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## DEAR INSOLVENCY PRACTITIONER Issue 96 – April 2020

### *Message from the Insolvency Service*

#### *Dear Reader*

*A temporary insolvency practice direction came into force on the evening of 3 April 2020. Its purposes are to assist court users during the current COVID-19 pandemic by avoiding the need for parties to attend court in person, and to deal with some of the problems arising from the need for the court(s) to operate with limited staff and resources. It supplements the Practice Direction – Insolvency Proceedings July 2018 and applies to all insolvency proceedings in the Business and Property Courts subject to variations outside London as directed by the relevant supervising judge.*

*Practitioners are recommended to read the temporary practice direction carefully which is attached to this special edition of Dear IP together with a summary of its provisions.*

*In this issue:*

*Information/Notes page(s):*

**Chapter 29**

Article 7

Article 8

**COVID-19**

Summary of Provisions in The Temporary Insolvency Practice Direction 2020

The Temporary Insolvency Practice Direction 2020

## **7) Summary of Provisions in The Temporary Insolvency Practice Direction 2020**

This article provides a summary of the provisions set out in the Temporary Insolvency Practice Direction 2020 (TIPD). The full TIPD is included in chapter 29 article 8 of Dear IP issue 96.

### **Filing notice of intention to appoint an administrator and notice of appointment of an administrator**

Paragraph 3 of the TIPD deals with filing notice of intention to appoint and notice of appointment of an administrator. A different practice will apply depending on whether the notice or appointment is made by a qualifying floating charge holder or a by company or its directors.

First and subject to exceptions, the TIPD provides that where a company or director or a qualifying floating charge holder uses CE-file to give notice of an intention to appoint or notice of appointment of an administrator, the notice will be treated as delivered to the court on the date and at the time recorded in a filing submission email. This is intended to reduce any uncertainty as to timing.

Secondly, the TIPD reflects the policy in the Insolvency Rules 2016 as regards filing notices by a company or director by CE-file. If a filing submission email attaching a notice of appointment of an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business. Similarly, if a filing submission email attaching a notice of intention to appoint an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business. This is important for the purpose of knowing when the ten-day period in paragraph 28(2) begins. It will be the date on which the courts are next open for business.

Thirdly, all notices filed by CE-file shall continue to be reviewed by the Court, as and when practicable, in accordance with paragraph 5.3 of PD510. The validity and time at which the appointment of an administrator is effective shall, however, not be affected by reason only of any delay in acceptance of the notice.

Fourthly, users are reminded that the procedure in Rule 3.20-3.22 in respect of qualifying floating charge holders still applies, and Electronic Working may not be used to file a Notice of Appointment of an administrator under paragraph 14 of Schedule B1.

### **Remote hearings**

The TIPD (paragraph 6) confirms what is already reality, that insolvency hearings will generally continue to be conducted remotely.

### **Pending petitions and applications**

Pending applications and petitions (except for winding up and bankruptcy petitions) listed for hearing before 21 April 2020 will be adjourned and relisted in accordance with procedures set out in the TIPD. Special provision is made for matters that need to be dealt with on an urgent basis. Further relisting guidance is envisaged, details of which will be available on the internet (a link is given).

### **Winding up and bankruptcy petitions**

Winding up and bankruptcy petitions will continue to be heard but will be dealt with by remote hearing in batches.

### **Urgent hearings**

Detailed guidance is given on how to obtain an urgent hearing before a Chancery or ICC judge (paragraph 5).

### **Non-London business**

The TPID deals with business throughout the Business and Property Courts (save for the treatment of petitions), subject to any modifications provided for in separate guidance issued by the supervising judge for the relevant court centre.

### **Statutory declarations**

Provision is made for statutory declarations to be made by video conference (paragraph 9).

*Enquiries regarding this article may be sent to: [Policy.Unit@insolvency.gov.uk](mailto:Policy.Unit@insolvency.gov.uk)*

## 8) The Temporary Insolvency Practice Direction 2020

### TEMPORARY PRACTICE DIRECTION SUPPORTING THE INSOLVENCY PRACTICE DIRECTION

#### Introduction

The Temporary Insolvency Practice Direction 2020 (TIPD) has been introduced to provide workable solutions for court users during the COVID-19 pandemic. Its intention is to avoid, so far as possible, the need for parties to attend court in person and to take into account the likelihood of the Court needing to operate with limited staff and resources. It also provides users with guidance as to the type of hearings which the Insolvency and Companies Court list will endeavour to provide during the period for which this practice direction is in force.

#### 1. Definitions

“Acceptance”	has the meaning ascribed by paragraph 5.3(1) of PD510
“Act”	means the Insolvency Act 1986
“Business Day”	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of England & Wales
“CE-File”	refers to the Court’s Electronic Working portal and “CE-Filing” means the filing with the court of any document using Electronic Working
“Electronic Working”	has the meaning ascribed to it by paragraph 1.1 of PD510 which, in accordance with paragraph 1.1 (2) of PD510 is a permitted means of electronic delivery of documents to the court for the purposes of rule 1.46 of the Rules
“Temporary IPD”	means this Temporary Practice Direction
“Temporary Listing Procedure for Winding-Up and Bankruptcy Petitions”	means the procedure set out at paragraph 7 of this Temporary IPD
“Filing Submission Email”	means the email referred to at paragraph 5.3(1) of PD510, generated by automatic notification following submission of a document using Electronic Working, which email acknowledges that the document has been submitted
“IPD”	means the Insolvency Practice Direction made by order of the Chancellor on 4 July 2018
“PD510”	means Practice Direction 510 – The Electronic Working Pilot Scheme which supplements CPR rules

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	5.5 and 7.12
<b>“Rule and Rules”</b>	means the Insolvency (England and Wales) Rules 2016
<b>“Schedule B1”</b>	means Schedule B1 to the Insolvency Act 1986

## **2. Application and coming into force**

This TIPD supplements the Insolvency Practice Direction (IPD). It will apply to all insolvency proceedings throughout the Business and Property Courts, subject to any variations outside London as directed by the relevant supervising judge. It will come into force on 6 April and remain in force until 1 October 2020 unless amended or revoked by a further insolvency practice direction in the meantime.

## **3. Filing a notice of intention to appoint an administrator and a notice of appointment of an administrator**

3.1 Subject to paragraphs 3.3 to 3.6 below, for the purposes of Rule 1.46(2), and notwithstanding anything to the contrary in PD510, in the case of a CE-filing of any of the notices identified in paragraph 3.2 below, the notice shall be treated as delivered to the court at the date and time recorded in the filing submission email.

3.2 The notices to which paragraph 3.1 above applies are: (1) a Notice of Intention to Appoint an Administrator filed by a company or its directors under Paragraph 27 of Schedule B1; (2) a Notice of Appointment of an Administrator filed by a qualifying floating charge holder under paragraph 18 of Schedule B1; and (3) a Notice of Appointment of an Administrator by a company or its directors under Paragraph 29 of Schedule B1.

3.3 Paragraph 3.1 above shall not apply to a Notice of Intention to Appoint an Administrator filed by CE-File pursuant to paragraph 27 of Schedule B1 outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business. Any such notice filed by CE-file outside that time period shall, for the purposes of Insolvency Rule 1.46(2), be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business. Accordingly, the date on which the time period of ten days in paragraph 28(2) shall begin is the date on which the courts are next open for business.

3.4 Paragraph 3.1 above shall not apply to a Notice of Appointment filed by CE-File pursuant to paragraph 29 of Schedule B1 outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business. Any such notice filed by CE-file outside that time period shall, for the purposes of Rule 1.46(2), be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business.

3.5 Notwithstanding paragraph 3.1 above, all notices identified in paragraph 3.2 above shall continue to be reviewed by the Court, as and when practicable, in accordance with paragraph 5.3 of PD510. The validity and time at which the appointment of an administrator is effective shall not be affected by reason only of any delay in acceptance of the notice.

3.6 Electronic working may not be used to file a Notice of Appointment of an administrator under paragraph 14 of Schedule B1 by the holder of a qualifying floating charge outside normal court opening hours. Such a notice may only be filed outside normal court opening hours by the procedure set out in Rules 3.20 to 3.22.

#### **4. Adjournment of pending applications and petitions**

4.1 In the immediate term, it is essential that the court's resources and time are preserved for genuinely urgent applications. To that end, all applications, petitions and claim forms (save for petitions for winding-up and bankruptcy to be heard before an ICC Judge sitting in the Rolls Building in London) currently listed for hearing prior to 21 April 2020 are adjourned, to be re-listed according to one or other of the following:

4.1.1 Where one or other of the parties considers that a matter that has been adjourned pursuant to paragraph 4.1 above is urgent, they may apply to have it re-listed pursuant to the listing procedure set out in paragraph 5 below.

4.1.2 In the case of petitions for bankruptcy or winding up (other than those to be heard before an ICC Judge sitting in the Rolls building in London), the temporary listing procedure for winding-up and bankruptcy petitions shall apply, immediately in the case of petitions to be heard before an ICC Judge sitting in the Rolls building in London, and as from the date that it is brought into effect for each other relevant hearing centre of the Business and Property Courts by a further guidance note to be issued by the supervising Judge for that hearing centre.

4.1.3 All other matters shall be re-listed pursuant to such procedure as is notified as soon as possible for the relevant hearing centre of the Business and Property Courts by a further guidance note to be issued by the supervising judge for that hearing centre.

4.2 The further guidance notes to be issued pursuant to paragraphs 4.1.2 and 4.1.3 above will be published on the Insolvency List web page for the relevant hearing centre(s) (<https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/courts-of-the-chancery-division/insolvency-and-companies-courts/>).

**5. Listing Urgent hearings before a High Court Judge or an Insolvency and Companies Court Judge**

- 5.1 Email the ICC Judges' clerks at [Rolls.ICL.Hearings1@justice.gov.uk](mailto:Rolls.ICL.Hearings1@justice.gov.uk) , or relevant High Court Judge clerk setting out
- 5.1.1 the nature of the application/claim form/petition (“Application”);
  - 5.1.2 why it is urgent;
  - 5.1.3 estimated time for hearing and pre-reading;
  - 5.1.4 number of parties who will need to attend; and
  - 5.1.5 your confirmation that the hearing can be conducted by Skype for Business, another stated remote communication application, or telephone.
- 5.2 Subject to further amendments to deal with practical issues as they arise, the ICC clerk or High Court Judge clerk will:
- 5.2.1 allocate the hearing to a judge and send a Skype (or other application) meeting invitation or dial-in details to the parties;
  - 5.2.2 confirm whether the application should be issued and paid for via CE-File or whether an undertaking to issue and pay the fee will be required due to limitations with CE-File processing;
  - 5.2.3 either endorse the application via CE-File in the usual way or provide an email setting out the time and date of hearing which shall be treated for all purposes as if endorsed on the application.
- 5.3 The applicant/claimant/petitioner must send only those documents which are essential for the hearing by PDF (or by sending a link to an online data room) to the clerk for forwarding to the judge, confirming the pre-reading time required.
- 5.4 The judge will join the hearing by Skype or other means at the allotted time.
- 5.5 The judge will make directions for the filing of a draft minute of order which, as soon as practicable, will be sealed and returned to the serving party in the usual way.

**6. Remote Hearings**

- 6.1 Unless ordered otherwise, all insolvency hearings will be conducted remotely by way of Skype for Business or such other technology as the parties and the court agree in advance of the hearing.
- 6.2 In the event that the judge determines, for whatever reason, that it is inappropriate to continue the hearing, the hearing shall be adjourned and a new hearing date and time will be fixed by the court.



6.3 Where the circumstances described at 6.2 apply, a notice of adjournment will be issued by the court.

## **7. Temporary listing procedure for winding-up and bankruptcy petitions**

7.1 As from the date this paragraph is brought into effect the Court will list for hearing all winding-up and bankruptcy petitions (whether adjourned pursuant to paragraph 4.2 above or otherwise) in the manner described in this paragraph 7.

7.2 The Court shall allocate time slots for groups of two or more petitions. Each time slot shall be given a designated meeting link using Skype for Business, or such other video conferencing technology as the relevant Court decides, or BT MeetMe, or such other telephone conferencing technology as the relevant court decides. The links shall be published on the daily cause list. The onus is on the parties to ensure they are able to utilise the link provided.

7.3 In the event that one or more of the parties is unable to use the link designated by the Court, subject to the judge's availability, they may arrange an alternative link via the Court clerks.

7.4 Any person who intends to appear on the hearing of the petition must deliver a notice of intention to appear on the petition in accordance with Rule 7.14, providing an email address or telephone number for the purposes of being invited to join the hearing remotely pursuant to paragraphs 7.1 or 7.2 above

## **8. Other insolvency hearings**

8.1 Judges, clerks, and/or officials will, in each case, wherever possible, propose to the parties:-

8.1.1 a Skype for Business (or other video conferencing technology) call at the allocated time by sending an invitation or otherwise making available a link;

8.1.2 a BT MeetMe (or other recordable telephone conferencing facility) to be arranged by the court or one or other of the parties at the court's direction in good time before the allocated time for the hearing.

8.2 If the parties disagree with the court's proposed method of hearing, they may make submissions in writing by email or CE-file (if available), copied to the other parties, as to what other proposal would be more appropriate. On receipt of submissions from all parties, the judge will make a determination as to the way in which the hearing will take place, and give all other necessary directions.

8.3 It will also be open to the court to fix a short remote case management conference in advance of the fixed hearing to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters.

## **9. Statutory Declarations**

9.1 Where Schedule B1 requires a person to provide a statutory declaration, a statutory declaration that is made otherwise than in-person before a person authorised to administer the oath may constitute a formal defect or irregularity. Pursuant to Rule 12.64 it is open to the court, on objection made, to declare that such a formal defect or irregularity shall not invalidate the relevant insolvency proceedings to which the statutory declaration relates, unless the court considers that substantial injustice has been caused by the defect or irregularity which cannot be remedied by any order of the court.

9.2 Where a statutory declaration is made in the manner described in subparagraphs 9.2.1 to 9.2.3 below then the defect or irregularity (if any) arising solely from the failure to make the statutory declaration in person before a person authorised to administer the oath shall not by itself be regarded as causing substantial injustice.

9.2.1 The person making the statutory declaration does so by way of video conference with the person authorised to administer the oath;

9.2.2 The person authorised to administer the oath attests that the statutory declaration was made in the manner referred to in 9.2.1 above; and

9.2.3 The statutory declaration states that it was made in the manner referred to in paragraph 9.2.1 above.

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