NEW INSOLVENCY MEASURES INTRODUCED

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During yesterday's announcement, we heard Business Secretary Alok Sharma introduce new measures by the Government to improve the insolvency system to help firms, "emerge intact the other side of the Covid-19 pandemic."

The aim of these measures, once approved, is to enable UK companies that are undergoing a rescue or restructure process to continue trading, giving them the breathing space, they need to avoid insolvency whilst also making sure that creditors get the best possible return in these circumstances.

WHAT ARE THE NEW MEASURES?

- Companies undergoing restructuring, will be allowed to continue buying much-needed supplies – such as energy, raw materials or broadband, while attempting a rescue
- Retrospectively from 1 March 2020, the temporary suspension of wrongful trading provisions – will be for three months, allowing company directors to keep their businesses going without the threat of personal liability

However, Alok Sharma did continue to highlight that, "all of the other checks and balances that help to ensure directors fulfil their duties properly will remain in force."

OUR THOUGHTS

It's an interesting and cautiously welcome change. It is important to note that other duties imposed on directors remain in force for now, so this isn't necessarily carte blanche to continue trading on if creditors are getting into a worse position.

Those directors with a good underlying business if not for COVID-19 will benefit from this as it will enable them to make potentially tough choices during these uncertain times, without the risk of personal liability.

For a business trading at a loss that isn't entirely attributable to COVID-19, there is more that can and arguably should be done by directors to deal with the issues. These don't necessarily require the need for liquidation and closure but could include a form of restructuring to focus on profitable parts of the business.

Removing liability for wrongful trading could mean directors don't consider these. This would mean the underlying issues still exist and are simply deferred to a later date post coronavirus pandemic, potentially once any ban on wrongful trading claims is lifted.

Directors have a defence to wrongful trading claims if they have taken every step possible to minimise potential losses to creditors. Removing the liability for wrongful trading could see creditors being worse off, if they continue to advance funds to a business, as they have no recourse against a director if they were trading whilst insolvent during that time.

Directors still have a duty to their creditors when their business is insolvent or likely to become insolvent and this change does not remove the need for professional advice and other steps to minimise potential losses to creditors. We have a team of insolvency experts who are here if you have any questions or concerns about insolvency or would like any clarity on these new measures and the steps you should be taking.