

Corporate Insolvency and Governance Bill

AMENDMENTS
TO BE MOVED
ON REPORT

After Clause 17

LORD HODGSON OF ASTLEY ABBOTTS

Insert the following new Clause—

“Review of pre-pack transactions

In Schedule B1 to the Insolvency Act 1986, after paragraph 74 insert—

“Review of pre-pack transactions

- 74A(1) The assets of a company may not be transferred under the terms of a pre-pack transaction unless the proposed purchaser has obtained an opinion in writing from a member of the Pre-Pack Pool that the transaction is not unreasonable.
- (2) In this paragraph, a “pre-pack transaction” means a transaction which is negotiated before a company enters administration, and under which all or a substantial part of the company’s assets are sold to an associate on or shortly after the appointment of an administrator.
- (3) For the purposes of sub-paragraph (2), “associate” has the meaning given in section 435 of the Insolvency Act 1986.””

Member’s explanatory statement

This new Clause requires a positive opinion to be obtained from a member of the Pre-Pack Pool before a company enters into a pre-pack transaction. The Pre-Pack Pool is an independent body of experienced business people set up in response to the recommendations of Teresa Graham’s report.

Schedule 3

LORD CALLANAN

Page 107, line 24, leave out from “debts” to end of line 27 and insert “(within the meaning given by section 174A);

- (b) priority pre-moratorium debts (within the meaning given by section 174A).”

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

Page 107, line 30, leave out sub-paragraph (3)

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's other amendment to page 107.

Page 109, line 13, leave out from "and" to end of line 15 and insert "priority pre-moratorium debts.

- (2A) In subsection (2)(b) "priority pre-moratorium debt" means –
- (a) any pre-moratorium debt that is payable in respect of –
 - (i) the monitor's remuneration or expenses,
 - (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium, or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that –
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that –
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see subsection (2B)).
- (2B) For the purposes of subsection (2A)(c) –
- "relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- "the relevant period" means the period –
- (a) beginning with the day on which the statement under section A6(1)(e) is made, and
 - (b) ending with the last day of the moratorium."

Member's explanatory statement

This amendment clarifies which pre-moratorium debts get priority for the purposes of new section 174A(2) of the Insolvency Act 1986. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

Page 109, line 18, at end insert –

- “(3A) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this section.
- (3B) Regulations under subsection (3A) may make consequential, supplementary, incidental or transitional provision or savings.
- (3C) A statutory instrument containing regulations under subsection (3A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Member’s explanatory statement

This amendment confers power on the Secretary of State to change the definitions of “moratorium debt” and “priority pre-moratorium debt” for the purposes of new section 174A(2) of the Insolvency Act 1986.

Page 109, leave out lines 23 and 24 and insert –

- “(5) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (2A)(a)(ii) of this section.
- (6) In this section –
 - “acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –
 - (a) under which, on the happening of an event –
 - (i) a debt or other liability falls due earlier than it otherwise would, or
 - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
 - (b) which confers on a party a right which, if exercised, will result in –
 - (i) a debt or other liability falling due earlier than it otherwise would, or
 - (ii) a debt or other liability being terminated and replaced by another debt or liability;
 - “contract or other instrument involving financial services” has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);
 - “monitor’s remuneration or expenses” has the meaning given by section A18;
 - “moratorium debt” has the meaning given by section A51;
 - “pre-moratorium debt” has the meaning given by section A51;
 - “redundancy payment” has the meaning given by section A18;
 - “wages or salary” has the meaning given by section A18.”

Member’s explanatory statement

This amendment defines expressions used in the Minister’s first amendment to page 109.

Page 111, line 25, leave out from “debts” to end of line 28 and insert “(within the meaning given by section 174A), and

- (b) priority pre-moratorium debts (within the meaning given by section 174A).”

Member’s explanatory statement

This amendment reflects the changes made by the Minister’s amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

Page 111, line 37, leave out “pre-moratorium debts mentioned in sub-paragraph (2)” and insert “priority pre-moratorium debts”

Member’s explanatory statement

This amendment is consequential on the Minister’s first amendment to page 111.

Page 111, leave out lines 41 and 42

Member’s explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister’s first amendment to page 111.

Schedule 7

LORD CALLANAN

Page 158, line 17, after ““Part 1A,”” insert “Article 148A(3A),”

Member’s explanatory statement

This amendment paves the way for the Minister’s amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

Page 158, line 40, leave out from “debts” to end of line 3 on page 159 and insert “(within the meaning given by Article 148A);

- (b) priority pre-moratorium debts (within the meaning given by Article 148A);”

Member’s explanatory statement

This amendment reflects the changes made by the Minister’s amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

Page 159, line 8, leave out sub-paragraph (4)

Member’s explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister’s second amendment to page 158.

Page 160, line 31, leave out from “and” to end of line 33 and insert “priority pre-moratorium debts.

- (2A) In paragraph (2)(b) “priority pre-moratorium debt” means –
 - (a) any pre-moratorium debt that is payable in respect of –
 - (i) the monitor’s remuneration or expenses,

Schedule 7 - continued

- (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium, or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that –
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that –
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see paragraph (2B)).
- (2B) For the purposes of paragraph (2A)(c) –
- “relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- “the relevant period” means the period –
- (a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and
 - (b) ending with the last day of the moratorium.”

Member’s explanatory statement

This amendment clarifies which pre-moratorium debts get priority for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

Page 160, line 36, at end insert –

- “(3A) Regulations may amend this Article for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this Article.
- (3B) Regulations under paragraph (3A) may make consequential, supplementary, incidental or transitional provision or savings.
- (3C) Regulations may not be made under paragraph (3A) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

Member’s explanatory statement

This amendment confers power on the Department for the Economy in Northern Ireland to change the definitions of “moratorium debt” and “priority pre-moratorium debt” for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989.

Page 160, leave out lines 41 and 42 and insert –

“(5) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (2A)(a)(ii) of this Article.

(6) In this Article –

“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –

(a) under which, on the happening of an event –

(i) a debt or other liability falls due earlier than it otherwise would, or

(ii) a debt or other liability is terminated and replaced by another debt or liability, or

(b) which confers on a party a right which, if exercised, will result in –

(i) a debt or other liability falling due earlier than it otherwise would, or

(ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);

“monitor’s remuneration or expenses” has the meaning given by Article 13D;

“moratorium debt” has the meaning given by Article 13HC;

“pre-moratorium debt” has the meaning given by Article 13HC;

“redundancy payment” has the meaning given by Article 13D;

“wages or salary” has the meaning given by Article 13D.”

Member’s explanatory statement

This amendment defines expressions used in the Minister’s first amendment to page 160.

Page 162, line 7, leave out from “debts” to end of line 10 and insert “(within the meaning given by Article 148A), and

(b) priority pre-moratorium debts (within the meaning given by Article 148A).”

Member’s explanatory statement

This amendment reflects the changes made by the Minister’s amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

Page 162, line 18, leave out “pre-moratorium debts mentioned in sub-paragraph (2)” and insert “priority pre-moratorium debts”

Member’s explanatory statement

This amendment is consequential on the Minister’s first amendment to page 162.

Page 162, leave out lines 22 and 23

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's first amendment to page 162.

Schedule 9

LORD CALLANAN

Page 186, line 24, leave out from second "a" to end of line 28 and insert "priority pre-moratorium debt."

Member's explanatory statement

See the explanatory statement for the Minister's second amendment on page 186 of the Bill.

Page 186, line 43, leave out from "debt"" to end of line 6 on page 187 and insert "–

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- "priority pre-moratorium debt" –
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order."

Member's explanatory statement

The Minister's amendments on page 186 of the Bill provide that the creditors to whom new section 901H of the Companies Act 2006 applies are those in respect of "moratorium debts" and "priority pre-moratorium debts" within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

Page 198, line 11, leave out from second "a" to end of line 15 and insert "priority pre-moratorium debt."

Member's explanatory statement

See the explanatory statement for the Minister's second amendment on page 198 of the Bill.

Page 198, line 30, leave out from "debt"" to end of line 38 and insert "–

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- "priority pre-moratorium debt" –

Schedule 9 - continued

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
- (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.”

Member’s explanatory statement

The Minister’s amendments on page 198 of the Bill provide that the creditors to whom new section 899A of the Companies Act 2006 applies are those in respect of “moratorium debts” and “priority pre-moratorium debts” within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

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