

Insolvency Practice Direction relating to the Corporate Insolvency and Governance Act 2020

1. Definitions:

1.1 In this practice direction the following definitions will apply:

- (1) “1986 Act” means the Insolvency Act 1986;
- (2) “2020 Act” means the Corporate Insolvency and Governance Act 2020;
- (3) “the coronavirus test” means whether:
 - (a) In the case of a petition to wind up a registered company on a ground specified in section 123(1)(a) to (d) of the 1986 Act that the condition in paragraph 5(2) of Schedule 10 to the 2020 Act is met;
 - (b) In the case of a petition to wind up a registered company on a ground specified in section 123(1)(e) or (2) of the 1986 Act that the condition in paragraph 5(3) of Schedule 10 to the 2020 Act is met;
 - (c) In the case of a petition to wind up an unregistered company on a ground specified in section 222, 223, or 224(1)(a) to (c) of the 1986 Act that the condition in paragraph 6(2) of Schedule 10 to the 2020 Act is met; or
 - (d) In the case of a petition to wind up an unregistered company on a ground specified in section 224(1)(d) or (2) of the 1986 Act that the condition in paragraph 6(3) of Schedule 10 to the 2020 Act is met;
- (4) “IPD” means the Practice Direction – Insolvency Proceedings (July 2018);
- (5) “PD 51O” means Practice Direction 51O – The Electronic Working Pilot Scheme which supplements CPR rules 5.5 and 7.12;
- (6) “preliminary hearing” means the preliminary hearing of the petition listed pursuant to paragraph 8.1(2) below;
- (7) “relevant period” has the meaning in paragraph 21(1) of Schedule 10 to the 2020 Act;
- (8) “Rule and Rules” means the Insolvency (England and Wales) Rules 2016.

2. Application and coming into force

2.1 Paragraphs 3 to 8 of this practice direction apply to winding-up petitions presented during the relevant period:

- (1) against a registered company under section 122(1)(f) of the 1986 Act on any of the grounds specified in section 123 of the 1986 Act; or
- (2) against an unregistered company under section 124 and 221(5)(b) of the 1986 Act on any of the grounds specified in sections 222, 223 or 224 of the 1986 Act.

2.2 Paragraph 9 of this practice direction applies to obtaining a moratorium under section A3 of the 1986 Act (inserted by [section 1] of the 2020 Act).

2.3 This practice direction shall come into force on the day that the 2020 Act comes into force.

3. Contents of the winding-up petition

3.1 A petition will not be accepted for filing unless it contains the statement required by Rule 7.5(1) as amended by paragraph 19(3) of Schedule 10 to the 2020 Act.

3.2 In addition, the petition shall contain a summary of the grounds relied upon by the petitioning creditor for the purposes of the coronavirus test.

4. Initial listing of the petition

4.1 Upon presentation of a winding-up petition, provided it is not rejected for filing under paragraph 3 above, the petition shall be listed for a non-attendance pre-trial review with a time estimate of 15 minutes for the first available date after 28 days from the date of its presentation.

4.2 The purpose of the non-attendance pre-trial review is to enable the court to give directions for a preliminary hearing in order for the court to determine whether it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test.

5. Petition to remain private

5.1 Until the court has concluded that it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test, or further order of the court in the meantime, the petition shall (in accordance with paragraph 19(2) and (4) of Schedule 10 to the 2020 Act) remain private, save for being served on the company and delivered to such other persons as are specified in Rule 7.9. Accordingly, unless the court otherwise orders:

- (1) the petition (whether filed electronically or otherwise) shall be marked private and will not be available for inspection; and
- (2) neither the petition nor the fact of its presentation shall be revealed in response to a search by a member of the public of any court file or other record.

6. Filing of evidence

6.1 If the petitioner wishes to rely upon any evidence at the preliminary hearing, other than that contained in the petition, it must file and serve on the company a witness statement containing such evidence at the same time as the petition.

6.2 If the company wishes to rely upon any evidence at the preliminary hearing it must file and serve on the petitioner a witness statement containing such evidence within 14 days of service of the petition upon it.

6.3 At least two days before the non-attendance pre-trial review the parties shall file and serve a listing certificate stating (i) the identity of their legal representatives (if any); (ii) their availability for the preliminary hearing; and (iii) a time estimate for the preliminary hearing.

7. The non-attendance pre-trial review

7.1 At the non-attendance pre-trial review the court may:

- (1) In the event that the company does not oppose the petition and the court is satisfied that it is likely to make a winding up order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test it shall list the petition for a hearing in the winding-up list; or
- (2) List the preliminary hearing and give such other directions in relation to the preliminary hearing as it thinks appropriate.

8. The preliminary hearing

8.1 At the preliminary hearing:

- (1) if the court is not satisfied that it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test, it shall dismiss the petition; or
- (2) if the court is satisfied on the evidence before it that it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test it shall list the petition for a hearing in the winding-up list.

8.2 Upon a direction under paragraph 7.1(1) above and 8.1(2) above, the provisions of the Rules relating to giving notice of the petition and the further conduct of the petition shall come into effect. Taking account of any direction provided in accordance with paragraph 12 below, the court will list a final hearing of the petition within such time period as allows for notice of the petition to be given pursuant to Rule 7.10.

8.3 If, at any time after the court has determined that it is likely that it will be able to make an order on the Petition under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test, it appears that the same or different court has also made such a determination in respect of another petition concerning the same company, the court shall direct that both petitions shall be listed for further hearing at the same time. In such a circumstance the court shall:

- (1) where required transfer the petition to the court dealing with the petition presented first in time; and
- (2) direct that the petition presented first in time should be heard first.

9. Petitions presented in the County Court

9.1 A winding-up petition to which this practice direction applies shall be deemed to be other than Local Business for the purpose of paragraphs 3.6 and 3.7 of the IPD, whether or not the petition is opposed. Accordingly, if the petition is issued in a County Court hearing centre having insolvency jurisdiction it shall be transferred to one or other of the hearing centres referred to in paragraph 3.6 of the IPD.

10. Obtaining a moratorium under section A3 of the 1986 Act

10.1 Where directors of a company file relevant documents with the court by means of electronic delivery (within the meaning of PD 51O) for the purposes of obtaining a moratorium pursuant to section A3 of the 1986 Act, for the avoidance of doubt the documents shall be treated as being filed with the court at the date and time recorded in the email referred to at paragraph 5.3(1) of PD5 1O, generated by automatic notification acknowledging that the documents have been submitted.

Practice Direction made by order of the Chancellor of the High Court, Sir Geoffrey Vos, with the approval of the Lord Chancellor, the Right Honourable Robert Buckland QC MP, Secretary of State for Justice, on 3 July 2020