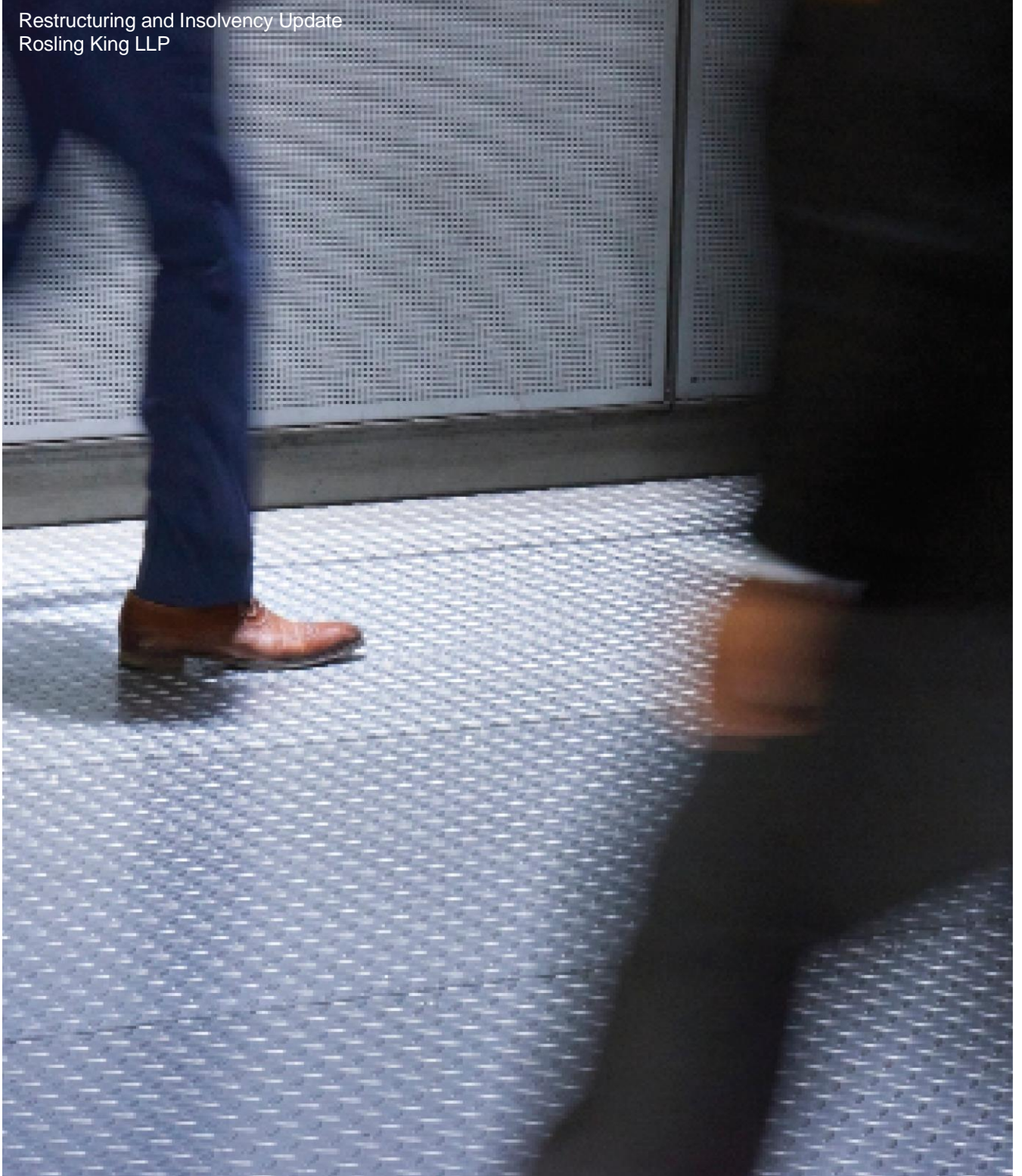


Restructuring and Insolvency Update
Rosling King LLP



The Finance Bill 2019-2021 (the “Bill”) finally received Royal Assent on 22 July 2020, and one of the most controversial measures implemented by the Bill is the reintroduction of ‘Crown Preference’. From 1 December 2020, HMRC will once again become a secondary preferential creditor in insolvency proceedings, meaning that certain debts owed to HMRC are prioritised over those owed to floating charge holders. HMRC’s preferential status was previously abolished by the Enterprise Act 2003, in a move designed to promote a business rescue culture. In the aftermath of Covid-19 and the financial distress that many businesses are already facing, the restoration of Crown Preference is a seriously questionable development.

What does this mean for creditors?

From 1 December 2020, in the event of an insolvency distribution, HMRC will now benefit from an elevated claim status; insofar as VAT, PAYE and NIC employee contributions are concerned, HMRC will still rank behind fixed charge holders and ordinary preferential creditors, but will now leapfrog ahead of floating charge holders and unsecured creditors. Currently, HMRC ranks as an unsecured creditor in respect of all debts owed to it.

This means that floating charge holders and unsecured creditors are likely to experience a reduction in the monies available to them on distribution. And this situation is amplified by the Government’s refusal to cap these monies by amount nor time.

The impact on the wider economy

The additional revenue for the UK government will come at a costly price for the rest of the economy, particularly in the aftermath of Covid-19. In particular, lenders holding floating charges, who now face the possibility of reduced returns, may be less willing and likely to provide their support to UK businesses. Further, such lenders may now seek personal guarantees to offset their increased risk of reduced returns.

With businesses now, more than ever, suffering major liquidity issues and being reliant upon access to finance, this could have a serious impact on the UK economy, as the temporary financial reliefs and measures introduced by the Government in response to Covid-19 are gradually phased out.

Commentary

The opposition to the return of Crown Preference is widespread. The need to keep businesses afloat post-Covid-19 and the rescue culture promoted by recent legislation, namely the Corporate Insolvency and Governance Bill which came into force on 30 June 2020, is at odds with a decision which will inevitably have a negative effect on UK businesses.

Insolvency and restructuring industry trade body ‘R3’ has long opposed the planned change and will continue to campaign against it, arguing that untold harm will be done to business rescue efforts at a critical time for the economy. Current president Colin Haig last week commented that R3 has “*held stakeholder roundtable discussions and coordinated the*

business community's response to this policy; we have briefed journalists and have been widely quoted in the media; we've met parliamentarians, seen questions raised with Ministers, amendments tabled to the legislation to mitigate its impact, and had the issue raised during recent debates over 25 times. Despite all of this effort, the Government has unfortunately ignored the evidence and carried on regardless."

Whilst the true financial cost of the Bill will be discovered in due course, unless we are able to reach a middle ground between the interests of HMRC and the interests of unsecured creditors, the return of Crown Preference is likely to have a negative effect on the UK economy, impacting lenders, businesses and customers alike.

Should you wish to discuss the implications of the new Finance Bill, or should you require any insolvency or restructuring advice generally, please contact [James Walton](#) or the partner with whom you usually deal.