



Department for
Business, Energy
& Industrial Strategy

Lord Callanan
Parliamentary Under-Secretary of State

**Department for Business, Energy &
Industrial Strategy**
1 Victoria Street
London
SW1H 0ET

Lord Hope of Craigshead
House of Lords
Westminster
SW1A 0PW

T +44 (0) 20 7215 5000
E enquiries@beis.gov.uk
W www.gov.uk

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Dear Lord Hope,

I was very grateful for your e mail and I am grateful for this further opportunity to explain why the government did not support your amendment that the directors be required to file a list of all known creditors of the company with the court in order to obtain a moratorium. Unfortunately, there was not adequate time to address and respond to all of the amendments in full during the debate.

I agree that the monitor needs to have contact details for the company's creditors at a very early stage in the moratorium to enable the monitor to comply with their duty to notify creditors of the moratorium. In order that the proposed monitor can make the statements required under section A6 of the Bill that the company is an eligible company and that it is likely that a moratorium would result in the rescue of the company as a going concern, they will need to undertake enquiries into the financial position and prospects of the company. These enquiries will need to be undertaken before the practitioner consents to act as monitor. If the proposed monitor is not able to access sufficient information to make these statements, then they should not agree to take on the appointment.

The extent of the enquiries will depend on the size and complexity of the company, but as a minimum I would expect the proposed monitor to ascertain the assets, liabilities and ongoing financial commitments of the company. It is envisaged that the proposed monitor would, as part of these enquiries, obtain a list of the company's creditors, the amounts owing to them, details of any security held together with their contact details (postal and email addresses). Guidance to this effect will be provided to insolvency practitioners, which was recently published in draft.

In making their enquiries the monitor has to exercise some independent critical judgement. Whilst they may be able to base their conclusions upon information given to them by the directors they will have to evaluate whether the information provided is of a nature they can rely upon, or whether they need to undertake further enquiries, such as an examination of the company's accounting records to ensure they have a list of all creditors.

Where, during the moratorium, the monitor becomes aware of potential additional creditors there are measures in the Bill which enable the monitor to require the directors to provide the monitor with any information they require for the purpose of carrying out their functions as monitor; which could include, further information about creditors. The monitor must

terminate the moratorium where the directors fail to comply with a requirement to provide this information and, as a result, the monitor isn't able to carry out their functions. The monitor will also be required to terminate the moratorium where the extent of any additional creditors means that the rescue of the company as a going concern is no longer likely.

I hope this further information reassures you that including a requirement for the directors to file a list of creditors with the court would not provide any additional protection for creditors, and that creditors' interests are best served by relying on the professionalism and integrity of the monitor to undertake appropriate pre-engagement enquiries.

By way of further reassurance, I can confirm that the Insolvency Service will be monitoring information and feedback from stakeholders and industry on the effectiveness of the measures in the Bill. In the event that issues emerge with identifying creditors that cannot be dealt with by guidance to insolvency practitioners as mentioned above, use could be made of the power in section A6(4) to add to the list of relevant documents in section A6(1).

I would also like to add that I am grateful to the Law Society of England and Wales for their consideration of the Bill. I note their suggestion that your amendment could be made using the power in clause 18 of the Bill. For completeness, I should mention that the power in clause 18 is intended to make changes that are related to coronavirus and have time-limited effect only.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

Lord Callanan