

March 2021



CREDITORS' WINDING-UP PETITIONS AND COVID-19 RESTRICTIONS

Due to Covid-19 restrictions, creditors' Winding-up Petitions issued between 1st October 2021 and 31st March 2022 still have restrictions.

The current conditions between 1st October 2021 and 31st March 2022 are:-

- A creditor may not present a Winding-up Petition in respect of debts in respect of any sums payable by a tenant under a business tenancy that is unpaid by reason of financial effects of Covid-19.
- The debt must be for a liquidated, undisputed sum and not less than £10,000.

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- The creditor may not present a Winding-up Petition unless a written notice has been served on the debtor containing the following:-
 - A creditor is seeking the debtor's proposals for payment of the debt;
 - If the debtor has not made a proposal to the creditor's satisfaction within 21 days, the creditor intends to present a Winding-up Petition.
- Further, the creditor's Petitions will need to include the following statements:-
 - That the requirement of compliance of Paragraph 1 of Schedule 10 of the Corporate Insolvency and Governance Act has been carried out (as above); and either
 - That no proposal for payment of the debts were made; or
 - A summary of the reasons why the proposals made were not to the creditor's satisfaction.

Accordingly, although it's possible to issue a Winding-up Petition against a debtor in certain circumstances, careful consideration should be taken before issuing the Petition, to make sure it's compliant with the new and current Covid obligations.

HOW TO MAKE YOURSELF BANKRUPT

In April 2016, the procedure changed for people wishing to make themselves bankrupt. Historically, a debtor who wished to make themselves bankrupt would present their own Petition to the Court.

However, over the last six years debtors must now apply online to the Adjudicator, who will consider the application and make a decision. This removes the involvement of the Court from the process of making a debtor's bankruptcy order (perhaps in a bid to save Court time/resources), although the Court still retains its general jurisdiction over all bankruptcy proceedings, including debtors' own bankruptcy applications following the Adjudicator's bankruptcy order. A creditor wishing to bankrupt a third party still petitions the Court following the service of a Statutory Demand, so this process remains unchanged in that respect.

For a debtor to make an application for their own bankruptcy, they need to access the online portal at Gov.uk called 'Online Debt Solutions'. There is also an Insolvency Service enquiry line that explains the process and gives guidance to applicants.

The Adjudicator will consider an application and have to be persuaded that:-

- The debtor is unable to pay their debts.
- There is no bankruptcy petition pending.
- No bankruptcy order has been made in respect of any of the debts which are subject to the application.

If the Adjudicator is satisfied that the above tests are met, a bankruptcy order should be made within 28 days from the application.

Following the bankruptcy order, the Official Receiver will publicise the bankruptcy order, register restrictions at the Land Registry, and record the bankruptcy order on the Individual Insolvency Register. The bankrupt will then have the usual consequences of a bankruptcy order being made against them.

The consequences of making yourself bankrupt are, in summary:-

- Creditors can't pursue a bankrupt for bankruptcy debts.
- The bankrupt's assets transfer to his Trustee in bankruptcy who will endeavour to realise those assets. This may mean losing your home.
- The Trustee in bankruptcy can apply for a proportion of the bankruptcy income to be paid into the bankruptcy estate.
- The bankrupt cannot be a company director. The bankrupt cannot obtain credit in excess of £500 without informing the lender that they are an undischarged bankrupt.
- To apply for a bankruptcy Order, there is a fee of £680.

For further information, we would recommend you visit <https://www.gov.uk/bankruptcy>



REPAYING BOUNCE BACK LOANS

In February 2021, further details were provided by the Government for a Pay as You Grow (PAYG) repayment system, to provide flexibility for businesses repaying bounce back loans.

The British Business Bank, which is responsible for running the bounce back loan schemes, set out that businesses will be able to pause repayments entirely for up to six months, and to extend the length of the loan from six to ten years and/or make interest only payments for six months.

However, there will be a penalty with businesses who take up these options having to pay more interest overall, and the length of the loans will increase with any repayment holiday. Businesses are advised to wait until they're contacted by the lender about PAYG options.

Further consideration or advice should be sought if the business is insolvent. The key principle to bear in mind is that a bounce back loan is a debt and not a grant. If a bounce back loan is repaid to avoid personal guarantees this could be a preference and action could be taken against the Directors.

REPAYING BOUNCE BACK LOANS CONT.

Further, if a business is considering taking further loans, the terms of the bounce back loan need to be considered to make sure that further loans aren't breaching the terms of the bounce back loan. Although technically a bounce back loan could be used to pay a dividend, if a business has retained profits but is cash poor, consideration should be given to taking dividends if the company is cash poor and may be deemed insolvent, and could be repayable if an insolvency process follows.

THE NEW BINDING ARBITRATION PROCESS FOR CORONAVIRUS-RELATED COMMERCIAL RENT ARREARS

The Commercial Rent (Coronavirus) Bill is imminently due to be passed into legislation, giving further protections to business tenants in relation to unpaid commercial rents. This is designed to dovetail with the end of some of the current restrictions on landlord enforcement in this area.

The Bill provides a helpful summary of its purpose in the explanatory notes, which confirm that "The purpose of the Commercial Rent (Coronavirus) Bill is to support landlords and tenants in resolving disputes relating to rent owed by businesses which were required to close during the COVID-19 pandemic."

The legislation will effectively ring-fence rent debts that arose as a result of forced business closures during the Coronavirus pandemic. It introduces a new (and binding) arbitration process in relation to those sums. It is designed to find a workable solution to the issue of dealing with arrears, so as to try to limit further damage to the economy. In doing this it will impose a further moratorium on the usual landlord enforcement remedies so as to enable the arbitration process to take place.

Whilst many landlords and tenants have reached their own commercial arrangements for dealing with rent arrears between themselves, there are a huge number of instances where this has not happened, for a wide range of reasons. The Bill is designed to intervene and assist in this area.

Under the new legislation there will be two conditions that must be met for rent to be considered as "protected rent".



THE NEW BINDING ARBITRATION PROCESS CONT.

These are that:

- 1.The tenancy in question must have been affected by the Coronavirus pandemic (and the question of what constitutes “affected” is expanded upon by the Bill; and
- 2.The rent must relate to a period of occupation by the tenant for, or for a period within, the “protected period” (as defined in the Bill).

So what is the “protected period”? The Bill defines this as the period beginning with 21 March 2020 and ending with:

- 1.The last day that the whole or part of the business carried on by the tenant at or from the premises or the whole or part of those premises was subject either to a closure requirement or a specific coronavirus restriction; or
- 2.Otherwise, 18 July 2021.

The operation of the arbitration process will be new territory for landlords and tenants alike. Whilst the intentions of the legislation are clear, the market will be keenly watching how it operates in practice and in particular the decisions that are coming out at the end of the process. Watch this space for further updates as the system is put into practice.

If you would like to discuss or need help or support on any of the issues above then please contact the Dispute Resolution Team on 01582 514000



Neil O'Callaghan
neil.ocallaghan@machins.co.uk



Ben Walters
ben.walters@machins.co.uk



Holly Baker
holly.baker@machins.co.uk