



Insolvency Profession's Views on the Moratorium and Restructuring Provisions in the Corporate Insolvency and Governance Act 2020

August 2020

Introduction

Following the introduction of the Corporate Insolvency and Governance Act 2020 (CIGA) on 26 June 2020, Insolvency Support Services undertook research on the insolvency profession's views of the moratorium and restructuring provisions in the new legislation. This paper provides a summary of the results of our research.

A total of 42 respondents participated in the research. They represent a cross-section of specialist insolvency practitioner (IP) firms as well as accountancy and law firms with insolvency and recovery practices, ranging from small to very large organisations, across the whole of the United Kingdom.

Executive Summary

Use of the Provisions

It is clear that, at the time of our survey, most respondents did not know if they were going to use either of the new rescue procedures (60% Moratorium, 54% Restructuring). Of those who are intending to use the moratorium (31%) and restructuring (20%) provisions, there is a clear difference in the size of company in relation to whom it would apply: Moratorium - large 15%, SME 38%, Any company 46%, compared to Restructuring - large 63%, SME 0%, Any company 38%.

Moratorium Provisions

Proponents of the moratorium agree or strongly agree that its main benefits are (in order): speed and ease of entry, the ability to extend, and the valuable breathing space it will give companies.

Of those not minded to use the moratorium, the main reasons cited are the costs of monitoring being disproportionate to the benefits, and that directors do not consult early enough to get the benefit of a moratorium. The latter is a long-standing complaint in insolvency and reflects the old adage that the sooner someone seeks assistance in relation to their business, the higher the chance of rescue. For the moratorium to be effective therefore, directors need to seek advice early.

The moratorium can only be overseen by an IP, so despite responses, it will be incumbent on us to use the moratorium provisions, or we risk losing the exclusivity of the role to other professionals. However, the cost is going to be an issue, as is the actual remit of the Monitor.

It seems likely that a majority of moratoriums will be extended past the original 20 business days (as anticipated by 66% of respondents). Intuitively this seems right: unless a company can get very quick

confirmation from its creditors to its proposals, in whatever form they might take, the vast majority of respondents (88%) think that a second period of 20 business days will be required.

Restructuring Provisions

It is clear that most respondents see the new restructuring tool being used at the higher end of the market. Of the respondents who will not be using the new provisions, 91% stated that it is because their client base is predominantly SME companies and directors. Although the SME market is not precluded from making a court application in terms of the new Part 26A Companies Act provisions, the Insolvency Service shares the view that this is intended for the large company sector. That means only certain firms (advisory and legal) will be assisting companies in this work.

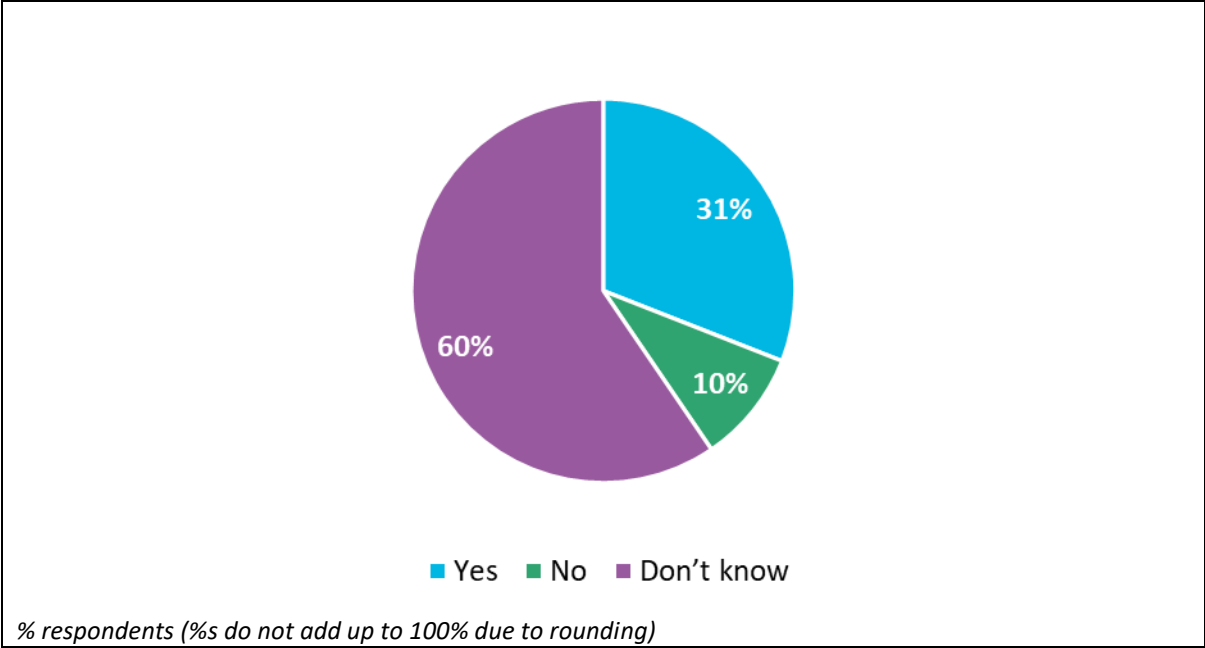
Those intending to use the provisions see the main benefits as the ability to bind dissenting creditors to the plan, and the ability to remove creditors with no economic interest in the company. It will be interesting to watch the market's response, as well as that of the courts, to the impact these new provisions will have on lenders and suppliers going forward, once the implications are fully understood.

Research Findings

Moratorium Provisions

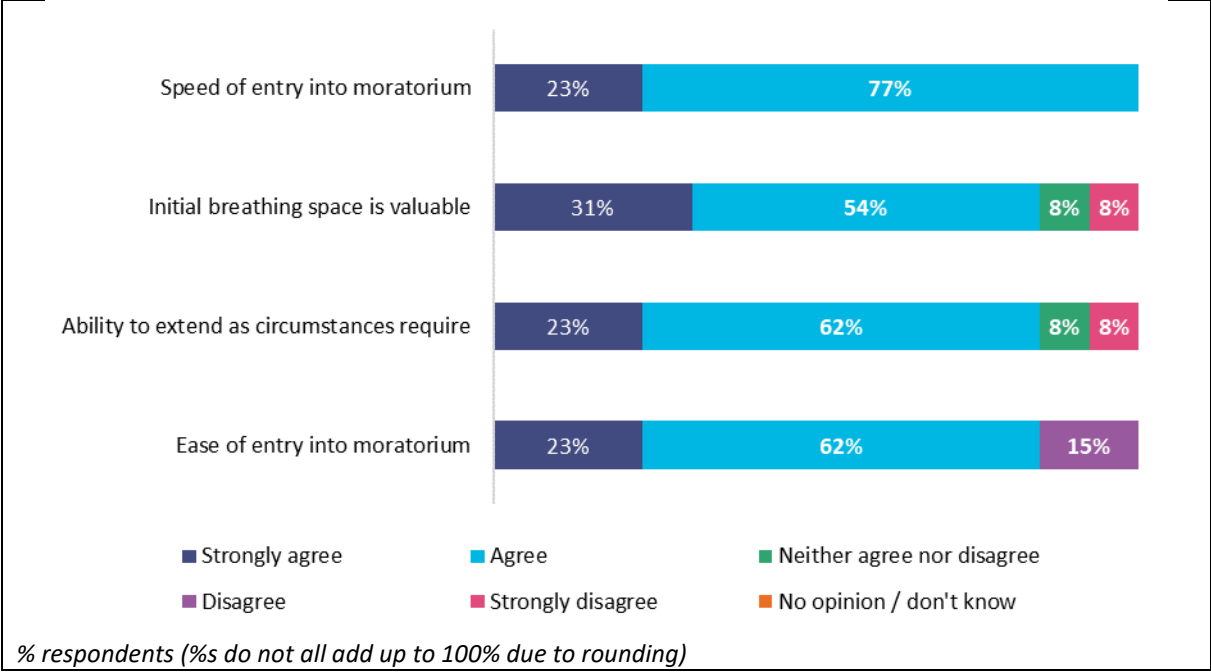
1. Will you be using the new moratorium provisions?

Three in five (60%) of respondents indicated that they do not know if they will be using the new moratorium provisions, while 31% said that they will be using them, and 10% stated that they will not.



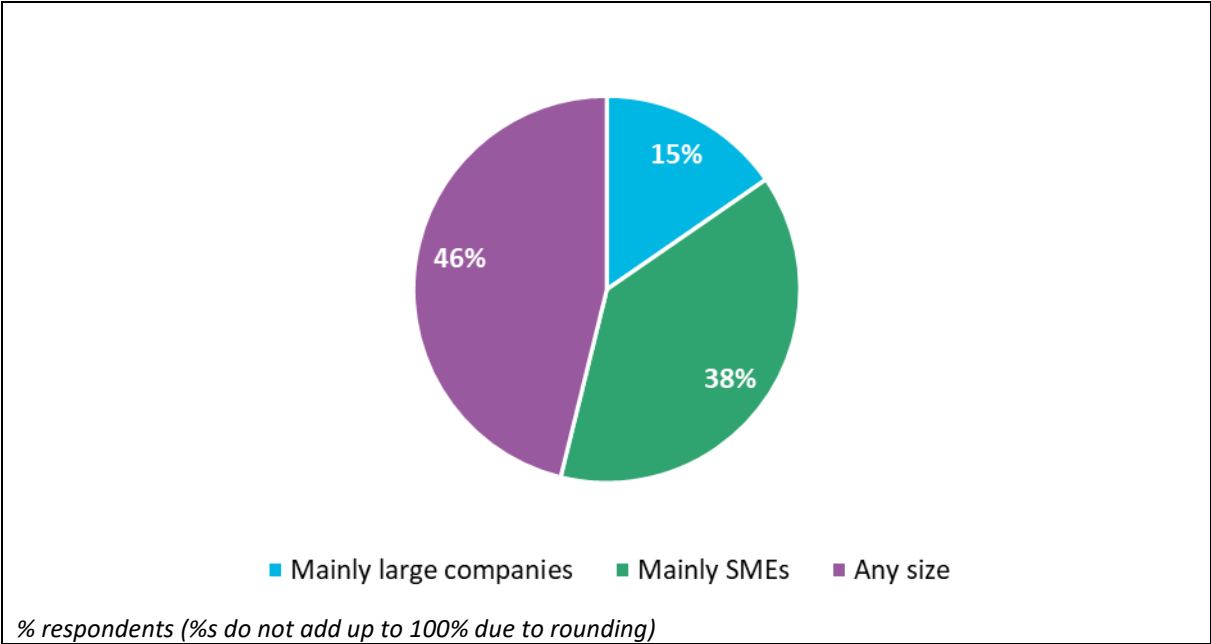
2. To what extent do you agree that the new moratorium provisions are likely to bring the following benefits?

Those respondents who said that they will be using the new moratorium provisions mostly agreed that they bring several benefits, with all respondents agreeing that speed of entry into moratorium is an advantage of the new provisions. However, a small number of respondents did not agree that the provisions will provide ease of entry into moratorium, valuable initial breathing space or the ability to extend as circumstances require.



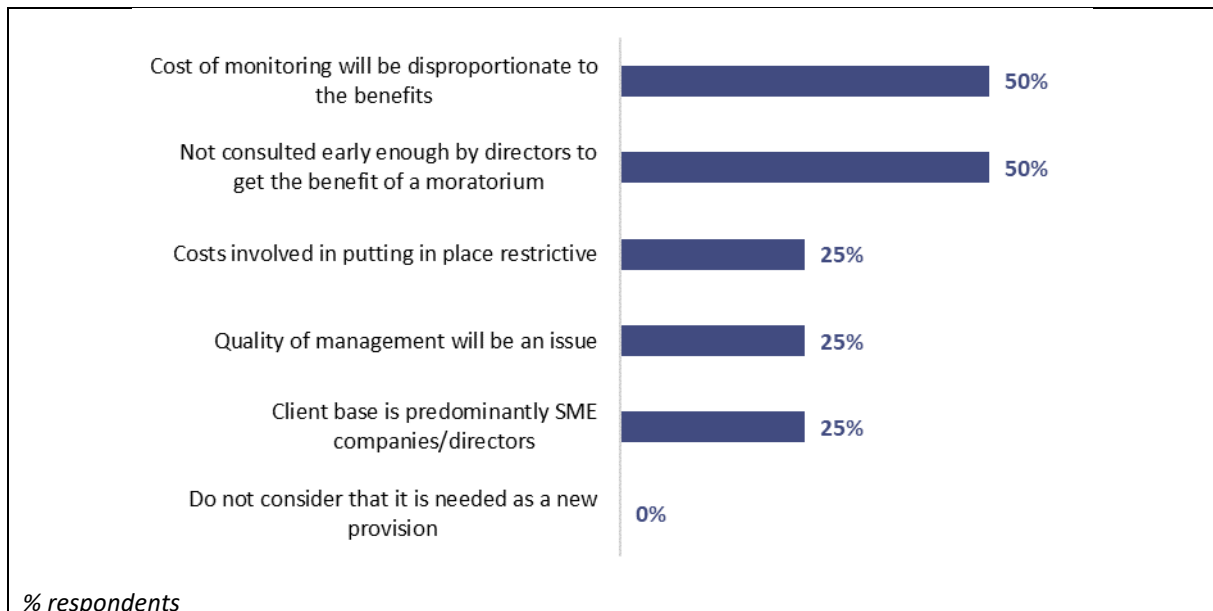
3. For what size of company do you anticipate using the new moratorium provisions?

Just under half (46%) of the respondents who said that they will be using the new moratorium provisions anticipate using them for any size of company, while 15% expect to use them mainly for large companies and 38% mainly for SMEs.



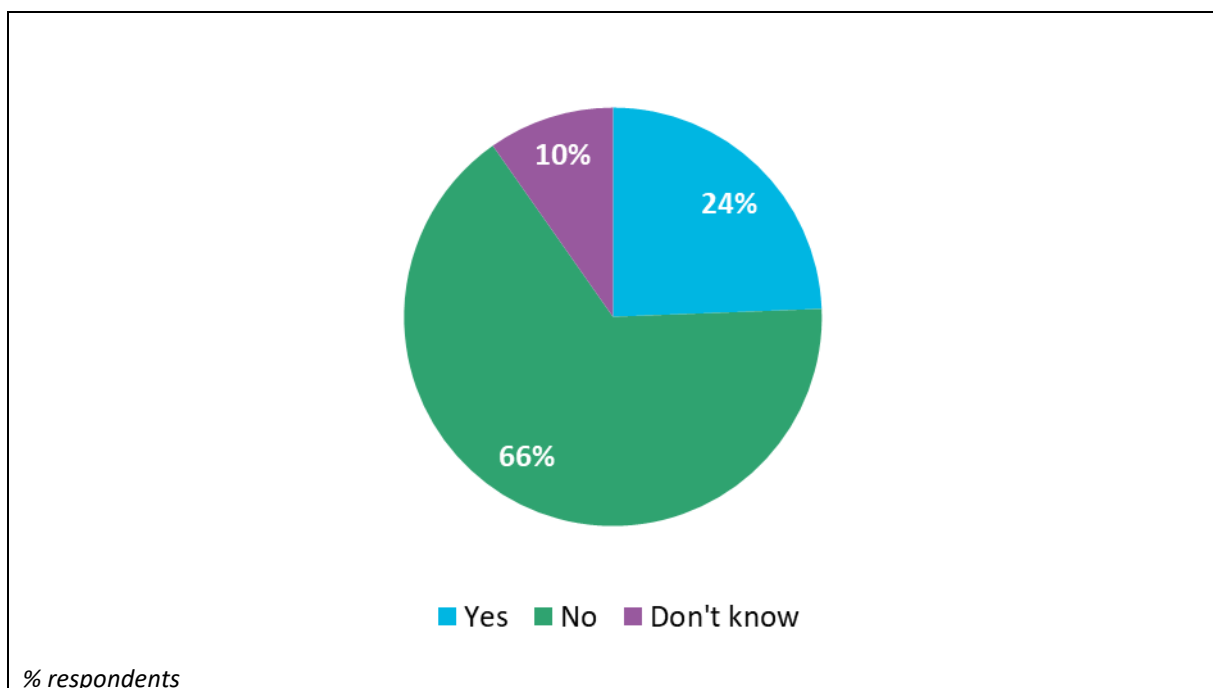
4. Why will you not be using the new moratorium provisions?

Those respondents who said that they will not be using the new moratorium provisions cited several reasons, the main ones being the cost of monitoring being disproportionate to the benefits and not being consulted early enough by directors to get the benefit of a moratorium.



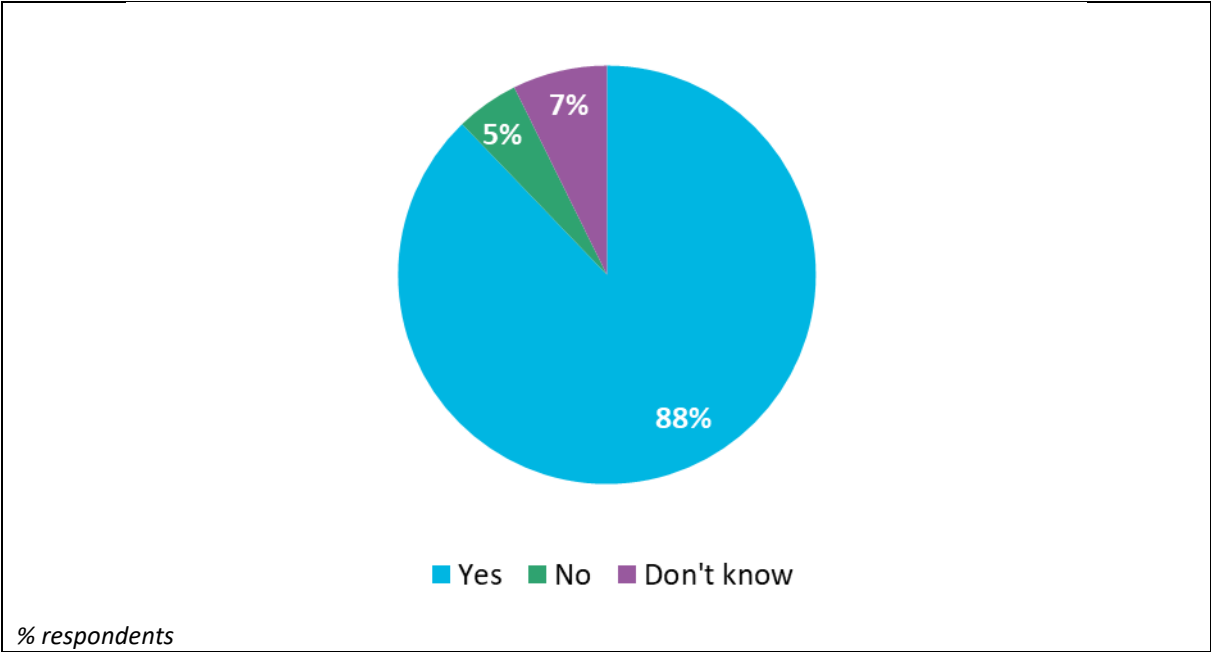
5. Do you think that the initial period of 20 business days will be long enough?

Almost two thirds (66%) of respondents think that the initial period of 20 business days will not be long enough, while just under a quarter (24%) think it will be sufficient, and the remaining 10% do not know.



6. Do you anticipate that an extension of a further 20 business days will happen in most cases?

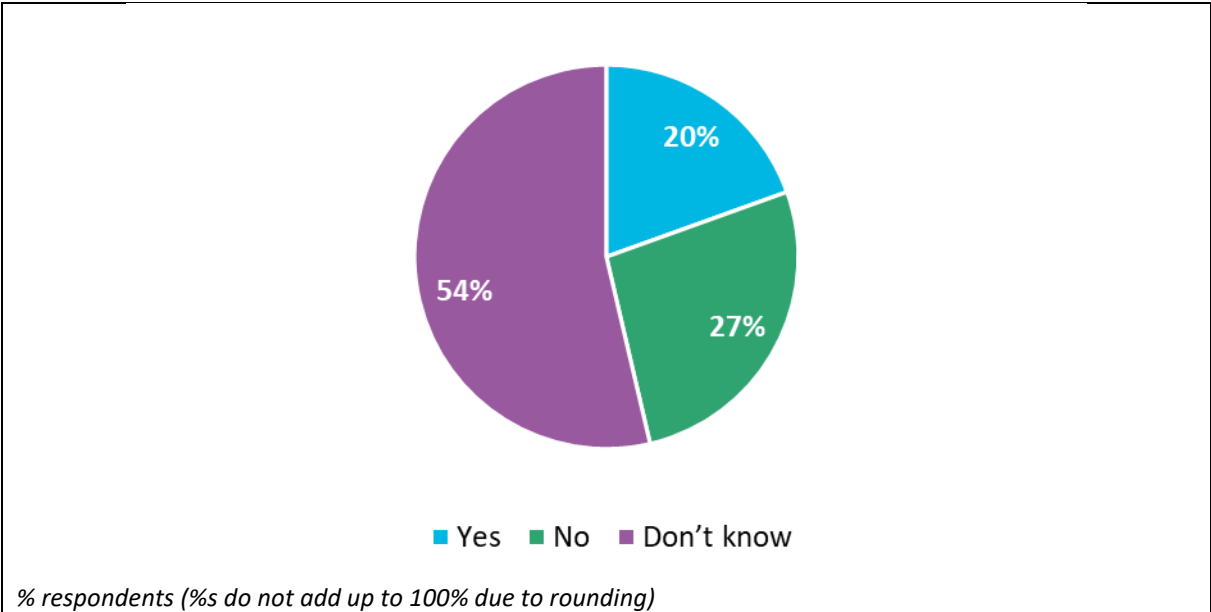
The majority (88%) of respondents anticipate that an extension of a further 20 business days will happen in most cases. Only 5% do not expect an extension, and 7% do not know.



Restructuring Provisions

7. Will you be using the new restructuring provisions?

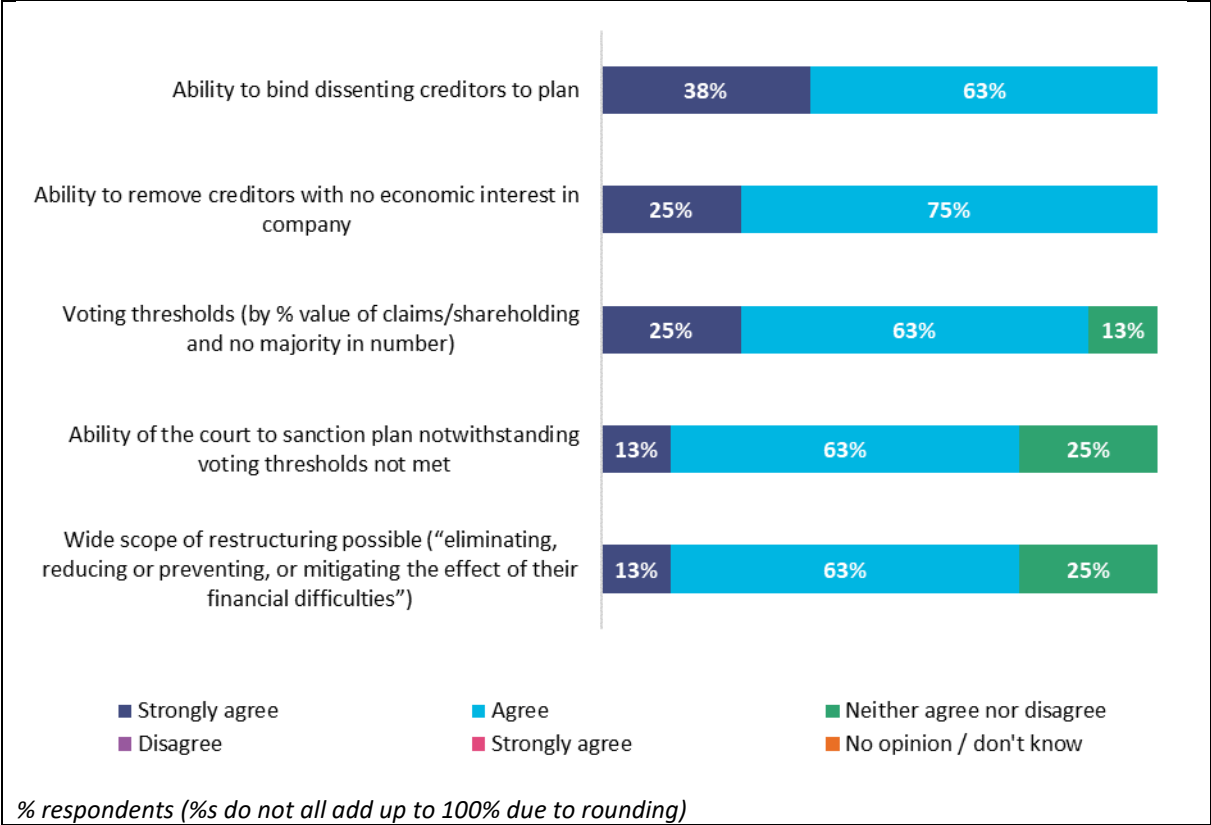
Just over half (54%) of respondents indicated that they do not know if they will be using the new restructuring provisions, while 27% said that they will not be using them, and only 20% stated that they will.



8. To what extent do you agree that the new restructuring provisions are likely to bring the following benefits?

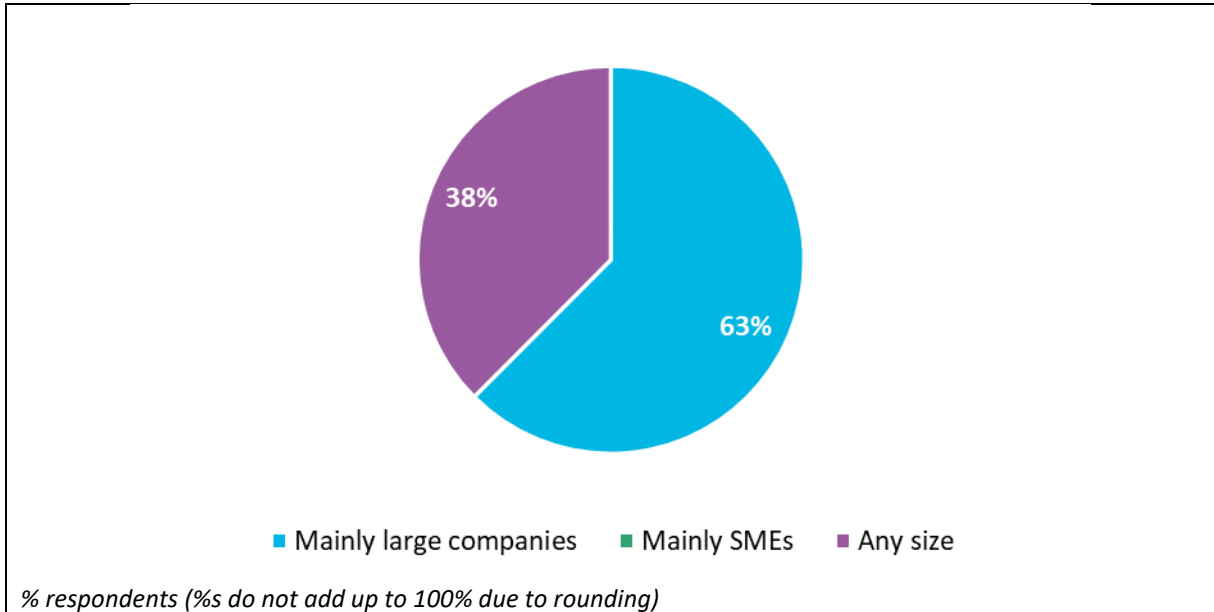
Those respondents who said that they will be using the new restructuring provisions mostly agreed that they bring several benefits. The ability to bind dissenting creditors to plan and to remove creditors with no economic interest in the company were seen as benefits by all respondents.

Most respondents also viewed voting thresholds, the ability of the court to sanction the plan notwithstanding voting thresholds not being met and the wide scope of restructuring possible as benefits of the new restructuring provisions.



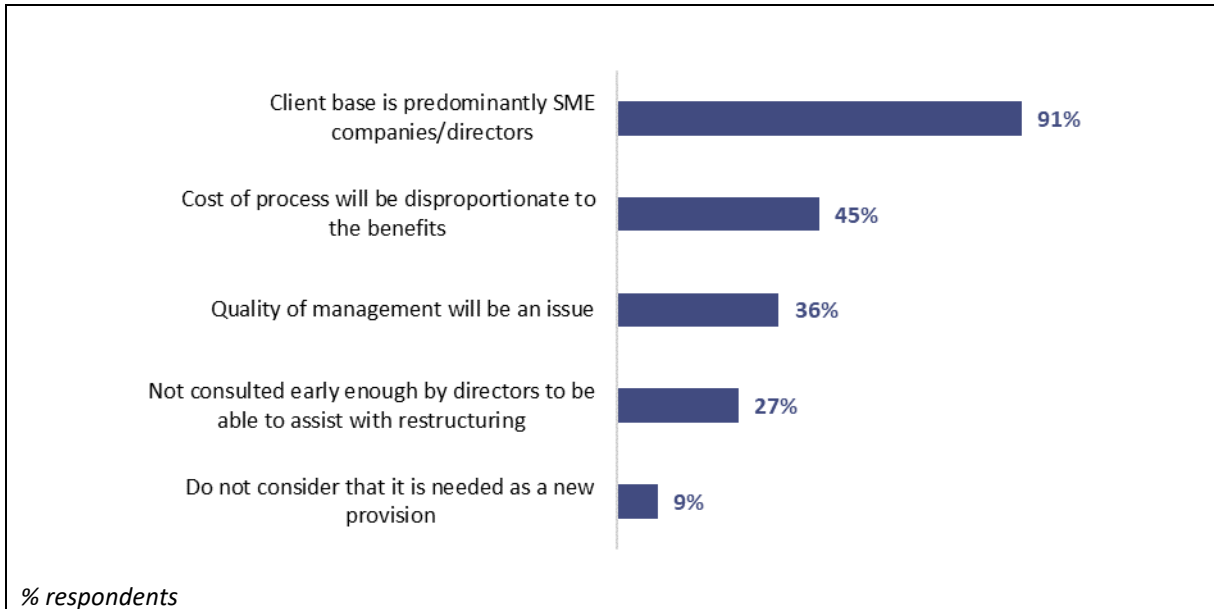
9. For what size of company do you anticipate using the new restructuring provisions?

Just over three in five (63%) respondents who said that they will be using the new restructuring provisions anticipate using them mainly for large companies, while 38% expect to use them for any size of company and none anticipate using them mainly for SMEs.



10. Why will you not be using the new restructuring provisions?

Those respondents who said that they will not be using the new moratorium provisions cited several reasons, with their client base being predominantly SME companies and directors by far the main one.



Contact Us

If you have any questions about this research or would like to discuss how Insolvency Support Services could support you and your firm in dealing with and using the new legislation, please do not hesitate to contact us.

As well as a recorded webinar, Corporate Insolvency and Governance Act 2020: An Introduction, already available to watch online at a time that is convenient to you, our Moratorium checklist is available now and the supporting document pack will be available in September. Please contact us for more information.

Eileen Maclean
emm@insolvencysupportservices.com

Alison Curry
ac@insolvencysupportservices.com

Insolvency Support Services Limited
www.insolvencysupportservices.com