

NEWSLETTER FROM THE WORLD OF INSOLVENCY

New insolvency advertising regime (England, Wales & Scotland)

There are changes to the insolvency advertising regime to allow discretionary advertising and introduce some new requirements. These came into effect on 6 April 2009. The most significant is that notices for meetings to effect Creditors Voluntary Liquidations (S98 IA'86) need only be advertised in the London Gazette and not local newspapers. The cost savings will be significant.

Voluntary Arrangements in practice (CVA's, IVA's and PVA's)

Restructuring by way of Voluntary Arrangements is an increasingly relevant solution where the core business (corporate or non corporate) is viable but there are cash flow problems and considerable debt. The major Sports retailer JJB Sports is shortly to enter a CVA without Administration.

The advantages are many including continued trading and workforce restructuring funded by the Redundancy Payments Fund. Assets are retained by the business and may be utilised as working capital. The directors, individuals or partners retain control of the business and unsecured creditor claims are frozen at the date of the VA. In return the business may either make contributions into the arrangement over a fixed duration for the benefit of creditors or in some cases a third party can offer a one off cash settlement that is better than liquidation/bankruptcy.

Banks are frequently supportive of CVA's particularly where they have overdraft and loan debt secured by debenture. Banks retain their security rights and benefit from the trading cash flow.

This firm has had considerable experience in preparing proposals and supervising a wide range of businesses including farmers, building contractors, plant engineers, yacht manufacturers and distributors, electrical engineers, nursing agencies, pubs, clubs, restaurants and retailers.

Whilst the initial months are usually challenging the business may trade out of its difficulties and continue to provide a living for its owners. Experience suggests unsecured creditors receive significantly higher dividends than liquidation or Bankruptcy though some debt write off is usually required.

Special Resolution Regime (SRR) for Ailing Banks and Building Societies (Banking Act 2009)

A new SRR for banks facing financial difficulties came into effect on 21 February 2009. The components of the SRR are three stabilisation options, a new bank insolvency procedure and a new bank administration procedure

Directors and controlling shareholders as 'employees'- Guidance from the Court of Appeal

The Court of Appeal in *BERR v Neufeld & Howe* [2009] EWCA Civ 280 issued new guidance on the question of determining whether a director and major shareholder of a company is an employee for the purposes of the Employment Rights Act 1996. The Court held that there was no reason in principle why a shareholder and a director of a company could not be an employee under a contract of employment. This of course enables directors to claim from the Redundancy Payments Fund for arrears of wages, holiday pay, pay in lieu of notice and redundancy on an insolvency event such as Administration or liquidation. Directors have to prove to Tribunals that their contract is not a sham and that will be judged on the conduct of the contract in practice.

An update on Debt Relief Orders (DRO's) (England & Wales)

On 6 April 2009 the Insolvency Service introduced an out of court scheme to provide debt relief for low income individuals who cannot pay their debts, have few qualifying liabilities, and few assets.

To be eligible a debtor must have liabilities of less than £15,000, assets of less than £300 and a disposable income of less than £50/month Debtors apply on line through an authorised intermediary /skilled debt advisor and pay £90 to the Official Receiver leading to debt write off after a one year moratorium. Debtors may not have credit of more than £500 in the year. Abusers will face a 2-15 year restriction order. Only one DRO application can be made in a six year period.

For free initial advice or further information speak to any of our experienced team:

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