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*David is a barrister, litigator and mediator with significant experience of complex international disputes and, in particular, insolvency, trust and fraud litigation and advocacy. David routinely advises and works with insolvency practitioners, offshore law firms, financial institutions and corporate and commercial clients throughout the world.*

### Important Changes to the Corporate Insolvency and Governance Act 2020

#### Summary

On 26 June 2020, the Corporate Insolvency and Governance Act 2020 (**the “Act”**).<sup>1</sup> It introduced some fundamental changes (both temporary and permanent) to the UK’s company and insolvency law and was precipitated in large part by the COVID-19 crisis.

On 29 September 2020, HM Government introduced two Statutory Instruments (**the “SIs”**)<sup>2</sup> and accompanying Explanatory Memorandums<sup>3</sup>, which extend some (but importantly, not all) temporary provisions provided in the Act that would otherwise have expired today, 30 September 2020.

Two of the most interesting developments are:

- 1) The extension of the prohibition on relying on statutory demands and winding up petitions unless the “Coronavirus Test” is met until 31 December 2020<sup>4</sup>, and
- 2) The termination of suspension on the rules on wrongful trading.

#### Extension of the regime for the winding up of companies

The most notable extension provided in the SIs is the restriction imposed by the Act in Schedule 10 on the winding up of companies, which has been extended from 30 September 2020 to 31 December 2020. This consequently means that:

- a) No winding up petition can be presented on statutory demand between 1 March 2020 and 31 December 2020.
- b) Unless a creditor has reasonable grounds to believe that the Coronavirus Test<sup>5</sup> has been met no

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<sup>1</sup> [Corporate Insolvency and Governance Act 2020](#)

<sup>2</sup> Statutory Instruments 2020 No. [1031](#) and [1033](#)

<sup>3</sup> Explanatory Memorandum [1031](#) and [1033](#)

<sup>4</sup> See, *op. cit.* at note 2 No. [1031](#) section 2(3)(b)

<sup>5</sup> See, The Corporate Insolvency and Governance Act 2020, section 10 and Schedule 10, Part 2, para. 2-3.



creditor may present a winding up petition between 27 April 2020 and until 31 December 2020<sup>6</sup> and neither can the Court make a winding up order on any petition presented during this period.

- c) If a winding up order has in fact been made after satisfying the Coronavirus test the winding up is deemed to commence upon the making of the order rather than the date of the petition.

The main reason for the extension of this restriction is, of course, to continue to provide alleviating measures to companies while COVID-19 restrictions remain in place. In particular, it helps to protect businesses in financial difficulty from aggressive creditors since the temporary restrictions prohibit creditors from filing winding up petitions when the debtor's inability to pay is due to the coronavirus pandemic.

*Termination of suspension on the rules of wrongful trading*

Unexpectedly, the Government has not extended the suspension of liabilities for wrongful trading under s.214 of the Insolvency Act 1986. No particular reason is given in either the SI or Explanatory Memorandums. This is, however, likely to be of little consequence since such actions tend to be rare and instead tend to be based on breaches of directors' duties which continue to apply.

It will be interesting to see how the legislation in this area develops during the remainder of 2020.

**30 September 2020**  
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For access to the full text of the SIs [click here](#).

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<sup>6</sup> *Ibid*, at para. 21(1).