

## CORPORATE INSOLVENCY AND GOVERNANCE BILL TEMPORARY MEASURES

The Corporate Insolvency and Governance Bill (the "Bill") introduces temporary measures intended to support businesses and protect them from the effects of the Coronavirus pandemic.

### Temporary Suspension of Statutory Demands and Restriction on Winding-up Petitions

The Bill temporarily suspends statutory demands. In order to protect businesses from eviction by landlords, the Coronavirus Act 2020 created a moratorium on commercial landlords enforcing the forfeiture of leases. However, it became apparent that some landlords were using statutory demands followed by winding-up petitions to put pressure on their tenants to pay outstanding rent.

A statutory demand is a written demand requiring payment of an unpaid debt. Where a statutory demand is unpaid it can be used by the creditor to demonstrate to a court that a company is insolvent. This can form the basis of a winding-up petition to force the company into liquidation. Accordingly, the Bill introduces provisions which temporarily prevent winding-up petitions being made on the basis of statutory demands.

Temporary provisions to void statutory demands issued against companies during the emergency will apply retrospectively from **1 March 2020 to 30 June 2020**.

Restrictions on winding-up petitions will apply retrospectively from **27 April 2020 to 30 June, or one month after the enactment of the Bill (expected by the end of June)**.

### Temporary Suspension of Directors' Liability for Wrongful Trading

The Bill temporarily removes the threat of personal liability arising from wrongful trading for directors who continue to trade during the Covid-19 crisis despite uncertainty as to whether the company will be able to avoid insolvency in the future.

The court will not take into account any worsening of the financial position of a company or its creditors during the period starting on **1 March 2020 and ending on 30 June or one month after the enactment of the Bill ( expected by the end of June)**.

### Extension of Filing Deadlines

The Bill provides for a temporary extension of the period allowed for the directors of a public company to comply with their obligations under section 441 of the Companies Act 2006 to deliver accounts and reports for a financial year to the Registrar at Companies House.

The temporary extension will apply retrospectively from **25 March 2020 to 30 September 2020**. However, the Secretary of State may shorten or extend the end of the extension period by statutory instrument.

### **Flexibility on Holding Annual General Meetings (AGMs) and Other Meetings**

The Bill temporarily allows companies that are under a legal duty to hold an AGM to hold a meeting by other means, even if their constitution would not normally allow it. Meetings may be held and votes may be cast by electronic means. It is also possible to hold a meeting without a quorum of participants in the same location.

This measure will apply retrospectively from **26 March 2020 to 30 September 2020**. The Secretary of State may also extend this period by statutory instrument.

### **Power to Change Period During Which Temporary Provisions Operate**

The Secretary of State may amend certain provisions which relate to the COVID-19 pandemic and have a temporary effect, by either curtailing the time period specified in that provision or by prolonging it by up to six months.

The provisions are:

- prohibition of petitions based on statutory demands;
- restriction on petitions where a company is affected by coronavirus;
- suspension of liability for wrongful trading;
- modification of the Insolvency Rules; and
- temporary exclusion for small suppliers.

### **Temporary Exclusion for Small Suppliers**

The Bill changes existing insolvency law by introducing a new section to the Insolvency Act 1986. It prohibits reliance on termination and other clauses in contracts for the supply of goods and services when any of the following insolvency procedures occur in relation to a company:

- it enters a 'new' moratorium;
- it enters administration;
- an administrative receiver is appointed;
- a CVA proposal is approved;
- it goes into liquidation;
- a provisional liquidator is appointed; or
- a court order summons a meeting in relation to a compromise or arrangement.

Accordingly, a supplier cannot terminate a contract because a company enters into one of the above insolvency procedures. Where an event occurred that would have allowed the supplier to terminate a supply contract before the company entered into insolvency and that right has not been exercised, it is suspended once the company enters into the relevant insolvency

procedure. If the supplier's right to terminate arises after the insolvency procedure begins, that right is not prohibited.

The Bill provides some safeguards for small suppliers, who are excluded from the prohibition for the time being. In order to qualify for the small supplier exemption, at least two of the following conditions must apply:

- the supplier's turnover was not more than £10.2 million in the last financial year (or an average of £850,000 each calendar month if the supplier is in its first financial year);
- the supplier's balance sheet total was (or is) not more than £5.1 million; and
- the number of the supplier's employees was (or is) not more than 50.

The period for which this exclusion applies **begins with the day on which the Bill is enacted and ends on 30 June 2020 or one month after the enactment of the Bill, whichever is the later.**

Please find a diagram of the temporary measures timeframe below.

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