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New Practice Direction – Insolvency Proceedings **Guidance On Winding-Up Petitions**

On 3 July 2020, a new Insolvency Practice Direction relating to the Corporate Insolvency and Governance Act came into force (CIGAPD). In this bulletin we consider some of the directions provided by the CIGAPD in relation to winding-up petitions.

Coronavirus Test

The vast majority of winding-up petitions are presented due to non-payment of a statutory demand, raising a statutory presumption of insolvency. The Act places a temporary blanket ban on winding-up petitions, based on an unpaid statutory demand served on or after 1 March 2020. If creditors cannot use a statutory demand in support of a petition, then they must rely either on unsatisfied execution or that the debtor is insolvent. The CIGAPD refers to “the coronavirus test”. The coronavirus test requires evidence that a company’s financial position, with regard to the outstanding debt, or its insolvency, has not been caused by COVID 19.

Contents of the winding-up petition

A petition will not be accepted for filing unless containing a statement that there are grounds for believing that COVID19 has not had a financial effect on the company, as required by the coronavirus test. The petition must also contain a summary of the grounds relied upon for the purposes of meeting the test.

Conditions for petition to remain private

After considering the statement and summary, unless the court considers that a winding-up order is likely, the petition will remain private.

Review by the court

If the petition is not rejected for filing, there will be a non-attendance pre-trial review. If the petition is not opposed and the court considers it likely that a winding-up order will be made it will list a preliminary hearing. At that hearing, if the court considers it is unlikely that it will make a winding-up order the petition will be dismissed. If the court thinks an order is likely it will list the petition for a hearing in the winding-up list.

Editor’s Note

The recent legislation will continue to provide a lifeline for any business suffering as a result of the pandemic. Clearly, the challenge for struggling businesses will be if the current arrangements are not extended beyond the end of “the relevant period”, which is 30 September 2020.

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