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Gordon Lindhurst MSP, Convener, Economy,
Energy and Fair Work Committee
Scottish Parliament

Via email:
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24 March 2021

Dear Convener,

UK Government - Corporate Insolvency and Governance Act 2020 Extension of Temporary Measures

I am writing to advise you that I have received a notification from Martin Callanan, Minister for Climate Change and Corporate Responsibility of the UK Government's intention to extend certain temporary measures contained within the Corporate Insolvency and Governance Act 2020 (CIGA 2020). In the absence of extension, these provisions are due to expire in March and April.

The staged return to more normal trading conditions following the national restrictions will extend beyond the current expiry of these measures and the UK Government considers that further short extensions are necessary to certain provisions. This will continue to help companies in the transition to full trading where there may be initial difficulty with accrued debts and low cash reserves.

The Scottish Parliament agreed a motion of legislative consent in relation to the relevant provisions of the then Corporate Insolvency and Governance Bill on 16 June 2020. The Act received Royal Assent on 25 June 2020.

The UK Government proposes to extend the following measures and has set out the rationale as follows:

Temporary suspension of statutory demands and restrictions on petitions to wind up companies – Extension until 30 June 2021

- This measure is currently due to expire on 31 March 2021.

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- There is significant concern that at the end of March, many businesses will still be prevented from reopening or trading to full capacity due to continuing national restrictions, which will make it difficult for them to start paying their debts. The UK Government is keen to avoid removing measures that protect companies from precipitative enforcement action by creditors and is therefore proposing to extend these temporary measures until the 30th June 2021. This will give the market a further period to adjust.
- The UK Government is also in the process of considering possible further transitional provisions to replace these measures once government support measures expire, to avoid triggering a surge in enforcement action.

Temporary modifications to the new moratorium - Extension until 30 June 2021

- This measure is currently due to expire on 30 March 2021.
- In normal trading conditions a company in financial distress that wishes to enter a company “moratorium” (a period free from enforcement action while a rescue is sought) must be assessed as rescuable by an insolvency practitioner. It must not have been subject to another insolvency procedure in the previous 12 months, and, where the company is subject to a winding-up petition it must first apply to court before a moratorium may be entered. These criteria have been temporarily relaxed during the Covid-19 period to make it easier to access a moratorium and increase the prospects of a company being rescued.
- Negotiating and arranging a company rescue (and/or seeking new investment) can be a protracted process and extending these measures will assist companies and support their recovery from the economic effects coronavirus.
- The UK Government intend to extend the temporary moratorium provisions which relax the entry criteria for a further three months until 30th June 2021

Temporary exemption for small suppliers from the requirement to continue to supply a company that has entered an insolvency procedure – Extension until 30 June 2021

- This measure is currently due to expire on 30 March 2021.
- This extension will provide further relief for small suppliers from the requirement to continue supplying their goods and services in such situations whilst the economy recovers and trading conditions improve.
- The UK Government intend to extend this measure for a further three months until 30th June 2021.

Suspension of Wrongful Trading Provisions – Extension until 30 June 2021

- This measure is currently due to expire on 30 April 2021.

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- This enables company directors to use their best endeavours to keep companies trading that would be viable but for the effects of the pandemic without the potential of personal liability for wrongful trading.
- The UK Government intend to extend the suspension of personal liability for wrongful trading for a further two months to 30th June 2021.

Temporary procedural rules for the moratorium – 30 September 2021

- CIGA 2020 introduced a new permanent free standing company moratorium process.
- The Insolvency Act 1986 has been updated for this procedure and temporary rules are in operation. There is a requirement to update the various Insolvency Rules for England & Wales and Scotland to allow for permanent rules on the operation of the moratorium.
- These rule changes will impact on devolved aspects of insolvency therefore agreement of Scottish Ministers will be required.
- To enable the development of the permanent rule changes and for them to commence on the same date for England and Wales and Scotland, the UK Government is currently proposing to extend the temporary procedural rules until 30 September 2021 and this will be monitored during this period.

Scottish Government officials will liaise with counterparts in the UK Insolvency Service to develop these rules and thereafter agreement of Scottish Ministers will be sought.

I have been advised that the UK Government do not propose to extend the measure which temporarily relaxed rules in relation to Annual General Meetings under Company Law, which is due to expire at the end of March. This allows companies and other entities such as building societies and incorporated charities temporarily to set aside requirements to hold physical meetings open to all shareholders or members and instead to convene meetings through electronic means with the minimum quorum. An extension to this would now require primary legislation and a suitable legislative vehicle has not been identified. I will update you further should the position change.

It should be noted that the regulation making powers in CIGA 2020 did allow measures to be extended to Scottish Charitable Incorporated Organisations within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act. These have been dealt with through Scottish Statutory Instruments.

I trust that you will find this update of assistance.



JAMIE HEPBURN

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