

UK GOVERNMENT EXTENDS FURTHER EMERGENCY LEGISLATION TO PROTECT BUSINESSES UNTIL 30 SEPTEMBER 2021 AND BEYOND

Following announcements made earlier this week by the UK Government that there is to be a 4 week delay to the lifting of all restrictions, further temporary insolvency and other measures aimed at protecting businesses during the coronavirus pandemic which were due to expire at the end of June, will be extended until the end of the Summer and beyond as set out in today's [announcement](#).

The temporary measures that will be extended include:

- statutory demands served between 1 March 2020 and 30 September 2021 may not be used to form the basis of a winding up petition;
- winding up petitions cannot be presented between 27 April 2020 and 30 September 2021 unless it can be established that the insolvency is unrelated to the coronavirus pandemic; and
- the moratorium preventing forfeiture of commercial leases due to the non-payment of rent will also be extended until 25 March 2022.

We note however, that the relaxation of the personal liability that may be imposed on directors under the wrongful trading provisions, that meant that the court had to assume that for the period between 1 March 2020 and 30 June 2021 a director was not responsible for the worsening of the company's financial position, will lapse at the end of this month.

These measures will continue to protect companies from creditor action. For example, this means that creditors cannot rely on statutory demands to bring winding-up petitions and are prohibited from filing winding-up petitions where the company's inability to pay its debts is due to coronavirus.

Further breathing space is provided to business tenants by the extension of the moratorium preventing landlords from forfeiting commercial leases based on rent arrears until 25 March 2022. The moratorium was due to expire on 30 June 2021. This is a blanket extension and is not limited to particular sectors or arrears arising during compulsory closures. The UK Government's aim is to allow time to enact primary legislation establishing a binding arbitration regime as a backstop where landlords and tenants fail to reach an agreement on rent arrears which accrued in relation to periods of trading restrictions. Landlords and tenants are expected to attempt to reach commercial agreements which

share the financial impact of these periods during the extension period where they have not already done so. The arbitration regime will be binding on landlords and tenants but only apply to businesses which have been required to close and rent arrears accruing during those periods of closures.

The review (with a view to reform) of commercial landlord and tenant legislation announced in December 2020 will be carried out later this year. The intention remains for it to consider a broad range of issues including the security of tenure under the Landlord & Tenant Act 1954, different models of rent payment and the impact of coronavirus on the market. The restrictions on the use of the Commercial Rent Arrears Recovery (CRAR) process by landlords will remain in place during the extended forfeiture moratorium but the total number of days of outstanding rent required for CRAR to be used will remain at 554 days.

The permanent insolvency measures introduced on 26 June 2020 continue. They include:

- a standalone moratorium for viable companies, which provides the company with a payment holiday for certain payments and protection from proceedings including enforcement;
- a new compromise procedure, known as a restructuring plan, modelled on a scheme of arrangement, which permits, with the court's approval, one class of creditors to bind others to an arrangement to eliminate, reduce, prevent, or mitigate the effects of any financial difficulties; and
- a prohibition on suppliers relying on termination clauses triggered by formal insolvency proceedings, including the new moratorium or the new compromise procedure.

The key features of each of the permanent measures are set out in the tables at the end of our [briefing](#) published in June 2020.

If you would like to hear more about the temporary and permanent insolvency measures please contact our restructuring and insolvency team or your usual Clifford Chance contact.

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