The Corporate Insolvency and Governance Act 2020 introduced on 25th June 2020 is designed to provide a breathing space for businesses wrestling with the challenges and impact of Covid-19.

Among other provisions, the government legislated to temporarily prevent winding-up proceedings being taken on the basis of statutory demands and to temporarily stop winding-up proceedings where COVID-19 has had a financial effect on the company which has caused the grounds for the proceedings.

If a statutory demand or winding up petition is presented and the debt can be attributed to the downturn in business as a result of the Covid-19 pandemic, then certain restrictions apply. No creditor is able to petition from 27th April 2020 until 30th Sept 2020 inclusive unless,

- the creditor reasonably believes that the pandemic has not had an adverse financial impact on the debtor's business (difficult to prove to the court), or
- the debtor would have been unable to pay the debt in the normal course, notwithstanding the pandemic.

Therefore, no winding up petition can be presented on the back of an expired Statutory Demand, served between 1st March 2020 and 30th Sept 2020.

With the resurgence of the pandemic and tighter restrictions now being imposed, it places even greater pressure on cashflow for certain businesses in those sectors worst affected. In recognition of this and in the knowledge that there will be no early return to pre pandemic levels of trade, the Government has, **with effect from 24th Sept extended the restrictions on statutory demands and winding-up petitions until 31st Dec 2020.**

While this is designed to offer added protection from aggressive creditor action, it will undoubtedly put significant financial pressure on all businesses badly impacted by the pandemic. It will restrict access in certain cases to further trade credit and essential supplies, which then becomes an ever-decreasing circle of decline for those affected.

The government hopes the extension will shield businesses and allow them to plan, adapt and develop a strategy to come through the pandemic and be stronger in the longer term. Will the business community be able to come out of this better placed to deal with the challenges or find this is simply delaying the inevitable? I have considerable reservations around building up debt with soft loans, in some cases to unsustainable levels.

Surely this can't be the panacea to get business through the pandemic. Directors are undoubtedly becoming fatigued with the continuing rigors placed upon them in trying to adjust and change their business models, some may decide they no longer have the enthusiasm for the continuing fight. To this end we are currently delivering an increasing number of solvent liquidations (Member's Voluntary Liquidations). In one case very recently, a Director contacted us who had come to the end of his tether and just closed the doors on his respectable, solvent and viable business.

When the restrictions are eventually lifted will we witness a flood of winding up petitions and corporate insolvencies, with the loss of livelihoods and mass redundancies? Only time will tell.

This communication does not constitute legal or other professional advice. It is strongly recommended to seek suitable professional advice before acting and not to rely on the subject matter covered above.

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