Voluntary Arrangements.

The critical points of the Restructuring Plan are:

Disapplication of Supplier Termination of Contract Provisions for Insolvency

The Act extends the disapplication of the rights of a supplier concerning contracts "for the supply of goods or services" (i.e., it restricts a supplier's rights). The Act makes clear where a contract includes a provision allowing the supplier to terminate the agreement or "do any other thing" such provision will "cease to have effect" when the company becomes subject to the relevant insolvency procedure.

The purpose of these provisions is to protect companies' supplies so that they can continue trading - therefore increasing the likelihood of rescue.

Contact Us

Please do contact our Dispute Resolution and Commercial teams for an initial conversation if any of the above is relevant to you, or your business, using the details provided below.

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