UK CORPORATE INSOLVENCY AND GOVERNANCE ACT: DIFFERENT STAKEHOLDER PERSPECTIVES

On 25 June, the Corporate Insolvency and Governance Act (the "**Act**") received Royal Assent to introduce reforms to the existing insolvency and companies legislation. The Act has been fast tracked through Parliament, taking just over a month from start to finish. Many of the provisions take effect from today. Certain of the Act's temporary provisions have now been extended until the end of September 2020, and will have retrospective effect.

The Act introduces both **temporary** emergency measures and **permanent** measures. These measures have business rescue at their heart, and, together with government financial support, are aimed at limiting formal insolvencies and allowing business to 'bounce back' from the adverse financial circumstances caused by the Covid-19 pandemic. The Act provides distressed businesses and their directors with some welcome relief during these unprecedented times and provides further restructuring tools, with the aim of preserving jobs and restoring the economic and productive capacity of the nation. Given the wide market ramifications of the Act, we reached out to our network of Partners for their thoughts on how the changes will be played out in practice and affect different stakeholders.

THE TEMPORARY MEASURES

In summary, the temporary measures include:

- **a relaxation of the personal liability that may be imposed on directors** under the wrongful trading provisions, so that the court must assume that for the period between 1 March and 30 September 2020 the director is not responsible for the worsening of the company's financial position;

- **statutory demands** served between 1 March and 30 September 2020 may not be used to form the basis of a winding up petition; and
- **winding up petitions** cannot be presented between 27 April and 30 September 2020 unless it can be established that the insolvency is unrelated to the Covid-19 pandemic.

The key features of each of these temporary emergency measures are set out in the tables at the end of this briefing.

THE PERMANENT MEASURES

In summary, the permanent measures include:

- **a standalone moratorium for viable companies**, which provides the company with a payment holiday for certain payments and protection from proceedings including enforcement;
- **a new compromise procedure,** modelled on a scheme of arrangement, which permits, with the court's approval, one class of creditors to bind others to an arrangement to eliminate, reduce, prevent, or mitigate the effects of any financial difficulties; and
- **a prohibition on suppliers relying on termination clauses** triggered by formal insolvency proceedings, including the new moratorium or the new compromise procedure.

The key features of each of the permanent measures are set out in the tables at the end of this briefing. We also set out the wide exclusions which apply in terms of eligibility, as well as exemptions in the context of the standalone moratorium and the prohibition on suppliers relying on termination clauses.

DIFFERENT STAKEHOLDER PERSPECTIVES

The remainder of this briefing focuses on the impact of the Act through insights gathered from Partners across our different practice areas.

Restructuring

Philip Hertz, global head of our restructuring and insolvency practice, is, on the whole, positive about the Act. Philip makes the point that, "*in terms of making the UK an international restructuring hub, the Act expands debtors' opportunities to pursue a rescue, which is good news. It is inevitable that there may be some uncertainties as to how the new legislation will play out in practice, but we are fortunate that we have a robust and dependable legal system to resolve matters that may be considered uncertain or remain untested*".

Adrian Cohen sees a broader thematic significance to the reforms which will make English law more appealing internationally. He says that, "*the shift in focus to business rescue instead of formal insolvency follows an international trend. The Act is very much perceived as promoting that rescue with a view to saving livelihoods and jobs, and as such is very much welcomed in the current climate. It has the potential to make a real difference and can be used by English and overseas companies*".

With respect to the new compromise procedure, **Iain White** adds, "*the new compromise procedure could be a real game changer in terms of international restructurings. Businesses making use of the procedure in the coming months will need experienced practitioners to advise them on the suitability of the process and indeed the risks the procedure entails. Having the ability to impose a compromise across classes who do not agree, is, in principle, a very powerful tool, but the credibility of the new compromise procedure will depend* *upon consistent and rigorous application of the creditor safeguards and the court's discretion to sanction*".

John MacLennan emphasises the benefits of the Act to smaller companies and unsecured creditors: "*the new legislation has not come a minute too soon in providing a greater number of options for distressed businesses to explore options for rescue. While the new moratorium may be best suited for smaller companies who have the support of their financiers, it may also be useful where the key exposures arise from disparate groups of unsecured creditors, where the company needs a stay on proceedings and enforcement to allow it time to explore either a consensual or formal restructuring. Also worthy of note is the revival of the power for the government to make future legislation in respect of sales to connected parties, which expired in May this year: this is expected to be used to address concerns regarding inappropriate use of the pre-pack procedure*".

With respect to the prohibition on suppliers relying on termination clauses, **David Towers** emphasises that, "*whilst the new moratorium is intended to create breathing space for distressed companies, the limits on suppliers' termination rights will provide some practical assistance to debtors. These limits mean that trade suppliers cannot adversely affect rescue prospects by increasing prices, varying payment terms, or refusing to supply. Of course, this does not mean that the debtor has a free ride and a continued supply requires payments to be made*".

Melissa Coakley considers the long-term impact of the Act on the economy: "*this is a much needed piece of legislation. It has been ambitious from the start, not just in terms of its accelerated legislative process, but also in what it seeks to achieve as a response to the impact of the Covid-19 pandemic on the economy, and beyond. It recognises that financial distress does not have to signal the end, but can provide an opportunity to re-build a stronger and more resilient business post rescue*".

Corporate

With respect to how the new compromise procedure will shift creditor dynamics vis-à-vis distressed companies, Partner **Mark Poulton** comments: "*the new compromise arrangement is an important development for corporates facing financial difficulties, strengthening their hands with classes of junior creditors who might otherwise hold them to ransom for a stake in the restructured business which is not justified by the economics. Having said that, there will be a degree of uncertainty for any corporate going in to this procedure and so I expect for most its importance will be in influencing the achievement of a consensual restructuring with all concerned. Also, given the costs inherent in a procedure of this sort, it is perhaps only a realistic alternative for larger corporates, while small and medium sized enterprises impacted by the Covid-19 pandemic may well be more dependent on further Government support*".

Asset finance

William Glaister, Global Head of our asset finance practice, has noted the impact of the Act's provisions on the broader transportation asset sector: "*while the Act's measures to support corporate debtors reeling from the effects of the pandemic are laudable, the UK aviation industry and broader transportation asset sector are unique as operators are reliant on high-value, capital equipment owned, or otherwise provided by other parties. A balance must be maintained to give domestic and foreign asset financiers, owners, and investors' confidence that their interests are sufficiently protected and that* *their credit risk positions will be respected. The legislation goes some way to this but there are residual uncertainties which it is hoped may be clarified in the future guidance, particularly to avoid future disputes*".

Financial services

Charles Cochrane, a Partner in our banking team, notes the importance of the exemptions to the Act's provisions in balancing various stakeholder interests: "*While the permanent measures are presented as debtor friendly, the wide exemptions mean that, on the whole, the impact on financial service providers is relatively neutral in economic terms in respect of the moratorium and the termination provisions. Perhaps the most controversial area of reform relates to the more flexible compromise agreement in the new Part 26A of the Companies Act 2006, which doesn't have any exemptions and can therefore, like the existing scheme of arrangement, affect the rights of financial creditors, including those with security. Unlike a scheme which relies on a 75% majority in value and a majority in number in each and every class of creditors or members affected by the scheme, the new compromise allows for a minimum of one class voting by 75% majority in value only to bind all others. There are, however, certain safeguards, namely that:*

- *all dissenting creditors must be no worse off under the compromise or arrangement than they would be under the relevant alternative to the compromise or arrangement (which is left for the court to determine); and*
- *the class approving and cramming down the other classes would receive a payment or have a genuine economic interest in the event of the relevant alternative.*

The court must also be satisfied that the compromise is fair and reasonable and it is expected that in cases where there are dissenting classes of creditors or members, the court will scrutinise the compromise very carefully indeed. The greater flexibility of the new compromise procedure could mean that it displaces schemes of arrangement or company voluntary arrangements as a preferred restructuring tool but it also arguably opens the door for more uncertainty and the potential for dispute in cases where the relevant alternative to the compromise is unclear or value breaks between different creditor groups".

These nuanced considerations flow from debates over creditors' protections which were had in Parliament. **Alex Dimsdale-Gill**, a Partner in our banking team argues that "*much of the debate over the legislation in Parliament focused on whether there were too many protections for financial creditors, including for example the fact that debts due under financial contracts and instruments are required to be met during the moratorium period. Recognising the important role financial stakeholders play in potential business rescues, the Act preserves these payments.*

Another hotly debated topic as the Act made its way through Parliament was whether the new super priority which ranks pre-moratorium and moratorium debts which ought to have been paid during the moratorium, but remain unpaid in a subsequent insolvency, with a priority ahead of floating charges, but after fixed charges, would apply to any accelerated part of the debt. The Act now provides that the super priority is limited to the scheduled payments falling due during the moratorium and would not include any accelerated amount remaining to be paid. Ultimately it was recognised that whilst certain provisions should be amended so that financiers are not encouraged to 'game the system' by manufacturing the right to accelerate in order to get a super priority on any subsequent formal process, the ability to accelerate was recognised as an important right to be preserved. The right to accelerate therefore remains intact, but for any financial debt that has been accelerated and remains unpaid in a subsequent insolvency occurring within 12 weeks of a *failed moratorium, the new super priority will not apply to the accelerated part of the debt. The super priority is instead limited to the scheduled payments falling due during the moratorium and would not include any accelerated amount remaining to be paid. This means that unpaid unsecured finance debts which ought to have been paid as part of the moratorium, will be eligible for this super priority ahead of unpaid secured claims which were scheduled to fall due at a later date, but for the acceleration. A careful review of the turnover provisions in any intercreditor arrangements may therefore be necessary, although in practice the entry requirements for a moratorium and the continuing obligations of the debtor to meet its payments, ought to mean that finance creditors have limited exposure. Further rules to make provision for how these super priority debts rank amongst themselves where there are insufficient assets available to meet all these super priority claims are also expected. The protections for unpaid super priority moratorium and pre-moratorium creditors are also carried across to give such creditors a veto right in relation to any subsequent scheme or the new compromise procedure, but again only if those procedures take place within 12 weeks of a failed moratorium*".

Derivatives

The Act's provisions raised significant concerns with respect to derivatives transactions while they were being debated. As **Jeremy Walter**, a Partner in our regulatory team notes, "*many industry groups were concerned about the potential impact of the prohibition on termination clauses. Without special exemptions for financial services this could have had a disastrous impact on the ability to risk-manage financial instruments which themselves are aimed at reducing risks in the financial markets. The inclusion of exemptions familiar from other resolution measures for close out netting and other termination rights is good news in maintaining the status quo, and it should be largely business as usual for financial services contracts and instrument*s".

Commercial Contracts

André Duminy, Head of our commercial contracts team, sees the need for the reforms but is cautious about unintended consequences on suppliers, and wonders how effective some of these measures will be. "*The idea that critical suppliers should not be allowed to terminate their contracts with companies that are subject to formal insolvency proceedings is certainly not new and indeed there is already provision in the Insolvency Act for essential supplies. These amendments go beyond essential supplies and they mean that all suppliers of goods and services unless exempted have to continue to supply (and incur costs) with no certainty that they will get paid. While the Act provides some relief, does it go far enough? And as we have seen before with essential supplies, termination rights can be crafted that do not rely on insolvency*".

Structured finance

Partner **Kevin Ingram** comments: "*On the whole, we expect the practical impact of the Act on securitisation structures to be minimal. Securitisation issuers should, in general, benefit from the exclusions applicable to securitisation companies and parties to capital market arrangements, which will exclude them from the scope of the moratorium and ipso facto termination provisions. As such, the ability of investors to accelerate their debts and enforce their security would remain unaffected. Where there are underlying corporate obligors, however, they may be within the scope of the new* *protections introduced by the Act and that may, in turn, have an effect on the ability of the servicer to enforce their debts in a timely manner.*

By contrast, there are no express exclusions for securitisation structures from the new compromise procedure under the Act. However, the fact that a securitisation issuer is typically established as an insolvency remote vehicle, with limited third party creditors and with the benefit of non-petition covenants and limited recourse provisions from its secured creditors, means it will be unlikely to fulfil the prerequisites for the cross-class cram down to apply in practice".

Capital Markets

Paul Deakins, a Partner specialising in debt capital markets transactions, points out a difficulty in the Act with respect to the standalone moratorium: "*there remains a rather curious delineation in the Act between the way it addresses secured or guaranteed bonds on the one hand and unsecured or unguaranteed bonds on the other, in particular, in relation to the moratorium, where an issuer of a secured or guaranteed bond is ineligible for the moratorium in the first place, but an issuer of an unsecured or unguaranteed bond is potentially eligible. This may be explained by virtue of the fact that the definition of capital market arrangement is derived from a provision in the repealed small companies moratorium, designed to protect securitisation structures. As a practical matter, however, investors in unsecured or unguaranteed bonds will take comfort from the fact that the scope of the payment exemption for a "contract or other instrument involving financial services" was broadened during the legislative process to include a "capital market investment". As a result, although an issuer of unsecured or unguaranteed bonds remains potentially eligible to take advantage of the moratorium arrangements, payments under the bonds and investor acceleration rights will be maintained*".

Disputes

From a disputes perspective, the temporary emergency measures are particularly interesting. **Jeremy Kosky**, the Head of our commercial litigation team, has commented that, "*it is good to see the ongoing relaxation of the rules on wrongful trading, for a further 3 months ending 30 September 2020. Guiding directors of a company facing solvency crunch points is challenging on a number of levels, including the prospect of personal liability if the directors get the big judgement calls wrong. The relaxation is helpful but directors must of course continue to make their decisions carefully, taking into account the interests of all their stakeholders, in particular their creditors. Ultimately, seeking and following financial and legal advice from insolvency and restructuring specialists will go a long way towards mitigating directors' legal risk*".

Employees and pension rights

Hywel Robinson, Head of our pensions team (and current Chair of the Association of Pension Lawyers), says that important safeguards for workers' pension entitlements have been introduced only this week to the legislation. Hywel comments, "*giving the Pensions Regulator and the Pension Protection Fund more information and participation rights in relation to both the new moratorium and the new compromise procedure, will, in appropriate circumstances, allow for greater engagement at an early stage where the rescue of the business and any rescue proposals has the potential to affect entitlements. These rights are to co-exist with the responsibilities and participation of the pension scheme trustees. However, industry concerns about exactly how pension entitlements are treated in (and after) a moratorium* *have not been addressed. In particular, the Act is not fully clear as to whether pension deficit contributions are payable during a moratorium, how employer contributions to personal pensions are treated, and what pension rights get super priority in a subsequent process. It is worth adding that the separate Pension Schemes Bill (which is also going through the Parliamentary process at the moment) continues to raise significant concerns. Provisions in that Bill intended to further safeguard defined benefit scheme currently look set to have wide unintended consequences (for companies with defined benefit schemes and parties who deal with them)*".

POWERS TO MAKE FUTURE AMENDMENTS

As with all new legislation there is a certain amount of uncertainty as to how the measures will work in practice. It is therefore unsurprising there are some general provisions which allow subsequent amendments and adjustments to take place, including adjustments to the current lists of exemptions and exclusions. As a result of much criticism in the House of Lords regarding the government having too much power to bypass Parliamentary scrutiny in respect of any changes made, concessions were made so that recourse and approval for such changes are required from both the House of Commons and the House of Lords.

OTHER REFORMS

Corporate Governance – Temporary measures for meeting and filings

The Act provides for greater flexibility as to the manner in which companies and other bodies may hold AGMs and other meetings, for example allowing the meetings to be held and votes to be cast electronically. It also makes provision for extending the time periods within which such meetings must be held. In addition, there is a temporary relaxation of the filing deadlines in respect of accounts, annual confirmation statements, and notices in relation to registration of charges. For more information on these aspects of the Act, please see our briefing: Coronavirus: UK Government publishes draft legislation relating to holding of company meetings.

Further information

If you are interested in hearing more about the proposed changes please get in touch with your usual Clifford Chance contact or any of our restructuring and insolvency experts listed in the Contacts page. We will also be hosting a Perspectives Series session on 2 July to discuss the provisions of the Act in detail.

In addition, you may find the following resources helpful:

Coronavirus: Government Financial Aid to Business: An International Guide

Cross Border Financing Guide (CC Financial Markets Toolkit).

CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020 – KEY FEATURES

1. PERMANENT MEASURES

MEASURE	KEY FEATURES
Company Moratorium	✓ Stay on certain payments, claims, the enforcement of security, legal proceedings and/or insolvency proceedings. ✓ Does not include payment holiday for rent, or goods and services supplied during the moratorium, wages or salary, redundancy payments or debts and liabilities arising under a contract or other instrument involving financial services. ✓ Initial duration of 20 business days, extendable to 40 business days provided certain debts falling due have been repaid (or further with creditor consent or the approval of the court). ✓ Debtor-in-possession procedure overseen by a monitor (insolvency practitioner) to ensure the company continues to comply with the necessary requirements. ✓ Accessible as the moratorium will be triggered automatically by the filing of papers at court (no hearing is required, except in certain cases). ✓ Not open to all debtors as companies must be eligible for the moratorium and satisfy certain criteria i.e. company is or likely to become unable to pay debts, and that it is likely that a moratorium would result in the rescue of the company as a going concern. ✓ Safeguards for creditors in respect debts or other liabilities arising under a contract or other instrument involving financial services and e.g. collateral and ability to challenge the moratorium in certain circumstances. ✓ Any scheme of arrangement or compromise proposed within 12 weeks of a moratorium coming to an end is also dependent upon certain creditors with unpaid pre-moratorium debts and moratorium debts, agreeing to the compromise or scheme. Likewise there is a super priority for certain unpaid pre-moratorium and moratorium debts in a subsequent insolvency occurring within 12 weeks.
Arrangements and reconstruction: companies in financial difficulty	✓ Modelled on scheme of arrangement under Part 26. ✓ Creditors and members (if applicable) vote on the compromise or arrangement, but the court can impose it on dissenting creditors in certain circumstances (commonly referred to as a 'cram down') as long as creditors or members are no worse off than they would be in the relevant alternative to the compromise or arrangement (to be determined by the court), and that the class of creditors approving the compromise or arrangement have a genuine economic interest or would receive value in that alternative. ✗ No specific exclusions for financial services – however it is only available with appropriate safeguards including a role for the financial services regulators (i.e. the FCA and PRA).
Termination Clauses	✓ Prohibition of enforcement by suppliers of termination clauses on the grounds that a party has entered into a formal insolvency procedure, the new moratorium or the new compromise or arrangement. ✓ Creditor protections to ensure that ongoing payments due under the contracts will have to be made and suppliers can be relieved of the requirement to supply if it causes undue financial hardship to their business. ✓ The prohibition on termination clauses are not be applicable in respect of a long list of specified entities and also arrangements, primarily in the financial services sector. ✓ Includes a temporary exemption for small company suppliers during the Covid-19 pandemic.
Amendments to Scheme of Arrangement/ CVA	✓ Where a scheme of arrangement or CVA is proposed within 12 weeks of the end of a moratorium, certain creditors will need to consent to the arrangement/CVA.

2. EXCLUSIONS

It should be noted the for the purposes of this briefing we have simplified the list, which relies heavily on definitions from existing legislation. In some respect the definitions and indeed scope of the exclusions themselves may be considered the overlapping or lacking in clarity.

<table>
<tr><th>MEASURE</th><th>WHO DOES IT NOT APPLY TO</th><th>WHAT DOES IT NOT APPLY TO</th></tr>
<tr><td>Termination Clauses</td><td>See Schedule 12 (Protection of Supplies of Goods and Services) of the Act.

Entities in the financial services sector <u>in the scenario where: (a) one of these entities is itself in distress; or (b) one of these entities is a supplier to another firm in distress</u>, including: insurers, banks and investment firms, electronic money and payment institutions, operators of payment systems, recognised investment exchanges, securitisation companies, building societies, friendly societies, and credit unions (the "Excluded Financial Services Sector Entities"), or overseas entities whose functions correspond with these Excluded Financial Services Sector.

Suppliers suffering hardship can seek relief from the effect of the provisions.

Temporary exclusion for "Small Entities".</td><td>See Schedule 12 (Protection of Supplies of Goods and Services) of the Act.

"Essential Supplies" insofar as the application of section 233B would cut across sections 233(3) and/or 233A(1) of the Insolvency Act 1986.

The prohibition does not apply to certain types of "Financial Products and Services" <u>in all scenarios</u>, including:

• Financial contracts, meaning:
- a contract for the provision of financial services consisting of (i) lending (including the factoring and financing of commercial transactions), (ii) financial leasing, or (iii) providing guarantees or commitments;
- a securities/ commodities/ futures or forwards contract, a swap agreement, an inter-bank borrowing agreement where the term of the borrowing is three months or less, securities financing transactions, derivatives, spot contracts; or
- a master agreement for any of the contracts or agreements referred to above.
• Capital market investments (both secured and unsecured); or
• Contracts forming part of a public-private partnership.

In addition, the protections provided by the following "Excluded Arrangements and Legislation" are unaffected by the prohibition. These include: (i) Part 7 of the Companies Act 1989 (financial markets and insolvency); (ii) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469); (iii) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979); (iv) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226); (v) set-off and netting arrangements (within the meanings given by section 48(1)(c) and (d) of the Banking Act 2009); and (vi) the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).</td></tr>
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MEASURE	WHO DOES IT NOT APPLY TO	WHAT DOES IT NOT APPLY TO
Company Moratorium	See Schedule 1 (*Moratoriums in Great Britain: eligible companies*) and Schedule 4 (*Moratoriums in Great Britain: temporary provisions*) of the Act. Companies are ineligible if at the date of filing for a moratorium: (i) the company is already subject to a formal insolvency procedure (including a moratorium that is in force at the date of filing); or (ii) during the period of 12 months prior to the filing date, it has been subject to a moratorium, unless the court has ordered that the previous moratorium is not to be taken into account for this purpose; or (iii) during the period of 12 months prior to the filing date, it has been subject to CVA or administration (for a temporary period this restriction is lifted by Schedule 4 to the Act to account for the impact of the Covid-19 pandemic). Entities in the financial services sector, in the scenario where one of these entities is itself in distress, including: (i) any of the Excluded Financial Services Sector Entities (as defined above); (ii) companies which are parties to market contracts or subject to market charges, participants in a designated systems, parties to secured or guaranteed capital market arrangements, public-private partnership project companies; and (iii) overseas entities whose functions correspond with the above list of entities. However there is no exclusion for these entities in a scenario where they are a counterparty to another (non-excluded) firm in distress which is using a company moratorium. In addition, a company which has permission under Part 4A of FSMA to carry on a regulated activity, and which is not subject to a requirement to refrain from holding money for clients, is also specifically excluded from being eligible for the company moratorium with temporary modifications for the duration of the relevant period.	See Schedule 2 (*Moratoriums in Great Britain: contracts involving financial services*) of the Act. The moratorium does not apply to Financial Products and Services in all scenarios, plus the following in addition: market contracts; qualifying collateral arrangements and qualifying property transfers; contracts secured by certain charges or arrangements; default arrangements and transfer orders; and contracts to accept and process card-based payment transactions. In addition, the protections provided by Excluded Arrangements and Legislation are unaffected by the company moratorium. Restrictions on enforcement of security and repossession of hire-purchase/leased property will not extend beyond the 60-day waiting period under the UK Cape Town Regulations.
Arrangements and reconstruction: companies in financial difficulty	See Schedule 9 (*Arrangements and reconstructions for companies in financial difficulty*) of the Act. No specific exclusions for the Financial Services Sector – however it is only available with appropriate safeguards including a role for	See Schedule 9 (*Arrangements and reconstructions for companies in financial difficulty*) of the Act. No specific exclusions for Financial Products and Services. There are as mentioned above special provisions relating to cases where a moratorium

MEASURE	WHO DOES IT NOT APPLY TO	WHAT DOES IT NOT APPLY TO
	the financial services regulators (i.e. the FCA and PRA).	has preceded an application under Part 26A within a 12 week period.
Relaxation of wrongful trading	See section 10 (*Suspension of liability for wrongful trading: Great Britain*) of the Act. Entities in the financial services sector, <u>in the scenario where one of these entities is itself in distress.</u> In addition, a company which has permission under Part 4A of FSMA to carry on a regulated activity, and which is not subject to a requirement to refrain from holding money for clients, is also specifically excluded from being eligible from the wrongful trading suspension.	No specific exclusions for Financial Products and Services or Excluded Arrangements and Legislation.
Suspension of presentation of Statutory Demands	No specific exclusions for the Financial Services Sector.	No specific exclusions for Financial Products and Services or Excluded Arrangements and Legislation.
Suspension of presentation of Winding up Petitions	No specific exclusions for the Financial Services Sector.	No specific exclusions for Financial Products and Services or Excluded Arrangements and Legislation.

3. TEMPORARY MEASURES

MEASURE	KEY FEATURES
Suspension of wrongful trading	✓ Temporary suspension of existing insolvency provisions that otherwise might impose personal liability on directors for continuing to trade when their business is in financial distress. ✓ Retrospective effect from 1 March 2020 to 30 September 2020 and subject to extension by order if necessary/appropriate. ✗ The suspension is not be applicable in respect of specified entities, primarily in the financial services sector. Directors are not absolved from compliance with other duties and disqualification regime remains in place. Directors will need to continue making decisions carefully, seeking professional advice where necessary.
Suspension of presentation of Statutory Demands	✓ Temporary suspension of Statutory Demands from 1 March 2020 to 30 September 2020 where a company cannot pay "due to Covid-19". ✓ Retrospective effect and subject to extension by order if necessary/appropriate. ✗ Does not prevent enforcement of other remedies or impact the ability to claim late payment interest in accordance with contractual provisions. ✗ Does not waive liability for debts, only suspends presentation of a statutory demand as a basis for presenting a winding up petition.
Suspension of presentation of Winding up Petitions	✓ Temporary suspension of winding up petitions from 27 April 2020 to 30 September 2020 where a company cannot pay "due to Covid-19". ✓ Retrospective effect and subject to extension by order if necessary/appropriate. ✗ Does not prevent enforcement of other remedies or impact the ability to claim late payment interest in accordance with contractual provisions.

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