

COVID-19: UK RESTRUCTURING AND INSOLVENCY UPDATE - JULY 2021 IS THE MONTH TO WATCH

Date: 7 April 2021

UK Restructuring and Insolvency Alert

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The UK government has extended its suspension of various rules and procedures affecting distressed businesses as a result of the coronavirus (COVID-19) pandemic. However, with the UK lockdown easing on a rolling basis up to 21 June 2021, these may be the last of the blanket extensions across all of these areas. Expect the gradual reintroduction of some of the rules and procedures from 1 July onwards.

THE EXTENSIONS TO THE END OF JUNE 2021

The new end date to which the UK government has extended various derogations from usual insolvency-related rules and procedures is 30 June 2021, including:

The current temporary restrictions on the service of statutory demands and winding-up petitions on distressed companies by creditors.

Statutory demands and winding-up petitions by creditors of companies affected by COVID-19 will continue to be restricted until 30 June 2021. It appears that there is a relatively low threshold for debtor companies to establish that the pandemic has had a “financial effect” on the company, with the company only required to establish that their financial position has worsened for reasons relating to COVID-19.

The prohibition on termination clauses, stopping suppliers from ceasing their supply or asking for additional payments while a company is going through a rescue process.

Small suppliers will also remain exempted from the obligation to supply such customers until 30 June 2021.

The temporary suspension of directors' liability for wrongful trading for directors who can demonstrate that their company's trading has been negatively affected by the pandemic.

Once a director of an English company concludes that there is no reasonable prospect of the company avoiding an insolvent liquidation or an insolvent administration, the director usually has a duty to take every step that a reasonably diligent person would take to minimise potential loss to the company's creditors. If the court deems that a director failed in this duty, the court can order the director to make such personal contribution to the company's assets as it thinks proper. There may be many thousands of directors who will feel themselves exposed to this liability from the beginning of July 2021 (if the suspension is not extended again), having benefitted from an almost continual suspension of the offence since 1 March 2020.

The current restriction on commercial landlords' right of reentry or forfeiture for nonpayment of rent.

The UK government's current position is to support commercial landlords and tenants to agree on their own arrangements for paying or writing off rent debts. However, the government has also made it clear that where businesses can pay their rent, they should do so. The government has also stated that if discussions between landlords and tenants do not happen, they are prepared to take further steps. They will be “launching a call for evidence on commercial rents” aimed at monitoring progress of negotiations and are anticipating the steps that could be taken after 30 June. There was mention of a potential “phased withdrawal” of protections being considered.

The restriction on the use of the Commercial Rent Arrears Recovery (CRAR) process by landlords.

The new extension also increases the total number of days of outstanding rent required for CRAR to be used to 457 days between 25 March and 23 June 2021, and 554 days between 24 June and 30 June 2021 (see more details [here](#)).

JULY 2021 ONWARDS

This package of measures prolongs these extensions beyond the date of 21 June 2021 when all general lockdown measures are due to end and public life in England is scheduled to return to the new normal (albeit with continued measures to combat COVID-19). Although difficult to predict, it may be that some of these dates will not be subject to any further extension or at least a timetable for phased withdrawal. Businesses need to start planning now for a world where some or all of these derogations cease to apply.

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