

January 2021 Newsletter

Before we kick things off, all of the Business Support and Insolvency Team here at Boyes Turner would like to wish all of you a very Happy New Year.

Whilst we are confident that no one is sad to see the back of 2020, we are under no illusion that 2021 will continue to be a difficult year for many businesses and individuals. With the current national lockdown in England set to last until mid-February (at least) the challenges and difficulties people faced during the first lockdown last March have been renewed, but with the roll out of the vaccines designed to combat the virus, hope now looks to be in sight.

What have we been up to?

Sandwiched in between lockdowns 2.0 and 3.0, the team have continued to act on an array of both personal and corporate insolvency matters, including acting for a large care home operator in its pursuit of significant sums due to it following the sale of its business.

In the news



Well, where do you want to start?

The end of 2020 saw the implementation of a number of key matters which will significantly affect the restructuring and insolvency industry, all of which would merit a designated newsletter in their own right!

A summary of the highlights (if you can call them that) are as follows.

Return of the Crown Preference

From 1 December 2020, HM Revenue & Customs (HMRC) became a secondary preferential creditor in both personal and corporate insolvencies in respect of some (but not all) fiscal liabilities due to it by virtue of the Finance Act 2020 and ancillary secondary legislation.

This in effect means that for insolvency processes commencing from **1 December 2020** any VAT, PAYE, employee National Insurance Contributions (NICs), student loan contributions or any amounts withheld under a construction industry scheme that were deducted by either a company or an individual from another but not accounted for to HMRC, HMRC will rank ahead of creditors who have the benefit of security in the form of floating charges and unsecured creditors in respect of those liabilities.

They will however rank behind the claims of employees, who retain their primary preferential creditor status, as well as behind the realisation of any fixed charges and the expenses of the insolvency process.

HMRC will also remain as an unsecured creditor for other tax debts, such as Corporation Tax, employer NICs, penalties and charges.

The extension of the restrictions on winding up

Perhaps unsurprisingly in the wake of the Government extending its furlough scheme to 30 April 2021, the Government yet again sought to extend the restrictions that had been implemented (and already extended) in respect of statutory demands presented against companies and winding up petitions. Those restrictions were due to expire on 31 December 2020 but have now been extended to **30 March 2021** (assuming no further extensions are granted).

Similarly, the need to obtain a validation order under section 127 of the Insolvency Act 1986 in respect of winding petitions presented during the period 27 April 2020 to 30 March 2021 has been dispensed with under the latest extensions. This dispensation will also expire on 30 March 2021 (assuming no further extensions are granted).

It's also worth noting that the temporary "suspension of wrongful trading" measures, which had been initially brought in when the Corporate Insolvency and Governance Act 2020 (CIGA) was implemented but which subsequently lapsed on 30 September 2020 after the Government declined to extend them at the same time as it extended other restrictions on 24 September 2020, were reintroduced with effect from 26 November 2020 to **30 April 2021**. Under section 12 of CIGA, a director is presumed not to be responsible for any worsening of the financial position of the company or its creditors that occurs during this period. The reintroduction of these measures may provide some degree of comfort to directors, however they must be aware that they may still be pursued for wrong doing via alternative means.

Brexit

31 December 2020 marked the end of the transition period of the United Kingdom's departure from the European Union and whilst there was good news for some that a deal had been reached between the UK and EU on Christmas Eve, the terms of the deal reached were not as had been hoped from the insolvency industry's perspective.

Perhaps the most significant consequence of the UK's exit is that for any insolvency process commencing in the UK from 1 January 2021, there will be no automatic recognition of that UK process in many EU Member States. Furthermore, there is no automatic right to or entitlement for cooperation amongst the UK and the EU in insolvency matters.

The legal framework which provided for co-operation and recognition, namely the Recast Insolvency Regulation, will no longer apply in the UK from 1 January 2021 for processes commencing after that date. Previously, where debtors were based outside of England and Wales and in the EU, insolvency practitioners would rely on this Regulation which established the jurisdiction to commence insolvency proceedings in any EU Member States (save for Denmark) as well as for enforcing orders arising from any such proceedings in a Member State.

With UK insolvencies commencing from 1 January 2021 no longer being automatically recognised in (most) EU Member States, if a debtor is based in such a state then it is likely that the insolvency practitioner will need to instruct solicitors local to that jurisdiction and apply in that jurisdiction for the UK insolvency to be recognised in that state and, if necessary, to enforce any orders deriving from those insolvency proceedings in that member state.

This will of course add to the complexity and costs of a case and it will invariably incur delays where, more often than not, time is of the essence.

Insolvency stats for November 2020

On 15 December 2020 the Government released the monthly insolvency statistics for November 2020. Those statistics showed:

- A small increase in corporate insolvencies of 4% compared to the previous month in October; and
- A sizeable decrease in the number of personal insolvencies, down 22% compared with the previous month.

With the implementation of a new Tier 4 for many areas, swiftly followed by the third national lockdown at the start of 2021, businesses that were already suffering and reliant on the Christmas trade would have been dealt another disruptive and significant blow. Whilst restrictions on a creditor's ability to commence winding up proceedings have yet again been extended (as detailed above), as too has the Government's various financial support packages to businesses and individuals, there still remains a great uncertainty as to the true extent of the financial impact which the coronavirus has had on businesses and individuals.

The consensus seems to be however that the figures released by the Government do not accurately reflect the pandemic's true impact and the number of insolvencies are likely to increase, dramatically in some sectors and areas, once the Government scales back its financial assistance and the restrictions which have been in place for almost a year are finally lifted.

And finally...

We are delighted to announce that the firm's highly regarded Debt Recovery team, headed up by **Donna Goddard**, has now merged together with the Business Support and Insolvency team, enabling us to provide an efficient and cost effective debt recovery service on standard fixed charges with no hidden costs. Our service includes:

- Sending letters before action;
- Issuing Court proceedings;
- Enforcement of Judgments;
- Bankruptcy and winding-up proceedings.

Our Debt Recovery team have vast experience in dealing with the collection of book debts in both corporate and personal insolvency scenarios; in one recent assignment the team collected the vast majority of an insolvent company's book debt ledger, together with interest and costs.

If you wish to discuss any of your cases, or require details of our standard fixed charges, please contact Donna on 0118 9527173 or email debtrecovery@boyesturner.com



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