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Coronavirus Update: UK Government Announces Proposed Changes to UK Insolvency Law

by *Andrew Petersen* and *Tom Dunn*

On 28 March 2020, the UK government announced changes to the UK insolvency regime, meaning companies now have more time to manoeuvre, or to keep trading while they explore options for rescue, during one of the most difficult periods faced by British companies in living memory. The reforms are twofold:

- **Restructuring plan and moratorium** – There will be a temporary moratorium for companies undergoing a restructuring process, when a new restructuring plan (details of which are yet to be announced) will mean that they cannot be put into administration by creditors and will continue to be able to access raw materials and buy other supplies essential to keep their businesses running. The move will allow companies to continue to pay staff and essential suppliers even when there is a fear that the company may be insolvent. The new restructuring plan is intended to build upon the new insolvency framework that was announced by the UK government in August 2018

- **Wrongful trading measures** – There will be a temporary suspension of the wrongful trading provisions in UK insolvency law. Under current UK law, if a director fails to take every step to minimise creditors' losses and continues to trade even though there is no reasonable prospect of avoiding administration or insolvent liquidation, that director may be personally liable to creditors for wrongful trading. These measures remove some concern on the part of directors of companies that are incurring additional borrowings offered by the UK government, such as the Coronavirus Business Interruption Loan Scheme, or the new lending facility offered by the Bank of England. Directors had been worried that incurring such borrowings would place directors personally liable for wrongful trading. With no fear of incurring personal liability for doing so, many companies may avoid being prematurely placed into insolvency proceedings by prudent directors due to circumstances entirely beyond their control.

Existing laws for fraudulent trading and the threat of director disqualification will continue to act as a deterrent against director misconduct.

The UK government has announced that "legislation to introduce these changes will be introduced in Parliament at the earliest opportunity", although it is not clear how soon this will be given that the UK Parliament is now in recess until 21 April 2020. Provisions will be included to enable the changes to be extended if necessary.

It is intended that the new rules will apply retrospectively from 1 March 2020. However, it is not clear whether companies that are already insolvent will be eligible for the new moratorium.

The changes to UK insolvency law follow a number of other recent announcements made by the UK government to support British businesses:

- A Coronavirus Job Retention Scheme.
- Deferring VAT and income tax payments.
- The Self-employment Income Support Scheme.
- Statutory sick pay relief package for small and medium-sized enterprises (SMEs).
- A 12-month business rates holiday for all retail, hospitality, leisure, and nursery businesses in England.
- Small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief.
- Grant funding of £25,000 for retail, hospitality, and leisure businesses with property with a rateable value between £15,000 and £51,000.
- The Coronavirus Business Interruption Loan Scheme to support long-term viable businesses that may need to respond to cash-flow pressures by seeking additional finance.
- A new lending facility from the Bank of England to help support liquidity among larger firms, helping them bridge coronavirus disruption to their cash flows through loans.
- The HMRC Time To Pay Scheme to help with tax.

Alston & Bird has formed a multidisciplinary task force to advise clients on the business and legal implications of the coronavirus (COVID-19). You can view all our work on the coronavirus across industries and subscribe to our future webinars and advisories.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or the following:

Andrew Petersen
+44 (0) 20 3823 2230
andrew.petersen@alston.com

Tom Dunn
+44 (0) 20 3823 2229
thomas.dunn@alston.com