

PRE-INSOLVENCY MORATORIUM

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This is an insolvency proceeding provided for under Sections 636-676 of the Insolvency Act, 2015. It is a moratorium/protection employed by companies who are in financial distress to reorganize its affairs and avoid formal insolvency proceedings.

Purpose

To give reprieve (a breathing space) to distressed businesses and 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 options available.

Eligibility

Any financially distressed companies can apply for the moratorium, except for banks, insurance companies, and companies already undergoing liquidation, administration, administrative receivership, or voluntary arrangements.

Process

The process leaves the affairs of the company in the control of the company/directors under the supervision of a licensed Insolvency Practitioner who acts as a Monitor.

To obtain a pre-insolvency moratorium, Directors must file the requisite documents with the Court, giving reasons for seeking the moratorium, statement of the company's financial position, as well as a statement from the Monitor indicating whether the proposed moratorium has a reasonable prospect of achieving its goal & more so, that the Company has sufficient funds available to enable it to carry on its business, during the proposed moratorium.

The moratorium takes effect upon filing of the requisite documents in Court and lasts for 30 days. Court may extend the period for a further 30 days or more. The court is required to endorse the copies of the documents filed and shall issue an Order recognizing the moratorium.

Effect:

Similar to the moratorium that applies in the administration:

- i. Creditors can't commence insolvency proceedings against the company, unless with the consent of the court.
- ii. Prevents the appointment of an administrator or administrative receiver.
- iii. Forfeiture and distress by a landlord or Enforcement actions for security are only possible with court approval.
- iv. Prevents disposal of property.

There's an obligation on the directors of the company to give notice to the monitor, and a further obligation to the monitor to publish the notice, to give notice to creditors and lodge a copy with the Registrar of Companies.

Company is restricted from: obtaining credit exceeding 25,000/-, disposal of property subject to various exceptions,

Monitors

They are responsible for supervising the company's activities and ascertaining that the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

Can it be challenged?

Yes, by any party, 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.