Ask ICAS Webinar Series

Rescuing distressed businesses: Corporate Insolvency and Governance Bill
Disclaimer

ICAS cannot accept responsibility for any person acting or refraining to act as a result of any material contained in this webinar. This webinar is designed to alert members to important issues of general application. It is not intended to be a definitive statement covering all aspects but is commentary on the subject of the webinar.

The webinar is compiled using every best endeavour of ICAS and of those contributing to the webinar. Members and others accessing the webinar must not rely wholly on information given during the webinar in deciding on any specific course of action and must use their own professional judgement or seek appropriate professional or legal advice where appropriate to respond to specific circumstances.

No liability, howsoever caused, for loss or damage of any kind resulting from information provided in the webinar attaches to ICAS, any of its staff or those individuals who contributed to the webinar or its content in respect of any fault, error, negligence or omission in their content.

© ICAS 2020 All rights reserved.
Ask ICAS Webinar Series

Rescuing distressed businesses: Corporate Insolvency and Governance Bill
Your experts for today

David Menzies CA
Director of Practice, ICAS

Steven Wood
Practice Support Specialist (Insolvency), ICAS

Shona Campbell CA
Director, Henderson Loggie
On 28 March 2020, the UK Government announced plans to bring forward legislation to introduce new measures to aid restructuring of companies.

Corporate Insolvency and Governance Bill laid in Parliament on 20 May 2020

Expected to come into force as the Corporate Insolvency and Governance Act 2020 (CIGA 2020) this week.

Objective to provide businesses with the flexibility and breathing space they need to continue trading and avoid insolvency, particularly during this period of economic uncertainty.

Government previously consulted on changes to the corporate insolvency regime and announced plans to introduce new insolvency restructuring procedures in August 2018.
Corporate Insolvency and Governance Bill: Company Moratorium

- Prevents creditor enforcement action being taken against a company while it considers options for rescue.
- Part A1 inserted into the Insolvency Act 1986, which sets out details for determining whether a company is eligible for a moratorium, how a moratorium is obtained, the length of a moratorium, the effects of a moratorium, details regarding the role of the monitor, and further miscellaneous and supplementary matters.
- Schedule ZA1, which sets out which companies are eligible for the moratorium, also inserted into the 1986 Act.
- Schedule A1 repealed as it is no longer required.
- Permanent change extending to the whole of the UK.
- Will commence the day after the Bill receives Royal Assent.
Corporate Insolvency and Governance Bill: Company Moratorium

- Available to all companies with some exceptions defined in Schedule ZA1.
- A company is also excluded from eligibility if it is subject to, or was recently subject to, moratorium or an insolvency procedure.
- However, temporary suspension on prohibition on eligibility.
- “Insolvency procedure” extends to voluntary arrangements, administration (including where an administration application has been made and an interim moratorium is in place), receivership, provisional liquidation, winding up, or the presentation of a petition for winding up under sections 124A-C of the 1986 Act.
- Scottish LLPs.
Entry by lodging ‘relevant documents’ at court.
Includes statement from the proposed monitor that, in the proposed monitor’s view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
The “rescuability” criterion is temporarily relaxed, to make it easier for companies which would be viable but for the COVID-19 emergency to access the regime.
Initial period of 20 business days.
Further extension of 20 business days possible without creditor consent.
Any further extension by creditor consent for up to one year.
Corporate Insolvency and Governance Bill: Company Moratorium

• Effect - company need not repay debts arising from obligations incurred before the start of the moratorium, even if they fall due on or after its commencement (with some exceptions e.g. rent in respect of a period during the moratorium, employee wages and salaries, debts or other liabilities arising under a contract or other instrument involving financial services).

• Prevents actions against the company as per administration moratorium.

• Moratorium must be displayed.

• Terminates at end of initial or any subsequent period unless extended.

• Also comes to end if a company enters into liquidation, administration, an administration interim moratorium, CVA or Scheme of Arrangement.

• Monitor can also bring to an end.
Corporate Insolvency and Governance Bill: Company Moratorium

- Monitor must be licenced insolvency practitioner.
- Role limited in scope to functions necessary to support the integrity of the moratorium process and ensure creditor interests are protected.
- Fees a contractual matter between the monitor and the company appointing them.
- Where a company enters administration or liquidation within 12 weeks of the end of the moratorium, any unpaid moratorium costs will enjoy super-priority over any costs or claims in the administration or liquidation, including the expenses of those procedures.
- Bonding requirements.
Corporate Insolvency and Governance Bill: Wrongful Trading

• Temporary measure due to expire on 30 September 2020.
• Temporary suspension of wrongful trading for company directors so they can keep their businesses going without the threat of personal liability.
• In determining the contribution to a company’s assets that it is proper for a person to make, the court is to assume that the person is not responsible for any worsening of the financial position of the company or its creditors that occurs during the period this provision is in operation.
• “All of the other checks and balances that help to ensure directors fulfil their duties properly will remain in force”.
Corporate Insolvency and Governance Bill: Continued access to supplies

- Permanent change to legislation extending to whole of the UK. Commences the day after the Bill receives Royal Assent.
- Prohibits termination clauses (sometimes called ‘ipso facto’ clauses) that engage on insolvency or are based on past breaches of contract.
- Subject to certain exclusions, contracted suppliers will have to continue to supply, even where there are pre-insolvency arrears.
- New section 233B introduced to the 1986 Act. Prevents suppliers of a much wider range of supplies relying on termination clauses or doing ‘any other thing’, due to a company entering a qualifying restructuring or insolvency procedure.
- Temporary exclusion for small suppliers.
Corporate Insolvency and Governance Bill: Winding up petitions

- Temporary measure due to expire on 30 September 2020. Extends to whole of the UK.
- Retrospective application to 27 April 2020.
- Prevents any statutory demands made against companies in the period between 1 March 2020 and 30 September 2020, from being used as the basis of a winding up petition on or after 27 April 2020.
- During the period 27 April 2020 to 30 September 2020, any creditor asking the court to make a winding-up order on the grounds of inability to pay debts must demonstrate to the court that the company’s inability to pay its debts was not caused by the coronavirus pandemic.
- Extension to period for pre-liquidation transactions to be overturned.
Corporate Insolvency and Governance Bill: New restructuring procedure

- Permanent change to legislation extending to the whole of the UK.
- Intended to broadly follow the process for approving a scheme of arrangement (approval by creditors, sanctioned by the court), but it will also include the ability for a company to bind classes of creditors (and, if appropriate, members) to a plan, even where not all classes have voted in favour of it ("cross-class cram-down").
- Commonality with schemes of arrangement expected to enable the courts to draw on existing body of case law where appropriate.
- 75% by value and a majority by number of each class of creditor must vote in favour of scheme before the court decides whether to sanction it.
- Binding on all affected parties
Corporate Insolvency and Governance Bill 2020
Moratorium key principles:

Straightforward, quick and cheap procedure

Available to most companies that are unable, or likely to become unable to pay their debts

Introduction of a new role …..“Monitor”

Directors remain in control and can lead discussions regarding rescue and restructuring

No legal action can be taken by creditors in respect of outstanding balances as at date of commencement of the moratorium

Ongoing expenses must be met

No requirement for the plan for restructuring the company to be specified at the commencement
To Commence Moratorium…

Lodge documents at Court stating…

The Directors

1) That they wish to obtain a moratorium
2) That in their view the company is, or is likely to, become unable to pay its debts

The Monitor

1) That they are qualified and consent to act
2) That the company is eligible
3) That in their view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern
Roles, Responsibilities and Duties

Directors and Monitor

Directors

1) Provide information to Monitor
2) Liaising with stakeholders, keeping the business running, provision of information to monitor, keep employees informed. . . .

Monitor

1) Notify the creditors of the moratorium
2) Ensure the creditors’ interests are being protected during the period of the moratorium
3) Sanction payment of pre moratorium debts
4) Sanction the granting of security
5) Must continue to monitor eligibility and whether it remains likely that the moratorium will result in the rescue of the company as a going concern
Possible outcomes

Company rescued as a going concern
1) Standalone Moratorium
2) Refinance/ Investment
3) Restructuring Plan
4) Scheme of Arrangement
5) Company Voluntary Arrangement

Not rescued as a going concern
1) Administration
2) Liquidation
Green flags

- Is there a specific reason why the company is unable, or likely to, become unable to pay its debts?
- Is there a strong and committed management team in place?
- Does the business have a clear and realistic plan moving forward and is this supported by robust financial forecasts and cashflows?
- Ability to meet ongoing liabilities?
- Are key stakeholders supportive?
Scenario 1

Profitable business,
One off significant bad debt,
Unable to make payments of debts as they fall due,
Future trading profitable, but will take time to convert to cash,
Director has significant equity in personal property,
Small minority creditor threatening winding up
Scenario 2

Hospitality business,
Had to close for COVID, previously highly profitable,
Experienced management team,
Business has strong brand,
COVID restrictions mean that will take time to build back up to previous profitability, but directors are confident this can be achieved,
Funding is available to meet running costs for a period of time, but no funds to meet payment of significant arrears now due and being aggressively pursued by some creditors.
Final thoughts

COVID-19 Pandemic, unprecedented event with significant government support provided to business

Increase in CVAs?

HMRC/financial institutions

Introduced as a cheap option, but protection of creditor interests comes at a cost

Potential for shareholders to retain value in insolvent businesses

Is creditor sentiment right for a debtor led process?

Will the restructuring professional community embrace this option?

Early advice, maximises the range of options available for any company
Ask ICAS Webinar Series

Q & A
Further information and guidance

• Insolvency and practice matters on icas.com/insolvency and icas.com/practice
• Coronavirus Hub on icas.com/coronavirus
• CA Connect on icas.com/caconnect
• Technical Helpdesk (Contact us on icas.com)
• Follow on Twitter @ICASaccounting and LinkedIn ICAS - The Professional Body of CAs
Further information and guidance

# ICAS Webinars – What's coming up

## ASK ICAS

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-Jul</td>
<td>Preparing for a return to office working</td>
</tr>
<tr>
<td>9-Jul</td>
<td>Focus on leisure, hospitality and tourism</td>
</tr>
<tr>
<td>16-Jul</td>
<td>Standards in the tax advice market</td>
</tr>
<tr>
<td>23-Jul</td>
<td>How COVID19 has changed how you should be doing AML</td>
</tr>
</tbody>
</table>

## OTHER WEBINARS

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Jul</td>
<td>Back to the future - the new normal in accountancy</td>
</tr>
</tbody>
</table>

Register at icas.com/webinars
Thank you for joining us

Ask ICAS
Webinar Series

Thank you for joining us