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My Lords,

I was unable to respond with the detail I would have wished to during proceedings yesterday on Group 9 of amendments. After considering your amendments, below is the note I had prepared. I expect we will continue this conversation at Report Stage of this Bill.

I thank the noble Lords, Lord Vaux, Lord Lennie, Lord Hendry, Lord Hain, Lord Monks, and the noble Baroness, Lady Bryan for all their individual amendments in Group 9. I appreciate the purpose of the amendments tabled and recognise the issues they attempt to address.

In very broad terms, these amendments would amend the Bill in a number of significant ways. A number of themes emerge from this group and I will attempt to put them into some sort of ordered structure.

Amendments 107 to 111 and 114 to 117 all seek to place additional conditions on using the new restructuring plan procedure introduced by this Bill. In broad terms they would require a company in financial difficulties to address certain specified issues within a restructuring plan, in order to make use Part 26A to deal with its financial concerns.

The various conditions that would be imposed collectively by this group of amendments would mean any company using a restructuring plan would have to already, or as part of the terms of the restructuring plan: pay all employee-related tax and pension debt in full; pay any outstanding amounts owed to employees; have rectified breaches of equalities legislation; have certain levels of employee-elected directors on the company board; have collective agreements in place with employees; and undertake to the court not to pay dividends, buy back shares or pay directors more than 10 times the rate of the lowest-paid full-time employee for a period of three years.

The Government agrees with much of the sentiment behind some of these amendments. Ensuring compliance with equalities law, protecting employees, and paying money to HMRC to fund valuable public services are all very important as I think we can all agree. That said, I would remind the House that this Bill deals with financial distress and insolvency and puts in place measures to help companies that cannot pay all their debts.

The inescapable fact of insolvency is that there is not enough money to pay everyone. The main purposes of restructuring and insolvency law are to, where possible, facilitate the rescue of struggling companies that can still achieve successful futures, and, where that is not possible, to deal efficiently with the process of selling assets and distributing the proceeds to creditors in accordance with rules that have been established to be both fair and to promote lending and encourage growth. Finding the right balance between competing interests is key to having a regime that contributes to economic growth.

The restructuring plan is a rescue tool. If we say to a company, you cannot use this tool because you breached your equality duties, or because you have not paid all amounts owed to HMRC, we deny that company the best chance of securing its long-term future, thereby saving the jobs of its employees and allowing it to contribute to future economic growth. I am sure this is not the intention of these amendments but I do think that would be their effect.

Amendments 112, 113 and 119 attempt to insulate employees and enhance the status of unsecured creditors and the company pension scheme where one exists. Again, I agree these amendments are driven by worthy intentions, but their effect would be to undermine rescue, thereby putting the company's future at risk. This may lead to employees losing their jobs and the company pension scheme being wound up or taken into the Pension Protection Fund.

Balance is fundamental to dealing with financial distress and insolvency. If we were to say unsecured creditors could have 30 per cent of assets in all restructuring plans, this would affect the existing balance and order of priority in insolvency. The impact on other creditors would be detrimental and this would, in all likelihood, make rescue impossible. Without sufficient room to negotiate with other creditors, companies will struggle to gain the support they need to approve restructuring plans.

On amendments 120, 121 and 122, I see the purpose is to lower the threshold for creditor approval within each class in the restructuring plan voting process. Once again, we come back to balance. The question is: what is the right level of support required from creditors before a restructuring plan can be approved by the court?

When the Government consulted on the restructuring plan measure in 2016, there was a great deal of support for a voting threshold of 75%. 75% is familiar in restructuring terms as it is the threshold required in both the scheme of arrangement and company voluntary arrangement; procedures that already exist and are well-used. No respondent argued in favour of a different threshold during the consultation and there has been no significant support for changing this threshold since.

Amendment 58 aims to commit the Government to conduct a review of trade union involvement in company restructuring arrangements by the end of this year, I would say that the focus in this Bill is to put in place, as soon as possible, the restructuring measures that are desperately needed now to deal with the economic impact of the COVID-19 pandemic.

We do not want to give the impression the permanent restructuring measures will be subject to major changes in the near future, as this will create significant uncertainty for companies who may need to restructure in the short and medium term.

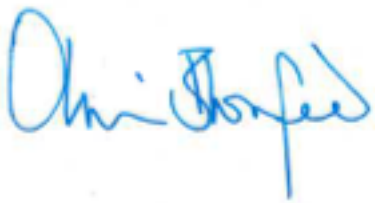
Finally, amendments 51 and 54 attempt to introduce a permanent exemption to the termination of supply contract provisions, and amend the criteria to qualify as a "small company".

I entirely understand and sympathise with the noble Lords' intentions to assist small suppliers; however, the Government believes that the provisions in section 233B will be ineffective in the long term unless all suppliers of all sizes are subject to it. And so, it is right that, once the COVID19 emergency period ends, all suppliers will be bound (unless otherwise exempted).

Further, there is already flexibility within the conditions to qualify as a small company, in that only two out of three must be met. We judge these to be reasonable conditions, that will ensure newly formed businesses are not prevented from accessing the temporary exclusion.

I hope this will provide comfort to noble Lords that the Government considered their amendments carefully prior to requesting that they be withdrawn yesterday.

I will also place a copy of this letter in the Library.



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