

Insolvency in times of coronavirus: a short, practical guide for businesses and insolvency practitioners

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This short practical guide for businesses and insolvency practitioners sets out the proposed and existing measures introduced by the government to help businesses during the coronavirus crisis. The note will also look at the key provisions of the Temporary Insolvency Practice Direction (“TIPD”), introduced in April 2020. This practical guide outlines the impact of the new provisions and measures on the listing of hearings, including remote hearings, and offers businesses and insolvency practitioners some practical links, tips, and recommendations to assist during the testing times ahead.

New government measures to assist businesses during Covid-19

The government has announced plans to introduce legislation aimed at assisting businesses hit by the coronavirus crisis. Some of the new measures will include the following:

- A three-month suspension of the wrongful trading rules, which is aimed at removing the threat of directors incurring personal liability while trading during the pandemic. Directors trading during these uncertain times need to be aware that this change to the law will apply retrospectively from 1 March 2020, thus it will not cover any period prior to 1 March 2020. It is also notable that all existing ‘checks and balances’ introduced to ensure that directors will fulfil their legal obligations will remain unchanged and in force.
- Measures to allow companies to continue to access essential supplies (i.e. raw materials, component parts, energy etc) while attempting to rescue the business.

- Companies undergoing restructuring will be given a time-limited moratorium from creditor action. It is not clear yet what the duration of the moratorium will be; it is anticipated that additional information will become available as the situation progresses and the relevant legislation is introduced in Parliament.
- There are plans to introduce legislation to ensure that companies required by law to hold Annual General Meetings (AGMs) will be able to do so safely and consistent with government guidance on social distancing. The plan is for companies to be extended greater flexibilities, such as holding AGMs online, or postponing such meetings altogether.

The government has also introduced a number of other measures to assist businesses affected by the Covid-19 crisis. For example, on 23rd March 2020, the government announced a moratorium on commercial property evictions for businesses that do not make rent payments on time. In addition, companies affected by Covid-19 can now file for a three-month extension to the filing of their accounts.

The Temporary Insolvency Practice Direction (“TIPD”)

The temporary insolvency practice direction (“TIPD”) came into force on the evening of 3rd April 2020. The purpose of TIPD is to reduce the need for parties to attend court in person during the Covid-19 pandemic and to minimise some of the issues related to courts having to operate with limited staff and resources. The temporary directions supplement the [Practice Direction Insolvency Proceedings July 2018](#) and should thus be read in conjunction with the relevant PD.

What is the duration of the TIPD?

The temporary directions will be in force until 1 October 2020 unless amended or revoked by a further insolvency practice direction in the meantime.

Which proceedings does the TIPD apply to?

The TIPD applies to all insolvency proceedings in the Business and Property Courts, subject to variations for businesses outside London and as directed by the relevant supervising judge (see more on this below).

What variations apply for businesses outside London?

The TIPD deals with businesses throughout the Business and Property Courts, save for the treatment of petitions. These are subject to any modifications provided for in separate guidance issued by the supervising judge for each relevant court centre. Guidance for court centres across the country is accessible via the links below:

- Information on the courts in Birmingham is accessible [here](#).
- Information about the courts in Bristol is accessible [here](#).
- Information about the courts in Leeds is accessible [here](#).
- Information about the courts in Liverpool is accessible [here](#).
- Information about the courts in Manchester is accessible [here](#).
- Information about the courts in Newcastle is accessible [here](#).

Filing a notice of intention to appoint an administrator and a notice of appointment of an administrator (TIPD, Part 3)

Part 3 of the TIPD deals with the filing of a Notice of Intention to Appoint and Notice of Appointment of an Administrator. It is notable that a different practice will apply depending on whether the Notice or Appointment is made by a qualifying floating charge holder or by a company or its director. The following is relevant:

- Where a company, 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 the filing submission email. This is subject to exceptions, i.e. it only applies to (i) a Notice of Intention to Appoint an Administrator filed by a company or its directors under para. 27 of Schedule B1, (ii) a Notice of Appointment of an Administrator filed by a qualifying floating

charge holder under paragraph 18 of Schedule B1, (iii) a Notice Appointment of an Administrator filed by a company or its directors under Paragraph 29 of Schedule B1.

- If a filing submission email attaching a Notice of Appointment of an Administrator is sent outside the hours of 10:00 – 16:00 on any day the courts are open for business, the notice will be treated as having been delivered at 10:00 am the next day the courts are open for business.
- If a filing submission email attaching a Notice of Intention to Appoint an Administrator is sent outside the hours of 10:00 – 16:00 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.
- All notices filed by CE-file shall continue to be reviewed by the Court, as and when practicable. It is notable that the validity and time at which the appointment of an Administrator is effective shall not be affected by reason only of any delay in acceptance of the notice.
- The procedure in Rule 3.20-3.22 in respect of qualifying floating charge holders still applies; Electronic Working may not be used to file a notice of appointment of an administrator under paragraph 14 of Schedule B1.

Adjourning pending applications and petitions (TIPD, Part 4)

Part 4 of the TIPD deals with the adjournment of pending applications and petitions. This was introduced to ensure that the court's resources and time are preserved for genuinely urgent applications. All applications, petitions, and claim forms currently listed for hearing prior to 21 April 2020 are adjourned (save for petitions for winding-up and bankruptcy to be heard before an ICC Judge sitting in the Rolls Building in London) and will be re-listed according to one or other of the following:

- (i) Where a party considers that a matter adjourned under these provisions is urgent, they may apply to have it re-listed pursuant to the listing procedure for urgent hearings.

- (ii) Petitions for bankruptcy or winding up (other than those to be heard before an ICC Judge sitting in the Rolls Building in London), the Temporary Listing Procedure for Winding-up and Bankruptcy Petitions shall apply, immediately in the case of petitions to be heard before an ICC Judge sitting in the Rolls Building in London, and as from the date that it is brought into effect for each other relevant hearing centre of the Business and Property Courts by a further guidance note to be issued by the supervising Judge of that particular centre.
- (iii) All other matters will be re-listed in accordance with procedure which will be notified as soon as possible for each relevant hearing centre.

Any further guidance will be issued on the Insolvency List webpage for the relevant hearing centre(s), so practitioners and interested businesses should keep an eye out [here](#).

Listing of hearings & remote hearings

Listing urgent hearings before a High Court or ICC Judge

To list an urgent hearing, an email should be sent to the relevant judge's clerk/s. For ICC Judges' clerks the request should be sent to Rolls.ICL.Hearings1@justice.gov.uk. For High Court judges, more details on how to contact individual Judges' clerks are available [here](#).

The request should set out the following:

- The nature of the application.
- Why the matter is urgent.
- Estimated time of the hearing and estimated reading time.
- The number of parties attending.
- Confirmation that the hearing can be conducted remotely using one of the appropriate technologies listed below.

The applicant/claimant/petitioner *must* send *only* documents which are *essential* for the hearing by PDF, or by sending a link to an online data room. For more details see TIPD r.5.

Remote hearings

- Hearings will be held remotely unless ordered otherwise.
- Hearings will be conducted remotely by Skype for Business or such other technology as the parties and the court agree in advance of the hearing.
- If the judge determines that it is inappropriate to continue the hearing, a notice of adjournment will be issued by the court and a new hearing date will be fixed.

The following technologies might be appropriate for remote hearings:

- (i) **Skype for Business** – for Microsoft users access the application [here](#). For Apple users, access the application [here](#).
- (ii) **Zoom** – the application is accessible [here](#).
- (iii) **Microsoft Teams** – the application is accessible [here](#).
- (iv) **BTMeet Me** – guidance on how to use BTMeet Me is accessible [here](#).

Temporary listing procedure for winding-up and bankruptcy petitions

Under the TIPD the court will list for hearing all winding-up and bankruptcy petitions in the following manner:

- The Court will allocate time slots for groups of 2 or more petitions. Each time slot will be given using an appropriate video conferencing technology.
- The links for the hearing will be published on the daily cause list, accessible [here](#).

Any person who intends to appear at the hearing of the petition must deliver [a notice of intention to appear](#) in accordance with [Rule 7.14](#), providing an email address or telephone number so they can be invited to join the remote hearing.

For the full provisions of the TIPD, see [here](#).

Some practical tips and recommendations

- Businesses or insolvency practitioners using virtual data rooms or other technologies for the purposes of hearings need to make sure that they are GDPR-compliant.
- Companies wishing to file for an extension of the filing deadline for accounts need to make sure they do so **before** the date for filing, as failure will result in an automatic penalty.
- HMRC has issued useful guidance on how it is dealing with situations where a business or individual is already in an insolvency process and what type of enforcement action can be taken during the crisis. The guidance is accessible [here](#).
- For more information and technical support relating to CE-file, see [here](#).
- The Insolvency Service has reviewed its [IVA registration process](#); IVA registration fees can now be accepted by BACS.
- The Insolvency Service has confirmed that [electronic signatures on requisitions](#) will now be accepted, as well as [requisitions of payments via email](#), in order to support flexible working arrangements.

Whilst every effort has been made to ensure the accuracy of this article as of the date of writing (16 April 2020) it should not be relied upon as legal advice in respect of any particular case and no liability is accepted in respect of the same.



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