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COVID-19: Winding-up Petitions



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At the start of lockdown the Government made some announcements of law changes to protect businesses during the shut-down of many areas. The Coronavirus Act 2020 has been in force since 25 March 2020 and prevented landlords from forfeiting leases until 30 June 2020 (unless this date is extended).

We therefore received many enquiries from aggrieved landlords and others who were owed considerable sums and were not in a position to do just nothing during this period. It became apparent that the service of statutory demands, as a pre-cursor to winding up a company, became an appealing option to some who felt they had little option but to proceed with this drastic action.

The Government press release of 23 April 2020 indicated that further action to prevent this course of action would be included within the Corporate Insolvency and Governance Bill. This can be found [here](#).

The announcement suggested the focus was on the landlord and tenant relationship only and that where a company could not “pay its bills due to Coronavirus” the Court would not wind-up the company on petition from a creditor.

However, when the Bill was released on 20 May 2020 it was clear that the intention was to extend protection much wider than was originally suggested.

The headline points are:

1. Any statutory demand served on a company between 1 March 2020 and 30 June 2020 should be void;
2. Any winding up petition presented in the same period should be rejected by the Court unless the creditor has reasonable grounds for believing that:
 - a. Coronavirus has not had a financial effect on the company; or
 - b. The facts of the case (i.e. the debt) would have arisen even if Coronavirus has not affected the company; and

3. Any winding up petition granted during the same period should be set aside.

If there is delay in passing the Bill the relevant period could be extended until the end of July 2020.

It is notable that since the detail of the Bill was announced a case on 2 June 2020 considered the potential application of these new rules. In *Re: A Company (injunction to restrain presentation of petition [2020] EWHC 1406 (Ch)* the Court decided that even though the Bill had not yet passed the intention was clear and so an injunction was granted to prevent the presentation of a winding up petition based on the evidence from the company that it had been financially effected by the Coronavirus.

Therefore whilst it is still possible that cases will slip through the net and the facts will allow a winding up petition to be presented, it appears that in reality most creditors will not be advised to consider the service of a statutory demand or the issue of a winding up petition thereafter given the debtor will know that they are likely protected in this interim period and that incurring costs on the process would not be prudent given the limited likelihood of being successful. A debtor will only need to provide evidence of the impact of Coronavirus to be provided with protection and it appears this will apply in almost all cases given the widespread impact of the lockdown and social distancing.

It was interesting to note that initially the Court was not persuaded that the impending rules were sufficient to alter their current jurisdiction and in *Shorts Gardens LLB v London Borough of Camden Council [2020] EWHC 1001 (Ch)* the process was permitted to proceed. However, this should not encourage creditors as this case appears to be largely decided on the fact that the debtor did not rely on the impact of Coronavirus on its business and made alternative arguments, which were not compelling to the Court.

The Bill is expected to be passed by the end of June 2020 and even if it is extended, as proposed, these protections do appear to be short lived and so creditor's options will likely be reinstated in relatively short course. It does however remain to be seen whether many creditors will take this extreme action even when they can in these difficult times.

For further information, watch our webinar on Friday 12 June which will provide an update for landlords on the Corporate Insolvency and Governance Bill 2020. Click [here](#) to register.