The authors had previously highlighted the UK Government’s intention to introduce: (i) a number of reforms to the UK’s insolvency framework; and (ii) a series of temporary changes to the corporate governance requirements for companies and other entities arising as a result of the impact of Covid-19. In this QuickStudy, we set out the key features of the draft Corporate Insolvency and Governance Bill published on 20 May 2020 (the “CIGB”) in furtherance of the Government’s stated aim to:

“…introduce new corporate restructuring tools to the insolvency and restructuring regime to give companies the breathing space and tools required to maximise their chance of survival;

temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action; and

amend Company Law and other legislation to provide companies and other bodies with temporary easements on company filing and annual general meetings (which will extend to charitable incorporated organisations and mutual societies) thus allowing them to focus their resources on continuing operations in this uncertain time…”

Key provisions of the CIGB

The CIGB comprises six insolvency measures and two corporate governance measures:

Insolvency measures

- **Company moratorium**: A proposed moratorium will provide businesses formal breathing space to pursue a rescue plan during which time no legal action can be taken against a company without leave of the court. Businesses will be afforded a 20-business day opportunity to consider a rescue plan, extendable to 40 business days, with further extensions at the agreement of creditors or the court. The company remains under the control of its directors in this period, but the process will be overseen by a monitor who must be a licensed insolvency practitioner.

- **Termination clauses**: where a company has entered an insolvency or restructuring procedure or obtains a moratorium during this period of crisis, the company’s suppliers will not be able to rely on contractual terms (including termination clauses) to stop supplying, or vary the contract terms with the company, e.g. by increasing the price of supplies. The customer is required to pay for any supplies made once it is in the insolvency process but need not pay outstanding amounts due for past supplies while it is arranging its rescue plan. This measure contains safeguards to ensure that suppliers can be relieved of the requirement to supply if it causes hardship to their business and a temporary exemption for small company suppliers during the emergency.
• **Restructuring:** Companies, or their creditors or members, will be able to propose a new restructuring plan which will provide an alternative rescue option for companies that are suffering financially. The plan will enable complex debt arrangements to be restructured and will support the injection of new rescue finance. It will introduce a cross-class cramdown that will allow dissenting classes of creditors to be bound by the plan, if the court determines:

  ° the proposals are fair and equitable; and
  ° creditors would be no worse off than if the company entered an alternative insolvency procedure.

This could well alter the balance of creditor suffering in the anticipated corporate distress tsunami. Landlords have recently borne the brunt of the pain in restructurings, especially in the retail sector. Banks and bondholders will probably fare comparatively worse in the next round.

• **Statutory demands:** The CIGB will introduce temporary provisions to void statutory demands made between 1 March and 30 June 2020. The CIGB will also restrict winding up petitions from 27 April to 30 June 2020 so as to prevent aggressive creditor action against companies struggling because of coronavirus.

• **Suspension of wrongful trading:** as previously highlighted, the CIGB will temporarily remove the threat of personal liability for wrongful trading between 1 March 2020 and 30 June 2020 from company directors so as to allow them to make their best efforts to continue to trade. However, all the other checks and duties on directors remain in place.

**Corporate governance measures:**

• **Meeting requirements:** The CIGB will temporarily allow companies under a duty to hold an AGM or GM to hold a meeting by other means even if their constitution would not normally allow it (though not prevent shareholders from exercising their right to vote on resolutions or matters brought before those meetings). Directors will not be exposed to liability for measures that need shareholder endorsement, and shareholders rights are preserved. These measures are intended to be retrospective from 26 March so that:

  ° a company that held an AGM in a way that adhered to social distancing measures will have done so in accordance with the law; and
  ° any company forced to postpone AGMs due to be held after 26 March will be given a limited period after the CIGB is passed to hold that AGM.

• **Extension of filings:** The CIGB will permit the Secretary of State to make regulations to extend deadlines for filing accounts, confirmation statements and registrations of charges. The Government intends that this measure will reduce pressure on companies that are currently unable to meet their filing deadlines allowing them to focus their resources on keeping their businesses going in this uncertain time but ensuring that the data is filed with Companies House within a reasonable time.

**Financial services firms**

The government has indicated that certain financial services firms and contracts have been excluded from some of these reforms on the basis that financial services regulators have existing powers to intervene in the business of financial services firms in distress, and the UK has a number of existing special insolvency regimes for certain of these firms. In our view, these exclusions should go some way towards safeguarding that these existing special insolvency regimes are unaffected, and that stakeholders in the financial markets have the legal certainty needed to facilitate the efficient functioning of financial markets.
Next steps
The CIGB has only just been introduced in Parliament – its next reading is scheduled to occur on 3 June 2020 – and so has not yet become law. Given a fair wind, and the Government’s strongly held desire to formalise these arrangements, it is conceivable that these reforms could be enacted from the start of July, subject to a straight-forward passage through Parliament. The authors will follow with interest as the legislative framework for these provisions takes shape.

Locke Lord’s London team has considerable experience advising on a host of insolvency/restructuring and funding matters across all sectors in the UK and globally.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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Visit our COVID-19 Resource Center often for up-to-date information to help you stay informed of the legal issues related to COVID-19.