

Status: Point in time view as at 26/06/2020.

Changes to legislation: There are currently no known outstanding effects for the Corporate Insolvency and Governance Act 2020, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 10

WINDING-UP PETITIONS: GREAT BRITAIN

PART 1

PROHIBITION OF PETITIONS ON BASIS OF STATUTORY DEMANDS

- 1 (1) No petition for the winding up of a registered company may be presented under section 124 of the 1986 Act on or after 27 April 2020 on the ground specified in paragraph (a) of section 123(1) of that Act, where the demand referred to in that paragraph was served during the relevant period.
- (2) No petition for the winding up of an unregistered company may be presented under section 124 of the 1986 Act on the ground set out in section 222 of that Act, where the demand referred to in section 222 was served during the relevant period.
- (3) In this Part of this Schedule, the “relevant period” is the period which—
 - (a) begins with 1 March 2020, and
 - (b) ends with 30 September 2020.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

PART 2

RESTRICTION ON WINDING-UP PETITIONS AND ORDERS

Restriction on winding-up petitions: registered companies

- 2 (1) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of a registered company on a ground specified in section 123(1)(a) to (d) of that Act (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
 - (a) coronavirus has not had a financial effect on the company, or
 - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of a registered company on the ground specified in section 123(1)(e) or (2) of that Act (“the relevant ground”), unless the condition in sub-paragraph (4) is met.

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- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or
 - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

Restriction on winding-up petitions: unregistered companies

- 3 (1) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of an unregistered company on a ground specified in section 222, 223 or 224(1)(a) to (c) of that Act (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or
 - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of an unregistered company on the ground specified in section 224(1)(d) or (2) of that Act (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or
 - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

Restriction on winding-up petitions: petitions made before commencement

- 4 (1) This paragraph applies where a creditor presents a petition under section 124 of the 1986 Act—
- (a) on or after 27 April 2020, but
 - (b) before the day on which this Schedule comes into force.
- (2) If the court to which the petition is presented is satisfied that the creditor presented it without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, 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.
- (3) If it appears to the official receiver or, in Scotland, the interim liquidator that the person who presented the petition did so without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the official receiver or interim liquidator must refer the matter to the court to determine whether to make an order under sub-paragraph (2).

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- (4) For the purposes of the 2016 Insolvency Rules or Rules of Court in Scotland, a reference under sub-paragraph (3) is to be treated as if it were an application under section 147 of the 1986 Act.

Restriction on winding-up orders: registered companies

- 5 (1) This paragraph applies where—
- (a) a creditor presents a petition for the winding up of a registered company under section 124 of the 1986 Act in the relevant period,
 - (b) the company is deemed unable to pay its debts on a ground specified in section 123(1) or (2) of that Act, and
 - (c) it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The court may wind the company up under section 122(1)(f) of the 1986 Act on a ground specified in section 123(1)(a) to (d) of that Act only if the court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The court may wind the company up under section 122(1)(f) of the 1986 Act on the ground specified in section 123(1)(e) or (2) of that Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

Restriction on winding-up orders: unregistered companies

- 6 (1) This paragraph applies where—
- (a) a creditor presents a petition for the winding up of an unregistered company under section 124 of the 1986 Act in the relevant period,
 - (b) the company is deemed unable to pay its debts on a ground specified in section 222, 223 or 224 of that Act, and
 - (c) it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The court may wind the company up under section 221(5)(b) of the 1986 Act on a ground specified in section 222, 223 or 224(1)(a) to (c) of that Act only if the court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The court may wind the company up under section 221(5)(b) of the 1986 Act on the ground specified in section 224(1)(d) or (2) of that Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

Restriction on winding-up orders: orders made before commencement

- 7 (1) This paragraph applies where—

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- (a) a court makes an order under section 122(1)(f) or 221(5)(b) of the 1986 Act on or after 27 April 2020 but before the day on which this Schedule comes into force, and
 - (b) the order was not one which the court would have made had paragraphs 5 and 6 been in force at the time.
- (2) The court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the official receiver nor the liquidator or provisional liquidator is liable in any civil or criminal proceedings for anything done pursuant to the order.
- (4) The court may give such directions to the official receiver, liquidator or provisional liquidator as it thinks fit for the purpose of restoring the company to which the order relates to the position it was in immediately before the petition was presented.
- (5) If at any time it appears to the official receiver or, in Scotland, the interim liquidator that—
- (a) an order made by the court under section 122(1)(f) or 221(5)(b) of the 1986 Act is void by virtue of sub-paragraph (2), and
 - (b) it might be appropriate for the court to give directions under sub-paragraph (4),
- the official receiver or interim liquidator must refer the matter to the court to determine whether to give such directions.
- (6) For the purposes of the 2016 Insolvency Rules or Rules of Court in Scotland, a reference under sub-paragraph (5) is to be treated as if it were an application under section 147 of the 1986 Act.

Modifications of 1986 Act

- 8 (1) Paragraphs 9 to 18 apply where—
- (a) a creditor presents a petition under section 124 of the 1986 Act during the relevant period in relation to a registered or unregistered company, and
 - (b) the court to which it is presented makes an order under section 122(1)(f) or 221(5)(b) of that Act (“the winding-up order”).
- (2) Paragraphs 9 to 18 are to be regarded as having come into force on 27 April 2020.
- 9 If the winding up would by virtue of section 129(2) of the 1986 Act be deemed to commence at the time of the presentation of the petition, the winding up is instead for the purposes of that Act to be deemed to commence on the making of the winding-up order.
- 10 In section 74 of the 1986 Act (liability as contributories of present and past members), subsection (2)(a) has effect as if the reference to one year or more before the commencement of the winding up were to—
- (a) one year or more before the day on which the petition was presented, or
 - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 18 months or more before the day on which the winding-up order was made.
- 11 In section 206 of the 1986 Act (fraud etc in anticipation of winding up), subsection (1) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which—

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- (a) begins with whichever is the later of—
 - (i) the day 12 months before the day on which the petition was presented, and
 - (ii) the day 18 months before the day on which the winding-up order was made, and
 - (b) ends with the day on which the winding-up order was made.
- 12 In section 207 of the 1986 Act (transactions in fraud of creditors), subsection (2) (a) has effect as if the reference to conduct occurring more than 5 years before the commencement of the winding up were to conduct occurring—
 - (a) more than 5 years before the day on which the petition was presented, or
 - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, more than 5 years and 6 months before the day on which the winding-up order was made.
- 13 In section 208 of the 1986 Act (misconduct in course of winding up), subsection (2) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which—
 - (a) begins with whichever is the later of—
 - (i) the day 12 months before the day on which the petition was presented, and
 - (ii) the day 18 months before the day on which the winding-up order was made, and
 - (b) ends with the day on which the winding-up order was made.
- 14 (1) Section 214A of the 1986 Act (as inserted for the purposes of limited liability partnerships by the Limited Liability Partnership Regulations 2001 (S.I. 2001/1090) and the Limited Liability Partnership (Scotland) Regulations 2001 (S.S.I. 2001/128)) has effect as follows.
 - (2) Subsection (2) has effect as if the reference to 2 years ending with the commencement of the winding up were to a period which—
 - (a) begins with whichever is the later of—
 - (i) the day 2 years before the day on which the petition was presented, and
 - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
 - (b) ends with the day on which the winding-up order was made.
- 15 (1) Section 240 of the 1986 Act (definition of “relevant time”) has effect as follows.
 - (2) Subsection (1)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
 - (a) begins with whichever is the later of—
 - (i) the day 2 years before the day on which the petition was presented, and
 - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
 - (b) ends with the day on which the winding-up order was made.
 - (3) Subsection (1)(b) has effect as if the reference to the period of 6 months ending with the onset of insolvency were to the period which—
 - (a) begins with whichever is the later of—

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- (i) the day 6 months before the day on which the petition was presented, and
- (ii) the day 12 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- 16 (1) Section 242 of the 1986 Act (gratuitous alienations (Scotland)) has effect as follows.
- (2) Subsection (3)(a) has effect as if the reference to a day not earlier than 5 years before the date on which the winding up of the company commences were to—
- (a) a day not earlier than 5 years before the day on which the petition was presented, or
- (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, a day not more than 5 years and 6 months before the day on which the winding-up order was made.
- (3) Subsection (3)(b) has effect as if the reference to a day not earlier than 2 years before the date on which the winding up of the company commences were to—
- (a) a day not earlier than 2 years before the day on which the petition was presented, or
- (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, a day not more than 2 years and 6 months before the day on which the winding-up order was made.
- 17 In section 243 of the 1986 Act (unfair preferences (Scotland)), subsection (1) has effect as if the reference to a preference created not earlier than 6 months before the commencement of the winding up were to a preference created—
- (a) not earlier than 6 months before the day on which the petition was presented, or
- (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, not earlier than 12 months before the day on which the winding-up order was made.
- 18 (1) Section 245 of the 1986 Act (avoidance of certain floating charges) has effect as follows.
- (2) Subsection (3)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 2 years before the day on which the petition was presented, and
- (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- (3) Subsection (3)(b) has effect as if the reference to the period of 12 months ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 12 months before the day on which the petition was presented, and
- (ii) the day 18 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.

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Modification of Insolvency Rules and Rules of Court

- 19 (1) This paragraph applies in relation to a petition which is presented in England and Wales by a creditor under section 124 of the 1986 Act—
- (a) on or after the day on which this Schedule comes into force, but
 - (b) before the end of the relevant period.
- (2) Any provision of the 2016 Insolvency Rules which requires or permits (or authorises the court to require or permit) notice, publication or advertisement of the petition does not apply until such time as the court has made a determination in relation to the question of whether it is likely that the court will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act.
- (3) Rule 7.5(1) of the 2016 Insolvency Rules (contents of winding-up petition) has effect as if it also required the petition to contain a statement that the petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.
- (4) In Rule 12.39 of the 2016 Insolvency Rules (the court file), the rights referred to in paragraphs (3) to (5) of that Rule are not exercisable without the permission of the court until such time as the court has made the determination referred to in sub-paragraph (2).
- 20 (1) This paragraph applies in relation to a petition which is presented in Scotland by a creditor under section 124 of the 1986 Act—
- (a) on or after the day on which this Schedule comes into force, but
 - (b) before the end of the relevant period.
- (2) Any provision of Rules of Court which requires or permits (or authorises the court to require or permit) notice, publication, advertisement or inspection of the petition or proceedings does not apply until such time as the court has made a determination in relation to the question of whether it is likely that the court will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act.
- (3) The court may by order in any case disapply sub-paragraph (2), so far as relating to inspection of the petition or proceedings, to any extent.
- (4) Rules of Court in Scotland have effect as if they required the petition to contain an averment that the petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.

Interpretation

- 21 (1) In this Part of this Schedule, “relevant period” means the period which—
- (a) begins with 27 April 2020, and
 - (b) ends with 30 September 2020.
- (2) For the purposes of this Part of this Schedule, references to a petition presented by a creditor—
- (a) do not include a petition presented by one or more creditors together with one or more other persons, but
 - (b) subject to that, do include a petition presented by more than one creditor (in which case the condition referred to in paragraph 3(2) or (4) or 4(2) or (4) must be met in relation to each creditor presenting the petition).

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- (3) For the purposes of this Part of this Schedule—
- “the 2016 Insolvency Rules” means the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024);
 - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
 - coronavirus has a “financial effect” on a company if (and only if) the company's financial position worsens in consequence of, or for reasons relating to, coronavirus;
 - “interim liquidator” means a person appointed under section 138(1) of the 1986 Act.

PART 3

GENERAL

- 22 In this Schedule—
- “the 1986 Act” means the Insolvency Act 1986;
 - “registered company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;
 - “unregistered company” has the same meaning as in Part 5 of the 1986 Act.
- 23 (1) The provisions of this Schedule, so far as relating to registered companies, have effect as if they were included in Part 4 of the 1986 Act.
- (2) Sub-paragraph (1) does not apply in relation to paragraph 19 or 20 (modification of insolvency rules).
- (3) In the application of the provisions of this Schedule to charitable incorporated organisations (by virtue of sub-paragraph (1) and paragraph 1 of Schedule 1 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013)) references to section 122(1)(f) of the 1986 Act are to be taken as references to section 122(1)(c) of that Act (as inserted by that Schedule for the purposes of those organisations).

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