



CORPORATE INSOLVENCY UPDATE

FURTHER EXTENSION OF RESTRICTIONS ON STAT. DEMANDS AND WINDING UP PETITIONS UNDER CIGA 2020

by Kavan Gunaratna – Barrister, Enterprise Chambers on 10.12.20

Executive Summary

1. The Government has now (as of 9.12.20) announced its intention to [extend the restrictions on stat. demands and winding up petitions \(contained in Sched. 10 of CIGA 2020\) until midnight on 30.3.21.](#)
2. At the time of writing, the relevant statutory instrument has yet to be made but the Department for Business, Energy & Industrial Strategy issued a press release on the gov.uk website yesterday which can be accessed here: <https://www.gov.uk/government/news/government-gives-businesses-much-needed-breathing-space-with-extension-of-insolvency-measures#history>.
3. This marks a change in approach: on 24.9.20 (when the Government extended a number of the Covid-related protections under CIGA 2020 from their initial expiry date of 30.9.20 to a series of different expiry dates), the Government declined to extend the restrictions on stat. demands and petitions to as late as 30.3.21 as it did for other forms of protection, limiting that extension to 31.12.20. At the time, it stated that it “recognised that this temporary measure is a significant intervention into the normal working of insolvency law, in particular the rights of creditors and consequently, any single extension of this measure should be of a shorter duration” (S.I. 2020/1031, Explanatory Memorandum, para. 7.3). However, this further extension will not come as a surprise to practitioners.
4. It marks the second change in approach announced within the past 14 days. Readers will be aware that on 25.11.20, the Government laid a second Statutory Instrument before Parliament (S.I. 2020/1349) to [reinstate until 30.4.21 the temporary “suspension of liability for wrongful trading”](#) (a misnomer given the actual text) which was enacted in section 12 of CIGA, broadly speaking to provide company directors with some comfort in respect of their potential exposure for wrongful trading under sections 214 or 246ZB of the Insolvency Act 1986. Under CIGA 2020 as originally enacted, that temporary suspension was due to expire at midnight on 30.9.20. The Government conspicuously declined to extend that particular deadline when it extended other protections on 24.9.20, so they lapsed on 30.9.20. It performed a u-turn and reinstated them from 26.11.20 to 30.4.21: S.I. 2020/1349 reg. 2. By reg. 3 of that S.I., it also further extended the temporary provisions about company meetings from 30.12.20 to 30.3.21.
5. [The various new \(amended\) deadlines can be summarised as follows \(in each case to midnight\):](#)
 - 5.1. 30.3.21 – expiry of restrictions on stat. demands and petitions under Sched. 10 CIGA
 - 5.2. 30.3.21 – expiry of dispensation from seeking validation orders under para. 8-9 of Sched. 10
 - 5.3. 30.3.21 – expiry of relaxations re: EGMs and voting arrangements etc. under Sched. 14 CIGA
 - 5.4. 30.3.21 – expiry of dispensation for small suppliers from new ipso facto rules under s.14-15 CIGA
 - 5.5. 30.3.21 – expiry of the remaining relaxations (under Sched. 4 CIGA) in the process for obtaining a Moratorium under Part A1 and Sched. ZA1 IA 1986 (but see S.I. 2020/1033 reg. 2 by which some of those relaxations already ceased to have effect on 1.10.20, with others extended by S.I. 2020/1031)
 - 5.6. 30.4.21 – expiry of “suspension of liability for wrongful trading” under section 12 CIGA 2020

6. Lord Callanan (the Under Secretary of State at DBEIS) said this about the latest announcement:
“It is vital that we continue to deliver certainty to businesses through this challenging time, which is why we are now extending these important and necessary measures to protect companies from insolvency. Through this measure, we want to ensure businesses are able to not only come through this testing period, but also to plan, adapt and build back better.”
7. Time will tell whether the Government will extend any of these temporary provisions for a third time in March 2021. Under section 41 of CIGA, it may do so by up to 6 months at a time (subject to the ultimate oversight of Parliament) where it considers it reasonable to do so to mitigate an effect of Covid-19.

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About the author

Kavan is a barrister practising from Enterprise Chambers. He is ranked by the Legal500 and Chambers & Partners as a leading junior simultaneously in the fields of Insolvency/Restructuring and Real Estate/Property litigation and Chancery-Commercial litigation, where quotes about him have included the following:

“unfailingly brilliant”; *“one of the best barristers in the area”;*
“exceptionally user-friendly”; *“a delight to work with”;* *“clients love him”*
“highly intelligent, quick to get to the bottom of an issue, articulate and charming”
“has a masterful grasp of the law” and is *“as strong with strategic advice”*
“a wonderful opponent - very able and slightly deadly”
“knows exactly how to present a case to a judge” and *“gets amazing results”*.

He is an author of ‘Butterworth’s Property Insolvency’ and ‘The Landlord and Tenant Factbook’ amongst other texts, and has published articles across his fields of practice, including recently in ‘Butterworth’s Journal of International Banking and Financial Law’. He has provided training for bodies including the PLA, ILA, R3 and the ICAEW, as well as in-house for leading law firms. His list of reported cases and full CV is available on the Chambers website.