



Matthew Ray
Deputy Director
Department for Business, Energy and Industrial Strategy
By email: Matthew.Ray@beis.gov.uk

30 April 2020

Dear Mr Ray

Fast-tracking of a moratorium on winding up petitions

By way of background, the BVCA is the industry body for the private equity and venture capital (“PE/VC”) industry in the UK. We represent the vast majority of UK-based PE/VC firms, as well as their investors and advisers. Our members currently back around 3,500¹ UK companies, of whom around 3,000 are small or medium sized enterprises. These businesses employ nearly 850,000 people in the UK and over the past five years approximately £38 billion has been invested in them.²

A moratorium on winding up petitions is urgently needed

A moratorium on the filing of winding up petitions by creditors would help businesses buy crucial time to mitigate the impact of the liquidity crises they are facing. We welcomed the Business Secretary’s announcement in March that a moratorium would be introduced (being one of the measures on which the Insolvency Service has been consulting on since May 2016). We also welcome his further announcement on 23 April that “any winding-up petition that claims that the company is unable to pay its debts must first be reviewed by the court to determine why. The law will not permit petitions to be presented, or winding-up orders made, where the company’s inability to pay is the result of COVID-19”. However, this latest announcement falls short of a full moratorium and does not prevent other adverse action being taken against a company. We therefore urge that the legislation for a moratorium (as was the subject of the Insolvency Service’s consultation) now be fast-tracked to support thousands of companies that are struggling to survive.

Directors across the country have been working around the clock to do everything they can to save their businesses, scouring supply chains for solutions, negotiating payment holidays and arrangements with creditors and applying for government support schemes where eligible. Sadly, the scale of the current crisis is unprecedented, and these efforts are in many cases insufficient. Many solutions depend on cooperation from suppliers who are themselves suffering liquidity issues. Significant delays remain in the delivery of government support schemes, as lenders are facing enormous backlogs in demand. Even when loans are approved, it may take several weeks for businesses to actually receive the money. In these conditions, the filing of winding up petitions can have significant adverse effects such as the freezing of business accounts and the automatic voiding of any transactions entered into by the company, and even where petitions are not processed by the courts they often encourage other creditors to withhold further funding.

How we suggest the Government should address this

From the announcement on 23 April, it appears that the Government intends for the Court to review any petition filed before it is issued, as well as once presented, before making a winding-up order. To

¹ 2,800 of which received investments from BVCA members between 2014-2018.

² BVCA annual Reports on Investment Activity (see www.bvca.co.uk).



assist the Court in determining whether the company's inability to pay is the result of Covid-19, the Government should support otherwise viable companies' efforts to weather the crisis by giving directors the power, where a winding up petition is filed or threatened, to declare that a company needs additional time to confront temporary liquidity or operational issues caused by the Covid-19 crisis. This would begin a 28-day moratorium (extendable to 56 days and beyond) during which a winding up petition cannot be issued, or a winding up order made. Appropriate safeguards could be introduced to prevent abuse of this option, such as a requirement for directors to have reasonable grounds to file a declaration, a restriction to one declaration per company and a power for the courts to override any moratorium if justified. We would be happy to discuss these further with Government.

In addition (as well as complementary) to the above measures, the grounds for seeking an interim moratorium under paragraph 44 of Schedule B1 to the Insolvency Act 1986, and length of such moratorium, could also be expanded to cover where directors intend to introduce measures to address Covid-19 liquidity crises to avoid insolvency, in default of which they will appoint an administrator. The period of this moratorium would match the 28-day period (plus extensions) for hostile winding up petitions and extend protection against other hostile action not sanctioned by a court such as the enforcement of security, the re-possession of goods, forfeiture by landlords and instituting legal proceedings. This would be particularly welcomed by companies facing revenue disruption and at risk of litigation concerning their temporary failure to make payments on time.

We would like to request the opportunity to discuss these proposals with you in further detail as soon as possible.

Yours faithfully,

A handwritten signature in black ink that reads "Michael Moore".

Michael Moore
Director General
British Private Equity & Venture Capital Association