

Minimising the risk of corporate insolvency in Mauritius in the wake of COVID-19

May 26, 2020

Like any other country, Mauritius will be heavily impacted economically by COVID-19. The country has been praised for its sharp measures aimed at curbing the spread of the virus on the island and overall, the management of the sanitary crisis has been a success.

The island is now gearing up to face the economic impact of the pandemic. With economic activity on hold for two months, the risk of insolvency has significantly increased for businesses at large. The lockdown is being gradually eased and it is expected that the sanitary curfew prevailing since 23 March 2020 will be lifted on 1 June 2020.

Breaks in supply chain, faltering demand as a result of extended lockdown, the resulting sharp decline in revenue, cash flow issues, failure to comply with loan repayments: all of these factors will likely result in a number of companies facing insolvency or near insolvency situations.

Insolvency: What does inability to pay debts mean?

It might be useful to recall certain fundamentals. It is generally agreed that insolvency equates to a situation where a company is unable to pay its debts as they fall due. While this might indeed be one of the reasons to trigger a procedure for the winding up of a company (vide section 102 (5) (b) of the Insolvency Act 2009), there is more to it.

In the *Yan v Mainzeal Property and Construction Ltd (in rec and in liq) [2014] NZCA 190*, the New Zealand Court of Appeal observed that the test is one solvency not liquidity: a realistic and commercial assessment of the company's "liabilities measured against the resources available to it in order to meet those liabilities when due" needs to be carried out. For that purpose, "...a temporary lack of liquidity may not equate to insolvency if the debtor is able to realise assets or borrow funds within a relatively short time frame in order to meet its liabilities as they fall due."

Minimising the risks of insolvency: Making use of available Schemes

The test set out by the New Zealand Court of Appeal sheds light on the recourse, which might be available to those cash-strapped entities, severely impacted by the drying up of demand resulting directly from economic lockdown imposed by the COVID-19 pandemic. The challenge for these entities seems to be access to short-term financing which will alleviate pressure until such time that normal operations resume.

Access to bridging loans

Companies which are unable to realise assets in the short term may avail themselves of the different financial support mechanisms set up by the Government of Mauritius and the Bank of Mauritius through the State Investment Corporation, Investment Support Program Limited, SME Equity Fund Ltd, and Development Bank of Mauritius Ltd.

Financing with a view to restructuring

Moreover, firms experiencing financial difficulties may have to look into longer-term solutions such as restructuring in order to survive. Typically, one of the pre-conditions for a successful restructuring is the availability of financing and a number of countries are coming up with specific mechanisms that would directly fund endangered businesses to this effect.

The latest announcement by the Bank of Mauritius relating to the setting up of a special purpose vehicle, the Mauritius Investment Corporation Ltd, goes in this direction. Distressed entities may well seek to look into this new scheme, which aims at providing “*support through a range of equity/quasi-equity instruments in view of ensuring that domestic systemic economic operators are kept afloat during these challenging times and that jobs are preserved.*”

Minimising the risks of insolvency: Amendments to the Insolvency Act 2009

Mauritius has recently enacted the COVID-19 (Miscellaneous Provisions) Act (“Act”) which amends 56 enactments to cater for the impact the sanitary crisis, mitigate hardship, and facilitate recovery following the pandemic.

The COVID-19 Period

The Act first of all provides, by way of an amendment to the Interpretation and General Clauses Act, for a definition of “COVID-19 period” as the period starting 23 March 2020 (the date of coming into effect of lockdown measures in Mauritius) and ending on 01 June 2020 or on such later date as the Prime Minister may prescribe by way of regulations made under the Act.

Providing additional protection to distressed businesses

Section 27 of the Act amends the Insolvency Act, and provides for the following changes in legislation, with a view to providing accrued protection to individuals and business enterprises that find themselves in financial difficulty as a result of the pandemic and the lockdown measures that resulted:

- i. the threshold for the Commercial Court to make Bankruptcy Order against a debtor is raised from Rs. 50,000 to Rs.100,000;
- ii. the threshold for a Statutory Demand to be served against a company under section 180 of the Insolvency Act is increased from Rs. 100,000 to Rs. 250,000;
- iii. where a statutory demand is served on a company, the delay for the company to act in accordance with the statutory demand is extended from one month to two months.
- iv. The delay for an application to set aside a statutory demand is extended from 14 days to 28 days
- v. a resolution for the winding up generally or for the more specific voluntary winding up of a company (with the exception of a company holding a Global Business Licence), passed during the COVID-19 period or during a period of three months after expiry of the COVID-19 period, is deemed to be void.
- vi. the appointment of any Receiver or Receiver Manager during the COVID-19 period is void and of no effect.
- vii. section 142 of the Insolvency Act in relation to duty to hold a creditors’ meeting and setting out the procedure thereof is made inapplicable during the COVID-19 period or during a period not exceeding 3 months after the COVID-19 period lapses.

viii. the delay to hold a first meeting of creditors in relation to an administration is extended from 10 to 30 days.

Minimising the risks of insolvency: Some other measures recommended by the World Bank

In a document dated 13 April 2020, entitled “**COVID-19 Outbreak: Implications on Corporate and Individual Insolvency**”, the World Bank recommended the following:

- i. the outright suspension of a director’s duty to file for insolvency when the company is in a situation of inability to pay its debts and the associated personal liability for a limited period. This is embodied in the COVID-19 (Miscellaneous Provisions Act) by an amendment to section 162 of the Companies Act, for the duration of COVID-19 period or such other period as the Registrar of Companies may deem necessary.
- ii. The setting up of informal workout frameworks setting out the core obligations for informal debt negotiations with financial institutions, such as a standstill agreement preventing debt enforcement during such negotiations.
- iii. Encouraging e-filings, virtual court hearings and out-of-court solutions in insolvency cases.

The above recommendations by the World Bank would complement the already highly responsive measures adopted by the Government of Mauritius and the Bank of Mauritius in their attempt to provide decisive assistance to help businesses remain afloat in the aftermath of the pandemic.

Note: The above is merely to give an insight on the legal issues highlighted herein and should not to be construed as being comprehensive nor being tantamount to legal advice. Our team will be pleased to advise you in relation to any issues raised in this article should you have any specific queries.

Your Key Contacts



Nilen Vencadasmy

Counsel, Port Louis

D +230 2083363

nilen.vencadasmy@dentons.com