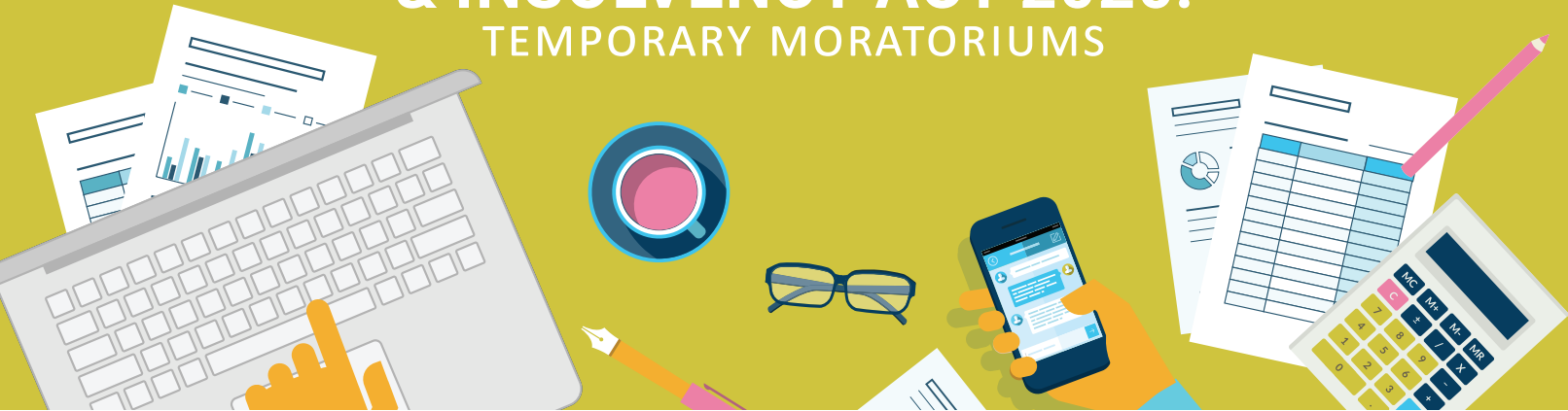


CORPORATE GOVERNANCE & INSOLVENCY ACT 2020: TEMPORARY MORATORIUMS



This article sets out the key provisions and actions that businesses should bear in mind in light of the measures introduced by the Act, which received Royal Assent in June.

TEMPORARY COMPANY MORATORIUM

The Act has introduced a temporary moratorium for companies in financial difficulties to provide them with breathing room whilst they try to rescue their business. Any insolvent companies or any companies that are likely to become insolvent can benefit from an initial 20 business day moratorium in which it will be able to restructure or look to obtain new investment.

This moratorium has the effect of placing a stay on legal proceedings. If a business is dealing with a company in a temporary moratorium, this will impact the enforcement action it can take against the company to recover any amounts owed to them by the defaulting company.

However, there are certain exemptions from this general moratorium, as suppliers and creditors will be able to bring legal proceedings against the company:

- 

with the written consent of the 'Monitor', namely an insolvency practitioner;
- 

permission from the court;
- 

as a set-off against any claim made by the company in any legal proceedings;
- 

criminal proceedings against the company or any of its directors or officers; and
- 

proceedings concerning any property or right over which the company exercises the powers of a trustee.



IMPACT FOR BUSINESSES

DEALING WITH A COMPANY IN A TEMPORARY MORATORIUM

Suppliers and creditors may be nervous about the introduction of the moratorium, which is relatively easy to access and may prevent recovery of their debts. However, there is some comfort in the fact that companies can only use the measures if it is likely to emerge as a going concern, with this being monitored and kept under review by the Monitor. The moratorium may be terminated if there is no prospect of rescue.

The Act does divide the company's debts into three categories:

- ✓ pre-moratorium debts: with payment holiday;
- ✓ pre-moratorium debts: without payment holiday; and
- ✓ moratorium debts.



THE FOLLOWING DEBTS MUST CONTINUE TO BE PAID:

- liabilities arising under a contract/instrument involving financial services, which include bank facilities, capital market arrangements (which captures arrangements involving guarantee or grant of security), and contracts secured by financial collateral arrangements;
- goods and services supplied during the moratorium;
- rent in relation to the moratorium period;
- wages, salaries and redundancy payments; and
- the monitor's fees and expenses from the commencement of the moratorium.

Unpaid moratorium and pre-moratorium debts, which the company was required to pay during the moratorium, will have priority in a subsequent liquidation or administration where the company enters administration, or winding up proceedings are commenced 12 weeks following termination of moratorium.

Whilst there are some protections for suppliers and creditors, it is crucial that businesses have a comprehensive due diligence process and effective monitoring processes to ensure that the contracting parties are solvent, able to perform their respective obligations under the contract and are financially stable.

