

## The New Corporate Insolvency and Governance Bill – A Summary of the Key Provisions

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Kate Rogers is recognised as a leading junior in chancery/commercial matters with particular specialisms in insolvency and company law. She is an experienced advocate, who regularly appears in the High Court on a variety of matters including obtaining urgent injunctive relief. Kate has a loyal following from her clients, who include major corporates, and international and high street banks. Many of her cases involve international aspects.

This summary gives a short overview of the Corporate Insolvency and Governance Bill, which was first read in the House of Commons on 20 May 2020 and is intended to proceed to the House of Lords following its final stages in the House of Commons on 3 June 2020. This Bill represents the biggest reforms to the UK's insolvency framework since the Enterprise Act in 2002. The aim is to allow more tools to rescue struggling companies as a going concern and help more businesses weather the COVID-19 storm and avoid entering an insolvency process.

There are nine key measures, three reforms to our corporate insolvency framework and six temporary measures to assist companies struggling during the global Covid-19 pandemic:

### Reforms

- **Moratorium:** distressed companies (solvent and insolvent: a change from the initial proposals which suggested only solvent) which are ultimately viable, will be able to enter a free-standing moratorium giving a period of 20 business days (extendable to 40 business days without consent) to consider a rescue plan for the company.
- **Prohibition on supplies of good and services:** Suppliers of goods and services will not be able to enforce termination and/or variation clauses in contracts when a company has entered an insolvency process/is subject to the new moratorium/ the new restructuring plan (subject to the supplier being able to make an application to court in cases of extreme hardship).
- **New restructuring plan:** the restructuring plan, if approved by the majority of creditors (note: the court can bind dissenting creditors by way of cross class cramdown), will enable companies to propose a rescue option including the restructuring of debt and the injection of fresh rescue finance.

## Temporary Measures

The period to which these temporary measures will apply is to be 1 March 2020 to the later of 30 June 2020 or one month after the Act coming into force (“the Relevant Period”)

- **Limitation on personal liability for wrongful trading:** it is to be presumed that any worsening of the company’s financial position or net shortfall to creditors incurred during the Relevant Period is not the responsibility and/or liability of the director/s.
- **Statutory demands:** made during the Relevant Period are to be void if the inability to pay is the result of Covid-19.
- **Winding up petitions:** any winding up petition presented between 27 April 2020 and 30 June 2020 based on a statutory demand made during the Relevant Period is prohibited if the inability to pay is the result of Covid-19.
- **AGMs and GMs:** companies under a duty to hold a general meeting may do so ‘by any other means’, ie. remotely, whether permitted by the company’s constitution or not.
- **Extensions for filing:** the Secretary of State is empowered to make Regulations extending the time for filing of: accounts; conformation statements; and registration of charges with the Registrar of Companies.
- **Temporary exclusions from the new reforms:** there will be some relaxation of eligibility requirements for the new moratorium and there will be a temporary exclusion of small suppliers from the protection of supply provisions in the new reforms, detailed above.

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