

## Winding Up Petitions: What the Regulation *Actually* Says

The Corporate Insolvency and Governance Act 2020  
(Coronavirus) (Amendment of Schedule 10) Regulations 2021

From **1 October 2021** until **31 March 2022** no winding up petition may be presented based upon a company's inability to pay its debts unless:

- The petition debt is at least £10,000 (which may be owed to more than one petitioner);
- The creditor has delivered to the company's registered office a statement seeking repayment proposals within 21 days and no satisfactory proposals have been made;
- The debt is not '*excluded*' (ie it is not rent or other payment due under a business tenancy which is unpaid because of Coronavirus).

### Points to Note:

1. The above restrictions apply only to petitions based on unpaid debts;
2. Past discussions or negotiations with the debtor company do not count towards the 21 day notice – a specific notice must be served, ...
3. ... but the petitioner can apply to the court for leave not to serve a proposals notice or to shorten the 21 day time period (we would suggest that a request for such permission be included within the body of the petition);
4. A number of creditors owed less than £10,000 can club together to reach the minimum limit;
5. It is not clear how the court will judge whether the petitioner acted reasonably in not accepting proposals from the debtor company;
6. It is also not clear how the court will assess whether a tenant failed to pay rent because of Coronavirus or for some other reason. We would suggest that the balance of convenience will lie with the tenant!

### Conclusion

Winding up petitions are now back subject only to an increased minimum debt and the requirement to give 21 days' notice seeking proposals. We would suggest that creditors might as well serve a statutory demand at the same time – given that they have to wait 21 days anyway. **Petitions based on anything other than the debtor's inability to pay its debts continue without restriction.**



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