

---

# INSOLVENCY BULLETIN

Volume 1, Issue 8

June 2020

---

## **The Corporate Insolvency and Governance Bill is supported by the courts in recent decisions on winding up petitions**

Two interesting applications, both involving winding-up petitions, have been heard this month. The judicial rulings, in both cases, supported the provisions of the Corporate and Insolvency Governance Bill (“the CIGB”). As detailed in our May bulletin the CIGB was presented to Parliament on 20 May 2020. The CIGB has now passed its third reading and is due to go back to the House of Commons with amendments. The temporary restrictions on the presentation of winding up petitions during what is described as the “relevant period” are defined within Schedule 10 of the CIGB.

In *Re A Company (Injunction to Restrain Presentation of a Petition)* [2020] EWHC 140 a company applied for an injunction to restrain the presentation of a winding up petition. In delivering his ruling and with reference to the provisions of Schedule 10 of the CIGB, Mr. Justice Morgan stated that “*On that evidence there is a strong case (at the lowest) that coronavirus has had a financial effect on the company*” and “*The evidence before me shows that the presentation of a petition which would ultimately fail would nonetheless have a seriously damaging effect on the company*”.

Counsel for the company relied on the proposition that for certain purposes the court can take into account the possibility of a change in the law. Mr. Justice Morgan ruled that the presentation of the petition be restrained. It is noticeable that a wide interpretation of the proposed legislation was given. The company was affected not necessarily by damage to its trading, but by the delay of refinancing options as a consequence of the pandemic. In making his decision Mr Justice Morgan stated “*a high degree of confidence that Schedule 10 (of the CIGB) will be enacted in more or less its current form*”.

In *Re A Company (application to restrain advertisement)* [2020] EWHC 1551 (Ch) ICC Judge Barber stated “*By the time of the hearing before me, it was common ground that the court should factor the provisions of the CIGB into the exercise of its discretion in relation to the Company’s application*”. Judge Barber referred to the ruling of Mr. Justice Morgan in the earlier case. With regard to advertising the petition Judge Barber also stated, with detailed reference to Schedule 10 of the CIGB, that “*The adverse publicity surrounding the presentation of a winding up petition at this commercially sensitive time would plainly be detrimental to the Company, and would serve no purpose if (as currently the case on the evidence as it stands, assuming that the CIGB is made law) there is no real chance that a winding up order will be made*”.

### **Editor’s note**

These two cases clearly show that the courts will give the widest possible scope in interpreting the provisions of the CIGB. The challenge will occur in demonstrating that a company has not been affected by the pandemic during the relevant period. Any creditor considering presenting a winding up petition, during the relevant period, should prepare very carefully, check that the debtor company does not fall within the ambit of the CIGB provisions and take detailed legal advice before proceeding.

<b><u>Insolvency and Corporate Recovery Team</u></b>
Jane Golledge Grant Rechin Mark Silvester (Editor) Michael Segen

---

### **SBP LAW SOLICITORS**

Glade House, 52-54 Carter Lane, London EC4V 5EF

Tel: +44 (0)20 7332 2222 • Fax: +44 (0)20 7236 2112 • DX: 1030 LDE

email: [michael@sbplaw.co.uk](mailto:michael@sbplaw.co.uk) [grant@sbplaw.co.uk](mailto:grant@sbplaw.co.uk) [jgolledge@sbplaw.co.uk](mailto:jgolledge@sbplaw.co.uk) [mark@sbplaw.co.uk](mailto:mark@sbplaw.co.uk)  
[www.sbplaw.co.uk](http://www.sbplaw.co.uk)

The information and any commentary on the law contained in this Bulletin is provided free of charge for information purposes only. No responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by SBP Law Solicitors. The information and commentary does not, and is not intended to, amount to legal advice and is not intended to be relied upon. You are strongly advised to obtain specific, personal advice from a lawyer about your case or matter and not to rely on the information or comments in this Bulletin.