

Proposed Changes to Insolvency Procedures

The Government has announced a consultation in respect of a new corporate insolvency framework.

The first proposal is to allow a three-month moratorium from creditor action for ailing companies. This will provide companies with an opportunity to consider the best approach for rescuing the business whilst free from enforcement and legal action by creditors.

Under the new proposal, the moratorium would last three months although it could be extended if necessary. This will allow any business that is insolvent or near insolvent to put into place a 'turnaround plan' without having to worry about a winding-up petition. During this time, creditors would have a general 'right' to request information from the Insolvency Practitioner, a right that the Government is considering extending to all insolvency procedures to improve transparency and give better protection to creditors.

A second proposal is to help businesses to continue trading through the restructuring process. This would include maintaining contracts that are necessary to keep the business going. The idea is to help prevent the situation whereby companies are held hostage by key suppliers seeking to profit from their difficulties to the detriment of a fair and successful rescue plan that would benefit all creditors.

The third proposal would be the development of a flexible restructuring plan which would enable a rescue plan to bind secured as well as unsecured creditors and introduce a 'cram-down' mechanism. This is when creditors reject a repayment plan but the Court can force it on them anyway.

The final proposal involves the development of the market in rescue finance. Currently, rescue finance is permitted as an expense in an administration procedure and the Government is seeking to consider the extent to which the law should be reformed.

As insolvency procedures have remained largely unchanged since 2004, these proposals will ensure that they continue to be 'fit for purpose.'

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact Ian, John or Robert. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.