

NEWSLETTER

Winter 2018

Insolvency and Corporate Governance

A Consultation on Insolvency and Corporate Governance has ended, and findings were reported in August 2018. The Government has amongst other things announced the following proposed changes: a pre-insolvency moratorium for viable businesses to restructure; a new restructuring procedure for distressed companies; the prohibition of enforcement by suppliers of termination clauses in contracts which take effect on entering insolvency or restructuring; the investigation of directors of dissolved companies (outside formal procedures) by the Insolvency Service; enhanced antecedent recovery powers for IPs particularly in relation to the sale of subsidiaries in distress and value extraction schemes; and an increase in the Prescribed Part to £800k.

New classes of creditor for financial institutions

Three new classes of non-preferential creditor will be introduced that will apply to the insolvency of financial institutions. This Order implements the obligations in Directive (EU) 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy. The Directive provides for a new class of non-preferred senior debt to be issued by credit institutions, investment firms and others. In insolvency proceedings debts in this class are to rank below ordinary unsecured debts but above own funds' investments and subordinated liabilities that do not qualify as own funds instruments. Institutions may issue this new class of secondary non-preferential debt to meet their obligations to have enough loss-absorbing and recapitalisation capacity, enabling the resolution authority to implement the institution's resolution strategy, and preventing their failure from having an impact on financial stability.

Insolvency Service (IS) report significant concerns over the operation and regulation of 'volume IVA' providers following monitoring visits by Recognised Professional bodies (RPBs)

The IS have reported concerns over the operation of 'volume IVA' providers who employ IPs to deal with thousands of cases at one time. The issues identified during visits included poor quality advice to debtors, potentially leading them to enter IVAs when other debt solutions or bankruptcy may be more appropriate. Sometimes it was not clear what the justification was for some charging of expenses. Other questionable practices were identified. The IS recommended prompt action by RPBs to deal with these companies where these issues were identified.

Richard J Smith is not a volume IVA provider and prides itself on giving bespoke, appropriate and impartial advice to debtors and adheres to regulatory guidelines. This firm and other smaller mixed practices have been warning the regulators and IS for some time that quality could be compromised by low fee levels sought by credit card companies and banks.

New preferential status for HMRC in relation to VAT and PAYE/NIC and SCT

From 2020 HMRC will become a secondary preferential creditor after settlement of preferential wages and holiday pay. The limits of the secondary claim in respect of VAT/ PAYE/NIC and SCT have not yet been set. Preferential status for these claims was abolished in 2003. These claims will rank out of assets ahead of the Prescribed Part (a ring-fenced fund for unsecured creditors) and the floating charges of banks.

Tax abuse and insolvency

The government consulted on tax abuse and insolvency and will legislate in 2019/20 to allow HMRC to make directors **and other persons involved** in tax avoidance, evasion or phoenixes jointly and severally liable for tax liabilities arising from these activities where the company becomes insolvent. It is proposed that penalties raised on facilitators of avoidance under DOTAS, Disclosure of Avoidance Schemes VAT and Other Indirect Taxes (DASVOIT), Promoters of Tax Avoidance Schemes (POTAS) and Avoidance Enablers, and penalties on facilitators of evasion should be brought within scope. It intends for the GAAR and DOTAS provisions to be included as definitions of tax avoidance for the purposes of this measure.

Insolvency Service Statistics	Q3 2018	Change on Q2 2018	Change on Q3 2017
Case numbers E&W			
Corporate			
Compulsory Liquidations	741	-2.5%	11.1%
Creditors' Voluntary Liquidations	3,083	11.8%	20.7%
Administrations	390	12.9%	25.9%
Company Voluntary Arrangements	94	0.0%	16.0%
Receiverships	0	N/A	N/A
Personal			
Bankruptcies	4,145	17%	12.0%
Debt Relief Orders	6,965	0.7%	11.5%
IVAs	14,040	-18.0%	-11.3%

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Obituary

Some of you may remember Norma Foster (former name Prosser) who sadly passed away on 25 November 2018. Norma worked for Grant Thornton until the late 1980s and then moved to Devon with Richard Smith and became a manager and IP in our practice in Ivybridge. Norma will be remembered for her knowledge of personal insolvency, skills with clients and debtors, involvement with the ICM and the SPG and being very sociable. Following retirement in 2007 Norma moved to Greece where she lived for some time. Norma had been ill for some time and died peacefully at her daughter's home in Camelford. She is survived by her daughter and two sons.

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