KIRKLAND & ELLIS

Kirkland Alert

UK Extends Temporary Insolvency-Related Measures in Light of COVID-19

25 March 2021

At a Glance

The UK Government has legislated to extend existing insolvency-related temporary measures[1] and restrictions on forfeiture[2] in light of COVID-19 to end June / end September 2021, as summarised below. In parallel, new legislation renews a broad discretionary power to amend corporate insolvency legislation temporarily in light of COVID-19.[3]

Temporary provision	Detail	Revised end date
Restrictions on forfeiture	Commercial leases cannot be forfeited for non-payment of rent or other sums due between 26 March 2020 and 30 June 2021; restrictions on landlords using commercial rent arrears recovery ("CRAR") have also been extended[4]	30 June 2021
Wrongful trading	Relaxation of directors' liability, under wrongful trading provisions, for any worsening of a company's	30 June 2021

	financial position in the relevant period	
Statutory demands	Statutory demands made in the relevant period are void	30 June 2021
Winding-up petitions and orders	• Suspension of winding-up petitions where a company's inability to pay is the result of Covid-19 • Restrictions on the court's jurisdiction to make a winding-up order	30 June 2021
Exemptions for small business suppliers from *ipso facto* restrictions	Small business suppliers are exempt from the prohibition on enforcement of *ipso facto* clauses (i.e., clauses allowing one party to a contract to terminate, or impose altered terms, solely on the basis of the insolvency of the counterparty — in contracts for the supply of goods or services)	30 June 2021
Relaxation of moratorium conditions	Certain of the conditions to the commencement of a moratorium are eased	30 September 2021

These provisions may be extended further; the renewed discretionary power expires end April 2022 (such that underlying measures should not extend beyond end October 2022).

* * *

The UK Corporate Insolvency and Governance Act 2020 ("CIGA") includes a broad discretionary power[5] for the Secretary of State, by regulation, to amend corporate insolvency legislation for specific purposes, including to reduce the number of entities entering insolvency proceedings for reasons relating to COVID-19 or to mitigate difficulties that corporate insolvency or restructuring procedures might impose on a business in light of COVID-19. This power was due to expire on 30 April 2021 but will now expire on 29 April 2022.[6] The insolvency-related extensions and adjustments in the table above are being implemented pursuant to this discretionary power.

The current COVID-19 temporary insolvency measures were due to expire at the end of March (or, in the case of wrongful trading relaxations, at the end of April). The UK Government committed itself to avoiding a "cliff edge" for businesses when the temporary measures fall away.

These changes attempt to strike a balance between the continued need for protection for businesses in certain sectors particularly adversely affected by COVID-19 and, on the other hand, permitting market forces to return to normal as the pandemic (hopefully) begins to draw to a close. Opinion will no doubt be divided depending on stakeholders' interests. As ever, we are happy to discuss this further with interested clients.

---

1. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021.↩

2. The Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) Regulations 2021. ↩

3. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021, expected to become effective on or about 24/25 March 2021.↩

4. The Taking Control of Goods (Amendment) (Coronavirus) Regulations 2021.↩

5. Specifically, the relevant power (under s.20 CIGA) is to:

    a) change the conditions that must be met before a corporate insolvency or restructuring procedure applies to entities of any description,

b) change the way in which a corporate insolvency or restructuring procedure applies in relation to entities of any description, or

c) change or disapply any duty of a person with corporate responsibility or the liability of such a person to any sanction (e.g. directors).

This power can only be exercised for certain specific purposes, including reducing the number of entities entering insolvency proceedings for reasons relating to COVID-19 (s.21 CIGA). This power can only be exercised if the need is urgent and the provision is proportionate (among other conditions) (s.22 CIGA). Any regulation enacted pursuant to this power can only have effect for a maximum of six months, though this power can be exercised repeatedly / periods can be extended, up to six months at a time (s.23 CIGA). Under the new statutory instrument, the Secretary of State can make such regulations up until 29 April 2022 — therefore the maximum end point of regulations would be October 2022.↩

6. See footnote 3.↩

Authors

Kate Stephenson

Partner / London

Related Services

Practices

- Restructuring

Suggested Reading

- 05 May 2021 - 13 May 2021 Speaking Engagement VALCON 2021
- 18 March 2021 Award Chambers Europe: Europe’s Leading Lawyers for Business 2021
- 17 March 2021 Award The 2021 Law Power 100