

Munich, 08.05.2020

Coronavirus Pandemic: UK Cross-border claims

Update 1

14th April 2020

1. What is the effect of the coronavirus pandemic on businesses'/individuals' ability to pay?

It is clear that the UK's second priority after safeguarding the health of every citizen is to protect the UK economy by protecting businesses and individuals. The UK Government has announced the biggest intervention and rescue packages in private-sector business since the Second World War to help fight the economic impact of coronavirus. Similar measures are being adopted all around the world.

The reality is the pandemic will have a huge impact on the financial health of individuals and businesses both in the UK and abroad and it naturally will have an effect on their ability to pay and your decision to pursue them for unpaid debts.

Our firm specialises in restructuring and insolvency and we are advising clients on their own trading and on their dealings with other companies during this difficult financial period. We are in a strong position to advise and assist in recoveries actions both in the UK and abroad both during and after the pandemic. Our firm's expertise can offer real insight into the challenges being faced during these unprecedented times to allow you to make the tough decisions about pursuing debts.

2. Can you still issue proceedings in England and Wales during the pandemic for debt claims?

You can still issue proceedings but legal advice should be obtained on a case by case basis due to the impact on how courts are working (see more detail below).

3. Can you still enforce UK Judgments in other jurisdictions and vice versa?

Enforcement of judgments are difficult during the pandemic because governments worldwide (including the UK) have introduced temporary measures to safeguard their respective economies, businesses and individuals.

However, we can access our international network of lawyers to determine on a case-by-case basis the options available to you. These may be steps to ensure swift action as soon as enforcement action can resume or indeed steps that can be taken in the interim to secure your debts.

4. Is there currently any advice from the English and Welsh Courts about the impact of Coronavirus with potential delays on the Court process or changes to limitation periods for issuing proceedings and service of proceedings?

The coronavirus pandemic raises issues in relation to:-

1. The court process;
2. Service of proceedings; and
3. Limitation periods.

The court process

A new Practice Direction (Practice Direction 51ZA – Extension of time limits and clarification of practice direction 51Y – Coronavirus) came into force on 2nd April 2020 and will cease to have effect on 30th October 2020. It allows parties in proceedings to agree increased extensions in procedural timetables of up to 56 days without formally notifying the Court, as long as this does not put any hearing date at risk.

The Practice Direction also requires the Courts to take into account the impact of the pandemic in considering applications for extensions of time, as well as applications for adjournment of hearings and relief from sanctions.

The English High Court has also issued guidance that it is encouraging parties to take a collaborative approach to address coronavirus-related issues in relation to procedural compliance and any unnecessary aggressive tactics during the pandemic will be frowned upon and will likely have adverse costs consequences.

Service of proceedings in the UK and other jurisdictions

Service of proceedings is an area of concern, because offices in the UK and abroad are mostly closed and therefore there is a risk that defendants may not become aware of proceedings in time to respond. Currently if a party is served during the pandemic, the usual time to respond applies, unless an extension is agreed (see above) between the parties.

If a defendant fails to respond in time and thereafter Judgment in Default is entered, the defendant could successfully set the Judgment aside if they argue that the proceedings did not come to their attention because they were unable to access their offices (due the pandemic). The usual rules for setting aside Judgment in Default will also technically still apply, such as the defendant must act promptly when applying to set aside and the Defence would have to have a real prospect of success. The reality is that the defendant may only need to show there is a defence worth hearing and therefore we expect the threshold would be lower in practice. However, attempting to take cynical advantage of this situation could also have adverse costs implications.

To address this issue, our advice would be to agree alternative methods of service between the parties and failing this apply to Court for permission to serve by email.

Limitation periods for issuing proceedings in England and Wales

Currently the usual rules apply in relation to limitation dates for issuing proceedings. You may therefore want to obtain advice from us to freeze the expiry of an approaching limitation period, by entering into a “standstill” agreement while you determine if you wish to proceed with recovery action.

For advice about limitation periods, please do contact us.

5. Are Court hearings still taking place during the pandemic in the UK?

In the England/Wales (we cannot comment on Scotland or NI), at present listed hearings are still proceeding by way of video conference calls and/or telephone conference calls. A temporary Practice Direction 51Y under the Civil Procedure Rules has been introduced and applies to remote hearings during the coronavirus pandemic.

The English and Welsh Courts have a preference for Skype video calls in the first instance and audio-only conference calls in the alternative. The key issue is that the hearing must be recorded.

If you have a hearing listed, you must contact the Court in advance to determine how the hearing is proceeding.

Please note that all this may change.

6. What effect has the pandemic had on winding-up proceedings in England and Wales?

Initially, the High Court said that all winding up cases were being adjourned. However, this has since changed. The Insolvency & Companies Court are now progressing winding-up cases remotely. Audio and video calls are being used for hearings. We understand that the Court are sending an automated email to parties setting out how to participate and what steps are needed beforehand.

If an email is not received, you will need to contact the Court.

Please note, there may be further changes and therefore please do contact us for any further updates.

It is worth noting that Australia has increased their minimum debt threshold to commence winding-up proceedings to \$20k and the statutory demand period (before enforcement) has been extended to six months. This is to prevent parties from using the threat of winding-up a company as a debt collection tool and to allow companies a chance to recover. It is therefore possible similar measures may be introduced in the UK. We will continue to monitor this.

The Team

If you require any help relating to the recovery of money or assets from a debtor based in the UK or where there are insolvency or restructuring issues affect a member of a Group of companies, a company or creditor of a company based in the UK, then please do contact any member of our team below.

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