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Kirkland Alert

UK Phases Out COVID-19-Related Temporary Insolvency Measures, but New Tapering Measures Protect Commercial Tenants

10 September 2021

1. At a Glance

Yesterday, 9 September, the UK Government [announced](#) plans to:

- a. permit existing restrictions on winding-up petitions and statutory demands to lapse on 30 September 2021; but
- b. until 31 March 2022:
 - i. prohibit winding-up petitions based on unpaid rent under a business tenancy which is unpaid by reason of a financial effect of coronavirus;
 - ii. protect businesses from creditors insisting on repayment of relatively small debts by temporarily raising the current debt threshold for a winding-up petition to £10,000 or more (up from £750); and
 - iii. require creditors to seek proposals for payment from a debtor business, giving them 21 days for a response before they can proceed with winding-up action.

Regulations in respect of these new restrictions on winding-up petitions are [here](#) and enter into force on 29 September.

The Government previously announced (in June) the extension of restrictions on forfeiture and commercial rent arrears recovery (“CRAR”) until 25 March 2022 or, if earlier, the enactment of new legislation to facilitate compromises between tenants

and landlords in respect of COVID-19-related rent arrears by way of binding arbitration proceedings. The Government already permitted the temporary relaxation of wrongful trading laws, and certain other temporary insolvency-related measures, to lapse on 30 June 2021.

2. When can winding-up petitions be served from 1 October?

From 1 October 2021 until 31 March 2022, a creditor can only present a winding-up petition on the ground that the company is unable to pay its debts if each of the following conditions is satisfied:

- A. the debt due by the company to the creditor is (i) liquidated (i.e., for a specific amount), (ii) has fallen due and (iii) is not an “excluded debt”, which is defined as rent under a business tenancy which is unpaid by reason of a financial effect of coronavirus;
- B. the creditor has delivered written notice seeking the company’s proposals for the payment of the debt;
- C. after 21 days, the company has not made a proposal for payment that is to the creditor’s satisfaction; and
- D. the amount owed is at least £10,000.

Creditors may apply to court to disapply/vary conditions B and C (but not conditions A or D).

3. Comment

The Government has committed itself to lifting restrictions on creditor actions as the economy returns to normal trading conditions. There are three ways in which these new interim measures “bridge the gap” toward permitting market forces to return to normal:

- A. by prohibiting winding-up petitions in respect of unpaid amounts below £10,000, to “protect businesses from creditors insisting on repayment of relatively small debts” – irrespective of the size of the company;
- B. by requiring creditors to give debtors 21 days to make proposals for repayment (although there is no obligation on creditors to accept such proposals, nor any

obligation for creditors to act reasonably when considering such proposals); and
C. by continuing protection for commercial tenants with rent arrears that are “unpaid by reason of a financial effect of coronavirus”, by prohibiting winding-up petitions in respect of such amounts.

This third protection/limitation is introduced pending new legislation (expected before end March 2022) to help tenants and landlords work together to reach agreement on how to handle outstanding unpaid rent arrears accrued during periods in which the business had to remain closed owing to COVID-19 restrictions; failing consensus, the new legislation is expected to provide for a binding arbitration process.

At first glance, these temporary regulations appear to protect a wider range of rent arrears (i.e., those “unpaid by reason of a financial effect of coronavirus”) than are intended to be captured by future legislation in respect of the arbitration regime (i.e. those accrued “when a business has had to remain closed during the pandemic”¹). For clarification, we await the Government’s formal response to its “call for evidence” on commercial rents and COVID-19² and a revised “Code of Practice for commercial property relationships”, upon which it is understood that the new legislation will be based.

1. Wording in [press release](#) issued by the Ministry of Housing, Communities & Local Government and the Department for Business, Energy & Industrial Strategy, 16 June 2021.↵

2. Further information on the call for evidence is [here](#).↵

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- 13 September 2021 Award Hong Kong Law Awards 2021
- 08 September 2021 Kirkland Alert English Court Holds Obligation in English Law Facilities Agreement Continues in French Insolvency Proceedings
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