

‘Stop right now, thank you very much’ – The application of the Schedule B1 statutory moratorium

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Introduction

Legal proceedings may, subject to certain statutory restrictions, be pursued against a company or an individual even though they are insolvent. The primary restriction arises from the statutory moratorium against creditor action that applies to an insolvent company in administration, under Schedule B1 to the Insolvency Act 1986 (“Schedule B1”).

This article summarises the purpose and operation of the statutory moratorium, and discusses the recent case of *CargoLogicAir Ltd v WWTAl AirOpCo 1 Bermuda Ltd* [2024] EWHC 508 (Comm), which has clarified the scope of the moratorium in an important respect.

Statutory moratorium

A company in financial difficulty will face considerable pressure from its creditors, who will want to take steps to protect themselves should the company fail. However, a unilateral action by a creditor to protect its own interests can prejudice the prospects of successfully rescuing an insolvent company or its business. For example, if a landlord forfeits the lease of the premises from which the company trades, it may prevent the continuation of the company’s business as a going concern.

It is therefore important to give a company breathing space when it enters an insolvency process designed to rescue it or its business, if that rescue is to succeed. Administration is a corporate insolvency procedure intended to promote the rescue and rehabilitation of companies in financial difficulty. Administration allows a company that is insolvent to be reorganised or to have its assets realised for the benefit of its creditors.

Accordingly, Schedule B1 provides that a company has the benefit of a moratorium, preventing most creditor or other third-party action against it or its assets, from the point at which the administration process is instigated. Between the instigation of the administration process and the company entering administration, the company is usually subject to an interim moratorium.

The moratorium is effectively a freeze on creditors taking action against the company or its assets for the duration of the administration process. A creditor must either seek the consent of the administrators or the court to pursue an action against the insolvent company. This applies to secured and unsecured creditors alike.

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