

Deeside Business Forum
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Coronavirus & insolvency developments

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1. Legislation vs Government announcements

Legislation yet to “catch up” with the various announcements.



2. The Coronavirus Act 2020: ability to forfeit lease/evict

Not strictly insolvency but measure to protect commercial tenants from eviction for non-payment of rent.

NB. Obligation to pay rent not removed.

In effect til 30 June 2020 initially.





3. The Coronavirus Act 2020: ability to forfeit lease/evict...

19.6.2020 (Friday) Gov press
release:
will legislate to extend this til
30.9.2020.



4. Commercial Rent Arrears Recovery (CRAR)

- What used be known as distress/distrain-replaced 2014.
- Landlord uses agent to seize tenant's goods and sell them to meet rent.
- 25.4.2020- new Regulations- may only be exercised where there is at least 90 days of unpaid rent outstanding rather than the usual 7 days.





5. Commercial Rent Arrears Recovery (CRAR)...

19.6.2020 (Friday) Gov press release: will lay secondary legislation to prevent landlords using this unless they are owed 189 days of unpaid rent, time period for measure will be extended til 30.9.2020.



6. Winding up petitions & statutory demands

- 23.4.2020 Gov press release & statement by Business Secretary Alok Sharma.
 - Still not the law!
- Initial expectation limited to retail businesses.
 - 20.5.2020 Corporate Insolvency and Governance Bill intro'd to Parliament.
 - Much wider scheme of reforms...
- Bill expected to be passed into law in the next few weeks.





7. Winding up petitions & statutory demands...

- Temporarily prohibit creditors from serving Demands and filing Winding up Petitions where inability to pay is result of Covid-19-high bar for creditor- no w/up order will be made
 - Applies to all companies, not just retail
- Initially for Demands 1.3.2020 - 30.6.2020 and Petitions 27.4.2020 - 30.6.2020



8. Winding up petitions & statutory demands...

19.6.2020 (Friday) Gov press release:
will amend Bill to extend this
til 30.9.2020.





9. Other changes to insolvency: wrongful trading

- Bill to implement Gov pledge to ensure directors cannot be personally liable for Wrongful Trading during Covid-19
- Covers period 1.3.2020 to later of (i) 30.6.2020 or (ii) one month after Bill comes into force.
 - Nb. Directors remain subject to fiduciary duties so potential personal liability.



10. Other changes to insolvency: statutory moratorium

- New process- company can obtain breathing space from creditors whilst explore restructuring options.
- Payment holiday for certain debts
 - Directors to remain in control, whilst a Monitor (insolvency practitioner) monitors.
 - Initial 20 days but extendable.





11. Other changes to insolvency: Restructuring plan

- New process. Similar to scheme of arrangement often seen for largest companies
- Available to both solvent and insolvent companies who satisfy 2 conditions:
(1) company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern; and



12. Other changes to insolvency: Restructuring plan...

- (2) a compromise or arrangement is proposed between the company and (a) its creditors, or any class of them, or (b) its members, or any class of them, and the purpose is to eliminate, reduce or prevent, or mitigate the effect of any such financial difficulties.
- If 75% in value of the creditors/members (or classes of each, as relevant) who vote agree the plan, the court may sanction arrangement.





13. Other changes to insolvency: supplier termination clauses

- Provision in contract for supply of goods or services ceases to have effect where a customer company becomes subject to insolvency procedure (moratorium, administration, liquidation, CVA) if contract would terminate due to insolvency or the supplier would be entitled to terminate.



14. Other changes to insolvency: supplier termination clauses...

- Further, supplier cannot require pre-insolvency debts to be paid as condition of making further supplies.
- Supplier can only terminate contract if office holder or company consent, or if court is satisfied that continuation of supply would cause supplier hardship.
- No requirement for office holder (or any director) to provide personal guarantee.





15. Other changes to insolvency: supplier termination clauses...

- Temporary exclusion for small suppliers where insolvency procedure occurs between date Bill comes into force and later of (a) 30 June 2020 or (b) one month after Bill comes into force.
- Suppliers likely to move to framework structure with individual contracts, to protect their position? Less certainty for customers- unintended consequence...



16. Non legislation developments

- Jobs furlough scheme ending
- HMRC VAT deferral- wont be repeated
- HMRC present most w/up petitions- have paused during Covid-19
 - What will HMRC approach be?
- HMRC Time To Pay arrangements
- Business confidence / customer confidence?



Thank you

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