

## UK Restructuring Measures: What Could Work Even Better?

21 June 2022

The UK Insolvency Service today published its interim report on the permanent measures under the Corporate Insolvency and Governance Act 2020 – namely, restructuring plans, the stand-alone moratorium, and restrictions on contractual termination (*ipso facto*) clauses.

The report – based on independent research conducted by the University of Wolverhampton – concludes that these measures have been broadly welcomed by stakeholders and are seen as satisfying their policy objectives and assisting the rescue of companies as going concerns. The report includes interesting suggestions of how the measures could work even better – raising potential areas for future reforms in the medium-term.

### Restructuring plans

The restructuring plan is seen as a success; the cross-class cram down power has been used successfully in cases where previously a scheme of arrangement alone would not have been effective. In considering potential areas for improvement, the report notes:

- restructuring plans are seen as too costly and time-consuming, especially for use in the SME market;
- the costs of challenging a restructuring plan are seen as excessive, which hinders the policy objective of protecting dissenting creditors;
- without greater disclosure and transparency requirements, the envisaged protection of creditors will be diminished; and
- reforming legislation to provide expressly that restructuring plans have extra-territorial effect would reduce costs as well as create certainty.

# Moratorium

The report states that the standalone moratorium has been used successfully and has satisfied its policy objectives – although its use has so far been limited to the SME market, in part owing significant eligibility constraints.

## Suspension of ipso facto (termination) clauses

There is a lack of evidence as to the practical operation of this measure, as pandemic-related measures effectively allowed many companies to avoid entering a formal insolvency procedure. However, the measure is broadly seen as a helpful power in helping to ensure a business can be turned around and jobs saved, satisfying the policy objective of preventing companies in insolvency procedures from being held hostage by suppliers.

Kirkland attorneys participated in interviews with the research team as part of their ‘expert sampling’ research process. The report is [here](#).

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### Practices

- Restructuring
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## Suggested Reading

- 19 October 2022 - 22 October 2022 Speaking Engagement The National Conference of Bankruptcy Judges

- 15 June 2022 Award China Business Law Awards 2022
- 10 June 2022 Speaking Engagement New York City Bankruptcy Conference

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