

Memorandum

Interim Report Underscores Success of CIGA 2020 Measures

23 June 2022

On 21 June 2022, the Insolvency Service published [Interim Report: CIGA 2020 \(March 2022\)](#), which reviews the operation of the permanent measures contained in the [Corporate Insolvency and Governance Act 2020 \(CIGA 2020\)](#).

What Did CIGA 2020 Do?

As a reminder, amongst other things, CIGA 2020 introduced three permanent changes to the restructuring toolbox: (A) the restructuring plan; (B) the moratorium; and (C) restrictions on *ipso facto* termination clauses in supply contracts.

What Did the Interim Report Say?

The Interim Report draws on feedback from IPs, legal professionals and trade associations. Overall, the permanent measures introduced by CIGA 2020 were regarded positively. We outline some of the key findings below:

- A. **The Restructuring Plan (RP)**—Overall, the introduction of the RP is considered a success, with the flagship cross-class cram-down power having been used successfully. There is a view that an RP is inaccessible to SMEs (although we note that there is recent precedent of an SME seeking to avail itself of an RP) and are prohibitively costly to challenge (thereby undermining protection for dissenting creditors).

Stakeholders also queried whether a more streamlined approach could be taken to the required documentation and cases dealt with by a single hearing by an Insolvency and Companies Court judge (rather than only a High Court judge). Such an approach would represent a deviation from how Schemes of Arrangement (**Schemes**) are conducted but would be in line with the 2019 EU Restructuring Directive [Directive (EU) 2019/1023], which contains flexibility for single hearings to be held in relation to proceedings analogous to an RP.

One of the major concerns raised was providing adequate protection for dissenting creditors with a feeling that information is only provided to dissenting creditors at quite a late stage in proceedings when the RP is so well-formulated that it may be difficult to propose a viable alternative.

- B. **The Moratorium**—Stakeholders noted that the Moratorium has been used successfully and in accordance with the set policy objectives. There were however concerns that the process alters pre-existing priorities in any subsequent insolvency procedure and this may be making IPs reluctant to recommend Moratoriums other than in situations where a rescue is extremely likely.
- C. ***Ipsa facto* clauses**—The *ipso facto* clause protections are seen as a positive by insolvency practitioners in supporting the continuation of contracts for goods and services in respect of companies entering formal insolvency procedures. However, the sentiment is that the level of formal insolvency procedures which were avoided during the pandemic, due in large-part to government intervention measures, means that it is too soon to fully assess the utility of these protections.

Observations

Without seeking to gloss over the concerns raised with respect to the RP, the positive response from stakeholders to the RP emphasises the strength and predictability of the UK restructuring regime. These recent enhancements, coupled with an experienced and specialised judiciary that has provided numerous detailed judgments to achieve Scheme-like certainty for the RP in just 24 months, serve to preserve the UK’s continuing competitive edge as an international restructuring hub.

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