

Exploring The Future of Micro, Small, And Medium Enterprises Insolvency in the UK: Evaluating Rescue Tools and Strategies

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Abstract

This article investigates the challenges faced by micro, small and medium enterprises (MSMEs) in the United Kingdom in navigating insolvency procedures. This is an important topic given the critical role that MSMEs play in the economy, contributing significantly to employment and innovation. This research highlights the complexities and costs associated with current insolvency frameworks that often deter timely assistance, exacerbating financial distress. Through a comprehensive analysis of existing rescue mechanisms, the study identifies gaps in the current system and proposes a streamlined out-of-court insolvency framework tailored specifically for MSMEs. Key recommendations include the simplification of documentation process using templated forms, the reduction of legal complexities, and the enhancement of financial literacy among entrepreneurs. The article advocates for the development of user-friendly online platforms that provide step-by-step guidance and real-time assistance, empowering business owners to engage proactively with the insolvency process. By fostering a supportive environment for early intervention and restructuring, this research aspires to contribute to the ongoing discourse on insolvency law reform, ultimately enhancing the resilience of MSMEs and promoting overall economic stability in the UK. The findings underscore the necessity of balancing simplification with adequate protection for creditors ensuring a robust insolvency regime that supports the unique needs of MSMEs while safeguarding the integrity of the financial system.

Key words MSMEs insolvency; corporate rescue; insolvency reform; out-of-court restructuring; financial literacy

Introduction

In the United Kingdom (UK), micro, small and medium enterprises (MSMEs)¹ are the backbone of the economy, driving innovation, creating jobs, and contributing significantly to economic growth.² However, these enterprises are often vulnerable to financial difficulties that can lead to insolvency.³ While various insolvency rescue tools exist to assist MSMEs in financial distress, they often lack a tailored focus on the unique challenges and needs of MSMEs⁴, resulting in inadequate support for these vital contributors to the economy during critical periods of financial instability.⁵

Tracing the evolution of corporate rescue insolvency measures in the UK, it has been marked by significant legislative reforms aimed at improving the framework for corporate rescue and restructuring.⁶ Beginning with the Cork Report in 1982, which underscored the need for reform in insolvency practices,⁷ the Insolvency Act 1986 introduced key mechanisms such as administration,⁸ and company voluntary arrangements (CVA),⁹ providing MSMEs with essential options for recovery.¹⁰ The subsequent Enterprise Act 2002 further refined the insolvency rescue framework by virtually abolishing the secured creditor-focused Administrative Receivership,¹¹ thereby enhancing the prospects for MSMEs rescue ensuring more equitable treatment of creditors.¹²

The most significant recent change came with the Corporate Insolvency and Governance Act 2020 (CIGA) frameworks, which sought to address existing gaps in corporate rescue options and to align UK insolvency law with international best practices, including those used under Chapter 11 of the United States of America's Bankruptcy Code, as well as the World Bank Principles for Effective Insolvency and Creditor Debtor Regime,¹³ and the UNCITRAL

¹ The paper will consider only micro and small companies within this, although it is acknowledged that similar issues will arise in relation to insolvency partnerships and LLPs.

² Gary A.S. Cook, Naresh R. Pandit, and David Milman, 'A resource-based analysis of bankruptcy law, MSMEs and corporate recovery' [2011] 30(3) ISBJ, 275-293.

³ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287-315.

⁴ Riz Mokal, Ronald Davis, Alberto Mazzoni, Irit Mevorach, Madam Justice Barbara Romaine, and Janis Sarra, *Micro, Small, and Medium Enterprise Insolvency: A Modular Approach* (OUP: 2018).

⁵ Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edition, CUP: 2017).

⁶ Horst Eidenmüller, *Comparative Corporate Insolvency Law*, (2nd edition, European Corporate Governance Institute - Law Working Paper No 738/2023, 2023).

⁷ David Milman, 'Forty Years of Corporate Insolvency Law' [2023] 15(1) CIL 5-22.

⁸ Cork Report (n11)117, 497 - 498, 120 (509); Insolvency Act 1986, Part II.

⁹ Cork Report (n 11)102-103, 428 - 430; Insolvency Act 1986, Part I.

¹⁰ Rebecca Parry and Stephen Gwaza, 'Is the Balance of Power in UK Insolvencies Shifting?' [2019] 7 NIBLJ 2.

¹¹ Administrative receivership is a process in which a floating charge holder appoints a receiver to manage and realise a company's assets to repay the outstanding debt. The receiver, accountable primarily to the appointing creditor, has broad powers to manage and sell the company's assets. However, administrative receivership is often less suitable for MSMEs due to its high costs, prioritisation of secured creditors over typically more numerous unsecured creditors, disruption to business continuity, limited focus on corporate rescue, and potential reputational damage. Alternative insolvency procedures tend to offer more balanced and supportive approaches for MSMEs.

¹² Sandra Frisby, 'In Search of a Rescue Regime: The Enterprise Act 2002.' [2004] 67(2)MLR, 247-72.

¹³ The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (Report, The World Bank 2016).

Legislative Guide on Insolvency Law.¹⁴ This alignment reflects a broader trend of convergence in international restructuring frameworks, and signifies a recognition of the need for a more robust and flexible approach to insolvency that can adapt to the diverse needs of MSME businesses.¹⁵

Despite these legislative advancements, a supportive environment for MSMEs facing financial difficulties remains elusive.¹⁶ While CIGA was initially seen as a promising step towards introducing MSME-friendly provisions, it has faced significant criticism regarding its costs, the need for expertise, and the time required for proceedings.¹⁷ The complexity of the insolvency process can be particularly daunting for MSME owners who may lack the resources to navigate the legal landscape effectively.¹⁸ Furthermore, the temporary measures introduced during the COVID-19 pandemic, while providing immediate relief, have also led to the emergence of ‘zombie’ companies, businesses that are only able to survive due to government support but are fundamentally unviable in the long term.¹⁹ This situation raises critical questions about the sustainability of such support and the long-term health of the MSME sector.²⁰

The challenges faced by MSMEs in the context of insolvency are multifaceted.²¹ They include limited access to finance, a lack of awareness about available insolvency options, and the stigma associated with insolvency that can deter MSME owners from seeking help until it is too late.²² Additionally, the existing insolvency frameworks often do not account for the unique operational structures and cash flow dynamics of MSMEs, which can differ significantly from larger corporations.²³ This disconnect can result in a mismatch between the needs of MSMEs and the solutions provided by current insolvency laws, further exacerbating their vulnerabilities.²⁴

As the UK economy continues to recover from the impacts of the pandemic, it is crucial to reassess and review the range of procedures²⁵ and the effectiveness of the existing insolvency

¹⁴ UNCITRAL, *Legislative Guide on Insolvency Law, Part Five: Insolvency Law for Micro and Small Enterprises* (United Nations 2021).; Jadesola Tiwalola Faseluka, ‘A Critical Analysis of the Effectiveness of Corporate Rescue in Retail Sector Insolvency Cases’ [2022] PhD-Thesis, The University of Leeds https://etheses.whiterose.ac.uk/31066/1/Faseluka_JT_Law_PhD_2022.pdf accessed on August 5, 2024.

¹⁵ *Ibid.*

¹⁶ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, ‘MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective’ [2023] 10(2) JICL, 189–214.

¹⁷ Julian Harris, ‘Final evaluation report into Corporate Insolvency and Governance Act 2020 identifies concerns’ [2023] 44(4) CL, 120.

¹⁸ n 16.

¹⁹ Paulina Fishman, ‘Insolvency Law to the Rescue - and Zombies Arise’ (2023) 12(3) JCLS 456.

²⁰ *Ibid.*

²¹ Umra Rashid, Mohd Abdullah, Saleh Khatib, Fateh Mohd Khan, Javaid Akhter, ‘Unravelling trends, patterns and intellectual structure of research on bankruptcy in MSMEs: A bibliometric assessment and visualisation’ [2024] 10 HJ 1-19.

²² Alexios Makropoulos, Charlie Weir, and Xin Zhang, ‘An analysis of the determinants of failure processes in UK MSMEs’ [2020] 27(3) JOSBAED 405-426.

²³ Asad Khan, ‘An empirical snapshot of English corporate insolvencies’ [2023] 32(3) INSOL 447-473.

²⁴ *Ibid.*

²⁵ Sarah Paterson, ‘Wither principle in English corporate restructuring law?’, [2021] 36 (5) BJOIBAFL. 322 - 324.

framework in supporting MSMEs.²⁶ The need for a more responsive and accessible insolvency regime that caters specifically to the challenges faced by MSMEs is evident.²⁷ This article will explore these issues, aiming to provide insights into how the insolvency landscape can be improved to better serve the needs of MSMEs. By identifying gaps in the current system and proposing targeted reforms, this article aspires to contribute to a more resilient economy, ensuring that MSMEs can thrive even in the face of adversity. Ultimately, fostering a supportive insolvency environment will not only benefit MSMEs but will also enhance the overall stability and growth of the UK economy.

Using doctrinal analysis this article will investigate the challenges faced by MSMEs in utilising insolvency procedures. The article aims to provide analysis of how effective the current rescue mechanism is in supporting MSMEs during financial distress.

This article will address the following research questions such as, what are the unique challenges faced by MSMEs in the current insolvency rescue framework in the UK? How have legislative reforms impacted corporate rescue measures in relation to MSMEs? And what legal reforms or amendments could improve the effectiveness of the insolvency rescue framework in supporting MSMEs? Reflecting the complexity of available options, the article will briefly assess each in turn, starting with administration and CVA as pre-CIGA rescue tools in Part 2, followed by the Standalone Moratorium, and Restructuring Plan introduced by CIGA in Part 3. Part 4 will focus on the World Bank Principles for Effective Insolvency and Creditor Debtor Regime and the UNCITRAL report that addresses the MSMEs insolvency and provide the recommendation with necessary reforms or amendments to enhance the insolvency framework. Finally, Part 5 will conclude with a summary of findings.

Ultimately, this research aspires to contribute to the ongoing discourse on insolvency law reform by providing evidence-based recommendations that address the unique needs of MSMEs. By identifying gaps in the current system and proposing targeted reforms, this study aims to foster a more resilient and supportive environment for MSMEs, ensuring that they have the necessary tools and resources to navigate financial difficulties effectively.

1. ADMINISTRATION, PRE-PACK ADMINISTRATION AND CVA, A PRE-CIGA RESCUE TOOLS

This section will consider the procedures that are options for MSMEs, noting that administration has traditionally been viewed as the most expensive rescue tool within the insolvency framework, since it involves the appointment of an administrator, who must be a qualified insolvency practitioner, to run the company.²⁸ However, its variant, pre-pack

²⁶ Iris Chiu, Andreas Kokkinis, and Andrea Miglionico, ‘Addressing the challenges of post-pandemic debt management in the consumer and MSME sectors: a proposal for the roles of UK financial regulators’ [2022] 23(4) JBR 439–457.

²⁷ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, ‘MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective’ [2023] 10(2) JICL, 189–214.

²⁸ Paul J. Omar and Jennifer Gant, ‘Corporate Rescue in the United Kingdom: Past, Present and Future Reforms’ [2016] 24 AILJ 40.

administration, has offered hope for MSMEs by being more cost-effective.²⁹ Similarly, the CVA offers a lifeline to struggling MSMEs by allowing them to restructure debt and continue operations, its effectiveness is limited by potential abuse by larger creditors and the risk of damaging long-term business relationships, highlighting the need for careful implementation and oversight.³⁰ Though these rescue tools were seen as the options for MSMEs they could not fully address the aspiration of MSMEs.

Administration

Administration was introduced as a response to the limitations inherent in administrative receivership, which dominated insolvency practices prior to the Enterprise Act 2002, but primarily served the interests of secured creditors.³¹ Under the administrative receivership framework, a secured creditor could appoint a receiver to manage the company's assets, often sidelining the interests of unsecured creditors and the company itself.³² This non-collective approach frequently resulted in the liquidation of viable businesses, leading to job losses and broader economic instability.³³

In contrast, administration aims to provide a collective framework for addressing insolvency, with the primary purpose of rescuing the company as a going concern.³⁴ If that is not feasible, administration seeks to achieve a better outcome for creditors than would be possible through liquidation.³⁵ However, several factors render administration unsuitable for MSMEs.³⁶ These include its complexity, the uncertainty it creates among stakeholders, and the stigma associated with entering the process.³⁷ Nevertheless, the most significant barrier is its high costs.³⁸ MSMEs typically operate on limited budgets, and the financial burden of administration—including fees for administrators and legal advisors—can be prohibitive.³⁹ This substantial expense often outweighs any potential benefits of the process, prompting many MSMEs to seek alternative restructuring options that are more financially manageable, notably the prepack.⁴⁰ Consequently, despite the various challenges posed by administration, it is the high costs that

²⁹ Ibid.

³⁰ Mark Addley and Kim Milward-Oliver, 'CVAs in focus: who is impacted?' [2019] 12(6), CRAI 203-206; Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

³¹ Clifford Chance, 'Administration: lifting the statutory moratorium' [2024] 35(4) PLCM, 76.

³² Kayode Akintola and David Milman, 'The rise, fall and potential for a rebirth of receivership in UK corporate law' [2020] JOLS 20(1), 99–119.

³³ Ibid.

³⁴ Munyaradzi Pride Chanakira, 'A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986' [2022] PhD Thesis, University of Wolverhampton, https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAllowed=y accessed on 15 August, 2024.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' [2023] 32(3) IIR 397-419.

³⁸ Sofia Ellina, 'Administration and CVA in corporate insolvency law: pursuing the optimum Outcome' [2019]30(3) ICCLR, 180-191.

³⁹ Ibid.

⁴⁰ Ibid.

primarily deter MSMEs from pursuing this route for corporate rescue.⁴¹ Nevertheless, prepack administration, a variant of the traditional administration process that gained increased prominence following the Enterprise Act 2002, provides MSMEs with a vital opportunity to continue operations post-insolvency.⁴² By enabling the creation of a new entity free from the liabilities of the insolvent business, Prepack Administration not only facilitates the preservation of jobs and economic value but also offers a potentially more cost-effective solution compared to standard administration procedures which is discussed in next section.⁴³

Whilst administration in its original form is unsuitable for MSMEs, pre-pack administration provides a pathway for business recovery. that the pre-pack can bypass some of the obstacles associated with traditional administration expediting the restructuring process and minimising costs.⁴⁴ However, the process is not without its challenges, particularly regarding issues of transparency and the risk of misuse in connected party transactions. As there are no court hearings and no creditors' meetings resulting few safeguards and much depends on the insolvency practitioner⁴⁵ Continuous regulatory oversight and reforms, such as those introduced by the Administration Regulations 2021, are crucial to ensure that pre-pack administration remains a fair and effective option for distressed businesses, while protecting the interests of all creditors involved.⁴⁶ The Regulation impose the requirements on administrators when disposing of, hiring out, or selling a company's property to connected persons during the first 8 weeks of administration.⁴⁷ However it reflects a commitment to balancing the needs of struggling MSMEs with the rights of creditors, fostering a more equitable insolvency environment.⁴⁸

Although the *DKLL Solicitors*⁴⁹ case is somewhat dated, it marked a significant turning point in the field by establishing judicial support for the use of pre-pack administrations, despite the lack of formal provisions in the Insolvency Act 1986, paving the way for their development as a practical insolvency tool within the existing legal framework.⁵⁰ The court recognised the potential benefits, authorising the sale despite opposition from HMRC, the majority creditor, highlighting the court's discretion in considering the interests of all stakeholders.⁵¹ There are

⁴¹ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL, 189–214.

⁴² Enterprise Act 2002.

⁴³ Bolanle Adebola, 'Transforming Perceptions: The Development of Pre-pack Regulations in England and Wales' [2023] 43(1) OJOLS 150-177.

⁴⁴ n 63.

⁴⁵ Bolanle Adebola, 'Transforming Perceptions: The Development of Pre-pack Regulations in England and Wales' [2023] 43(1) OJLS 150-177.

⁴⁶ Ibid.

⁴⁷ The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021

⁴⁸ Riz Mokal and Alfonso Nocilla, 'Rehabilitating the U.K. Pre-Pack: A Critical Analysis and Proposals for Reform' [2024] 40(2) BAFLR 1-42.

⁴⁹ *DKLL Solicitors v Her Majesty's Revenue and Customs* [2007] EWHC 2067 (Ch).

⁵⁰ Munyaradzi Pride Chanakira, 'A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986' (PhD Thesis, University of Wolverhampton 2020) https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAllowed=y accessed on 15 August, 2024; Peter Walton, 'Pre-packin' in the UK' [2009] 18 IIR 85.

⁵¹ Rebecca Parry, 'Is UK Insolvency Law Failing Struggling Companies?' [2009] 18{2} NLJ 42-52.

potential benefits and challenges of pre-pack administration for MSMEs.⁵² While it offers a means to preserve business value and protect jobs, MSMEs must navigate creditor opposition, perception issues, and resource constraints to achieve a successful outcome.⁵³

Company Voluntary Arrangements

As MSMEs navigate financial distress, the CVA process emerges as a potential lifeline, allowing companies to negotiate with creditors while retaining control over their operations.⁵⁴ It is a relatively simple and inexpensive procedure based on creditor consent, rather than a court order. However, the complexities and requirements of this process can pose significant hurdles, particularly for MSMEs that may lack the necessary resources and expertise.⁵⁵

One of the primary advantages of a CVA is its ability to provide a structured framework for companies to address their financial difficulties.⁵⁶ Existing management can remain in control, although with the involvement of an insolvency practitioner at every stage. By entering a CVA, MSMEs can propose a repayment plan to their creditors, which, if approved, allows them to continue trading while repaying debts over a specified period.⁵⁷ This arrangement not only helps preserve the business but also protects jobs and maintains supplier relationships, which are crucial for the local economy.⁵⁸ The CVA process potentially can encourage early intervention, enabling businesses to tackle financial issues before they escalate into insolvency.⁵⁹ This proactive approach can significantly enhance the likelihood of recovery, allowing MSMEs to emerge from financial distress with a renewed focus on growth and sustainability.⁶⁰

However, the CVA process is not without its challenges.⁶¹ The requirement for the directors proposing the voluntary arrangement to provide the insolvency practitioner, as nominee⁶² of the CVA, with comprehensive documentation, including a statement of the company's affairs, details about creditors, debts, and assets, can be particularly burdensome for MSMEs.⁶³ Many

⁵² Peter Walton, 'Pre-packin' in the UK' [2009] 18 IIR 85.

⁵³ Ibid.

⁵⁴ Peter Walton, Chris Umfreville, and Lézelle Jacobs, 'A snapshot of company voluntary arrangements: Success, failure and proposals for reform' [2020] 29(2) IIR 267-284.

⁵⁵ Gerard McCormack, 'Rescuing small businesses: designing an "efficient" legal regime' [2009] 4 JBL 299-330.

⁵⁶ Susan Morgan, 'Rescuing Companies or their Creditors: Understanding the role of the Company Voluntary Arrangement as a rescue procedure in the UK' [2021] PhD-Thesis, University of Nottingham <https://eprints.nottingham.ac.uk/68494/1/Sue%20Morgan%20Thesis%20FINAL%20with%20corrections%20%28Feb%202022%29.pdf> accessed on 5 August 2024.

⁵⁷ Kathy Stones, 'R3 and Lexis PSL R&I produce standard form COVID-19 CVA proposal and standard conditions' [2021] 14(1) CRAI, 31-32.

⁵⁸ Susan Morgan, 'The invisible success story of the CVA' [2023] 16(4) CRAI, 141-143; Gary Cook, Naresh Pandit, and David Milman, 'A resource-based analysis of bankruptcy law, MSMEs and corporate recovery' [2012] 30(3) ISBJ 275-293

⁵⁹ Mark Addley and Kim Milward-Oliver, 'CVAs in focus: who is impacted?' [2019] 12(6), CRAI 203-206.

⁶⁰ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

⁶¹ Vanessa Finch and David Milman, *Rethinking Rescue*, (2017, CIL) 442-450.

⁶² Insolvency Act, 1986 section 2(3).

⁶³ Peter Walton, Chris Umfreville and Lezelle Jacobs, 'Company Voluntary Arrangements: Evaluating Success and Failure' (R3 May 2018), Executive summary <https://www.icaew.com/->

smaller enterprises may lack the administrative capacity to compile such extensive documentation, which can hinder their ability to present a compelling case for the voluntary arrangement.⁶⁴ The need for detailed financial information can be overwhelming, especially for those without dedicated financial staff, potentially leading to unfavorable outcomes.⁶⁵ This administrative burden can deter MSMEs from pursuing a CVA, even when it may be in their best interest.⁶⁶ Additionally, the reliance on the nominee's expertise introduces another layer of complexity.⁶⁷ While the nominee plays a crucial role in facilitating the CVA process, their qualifications and experience can significantly impact the arrangement's success.⁶⁸ MSMEs must be proactive in ensuring they engage qualified nominees who can navigate the intricacies of the process effectively.⁶⁹

Given the complexities involved in proposing a CVA, there is a clear need for education and support for MSME directors.⁷⁰ Many may not fully understand the implications of a CVA or the requirements for a successful proposal.⁷¹ Providing accessible resources, training, and advisory services can empower MSME directors to make informed decisions and enhance the likelihood of successful CVA proposals.⁷² This educational component is vital, as it equips directors with the knowledge necessary to navigate the intricacies of insolvency law and the CVA process.⁷³

Furthermore, the decision-making process surrounding the CVA can be challenged if perceived as unfair or detrimental to the company's interests.⁷⁴ Material irregularities during this process can also serve as grounds for challenge, further complicating the already delicate nature of the CVA.⁷⁵ It is essential for MSMEs to understand these potential pitfalls and ensure that any modifications to the arrangement do not compromise its viability.⁷⁶ The complexities of

[/media/corporate/files/regulations/insolvency/publications/cvas-evaluating-success-and-failure.ashxa](https://www.icaew.com/-/media/corporate/files/regulations/insolvency/publications/cvas-evaluating-success-and-failure.ashxa) accessed on 5 August 2024.

⁶⁴ Ibid.

⁶⁵ Francesca Burigo, David C Ehmke and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL 189–214.

⁶⁶ n 84.

⁶⁷ Julizaerma Mohamad Khudzari, Norziana Lokman & Sarina Othman, 'Corporate Voluntary Arrangement: A Literature Review' [2021] 24 JOLERI 1-10.

⁶⁸ Ibid.

⁶⁹ Peter Walton, Chris Umfreville and Lezelle Jacobs, 'Company Voluntary Arrangements: Evaluating Success and Failure' (R3 May 2018), Executive summary <https://www.icaew.com/-/media/corporate/files/regulations/insolvency/publications/cvas-evaluating-success-and-failure.ashxa> accessed on 5 August 2024.

⁷⁰ Matt Finnie, John Houghton and Ian Jack, 'Corporate restructuring in the UK: the old or the new?' [2022] 19(4) ICR 190-193; Gerard McCormack, 'Rescuing small businesses: designing an "efficient" legal regime' [2009] 4 JBL 299-330.

⁷¹ Sofia Ellina, 'Administration and CVA in corporate insolvency law: pursuing the optimum Outcome' [2019]30(3) ICCLR, 180-191.

⁷² Chris Umfreville, 'Pre-packaged administrations and company voluntary arrangements: the case for a holistic approach to reform' [2019] 30(11) ICCLR 581-603.

⁷³ Emilie Ghio and Donald Thomson, 'Corporate Insolvency: Why Are Directors Afraid of Help? Preliminary Study on the Stigma Associated with Corporate Insolvency' [2023] 98(2) CKLR 391.

⁷⁴ Insolvency Act 1986 Section 5(3).

⁷⁵ Vanessa Finch and David Milman, *Rethinking Rescue*, (2017, CIL) 442-450.

⁷⁶ Caroline Sumner, 'Company voluntary arrangements: evaluating success and failure' [2018] 11(3) CRAI 111-112.

creditor engagement, including the need to negotiate with multiple stakeholders, can further complicate the process, as differing interests and priorities may lead to conflicts that hinder the approval of the CVA.⁷⁷

Moreover, the role of professional advisors cannot be overstated.⁷⁸ Engaging financial advisors, legal experts, and insolvency practitioners can provide MSMEs with the necessary guidance to navigate the CVA process effectively.⁷⁹ However, there may be financial incapacity of MSMEs to afford that level of engagement.⁸⁰ But these professionals can assist in preparing the required documentation, negotiating with creditors, and ensuring compliance with legal obligations.⁸¹ Their expertise can significantly increase the chances of a successful CVA, allowing MSMEs to focus on their core operations rather than becoming mired in administrative complexities.⁸²

Considering the significant challenges encountered by MSMEs during the CVA process, there is an increasing advocacy for reforms aimed at streamlining the procedure and enhancing its accessibility.⁸³ Proposed reforms may encompass the simplification of documentation requirements, the establishment of clearer guidelines for nominees, and the augmentation of support mechanisms available to MSMEs throughout the CVA process.⁸⁴ Furthermore, it is advisable that the duration of CVAs not exceed three years unless justified by compelling reasons.⁸⁵ The introduction of standardised terms and conditions, particularly for small company CVAs, should be considered, with a stipulation that certain classes of creditors provide comprehensive explanations for any refusal to endorse the CVA.⁸⁶ Increasing awareness of the CVA as a viable solution for financial distress among MSME directors is also imperative.⁸⁷ Many MSME directors may lack knowledge regarding the advantages of a CVA or may harbor misconceptions about its implications, which could result in the underutilization of this critical tool.⁸⁸ Despite being a well-established large company, Monarch Airlines struggled to secure necessary financial backing,⁸⁹ highlighting the limited access to funding

⁷⁷ Mark Addley and Kim Milward-Oliver, 'CVAs in focus: who is impacted?' [2019] 12(6), CRAI 203-206.

⁷⁸ Sofia Ellina, 'Administration and CVA in corporate insolvency law: pursuing the optimum Outcome' [2019] 30(3) ICCLR, 180-191.

⁷⁹ Ibid.

⁸⁰ Peter Walton, Chris Umfreville, and Lézelle Jacobs, 'A snapshot of company voluntary arrangements: Success, failure and proposals for reform' [2020] IIR 1-18.

⁸¹ Dennis Cardinaels, 'Companies' and creditors' distress: how to untie the Gordian knot in the non-controlling unsecured creditors' interests?' [2021] PhD-Thesis, The University of Leeds, https://etheses.whiterose.ac.uk/30066/1/Cardinaels_D_School%20of%20Law_PhD_2021.pdf accessed on August 8, 2024.

⁸² Ibid.

⁸³ Francesca Burigo, David C Ehmke and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in The Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL 189-214.

⁸⁴ Ibid.

⁸⁵ Peter Walton, Chris Umfreville, and Lézelle Jacobs, 'A snapshot of company voluntary arrangements: Success, failure and proposals for reform' [2020] IIR 1-18.

⁸⁶ R3, 'R3 Standard Form COVID-19 CVA Proposal' (R3) <https://www.r3.org.uk/technical-library/england-wales/technical-guidance/r3-standard-form-covid-19-cva-proposal/> accessed [2025].

⁸⁷ Emilie Ghio and Donald Thomson, 'Corporate Insolvency: Why Are Directors Afraid of Help? Preliminary Study on the Stigma Associated with Corporate Insolvency' [2023] 98(2) CKLR 391.

⁸⁸ Catherine Wong, 'Will company voluntary arrangements play a significant role in the UK's corporate rescue culture?' [2017] 38(4) CL 122-123.

⁸⁹ *Re Monarch Airlines Ltd* [2017] EWHC 2444 (Ch).

that many MSMEs encounter during financial distress.⁹⁰ The airline's attempt to implement a CVA was thwarted by insufficient creditor support, illustrating the inherent difficulties in gaining approval from creditors, which can be a substantial barrier for MSMEs.⁹¹

Overall, the exploration of insolvency rescue mechanisms—specifically administration, pre-pack administration, and company voluntary arrangements highlights the intricate challenges MSMEs face during financial distress. While these tools offer potential avenues for restructuring and recovery, their effectiveness is often compromised by significant obstacles. While these rescue mechanisms offer potential recovery pathways, their success depends on effective regulatory frameworks, better access to professional support, and a shift in stakeholder perceptions. Targeted reforms are essential to enhance the viability of these options, enabling MSMEs to overcome financial challenges and achieve sustainable growth.

2. CIGA RESCUE MEASURES AND THEIR APPLICATION TO MSMEs

The Standalone Moratorium and the Restructuring Plan were designed to provide companies that include MSMEs with vital tools to navigate financial difficulties and prevent insolvency.⁹² However, despite their intended benefits, their practical application has revealed several shortcomings that have affected their utilisation by MSMEs.⁹³

Moratorium

CIGA introduced a moratorium aimed at providing a 'breathing space' for companies facing financial distress.⁹⁴ This legislative framework was designed to allow businesses to restructure without the immediate threat of creditor actions.⁹⁵ However, while the moratorium presents potential benefits, its application to MSMEs reveals significant challenges that warrant critical examination.⁹⁶

The moratorium under CIGA offers an initial period of 20 business days, extendable up to a year, during which most creditor actions are paused.⁹⁷ This provision is particularly crucial for MSMEs, which often operate with limited financial reserves and face acute pressures from creditors.⁹⁸ The intent is to provide these enterprises with the necessary time to devise viable

⁹⁰ Francesca Burigo, David C Ehmke and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in The Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL 189–214.

⁹¹ Stephen Parker, 'Thomas Cook's Collapse and Airline Insolvency - Lessons for the UK' [2020] 4(1) IARI 11.

⁹² Emily Saunderson, 'The CIGA moratorium: a lifeline for UK companies?' [2020] 17(5) ICR 342-344.

⁹³ Sarah Paterson, 'Restructuring moratoriums through an information-processing lens' [2023] 23(1) JCLS 37-67.

⁹⁴ Emily Saunderson, 'The CIGA moratorium: a lifeline for UK companies?' [2020] 17(5) ICR 32-344.

⁹⁵ Ibid.

⁹⁶ Paul Sidle, 'The new standalone moratorium introduced under CIGA 2020' [2020] 13(4) CRAI 119-123.

⁹⁷ Chris Norman, Seema Shukla and Lewis Cymbal, 'Corporate Insolvency and Governance Act 2020: a balancing act' [2020] 35(9) BJBAFL 629-632.

⁹⁸ Tim Carter and Helen Martin, 'CIGA Report March 2022: assessing the impact of the new insolvency provisions' [2022] 15(4) CRAI 131-132.

recovery strategies without the looming threat of liquidation.⁹⁹ The involvement of a qualified monitor is intended to ensure oversight and prevent abuse of the system, thereby protecting both the creditors and the integrity of the market.¹⁰⁰ However, the effectiveness of this framework is undermined by several inherent challenges that MSMEs encounter when navigating the moratorium process.¹⁰¹

One of the primary challenges is the requirement for MSMEs to demonstrate a viable plan for continued operation to qualify for the moratorium.¹⁰² This stipulation can be particularly burdensome for smaller enterprises that may lack the resources or expertise to develop comprehensive recovery strategies.¹⁰³ The necessity for extensive documentation, including a notice of intention and statements from directors and a qualified monitor, can deter MSMEs from seeking the moratorium, even when it may be beneficial.¹⁰⁴ The administrative burden associated with these requirements can divert critical resources away from recovery efforts, further complicating the situation for struggling businesses.¹⁰⁵

Moreover, the moratorium does not cover debts arising from financial services contracts, which poses a significant risk for many MSMEs that rely heavily on a single bank for working capital.¹⁰⁶ This limitation can weaken the protective nature of the moratorium, especially when MSMEs face immediate pressure from their primary financial institutions.¹⁰⁷ The reliance on personal guarantees from directors can exacerbate this vulnerability, as it places additional financial strain on individuals who may already be facing significant stress due to the company's financial difficulties.¹⁰⁸

The role of the monitor, while intended to provide oversight, introduces ethical concerns and potential conflicts of interest.¹⁰⁹ The monitor's dual responsibility to safeguard creditor interests while assessing the company's viability can lead to an overly cautious approach, stifling innovative restructuring solutions that MSMEs may need to survive.¹¹⁰ Furthermore, the monitor's reliance on information provided by the company raises questions about the accuracy and completeness of financial data,¹¹¹ particularly in MSMEs where reporting

⁹⁹ Ibid.

¹⁰⁰ Louis Doyle QC, 'Part A1 moratorium monitorship: some practical problems and pitfalls' [2020] 33(4) IJ 107-110.

¹⁰¹ Ibid.

¹⁰² Julian Harris, 'Final evaluation report into Corporate Insolvency and Governance Act 2020 identifies concerns' [2023] 44(4) CLJ 120.

¹⁰³ Ibid.

¹⁰⁴ Emily Saunderson, 'The CIGA Moratorium: A Lifeline for UK Companies?' [2020] 17(5) ICR 32-344.

¹⁰⁵ Ibid.

¹⁰⁶ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287-315.

¹⁰⁷ Ibid.

¹⁰⁸ Angharad James, 'Curtailment of individual rights by statutory moratoria' [2023] 22(2) JCLS 1017-1044.

¹⁰⁹ Francesca Burigo, David C Ehmke and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL 189-214.

¹¹⁰ Ibid.

¹¹¹ Sarah Paterson, 'Restructuring moratoriums through an information-processing lens' [2023] 23(1) JCLS 37-67.

practices may not be as robust as in larger corporations.¹¹² This reliance can result in misinformed decisions that undermine the integrity of the moratorium process.¹¹³

To address these challenges, there is a pressing need for simplification of the moratorium process and additional support mechanisms for MSMEs.¹¹⁴ Recommendations include streamlining the documentation requirements, providing financial assistance for hiring qualified monitors, and offering training for MSME directors to enhance their understanding of the moratorium's provisions.¹¹⁵ Regular reviews and stakeholder engagement could further enhance the effectiveness of the moratorium, ensuring that it supports MSME recovery while protecting creditor interests and overall economic stability.¹¹⁶ Moreover, fostering open communication between MSMEs and their creditors is essential to mitigate the adversarial environment that can arise during the moratorium.¹¹⁷ By maintaining transparency and collaboration, MSMEs can build trust with creditors, which is crucial for navigating financial distress successfully.¹¹⁸

To sum up, while the moratorium established by the CIGA offers essential protections for MSMEs facing financial distress, its application reveals significant challenges that must be addressed. The complexities of the moratorium process, coupled with the ethical concerns surrounding the role of monitors and the limitations on financial services debts, highlight the need for a more supportive and accessible framework. By simplifying the process and providing targeted support, policymakers can enhance the effectiveness of the moratorium, ultimately fostering a more resilient environment for MSMEs to recover and thrive in the face of financial adversity.

Restructuring Plan

The Companies Act 2006, particularly Part 26A, provides a framework for restructuring plans aimed at assisting companies in financial distress.¹¹⁹ Part 26A of the Companies Act 2006 was introduced to facilitate arrangements and reconstructions for companies in financial difficulty¹²⁰ that allows companies to propose a compromise or arrangement with their creditors and members, which, if approved, becomes binding on all parties involved.¹²¹ The

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Francesca Burigo, David C Ehmke and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL 189–214.

¹¹⁵ Ibid.

¹¹⁶ Insolvency Service, *Corporate Insolvency and Governance Act Post Implementation Review* [2023] 23 INSS 1–66.

¹¹⁷ Ibid.

¹¹⁸ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287–315.

¹¹⁹ Companies Act 2006, Part 26A

¹²⁰ Riz Mokal, 'The Difficulties with 'Financial Difficulties': The Threshold Conditions for the New Part 26A Process' [2020] 35(10) 662–664.

¹²¹ Carmen Alonso and Hugo Bowkett, 'Restructuring Tools in the United Kingdom and in Spain' (2021) 2 JOIAR 409–422.

key conditions for approval include the agreement of at least 75% in value of a class of creditors or members present at the meeting.¹²² This provision aims to provide a structured approach to restructuring, offering companies a pathway to recovery while ensuring that the interests of creditors are considered.¹²³

The flexibility inherent in the framework allows for modifications to the restructuring plan, enabling companies to adapt to changing circumstances or creditor feedback.¹²⁴ This adaptability is particularly beneficial for MSMEs, which may need to pivot quickly in response to market dynamics or operational challenges.¹²⁵ A significant feature of the restructuring framework is the concept of cross-class cram down, which allows a restructuring plan to be approved even if not all classes of creditors agree to it, provided certain conditions are met.¹²⁶ This mechanism can be relevant for MSMEs, as it can prevent a minority of dissenting creditors from blocking a viable restructuring plan that could benefit the company.¹²⁷

Despite its strengths, the restructuring framework under Part 26A presents several weaknesses, particularly for MSMEs.¹²⁸ One significant concern is the complexity and resource intensity that the two court hearings to be required during the process.¹²⁹ MSMEs often lack the financial and legal expertise required to navigate the intricacies of the restructuring process, which can deter them from seeking assistance until it is too late.¹³⁰ The costs associated with legal advice, court fees, and administrative burdens can be prohibitive, leading many MSMEs to forgo the restructuring option altogether.¹³¹

Additionally, the requirement for a 75% majority approval¹³² can create challenges for smaller creditors, who may feel marginalised in the decision-making process.¹³³ This dynamic raises concerns about the potential for larger creditors to dominate the proceedings, pushing through plans that favor their interests at the expense of smaller stakeholders.¹³⁴ Such scenarios can lead to disputes and undermine the collaborative spirit that the framework seeks to promote.¹³⁵

¹²² Companies Act 2006, Section 901C.

¹²³ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287-315.

¹²⁴ Paul Sidle, 'Restructuring plans: some practical points on information disclosure and recovery of costs' [2021] 34(4) IJ 86-94.

¹²⁵ Elizabeth Taylor, 'Part 26A restructuring plans - making business rescue more possible' [2024] 47(11) CSR 167-169.

¹²⁶ Clifford Chance, 'Part 26A restructuring plan: cross-class cram-down' [2023] 34(3) PLCM 67.

¹²⁷ Ibid.

¹²⁸ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

¹²⁹ Ibid.

¹³⁰ Marcus Greet, 'Evaluating the Necessity of the Corporate Insolvency and Governance Act 2020: An Evaluation of the Framework and Its Effectiveness Prior to the Act's Passing' (2024) 5 CGR 123-145.

¹³¹ Ibid.

¹³² Eugenio Vaccari, 'The Adler Restructuring Saga: Fair Wind for Dissenting Creditors?' (2024) 8 Journal of Corporate Law 225-240.

¹³³ Gerard McCormack, 'The UK restructuring plan (RP) in an age of uncertainty' [2024] 5 JBL 438-461.

¹³⁴ Julian Harris, 'Final evaluation report into Corporate Insolvency and Governance Act 2020 identifies concerns' [2023] 44(4) CLJ 120.

¹³⁵ Ibid.

The case of Houst Limited, that successfully utilised a restructuring plan, demonstrates the potential of this rescue mechanism as an MSME-friendly solution. Although Houst Limited was considered an MSME in its restructuring¹³⁶, it technically exceeded MSME criteria due to its larger number of employees.¹³⁷ The court proceedings were expedited partly because the preferential creditor, HMRC, did not challenge the cross-class cramdown.¹³⁸ This case demonstrates how an MSME might benefit from the court's flexible approach to restructuring under Part 26A.¹³⁹ However, this might not always be the case.¹⁴⁰ If a secured creditor were to challenge the cramdown, it could prolong the proceedings and increase documentation requirements, thereby raising costs and making the restructuring plan less feasible for MSMEs.¹⁴¹

Overall, while the CIGA measures offer valuable tools for MSME recovery, their application reveals notable challenges that need addressing. Simplifying the moratorium process, providing additional support, and ensuring fairness in restructuring proceedings are crucial for enhancing the effectiveness of these measures. By implementing targeted reforms and fostering a supportive environment, policymakers can improve the chances of MSME recovery and contribute to a more resilient economic landscape. The insights from Houst Ltd.'s experience emphasise the importance of ongoing refinement and adaptation of these frameworks to meet the evolving needs of MSMEs in financial distress.

3. RECOMMENDATIONS FOR STRENGTHENING MSME INSOLVENCY FRAMEWORKS: INSIGHTS FROM THE WORLD BANK AND UNCITRAL

This part addresses pressing issues by presenting a comprehensive set of recommendations designed to enhance the insolvency framework for MSMEs in the UK. Drawing upon the insights and guidelines provided by esteemed organisations such as the World Bank and UNCITRAL, this part will explore the necessity of creating streamlined and accessible insolvency processes tailored specifically for MSMEs. By focusing on the unique challenges faced by these enterprises, we can identify gaps in the current system and propose targeted reforms that not only facilitate easier access to insolvency relief but also foster a supportive

¹³⁶ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MMSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL,189–214 ; Department for Business, Energy and Industrial Strategy, *Corporate Insolvency and Governance Act 2020: Final Evaluation Report* (November 2022) <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020-evaluation-reports/corporate-insolvency-and-governance-act-2020-final-evaluation-report-november-2022> accessed 14 April 2025.

¹³⁷ Companies act 2006, section 465-467.

¹³⁸ Peter Walton and Lézelle Jacobs, *Corporate Insolvency and Governance Act 2020 - Final Evaluation Report* (HMG 2022) <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020-evaluation-reports/corporate-insolvency-and-governance-act-2020-final-evaluation-report-november-2022>. Accessed on August 5, 2024.

¹³⁹ Ibid.

¹⁴⁰ Kunal Gadhvi, 'A cramdown of the UK tax authority through the first MSME restructuring plan: Re Houst Ltd' [2022] 15(5) CRAI 151-153.

¹⁴¹ n 213.

environment for recovery and growth. Through this exploration, this article aims to provide a novel approach that addresses the specific needs of MSMEs, ensuring that they are equipped to navigate financial distress with confidence and support.

Insights from World Bank Principles for Effective Insolvency and Creditor Debtor Regime¹⁴² and UNCITRAL Legislative Guide on Insolvency Law

The World Bank's report on effective insolvency regimes and UNCITRAL legislative guide on insolvency laws part five provides valuable recommendations for creating streamlined and accessible processes for MSMEs.¹⁴³ One of the primary recommendations from these reports is to lower the barriers to access for MSMEs seeking insolvency relief.¹⁴⁴ This can be achieved by simplifying the legal procedures involved in insolvency cases.¹⁴⁵ In the UK, the insolvency procedures such as Administration,¹⁴⁶ Prepack Administration,¹⁴⁷ CVA,¹⁴⁸ and the Restructuring Plan¹⁴⁹ can be complex, costly and time consuming, often deterring MSMEs from pursuing necessary restructuring or liquidation options.¹⁵⁰ To address this, the UK government could introduce a tiered insolvency process specifically designed for MSMEs, which would involve simplified documentation and reduced legal fees.¹⁵¹ Such a framework would encourage early intervention and out-of-court restructuring, allowing businesses to address financial distress before it escalates.¹⁵²

Another key recommendation is to establish a streamlined regime that reduces the complexity, length, and costs associated with ordinary insolvency proceedings.¹⁵³ The World Bank suggests implementing flexible mechanisms that facilitate the rehabilitation of viable MSMEs while ensuring the effective liquidation of non-viable ones.¹⁵⁴ In the UK, this could involve the

¹⁴² The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank Group 2016); UNCITRAL, *Legislative Guide on Insolvency Law* (UN, 2021).

¹⁴³ *Ibid.*

¹⁴⁴ n 216dd; Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

¹⁴⁵ Aurelio Gurrea-Martínez, 'The Rise of Pre-Packs as a Restructuring Tool: Theory, Evidence and Policy' [2023] 24 EBOLR, 93-116.

¹⁴⁶ Munyaradzi Pride Chanakira, 'A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986' [2022] PhD Thesis, University of Wolverhampton, https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAlloved=y accessed on 15 August, 2024.

¹⁴⁷ Riz Mokal and Alfonso Nocilla, 'Rehabilitating the U.K. Pre-Pack: A Critical Analysis and Proposals for Reform' [2024] 40(2) BAFLR 1-42.

¹⁴⁸ Peter Walton, Chris Umfreville and Lezelle Jacobs, 'Company Voluntary Arrangements: Evaluating Success and Failure' (R3 May 2018), Executive summary <https://www.icaew.com/-/media/corporate/files/regulations/insolvency/publications/cvas-evaluating-success-and-failure.ashxa> accessed on 5 August 2024.

¹⁴⁹ Peter Walton and Lézelle Jacobs, *Corporate Insolvency and Governance Act 2020 - Final Evaluation Report* (HMG 2022) <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020-evaluation-reports/corporate-insolvency-and-governance-act-2020-final-evaluation-report-november-2022>. Accessed on August 5, 2024.

¹⁵⁰ *Ibid.*

¹⁵¹ The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank Group 2016).

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

creation of a dedicated MSME insolvency pathway that offers expedited processes for small businesses. For instance, the introduction of a fast-track administration procedure could enable MSMEs to reorganise quickly, minimising disruption to their operations and preserving jobs.

Additionally, enhancing financial literacy among MSME owners is crucial for preventing insolvency.¹⁵⁵ These reports highlight the need for mechanisms that assist MSMEs in recognising early signs of financial distress.¹⁵⁶ In the UK, this could be achieved through the establishment of educational programs and resources aimed at improving financial management skills among small business owners.¹⁵⁷ Collaborations between government agencies, financial institutions, and business support organisations could facilitate workshops and training sessions that equip entrepreneurs with the knowledge to navigate financial challenges effectively.¹⁵⁸

In conclusion, the recommendations outlined in the World Bank's report and UNCITRAL legislative guide provide a comprehensive framework for creating streamlined and accessible insolvency processes for MSMEs. By simplifying legal procedures, establishing dedicated pathways for MSME insolvency, and enhancing financial literacy, the UK can foster a more supportive environment for small businesses. Implementing these solutions will not only aid in the recovery of distressed MSMEs but also contribute to the overall resilience and growth of the economy.

Recommendation of a Novel Out-Of-Court Insolvency Framework for MSMEs

The current insolvency frameworks in the UK have been criticised for their complexity and inaccessibility, particularly for MSMEs.¹⁵⁹ These businesses often face unique challenges that differ significantly from those encountered by larger corporations, including limited access to financial resources, higher relative costs of legal proceedings, and a lack of awareness regarding available support mechanisms.¹⁶⁰ As such, there is a pressing need for a novel out-of-court insolvency framework that simplifies the process and enhances the ability of MSMEs to navigate financial distress effectively.

Rationale for a Simplified Model

The rationale for introducing a simplified out-of-court insolvency framework stems from the recognition that traditional insolvency procedures¹⁶¹ can be prohibitively complex and costly

¹⁵⁵ Natalie Mrockova, 'Resolving MSME insolvencies: an analysis of new Chinese rules' [2022] 22(1) JCLS 469-503.

¹⁵⁶ The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank Group 2016).

¹⁵⁷ n 231.

¹⁵⁸ Umra Rashid, Mohd Abdullah, Saleh F.A. Khatib, Fateh Mohd Khan, Javaid Akhter, 'Unravelling trends, patterns and intellectual structure of research on bankruptcy in MSMEs: A bibliometric Assessment and visualisation' [2024] 10(2) HJ 1-19.

¹⁵⁹ David Milman, 'Forty Years of Corporate Insolvency Law' [2023] 15(1) CIL 5-22.

¹⁶⁰ Alexios Makropoulos, Charlie Weir, and Xin Zhang, 'An analysis of the determinants of failure processes in UK MSMEs' [2020] 27(3) JOSBAED 405-426.

¹⁶¹ Asad Khan, 'An empirical snapshot of English corporate insolvencies' [2023] 32(3) INSOL 447-473.

for MSMEs.¹⁶² The existing frameworks, such as administration, prepack administration,¹⁶³ CVA, the moratorium,¹⁶⁴ and restructuring plan¹⁶⁵ often require extensive legal documentation and can involve significant administrative burdens.¹⁶⁶ This complexity can deter MSMEs from seeking necessary restructuring options, ultimately exacerbating their financial difficulties.¹⁶⁷ A simplified model would aim to lower these barriers, facilitating early intervention and allowing businesses to address financial challenges before they escalate into insolvency.¹⁶⁸

Key Features of the Proposed Framework

The proposed out-of-court insolvency framework incorporates several key features designed to enhance accessibility and efficiency such as streamlined procedures, reduced costs, early intervention mechanisms, access to resources, and an awareness campaign.¹⁶⁹

Streamlined procedures

Creating standardised documentation and processes, MSMEs can navigate the insolvency landscape with greater ease and confidence.¹⁷⁰ Firstly, it is essential that the framework provides a set of procedures that are easy to follow.¹⁷¹ When the steps involved in initiating and managing insolvency processes are detailed, MSMEs can better understand their options and the actions they need to take.¹⁷² This clarity not only empowers business owners but also fosters a sense of control during a challenging time.¹⁷³

¹⁶² Francesca Burigo, David C Ehmke, and Eugenio Vaccari, ‘MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective’ [2023] 10(2) JICL, 189–214.

¹⁶³ Aurelio Gurrea-Martinez, ‘The Rise of Pre-Packs as a Restructuring Tool: Theory, Evidence and Policy’ [2023] 24 EBOLR, 93–116.

¹⁶⁴ Julian Harris, ‘Final evaluation report into Corporate Insolvency and Governance Act 2020 identifies concerns’ [2023] CL 44(4), 120.

¹⁶⁵ Ibid.

¹⁶⁶ Kristin van Zwieten, ‘Mid-Crisis Restructuring Law Reform in the United Kingdom’ [2023] 24 EBOLR, 287–315.

¹⁶⁷ Iris Chiu, Andreas Kokkinis, and Andrea Miglionico, ‘Addressing the challenges of post-pandemic debt management in the consumer and MSME sectors: a proposal for the roles of UK financial regulators’ [2022] 23(4) JBR 439–457.

¹⁶⁸ Aurelio Gurrea-Martínez, ‘Implementing an insolvency framework for micro and small firms’ [2021] 30(s1) IIR 46–66.

¹⁶⁹ UNCITRAL, Legislative Guide on Insolvency Law (UN, 2019); The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes (World Bank Group 2016).

¹⁷⁰ The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes (World Bank Group 2016); Aurelio Gurrea-Martínez, ‘Implementing an insolvency framework for micro and small firms’ [2021] 30(s1) IIR 46–66; UNCITRAL, Legislative Guide on Insolvency Law (UN, 2019).

¹⁷¹ Munyaradzi Pride Chanakira, ‘A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986’ [2022] PhD Thesis, University of Wolverhampton, https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAllowed=y accessed on 15 August, 2024.

¹⁷² Ibid.

¹⁷³ Ibid.

Moreover, the introduction of standardised forms and templates can alleviate the administrative burden on MSMEs.¹⁷⁴ Instead of grappling with complex legal documents, businesses could utilise pre-prepared templates that encompass all necessary information.¹⁷⁵ This approach not only saves time but also minimises the risk of errors or omissions, ensuring that all required legal elements are included.¹⁷⁶

In addition to simplifying documentation, it is vital to minimise legal complexities.¹⁷⁷ The use of legal jargon and intricate requirements can be daunting for MSME owners, many of whom may lack extensive legal or financial expertise.¹⁷⁸ By streamlining procedures and employing plain language in documentation, the process becomes more accessible.¹⁷⁹ Clear guidelines on what is required at each stage can further enhance understanding and compliance.¹⁸⁰

Furthermore, the development of online platforms or resources that provide step-by-step guidance, frequently asked questions, and dedicated support services can empower business owners to take proactive steps in managing their financial difficulties.¹⁸¹ Such user-friendly navigation encourages early intervention, allowing businesses to explore restructuring options before their financial situation deteriorates.¹⁸²

In conjunction with streamlined procedures, providing educational resources and support networks is equally important.¹⁸³ Workshops, webinars, and informational materials can equip business owners with the knowledge they need to navigate the process effectively.¹⁸⁴ This educational aspect not only enhances understanding but also instills confidence in business owners as they face their financial challenges.¹⁸⁵

Overall, the establishment of streamlined procedures within the insolvency framework for MSMEs is essential for reducing barriers to access and ensuring that businesses can effectively manage their financial challenges. By simplifying processes, standardising documentation, and providing clear guidance, the framework can promote better outcomes for distressed MSMEs, ultimately contributing to their recovery and sustainability.

¹⁷⁴ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287-315.

¹⁷⁸ Natalie Mrockova, 'Resolving MSME insolvencies: an analysis of new Chinese rules' [2022] 22(1) JOCLS 469-503.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

¹⁸² Ibid.

¹⁸³ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

Reduced Costs

By lowering the financial barriers associated with insolvency processes, the framework can create a more supportive environment for MSMEs, ultimately facilitating their recovery and sustainability.¹⁸⁶ To begin with, lowering the costs associated with insolvency proceedings can significantly alleviate the financial burden on MSMEs.¹⁸⁷ Many small businesses operate on tight margins and may struggle to cover the expenses related to traditional insolvency processes.¹⁸⁸ High legal fees, administrative costs, and other associated expenses can deter business owners from pursuing necessary relief, often leading them to delay seeking help until their situation becomes critical.¹⁸⁹ By reducing these costs, the framework can encourage more MSMEs to take proactive steps in addressing their financial challenges.¹⁹⁰

One effective approach to achieving reduced costs is the introduction of tiered fee structures.¹⁹¹ This system would allow fees to be adjusted based on the size and financial capacity of the business.¹⁹² For instance, smaller enterprises with limited resources or with simpler financial affairs could benefit from lower fees, while larger MSMEs or those with complex financial affairs might pay a higher rate.¹⁹³ This tiered approach ensures that the costs are proportionate to the business's ability to pay, making the insolvency process more accessible to a wider range of enterprises.¹⁹⁴

In addition to tiered fee structures, the provision of subsidised legal support similar to Citizens advise and support through court¹⁹⁵ in general but this one should be specifically targeted to support MSMEs which can further enhance affordability for MSMEs.¹⁹⁶ Many MSMEs may lack the financial means to hire legal professionals to guide them through the complexities of insolvency proceedings.¹⁹⁷ By offering subsidised legal assistance by specifically trained legal professionals, the framework can help ensure that MSMEs receive the necessary guidance and support without incurring prohibitive costs.¹⁹⁸ This support can be crucial in helping business owners understand their rights and options, ultimately leading to more informed decision-making.¹⁹⁹

¹⁸⁶ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL,189–214.

¹⁸⁷ n 280.

¹⁸⁸ Ibid.

¹⁸⁹ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

¹⁹⁰ Ibid.

¹⁹¹ Clifford Chance, *A Guide to Restructuring and Insolvency Procedures in Europe* (CC, 2021).

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Blakey, Rachael. 2024. "Assessing the Availability of Legal Support through the 'Help with Family Mediation' Legal Aid Scheme." *Journal of Social Welfare and Family Law* 46 (1): 82–103. doi:10.1080/09649069.2024.2304977.

¹⁹⁶ Bob Wessels and Stephan Madaus, *Instrument of the European Law Institute - Rescue of Business in Insolvency Law* (ELI, 2017)

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

Moreover, reducing costs can foster a culture of early intervention among MSMEs.²⁰⁰ When financial barriers are lowered, business owners may be more inclined to seek help at the first signs of financial distress rather than waiting until their situation worsens.²⁰¹ Early intervention can lead to better outcomes, as businesses can explore restructuring options and implement solutions before facing severe consequences.²⁰²

Overall, the reduction of costs associated with insolvency proceedings is essential for encouraging MSMEs to seek assistance during financial difficulties. By implementing tiered fee structures based on the size and financial capacity of businesses, along with providing subsidised legal support, the framework can create a more accessible and supportive environment. This approach not only empowers MSMEs to address their financial challenges proactively but also contributes to their overall recovery and sustainability in the long run.

Early Intervention Mechanisms

By encouraging MSMEs to seek help at the initial signs of distress, these mechanisms can significantly improve the chances of recovery and prevent the escalation of financial problems.²⁰³ To promote early intervention, the framework should incorporate various incentives that motivate MSMEs to engage proactively with the insolvency system.²⁰⁴ One effective strategy is the introduction of tax breaks for businesses that seek assistance early in their financial struggles.²⁰⁵ To mitigate the risk of abuse, it is crucial to establish clear eligibility criteria that require evidence of genuine financial distress and proactive engagement with financial advisory services, alongside imposing stringent penalties for any misuse. By offering tax relief, the government can alleviate some of the financial pressures that MSMEs face, making it more appealing for them to reach out for help sooner rather than later.²⁰⁶ This financial incentive can serve as a powerful motivator, encouraging business owners to act before their situation deteriorates.²⁰⁷ However this may lead to the abuse of tax breaks

In addition to tax breaks, the framework could also implement reduced fees for early applications.²⁰⁸ By lowering the costs associated with initiating insolvency proceedings for

²⁰⁰ Alexios Makropoulos, Charlie Weir, and Xin Zhang, 'An analysis of the determinants of failure processes in UK MSMEs' [2020] 27(3) JOSBAED 405-426.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL, 189–214.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Munyaradzi Pride Chanakira, 'A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986' [2022] PhD Thesis, University of Wolverhampton, https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAllowed=y accessed on 15 August 2024.

²⁰⁷ Ibid

²⁰⁸ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

those who act quickly, the framework can remove a significant barrier that often prevents MSMEs from seeking help.²⁰⁹ When business owners know that they can save money by addressing their financial issues early, they may be more inclined to take the necessary steps to engage with the insolvency system.²¹⁰ This proactive approach can lead to better outcomes, as it allows for timely interventions that can stabilise the business and facilitate restructuring efforts.²¹¹

Fostering a culture of proactive engagement with the insolvency system is essential for the overall health of the MSME sector.²¹² When early intervention mechanisms are in place, they not only provide immediate financial incentives but also help to shift the mindset of business owners.²¹³ Instead of viewing insolvency as a last resort, MSMEs can begin to see it as a viable option for recovery and renewal.²¹⁴ This cultural shift can reduce the stigma associated with insolvency, encouraging more business owners to seek assistance without fear of judgment or failure.²¹⁵

Moreover, early intervention can lead to more effective and efficient use of resources within the insolvency system.²¹⁶ When MSMEs seek help early, insolvency practitioners can work with them to explore options, such as out-of-court settlements,²¹⁷ which may be less costly and time-consuming than formal insolvency proceedings.²¹⁸ This not only benefits the individual businesses but also contributes to the overall stability of the economy by reducing the number of business failures and preserving jobs.²¹⁹

Overall, implementing early intervention mechanisms within the insolvency framework is vital for supporting MSMEs in financial distress. By providing incentives such as tax breaks and reduced fees for early applications, the framework can encourage proactive engagement with the insolvency system. This approach not only enhances the likelihood of successful recovery for individual businesses but also fosters a healthier economic environment by promoting timely interventions and reducing the stigma associated with seeking help.

²⁰⁹ Rachid Achbah and Marc Fréchet, 'Fostering MSME Survival Through Insolvency Proceedings: A Legitimacy Perspective on Retrenchment, Age, and Firm-Specific Distress' [2023] 61(2) SBE 403-425.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' [2023] 32(3) IIR 397-419.

²¹⁶ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

²¹⁷ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL, 189-214.

²¹⁸ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

²¹⁹ Ibid.

Access to Resources

Establishing a dedicated online platform can significantly enhance the accessibility and effectiveness of the resources available to MSMEs, providing them with the tools and support they need to make informed decisions.²²⁰ A timely update on the dedicated online platform as Insolvency Service online hub²²¹ would serve as a centralised hub where MSMEs can access a wide range of resources related to insolvency.²²² This could include educational materials, guides, and FAQs that explain the insolvency process, the options available to businesses, and the rights and responsibilities of business owners.²²³ By providing clear and comprehensive information, the platform can empower MSMEs to understand their situation better and explore potential solutions.²²⁴

One of the key features of this online platform would be the ability for MSMEs to submit applications for insolvency restructuring directly through the site.²²⁵ This streamlined process can reduce the administrative burden on business owners, making it easier for them to initiate the necessary steps without getting overwhelmed by complex paperwork or procedures.²²⁶ By simplifying the application process, the platform can encourage more MSMEs to seek help at the first signs of financial distress, ultimately leading to better outcomes.²²⁷

In addition to providing resources and facilitating applications, the platform could also serve as a communication channel between MSMEs and insolvency practitioners.²²⁸ This feature is crucial, as timely and relevant advice can make a significant difference in how businesses navigate their financial challenges.²²⁹ Through the platform, MSMEs could ask questions, seek clarification on specific issues, and receive guidance tailored to their unique circumstances.²³⁰ This direct line of communication can help demystify the insolvency process and ensure that business owners feel supported throughout their journey.²³¹

²²⁰ Iris Chiu, Andreas Kokkinis, and Andrea Miglionico, ‘Addressing the challenges of post-pandemic debt management in the consumer and MSME sectors: a proposal for the roles of UK financial regulators’ [2022] 23(4) JBR 439–457.

²²¹ HM Government, ‘New Information Hub Launched to Help Limited Company Directors Make the Right Decisions at the Right Time’ (GOV.UK, 14 March 2024) <https://www.gov.uk/government/news/new-information-hub-launched-to-help-limited-company-directors-make-the-right-decisions-at-the-right-time> accessed 5 March 2025.

²²² Ibid.

²²³ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

²²⁴ Ibid.

²²⁵ UNCITRAL, *Legislative Guide on Insolvency Law* (UN, 2019); The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank Group 2016).

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Natalie Mrockova, ‘Resolving MSME insolvencies: an analysis of new Chinese rules’ [2022] 22(1) JCLS 469–503.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

Furthermore, the online platform could incorporate tools such as chatbots supported by artificial intelligence or live chat features, allowing MSMEs to receive immediate assistance when they need it most.²³² This real-time support can be invaluable, especially for business owners who may be feeling stressed or uncertain about their financial situation.²³³ By providing quick access to information and guidance, the platform can help MSMEs make informed decisions and take proactive steps toward recovery.²³⁴

Another important aspect of the platform could be the inclusion of networking opportunities and forums where MSMEs can connect with one another, share experiences, and learn from each other.²³⁵ This sense of community can be particularly beneficial for business owners who may feel isolated during challenging times.²³⁶ By fostering connections among MSMEs, the platform can create a supportive environment where business owners can find encouragement and practical advice from their peers.²³⁷

In summary, establishing a dedicated online platform for MSMEs to access resources, submit applications, and receive guidance on the insolvency process is crucial for enhancing their ability to navigate financial distress. By providing comprehensive information, facilitating communication with insolvency practitioners, and creating a supportive community, the platform can empower MSMEs to take proactive steps toward recovery. This approach not only improves individual outcomes for businesses but also contributes to the overall resilience of the MSME sector and the economy.

Awareness Campaigns

By launching targeted awareness campaigns, the government can educate business owners about the benefits of early intervention and the resources available to them, ultimately fostering a more supportive environment for MSMEs facing financial distress.²³⁸ One of the primary objectives of these awareness campaigns would be to shift public perception regarding insolvency.²³⁹ Many business owners may view insolvency as a sign of failure or incompetence, which can create a significant psychological barrier to seeking help.²⁴⁰ By promoting the message that insolvency is a legitimate and often necessary step for recovery, the campaigns

²³² Marton Ribary and others, 'Insolvency Bot: A GPT-Based Legal Advice Tool for Small Businesses in Distress' [2023] Zenodo <https://doi.org/10.5281/zenodo.10029735> accessed 29 August 2024.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Chiara Eleonora De Marco, Alberto Di Minin, Cristina Marullo and Daniel Nepelski, *Digital Platform Innovation in European MSMEs: An Analysis of MSME Instrument Business Proposals and Case Studies* (POEU 2019) EUR 29690 EN, ISBN 978-92-76-00776-0, doi:10.2760/57240, JRC115240.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Federico Diez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

²³⁹ Ibid.

²⁴⁰ Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' [2023] 32(3) IIR 397-419.

can help normalise the conversation around financial distress.²⁴¹ This shift in perception can encourage business owners to view insolvency not as an end, but as a potential pathway to restructuring and revitalisation.²⁴²

The campaigns could highlight success stories of MSMEs, as a short film entitled ‘ The Turnaround of Tom’s Company’ Internal Communication’ posted on You Tube by Insolvency Service²⁴³ that have successfully navigated the insolvency process and emerged stronger.²⁴⁴ By showcasing real-life examples of businesses that have turned their situations around, the government can illustrate that seeking help is not only acceptable but can also lead to positive outcomes.²⁴⁵ These narratives can serve as powerful motivators for other business owners who may be hesitant to act due to fear of judgment or failure.²⁴⁶

In addition to changing perceptions, awareness campaigns should focus on educating business owners about the specific benefits of early intervention.²⁴⁷ Many MSMEs may not be aware of the resources and support systems available to them, or they may underestimate the advantages of seeking help sooner rather than later.²⁴⁸ By providing clear information about the options for restructuring, the potential for debt relief, and the availability of financial assistance, the campaigns can empower business owners to make informed decisions about their financial futures.²⁴⁹

Furthermore, the campaigns could emphasise the importance of proactive engagement with the insolvency system.²⁵⁰ By encouraging business owners to recognise the early signs of financial distress and to seek help promptly, the campaigns can help prevent situations from escalating to the point of crisis.²⁵¹ This proactive approach not only benefits individual businesses but also contributes to the overall stability of the economy by reducing the number of business failures.²⁵²

To maximise their impact, awareness campaigns should utilise a variety of communication channels, including social media, webinars, workshops, and informational materials distributed

²⁴¹ Chiara Eleonora De Marco, Alberto Di Minin, Cristina Marullo and Daniel Nepelski, *Digital Platform Innovation in European MSMEs: An Analysis of MSME Instrument Business Proposals and Case Studies* (POEU 2019) EUR 29690 EN, ISBN 978-92-76-00776-0, doi:10.2760/57240, JRC115240.

²⁴² Aurelio Gurrea-Martínez, ‘Implementing an insolvency framework for micro and small firms’ [2021] 30(s1) IIR 46-66.

²⁴³ Insolvency Service, *Understanding the Corporate Insolvency and Governance Act 2020* (YouTube, 12 November 2020) <https://m.youtube.com/watch?v=gbWj33Ej3rA&t=318s> accessed 14 April 2025.

²⁴⁴ Ibid.

²⁴⁵ Gerard McCormack, ‘The European Restructuring Directive - a general analysis’ [2020] 33(1) IJ 11-22.

²⁴⁶ Ibid.

²⁴⁷ Antonio Juan Briones-Peñalver, Francisco Campuzano-Bolarin, Francisco Acosta Hernández, and José Rodrigo Córdoba-Pachón, ‘Towards a Digital Relational Administration Model for Small and Medium Enterprise Support via E-Tutoring in Spain’ [2024] 12(3) SJ, 1-17.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ John Michael Wood, ‘Corporate Rescue: A Critical Analysis of its Fundamentals and Existence’ (PhD thesis, University of Leeds 2013).

²⁵¹ Ibid.

²⁵² Ibid.

through business support organisations.²⁵³ Engaging with local business communities and leveraging partnerships with industry associations can also enhance the reach and effectiveness of the campaigns.²⁵⁴

Evaluating the Proposed Framework

The proposed out-of-court insolvency framework presents a promising approach to supporting MSMEs facing financial distress. Although this framework has challenges, its strengths outweigh them.

One significant challenge of the proposed framework is that tax breaks reduce government revenue, which can limit funding for essential public services such as healthcare, education, and infrastructure. Moreover, the risk of oversimplification is another challenge. Simplifying the insolvency process may lead to inadequate protections for creditors and other stakeholders.²⁵⁵ If the framework is too lenient, it could undermine the rights of creditors, resulting in disputes and a lack of trust in the system.²⁵⁶ Additionally, despite efforts to simplify the process, the stigma associated with insolvency may persist.²⁵⁷ Business owners might still hesitate to seek help due to fear of judgment, which could limit the framework's effectiveness.²⁵⁸ Furthermore, many MSMEs may lack awareness of the new framework and its benefits.²⁵⁹ Without proper education and outreach, business owners may miss opportunities to utilise the framework effectively.²⁶⁰

Also, resource constraints pose another challenge. MSMEs often operate with limited resources, making it challenging for them to engage with the insolvency process, even if it is simplified.²⁶¹ The need for financial and legal expertise may still act as a barrier.²⁶² Another concern is the potential for larger creditors to dominate the process.²⁶³ The framework may inadvertently favor larger creditors, who could exert more influence over the restructuring process,²⁶⁴

²⁵³ Munyaradzi Pride Chanakira, 'A Critical Analysis of The Effectiveness of the Corporate Rescue Provisions Under Sch B1 of Insolvency Act 1986' [2022] PhD Thesis, University of Wolverhampton, https://wlv.openrepository.com/bitstream/handle/2436/625046/Chanakira_PhD_Thesis.pdf?sequence=1&isAllowed=y accessed on 15 August 2024.

²⁵⁴ Ibid.

²⁵⁵ Aurelio Gurrea-Martínez, *Reinventing Insolvency Law in Emerging Economies* (CUP 2024) 208-247.

²⁵⁶ Ibid.

²⁵⁷ Emilie Ghio and Donald Thomson, 'Corporate Insolvency: Why Are Directors Afraid of Help? Preliminary Study on the Stigma Associated with Corporate Insolvency' [2023] 98(2) CKLR 391.

²⁵⁸ Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' [2023] 32(3) IIR 397-419.

²⁵⁹ Alexios Makropoulos, Charlie Weir, and Xin Zhang, 'An analysis of the determinants of failure processes in UK MSMEs' [2020] 27(3) JOSBAED 405-426.

²⁶⁰ Caroline Platt, Edward Lewis, Eleni Rawson, Richard Tett and Ria Di Marco, 'The restructuring plan two years on: lessons learned' [2023] 20(1) ICR 5-10.

²⁶¹ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL, 189-214.

²⁶² Marcus Greet, 'Evaluating the Necessity of the Corporate Insolvency and Governance Act 2020: An Evaluation of the Framework and Its Effectiveness Prior to the Act's Passing' (2024) 5 CGR 123-145.

²⁶³ Kristin van Zwieten, 'Mid-Crisis Restructuring Law Reform in the United Kingdom' [2023] 24 EBOLR, 287-315.

²⁶⁴ Ibid.

potentially sidelining smaller creditors and leading to inequitable outcomes. Lastly, the successful rollout of the framework will require coordination among various stakeholders, including government agencies, financial institutions, and legal advisors.²⁶⁵ Any lack of collaboration could hinder its effectiveness.²⁶⁶

Despite these challenges, the proposed framework offers several significant advantages that can outweigh the potential downsides. For instance, by simplifying the insolvency process, the framework enhances accessibility, making it easier for MSMEs to engage with the system.²⁶⁷ This accessibility encourages timely intervention, allowing businesses to address financial difficulties before they escalate into crises.²⁶⁸ Furthermore, the framework promotes a culture of early intervention,²⁶⁹ which is crucial for preventing insolvency. By making the process less intimidating, MSMEs may be more inclined to seek help sooner, improving their chances of recovery.²⁷⁰

In addition, a more straightforward process can help normalise discussions around financial distress, thereby reducing the stigma associated with insolvency.²⁷¹ This cultural shift can empower business owners to seek assistance without fear of judgment.²⁷² Moreover, the framework can be complemented by initiatives that provide MSMEs with access to financial advisors, legal support, and educational resources.²⁷³ Such support can enhance their ability to navigate the insolvency process successfully.²⁷⁴

Another advantage lies in the flexibility and tailored solutions that the out-of-court nature of the framework allows.²⁷⁵ This flexibility can better meet the unique needs of MSMEs, as opposed to rigid court processes that may not consider their specific circumstances.²⁷⁶ Furthermore, by fostering a more collaborative environment, the framework can encourage dialogue between debtors and creditors, leading to mutually beneficial outcomes that support the recovery of MSMEs while respecting creditor rights.²⁷⁷

However, it is crucial to consider the potential unintended consequences of implementing such a framework. For instance, if the process is perceived as too lenient, it may encourage some business owners to engage in reckless financial behavior, believing they can easily escape the

²⁶⁵ Aurelio Gurrea-Martínez, *Reinventing Insolvency Law in Emerging Economies* (CUP 2024) 208-247.

²⁶⁶ *Ibid.*

²⁶⁷ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

²⁶⁸ *Ibid.*

²⁶⁹ The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank Group 2016).

²⁷⁰ *Ibid.*

²⁷¹ Emilie Ghio and Donald Thomson, 'Is insolvency stigmatised?' [2023] 32(3) IIR 397-419.

²⁷² *Ibid.*

²⁷³ Federico Díez, *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff Discussion Note No 2021/002, IMF 2021).

²⁷⁴ *Ibid.*

²⁷⁵ Asad Khan, 'An empirical snapshot of English corporate insolvencies' [2023] 32(3) INSOL 447-473.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

consequences of poor decision-making.²⁷⁸ This moral hazard could lead to a cycle of irresponsible business practices, ultimately undermining the integrity of the insolvency system.²⁷⁹

Additionally, the effectiveness of the framework will largely depend on the economic context in which it is implemented.²⁸⁰ In times of economic downturn, even the most well-designed insolvency framework may struggle to support MSMEs adequately.²⁸¹ The interplay between macroeconomic factors and the insolvency landscape must be carefully considered to ensure that the framework remains relevant and effective under varying conditions.²⁸²

Furthermore, the success of the proposed framework hinges on the willingness of stakeholders to embrace change.²⁸³ Resistance from established creditors or legal institutions accustomed to traditional processes may pose significant barriers to implementation.²⁸⁴ Engaging these stakeholders early in the process and addressing their concerns will be vital to fostering a collaborative environment that supports the framework's objectives.²⁸⁵

Overall, while the proposed out-of-court insolvency framework presents several challenges, its merits significantly outweigh the potential downsides. By enhancing accessibility, encouraging early intervention, and reducing stigma, the framework can empower MSMEs to engage with the insolvency process more effectively. Addressing concerns about limiting the scope for opportunistic exploitation, oversimplification and ensuring adequate protection for all stakeholders will be essential to its success. Ultimately, this framework has the potential to create a more resilient and equitable insolvency system that supports MSMEs while safeguarding the interests of creditors and other parties involved. However, careful consideration of the broader economic context, potential unintended consequences, and stakeholder engagement will be crucial in realising the framework's full potential. Through a balanced approach that acknowledges both the challenges and opportunities, the proposed framework can contribute to a more robust and supportive environment for MSMEs navigating financial difficulties.

Conclusion

The research highlights that MSMEs are vital to the UK economy, contributing significantly to employment and innovation. However, the complexities and costs associated with current insolvency procedures often deter these businesses from seeking timely assistance,

²⁷⁸ Francesca Burigo, David C Ehmke, and Eugenio Vaccari, 'MSMEs in Distress: Regulatory Costs and Efficiency Considerations in the Implementation of Preventive Restructuring Mechanisms: An Anglo-German-Italian Perspective' [2023] 10(2) JICL, 189–214.

²⁷⁹ Ibid.

²⁸⁰ Paulina Fishman, 'Insolvency Law to the Rescue - and Zombies Arise' (2023) 12(3) JOCLS 456.

²⁸¹ Ibid.

²⁸² John Michael Wood, 'Corporate Rescue: A Critical Analysis of its Fundamentals and Existence' (PhD thesis, University of Leeds 2013).

²⁸³ Ibid.

²⁸⁴ Aurelio Gurrea-Martínez, 'Implementing an insolvency framework for micro and small firms' [2021] 30(s1) IIR 46-66.

²⁸⁵ Ibid.

exacerbating their financial difficulties. To address these challenges, the proposed out-of-court insolvency framework presents a promising approach. By simplifying the application process through templated forms, we can significantly reduce the administrative burden on MSMEs, making it easier for them to access the support they need. This simplification is crucial, as many small business owners lack the legal expertise to navigate the intricate insolvency landscape. Streamlined documentation and clear guidelines can empower these entrepreneurs to take proactive steps toward recovery without the fear of overwhelming legal complexities.

Moreover, the integration of closed domain AI-assisted chatbots can provide real-time guidance and information to business owners navigating the insolvency process. These digital tools can demystify legal jargon and offer personalised assistance, ensuring that MSMEs are well-informed about their options and the steps they need to take. By providing immediate access to information, AI chatbots can help business owners make informed decisions, reducing the likelihood of delays that could worsen their financial situation.

In addition to technological innovations, establishing a distressed companies forum would create a collaborative space for business owners to share experiences, seek advice, and discuss best practices. This peer support network can foster a sense of community and resilience among MSMEs facing similar challenges. By facilitating open discussions about financial distress, the forum can help normalise the conversation around insolvency, reducing the stigma that often prevents business owners from seeking help.

Furthermore, the recommendations drawn from the World Bank and UNCITRAL principles underscore the necessity of establishing a streamlined and flexible insolvency framework that encourages early intervention and out-of-court restructuring for MSMEs. Such measures not only facilitate the rehabilitation of viable businesses but also ensure the efficient liquidation of non-viable ones, thereby promoting a healthier economic environment. Early intervention is particularly critical, as it allows businesses to address financial difficulties before they escalate into crises, ultimately preserving jobs and economic value.

This article aspires to contribute to the ongoing discourse on insolvency law reform by advocating for targeted reforms that address the unique needs of MSMEs. By fostering a supportive insolvency environment, we can enhance the resilience of these enterprises, ensuring they have the necessary tools and resources to thrive even in the face of adversity. The proposed framework should also include provisions for financial education and access to professional advice, equipping business owners with the knowledge to make sound financial decisions and avoid pitfalls that could lead to insolvency.

Ultimately, a robust insolvency framework, complemented by innovative solutions such as templated applications, AI assistance, and collaborative forums, will not only benefit MSMEs but will also bolster the overall stability and growth of the UK economy, paving the way for a more sustainable future. The success of this framework hinges on the willingness of stakeholders, including government agencies, financial institutions, and legal advisors, to embrace change and collaborate effectively. Engaging these stakeholders early in the process and addressing their concerns will be vital to fostering a collaborative environment that supports the framework's objectives.

Overall, the journey toward a more effective insolvency framework for MSMEs is not merely a legal reform; it is a commitment to fostering a resilient and dynamic business ecosystem. By embracing innovative solutions, engaging stakeholders, and prioritising education and outreach, we can create a supportive environment that empowers MSMEs to navigate financial distress with confidence. The potential benefits of these reforms extend beyond individual businesses, contributing to a more robust and equitable economic landscape for all. As we look to the future, it is imperative that we remain vigilant and responsive to the evolving needs of MSMEs. Continuous assessment of the effectiveness of the proposed framework, along with necessary adjustments, will ensure that it remains relevant and effective in supporting the backbone of UK's economy. Together, we can build a more resilient insolvency system that not only protects the interests of creditors but also champions the growth and sustainability of MSMEs across the UK. By fostering a culture of support and innovation, we can ensure that MSMEs are equipped to thrive, even in challenging economic climates, ultimately contributing to a more prosperous and sustainable economy for all.