**Winding-Up Petitions after the New Insolvency Practice Direction relating to the Corporate Insolvency and Governance Act 2020**

**Introduction**

The Corporate Insolvency and Governance Act 2020 (“the Act”) came into force on 26 June 2020. The Act introduced a number of temporary changes to the UK’s insolvency regime to mitigate the adverse economic effects of Covid-19. One of the key changes is the prohibition on the presentation of winding up petitions in Schedule 10 of the Act and is set out below in more detail.

On 3 July 2020, the Lord Chancellor approved a new Insolvency Practice Direction which sets out the procedures governing winding up petitions until 30 September 2020. In this article I will address those procedures and their impact in practice upon the winding up process.

1. **Schedule 10 Corporate Insolvency and Governance Act 2020** 
   1. **The prohibition**

The prohibition as stated in Schedule 10 of the Act can be summarised is as follows:

* No petition for the winding up of a company can be presented on or after 27 April 2020 on the ground that a company has failed to satisfy a statutory demand if that demand was served between 1 March and 30 September 2020; and
* No petition for the winding up of a company can be presented by a creditor on or after 27 April and 30 September 2020 unless the creditor has reasonable grounds for believing that (1) coronavirus has not had a financial effect on the debtor or (2) the debtor would have been unable to pay its debts even if coronavirus had not had a financial effect on the debtor.
  1. **The impact of the prohibition**

The effect of the above provisions are that there is a blanket prohibition preventing winding-up petitions being presented to the Court on or after 27 April 2020 where they are brought on the basis of a statutory demand served between 1 March and 30 September 2020. The prohibition is not therefore restricted to the sectors which have been most severely financially impacted by the effects of Covid-19.

The Court “may” make a winding-up order based on a petition presented after 1 March 2020 as long as it is satisfied that the creditor has reasonable grounds for believing that the coronavirus has not had a financial effect on the company or that its inability to pay its debts would have arisen anyway.

In relation to existing winding-up orders which were made on or after 27 April 2020 but before 26 June 2020 (when the Act came into force) which would not have been made if the Court applied the above principles will be considered retrospectively void. Therefore, there is no need for an application to rescind a winding-up order. However, professional advice should be sought if there is any doubt in relation to a winding-up order which has been made on or after 27 April 2020.

1. **The New Insolvency Practice Direction** 
   1. **Petitioning Creditor’s statement**

Paragraph 3 of the Practice Direction states that the Court will not accept a winding-up petition unless it contains a statement in accordance with paragraph 19 (3) of Schedule 10 of the Act. In other words, the petition must contain a statement confirming that the ‘coronavirus test’ is met.

* 1. **Non Attendance Pre-Trial Review (“Non-Attendance PTR”)**

Pursuant to paragraph 4 of the Practice Direction, all winding-up petitions which contain the statement in compliance with paragraph 3 of the Practice Direction are to be listed for a non-attendance pre-trial review with a time estimate of 15 minutes for the first available date after 28 days from the date of its presentation. Two days before the non-attendance PTR, the parties must file a listing certificate including a time estimate for the preliminary hearing. This causes some practical difficulties as in many cases it is unclear to the Petitioner whether the debtor company has or will oppose the petition at the time of filing the listing certificates making it difficult to estimate the length of time that may be required for a preliminary hearing.

The purpose of these hearings is for the Court to determine whether to list the petition for a hearing in the winding-up list or for a preliminary hearings as detailed in paragraph 7 of the Practice Direction.

In my experience thus far, if there is no opposition from the debtor company and the Court can satisfy itself that it is likely to make a winding-up order under section 122 (1) (f) or 221 (5) (b) of the Insolvency Act 1986 then it will list the petition in the winding-up list. It is worth bearing in mind that since the Petitioner is unable to attend this hearing, the grounds relied upon by the Petitioner for the purposes of the coronavirus test should be abundantly clear from the Petition. It is advisable to seek professional advice in relation to this as if the grounds are unclear then it may be necessary to take steps to clarify this to the Court in advance of the non-attendance pre-trial review.

* 1. **Preliminary Hearings**

Paragraph 8 provides details of what to expect at a preliminary hearing. Essentially, the Court will determine whether or not the coronavirus test has been met and dismiss or list the petition for a winding-up hearing accordingly. In practice, this has meant the citing of coronavirus as a method of delaying the inevitable but insolvency judges have been robust in dismissing such arguments. Unfortunately, given the scale of financial hardship caused by Covid-19, many companies have been adversely affected and in those cases, winding-up petitions against them have been dismissed. Understandably, the threshold applied has been low.

* 1. **Petition Hearings**

As a result of the provisions of the Act and the Practice Direction, the number of petition hearings has dramatically reduced. The conduct of petition hearings is largely unchanged save that the Courts are concerned to ensure that the coronavirus test has been met and that service upon debtor companies has been done by e-mail in addition to service at the registered office.

1. **Implications in Practice**

In practice, the provisions in the Act and the Practice Direction act as a filter and preserve the winding-up list for cases where a winding up order can be made in compliance with Schedule 10 of the Act. As all winding-up petitions are now subject to a non-attendance pre-trial review and potentially a preliminary hearing before reaching the winding-up list, it does take considerably longer to complete the process. However, the advantage of this is that it allows more time for debtor companies to settle the Petition debt.

As it stands, the relevant provisions in the Act and the Practice Direction are in force until 30 September 2020. Whilst the Government has the power to extend the period that both are in force, there has been no announcement to this effect yet. As we have learned over the past few months, that does not rule out the possibility of an announcement closer to the time so watch this space….

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