

Corporate Insolvency and Governance Act 2020

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Restructuring & Insolvency analysis: Having received its first reading in the House of Commons on 20 May 2020, the Corporate Insolvency and Governance Bill has today been published (having received Royal Assent yesterday), resulting in the Corporate Insolvency and Governance Act 2020 (CIGA 2020).

The CIGA 2020 represents the biggest change to the UK's insolvency framework in 20 years.

The overarching objective of the CIGA 2020 is to provide businesses with the flexibility and breathing space they need to continue trading during the current coronavirus (COVID-19) pandemic. The measures are designed to help UK companies and other similar entities by easing the burden on businesses and helping them avoid insolvency during this period of economic uncertainty.

According to the explanatory notes published in support of the Bill when it was first introduced to the House of Commons, the CIGA 2020 has three main sets of measures to achieve its purpose:

- to introduce greater flexibility into the insolvency regime, allowing companies breathing space to explore options for rescue while supplies are protected, so they can have the maximum chance of survival
- to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action
- to provide companies and other bodies with temporary easements on company filing requirements and requirements relating to meetings including annual general meetings

The CIGA 2020 is a combination of reactionary, temporary measures designed to help businesses survive the coronavirus pandemic, and permanent measures which were formulated as a result of the Insolvency and Corporate Governance consultation that culminated with the government's response in 2018 (see News Analysis: [Exploring the government's response to the insolvency and corporate governance consultation](#)).

The CIGA 2020 includes seven main provisions:

introduction of a company moratorium—directors of insolvent companies or companies that are likely to become insolvent can obtain a 20 business day moratorium period to allow viable businesses time to restructure or seek new investment free from creditor action. The moratorium period may also be extended. The moratorium will be overseen by an insolvency practitioner acting as a 'monitor' although the directors will remain in charge of running the business on a day-to-day basis (known as a 'debtor-in-possession' process with the company being the 'debtor'). The moratorium will be free-standing; it will not be a gateway to a particular insolvency (or any process at all, if the company can be rescued during the moratorium without needing entry into an insolvency procedure)

introduction of a restructuring plan—the new restructuring plan closely resembles the existing English 'scheme of arrangement' allowing a company to bind all creditors—including junior classes of creditors even if they vote against the plan—through the use of a cross-class cram down provision. Such cram down could be imposed provided dissenting classes of creditors are no worse off than they would be in the relevant alternative. The classes of creditors would be proposed by the distressed company on a case-by-case basis. For a class to vote in favour, 75% of a class by value has to agree to the plan. No financial conditions are set in order to qualify for a restructuring plan. This means both solvent and insolvent companies will be able to propose restructuring plans to their creditors

temporary restrictions on winding-up petitions—the Government has legislated to temporarily prevent winding up proceedings being taken on the basis of unsatisfied statutory demands and to temporarily stop winding up proceedings where coronavirus has had a financial effect on the company which has caused the grounds for the proceedings. The CIGA 2020 provides that a winding-up petition based on [section 123\(1\)\(a\)](#) of the Insolvency Act 1986 ([IA 1986](#)) (ie an unsatisfied statutory demand in respect of a debt exceeding £750) that relates to a statutory

demand served on or after 1 March 2020 cannot be presented by a creditor during the period beginning on 27 April 2020 (it has retrospective effect) until 30 September 2020. A petition may not be presented unless the creditor has reasonable grounds for believing that (a) coronavirus has not had a financial effect on the debtor, or (b) the debtor would have been unable to pay its debts even if coronavirus had not had a financial effect on the debtor. The CIGA 2020 makes provision where a winding-up order has been made during the relevant period

temporary suspension of wrongful trading liability—the CIGA 2020 temporarily makes changes to the wrongful trading provisions under [IA 1986, s 214](#) and [IA 1986, s 246ZB](#) to give company directors greater confidence to use their best endeavours to continue to trade during this pandemic emergency, without the threat of personal liability should the company ultimately fall into insolvency. The changes are back-dated to 1 March 2020 and end on 30 September 2020. For the purposes of determining any compensation payable with regards wrongful trading, the court is to assume that the director is not responsible for any worsening of the financial position of the company or its creditors that occurs during this period. Therefore the amendment does not go quite as far as the full suspension of wrongful trading provisions that the government had previously announced, but instead limits the financial consequences. Existing laws for fraudulent trading and the threat of director disqualification will continue to act as a deterrent against director misconduct

prohibition on termination clauses in supply contracts—the CIGA 2020 introduces a permanent change to the use of termination clauses in supply contracts. As a result of the measure, where a company has entered an insolvency or restructuring procedure or obtains a moratorium, the company's suppliers of goods and services (with certain prescribed exceptions) will not be able to rely on contractual terms to stop supplying, or vary the contract terms with the company (for example—increasing the price of supplies). The customer is required to pay for any supplies made once the insolvency process has commenced, but is not required to pay outstanding amounts due for past supplies while it is arranging its rescue plan. The measure also contains safeguards to ensure that suppliers can be relieved of the requirement to supply if it causes hardship to their business. There will also be a temporary exemption for small company suppliers during the current emergency until 30 September 2020

temporary changes to holding annual general meetings (AGM) and general meetings (GM)—the CIGA 2020 temporarily allows those companies that are under a legal duty to hold an AGM or GM to hold a meeting by other means—even if their constitution would not normally allow it. As a result, directors will not be exposed to liability for measures that need shareholder endorsement, and shareholders' rights are preserved. The measures also make provision to extend the period within which companies and other bodies must hold an AGM, in order to offer further flexibility if required

extensions to some Companies House filing requirements—companies are required, primarily by virtue of the [Companies Act 2006 \(CA 2006\)](#), to file prescribed documents by fixed deadlines at Companies House each year. Missing the deadline automatically results in a financial penalty and can result in criminal sanctions for the company's directors or the company being struck off the register of companies. The CIGA 2020 allows the Secretary of State to temporarily make further extensions to deadlines for certain filings which include: accounts under [CA 2006, Pt 15](#), annual confirmation statements under [CA 2006, Pt 24](#), notices of related relevant events under the [CA 2006](#), and registration of charges under [CA 2006, Pt 25](#)

We have published new content in relation to the CIGA 2020, including:

[Corporate Insolvency and Governance Act 2020—overview](#)

[Moratorium—overview](#)

Practice Note: [Corporate Insolvency and Governance Act 2020—moratorium](#)

Practice Note: [Corporate Insolvency and Governance Act 2020—moratorium extension and termination](#)

[Restructuring plan—overview](#)

Practice Note: [Corporate Insolvency and Governance Act 2020—restructuring plan provisions](#)

[Corporate Insolvency and Governance Act 2020—frequently asked questions \(FAQs\) on the restructuring plan](#)

Checklist: [Corporate Insolvency and Governance Act 2020—differences between restructuring plans, schemes of arrangement, and CVAs](#)

Precedent: [Corporate Insolvency and Governance Act 2020—claim form \(CPR Part 8\) in respect of an application for a restructuring plan](#)
Precedent: [Corporate Insolvency and Governance Act 2020—witness statement in support of an application for a restructuring plan](#)
Precedent: [Corporate Insolvency and Governance Act 2020—restructuring plan](#)
Precedent: [Corporate Insolvency and Governance Act 2020—explanatory statement for a restructuring plan](#)
Practice Note: [Corporate Insolvency and Governance Act 2020—temporary changes to the wrongful trading regime](#)

Useful links

The CIGA 2020 is available in full [here](#).

The explanatory notes published alongside the Bill as originally introduced to the House of Commons can be found [here](#).

BEIS have prepared an explanation of each of the measures in the CIGA 2020 which can be found [here](#).