GUIDE

The Corporate Insolvency & Governance Act 2020

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The Corporate Insolvency & Governance Act was given Royal Assent in June 2020. It introduces a number of new processes the focus of which is to assist in the rescue of companies as a going concern.

The biggest shake-up of English insolvency law for a generation

This summary is based on the provisions of the Act as at 26 June 2020. It is still subject to change by Regulation should the Secretary of State deem it necessary.

New Moratorium process – basic overview

- Moratorium will protect a company from creditor enforcement action (modelled on administration moratorium).
- Available to companies which are or are likely to become insolvent.
- Directors apply for Moratorium by filing papers at court – no prior notice to any creditors
- Moratorium will be granted for an initial period of 20 business days, extendable "over the counter" by the directors for a further 20 days.
- Moratorium can be further extended by creditor vote so that it lasts for a total of one year (from date of original commencement of Moratorium) OR by application to court (though the court will want to know why creditor consent has not been sought/obtained) Extension by the court has no time limit.
- Overseen by an insolvency practitioner who must confirm on entry into the Moratorium, that the Moratorium is likely to result in the rescue of the company as a going concern (not the business).
- Directors remain in control of the business subject to the oversight of an insolvency practitioner (called a Monitor) and subject to restrictions on their powers to incur credit and grant security.
- A company will be allowed a payment holiday during the moratorium from (essentially) its trade creditors.
- All finance creditor debt, rent, employees' wages, trade creditor debt (for goods or services supplied during the Moratorium) and Monitor costs falling due in moratorium ("protected debts") must be paid in full during course of the Moratorium
- Protected debts are afforded super priority in subsequent insolvency procedures, restructuring plans and schemes of arrangement to the extent they are unpaid at the end of the Moratorium

Comparison of English rescue procedures

Process	What is it? Any distinguishing features?	Getting in	Control	Use with new Moratorium process?	Costs
CVA	A way in which a company can propose a compromise with its unsecured creditors. Possibility to "cram down" a proportion of dissenting creditors (subject to conditions).	Out of court procedure without need to demonstrate insolvency. Creditors and members vote on the proposals. At least 75% of creditors by value need to vote in favour plus more than 50% of creditors not connected to the company need to have voted for the proposals	Remains with the management of the company under the supervision of an insolvency practitioner	Yes, Moratorium will be automatically extended where a CVA proposal has been launched to creditors and is awaiting approval	Front-loaded to preparing the proposals plus Supervisor's fees throughout life of CVA. Possibility of court hearings to deal with challenges from creditors
Administration	A statutory insolvency procedure by which the business of the company is usually rescued by selling it on with the proceeds of sale distributed to creditors using insolvency distribution rules Company protected from creditor action during the administration by a moratorium.	Out of court route by directors is the most popular Notice to floating charge holders allows them to appoint an administrator ahead of the directors, but this right is rarely exercised Insolvency must be shown	All management functions pass to the administrator who is an insolvency practitioner	Possible, BUT • administration has its own moratorium which is activated on filing a notice of intention to appoint and • Moratorium can only be commenced with a statement from the proposed Monitor that it is likely the Moratorium will result in the rescue of the company as a going concern. This is not compatible with a strategy of entering administration and selling the business and assets of the company a the "company" will not survive as a going concern	Costs of getting in are minimal. Majority of costs are incurred from the sale and running the administration and are paid from the realisations of the assets
Restructuring Plan	A way in which a compromise can be struck with creditors and/or members of a company • Opportunity to compromise secured creditor claims • Opportunity to "cram down" dissenting creditors (subject to conditions)	Similar to a scheme of arrangement except: • Need to demonstrate the company is in "financial difficulties" or likely to be soon • only 75% by value of a class of creditors needs to vote in favour of the plan. There is no need for a majority in value or for a proportion of unconnected creditors to approve the plan; and • The court may sanction the plan if one or more classes have voted against it if the court finds none of the members of the dissenting class would be worse off in the alternative if the Plan does not go ahead	Remains with the management of the company. No need for an outside appointment	Yes, Moratorium may be extended by the court where an application to court for a convening hearing is made As with schemes of arrangement, the possibility of combining a plan with a Moratorium is attractive to reduce costs, but the limited time period available for a Moratorium (8 weeks max before needing to get creditor or court approval for an extension) may limit the use of the combination	The intention was that the Restructuring Plan could be used in conjunction with the Moratorium to reduce the need for expensive lock-up agreement negotiations before even embarking on implementation of the Plan. However, there is still a need for two court hearings and the possibility of challenge over a cram-down will only increase those costs, so the process is still likely to be quite expensive. Costs are all upfront rather than payable over the life of the plan

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