

Powers of The Pension Regulator – BHS and Dominic Chappell

The Pension Regulator (TPR) has obtained a conviction and fine against Dominic Chappell for £124,000 for failing to reveal information about the sale of BHS, requested by TPR under s72 Pensions Act 2004.

Consultation for HMRC preferential status

The government has issued a consultation document in respect of the proposal that HMRC be given secondary preferential status. HMRC last had preferential status in all insolvencies in 2003. If introduced this will mean HMRC being paid after the current preferential creditors (arrears of wages and holiday pay) have been paid in full. The consultation ends 27 May 2019. Limits on amounts of VAT/PAYE/NIC/SCTAX payable have not been determined. If implemented it is likely that banks and other floating charge holders who hold company security may be prejudiced and this may affect lending decisions and the provision of credit to companies and the position will worsen for unsecured creditors. As taxpayers we should encourage better tax recoveries for HMRC but as restructuring professionals it may make recovery through insolvency procedures more challenging with HMRC likely being the most significant stakeholder

Brexit legislation impacting on insolvency in a no-deal scenario

Below is a non-exhaustive list. It will greatly complicate the profession and foreseeably may add to legal costs in many cases:
The Insolvency (Amendment) (EU Exit) Regulations 2018; The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019; The Provision of Services (Amendment) (EU Exit) Regulations 2018, SI 2018/1329; Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019; The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019; The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2018; The European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018; The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018.

Dividends & S423 IA86 – Inter group dividend challengeable

In the case of BTI 2014 LLC v Sequana SA [2019] EWCA Civ. 112 the court reviewed whether payment of a lawful dividend could be challenged under S423 IA86. The wholly owned subsidiary “paid” a dividend and the proceeds of the dividend were used to offset the debt owed by the holding company to the wholly owned subsidiary at a time when there was a contingent liability. The court held that the payment of the dividend did fall under s423 when considering whether the transaction put assets beyond the reach of creditors.

Electronic Filing at Court

The Courts and Tribunal Judiciary announced on 15 February that CE-File electronic filing was extended to the Business and Property Courts (B&PCs) outside London from 25 February 2019, to include Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. See www.judiciary.uk/announcements/electronic-filing-in-the-business-and-property-courts-outside-of-london. From 30 April all professional users will be required to use it in new proceedings.

Insolvency Service Guide to searching for insolvent people or companies

The IS have issued guidance on searching for people or companies in insolvency proceedings which may be found at <https://www.gov.uk/government/publications/find-insolvent-people-and-companies/search-for-people-or-companies-in-insolvency-proceedings>

Insolvency Service Statistics

	Q4 2018	Change	Total	Change
Case numbers		Q4 2017	2018	on 2017
Corporate				
Compulsory Liquidations	822	32.6%	3,117	11.1%
Creditors' Voluntary Liquidations	2,694	5.0%	11,152	9.3%
Administrations	367	15.1%	1,464	11.2%
Company Voluntary Arrangements	66	20.0%	356	16.0%
Receiverships	0	n/a	1	-50.0%
Personal				
Bankruptcies	4,196	10.2%	16,582	9.8%
Debt Relief Orders	7,196	11.9%	27,683	11.2%
IVAs	22,717	50.6%	71,034	19.9%

Commentary on statistics

Company insolvencies increased in 2018 to the highest levels since 2014. Personal insolvencies are the highest since 2011. New IVAs reached their highest total since records began. CVLs remain the most common form of company insolvency. The underlying liquidation rate is 1 in 249 (0.4%) of active companies. Nearly 1 in 401 adults became insolvent in 2018, a rise of 14% over 2017. There are no reliable figures for the number of people in **Debt Management Plans (DMPs)** which are not formal insolvencies. Estimates suggest that more than 500,000 people are subject to DMPs as compared to circa 300,000 currently in IVAs. DMPs rarely provide debt write off or relief from interest as compared to IVAs and so are preferred by banks and credit card companies.

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