

Government Proposals Could **Compel IT Suppliers to Support** Their Insolvent Customers

The UK government has just proposed a number of amendments to the Enterprise and Regulatory Reform Bill (currently being considered by Parliament) which will impact on IT suppliers if they become law.

Bill Amendments

The amendments give the Secretary of State power to make changes to the Insolvency Act 1986. The net effect of these changes would be that IT suppliers would not be able to include clauses in supply contracts providing that the supply would terminate automatically, or at the supplier's option, if the customer became insolvent. Any such clauses would have no effect, unless the Insolvency Practitioner, working to rescue the customer's business, or a court approved the termination. Similarly, any clauses permitting the supplier to change the terms of supply or require outstanding charges to be satisfied as a condition of continued supply post-insolvency would have no effect. IT suppliers would, however, be able to include a contractual clause making continued supply post-insolvency conditional on the Insolvency Practitioner personally guaranteeing the future payment of their charges.

Rationale

The amendments to the Enterprise and Regulatory Reform Bill are a sign of the difficult economic climate. The rationale is to give Insolvency Practitioners an opportunity to save insolvent but viable businesses. This is almost impossible where IT supplies essential to core business operations are cut because of the insolvency. The amendments to the Bill are also intended to prevent IT suppliers having an unfair advantage over other creditors by preventing the possibility of customers being "held to ransom" (demands that outstanding charges be paid or supplies stopped).

Implications

In respect of pre-insolvency debts, IT suppliers will be in no worse position than now. They will stand as a creditor in the insolvency with other suppliers. Post-insolvency, IT suppliers will be denied the right to terminate. However, this will be mitigated by the availability of personal guarantees for future charges from the Insolvency Practitioner. These personal guarantees will be a key protection for IT suppliers if the Bill becomes law and they would be well advised to ensure that a term to this effect is included in all supply contracts from that time.

The government intends to consult with all interested parties later this year before these amendments become law. We will keep you updated with the outcome of these consultations.

Contact

Andrew J. Wilkinson
T +44 20 7655 1783
andrew.wilkinson@squiresanders.com

Garfield J. Smith
+44 20 7655 1365
garfield.smith@squiresanders.com