

CORONAVIRUS: UK INSOLVENCY REFORMS ANNOUNCED

On 28 March [measures to reform insolvency legislation](#) were announced by the Department for Business Energy & Industrial Strategy aimed at supporting business. No detail is available on the precise operation of such measures or the exact timing of legislation required. The UK measures are, in certain respects, in keeping with legislative measures already taken in other parts of the globe. At the end of this briefing we include a summary table of measures taking place elsewhere, which we continue to monitor.

OVERVIEW OF UK MEASURES

The UK measures announced include:

- a suspension of existing insolvency provisions that otherwise might impose personal liability on directors for continuing to trade when their business is in financial distress. This is to have retrospective effect applying from 1 March 2020, so will have an immediate impact on those facing the current crisis.
- [fast-tracking measures](#) designed to increase protections for creditors and to provide a fair balance between the rights of the company seeking to be rescued and the rights of the creditors seeking payment of the company's debts. These have been the subject of debate since 2016 and include:
 - the introduction of a new standalone moratorium to help business rescue. This will give those financially distressed companies which are ultimately viable a period of time when creditors (including secured creditors) cannot take action against the company, allowing such companies to make preparations to restructure or seek new investment;
 - creation of a new restructuring process that would include the ability to bind dissenting classes of creditors who vote against it (commonly referred to as a 'cram down'); and
 - prohibition of enforcement by suppliers of termination clauses in contracts for supply of goods and services on the grounds that a party has entered into a formal insolvency procedure, the new moratorium or the new restructuring plan.

WHAT THE PROPOSED REFORMS MAY MEAN FOR STAKEHOLDERS

Until the detail of the legislation is published, we are only able to base our analysis on the proposals as previously announced (in respect of which,

please see our previous [briefing](#)). These may require some adaptation to make them more applicable in the current Coronavirus crisis.

As discussed above, the fast-track reforms look at offering the following:

Moratorium for viable companies

- Administration-style moratorium on creditor action (includes stay on the enforcement of security).
- Only available to solvent companies facing financial difficulty - this may need some adaptation to account for difficulties brought about by the Coronavirus crisis.
- Overseen by a monitor (insolvency practitioner).
- 28 days extendable to 56 days (an extension requiring a creditor vote) - a longer period may be needed to deal with the Coronavirus crisis.
- Unpaid costs incurred during the moratorium get super-priority (to protect those supporting the business).
- Company must be able to keep up with its payments as they fall due during the moratorium period (this may need some adaptation to account for the difficulties brought about by the Coronavirus crisis) – although other government measures designed to alleviate liquidity may assist.

New restructuring plan procedure

Additional compromise procedure modelled on scheme of arrangement which requires either:

- 75% by value of voting creditors in each class, plus 50% of total unconnected creditors; or
- 75% by value of voting creditors in one impaired class and any dissenting class of creditors is:
 - paid in full before a junior class receives any distribution, unless a variation to this principle is necessary to achieve the aims of the restructuring and is just and equitable in the circumstances (the "modified absolute priority rule")
 - better off under the plan than it would be under the next best alternative (the "best interests test").

Only the company can apply, but creditors/shareholders are given an opportunity to submit a counter proposal.

No insolvency termination

- Prohibits termination triggered by insolvency - this is in addition to existing measures for essential supply contracts in the context of formal procedures including administration and company voluntary arrangements.
- Intended to facilitate continued trading.
- Original proposals excluded certain financial contracts.
- Suppliers suffering hardship can seek relief.

Wrongful trading – suspension

- The changes to be introduced will have an immediate effect for directors facing already difficult decisions and circumstances.

- Whilst the announcements are clearly of significant assistance, they make clear that directors still need to act responsibly.
- Directors will need to continue to make decisions carefully taking into account the interests of their stakeholders, in particular their creditors, and seek professional advice where necessary.
- The impact on directors of companies which were experiencing distress prior to the Coronavirus pandemic is unclear.
- The risk of exposure for misfeasance or fraudulent trading or disqualification is also as of yet unclear.

Further information

We are continuing to monitor the position, and await the publication of the required legislation, which we expect imminently.

If you are interested in hearing more about the proposed changes please get in touch with your usual Clifford Chance contact or any of our restructuring and insolvency experts listed in the Contacts page.

In addition, you may find the following resources helpful:

[Coronavirus: Government Financial Aid to Business: An International Guide](#)

[Financial difficulties triggered by the impact of Coronavirus: Issues for stakeholders](#)

[Coronavirus: Infrastructure finance - Immediate financing considerations for infrastructure investors and funders](#)

[Coronavirus: Leveraged Finance - Immediate financing considerations for financial sponsors, underwriters and debt investors](#)

[Cross Border Financing Guide](#) (CC Financial Markets Toolkit)

GLOBAL INSOLVENCY REFORMS

International measures on general financial aid to business: see [link](#).

Jurisdiction	Measures
Australia (see our dedicated briefing)	<p>The Commonwealth Government presented the Coronavirus Economic Response Package Omnibus Bill 2020 in Parliament on 23 March 2020. The Bill includes the following proposed amendments to the Corporations Act:</p> <ul style="list-style-type: none"> giving the Treasurer new legislative powers for a period of 6 months to exempt or modify the operation of the Corporations Act on classes of people. amending provisions relating to statutory demands to increase the threshold at which creditors can issue a statutory demand on a company and to extend the time companies have to respond to statutory demands they receive. providing temporary relief (6 months) to directors from the risk of personal liability under section 588G of the Corporations Act for insolvent trading, provided the relevant debts are incurred in the ordinary course of business.
Germany (see our dedicated briefing)	<ul style="list-style-type: none"> Facilitation of new liquidity support: Loans can be granted with repayment and security being protected from claw-back until 30 September 2023. New shareholder loans are protected from equitable subordination and against claw-back in the same way, however, security for shareholder loans will not benefit from the protection scheme. Treatment of existing financings: The scope for inclusion of existing financing under the proposed protection scheme is unclear. In the absence of a clear stipulation in the draft legislation, existing lenders may most likely grant deferrals in order to avoid severe timing issues in connection with obtaining restructuring opinions in these situations. Suspension of insolvency filing obligation for businesses affected by the Coronavirus crisis until 30 September 2020: The suspension requires that the insolvency was triggered by the impacts of the Coronavirus, which is declared to be the case, unless the business (i) was illiquid on 31 December 2019; or (ii) has insufficient prospects of restoring its solvency. The right of third party creditors to file a petition for the initiation of insolvency proceedings will also be suspended for a period of three months. Ban on the termination of lease contracts: Lease contracts for real estate and for living/office space must not be terminated on the basis of payment defaults until 30 June 2020, insofar as non-payment is caused by the impact of the Coronavirus. Consumer rights: Overdue payments under consumer loans will be automatically prolonged until 30 September 2020. Consumers and small entrepreneurs can refuse performance of contracts entered into after 8 March 2020.
Italy	<ul style="list-style-type: none"> Law Decree No. 18/2020 states that, from 9 March 2020 until 15 April 2020, and subject to some exceptions, proceedings before civil courts are suspended. This means that: <ul style="list-style-type: none"> all hearings scheduled within this time frame shall be re-scheduled on a date after 15 April 2020; and procedural terms and deadlines for the filing of any written submission, of any new civil claim, also in relation to enforcement proceedings, expiring between 9 March

Jurisdiction	Measures
	<p>and 15 April 2020 are <i>ex officio</i> suspended and if a term or deadline is supposed to start running between 9 March and 15 April 2020, it will start running on 16 April 2020.</p> <p>The above suspension does not apply to proceedings whose delay may cause “<i>serious harm to the parties</i>”. This carve-out has created uncertainty especially among Italian Bankruptcy Divisions, as to whether the above restriction should apply to <i>concordato</i> and bankruptcy proceedings. The current interpretation among Italian Bankruptcy Divisions is that such suspension should generally apply to insolvency proceedings; however, in the absence of specific guidelines of the Italian Government on the interpretation of the general exception and on the cases falling within its scope, it is likely that each single court will decide the approach to be taken for procedural terms and deadlines in relation to <i>concordato</i> and bankruptcy proceedings where suspension could cause “serious harm to the parties”.</p> <ul style="list-style-type: none"> • There is no suspension of the criminal sanctions for delaying the filing of the bankruptcy.
<p>Luxembourg (see our dedicated briefing)</p>	<p>The Grand Ducal Regulation dated 25 March 2020 on the suspension of procedural delays suspends certain procedural deadlines applicable in civil and commercial matters. The Ministry of Justice has clarified that this suspension also applies in insolvency matters and, in particular, to the 30 day period starting on the date of the cessation of payments and during which the managers of a company are obliged to file for insolvency. This suspension is effective 26 March, meaning that a company that has been in a cessation of payments since 17 March (10 days) will only be obliged to file for insolvency if it remains unable to pay 20 days after the end of the suspension period, which will be when the current state of emergency will have been lifted.</p> <p>This does however also mean that directors are still allowed to file for insolvency, and may feel obliged to do so depending on the circumstances and that creditors can petition for insolvency. Any procedure for the insolvency of a debtor started by creditors will however take a certain time and if the company solves its liquidity issues prior to the judgement and is again able to pay its creditors, then it is no longer in cessation of payments and no judgement opening an insolvency should normally be rendered.</p>
<p>Spain (see our dedicated briefing)</p>	<p>Under Royal Decree-Law 8/2020, as of 18 March 2020:</p> <ul style="list-style-type: none"> • during the state of alarm, debtors are not obliged to file for insolvency if they are currently insolvent, or if they have not reached an agreement with their creditors by the end of the ordinary time limits permitted under Spanish insolvency legislation. • during the state of alarm and the two months following the conclusion of this situation, no applications for compulsory insolvency (i.e. those filed by creditors) will be admitted, and voluntary insolvency applications (i.e. those filed by the debtor) will have priority. If the debtor files for its own insolvency during the state of alarm or during the two months after the conclusion of the state of alarm, its application will have priority over a creditor’s application.
<p>Turkey</p>	<p>Pursuant to Presidential Decree No. 2279 dated 22 March 2020, and except in respect of alimony receivables, all execution and bankruptcy proceedings shall be suspended and no new proceedings can be initiated until 30 April 2020. The suspension also extends to the provisional attachment (<i>ihityati haciz</i>) judgments which will not be enforced until 30 April 2020.</p>

Jurisdiction	Measures
United Kingdom	On 28 March 2020 measures to reform insolvency legislation were announced by the Department for Business Energy & Industrial Strategy aimed at supporting business (see above for details of the measures). No detail is available on the precise operation of such measures or the exact timing of legislation required. Other supporting measures are also being implemented, which include regulator expectations for banks to act in good faith in terms of borrowers affected by the Coronavirus crisis.
OTHER KEY JURISDICTIONS WHERE NO MEASURES ANNOUNCED	
The following key jurisdictions have not yet implemented any reforms to restructuring and insolvency regimes to address the Coronavirus crisis:	
<p>Americas</p> <ul style="list-style-type: none"> • United States of America 	<p>APAC</p> <ul style="list-style-type: none"> • Hong Kong • Japan • Singapore
<p>Europe</p> <ul style="list-style-type: none"> • Belgium • Czech Republic • France • Russia 	<p>MENA</p> <ul style="list-style-type: none"> • United Arab Emirates

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