

TEMPORARY INSOLVENCY PRACTICE DIRECTION
SUPPORTING THE INSOLVENCY PRACTICE DIRECTION

Introduction

This Temporary Insolvency Practice Direction is intended to provide workable solutions for court users as the current COVID-19 pandemic continues together 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 temporary 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
“Hybrid Hearing”	means a hearing at which some of the parties, witnesses and legal representatives appear in person before the Court and others participate remotely by audio or video technology
“In-person Hearing”	means a hearing at which the parties, witnesses and legal representatives appear in person before the Court
“Temporary IPD”	means this Temporary Insolvency Practice Direction
“Temporary Listing Procedure for Winding-Up and Bankruptcy Petitions”	means the procedure set out at paragraph 4 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 5.5 and 7.12
“Remote Hearing”	means a hearing at which the parties, witnesses and legal representatives appear remotely by audio or video technology

“Rule and Rules”	means the Insolvency (England and Wales) Rules 2016
“Schedule B1”	means Schedule B1 to the Insolvency Act 1986

2. Application and coming into force

This Temporary IPD supplements IPD and replaces the temporary insolvency practice direction which came into force on 6 April 2020. It will apply to all insolvency proceedings throughout the Business and Property Courts, subject to any variations as directed by (in London) the Chief Insolvency and Companies Court Judge or (outside London) the relevant Supervising Judge. It will come into force on 1 October 2020 and remain in force until 31 March 2021 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. Winding-up and bankruptcy petitions

4.1 As from the date this paragraph is brought into effect the Court will list the hearing of any winding-up and bankruptcy petition in the manner described in this paragraph 4.

4.2 The hearing shall be a Remote Hearing and shall be conducted using such video conferencing technology or telephone conferencing facility as the relevant Court decides.

4.3 The parties must provide the Court with an email address or telephone number for the

purposes of being invited to join the Remote Hearing as soon as possible and in any event no later than 2 clear Business Days before the hearing date. Failure to do so may result in the Court making an order (including a winding-up order, a bankruptcy order or dismissal of the petition as the case may be) in the absence of the party who did not provide such details.

4.4 Any other person who intends to appear at the Remote Hearing of a winding-up or bankruptcy petition must deliver a notice of intention to appear on the petition in accordance with Rule 7.14 or Rule 10.19 as the case may be, providing with it an email address or telephone number for the purposes of being invited to join the Remote Hearing.

5. Other insolvency hearings

5.1 Hearings may be conducted by one of three methods: an In-person Hearing, a Remote Hearing or a Hybrid Hearing.

5.2 The parties shall liaise with each other with a view to providing the Court with an agreed proposal for the method of hearing, as far in advance of the hearing date as reasonably practicable.

5.3 Where the parties are unable to reach agreement, they shall each provide the Court with their proposals for the method of hearing as far in advance of the hearing date as reasonably practicable.

5.4 It shall be for the Court (with the benefit, as applicable, of the agreement or proposals of the parties) to determine the method of the hearing.

5.5 In the case of any Remote Hearing or Hybrid Hearing, the parties must provide to the Court as far in advance of the hearing as reasonably practicable, an email address or telephone number of each person intending to join the hearing remotely, for the purposes of being invited to join the Remote Hearing or Hybrid Hearing as the case may be. Failure to do so may result in the Court making an order in the absence of the party who did not provide such details.

5.6 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.

6. Statutory Declarations

6.1 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.

6.2 Where a statutory declaration is made in the manner described in sub- paragraphs 6.2.1 to 6.2.3 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.

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

6.2.2 The person authorised to administer the oath attests that the statutory declaration was made in the manner referred to in 6.2.1 above; and

6.2.3 The statutory declaration states that it was made in the manner referred to in paragraph 6.2.1 above.

2 October 2020