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UK Insolvency Service’s “Post-Implementation Review” of Restructuring Plans and Other Measures; Possible Refinements Ahead

27 June 2023

The Insolvency Service yesterday published its official “[Post-Implementation Review](#)” of the Corporate Insolvency and Governance Act 2020 (**CIGA**), exactly three years since it came into force.

During CIGA’s passage through Parliament, the Government made a commitment to review the permanent measures in CIGA no later than three years after they came into force. This review builds on an earlier research-based “process evaluation” of CIGA published in December; see our [Alert](#).

Key Findings of Post-Implementation Review

- The permanent CIGA measures have been broadly welcomed by stakeholders:
 1. The Restructuring Plan (**RP**) is seen as a success and appears to satisfy its policy objectives.
 2. Though early, the preliminary signs are positive that provisions on the Suspension of Termination Clauses are meeting their objectives.
 3. The evidence for the Company Moratorium is more ambiguous; this process is used more frequently by smaller companies (in part owing to constraints on eligibility criteria).

(For more information on the underlying measures, see our [Alert](#).)

- Use of RPs and the Moratorium is considerably lower than expected. Possible reasons for this include: Government support through Covid-19 pandemic; taking time for industry to adopt new measures; and the possibility that estimates in the “impact assessment” (during Parliamentary passage) were too high (potentially owing to a combination of barriers preventing uptake alongside initial estimates simply being too high).
- Amendments could be made to help achieve further benefits and to reduce the burden on business. Possible refinements are summarised in the table below.
- Although there is evidence that these changes could lead to more use of the new processes and greater efficiency, the Insolvency Service is not committing to specific reforms; rather, they are raised as “areas of which further consideration would be constructive”. This does not constitute a commitment to make any of the changes, several of which would require consultation and changes to primary legislation (which may be achievable through statutory instrument), and all of which would be subject to Parliamentary consideration.
- We anticipate formal consultation on certain matters below in due course (specifically, those for which the stated action is “Consultation”).

Possible Refinements Going Forward

Measure	Issue	Action	Brief justification for action
Restructuring plans	Costs associated with setting up and challenging a RP	Consultation. Any change would require amendment of primary legislation	It was anticipated that RPs would be more suitable for companies with certain characteristics than others, and the need for two court hearings would not lend itself to this being a cheap process. Exploration of whether the financial burden could be eased may be beneficial

	Multiple debtor entities		This would simplify the procedure to allow RPs in group structures without requiring separate applications. Such a change would introduce a lead company concept with jurisdiction extending to affiliated companies. This would go against the established principles of "one entity, one procedure"
	Mandatory upside sharing		This could incentivise creditors to lend their support to a RP by providing for creditors to receive a share of future profit should the rescue be successful and would also address the equitability of the RP when considering the relevant alternative
	Information asymmetry	Guidance	Evidence has suggested that professional guidance may help improve trust and transparency with the process
Moratorium	Alteration of priority of debts, leading to uncertainty as to whether officeholder	Consultation. Any change would require amendment of primary legislation	There is evidence of an unwillingness to recommend an option which would lead to a risk that a subsequent

	debts would be paid in subsequent insolvency		office-holder's fees will not be paid
	Definition of financial services, including a risk of exploitation of definitions relating to contracts involving financial services (which are excluded from the payment holiday in a moratorium)		To ensure that it is clear which liabilities are within the definition
	Eligibility criteria		The current eligibility criteria exist to mitigate any risk to financial stability, including appetite for lending. Any change would require full assessment of the wider impacts on lending
	Reputational risk to insolvency practitioners	Guidance	A new process is by its nature likely to involve a familiarisation period. Many company voluntary arrangements do not continue for their full term, but no evidence has been

			found to suggest that there is a reputational risk to nominees and supervisors as a result
	Clarity over role of the monitor		Evidence suggested more guidance might help take up of the measure
	Current length of moratorium		Guidance on how the initial period can be extended. Evidence suggests that it is easily extended where needed
Suspension of termination (<i>ipso facto</i>) clauses	Dealing with less sophisticated suppliers	Guidance	It may be beneficial for insolvency practitioners to receive guidance as to how to exercise the measure when dealing with less sophisticated suppliers

“No further action”: The Insolvency Service recommends no action in other areas, including:

- the possibility of **express extra-territorial effect** for RPs*; and
- the possibility of a **standardised restructuring plan template**: the review instead suggests that SMEs could look to SME company voluntary arrangement precedents (including a standard form developed by R3), rather than the documentation for a typical restructuring plan, which is considered likely to be overly complex for SME purposes.

* Although this prospect is raised in the review, it is not included in the table of possible refinements.

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Suggested Reading

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