

COVID-19: Insolvency Alert – England & Wales High Court Ruling on COVID-19 Protections in Corporate Insolvency and Governance Bill 2020

8 June 2020

On 2 June 2020, Mr Justice Morgan handed down his judgment in the case of *Re: A Company* [2020] EWHC 1406 (Ch) in which a High Street retailer (whose identity is not disclosed) applied to restrain the presentation of a winding-up petition based on the provisions of the yet-to-be-enacted Corporate Insolvency and Governance Bill 2020 (the “Bill”).

In *Re: A Company*, a creditor of the High Street retailer served, or purported to serve, a statutory demand relating to the arrears of rent and service charge (around 15 April 2020) and then, subsequently, e-filed a petition seeking the winding-up of the company. The applicant sought an injunction from the court to restrain the presentation of the petition on the basis of the measures in the Bill that, because of COVID-19, impose restrictions on winding-up petitions served after 27 April 2020.

The restrictions on winding-up petitions in the Bill include the following:

- a) no petition for the winding-up of a registered company may be presented on or after 27 April 2020 as a result of non-compliance with a statutory demand that was served between 1 March 2020 and 30 June 2020 (or one month after the Bill comes into force, whichever is the later); and
- b) a creditor who presents any winding-up petition between 27 April 2020 and 30 June 2020 (or one month after the Bill comes into force, whichever is the later) on the basis of a company being cash flow insolvent or balance sheet insolvent must have reasonable grounds for believing that:
 - COVID-19 has not had a financial effect on the company; or
 - that the company would be unable to pay its debts even if COVID-19 had not had a financial effect on the company.

If (upon the Bill becoming law) a winding-up petition has been presented on or after 27 April 2020 which does not satisfy this condition, the court may make such order as it thinks appropriate to restore the position to what it would have been if the petition had not been presented.

Mr Justice Morgan was persuaded, on the evidence, that there was a strong case that COVID-19 had a financial effect on the company before the presentation of the petition and, further, that the facts on which the petition would be based would not have arisen if COVID-19 had not had a financial effect on the company. Mr Justice Morgan also assessed that the existence of the presented petition would cause serious damage to the High Street retailer.

The authorities support that when a court is deciding whether to grant relief, it can take into account its assessment of the likelihood of a change in the law which would be relevant to its decision.

Accordingly, Mr Justice Morgan granted an interim injunction on the basis of the COVID-19 measures outlined above, and considered that *“the grant of an injunction to restrain the presentation of the petition is powerfully supported by the clear policy objectives of the [Bill]”*.

Further information on further COVID-19 measures and wider reform of UK insolvency law contained in the Bill [can be found in our detailed publication here](#).

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