

Proposed insolvency (and other) relief for businesses impacted by COVID-19

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Finance Minister Grant Robertson yesterday afternoon announced a number of proposed temporary changes to the Companies Act, with the stated purpose to help businesses facing insolvency due to COVID-19 remain viable.

The temporary changes include:

- **Giving directors of companies facing significant liquidity problems because of COVID-19 a 'safe harbour' from insolvency duties (under sections 135 and 136) of the Companies Act:** Directors' decisions to keep on trading, as well as decisions to take on new obligations, over the next 6 months will not result in a breach of duties if:
 - in the good faith opinion of the directors, the company is facing or is likely to face significant liquidity problems in the next 6 months as a result of the impact of the COVID-19 pandemic on them or their creditors
 - the company was able to pay its debts as they fell due on 31 December 2019, and
 - the directors consider in good faith that it is more likely than not that the company will be able to pay its debts as they fall due within 18 months (for example, because trading conditions are likely to improve or they are likely to be able to reach an accommodation with their creditors).
- **Enabling businesses affected by COVID-19 to place existing debts into hibernation until they are able to start trading normally again:** The COVID-19 Business Debt Hibernation regime will be introduced with one of the Government's stated intentions being to provide a simple, quick and flexible process that businesses can use to put debts on hold, without passing control of the business to an insolvency practitioner.

Key features of the regime will include:

 - creditors will have a month from the date of notification of the proposal by the business to vote on it, with the proposal going ahead if 50% (by number and value) agree. The proposal will then bind all creditors (other than employees)
 - there will be a one month moratorium on the enforcement of debts from the date the proposal is notified, and a further six month moratorium if the proposal is passed
 - changes to the voidable transactions regime to give comfort to creditors who continue to trade with the business that payments they receive will not be clawed back in any later liquidation, and
 - the scheme will be available to all businesses including forms of entity with legal personality (not just companies) and entities that do not have legal personality (ie trusts and partnerships) but will not extend to licensed insurers, registered banks, non-bank deposit takers and sole traders.
- **Allowing the use of electronic signatures where necessary due to COVID-19 restrictions:** Electronic signatures are widely used in business already but there will be an amendment made to the Contract and Commercial Law Act 2017 so that the provisions in that Act relating to electronic signatures apply to security agreements containing powers of attorney.
- **Giving the Registrar of Companies the power to temporarily extend deadlines imposed on companies, incorporated societies, charitable trusts and other entities under legislation:** These will include for holding AGMs and filing annual returns. It is not clear from the announcement whether this would also include for filing financial statements. Buddle Findlay has sought clarification from the Companies Office on this point as a matter of urgency with many of its clients due to file their accounts in May.
- **Giving temporary relief for entities that are unable to comply with requirements in their constitutions or rules because of COVID-19:** Not a lot of detail has been provided by Government on this proposal. However, it appears to relate mainly to relaxing administrative and logistical requirements such as the rules around electronic communications (including electronic meetings) where constitutions or rules do not allow them.

Mr Robertson stated that the legislation to implement these changes will be drafted as soon as possible and the Government will be asking Parliament to agree to make some of these changes (including the 'safe harbour' changes) retrospective to 3 April 2020.

Further information can be found [here](#).

We will provide further update and comment once the draft Bill is made available for review.

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