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Summer 2020.

Recovery newsletter

Welcome

Welcome to our Summer newsletter in what has been a challenging period for both business and the Country as a whole.

You will already be aware of the furlough scheme and the various grants and loans available. We are therefore focusing on measures introduced by recent government legislation specifically relating to insolvency and corporate recovery and the procedures which may prove useful when dealing with the results of COVID-19, including the damage done to cashflows, the additional debt burden, and the possibility of trade being subdued in the medium to long term. It's a dry subject so we have tried to keep it short!

Corporate Insolvency & Governance Act 2020

The bill came into force on 26 June 2020 bringing forward both measures that have been discussed for several years and others which are COVID-19 specific.

Here is a summary of some of the key measures introduced by the Act.

Moratorium

The new procedure known as a moratorium is intended to provide a breathing space for a company whilst a rescue package is put together.

Some of the key points are as follows: ▶

- The process is monitored by a licenced Insolvency Practitioner who must state at the outset it is likely that the moratorium will result in the rescue of the company as a going concern.
- Provides an initial 20 business day period where no legal action can be taken without leave of Court which offers protection while a rescue package is put together.
- This period can be extended by a further 20 business days or up to a year with agreement of creditors and/or Court.
- The directors remain in control of the company.
- The monitor must end the process if they believe that rescue as a going concern is no longer possible.

New Restructuring Plan

This new procedure is similar to a scheme of arrangement and allows an eligible company to propose a compromise with any class of its creditors and/or members.

The plan is voted on by each class of creditors with 75% in value of those voting having to agree.

A Court hearing is then required to give final approval to the plan. Any dissenting classes of creditor can be bound, including secured creditors if the Court thinks the plan is fair and equitable.

As there is Court involvement the costs may be substantial which could prove prohibitive in many cases so is likely to be used by large Companies.

Termination Clauses

Suppliers will no longer be able to terminate supply or amend contract terms if a company enters an insolvency process. The only exceptions are if it will cause “hardship” to the supplier or the supplier is a small company, although this is a temporary exemption until 30 September 2020.

Wrongful Trading

The wrongful trading provisions have been temporarily relaxed. This is good news for directors concerned with trading through the current crisis. However, other directors’ duties still apply.

- Effective from 1 March to 30 September 2020 the “relevant period”.
- There will be an assumption by the court that directors will not be responsible for worsening the financial position in the relevant period.
- However, other director’s duties remain unaffected, so directors must still adhere to their fiduciary duties, including duties to creditors and must avoid preferences, transactions at an undervalue and fraudulent trading.

Statutory Demands and Winding Up Petitions

There is also a temporary suspension of statutory demands, and winding-up petitions from being presented where there is an inability to pay debts due to the COVID-19 pandemic. If the company would have become insolvent despite COVID-19 then a petition can still be presented.

Existing tools

In addition, rescue procedures such as Administration and Company Voluntary Arrangements remain vital and, are likely to continue to be the most useful procedures in most rescue situations.

Administration

Administration is a rescue procedure used for companies when there is reasonable expectation that a solution can be found. This may be a rescue of the company as a going concern through an exit strategy such as a Company Voluntary Arrangement, or the business through a pre-pack sale.

Recently you may have heard of the "light touch administration" this derives from existing legislation which enables the Administrator to allow the existing directors or management to continue the running of business on a day to day basis under their supervision. This is most appropriate where the objective is to rescue the company as a going concern.

Company Voluntary Arrangement ("CVA")

A CVA is a flexible arrangement between a company and its creditors and involves making a monthly contribution from profits or a lump sum payment from an asset. It can be a standalone procedure or used in conjunction with Administration. This could prove useful in the current climate where business has been affected by lockdown in the pandemic but is expected to improve over the medium to long run.

Breaking news

Despite opposition from the insolvency profession and a delayed introduction because of COVID-19 HMRC will gain secondary preferential status from 1 December 2020.

This only relates to certain taxes collected on behalf of HMRC, including PAYE and VAT. This is likely to reduce returns to unsecured creditors and secured creditors holding a floating charge.

Early advice

Seeking advice early increases the likelihood that the company or business can be saved.

However, if a rescue procedure is no longer possible or the position is terminal, we can assist the directors in placing the company into Liquidation in an efficient and professional manner.

If you or your clients require advice or have any questions relating to the contents of this newsletter, please call Kate Merry or Ben Dyer on 01223 728 222. We are always happy to have a free initial consultation or chat.

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