



COVID-19– Geldards Public Sector Update

Business Emergency Advisory Team

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Copyright Issues Around Providing Materials Remotely During Lockdown

Michael Lindsey, Intellectual Property

Copyright Issues Around Providing Materials Remotely During Lockdown

- What types of works are we talking about?
- What types of acts might infringe copyright in them?

The Key Questions;

1. Is the work protected by copyright?
2. Who owns the copyright?
3. Is the use licensed by the copyright owner?
4. Does the use fall within one of the statutory permitted acts?



Corporate Insolvency and Governance Bill: Insolvency provision

Ruth Thurland, Senior Associate, Business Recovery and Insolvency

Corporate Insolvency and Governance Bill

Extensive bill containing:-

- Temporary provisions which are a direct response to COVID-19; and
- Permanent provisions to assist with company rescue generally, and which have been in discussion for some time.

As well as the insolvency provisions to be discussed, there are also provisions relating to corporate governance

Temporary provisions

1. Wrongful trading
2. Winding up petitions

These provisions have retrospective effect from 1 March 2020 to 30 June 2020 or one month after the bill is enacted, whichever is the later (referred to as the “Relevant Period”).

The Relevant Period is extendable by statutory instrument up to a total of 6 months.

1. Wrongful trading

- Arises under s214 Insolvency Act 1986
- A director can be ordered to contribute to the company's assets if they fail to take every step which they ought to minimise the loss to creditors once they conclude (or should have concluded) that there is no reasonable prospect of the company avoiding an insolvent liquidation or administration.

What does the bill change?

Amount of contribution:

- will usually reflect the amount by which the deficit to creditors increased as a result of the wrongful trading.
- In assessing that contribution, the court must now assume that the director is **not** responsible for any worsening of the company's financial position during the Relevant Period.
- Rebuttable? Probably not in the usual way

Limitations

- Doesn't affect any of the other provisions in the Insolvency Act, or a director's statutory duties
- Large overlap with s172(3) Companies Act 2006: where a company is insolvent or close to insolvency, a director has a duty to give paramount consideration to the interests of creditors
- Fair?
- Useful?

2. Bar on presenting winding up petitions based on statutory demand

- No petition can be presented based upon a statutory demand served during the Relevant Period
- Applies retrospectively from 27 April 2020
- Applies regardless of when the debt accrued and whether COVID-19 has had any impact on the debtor's ability to pay

Bar on presenting winding up petitions (no statutory demand)

No winding up petitions may be presented between 27 April 2020 and one month post commencement of the restrictions unless:

- The creditor can show reasonable grounds for believing that COVID-19 has not had a financial effect on the company; or
- The company would be deemed to be insolvent even if any worsening of its financial position due to COVID-19 is ignored.

How the Court will deal with petitions during the Relevant Period

Petitions presented during the Relevant Period:-

- Must not be advertised until the Court has considered whether the petition complies with the new rules
- Will be dismissed if they don't comply

Winding up orders made after 27 April 2020:-

- will be void unless they comply,
- court shall give such directions as it thinks fit for restoring the company to its position immediately before the petition.

Permanent provisions

3. Nullifying of clauses in supply contracts providing for termination of the contract on insolvency
4. Wider access to moratorium protection, under the supervision of an insolvency practitioner
5. New restructuring scheme including “cross class cram down” (a mechanism to bind dissenting creditors to the terms of the scheme)

3. Restricting termination provisions in supply contracts

- Suppliers cannot rely upon terms which allow them to terminate or change terms on the basis that a company has entered an insolvency procedure, or obtained a moratorium
- Also prevents a supplier from terminating the contract on other grounds until the insolvency procedure is at an end
- Suppliers cannot demand payment of outstanding sums as a condition of continuing supply

Exceptions and safeguards

Supplier can continue to rely on such clauses where:-

- The company or office holder consents
- The court grants permission on the basis that continuation of the contract would cause the supplier hardship
- Temporary exclusion for small suppliers (turnover of no more than £10.2m, balance sheet total assets of no more than £5.1m, and no more than 50 employees)

4. New moratorium procedure

- Allows companies in financial difficulties to get breathing space from creditors while a rescue plan is considered
- Supervised by an insolvency practitioner (the “Monitor”)
- Monitor must be satisfied that that it is likely that the moratorium will result in a rescue of the company as a going concern
- Company remains under the control of its directors.

Procedure

- Two ways of applying depending on the circumstances:-
 - By filing of documents
 - By application to court
- Once obtained the company must advertise the fact of the moratorium
 - at its premises
 - on its website and
 - on business documents
- Initial period of moratorium is 20 business days, extendable under various circumstances

Effects of moratorium

- No legal action can be taken against the company or its assets without leave of the court
- Provides for a “payment holiday” in respect of certain debts incurred pre-moratorium
- Also restricts the company’s ability to pay pre-moratorium debts, to take on new credit, or to dispose of property
- Company must be able to pay its ongoing liabilities

Benefits

- Very debtor-friendly
- Considerably widens access to moratorium protection
- Flexible and potentially long in duration
- Benefits of the administration moratorium without needing to put the company into administration

5. Restructuring Plan

Any company which can be wound up under the Insolvency Act, including a foreign company, can propose a Restructuring Plan to its creditors / shareholders, provided:

- a) it has encountered, or is likely to encounter, financial difficulties which affect, or may affect, its ability to carry on business as a going concern; and
- b) the purpose of the compromise or arrangement is to eliminate, reduce, prevent or mitigate those difficulties.

Creditors and shareholders vote in “classes”, each of which are deemed to approve if 75% in value vote in favour.

Restructuring Plan

Designed to:

- enable restructuring of complex debt arrangements
- support the injection of rescue finance into the business
- Important benefit is “cross class cram down” - allows dissenting classes of creditors to be bound to the arrangement if the court is satisfied that none would be worse off under the arrangement than the “relevant alternative”.
- Requirement for court sanction that is not found e.g. in a CVA

Summary and comment

- Very debtor friendly
- Temporary provisions are not necessarily well drafted and some may have little effect
- Permanent provisions are better - based on previous consultations
- Another step towards creating a genuine rescue culture – plug the gaps in the administration regime
- Wider access to moratorium very significant

Timetable

- Announced at the end of March 2020
- Second reading 3 June 2020
- Widespread consultation beforehand
- Expected to come into force end of June 2020

Any questions



Contact details



Michael Lindsey

Partner

+44 029 2039 1740

Michael.linsley@geldards.com



Ruth Thurland

Senior Associate

+44 0115 983 3699

Ruth.thurland@geldards.com

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