Richard J Smith & Co Insolvency Practitioners & Forensic Specialists

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NEWSLETTER

Lockdown Look-back Edition 2020

Some reflections and commentary

The unforeseen and unprecedented lockdown caused everyone to change their working practices, but some things are easier said than done and some organisations are nimbler than others. Legislation can be inflexible and it has taken the ingenuity of people working behind the scenes to allow corporate and business insolvency activity to continue.

Some things worked well:

- Trade and professional bodies issued helpful and timely advice to the sector;
- Wrongful trading rules and winding up petitions were suspended and remain so at this time;
- Video conferencing was permitted for the swearing of certain statutory documents;
- The Insolvency Services Account permitted electronic signatures;
- Companies House accepted online filing of certain documents.

There were some frustrations:

- Video conferencing was not expressly permitted for the swearing of other statutory documents, albeit that was resolved latterly;
- HMRC could not be contacted by telephone, and certain specialist insolvency departments were raided to provide staff to the departments dealing with SEISS and furlough applications;
- VAT and CT refunds were delayed by, in our experience, for over 12 weeks;
- The inability to meet clients and give face to face advice was difficult but largely solved by the technology.

As a firm we adopted a work from home policy but with a core physical presence to deal with that which couldn't be done remotely. We found this to be a common practice amongst professional firms and that it works quite well. We anticipate that there will be a reluctance to return to old working practices and there will be significant knock on effects for providers of office space and those businesses that cater to office workers in major cities. Opportunities will arise for IT technicians and in particular for software that assists with home working.

The response from Government

The government introduced many measures designed to prevent mass redundancies and business failures. Some of those have been more successful than others, and no doubt you will be aware of those cohorts that haven't been catered to either by circumstance or by design. Particularly hard hit have been the director employees that remunerate by way of dividend.

The details of the financial support can still be found online at www.gov.uk/government/collections/financial-support-for-businesses-during-coronavirus-covid-19

Considerations for the future

We have already been asked to advise a number of clients that have successfully obtained 'Bounce back' loans or CBILS loans but still face insolvency issues. The rationale for applying for the loans is more compelling in some cases than in others. We have also been approached to take part in research by insolvency lawyers acting for clearing banks, as to how frequently this is occurring. We sense that there is concern amongst the banks as to the recoverability of some of the loans, notwithstanding the government backed guarantee (either in whole or in part). We also sense that practitioners will be looking very closely at the timing of loan applications compared to insolvency, and particularly when the new loans (which directors have not guaranteed) have replaced existing lending which was personally guaranteed.

Proposed IR 35 Legislation

The government deferred the implementation of the Proposed IR35 legislation to 6 April 2021 as a result of the Coronavirus.

Prescribed part

The prescribed set aside for unsecured creditors in insolvencies where floating charges are held is increasing from £600,000 to a maximum of £800,000 but applies only to new security taken after 6 April 2020.

Preferential status of HMRC affected by lockdown

The preferential status of HMRC in relation to VAT and PAYE/NIC arrears (which was abolished in 2003) in insolvencies was due to come back this year but has been delayed to 1 December 2020.

Proposed new government legislation

As if there wasn't enough to do during lockdown, the government Insolvency Service announced new plans to change the UK's Insolvency Framework. Specifically, new tools would include: A new Moratorium process for companies, giving breathing space from creditors whilst a rescue/restructure is explored, Protection of Supplies to companies during the Moratorium, and a new Restructuring Plan (similar to the US Chapter 11) binding creditors all packaged together in the Corporate Insolvency & Governance Act 2020.

Document swearing during lockdown

New practices were developed to permit the valid swearing of insolvency documents on-line thereby avoiding physical visits to lawyers.

IVAs & CVAs during lockdown - IP discretion to avoid breaches due to Coronavirus

IPs were supported by HMRC (often a major creditor) to use their professional discretion to allow IVAs and CVAs to continue, notwithstanding that suspended trading would mean that voluntary contributions from profit would be impossible or other realisations delayed and therefore there would be breaches of terms consequences.

Landlords and tenants and arrears of rent

The government set out guidance for landlords to prevent forfeit during lockdown but some landlords were circumventing these guidelines by using Commercial Rent Arrears and Recovery (CRAR) legislation to enforce payment of arrears. This led to further measures to void temporarily winding up petitions and Statutory Demand from Landlords to Commercial tenants to 30 June. Legislation will also be brought forward to prevent landlords using CRAR unless 90 days or more of unpaid rent is owed giving more breathing space.

Insolvency Service Statistics Case numbers E&W	Q4 2019	Change on Q4 2018	Total 2019	Change on total 2018
Corporate				
Compulsory Liquidations	661	-21.8%	2,970	-5.4%
Creditors' Voluntary Liquidations	3,073	14.6%	12,060	8.0%
Administrations	474	27.1%	1,814	24.0%
Company Voluntary Arrangements	77	18.5%	351	-1.1%
Receiverships	-	N/A	1	0.0%
Personal				
Bankruptcies	4,118	-2.3%	16,702	0.0%
Debt Relief Orders	6,947	-2.4%	27,497	-0.1%
IVAs	18,197	-22.1%	77,982	9.8%

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