Published on *The National Law Review* https://natlawreview.com

UK Announces New Insolvency Laws: What Are They and How Do They Help Support Businesses?

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Over the weekend, the Business Secretary announced that UK Insolvency Laws will be changed.

The changes will give businesses “extra time to weather the storm” and give comfort to directors who, challenged with trading through a difficult cash flow period, will not face claims for wrongful trading.

Relaxation of wrongful trading provisions

The proposed measures alleviate concerns that borrowing additional funds offered by the Government could place a director at risk of personal liability.

Under current law, if a director continues to trade a business whilst it is technically insolvent he may be liable for wrongful trading if the business ultimately enters administration or insolvent liquidation, and by continuing to trade the net deficiency to creditors’ increases.

The offer of financial help from the Government had placed directors in a very difficult position, because by taking out additional lending in an effort to save the business they could potential expose themselves to personal liability if it ultimately fails.

However, under the new rules the wrongful trading provisions will be temporarily suspended.

This change should encourage businesses to take advantage of the financial packages on offer and ensure “that when the crisis passes” businesses are ready to “bounce back.”

Importantly, the new rules will apply retrospectively from 1 March 2020.

However, directors must still ensure that they comply with their directors’ duties and act in the best interests of the company. Not all insolvency laws will be relaxed and for a business in distress or concerned about the ultimate viability of the business, directors should take professional advice to ensure that the right decision about the future of the business is made.

New insolvency tools and moratorium

In addition to relaxing the rules around wrongful trading the UK's Insolvency Framework will be changed to include:

- A moratorium for companies giving them breathing space from creditors enforcing their debts for a period of time whilst they seek a rescue or restructure;
- Protection of their supplies to enable them to continue trading during the moratorium; and
- A new restructuring plan, binding creditors to that plan

The proposals will include key safeguards for creditors and suppliers to ensure they are paid while a solution is sought.

The new legislation fast tracks proposed plans to change UK Insolvency Laws that were consulted on in 2018. See our previous blog discussing the detail of those proposals.

Presently, a company or director can only obtain the benefit of a moratorium when filing a notice of intention to appoint administrators, and that moratorium lasts for 10 business days.

When first tabled, the proposed new moratorium was to last for up to three months. That was later reduced to 28 days, but in current circumstances, we understand that this could once again be extended to three months, thus giving a business the breathing space it needs to work through the Covid-19 crisis.

However this and the other new tools are unlikely to be available until after Easter, given that Parliament is in recess.

The Right Honorable Alok Sharma said the changes to insolvency rules will give “firms extra time and space to weather the storm and be ready when the crisis ends, while ensuring that creditors get the best return possible.”

National Law Review, Volume X, Number 89