

COVID-19 : Changes to UK Insolvency Law

The UK Government has announced it intends to amend UK insolvency laws relating to both the ways in which UK companies can explore opportunities to consider their survival options and the offence of wrongful trading by directors of UK companies.

Moratorium

Plans had been previously announced by the Government to introduce new restructuring procedures in August 2018. Those August 2018 plans looked at the ability for solvent companies to take advantage of a new preliminary moratorium giving them the opportunity to consider various restructuring options. The latest legislation will implement these plans and introduce a short moratorium intended to give companies the opportunity to consider the options open to them to survive.

A company would be eligible to apply for the moratorium if:-

- the company is in financial distress, judged on the basis that the company will become insolvent if action is not taken;
- the company is capable of rescue;
- the company has sufficient funds to carry on its business during the moratorium, meeting current and new obligations as they fall due

The moratorium will be granted for an initial maximum period of 28 days although it is intended that extensions will be available.

Wrongful Trading

The existing wrongful trading provisions apply where directors fail to take proper steps to protect creditors when insolvent administration or liquidation is unavoidable. Wrongful trading provisions apply to any person who is or has been a director of the company in question. If the company is in insolvent administration or insolvent liquidation, any such director will be guilty of wrongful trading if he:-

- knew or ought to have known that there was no reasonable prospect of the company avoiding an insolvent administration or insolvent liquidation; and
- failed to take action, which a reasonably diligent person would take, to reduce the potential loss to the company's creditors

In light of the COVID-19 uncertainty, the Government has temporarily suspended these provisions for three months beginning from 1st March 2020. This is to enable directors to take decisions on the continuance of trade and taking on further credit — including under the new Government funding initiatives — without concern about the potential for personal liability under the wrongful trading regime.

It will still remain an offence to knowingly carry on trading with intent to defraud creditors of the company, or creditors of any other person, for any fraudulent purpose.

The Government announced that these changes will be introduced in Parliament “at the earliest opportunity”. Provisions will be made to allow the changes to be extended if necessary.