

HERBERT SMITH FREEHILLS REACTS TO UK GOVERNMENT'S PUBLICATION OF CORPORATE INSOLVENCY AND GOVERNANCE BILL

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Deals and cases

Responding to news that the Government has published draft legislation designed to temporarily suspend wrongful trading provisions, [John Whiteoak](#), a partner in Herbert Smith Freehills' disputes practice, says:

“We support the underlying philosophy and goals of the proposed bill – to enable otherwise strong companies to survive during a period of unprecedented interruption and turmoil. Nevertheless, we consider that many of those changes could have been achieved with less radical amendments and working within the existing insolvency law.

He adds: "This is the most significant change to insolvency law for more than 30 years and alters some fundamental principles of English contract law that go back hundreds of years. It introduces concepts which have been developed in other jurisdictions. However in those jurisdictions there is far greater court supervision to protect the interest of creditors than is proposed by this bill. The bill has had very little public consultation and appears to be being introduced without time for sufficient scrutiny by industry, practitioners or policy makers. While some of the concepts are certainly worthy of consideration, for example the new moratorium regime, introducing them now with so little time for industry and practitioners to consider them and in the middle of a crisis may lead to unintended consequences. We are particularly concerned about the relationship between companies and its suppliers and this legislation may pose a real risk to already strained and financially distressed supply chains. For every company that does not make payments because of this new legislation there will be many more that suffer the financial consequences of that, leading to those companies being in financial distress.

"Of additional concern is the extremely broad power being given to the executive to make yet unknown additional changes to insolvency law by secondary legislation."

Kevin Pullen, a partner in the firm's insolvency and restructuring practice, also says: "We would encourage the Government to consider a more phased introduction of some of these measures to give time for industry, suppliers, financial creditors and practitioners to assess their impact.

"Insolvency law represents a delicate balance between a debtor and its creditors and that dynamic is fundamental to an efficient business environment and the free flow of credit and liquidity. The United Kingdom has always been rightly cautious about interfering in that dynamic and it should remain so."

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