



Do you need breathing space? Coming to an arrangement with your creditors and the Business Debt Hibernation Scheme

On Friday 3 April 2020, the Government announced a Business Debt Hibernation Scheme (**BDHS**), with a view to providing viable and well-run businesses, negatively impacted by COVID-19, with some breathing space.

We note the BDHS is available to companies, trusts, partnerships etc., but does not extend to licensed insurers, registered banks, non-bank deposit takers and sole traders.

It appears that the BDHS will be an additional restructuring tool and will complement those frameworks that already exist in the Companies Act (**Act**), such as the existing Creditor Compromise scheme.

What are the key features of the BDHS?

The BDHS is designed to provide a simple and flexible way for a business to come to a short term arrangement with its creditors. Its key features are:

- Once creditors are notified that a business intends to put forward a proposal, creditors will have one month to vote on the proposal;
- During that month, a moratorium prevents creditors taking action against the business to recover their existing debt; and
- If 50 percent (by number and value) of creditors agree to the proposal put forward, the proposal will be binding on all creditors (other than employees) and the moratorium will continue for another six months.

The Government has advised that “directors” will need to meet a threshold before being able to access the BDHS. No further details at this date are currently available of what that threshold will be.

How do directors formulate a proposal to creditors?

Whether directors look at accessing the BDHS or instigating a Creditor Compromise, talking to your creditors early, putting in place a robust plan and effectively communicating this plan to creditors will all be essential in gaining support from the majority of your creditors and have them vote in favour of your proposal.

A forecast of your short, medium and long term trading is needed to demonstrate that your business is indeed viable, how much cash can be generated from trading and when sufficient cash will be produced to pay creditors. This analysis may also identify that you have surplus assets or stock that can be liquidated to generate cash to pay creditors, what parts of your business need to be closed (if any) and whether additional funding is needed.

It will also be important to compare the position if no BDHS/Creditor Compromise is put in place (i.e. the impact on stakeholders if the business was to go into liquidation) so that creditors are aware of how each scenario will impact them.

When should directors consider a formal Creditors Compromise?

The Act, as it currently stands, provides a Creditor Compromise scheme which allows you to implement an arrangement with some, or all, of your creditors. Creditor Compromises provide significantly more flexibility than the BDHS. There is no

threshold to be met before accessing the Creditor Compromise scheme and no restriction on the period of time over which you propose to carry out your plan. If the prescribed procedure is followed, and enough creditors vote in favour of your proposal (50 percent by number and 75 percent by value), your proposal will be binding on all creditors given notice of it, including those that voted against it.

What types of arrangements are possible under a Creditor Compromise?

Any sort of arrangement can be proposed to your creditors. The arrangement might be relatively simple, like asking your creditors to accept a lesser sum in full and final settlement of the full amount you owe (which does not currently appear to be a proposal available under the BDHS) and/or to park your current debt for a specified period of time, while cash flow improves and/or you sell down surplus assets. It is also possible to propose more sophisticated arrangements such as exiting loss making contracts and leases, or that creditors take equity in exchange for their debts.

If you have a large number of creditors and/or your business model is more complex, putting together a plan is likely to require specialist external advice. Deloitte is experienced in all factors required under both the BDHS and Creditor Compromises, including:

- Negotiating with stakeholders on behalf of businesses;
- Putting together your plan;
- Assessing options available; and
- Implementing the formal aspects of any proposal to creditors.

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