

Moratoriums

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31 March 2021

1. Part A1 moratorium

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What is a Part A1 moratorium?

A Part A1 moratorium (also referred to as a 'standalone moratorium') was introduced by the Corporate Insolvency and Governance Act 2020 (CIGA 2020) with effect from 26 June 2020. It is designed to allow financially distressed entities a short breathing space from enforcement action by certain types of creditors while they organise their affairs to make their rescue viable. It is a debtor-in-possession process meaning that directors remain in control of the company but are supervised by an insolvency practitioner acting as a monitor.

An important qualification on the effect of the moratorium is that it does not prevent enforcement action by financial creditors. Debts owed to such creditors that falls due during the moratorium must continue to be paid for the moratorium to remain in force. Moratorium debts (those incurred during the moratorium) and certain pre-moratorium debts (falling due during the moratorium but incurred before the moratorium – including rent for the period of the moratorium) must continue to be paid during the moratorium and it may be that the company obtains specific 'debtor-in-possession' funding to see it through that period.

The moratorium can be obtained through a court filing for an initial period of 20 business days (and can be extended by a further 20 business days) without creditor consent.

Eligibility and Entry into a Moratorium

- A Company is eligible unless it is excluded (see attached [link](#) to exclusions list in statute) and provided it has not been subject to, or recently subject to, a moratorium or an insolvency procedure (see more on this in the temporary rules section below)
- The directors can obtain a moratorium by filing the following with the court (much like an out of court administration process):
 - A statement from the directors to certify that the company is, or is likely to become, unable to pay its debts;
 - A statement from the proposed monitor confirming that, in their view, it is likely that a moratorium would result in the rescue of the company as a going concern (this includes an assessment of the company's ability to continue paying certain debts as they fall due);
 - Where there are to be joint monitors, a statement specifying the functions they will exercise jointly or by all or each of them; and
 - If the company is regulated by the FCA and/or PRA, the consent of those regulators to the company obtaining a moratorium.
- If there is an outstanding winding up petition or the company is an overseas company, the directors must make an application to court, accompanied by the documents above.

How long will it last?

The moratorium will initially last 20 business days beginning with the business day after the day on which the moratorium comes into force (section A9(2), IA 1986) but it can be extended beyond 40 business days with creditor consent or the permission of the court.

What is its effect?

Similar to the moratorium arising in an administration:

- Insolvency proceedings may not be commenced against the company, unless applied for by the directors or on the grounds of public interest; and
- Creditors cannot take steps to forfeit, repossess goods, enforce security or continue most legal processes against the company without the permission of the court.

Moratorium debts in subsequent proceedings

All "moratorium debts" and certain pre-moratorium debts will attract super-priority in the event of a subsequent liquidation or administration that commences within 12 weeks of the end of the moratorium. A financial services creditor that chooses to accelerate recovery of its debt will lose its super-priority status.

2. Temporary insolvency rules - relaxing entry to part A1 Moratorium

The temporary insolvency rules relaxing the entry requirements for a Part A1 moratorium have been extended until 30 September 2021 to permit that:

- Directors can file for a moratorium out of court even if their company is subject to a winding-up petition (unless the company is an overseas company); and
- Companies will be eligible for the moratorium despite having been subject in the previous 12 months to a moratorium.

3. Other types of moratorium

There is only one other form of moratorium that exists in an insolvency context and that applies when a company files a Notice of Intention to Appoint Administrators (in which case it is an initial 'interim moratorium) or a Notice to Appoint Administrators.

A moratorium does not apply in Liquidation; that is a terminal procedure where the company is beyond rescue. In terms of creditor action against a company in liquidation there is an automatic stay of legal proceedings against the company or its assets meaning that a claimant would have to apply to court for permission before bringing or pursuing proceedings (this does not extend to the enforcement of security or the forfeiture of a lease).

The previous "small companies" moratorium available to companies considering a CVA context was repealed with effect from 26 June 2020 and has effectively been replaced by the Part A1 Moratorium.

We advise insolvency practitioners and companies in respect of the different moratoriums available and all other aspects of corporate insolvency. Please contact us to find out more.

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