

A Note on the Temporary Insolvency Practice Direction 2020

A temporary insolvency practice direction (“TIPD”) came into force on the evening of 3 April 2020. Its purposes are to assist court users during the current COVID-19 pandemic by avoiding the need for parties to attend court in person, and to deal with some of the problems arising from the need for the court(s) to operate with limited staff and resources. It supplements the Practice Direction – Insolvency Proceedings July 2018 and applies to all insolvency proceedings in the Business and Property Courts subject to variations outside London as directed by the relevant supervising judge.

Practitioners are recommended to read the TIPD carefully, but the following summary of its provisions may assist.

Filing notice of intention to appoint an administrator and notice of appointment of an administrator

Para 3 of the TIPD deals with filing notice of intention to appoint and notice of appointment of an administrator. A different practice will apply depending on whether the notice or appointment is made by a qualifying floating charge holder or a by company or its directors.

First and subject to exceptions, the TIPD provides that where a company or director or a qualifying floating charge holder uses CE-file to give notice of an intention to appoint or notice of appointment of an administrator, the notice will be treated as delivered to the court on the date and at the time recorded in a filing submission email. This is intended to reduce any uncertainty as to timing.

Secondly, the TIPD reflects the policy in the Insolvency Rules 2016 as regards filing notices by a company or director by CE-file. If a filing submission email attaching a notice of appointment of an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business. Similarly, if a filing submission email attaching a notice of intention to appoint an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business. This is important for the purpose of knowing when the ten-day period in paragraph 28(2) begins. It will be the date on which the courts are next open for business.

A Note on the Temporary Insolvency Practice Direction 2020

Thirdly, all notices filed by CE-file shall continue to be reviewed by the Court, as and when practicable, in accordance with paragraph 5.3 of PD510. The validity and time at which the appointment of an administrator is effective shall, however, not be affected by reason only of any delay in acceptance of the notice.

Fourthly, users are reminded that the procedure in Rule 3.20-3.22 in respect of qualifying floating charge holders still applies, and Electronic Working may not be used to file a Notice of Appointment of an administrator under paragraph 14 of Schedule B1.

Remote hearings

The TIPD (para 6) confirms what is already reality, that insolvency and companies hearings will generally continue to be conducted remotely.

Pending petitions, applications etc

Pending applications and petitions (except for winding up and bankruptcy petitions) listed for hearing before 21 April 2020 will be adjourned and relisted in accordance with procedures set out in the TIPD. Special provision is made for matters that need to be dealt with on an urgent basis. Further relisting guidance is envisaged, details of which will be available on the internet.

Winding up and bankruptcy petitions

Winding up and bankruptcy petitions will continue to be heard but will be dealt with by remote hearing in batches (as has been the case for the past week or so).

Urgent hearings

Detailed guidance is given on how to obtain an urgent hearing before a Chancery or ICC judge (para 5).

Non-London business

The TIPD deals with business throughout the Business and Property Courts (save for the treatment of petitions), subject to any modifications provided for in separate guidance issued by the supervising judge for the relevant court centre.

Statutory declarations

Provision is made for statutory declarations to be made by video conference (para 9).

A Note on the Temporary Insolvency Practice Direction 2020