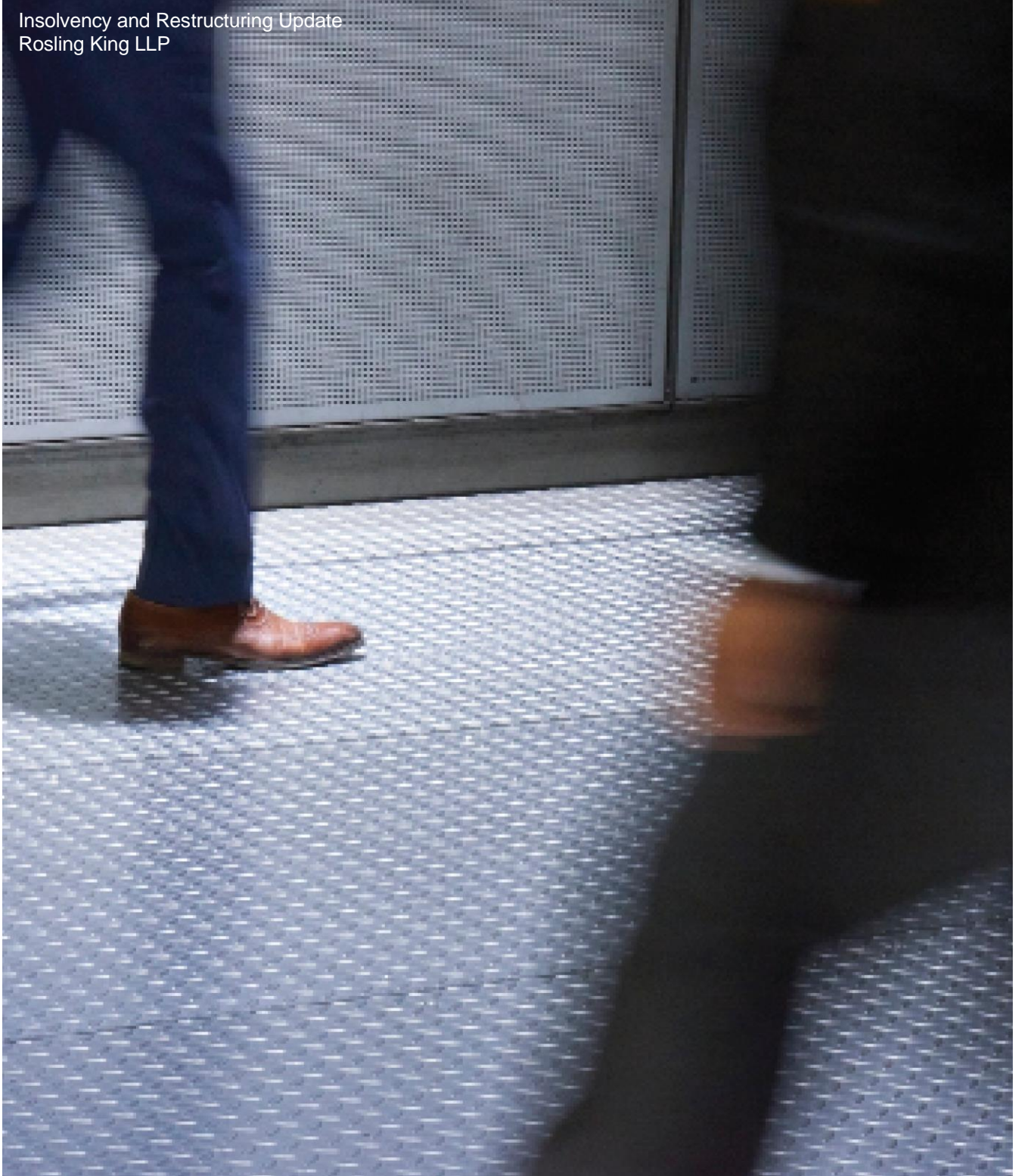


Insolvency and Restructuring Update  
Rosling King LLP



The new Corporate Insolvency and Governance Bill (the “**Bill**”), which is being fast-tracked through Parliament and expected to come into effect shortly, is designed to help companies and other entities in financial difficulty caused by the pandemic. The Bill will do so by providing a package of measures that amend current insolvency and corporate law and comprise of both temporary and permanent measures: (1) new permanent company moratorium lasting initially 20 business days, (2) new permanent restructuring measures to allow companies in financial difficulty to propose a rescue plan to restructure complex debt arrangements (3) the temporary suspension of wrongful trading (4) the temporary suspension of winding-up petitions (5) the prevention of suppliers from terminating contracts or raising prices just because a company has entered an insolvency procedure or a moratorium and (6) temporary easing of requirements for AGMs and General Meetings and timings for corporate filings.

The relevant measures under the Bill are summarised below:

Measure	Overview	Timeframe	Commentary
Company moratorium (permanent measure)	<p>Mechanism designed to give a company temporary breathing space from creditors, by imposing restrictions on insolvency proceedings, enforcement and legal proceedings as well as restrictions on entering security and obtaining credit. The moratorium invokes a payment holiday for pre-moratorium debts (albeit not in relation to debts arising under contract or instrument involving financial services) and prohibits the crystallisation of a floating charge or any step to restrict its disposal.</p> <p>Directors of an eligible company may obtain a moratorium by filing the relevant documents with the Court, or by application to the Court if the company is already subject to a winding-up petition. The Court will only make an order for a moratorium if it is satisfied that a moratorium would achieve a better result for the company’s creditors as a whole, than would be likely if the company were wound up immediately.</p>	<p>The moratorium remains in force for a period of 20 business days, beginning with the business day after the day on which the moratorium comes into force. This period may be extended by the directors or the Court for a further 20 days without creditor consent or for up to one year with consent of creditors or the Court.</p> <p>The company is required to send notice of the moratorium to all shareholders and all known creditors as soon as is reasonably practicable after receipt of notice that the moratorium has been granted.</p>	<p>In monitoring the moratorium, Monitors are required to temporarily disregard any worsening of the financial position of the company for reasons relating to COVID-19.</p>

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	<p>The moratorium is closely monitored by an officer of the court and licensed insolvency practitioner (the “<b>Monitor</b>”) who must consider whether the moratorium will result in the rescue of the company as a going concern.</p>		
<p>Arrangements and reconstructions for companies in financial difficulty (permanent measure)</p>	<p>A new restructuring plan (the “<b>Restructuring Plan</b>”) aimed at company rescue, will enable complex debt arrangements to be restructured and supports the injection of new rescue finance. The Restructuring Plan will be capable of binding dissenting classes of creditors provided that the directors of the company are able to demonstrate that the creditors will be no worse off than in a more traditional insolvency procedure and the Restructuring Plan is sanctioned by the Court as being fair and equitable.</p> <p>The Restructuring Plan requires approval of 75% of the company’s affected creditors.</p>		<p>Whilst there will be safeguards such as the sanction of the court being required; there are concerns that any dissenting creditor class bound to a plan must not be made worse off than it would have been in the next most likely outcome.</p>
<p>Prohibition on winding-up petitions (temporary measure)</p>	<p>To protect struggling companies against aggressive creditor action, the Government have introduced a temporary prohibition against creditors seeking to file statutory demands and winding-up petitions for coronavirus-related debts. Winding-up petitions will be void if (a) presented on the basis of any statutory demand made during the relevant period or (b) presented to the Court between 27 April 2020 and 30 June 2020 or one month after the Bill coming into</p>	<p>The relevant period is the period commencing on 1 March 2020 and ending on 30 June 2020 or one month after the Bill coming into force (whichever is later). This period can be extended by up to six months by the Secretary of State.</p>	<p>There have been two recent cases (re a Company (Injunction to Restrain Presentation of a Petition) [2020] EWHC 1406 and re a Company (Injunction to Restrain Advertisement of a Winding-up Petition) [2020] EWHC 1551 (Ch)) where the Courts have for all intents and purposes applied the Corporate Insolvency and Governance Bill as if it were law and granted</p>

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	<p>force (whichever is later). This period can be extended by up to six months by the Secretary of State.</p> <p>The Court will only accept a winding-up petition if a creditor can prove that it has reasonable grounds for believing that the COVID-19 pandemic did not have a financial effect on the company or if the relevant grounds for winding-up would have arisen even if COVID-19 had no effect on the company.</p>		<p>injunctions to restrain the presentation of a winding-up petition.</p> <p>The most recent case suggests that the threshold for a company to show that COVID19 had a financial effect was in essence a low one.</p>
<p>Suspension of liability for wrongful trading (temporary measure)</p>	<p>The Bill temporarily removes the threat of personal liability for directors who continue to trade during COVID-19 where there is a risk of insolvency. In determining liability for wrongful trading, the Court must assume that the directors are not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period.</p> <p>Whilst no claims can be brought against a director for wrongful trading in relation to losses caused by trading during the relevant period, the duties owed towards creditors will remain in place and alternative claims may be brought or pursued against directors.</p>	<p>The relevant period is the period commencing on 1 March 2020 and ending on 30 June 2020, or one month after the Bill comes into force.</p>	<p>The temporary suspension of liability only applies to wrongful trading and in practice, directors must continue to assess whether the company has a reasonable prospect of avoiding insolvent liquidation or administration. Once the suspension is lifted, directors will need to show that they are taking all necessary steps to minimise loss to creditors.</p>
<p>Termination clauses in supply contracts (permanent Measure)</p>	<p>Contracts for the supply of goods and services (excluding contracts for financial services and products) which permit a supplier to terminate the contract on the account of the other party entering into an</p>		<p>The provisions relating to termination clauses are permanent and will ensure that companies undergoing a rescue process continue to receive supplies, subject</p>

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	<p>insolvency procedure are no longer permitted and cease to take effect.</p> <p>In such circumstances, a supplier will only be permitted to terminate the contract if the office holder or company consents, or if the Court is satisfied that continuation of the contract would cause the supplier hardship and grants permission for termination.</p>		<p>to certain safeguards in place to protect suppliers facing hardship.</p> <p>The Bill maintains a temporary exclusion during COVID-19 in relation to small entity suppliers. At least two of the following conditions must be met in the most recent financial year: turnover of not more than £10.2 million; balance sheet total of not more than £5.1 million; not more than 50 employees.</p>
<p>AGMs and General Meetings (temporary measure)</p>	<p>Directors are permitted to temporarily ignore the processes for holding AGMs and General Meetings which are set out in a company's articles and hold a meeting by any other means to ensure shareholders' right to vote are preserved.</p>	<p>Retrospective effect from 26 March 2020.</p> <p>The introduction of this measure with retrospective effect means that companies that have already held an AGM or General Meeting in a way which adhered to the Government imposed social distancing measures, but in contravention with their articles, will now have done so in accordance with the law.</p> <p>Companies that were required to postpone their AGMs, due to be held after 26 March 2020, will also be afforded a limited period to hold the AGM, making use of the new flexibilities introduced by the Bill.</p>	<p>These provisions are designed to ensure that directors are not exposed to greater liability for lack of shareholder approval during the COVID-19 pandemic, as they are following the Government imposed social distancing measures.</p>

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Filings (temporary measure)	Temporary extension of deadlines for filing accounts, confirmation statements and registration of charges at Companies House. Currently, failure to meet these deadlines could lead to financial penalties or prosecution of a director, but can also impact on a company's record or credit rating.	The extended period of time for filing must not exceed 42 days for filings due within 21 days or 12 months for filing due within 3, 6 or 9 months.	The provisions relating to filings are temporary and are designed to relieve the pressure on companies to meet deadlines imposing financial consequences if they are not met during the COVID-19 pandemic. Companies are encouraged to focus on keeping their business going during this difficult and uncertain time, whilst ensuring filings are submitted within a reasonable period of time.

Should you wish to discuss these measures in more detail, please contact Alexander Pelopidas or the partner with whom you usually deal.