



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

### *Termination clauses in supply contracts*

#### **14 Protection of supplies of goods and services: Great Britain**

(1) In the Insolvency Act 1986, after section 233A insert—

##### **“233B Protection of supplies of goods and services**

- (1) This section applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this section where—
  - (a) a moratorium under Part A1 comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 1 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—

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- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where—
  - (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,  
the entitlement may not be exercised during that period.
- (5) Where a provision of a contract ceases to have effect under subsection (3) or an entitlement under a provision of a contract is not exercisable under subsection (4), the supplier may terminate the contract if—
  - (a) in a case where the company has become subject to a relevant insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under subsection (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with subsection (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this section “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
  - (a) in the case of a moratorium under Part A1, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect—
    - (i) paragraphs 76 to 84 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,

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- (d) in the case of a voluntary arrangement approved under Part 1 taking effect in relation to the company, when the arrangement ceases to have effect,
  - (e) in the case of the company going into liquidation, when—
    - (i) the liquidator complies with section 94(2), 106(2) or 146(3) (duties relating to final account), or
    - (ii) the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and
  - (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
    - (i) an order made by the court under section 901F of that Act takes effect, or
    - (ii) the court decides not to make such an order.
- (9) In this section “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 4ZZA provides for exclusions from the operation of this section.

### **233C Powers to amend section 233B and Schedule 4ZZA**

- (1) The Secretary of State may by regulations omit any of paragraphs (a) to (g) of section 233B(2) (relevant insolvency procedures).
- (2) The Secretary of State may by regulations amend Schedule 4ZZA so as to—
  - (a) remove or amend any exclusion from section 233B for the time being specified there, or
  - (b) add further exclusions from section 233B.
- (3) In subsection (2), references to exclusions from section 233B are to circumstances in which section 233B, or any provision of that section, does not apply.
- (4) The circumstances referred to in subsection (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.
- (5) Regulations under this section may make—
  - (a) different provision for different purposes;
  - (b) consequential provision;
  - (c) transitional and supplementary provision.
- (6) Regulations under this section made by virtue of subsection (5) may in particular make provision amending this Act or any other enactment whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 4ZZA is omitted, provision omitting section 233A or 233 respectively).

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- (7) Regulations under subsection (1) may not omit section 233B(2)(c) unless the Secretary of State has first consulted the Scottish Ministers.
  - (8) In this section “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.
  - (9) Regulations under this section are to be made by statutory instrument.
  - (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (2) In the Insolvency Act 1986, in section 434 (Crown application), before “bind” insert “and sections 233A and 233B and Schedule 4ZZA ”.
- (3) Schedule 12—
- (a) inserts a new Schedule into the Insolvency Act 1986 which provides for exclusions from the operation of section 233B of that Act, and
  - (b) contains consequential amendments.
- (4) The amendments made by this section and Schedule 12 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

**Changes to legislation:**

There are currently no known outstanding effects for the Corporate Insolvency and Governance Act 2020, Section 14.