

Covid-19: Guidance on protecting your business with caveats

A payment demand letter sent to an empty office, or not seen by the right person, can cause havoc for a business when followed by insolvency proceedings. That risk is more heightened just now given the impact on businesses of the Coronavirus pandemic. There is a simple solution to offer peace of mind – a caveat.

What are caveats?

Caveats are, in effect, an early warning mechanism. They can protect you or your business from being served with certain court orders without warning. Putting a caveat in place reduces the risk of a nasty surprise.

What type of actions can be ‘caught’ by a caveat?

Caveats are only available in Scotland, so they only offer protection against proceedings brought against you in the Scottish courts. The orders they ‘catch’ include:

- Interim interdict (sometimes referred to by the English term, ‘injunction’).
- Petitions to wind up companies.
- Sequestration (bankruptcy) proceedings.

What does the ‘early warning mechanism’ mean in practice?

If one of the above types of proceedings are brought against you or your company in Scotland, having a caveat in place ensures that your solicitor will be notified of it before an order is granted.

It allows you time to consider the proceedings and, if you wish, try to negotiate a resolution without the matter calling in court. If a resolution can’t be agreed, your solicitor or advocate (barrister) will have the opportunity to address the court on why any order sought against you or your business should not be granted.

In the context of a winding up petition, a caveat can mean the difference between survival and going under for some companies. The reputational damage of a winding up petition appearing in the press, as well as the consequences for trade credit or banking facilities – even if the petition is entirely misconceived, malicious or unjustified – is so great that many companies maintain caveats as a matter of course.

Who can caveats protect?

Caveats can be lodged on behalf of individuals, companies, firms and partnerships with interests in Scotland.

All businesses with interests in Scotland should consider lodging caveats. If they are involved in disputes over access to or ownership of land or are being/may be pursued for payment (whether justifiably or not), caveats are highly recommended. In certain circumstances, individuals would also be well advised to have caveats in place.



What does it cost to lodge a caveat?

The cost of lodging a caveat includes court lodging dues and a modest legal fee. Lodging dues are currently £45 per caveat in both the Sheriff Courts and the Court of Session.

We generally recommend that most active companies registered in or currently trading in Scotland have caveats lodged at the relevant Sheriff Court(s) as risk management tool. It may also be appropriate to register a caveat at the Court of Session depending on the size of your business and the nature of any anticipated dispute.

How long do caveats last?

Caveats last for one year. They can be renewed on an annual basis. If we have lodged a caveat on your behalf we can advise you when it is due for renewal.

For further guidance and support, you can contact:

[John Bett](mailto:johnbett@lindsays.co.uk), Partner and Head of Dispute Resolution & Litigation
johnbett@lindsays.co.uk
0141 302 8409

or

[Paul Harper](mailto:paulharper@lindsays.co.uk), Partner in Dispute Resolution & Litigation
paulharper@lindsays.co.uk
0131 656 5639