Global Restructuring Review

NEWS

A balancing Act: the UK's new corporate insolvency and governance law

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11 September 2020

Typewriter: does the CIG Act bring the UK up to date with the 1970s? (Credit: Shutterstock.com/MohdKhairilX)

When the clock struck midnight on 25 June, the UK's restructuring and insolvency regime suddenly looked a lot friendlier for debtors, both temporarily pending the coronavirus' havoc on the UK economy, and permanently. But does the new legislation rushed through parliament in under a month provide a serious contender to Chapter 11's crown, or does it merely bring the UK up-to-date with the 1970s as one practitioner suggested?

From the new free-standing moratorium process, to the restructuring plan – or "super-scheme" –that UK airline Virgin Atlantic has already tested out, and to new restrictions on *ipso facto* rules for suppliers, the Corporate Insolvency and

Governance (CIG) Act 2020 seems on the face of it to be something of a windfall for distressed companies.

The Act's permanent measures, based on a **proposed framework** for improving the UK's restructuring scene that was released following government consultations in 2016 and 2018, were intended to balance out the UK insolvency regime's traditionally friendlier-to-creditors stance.

Meanwhile its temporary measures, suspending winding-up actions and statutory demands, as well as personal liability for directors for wrongful trading until 30 September, have given companies impacted by the coronavirus some much-needed breathing space. They may yet be extended past September.

Submitted to the UK parliament as a 240-page bill on 20 May, the Act was fast-tracked through the lower house, the House of Commons, which made **just a small tweak** allowing airline creditors to be compromised through the new restructuring plans and schemes of arrangement. The House of Lords then **gave the bill much deeper scrutiny**, making amendments to prevent financial creditors who are exempt from the new moratorium from getting super-priority for accelerated debts in any future insolvency process.

The Lords also gave the UK's Pensions Regulator and its Pension Protection Fund greater, creditor-like powers during moratoriums and restructuring plan processes, and made it mandatory for new moratorium monitors to inform pensions bodies when a moratorium comes into force.

As a result of debate in the upper house, UK pre-packaged administrations may also see further regulation in the coming year: the final version of the bill extended a sunset clause reserving power for the government to review pre-packs until June 2021. Lord Callanan, a parliamentary undersecretary of state for the UK's Department for Business, Energy and Industrial Strategy (BEIS) also made a commitment to produce a government report on pre-packs "in the summer" of this year.

By the time the bill became an Act it had grown by 14 pages.

Initial reactions

From the time of its submission to parliament, to its exit as enforceable legislation, UK practitioners have repeatedly emphasised the significance of the changes introduced by the CIG Act, as well as some of its shortcomings.

Kirkland & Ellis partner **Kate Stephenson** in London described it as the biggest change to the UK restructuring and insolvency regime since 2003, if not 1986 when the Insolvency Act came into force. But Stephenson also noted concerns that capital markets exceptions to eligibility for the moratorium effectively exclude many larger companies with bond financings from the tool.

Jennifer Marshall, a partner at Allen & Overy who discussed the bill with the UK Insolvency Service in her capacity as chair of the City of London Law Society's Insolvency Sub-Committee (CLLS), said the UK government had done a "tremendous job" of putting the legislation together fast. However, she noted the complete silence in the Act on whether absolute or relative priority rules apply to the restructuring plan.

Howard Morris, head of the business restructuring and insolvency group at Morrison & Foerster in London, said he was "pleased" with the bill, but noted the absence of any provisions on debtor-in-possession funding.

And **Olga Galazoula**, a partner at Ashurst in London, said the CIG bill as it was in its first incarnation was "the biggest reform of the UK's restructuring and insolvency framework in more than 15 years". But while reform "has been welcome as it adds to our toolkit rather than taking anything away", Galazoula said it was unclear how effectively the new tools would be able to compete with tried and tested methods like rescue administrations, particularly in the current, extraordinary circumstances.

While cautiously optimistic, all of the practitioners ultimately said – to use an old English idiom – that the proof would be in the pudding.

Virgin Atlantic is of course **already savouring** one of the most hotly anticipated sweets in the CIG Act: the restructuring plan. At the time of writing it had **successfully persuaded** the English High Court to convene plan creditor

meetings and obtained **interim recognition** of the new instrument from a New York court under Chapter 15.

The next test would come after the Virgin Atlantic's creditors' meetings on 25 August, depending on whether the fourth and only creditor class that hadn't already expressed support for plan voted yes or no. It overwhelmingly **voted yes**. A no vote could potentially have required use of the new, novel cross-class cramdown provisions in the restructuring plan at the plan's **sanction hearing** on 2 September – but Virgin did not need to rely on them in the end.
While they wait for more debtors to taste the proverbial pudding – and many say they are already in talks with clients in regards to potential moratoriums, *ipso facto* restrictions and plans – GRR asked UK practitioners for a deeper reflection on whether the final version of the CIG Act met their expectations, and what they are looking out for in the near future as courts start to interpret it.

Restructuring plan – the UK's Chapter 11?

"Obviously I'm a huge fan of the restructuring plan," said Virgin Atlantic's counsel Marshall. "I really do think it's the first time we have had a really serious competitor to Chapter 11." In fact, Marshall said she was disappointed that somebody recently described the restructuring plan to her as Chapter 11 "lite". This somehow suggested it was not as good as Chapter 11, she said, but "it's much better, in many ways".

In addition to allowing cross-class cramdown for the first time, the plan, which sits under a new part 26A of the Companies Act below the scheme of arrangement, only demands approval from a majority of creditors in value and does away with the parallel numerosity requirement. Unlike a scheme, it mandates that companies proposing a plan must be experiencing or about to experience financial difficulty. It also permits courts to sanction the transfer of an undertaking without having to file an administration, which some practitioners described as "fascinating".

Speaking to GRR on the first day the Virgin Atlantic plan went before a court, Galazoula said restructuring plans were "very much" what Ashurst's clients in the restructuring market were focusing on, either as a default plan, or as a back-

up plan if they cannot get the consenting creditor majorities to work for a scheme of arrangement. “In terms of how it positions your lenders on their holdout leverage, it has moved the goalposts quite significantly,” she said.

On the lack of guidance as to whether absolute or relative priority rules, or even neither apply to plans, Marshall recalled **Mr Justice Snowden** had recently likened the absence of such guidance in the CIG Act to a child being given a toy for Christmas and then finding out there are no instructions in the box. But Marshall was nevertheless confident the English judiciary would prevent creditors from pursuing plans that give all the value to shareholders or junior creditors at the expense of senior creditors. Like for a scheme of arrangement, the English courts have a general discretion to sanction plans on fairness grounds, she said, and they might also take into account US jurisprudence, where the absolute priority rule is an established norm. “So it may well be that the priority rule finds its way in through the back door.”

Matthew Czyzyk, a partner at Ropes & Gray in London, shared Marshall’s confidence in the courts. “It’s really in everybody’s interest to make this work, certainly in the early stages,” he said. “It’s a new piece of legislation, we are in very difficult times politically and economically and the legislation is meant to bolster UK rescue culture. So I think the judges will take a sensible and pragmatic approach.”

Other practitioners were more cautious, however. Morris at Morrison & Foerster said that in comparison with the Chapter 11 process, the restructuring plan leaves courts “without all the infrastructure and plumbing of protections and safeguards before depriving dissenters from contractually bargained-for rights”.

Overseas plans

The plan is open to foreign companies to use, in the same way many have used English schemes in the past by establishing a sufficient connection to the jurisdiction – but practitioners noted the difficulties that might arise for these as-yet untested plans in the realm of foreign recognition.

Galazoula said there was a well-trodden path of expert opinions that schemes are capable of being recognised in particular jurisdictions. But with restructuring

plans, she could envisage a situation where foreign experts in certain jurisdictions might struggle a bit more over whether a plan is a pre-insolvency process, or a pure Companies Act process.

Recognition in the EU after Brexit is a big concern, argued Ropes & Gray's Czyzyk. "Come 31 December, Brexit is just going to add another layer of uncertainty, and if you have jurisdictions like the Netherlands putting new processes in place, it will be interesting to see where that leaves the UK."

In Europe, the Netherlands is the only other jurisdiction expected to offer cross-class cramdown within proposed amendments to its restructuring framework, with its much-anticipated WHOA or Dutch scheme. The Dutch scheme was expected to come into force in July, but it didn't happen: now it's expected in October. Much like the restructuring plan, the WHOA borrows a lot from Chapter 11. It also introduces a two-thirds voting approval threshold for creditors and is open to certain international companies. Czyzyk said he'd spoken to colleagues in Germany whose clients were already finding the prospect of hopping over the border to the Netherlands and using the Dutch scheme more appealing than going to London to use a scheme or restructuring plan.

On the positive side, he agreed with a theory previously raised by Allen & Overy's Marshall, that the restructuring plan might actually be easier to recognise internationally than an English scheme on the grounds that it looks more like an insolvency process than a Companies Act process, since users have to be experiencing some financial difficulties to make use of it.

Moratorium, meh

The CIG Act established a free-standing, 20-day moratorium that can be extended to 40 days, then up to a year with creditor and court approval. It can be used with any or no restructuring process, from a CVA to a new restructuring plan. With the moratorium comes a new role for licensed insolvency practitioners as plan monitors, who will report on a company's financial health and prospects for rescue before a moratorium is granted, and dismiss the moratorium if they think rescue is unlikely.

But the reception for the moratorium at the top end of the restructuring market has been a muted one. Companies with capital market arrangements are exempted from it, which means it is out of the reach of all entities that issue bonds.

“Given the conditions that attach to it, its not really a silver bullet,” Galazoula said. While she thinks there will be take-up of the moratorium in the middle and lower end of the restructuring market, it probably won’t, in its current form, feature particularly highly in conversations with sophisticated, complex capital structure companies.

When asked if it should be broadened to include secured creditors and financial debt, Galazoula said she thinks it “would run the risk of making debt more expensive”.

According to Galazoula, trade creditors, who are the targets of the moratorium payment holiday, are already trying to find ways to protect themselves. “We’re fielding quite a lot of questions from commercial counterparties on how they ought to change their commercial terms to protect themselves a bit more against the risk of their counterparty going into a moratorium process, and also as part of the *ipso facto* regime, being obliged to continue to supply,” Galazoula said. “Imagine if you extrapolate this reaction in the financial world in the current circumstances.”

Sarah Coucher, a senior finance and restructuring partner at Norton Rose Fulbright in London, pointed out another weakness in the moratorium in that it doesn’t provide a payment holiday on rent payments for closed properties falling due in the moratorium period. As a result, retailers and restaurant chains are required to continue paying out on lease costs for closed properties, whereas in a trading administration, they are only expected to pay rent on the leases they are using. “We thought that might change in the debate in the House of Lords,” Coucher said of the rent provisions, “but it’s still in it”. Failure to include rents in the payment holiday makes the process less useful for businesses that are coming out of covid-19 lockdowns, she explained.

Separately, Coucher said there was a lack of clarity on the monitor’s duties and what insolvency practitioners holding the position might be liable for. She noted

that Norton Rose Fulbright organised a webinar for its UK lawyers to speak to Canadian colleagues about how the Canadian monitorship works in Companies Creditors Arrangement Act (CCAA) proceedings – but the conclusion was that a monitor in Canada often has a very different role to a monitor in the new moratorium procedure in the UK. The CCAA process is very court-heavy, like a Chapter 11, and a judge sets out the monitor's role and his or her liabilities in a court order made early in the process. The moratorium in the UK will commence in most cases without a court hearing, so there won't be the same opportunities for clarity from the initial court hearings. Guidance will have to come from elsewhere.

Alison Goldthorp, another senior insolvency and restructuring partner at Norton Rose Fulbright, who was in a committee from the professional organisation R3 that liaised with the government on the bill, said the UK Insolvency Service hadcommented that the duties of themonitorwere intentionally not prescribed so that the role is flexible.

Goldthorp said what was clear is that the monitor has to be well-prepared: first they have to understand the business of the debtor's company, and the plan for its rescue, and form a view on whether it is likely to be saved. Then they have to work out what payments will need to be paid during the initial 20 days moratorium period by identifying those falling due where there is no payment holiday. They also need to understand the position of financial creditors and their rights to accelerate payments under any loan facilities. "It's not something you can take on in an afternoon," she warned. But she said a number of insolvency practitioners had reached out to her team and asked questions about what they should do to prepare to take on the role, so there is definitely interest.

"It is for companies with a good business and a board of directors that the creditors have confidence in. It's not for companies where the business doesn't really work and has too much debt, where the directors need to look for a buyer for the assets – those companies should still go into administration," Goldthorp said. "I think it should be very useful to a company with a good business that's just been hit by covid and has had 18 weeks with no cash coming in during lockdown. There are a lot of companies in that position at the moment."

Practitioners are also divided on whether the moratorium is too short. Czyzykpointed that 20 days is a “challenging” deadline to get a restructuring over the line. “Getting a scheme done takes six to eight weeks, a plan will be similar in terms of timeline, and that doesn’t take into account the preparation that is required in advance of launching the process. Even negotiating a lock-up and getting consent from creditors can run for weeks,” he said. Moreover, to extend those 20 days to 40, the debtor has to pay off any debts that accrued during the initial moratorium period. “If a company is already in a position where it needs to have a moratorium, is it going to have enough free cash to pay off those debts and get another 20 business days,” he asked?

Others think the period may be sufficient. Goldthorp said the traditionally very creditor-led UK insolvency regime was seeking to achieve a new balance of interests for debtors and creditors. Traditionally, the lender with a qualifying floating charge has always been given notice in the UK when a company intends to go into administration, so the fact qualifying floating charge creditors do not have to be notified about moratoriums is a big departure – even if they are practically speaking, unaffected by them, since they retain the right to accelerate loans and will be paid any amounts falling due in the moratorium. “It’s always been a balance between getting creditors to stand still while a restructuring has time to progress, and it being fair to do so, so it is important that directors cannot take advantage of the moratorium as a reason to defer payments were there is no real prospect of,” she noted. “The government is obviously trying to draw a line between the lenders and other unsecured creditors where there will be a payment holiday during the moratorium, in order to encourage lenders to continue to lend and give the company time to pursue a rescue.”

Moratorium fixes

The moratorium received several amendments in the House of Lords, including one to correct the accidental inclusion of unsecured bonds in its payment holiday, and the removal of provisions that would have granted super-priority status to accelerated debts in any insolvency or restructuring process that ensued within 12 weeks of a moratorium.

Marshall explains the inclusion of unsecured bonds in the moratorium payment holiday was an accident – a result of pinching the definition of a "capital market arrangement" from other legislation on appointment of administrative receivers, which only included secured or guaranteed bonds. She said the initial omission was "really worrying" and clearly not what was intended by the CIG Act. "It suddenly meant we would have to start putting into prospectuses or offerings circulars for the issuance of English law governed bonds risk factors that in the circumstances that the bond issuer entered insolvency proceedings, it wouldn't be possible for the bond trustee to accelerate the notes," she explained. "And furthermore, if the issuer went into a moratorium it wouldn't be obliged to continue paying its bond debts, even though it was obligated to pay its bank debts." Luckily the fix was easy – a new exclusion for a capital markets "investment" defined as traded or listed bonds.

The question of super-priority for accelerated debts in any future insolvency was not quite as straightforward. "I was alerted by the Treasury than an amendment had been tabled to get rid of acceleration altogether. Of course, we didn't really have time to react." Marshall said. "They were the most tense couple of hours of the past few of months." Had the amendment been passed, it could have jeopardised the entire netting industry and had disastrous consequences for banks, requiring them to start holding capital on a gross rather than net basis and costing billions of pounds, she explained to GRR. "We understood what was driving it, but it was just using a massive sledgehammer to crack a nut. And it could have had really bad, unintended consequences. I was really glad that got rejected."

The CLLS, under Marshall's direction, suggested the fix that was eventually approved, preventing accelerated debts from getting super-priority in a subsequent insolvency. She said the drafting of the amendment could have been better, had there been more time, because it has left open some problems: for example, does it count as an acceleration if a revolving credit facility (RCF) rolls during a moratorium period?

Czyzyk says the question of RCF payments falling due during a moratorium appears to have created a loophole, because if those RCF debts are not paid, they may end up getting super-priority over term loans in a subsequent administration or liquidation, or they may be protected from compromise in a

restructuring plan, scheme or CVA, where the relevant process commences within 12 weeks of the end of the moratorium. “Some people have been saying that gives a big advantage to having an RCF as opposed to a term loan,” he explained.

“I expect there will be effort put into gaming this new priority waterfall,” Morris noted. “The potential effect on the option of post-moratorium accelerated M&A and pre-packs may be considerable.”

“We do a lot of work for banks and knowing at the start that you may have leverage as a lender if the loan is an RCF falling due in the moratorium, as opposed to a term loan, could help in negotiations on the restructure. The discrepancy needs to be ironed out,” added Goldthorpe. The safest route for a debtor to avoid acceleration of term loan facilities and debts falling due under a RCF with potential super-priority issues in a subsequent insolvency, is to agree a separate standstill with secured creditors at the outset, she said.

Even with the adjustments to the moratorium, Stephenson said, she and other partners at Kirkland continued to be concerned that the protections offered to financial creditors mean the moratorium will be little-used in practice, unless there is a parallel standstill arrangement in place.

Ipso facto

New, permanent restrictions on *ipso facto* rules in the CIG Act will force contractual counterparties to continue supplying debtors through insolvency processes in the UK for the first time. Administrators will no longer have to ask suppliers nicely to continue to supply, then engage in horse-trade negotiations for what those suppliers might get in return.

Goldthorp called the *ipso facto* restrictions a “dramatic” change. “Normally under English law there is freedom of contract for suppliers and counterparties to agree the terms under which they want to deal. So to actually force suppliers to continue to supply when they have a right to terminate the contract is a big step.”

She added that lots of Norton Rose Fulbright's clients had already been asking about the new *ipso facto* provisions to find out what is included and what isn't, because it's not absolutely clear. Some financial services-related commodities contracts are excluded from the new restrictions, for example, but there is no definition in the law to clarify exactly what is meant by "commodity". "The whole idea about forcing suppliers to supply is a very new thing that a lot of people will have to get their head around and work out how that will work in practice," she said.

Goldthorp predicted many outsourcing companies will be forced to continue to supply under the new provisions – particularly those who provide staff and business services. Some of them might seek to be excluded from supply on hardship grounds.

She also said the new *ipso facto* rules might see trading administrations make a comeback. "We stopped having trading administrations, largely because there are more pre-pack sales as there isn't funding for trading administrations. But in certain businesses where you get better value if the suppliers continue to supply, you may get more trading administrations where the suppliers continue to support the business and then there's a better outcome for creditors after a period of trading."

Airline creditors

The House of Commons' chief amendment to the bill specifically concerned airline creditors who are already protected by the Cape Town Convention, an international treaty that sets standards on transactions for airline-related assets. In its first incarnation, the bill enhanced already strong protections under the Convention permitting creditors to enforce security if an airline defaults on payments or enters insolvency. Paul Scully MP, parliamentary undersecretary for BEIS, said in the commons that parliament's aim had been to reduce lending costs for airlines, but the practical effect of the additional safeguards would have been to prevent distressed air carriers from restructuring through a scheme or plan without unanimous creditor consent.

"I don't know what Virgin would have done if those amendments hadn't been made," Marshall said, adding that trying to get Cape Town creditors to consent

to a restructuring plan while the protections were in place would have felt “like trying to negotiate the deal with one arm tied behind your back”.

Pensions

A lot of the House of Lords’ debating time was given to pensions stakeholders and there were multiple amendments suggested that didn’t make it through, including that restructuring plans should only be used to improve the position of pension schemes, and an amendment to give pension debts priority. Both of those changes were rejected. Pensions stakeholders were also denied the right to veto a moratorium or restructuring plan.

Marshall said the pension amendments that did get through, allowing pensions stakeholders to be actively involved in moratoriums and plans, were “very, very sensible”. Though she said it didn’t seem right that the only pension debt carved out of the moratorium payment holiday is contributions to occupational pensions schemes. Payments to personal pensions plans and arrears were not included.

“I’ve heard people in the pensions industry say: well, why is it that you are paying your accrued bank debt, but you’re not paying your accrued unpaid contributions to your pension scheme? And I do have some sympathy with that. Obviously you need to draw the line somewhere… But I do feel slightly twitchy about the idea that deferred contributions to a pensions scheme will not be paid during the moratorium,” she said.

The legislation leaves it open for the UK Secretary of State to change which debts are excluded from the moratorium payment holiday, so Marshall predicted there could be some amendments relating to pensions debts in the near future.

Pre-packs

We are weeks into September now and there is no sign yet of the pre-pack review that Lord Callanan promised this summer. But Goldthorp said that the comments in the House of Lords debate indicated it is definitely coming and it is going to focus on pre-pack sales to connected and the voluntary use of the Pre-pack Pool.

The Pool is an independent body made up of members of professional accounting, insolvency and restructuring organisations that was established in 2015 to offer opinions on the "reasonableness" of pre-packed administrations. Famously underused, its chair even wrote to the BEIS in May noting that it was in danger of being disbanded for lack of consultation. But it seems its use might be on the up: the Pool was consulted in the pre-pack sale of camping retailer Go Outdoors in June, which was **completed as the House of Lords debated the bill**.

Galazoula noted that, at the top end of the market, insolvency practitioners have generally insisted on referring connected pre-packs to the pool, despite referral being voluntary. "I've done a few [connected pre-packs] over the last couple of years and we've always gone to the pool," she said. "Administrators would not take an appointment in a connected pre-pack unless we went to the pool."

Stephenson said the revival of the reserve power to regulate pre-pack sales to connected parties fixes what partners at Kirkland & Ellis had considered "a surprising omission" in the original draft bill, given that a sunset clause with the same powers for government expired this May.

"Of course, it remains to be seen whether and how pre-pack sales will be reformed substantively via that power by June 2021," she added.

What's next?

The government has not closed the door permanently on debtor-in-possession (DIP) financing. Galazoula said it just accepted it was not easy to reconcile these with other aspects of English law and was probably too big and too complex of an endeavour to introduce at this stage, with the time constraints the bill was under.

Czyzyk also suggested DIP financing provisions may be coming down the line when asked what could be next. If a debtor is contemplating senior financing as part of a restructuring plan, it will get there even without specific legislation, he explained, but it will only be available at the end of the process following court sanction. In a Chapter 11, the standalone DIP financing provisions allow the debtor to get that finance with super-priority in place on the first day, and it is

then available for the duration of the entire restructuring, which “helps to steady the ship”.

Future DIP provisions aside, Czyzyk said the real elephant in the room for the coming months was Brexit and its impact on the market against increased competition from the EU. The European preventive frameworks directive will try to raise the minimum standards across European restructuring regimes and countries like Spain, which started early with its homologation tool, want a bigger slice of the pie. They could well get it, too, Czyzyk said. At first, when the new homologation law came out, international investors were cautious, but a few years down the line, homologation has been tried and tested and investors are much more comfortable. In the not-too-distant future, the Dutch WHOA will also come into play. “That’s going to come at quite an interesting time because, come October we are heading into a second wave [of the covid-19 pandemic]. We’re going to see some government support measures like the furlough scheme and government-backed credit lines tapering off across Europe, and we’ve got Brexit just around the corner. So I think we’re going to have quite a tumultuous market,” he said. “If the Dutch parliament steps up and the Dutch scheme comes into force, that could be quite timely.”

Goldthorp noted the number of Henry VIII provisions that the CIG Act includes: named after the infamously autocratic 16th century British monarch, Henry VIII provisions give the UK Secretary of State powers to amend legislation and introduce additional regulations without further parliamentary scrutiny. She said Henry VIII powers are usually thought to be a bad thing, but in this case they are helpful because the CIG Act came into force so quickly, so having the power to improve or amend parts of the legislation that do not work as intended is useful in the context.

Like Marshall, Goldthorp predicted the Henry VIII the powers might be used to make debt-issuing companies eligible for a moratorium, and to re-think what kinds of debts the payment holiday applies to.

Beware the Finance Bill 2020

While the CIG bill was moving through parliament, another bill with less well-received, far-reaching impacts on the UK’s restructuring and insolvency sphere

was also being vetted by MPs and quietly received royal asset on 27 July. The Finance Act 2020 elevates the UK tax authority, HMRC, to secondary preferential status in insolvencies from 1 December. It comes 18 years after the UK scrapped crown preference in the insolvency waterfall in line with international trends.

In her CLLS capacity and also as then-president of the Insolvency Lawyers' Association, Marshall lobbied the government not to make the change and increase the cost of borrowing. HMRC's response was that if it was a priority creditor in insolvencies, it would be less likely to push debtors into insolvency in the first place. But Marshall said she didn't buy that. "When you look at their approach, particularly at the smaller end of the market, they are often the ones petitioning for a winding up or putting a company into a CVA," she said. Though the tax authority has been selling the policy as taking money out of banks' pockets and giving it to taxpayers, Marshall said that's not right: it will ultimately be supply chains and ordinary unsecured creditors who will suffer.

Nevertheless, she said HMRC decided it was "a policy thing", so the UK will just have to wait to see what impact it has on the cost of borrowing and recoveries to unsecured creditors.

1970s to today

Despite the teething problems and omissions, all of the practitioners GRR spoke to praised the fast-tracking of the bill, in unparalleled circumstances. MoFo's Morris, who made the quip about bringing the regime up-to-date with the US in the 1970s, said the UK had taken some big steps in the direction of Chapter 11 – and in the world's general direction of travel for restructuring legislation.

Morris emphasised he had "enormous respect" for the authors of the Act and the work they did to produce a reform so quickly. "It's a privilege to be in the arena of dramatic reform and I have confidence that our judiciary and profession have the intellectual power and vision to make this work," he told GRR.

"Drafting this kind of legislation, of this complexity and size, usually takes six to nine months, and it took a few weeks," Goldthorp echoed of the bill. "And it

came about in the most extraordinary of circumstances… one should not lose sight of that fact."

First published on the *Global Restructuring Review* website, 11 September 2020.