Changes to the UK Rules on Insolvency and Wrongful Trading

30 March 2020

On 28 March 2020, the UK Government announced upcoming changes to the UK insolvency regime and a temporary suspension of the wrongful trading rules. These changes aim to help businesses affected by the current crisis to continue to trade through the exceptional circumstances that they currently face.

PROPOSED CHANGES TO THE UK INSOLVENCY RULES

At first glance, the changes announced by the UK Government amount to a significant structural change for the UK insolvency regime, which is likely to become more akin to the US Chapter 11 procedure.

The new insolvency regime will seek to:

- provide a *moratorium* period for embattled companies, giving them time to agree to a restructuring or rescue plan with their creditors without worrying about enforcement;
- protect their supplies, thus enabling struggling companies to continue trading throughout any *moratorium*, while safeguarding their suppliers and creditors to ensure that they continue to be paid while a restructuring/rescue plan is agreed upon; and
- provide for the implementation of a restructuring plan, which will be binding on creditors.

The details on the new insolvency regime are yet to be unveiled and for now it is not known how the UK Government plans to achieve the above aims. However, given the urgency of the crisis, we expect this to happen sooner rather than later. At that point, we will publish a further note setting out the details of the new regime.

TEMPORARY SUSPENSION OF WRONGFUL TRADING RULES

The other major announcement was the proposed suspension of the wrongful trading rules set out in section 214 of the Insolvency Act 1986. Under the current rules, the liquidator of a company in insolvent liquidation can bring an action in respect of wrongful trading against the directors of the company if such directors have arranged for the company to continue trading after they:

- "*knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation*"; and
- did not take "*every step with a view to minimising the potential loss to the company's creditors*".

If directors are found liable for the company's wrongful trading, then they will be held personally responsible for the relevant debts of the company.

The UK Government is suspending this rule in order to help companies to continue trading during the pandemic without the risk of personal liability for company directors arising from wrongful trading if the company ultimately becomes (or is currently) insolvent.

While this announcement will be welcomed by directors of companies facing financial difficulties, they will still need to be mindful of compliance with their other statutory duties. As soon as the relevant implementing rules/secondary legislation is published, we will issue a further note giving guidance on the interplay between the suspension and the other directors' duties.

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For more information regarding the coronavirus, please visit our Coronavirus Resource Center.

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