

UK Corporate Insolvency and Governance Act 2020 Update

by Joseph Lewin

It has now been more than three months since the UK Government imposed a nationwide lockdown. Whilst certain businesses are beginning to resume operations, many still face an uncertain future.

The Corporate Insolvency and Governance Act 2020 (“**Act**”) received royal assent on 25 June 2020. It includes a range of measures that are intended to help businesses that are in financial difficulty as a result of the COVID-19 pandemic, particularly to help businesses avoid insolvency.

Some of these measures have been introduced in response to the economic effects of the COVID-19 pandemic, whilst others were under consideration prior to the pandemic, and have been accelerated to help businesses deal with the financial impact.

This update summarises the key changes that the Act has brought in. In addition to the measures set out in this update, the Act also contains provisions relating to company filing obligations and company meeting requirements.

1. Suspension of wrongful trading provisions

The Insolvency Act 1986 contains provisions relating to wrongful trading, which hold directors of an insolvent company personally liable if the company had continued to trade in a way which failed to minimise its creditor’s losses when there was no reasonable prospect of avoiding insolvency.

The Act suspends wrongful trading provisions for six months, starting on 1 March 2020 until 30 September 2020. During that period, the court is required to assume that a director is not responsible for any worsening of the financial position of the company or its creditors.

As such, directors of insolvent companies will not be held personally liable under the wrongful trading provisions in the Insolvency Act 1986 for any losses caused to the

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company's creditors during that six month period if the company continues to trade.

However, the suspension of these provisions does not apply to directors of "excluded entities" which includes banks, investment companies and certain other non-eligible companies.

2. Statutory moratorium on creditor enforcement

The Act introduces a moratorium for debtor companies which prevents enforcement action from most creditors. The moratorium is designed to give companies that are likely to become insolvent some additional breathing space so that they can investigate rescue options to avoid insolvency, for example, new investment or restructuring.

The moratorium must be proposed by a company's directors and gives the company 20 days (which can be extended to by a further 20 days without creditor consent) to explore other options free from the threat of legal action by its creditors. During the moratorium, most creditors will be prevented from taking enforcement action against the company. In addition, the moratorium provides a payment holiday for some pre-moratorium debts, without the need for permission from the court.

A licensed insolvency practitioner will oversee the moratorium, whilst the directors carry on running the business. The insolvency practitioner will have to consent to certain matters, including the granting of any new security.

3. Statutory demands and winding-up petitions

The Act also includes temporary restrictions on debt-recovery tools, namely statutory demands and winding-up petitions.

Statutory demands are a formal demand for payment from a debtor, and a precursor to a legal petition for winding-up.

Given the threat of winding-up if no payment is made within 21 days, the statutory demand process is often used as an aggressive form of debt collection. The new Act seeks to curtail this practice.

A summary of the changes brought in by the Act in this area, which came into force on 27 April 2020, are as follows:

- a. Statutory demands served between 1 March 2020 and 30 September 2020 ("**Relevant Period**") will not be able to be used as the basis of a winding-up petition presented on or after 27 April 2020.
- b. During the Relevant Period, a creditor can only commence winding-up proceedings against a company unless it has reasonable grounds to believe that:
 - i. coronavirus has not had a financial effect on the company; or

ii. the reasons for winding-up the company would have existed even if coronavirus had not had a financial effect on the company.

Given the very significant effect that the current crisis has had on the UK economy, it is likely that these changes will spell the end of the use of statutory demands as a debt enforcement tool in the very near future. Creditors will need to find other, less aggressive, means to enforce debts over the coming months.

4. Restructuring procedure

The restructuring procedure outlined in the Act gives a company that is struggling financially the option to propose a restructuring plan which will be sanctioned by the court. If the plan is approved by the court, any creditors who have voted against the proposal of the restructuring plan will be bound to it provided that those creditors would be no worse off than if the company had entered into a different form of insolvency procedure.

5. Invalidity of certain contractual provisions

The Act introduces measures which prevent the suppliers of a company which goes into a formal insolvency process, including liquidation or administration, from terminating a contract for the supply of goods or services because of the company's insolvency process.

These measures are designed to maintain the company's supply chain so that it can continue to trade, but there are some exceptions, including where the supplier can show that continuance of supply would cause "hardship".

For more information, please contact [Tim Maloney](#) or [Matthew Blower](#).

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