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NEWSLETTER

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Summer 2021

Breathing Space Schemes launched

The Breathing Space Scheme launched on 4 May 2021 to provide individuals with legal protections from their creditors for 60 days with most interest and penalty charges frozen and enforcement action halted. Individuals where problem debt can be linked to issues with their Mental health can obtain a further 30 days protection. Between 4 May 2021 and 30 June 2021 there were 11,747 registrations comprising 11,636 Standard Breathing Space Schemes and 111 Mental health Breathing Space Schemes registered.

We can envisage that such schemes might be a substitute for more expensive old style Interim Orders obtained from the Court used to provide moratorium protection for debtors in complex IVA situations where the debtor is under intense creditor pressure.

Individual Voluntary Arrangements (IVAs) are still useful tools to rescue sole traders and unincorporated partnerships

The IVA market is now dominated by 3 major firms (Creditfix, Hanover Insolvency and Financial Support Systems) who have 52% of the market. A further 10 practices that registered over 1,000 IVAs each represent a further 34% of the market. New registered IVAs amounted to 78,478 in total in 2020. Most of these IVAs are consumer debt focussed and the debtors are salaried employees offering contributions to creditors from their net disposable incomes.

Trading individuals who experience insolvency issues are not properly understood by major IVA providers and the Protocol IVAs proposed by these factory providers are not designed to consider complex asset disposals and trading positions and proposals based on profit derived from trading cash flow projections. Richard J Smith & Co specialise in advising such clients and preparing IVAs for complex positions and trading businesses so if you have unincorporated clients with these issues please get in touch.

Dissolved companies and Director's disqualification

Following proposed changes to the law in 2018, the Insolvency Service (IS) has recently laid a bill before parliament in May 2021, permitting the IS to investigate directors of limited companies who dissolve companies where there are liabilities outstanding and should have been liquidated. This closes a loophole that has been a perennial abuse of process issue notwithstanding that dissolving a company in those situations without providing proper notice is already a criminal offence. Historically it has not been policed properly by Companies House or the IS but this will now happen.

Business support measures extended due to COVID-19 – A reminder of where we are

Restrictions on statutory demands and winding up petitions, introduced in the Corporate Insolvency and Governance Act, were extended to 30 September 2021. Statutory demands will be void if served during the relevant period. Also extended to 30 September 2021 is the relaxation of the requirements to enter a Moratorium which is a new insolvency process. The provision for small suppliers not having to continue supplying a formally insolvent business ended on 30 June. The wrongful trading rules providing for the threat of personal liability for directors were suspended until 30 June 2021 but are now back in force. The CJRS or Furlough support for businesses ends on 30 September 2021. The Bounce Back Loan Scheme and CBILS ended on 31 March 2021, and the new Recovery Loan Scheme is in place until 31 December 2021.

Forfeiture by commercial landlords suspended to March 2022 due to COVID

Sections 82 and 83 of the Coronavirus Act originally imposed a three-month moratorium on landlords' ability to forfeit leases of commercial property for non-payment of rent in England and Wales, and Northern Ireland, respectively. That period has been extended several times, and the government announced on 16 June that it is being further extended to 25 March 2022. The relevant provisions of the Coronavirus Act apply to the vast majority of commercial leases, but not most leases for terms of less than six months. They will prevent landlords from taking any action to forfeit for non-payment of rents or other sums, including service charges and insurance rent, from 26 March 2020 until 25 March 2022. The Act currently provides that in any existing proceedings begun before 26 March 2020 there can be no order for possession before 30 June 2021. This will also be extended to 25 March 2022. Despite sections 82 and 83, forfeiture by peaceable re-entry would still be available to a landlord for breaches unrelated to non-payment of rent or other sums due.

Changes to HMRC's insolvent liquidation process for Corporation Tax cases

As part of HMRC's work to reduce the administrative burden on Insolvency Practitioners (IPs), it is improving its process for when Companies House notify HMRC about an insolvent liquidation. After receiving a notification of liquidation, HMRC will update its system to make these records inactive. This will stop initial and annual notices to file (CT603) being issued, so IPs won't have to respond to those communications. If, during the period of liquidation, there has been no activity giving rise to a charge under Corporation Tax, IPs will no longer have to submit nil Company Tax returns or liquidation reports. This will remain the case for the period of liquidation. Under normal circumstances, there will be no requirement to contact HMRC for tax clearance relating to Corporation Tax prior to closing the liquidation. HMRC will only contact IPs if it requires a Company Tax return or any additional information. In insolvent liquidations, IPs will need to be satisfied that they have all outstanding tax matters closed before they move to have the company struck off/dissolved. The process for administrations and solvent liquidations remains unchanged.

Insolvency statistics

Insolvency Service Statistics Case numbers (E&W)	2020		2021		2020	2021
	Q1	Q2	Q1	Q2	Q1+Q2	Q1+Q2
Corporate						
Compulsory Liqs.	707	205	114	102	912	216
Creditors' Voluntary Liquidations	2,668	2,302	2,085	2,865	4,970	4,950
Administrations	400	389	203	157	789	360
Company Voluntary Arrangements.	69	47	37	25	116	62
Receiverships	1	1	-	1	2	1
Personal						
Bankruptcies	4,314	2,505	2,801	2,285	6,819	5,086
Debt Relief Orders	6,862	4,792	4,161	4,367	11,654	8,528
IVAs	16,361	25,566	19,467	21,398	41,927	40,865

Commentary on statistics

Whist CVL levels in June are now back to pre-pandemic levels, since the start of the first UK lockdown, as a response to the COVID-19 Pandemic in March 2020, overall numbers of company and individual insolvencies have remained low when compared to pre-pandemic levels. This is likely to be driven by government measures put in place to support businesses and individuals during the pandemic, including temporary restrictions on the use of statutory demands and winding up petitions (commenced by creditors) and financial support in the form of grants, the CJRS and accessible Bounce Back Loans and CBILS.

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