

## PRE-INSOLVENCY MORATORIUM

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A new provision under the Insolvency Act, 2015 has been introduced giving reprieve to distressed businesses. The purpose of the provision referred to as Pre-Insolvency moratorium is meant to prevent creditors from taking an enforcement action against a company while it considers its options for rescue, whether by new investment, formulating a restructuring plan, refinancing, sale or other rescue option available. What these provisions do is that they give time to the company to analyse its options.

The process leaves the affairs of the company in the control of the company/directors under the supervision of a licenced Insolvency Practitioner who acts as a Monitor. The moratorium takes effect upon filing of Documents in Court and lasts for 30 days from and including the day on which the moratorium takes effect and may extended by Court for a further 30 days or more. The court shall endorse the copies of the documents filed and shall issue an Order recognising the moratorium in the Form provided under the Insolvency regulations.

To obtain a pre-insolvency moratorium, the Directors have to file with the Court, among other documents, a statement from the Monitor indicating that the proposed moratorium has a reasonable prospect of achieving its aims and the Company has sufficient funds available to it during the proposed moratorium to enable it to carry on its business.

### **What pre-insolvency moratorium means for Creditors**

During the period of the moratorium creditors can't commence insolvency proceedings against the company. Unless they have the consent of the court, creditors also cannot:

- enforce security
- commence or continue with legal action; or
- landlord may only exercise rights of forfeiture with leave of Court

A secured lender cannot enforce its security (without the court's permission) by, for example, appointing an administrator, or crystallise a floating charge.

### **Can it be challenged?**

Anyone can challenge the moratorium by applying to court on the grounds that the conduct of the monitor has unfairly harmed them. A creditor or member may also challenge the conduct of the directors on the grounds that company's affairs have been managed in a way that has unfairly harmed them.