



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Urgent Insolvency and Corporate Law Changes in Response To COVID-19	Date to be published	9 April 2020

List of documents that have been proactively released		
Date	Title	Author
3 April 2020	Urgent Insolvency and Corporate Law Changes in Response To COVID-19	Office of the Minister Commerce and Consumer Affairs
3 April 2020	Urgent Insolvency and Corporate Law Changes in Response To COVID-19 – Minute of Decision	Cabinet Office

Information redacted

YES / NO [select one]

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Some information has been withheld as it is under active consideration.



Meeting of the COVID-19 Ministerial Group

Minute of Decision

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Urgent Insolvency and Corporate Law Changes in Response to COVID-19

The group of Ministers with Power to Act on COVID-19 matters [CAB-20-MIN-0130] convened on 3 April 2020 at 10.30am, and in accordance with their Power to Act:

Insolvency law and directors' duties

- 1 **agreed** to make the following changes to the Companies Act 1993:
 - 1.1 add a temporary COVID-19 Business Standstill regime (CBS) that would allow companies and other entities to enter into agreements with their creditors in relation to existing debt;
 - 1.2 add a temporary safe harbour, deeming decisions to keep on trading, as well as any decisions made to take on any new obligations over the next 6 months, to be reasonable if:
 - 1.2.1 in the good faith opinion of the directors the company is facing or is likely to face significant liquidity problems in the next six months as a result of the impact of the COVID-19 pandemic on them, their creditors or their debtors;
 - 1.2.2 the company was able to pay its debts as they fell due on 31 December 2019; and
 - 1.2.3 the directors, in good faith, consider that it is more likely than not that the company will be able to pay its debts as they fall due within 18 months (for example, because trading conditions are likely to improve or they are likely to be able to reach an accommodation with their creditors);
- 2 **noted** that Cabinet agreed, among other insolvency-related reforms, to reduce the period of vulnerability under the voidable transactions regime from two years to six months where the debtor company and the creditor are unrelated parties [CAB-19-MIN-0491.01];
- 3 **agreed** to implement the period of vulnerability change under the legislation minute; proposed in this minute;
- 4 **agreed** to amend the Contract and Commercial Law Act 2017 so that the provisions in that Act relating to electronic signatures apply to security agreements containing powers of attorney;

Insolvency practitioner licensing

- 5 **noted** that the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 are scheduled to come into force on 17 June 2020;
- 6 **noted** that this start date is still being targeted, but it would be prudent to provide for the date to be extended should there be unexpected COVID-19-related delays;
- 7 **agreed** to include a provision that would allow for the commencement of the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019 to be deferred for up to 12 months;

Extending statutory deadlines

- 8 **noted** that many statutory deadlines in corporate governance legislation, relating to such matters as holding annual general meetings and filing annual returns should be relaxed because they are unachievable or are relatively unimportant in the current circumstances;
- 9 **noted** that there are powers to make exemption notices in relation to statutory obligations under some Acts (e.g. the Financial Markets Conduct Act 2013 and the Charities Act 2005) but not others (e.g. the Companies Act 1993);
- 10 **agreed** to provide the relevant Registrars with a temporary power to issue exemption notices relating to compliance with statutory obligations under the Companies Act 1993, Limited Partnerships Act 2007, Incorporated Societies Act 1908, Charitable Trusts Act 1957 and various other statutes;
- 11 **agreed** to temporarily relax deadlines for Registrars under various Acts to carry out certain functions, such as processing applications to reserve company names;
- 12 **noted** that relief from certain obligations, such as lodging annual returns, will have adverse financial implications because there are associated fees and levies;

Non-compliance with entity constitutions

- 13 **noted** that some incorporated societies, charitable trusts, unincorporated associations and other entities are unable to comply with obligations in their constitutions or rules in relation to such matters as appointing auditors and holding annual general meetings;
- 14 **agreed** to include changes that would provide temporary relief:
- 14.1 to the effect that an entity which cannot perform an obligation under its constitution or rules because of the impacts of COVID-19 is absolved from the obligation until such a time when it is reasonably able to perform it;
- 14.2 permitting electronic communications, including electronic meetings, even if their constitutions or rules do not provide for it;

General matters

- 15 **noted** that retrospectively validating the safe harbour and deadline relief changes will:

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- 15.1 reduce stress and increase certainty for financially distressed individuals and their families, and for directors, officers and employees of for-profit and not-for-profit entities;
- 15.2 promote business confidence;
- 16 **agreed** to provide for the retrospective validation of the changes in paragraphs 1.2, 10, 11 and 14 to the extent that is necessary or desirable;
- 17 **noted** that these proposals have been developed rapidly, with limited targeted consultation and may need to be varied to be fully effective;
- 18 **authorised** the Minister of Finance and the Minister of Commerce and Consumer Affairs:
- 18.1 to modify or rescind the decisions in paragraphs 1, 10,11 and 14;
- 18.2 to make other changes that will support the intent of paragraphs 1 to 14;
- 19 **agreed** to include an Order in Council-making power to extend deadlines in relation to the temporary measures that are recommended above;

Legislative implications

- 20 **noted** that the recommended changes are urgent;
- 21 **noted** that none of the recommended changes fit with the criteria for making Orders in Council under the Epidemic Preparedness Act 2006;
- 22 **agreed**, subject to advice from Parliamentary Counsel Office, to implement the changes by way of:
- 22.1 one bill giving effect to all of the required legislative changes other than the proposed COVID-19 Business Standstill regime (CBS);
- 22.2 a second Bill giving effect to the CBS;

Communications

- 23 **noted** that there will be a wide-ranging communications programme publicising the agreed changes, which will target the business community, the not-for-profit sector and professional advisers;
- 24 **noted** that MBIE will proactively release this paper, but it is not clear when that will be able to happen.

Michael Webster
Secretary of the Cabinet

Distribution:
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Copied to officials via email