



Ask ICAS Webinar Series

Q & A

Ask ICAS: Rescuing financially distressed businesses

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Corporate Insolvency and Governance Bill

Question	Answer(s)
Is administration of companies also suspended under the temporary coronavirus provisions or is it only winding up?	<p>For clarity, it remains possible to wind up a company during the restricted period, which now will extend through to 30 September 2020, although only in certain circumstances.</p> <p>The provisions in CIGA 2020 are that generally no petition may be presented in court for the winding up of a company between 27 April 2020 and 30 September.</p> <p>Creditors may present a petition if the creditor has reasonable grounds for believing that coronavirus has not had a financial effect on the company, or that the manner in which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.</p> <p>There is no change to the ability of creditors to seek the appointment of an administrator either by seeking an order for administration or appointment as a Qualifying Floating Charge Holder</p>
Will the use of website provisions under rules 1.49 and 1.50 apply to the monitor when communicating with creditors?	Schedule 4 to CIGA 2020 sets out the temporary provisions in relation to communication pending permanent provisions in both the Insolvency Rules 2016 and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018. Paragraph 46 sets out the rules for delivery of documents for England and Wales and paragraph 86 sets out the equivalent rules for Scotland. Neither permits the use of websites.
Will the electronic delivery provisions apply to the monitor when communicating with creditors?	Yes - see answer above. Electronic delivery is permitted.

<p>Where the directors convene a decision procedure to extend the moratorium, can creditors then requisition a physical meeting? My concern about the ability to requisition a physical meeting is the timing of it as a requisitioned physical meeting could well end up having to be held after the moratorium has automatically ended and I could not see any automatic extension terms as there are where considering a CVA.</p>	<p>The decision as to consent is to be made using a qualifying decision procedure and Part 15 of the Insolvency Rules 2016 (except rule 15.8(3)(f) and (g)) and Part 16 applies (proxies) (except rule 16.7). In Scotland Part 5 of The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 applies, except rule 5.8(3)(f) and (g), as well as Part 6 (except rule 6.7).</p> <p>There is therefore nothing to stop creditors requisitioning a physical meeting and there appears to be no automatic extension.</p> <p>It is therefore likely that an early decision will be required on whether an extension beyond 40 days is likely to be required - with the decision procedure possibly commenced at the same time as the extension without consent is being obtained and notified.</p>
<p>Can you act as monitor for a client?</p>	<p>There is no prohibition on acting as monitor for a firm client. However, when considering whether it is appropriate to act as monitor, insolvency practitioners should refer to the Code of Ethics to identify threats to compliance with the fundamental principles; evaluate the threats identified; and address the threats by eliminating or reducing them to an acceptable level. Insolvency practitioners must exercise professional judgement; remain alert for new information or changes to the facts or circumstances and re-evaluate if necessary; and apply the "reasonable and informed third party test".</p>
<p>Can a security be called up before 30/9/20?</p>	<p>Yes there is no prohibition on the calling up of securities however a moratorium will, in terms of section A21 of Part A1, prohibit the enforcement of the security.</p>
<p>As I read it the temporary prohibition on statutory demands does not extend to short form demands which are of course often used by creditors in Scotland to found inability to pay debts under section 123(1)(e). Does the panel agree that a petition on that basis is not prohibited provided the creditor can aver that the debtor company would have been insolvent notwithstanding Covid ?</p>	<p>There is a general prohibition on petitions for winding up being presented after 27 April 2020 if that petition is based on a statutory demand (howsoever defined) served between 1 March and 30 September 2020 and on the ground of s123(1)(a) of the Insolvency Act 1986.</p> <p>A petition under Section 123(1)(e) is permitted during the period 27 April and 30 September 2020 only if the creditor has reasonable grounds for believing that coronavirus has not had a financial effect on the company, or the relevant ground would apply even if coronavirus had not had a financial effect on the company.</p>

<p>Any implications of these changes for unincorporated businesses - eg traditional partnerships (non LLP)?</p>	<p>No - partnerships in Scotland do not fall within the corporate regime - they are dealt with via personal insolvency legislation. Entities such as partnerships can apply for a personal insolvency moratorium and further information is available on the Accountant in Bankruptcy's website at https://www.aib.gov.uk/debt/deal-debt/what-moratorium</p>
<p>Do the directors or monitor need to communicate the moratorium beyond the creditors? For example, do they need to lodge with Companies House or advertise in the Gazette?</p>	<p>Section A8 of Part A1 sets out notification requirements when a moratorium comes into force. The directors are responsible for notifying the monitor, though in practical terms it is likely that the monitor will have an active role in the process in any event. The monitor is then responsible for notifying the -- registrar of companies, every creditor of the company of whose claim the monitor is aware, in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.</p> <p>There is no obligation to make any advertisement on the Gazette.</p> <p>While not contained in CIGA 2020, the Insolvency Service guide also makes provision for notification to employees of the company. It states that, when in receipt of notification from the directors that a moratorium has come into force, the monitor should ensure that the directors have informed employees of the effect of the moratorium, its initial length, its effect on their wages, salary and employment rights.</p> <p>Beyond initial notification there are ongoing responsibilities conferred on both directors and monitors to notify certain parties in certain circumstances. For example section A17 of Part A1 sets out a table which imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end. That section also sets out the monitors notification obligations if he receives such notice.</p>
<p>Is the provision that you are entitled to take information from the directors at face value give you as an IP any comfort?</p>	<p>The insolvency practitioner should exercise their professional judgement to satisfy themselves of the accuracy of the information being provided before proceeding with a moratorium.</p> <p>During the moratorium the monitor is able to require the directors provide further information in terms of section A36 of Part A1. If the directors fail to comply then the monitor must terminate the moratorium.</p>