

Corporate Insolvency and Governance Act 2020: update

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Those measures include a temporary restriction on statutory demands and winding-up petitions as well as a temporary suspension of liability for wrongful trading.

The prohibition on statutory demands and restrictions on winding-up petitions have been repeatedly extended since they came into effect on 1 March 2020. Whilst not a complete barrier to action, CIGA imposed additional requirements to justify and limit the use of winding-up petitions.

The measures were necessary, and the success of that approach is borne out in the insolvency statistics which have consistently shown low levels of corporate insolvencies over the last 15 months. Questions remain over how businesses will cope without these measures and whether they have simply delayed the inevitable rather than preventing it.

The measures will expire in 3 weeks on 30 June 2021 and it is unclear whether they will be extended again to coincide with the end of the furlough scheme in September 2021.

Whatever happens, directors should use the time available now (whether its 3 weeks or 3 months) to make a plan, based on up to date cash-flows and forecasts and, if necessary, professional advice, for dealing with or, at least, mitigating the risks that lie ahead. That might include how to service current, deferred or contingent liabilities (both new and old) and the proper approach to decision-making to comply with a director's duties and avoid any personal liability attaching to the directors.

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