Insolvency Bulletin

Focus on increased protection for creditors

PRE-PACKS TO BE REVIEWED - AGAIN

The Government is planning to commission an independent review into controversial 'pre-pack' sales sometime this Spring in a bid to address creditor concerns.

The move was announced by Lord Younger in the House of Lords in March.

In addition, the issue surrounding continuation of supply to insolvent businesses is now the subject of a government amendment being debated shortly and it is proposed that there will be a consultation on the issue prior to the implementation of any reforms.

John Travers comments: 'Creditors have sometimes been the victims in pre-pack administrations so putting in place new measures to increase transparency and prevent abuse is welcome."

The review will commence once the strengthened SIP 16 is in place, and after the Insolvency Service has reported on the findings from its monitoring. It is set to be completed within 12 months.

John says: 'Used appropriately, pre-packs can be highly effective. By better enabling the rescue of businesses, it is often possible to preserve value, get the best deal for creditors and safeguard jobs. An independent review will allow further evidence to be assembled on how pre-packs are working in practice and which, if any, further enhancements are needed to the current system."

Insolvency guys not all leading the millionaire lifestyle

BUST IS NOT BOOM FOR IP'S, AS CLAIMED

Taken at face value, Ben Marlow's startling headline in his Sunday Times article of 31 March combined with his dramatic use of statistics would lead the reader to assume the insolvency profession is milking the system and IP's are all rolling in the money: UK total of £1 billion in administrators' fees in 2010; PWC's bill for more than £500m for winding up Lehman Brothers and a cool £30m to Deloitte for unravelling Woolworth!

However, a World Bank study has ranked Britain among the world's 'top ten' out of 183 countries for the quality of its insolvency services, and showed that the UK has a higher rate of rescue and recovery than in other European countries.

It also found that, on average, the cost of insolvency on money recovered is generally lower than in the US, France or Germany.

John Travers comments: "The failure of a business is highly emotive and it is always easier to point the dagger at the messenger.

"The demise is not the IP's fault and, in many cases, if we were called in earlier we could have effected a turnaround and helped save the day."

Borrowers being allowed to sink into trouble

PAYDAY LOAN FIRMS COME UNDER FIRE

An OFT report reached some damning conclusions about the booming payday loan industry, revealing that half their revenue is earned from roll-over loans rather than the 'one-off' loans they are supposed to be.

There are also concerns over lenders failing to carry out proper affordability assessments in the rush to secure business over their competitors.

John Travers says that the proposals for rapid action on compliance and the threat of a referral of payday loan companies to the Competition Commission are welcome and, he believes, necessary to improve the situation.

Research from R3 reveals that over 5 million UK adults say they are likely to seek a payday loan this year.

INSOLVENCY STATS CONTINUE TO SHOW FALL IN BUSINESS FAILURES

The latest Insolvency Index from Experian reveals a significant drop in the rate of business insolvencies in January 2013 as it hits its lowest level since June 2007.

The data shows that 0.06 per cent of the business population (1,271 companies) failed in January 2013. This marks a fall from 0.07 per cent in January 2012 and down from 0.08 per cent at the end of last year.

The UK's mid-sized firms saw the biggest fall in insolvency rates since January 2012 while the largest firms (those with over 500 employees) saw their average insolvency rate fall from 0.20 per cent in January 2012 to 0.15 per cent in January 2013.

The picture for businesses with less than 10 employees remains broadly flat.

Lawyers and accountants having to face up to new economic realities

PROFESSIONAL SERVICES: THE MARKET HARDENS

Businesses in the professions are now facing the same challenges as any other as clients become more cost-conscious and are more actively shopping around for the best deals, says John Travers.

This, coupled with an oversupply in disciplines such as conveyancing and auditing, has had a devastating effect on some practices.

In the wake of a number of high profile failures in the Midlands, John Travers is advising firms to ensure that their major asset, work in progress, is properly controlled.

He says: "WIP tells the true story about the performance of a professional firm. Maintaining proper records and implementing regular reviews can reveal whether the business is over or understaffed. It can identify those partners and employees who are performing well and those that are not.

"In fact, I believe it is the most important management tool available to professional practices and sadly, in my experience, it is often the most underused."

He adds: "Practices with substantial bank borrowing are even more exposed. Historically, banks have adopted a fairly relaxed approach to lending to professional firms but, over recent years, that approach has hardened considerably - and rightly so, in my opinion.

"Smaller practices, in particular, are advised to review their current financial management processes."

Further threat for some...

NEW RULES NO JOKE

On April 1 2013, the rules on conditional fee agreements and After the Event Insurance changed. The notable exception is insolvency cases.

From now on, funding of personal injury and other claims such as PPI are the responsibility and risk of the applicant.

John Travers comments: "The new regime will inevitably lead to a decline in these markets. This will make it very tough going for any law firm specialising in these disciplines."

Directors' misdeeds may go unpunished

INSOLVENCY SERVICE STRETCHED

The Business, Innovation and Skills (BIS) Committee has recommended that the Insolvency Service receives additional funding after it found that the regime remains under-resourced.

In a report published in February the committee warned that budgetary constraints are undermining stakeholder confidence in the Service's work.

Chairman Adrian Bailey, Labour MP for West Bromwich West, called for the necessary funding to ensure that misconduct of directors is properly penalised.

John Travers comments: " Continued cut-backs means service levels are under threat so it is self-evident that directors' bad practice could potentially slip through the net.

"There should be no excuse for giving miscreants 'a get out of jail free' card," he adds.

Gift tokens may not be the ideal present anymore

GIVERS BEWARE AS RETAIL COLLAPSES ACCELERATE

The insolvency laws should be changed to boost consumer protection to people who buy vouchers from retailers that then go into administration, MPs have been told.

Labour's Michael McCann told the House of Commons that voucher holders should be ranked higher in the queue of unsecured creditors.

The treatment of those who buy vouchers and gift cards has risen up the political agenda after a string of well - publcised high street failures this year.

John Travers says that the simple principle is that if money has been taken for something not yet supplied, it is probably held on trust for the holder of the voucher.

He advises a straightforward solution: "Monies received for vouchers can be ring-fenced in a separate trust account and funds only released into the retailers own funds when the voucher is redeemed.

"The principal objection to this could be the additional accounting procedures required and related costs, but it is likely that these could be obviated using new technologies."

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