Changes to insolvency rules will not save businesses - ...

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The government announced changes to regulations on insolvency laws this morning using emergency powers that have been provided to them. They said:

Under the plans, the UK's Insolvency Framework will add new restructuring tools including:

* *a moratorium for companies giving them breathing space for from creditors enforcing their debts for a period of time whilst they seek a rescue or restructure;*

* *protection of their supplies to enable them to continue trading during the moratorium; and;*

* *a new restructuring plan, binding creditors to that plan*

The proposals will include key safeguards for creditors and suppliers to ensure they are paid while a solution is sought.

The government will also temporarily suspend the wrongful trading provisions to give company directors greater confidence to use their best endeavours to continue to trade during this pandemic emergency, without the threat of personal liability should the company ultimately fall into insolvency.

Existing laws for fraudulent trading and the threat of director disqualification will continue to act as an effective deterrent against director misconduct.

I have previously drawn attention to these legal requirements and noted that they were an impediment to companies seeking support from banks as they try to keep their companies alive during the coronavirus crisis.

I regret to say that the changes made are almost meaningless in this context. I note warm words have been offered by some professional organisations with regard to them, but I do not share their sentiments.

It is true that these rule changes will provide a short breathing space to restructure debts, but clearly that has to be used wisely and appropriately if a cascading flow of bad debt is not to have a domino effect across whole rafts of the business world. Protecting one company cannot be at cost to the viability of another; that makes no sense at all. This measure seems to assume that we are still operating in a world where business failure is an exception and not the norm. That is not the world we live in any more: business failure is now systemic and not particular.

In addition, the proposal does not impact the availability of loans from banks to companies seeking to restructure. Their directors may be legally off the hook for wrongful trading whilst seeking bailouts but banks are still going to demand personal guarantees and security on the basis of assets outside the business from those directors if those loans are to be made available. And directors may well not be able to give that security, and may be unwise to do so.

As a result these changes look like yet more tinkering from a government that is overwhelmed by the scale of the crisis that it is facing and has no idea how to respond to the systemic risks that this creates. Yet again, it will have to have another go at these reforms before they can make any sense.

More importantly, it will also need to provide 100% bank loan guarantees of many companies are to survive. And we are a long way from seeing that as yet. Until we do the post-coronavirus recovery is looking decidedly shaky.