



Technical factsheet

Business recovery options

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This factsheet has been produced in partnership with Duff & Phelps and is current as at 13 October 2020.

UK GOVERNMENT SUPPORT – UPDATES AND STATISTICS

Key COVID-19 government support initiatives include the following:

1. Coronavirus Job Retention Scheme (CJRS) – introduced in April 2020 and backdated to 1 March 2020 (the furlough scheme)
2. HMRC VAT deferral scheme
3. HMRC PAYE/NI support
4. Protection from landlords.

Key COVID-19 government loan schemes include the following:

1. Coronavirus Business Interruption Loan Scheme (CBILS)
(Approved: 60,000 loans, £13.7bn of new funding)
2. Coronavirus Large Business Interruption Loan Scheme (CLBILS)
(Approved: 561 loans, £3.5bn of new funding)
3. Bounce Back Loan Scheme (BBLs)
(Approved: 1.2m loans, £35.5bn of new funding)
4. Covid-19 Corporate Financing Facility (CCFF)
(approved 204 loans, £82.1bn of new funding)
5. Coronavirus Future Fund (Future Fund)
(Approved: 590 loans, £0.6bn of new funding).

Corporate Insolvency and Governance Act June 2020

1. *Temporary measures*
 - a. Wrongful trading provisions suspension ended 30/09/2020
 - b. Winding-up petitions and statutory demands suspension extended to 31/12/2020.
2. *Permanent measures*
 - a. Introduction of a new ‘moratorium’
 - b. Prohibition on enforcement of termination clauses in supply contracts and
 - c. Introduction of a new ‘restructuring plan’.

Summary of key dates (per HM Treasury Winter Economy Plan – September 2020)

Finance schemes

1. CBILS applications – revised deadline now 31/01/2021
2. CLBILS applications – revised deadline now 31/01/2021
3. BBLS applications – revised deadline now 31/01/2021
4. CCFF applications – deadline remains at 22/03/2021
5. Future Fund applications – revised deadline now 31/01/2021.

Employee schemes

1. Job Retention Scheme – Deadline extended to 02/12/2020. However, scheme was due to be replaced with new Job Support Scheme on 01/11/2020.
2. Self-Employment Income Support Scheme – Revised deadline now 31/03/2021.

Taxation schemes

1. Deferred VAT payment deadline – deadline remains at 31/03/2021. However, businesses now have the option to spread the VAT liability over 11 equal instalments over 2021/22.
2. 5% VAT rate for hospitality and leisure – revised deadline now 31/03/2021.

Creditors

1. Restrictions on creditor actions (winding-up petitions) – revised deadline 31/12/2020.
2. Landlord moratorium – revised deadline now 31/12/2020.

STRESS VS DISTRESS

A summary of the typical underlying symptoms of each stage are summarised below:

1. **Discomfort and denial** (P&L/KPI underperformance)
 - Limited sales growth or declining trends
 - Declining gross margin
 - Increase in cost of sales, overheads of exceptionals.

2. Stress (balance sheet deterioration/covenant breaches)

- Asset erosion
- Covenant stretch
- Movements in debt structure and declining security values.

3. Distress (cash shortfall/funding requirements)

- Working capital crisis
- Increased levels of creditor stretch
- County court judgment, statutory demands, winding-up petitions.

4. Crisis (insolvency/restructuring)

- Debt restructure
- Refinance
- Investment
- Accelerated M&A.

THE TOOLKIT ESSENTIALS – BUSINESS RECOVERY

The various 'toolkit essentials' are summarised below:

1. Diagnose the problem

- Work with clients to understand the cause of the distress
- Consider which stakeholders will be impacted and/what will be required?
- Assessment of the management team and the need for additional support.

2. Short-term cashflow

- Understand the cash runway and create a 13-week cashflow forecast
- What timelines are available in which to find a solution.

3. Critical cashflow

- Cash management on a critical basis, ie prioritising only those suppliers where supply is critical will help preserve cash and extend/provide more time
- Can we accelerate debtor receipts to increase cash in the short term?

4. Profitability and funding requirements

- Medium-term integrated forecasts and sensitivity analysis
- Assessment of funding requirements/mitigation
- Options analysis
- Do we have a viable underlying business?

5. Refinance

- Alternative lenders that could replace the existing funder and provide new monies that could be used to fund the turnaround

6. Equity investment

- Assess ability of shareholders to inject capital
- Consideration of any third-party equity investment.

7. Sale of business

- Provides an opportunity to preserve any equity value
- Distressed sales are likely to result in limited equity return to shareholders
- Assess where the value breaks debt vs equity.

8. Restructuring options

- If the solvent options have all been exhausted, then restructuring options in line with your client's duties as a director need to be considered and planned in conjunction with the options above.

BUSINESS RECOVERY – ADMINISTRATION OVERVIEW

An overview of an administration process is summarised below:

Assessment

Initial analysis

- This phase of work will include an assessment of the following:
 - Options available to the company and if an administration is the appropriate insolvency process

- The funding and stakeholder positions to determine the feasibility including any risks associated with trading through in an administration. Will this increase the chances of saving the business as a going concern or will it maximise the return to creditors?
 - The asset position of the company exploring if a marketing process should be undertaken for its business and assets.
- For avoidance of doubt, the above is not an exhaustive list, but these workstreams will assist in delivering the detailed plan that will form the administrators' proposal for conducting the administration.

Interim moratorium

- Initial moratorium is triggered following the filing of the Notice of Intention to Appoint Administrators (NOI) with the court
- Prevents legal action being taken against the company to allow options to be explored
- Initial moratorium ends on the earlier of either:
 - the appointment of administrators
 - 10 business days.

Moratorium and trading/hold/sale

Moratorium

- The appointment of an administrator must be made within 10 business days of filing the NOI in court (unless a further NOI is filed)
- Immediately on appointment, a second moratorium is granted. This moratorium lasts until the company exits administration
- The moratorium allows the administrators to conduct their duties and attempt to resolve the company's issues safe from the threat of legal action
- Creditors still retain their rights and the claims for any monies they are owed. However, they are temporarily stayed from enforcement action while the moratorium remains in place.

Trading administration

- Should the administrator consider it commercially viable, they may trade the business during the administration with a view to:
 - rescuing the business as a going concern
 - selling the business and assets as a going concern at a later date
 - maximising the asset realisations. These are generally higher in a trading scenario as opposed to wind-down – for instance, the sale of stock on normal trading terms.

Sale of business and assets

- The administrator will conduct a sale process in respect of the company's business and assets in order to achieve the best outcome for creditors. Should a sale of the company's business not be achievable, the administrators will realise the company's assets.

Exit options

Return to directors (pursuing purpose 1: going concern)

- Should the administrator achieve the first purpose of an administration, being to rescue the company as a going concern, control of the company is passed back to the directors.

Company voluntary arrangement (pursuing purpose 1: going concern)

- Alternative route to return control of the company to the directors and shareholders in a tax efficient and clean manner
- Allows the company to continue as a going concern and return to profitability should the business have a viable future
- Agreement must be reached with the company's creditors for this to become legally binding.

Dissolution (where a rescue as a going concern has not been achieved)

- A common ending to an administration whereby the officeholder considers that the duties have been completed and that there remains no assets to realise, costs to discharge and all remaining funds have been distributed to creditors

- Notice is filed by the administrator with the Registrar of Companies and the administration ends.

Liquidation (where a rescue as a going concern has not been achieved)

- Should there be sufficient asset realisations to allow a dividend to unsecured creditors, then the company will be placed into creditors' voluntary liquidation. A notice is filed with the Registrar of Companies and the company is placed into creditors' voluntary liquidation to allow the distribution to take place.

NEW LEGISLATION

A brief introduction to the three measures that are likely to have long-term implications on UK restructuring are summarised below:

- **The moratorium** – struggling companies will be given formal breathing space for an initial 20 business days, which can be extended, to allow them to pursue a rescue plan
- **Termination clauses** – suppliers will be prohibited from enforcing termination clauses because a company has entered into an insolvency or restructuring plan
- **Restructuring plan** – although similar to a Scheme of Arrangement under the Companies Act, a restructuring plan allows the restructure to be imposed on dissenting creditors.

THE RESTRUCTURING PLAN

The new restructuring plan introduced as part of the Corporate Insolvency and Governance Act 2020 is expected to play a key role in domestic and international restructurings.

The addition of a cross-class cram-down means dissenting creditors will be able to be compromised based on a determined valuation, which may result in valuation disputes being played out in the UK court.

There is uncertainty as to how the restructuring plan will develop and the approach of the UK Court in respect to fairness across classes of creditors and complex valuation issues, which may lead to potential disputes.

MORATORIUM

A summary of the new standalone moratorium to help business rescue is summarised below:

Purpose

1. To give financially distressed companies, which are viable, breathing space from all creditors to explore rescue and restructuring options as a going concern
2. The company will remain under the control of its directors during the moratorium
3. Moratorium is overseen by a 'monitor', a licensed insolvency practitioner
4. Effect is akin to administration – no insolvency or legal proceedings, no enforcement of security, no landlord forfeiture etc.

Test for entry

- Company is, or is likely to become, unable to pay its debts
- The monitor must be satisfied that the moratorium will result in the rescue of the company as a going concern (temporary Covid-19 amendment: 'or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus') AND that the non-payment holiday debts will be able to be paid during the period of the moratorium as and when they fall due.

Payment holiday

- The moratorium creates a 'payment holiday' for pre-moratorium debts.
- There are, however, certain exemptions:
 - Liabilities arising under contracts involving financial services
 - Goods or services supplied during the moratorium
 - Rent/wages/redundancy payments in the moratorium and
 - The monitor's remuneration.

Eligibility

- All companies, unless specifically excluded (certain financial institutions and any company that is party to a capital market arrangement)

- The moratorium is not available if the company has been subject to an insolvency procedure in the past 12 months
 - If there is an outstanding winding-up petition, the court must be satisfied that the moratorium will achieve a better result for creditors than would be likely if the company were wound up (without first being subject to a moratorium).

Process

- Notices and statements filed at court confirming the monitor has assessed eligibility and consents to act
- Directors file papers at court – 20 business day moratorium commences
- Directors notify monitor, all known creditors and Companies House
- Notice at company office, website and documents during moratorium.

The monitor

- Assesses that the eligibility criteria continues to be met (ie rescue) during the moratorium and, if not, takes steps to end the process
- Monitor consent is required for the granting of new security, payment of certain pre-moratorium debts which have a payment holiday (over £5k or 1% of unsecured liabilities) and disposal of property outside ordinary course of business
- Officer of the court.

Extension

- In all cases:
 - All moratorium debts and all pre-moratorium debts with no payment holiday must have been paid and
 - The monitor states again that it is likely to rescue the company as a going concern.
- By directors, with no creditor consent:
 - Maximum 20 further business days.
- By directors, with creditor consent:
 - Maximum one year from commencement of initial period
 - Requires majority (in value) of secured pre-moratorium creditors and unsecured pre-moratorium creditors.

- By court, on application of directors:
 - No maximum period
 - Statement from directors as to whether pre-moratorium creditors consulted (and, if not, why not?).
- While company voluntary arrangement (CVA)/restructuring plan sought:
 - Until date CVA is approved
 - Court discretion.

Termination

- Moratorium will terminate:
 - Unless extended
 - If CVA/restructuring plan/scheme of arrangement is approved
 - If company enters insolvency process (including filing of a Notice Of Intention to Appoint Administrators)
 - If the monitor thinks the moratorium will no longer likely lead to a rescue of the company as a going concern, rescue objective has been achieved, the monitor is unable to carry out their functions or the company is unable to pay certain debts that have fallen due.

Subsequent insolvency

In the event that a company enters an insolvency process within 12 weeks of the end of a moratorium period, the following are payable from floating charge realisations in the following order of priority:

1. Moratorium protected debts:
 - Supplies made during the moratorium where the supplier would not have supplied other than for S233
 - Employee wages/salaries
 - Other debts due in moratorium period, apart from monitor's remuneration. This excludes debts due because of an acceleration; and monitor's remuneration/expenses
2. Insolvency practitioner's remuneration
3. Preferential creditors (to include 'Crown' from 1 December 2020)
4. Prescribed part (£800k for charges after 4 April 2020)

5. Floating charge holders
6. Unsecured creditors.

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