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Kirkland Alert

COVID-19 — Proposed Changes to UK Insolvency Laws

29 March 2020

At a Glance

The UK government has announced changes to insolvency laws in response to COVID-19, giving firms extra time and space to weather the storm.

- **Wrongful trading:** There will be a temporary suspension of wrongful trading provisions for company directors to remove the threat of personal liability during the pandemic, applied retrospectively from 1 March 2020.
- **New restructuring plan and moratorium:** The government previously announced plans to introduce new restructuring procedures in August 2018 (see our previous *Alert*). New legislation will implement these plans, including the ability to bind dissenting stakeholders to a new restructuring plan (including "cross-class cram-down") and a short moratorium or "breathing space" that will give companies in difficulty time to explore options for rescue. This will include protection of supplies to enable companies to continue trading during the moratorium.

Timing

The UK government plans to bring forward legislation to this effect "at the earliest opportunity". Exact timing remains uncertain. Provisions will be included to enable the changes to be extended if necessary. Parliament is currently in recess until 21 April.

Wrongful Trading

There will be a temporary suspension of wrongful trading provisions for company directors to remove the threat of personal liability during the pandemic, applied retrospectively from 1 March 2020. The current wrongful trading rules have been of particular concern to directors in recent weeks, given the risk of personal liability for directors if they fail to take **every** step to minimise potential losses to creditors once there is no reasonable prospect of avoiding an insolvent liquidation/administration, which may push directors to file the company for insolvency proceedings prematurely. Existing laws for fraudulent trading and the threat of director disqualification will remain in force as a deterrent against director misconduct.

New Restructuring Plan and Moratorium

There is scant detail on this measure in the government's announcement, but it builds on potential reforms previously announced in August 2018. We understand that the government is fast-tracking these proposals in light of the current crisis. The Business Secretary announced that these reforms will enable UK companies undergoing a rescue or restructuring process to continue trading, giving them breathing space that could help them avoid insolvency. This will include enabling companies to continue buying certain essential supplies, such as energy, raw materials or broadband, while attempting a rescue.

Further Details and Comment

The full text of the announcement can be found on the UK government website. No further details were available at the time of going to press. Whilst this is clearly a very welcome move, further details are urgently needed at this critical time for business. Notably, the announcement does not include other changes to insolvency law that may be necessary or helpful in the current crisis, such as limiting hostile winding up petitions or amending the circumstances in which a company is deemed to be unable to pay its debts under the Insolvency Act 1986.

It remains to be confirmed whether companies that are already insolvent will be eligible for the new moratorium. The government's proposals in August 2018 excluded companies that were already insolvent from the scope of the moratorium, opening it only to companies with sufficient liquidity to pay their debts for the proposed moratorium period as they fall due. Clearly, there will be a real focus on the scope of the moratorium and which companies in the current COVID-19 crisis will be able to qualify.

Virtual Meetings

The Government simultaneously announced that the government will introduce legislation to permit AGMs to be postponed or held online or by phone, consistent with social distancing measures.

Additional UK Measures

This announcement follows a series of recent measures to combat the economic effects of COVID-19 on UK businesses, including:

- a three-month extension period for **filing accounts**, announced on 25 March 2020 — while companies will still have to apply for the three-month extension to be granted, those citing issues around COVID-19 will be automatically and immediately granted an extension. More than 10,000 businesses have already successfully applied for the extension;
- the **Covid Corporate Financing Facility**, a new lending facility from the Bank of England to help support liquidity among larger firms, provided they had a short or long-term rating of investment grade (or equivalent) as at 1 March 2020;
- the **Coronavirus Business Interruption Loan Scheme**, offering loans of up to £5 million for SMEs through the British Business Bank;
- a Coronavirus **job retention scheme**;
- a 12-month **business rates holiday** for all retail, hospitality, leisure and nursery businesses in England;
- the **option to defer VAT payments** due between 20 March and 30 June 2020, until 31 March 2021; and
- the **HMRC Time To Pay Scheme**.

The UK announcement follows similar measures in other jurisdictions, including Germany.

For further information on these measures and similar measures across Europe, contact any member of Kirkland's European Restructuring team.

Authors

Kate Stephenson

Partner / London

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