

# New Insolvency Practice Directions

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## Introduction

- On 26 June 2020, the [Corporate Insolvency and Governance Act 2020](#) (“CIGA”) came into force. CIGA is intended to relieve some pressure on businesses operating during the COVID-19 pandemic, and also to introduce new options for a company facing potential insolvency.
- Measures introduced by CIGA include:
  - i. A new moratorium process intended to give struggling companies breathing space, lasting up to 40 days without creditor consent and potentially longer with creditor consent;
  - ii. A new restructuring plan which can be used to ‘cram down’ a class of creditors or members who votes against the arrangement (given certain conditions);
  - iii. A provision ‘protecting the supplies of goods and services’, which prevents suppliers of goods and services to a company cutting off that supply upon the recipient company becoming subject to an insolvency procedure (by suspending contractual provisions giving the supplier a right to do so);
  - iv. A bar on statutory demands presented between 1 March 2020 and 30 September 2020 forming the basis of a winding-up petition; and
  - v. A new ‘coronavirus test’ applying during the same period in respect of winding-up petitions, which bars petitions being presented or winding-up orders approved unless the company would have been unable to pay its debts irrespective of the pandemic.
- Amendments to Practice Directions issued on 3 July 2020 make the changes to court rules of procedure which are required for the provisions of CIGA to have effect. These took the form of a new [Insolvency Practice Direction](#) and an [Amended 2018 Insolvency Practice Direction](#).
- Many of the new COVID-19-related rules will fall away after the end of the “relevant period” on 30 September 2020, unless the period is extended.

## The New Insolvency Practice Direction

- The New Insolvency Practice Direction introduces a new requirement for winding-up petitions to include a statement that the petitioner considers that either (i) the pandemic has not had a financial effect on the company; or (ii) the relevant ground for winding-up would apply even if the pandemic had not had any financial effect on the company. The petitioner must also include a summary of the grounds relied upon to make that statement.
- A new non-attendance pre-trial review of winding-up petitions will be held, at which the court will give directions for a preliminary hearing in order for the court to determine whether it is likely that the 'coronavirus test' will be satisfied.
- Until the court has concluded that the 'coronavirus test' is likely to be satisfied, winding-up petitions will now remain private, except for being served on the company and limited other parties (as set out in Rule 7.9 of the Insolvency Rules, including any liquidator or administrator).

## The Amended 2018 Insolvency Practice Direction

- Amendments to the 2018 Insolvency Practice Direction make provisions for the listing in front of a High Court Judge or Insolvency and Companies Court Judge of (i) applications for orders concerning moratoria contained in CIGA; and (ii) applications for orders concerning the protection of supplies of goods and services.

## Considerations for companies

- The new provisions on privacy of winding-up petitions, until the 'coronavirus test' is deemed satisfied, could significantly alter the dynamics of the creditor-debtor relationship. The ability to pressure debtors with the threat of a public winding-up petition has clearly become less straightforward.
- Moreover, the requirement for petitioners to show grounds for believing that the company would be unable to pay its debts even without coronavirus will be onerous for petitioning creditors. It remains to be seen what sort of grounds will be considered acceptable for this requirement, but more sophisticated financial analysis than under previous rules will inevitably be required.
- As intended, the rules are likely to give significant breathing space to debtor companies, especially those who have been heavily impacted by the pandemic such as those in hospitality, the arts, or travel. For these companies, it has now become easier during the relevant period to fight off winding-up petitions on the basis that the pandemic is the only reason that the company cannot pay its debts. This is another example of a pro-business continuity initiative from the government.

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