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Company Voluntary Arrangement (CVA) research report for the Insolvency Service confirms CVAs can produce better outcomes than relevant alternative procedures

The Insolvency Service recently commissioned research into CVAs. This review was undertaken in light of “significant concerns” from the commercial property sector around how compromises to rental debts, changes to long-term leases, or the basis of calculating rents are unfairly affecting landlords in comparison to other classes of creditors. The outcome of this research has been published and has concluded that while there may be individual instances where landlords could argue that they have not been equitably treated, perhaps when compared to other landlords in categories which impose lower compromises, it appears that “landlords are broadly treated equitably compared to other classes of unsecured creditors”, for the following reasons:(1)They tend to have disproportionately larger voting rights than other groups of creditors;(2)The voting does not appear to be skewed by the impact of unconnected creditors; and(3)They have similar rights to all other creditors: they can propose modification to the Proposal and – if they do not agree with a Proposal that is voted through - they can take their site(s) back (akin to withdrawing a service) or submit a statutory challenge. The report also concluded that, in general, “if the CVA is not approved the relevant alternative represents a much poorer outcome for all creditors. CVAs remain a highly effective tool for the restructuring of companies facing financial distress and insolvency. They can be successful in any sector and Richard J Smith & Co have a strong record of preparing, presenting, and supervising such proposals which may benefit creditors, directors, and shareholders.

Insolvency Service empowered to ban Directors

As anticipated, instances of COVID related frauds are coming to light in increasing numbers. A tactic employed historically by some unscrupulous directors was to dissolve their company instead of placing it into a formal insolvency process, which bypassed the statutory investigations that practitioners must perform. There was concern that this would be used more frequently in a bid to avoid COVID fraud scrutiny. Recently enacted powers allow the Insolvency Service to investigate director conduct in dissolution cases. The first reported cases have seen two directors hit with 10- and 12-year disqualifications for obtaining bounce back loans fraudulently, and also for utilising the funds for personal gain. We welcome this development and expect to see further cases reported soon.

Guidance on remediation contribution orders if your building owner becomes insolvent

The Building Safety Act 2022 provides that from 28 June 2022 an insolvency practitioner will be able to apply to the court to make an order which requires companies associated with your building owner to make payments towards remediation of the relevant defects in your building. This can take place when your building owner is in the process of winding up their company and when all of the following criteria apply: (a). there are relevant defects relating to your building (b) their company is under an obligation to either directly remedy, or is liable to pay to remedy any of the relevant defects (whether already incurred or not) (c) they have links to other companies, known as “associated persons”.

Enforcement of charging order, eligible debt and moratorium

In the case of Lees v Kaye and another [2022] EWHC 1151 (QB) the applicant had a mental health crisis moratorium in place when she was evicted from her property and the was property sold. The Court considered whether the debt owed, which had been secured against the property, was an eligible debt and found that it was. The Court ordered that the eviction and sale were null and void and an order was made to restore the position prior to eviction.

Russia (Sanctions) (EU Exit) (Amendment) (No 14) Regulations 2022

In addition to new trade restrictions and to amend existing trade restriction, new restrictions relating to professional and business services came into effect on 21 July 2022. The restrictions cover accounting services, business and management consulting, The meanings of 'Accounting services', 'business and management consulting services' and 'public relations services' can be found at “Chapter 6B. Professional and Business Services and public relations services. Can be found at 54B. Section 54C (1) which sets out the rules for Professional and Business services provides that a person must not directly or indirectly provide, to a person connected with Russia any (a) accounting services; (b) business and management consulting services; or (c) public relations services. A person who contravenes a prohibition commits an offence, but it is a defence for a person charged with the offence of contravening the regulations to show that the person did not know and had no reasonable cause to suspect that the goods were destined (or ultimately destined) for Russia.

Insolvency Service Statistics		2021		2022	Last 4 Qs	2021
Case numbers (E&W)	**Q3**	**Q4**	**Q1**	**Q2**	**Total**	**Total**
Corporate						
Compulsory Liqs.	104	155	340	371	970	476
Creditors' Voluntary Liquidations	3,591	4,127	4,533	4,817	17,068	12,664
Administrations	333	260	309	287	1,189	953
Company Voluntary Arrangements	20	33	25	32	110	115
Receiverships	-	-	-	1	1	1
Personal						
Bankruptcies	1,870	1,718	1,842	1,614	7,044	8,695
Debt Relief Orders	5,735	5,863	6,629	5,772	23,999	20,135
IVAs	20,559	19,942	21,403	22,724	84,628	81,385

Commentary on the insolvency statistics

The corporate figures reflect the challenging climate businesses were operating in at the beginning of the year, with the Omicron variant of Covid-19 delaying some businesses from reopening, rising fuel and energy costs, and the increased cost of living stifling hope of the vital spending boom many were relying on to support their businesses after a difficult 2021.The number of corporate insolvencies in Q2 2022 is still 29.7% higher than pre-pandemic levels, with 5,508 insolvencies in Q2 2022 compared with 4,248 in Q2 2019. Comparing the 2022 statistics to last year when Government support measures such as the Coronavirus Job Retention Scheme (furlough scheme), Bounce Back Loans and Coronavirus Business Interruption Loans were in place to help keep businesses going, it is clear that the wave of insolvencies we expected as a result of the pandemic was pushed back rather than prevented. Between 26 June 2020 and 30 June 2022, in England & Wales, 39 moratoriums were obtained, and 12 companies had a Restructuring Plan registered at Companies House. These two new procedures were created by the CIGA 2020 and are mostly used by large companies.

Personal insolvencies remain high but Bankruptcies and DROs show a small decline in the latest quarter. The increase in DROs compared to last year is linked to changes to the eligibility criteria on 29 June 2021 including an increase in the level of debt at which people can apply for a DRO to £30,000. IVA numbers have ranged from around 6,300 to 7,800 per month over the past year.

Office news

In June 2022 we co-sponsored the ICAEW SW Golf Day at Dainton Park with Tony Jopson & Co which was a great success. For you golfers out there, please mark your diary with 29 June 2023, again at Dainton Park.

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