





Restructuring & Insolvency

How to protect your business

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[#YourLegalTeam](#)

Your Legal Team



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Agenda

- Jargon buster for main types of insolvency proceedings
- A review of recent developments in Insolvency law
- Debtor and creditor considerations in insolvency
- Q&A Session

Jargon Busting

- 'Insolvency' describes the inability of a debtor to pay its debts
- Insolvent individuals are made 'bankrupt', while companies are put into 'liquidation' or 'administration'
- Individual or Company Voluntary Arrangements ('IVA'/'CVA') are a common alternative to bankruptcy or liquidation or administration

Creditor Order of Priority

- Fixed charge holders
- Insolvency Practitioner (IP) fees and expenses
- Preferred creditors (now including HMRC)
- Floating Charge holders
- Unsecured Creditors
- Shareholders

Liquidation

- Liquidation is used to wind up a company and realise and distribute its assets to creditors and shareholders. Liquidation of a company can be voluntary or compulsory
- Voluntary liquidation is initiated by a shareholders' resolution to wind up the company
 - Members Voluntary Liquidation (MVL) – solvent liquidation
 - Creditors Voluntary Liquidation (CVL) – insolvent liquidation
- An MVL must be accompanied by a statutory declaration
- Liquidator nominated by the shareholders and approved by Creditors (CVL only)

Liquidation (2)

- Compulsory liquidation is initiated by the presentation of a winding up petition to the court
- Official Receiver (OR) automatically becomes the liquidator of the company
- If the company has assets that can be realised for the benefit of creditors it is normal that an IP will be appointed by the OR to act as liquidator
- In the case of a compulsory liquidation any action or legal proceedings against the company in liquidation cannot be initiated or continued without the leave of the court

Administration

- The administration procedure is a way of facilitating a rescue of a company or the better realisation of its assets
- It allows an insolvent company to continue to trade with protection from its creditors through a statutory moratorium
- This moratorium prevents creditors from taking any legal action against the company or enforcing their security against the company or its property

Administration (2)

- The main objective of administration is to rescue the company as a going concern
- If this is not possible then the second objective is to achieve a better result for the company's creditors than a winding up or liquidation of the company (without first being in administration)
- The third objective is to realise property to distribute the proceeds to the secured or preferential creditors. This only applies if the first two objectives are not possible, and it will not unnecessarily harm the interests of the creditors as a whole

Administration (3)

- An Administrator can be appointed either by an out-of-court procedure or by a court order
- An out-of-court appointment can only be made by the company through its directors or shareholders or by a qualifying floating charge holder
- An application for a court order can be made by either the company, the company's directors or one or more creditors of the company
- The Administrator has extensive powers to manage the affairs of the company and enforcement powers, such as bringing an application to court to challenge pre-insolvency transactions

Pre-Pack Administration

- A 'pre-pack' is an insolvency procedure where a company arranges a deal to sell its assets to a buyer before appointing administrators to facilitate the sale
- It's a powerful, legal way of selling the business on to a trade buyer or third party
- Typically, a good outcome for secured creditors but disastrous for unsecured creditors
- 'Phoenix' company issues to be addressed further by The Administrations (Restrictions of Disposals etc. to Connected Parties) Regulations (Northern Ireland) 2021

Company Voluntary Arrangements

- A CVA is a contractual agreement between a company and its unsecured creditors
- The main aim of the CVA is to enable a company in financial difficulty to propose a compromise or arrangement with its creditors
- In most cases a CVA is commenced by the company's directors however if the company is already in administration or liquidation it can be proposed by its administrator or liquidator
- CVA must be approved by at least 75% of the voting creditors who respond to the invitation to vote. At least 50% of those voting in favour must be unconnected with the company

Company Voluntary Arrangements (2)

- An approved CVA is supervised by a licensed IP and although the directors of the company remain in control they must fully cooperate with the IP to ensure implementation of the terms of the CVA
- There is no impact on employees and the procedure does not interfere with the company's ongoing business activities
- The approved CVA is a binding agreement between the company and all of its unsecured creditors and this includes unsecured creditors who did not vote and even those unsecured creditors who did not receive notice of the proposed CVA
- There are very limited grounds available to challenge a CVA

Recent Developments

CIGA 2020 Restructuring Plan

- To be eligible the company must show that it is encountering or likely to encounter financial difficulties and a proposed compromise with creditors intends to “eliminate, reduce, prevent or mitigate” the effect of the difficulties
- The process involves an application to court, followed by a meeting of creditors (75%), followed by the court sanctioning the plan
- New power includes a “cross-class cram down” and binds all creditors including a class of dissenting creditors (similarities with US Chapter 11 model)

Creditor Petitions

- Winding Up Petitions or Bankruptcy petitions can only be presented on foot of a court judgment in respect of the debt
- HMRC do not require a judgment before presenting their petition

Crown Preference

- As of 1 December 2020, 'Crown Preference' ranks HMRC ahead of floating charge holders and unsecured creditors under Finance Act 2020
- HMRC's 'elevated' claim status will relate to PAYE, Employee NICs, Construction Industry Scheme deductions and VAT
- HMRC claim not capped by amount or time and the Act will apply retrospectively

Implications for Insolvencies

- HMRC typically one of the largest creditors in most insolvencies
- HMRC cannot be bound by a Company Voluntary Arrangement (CVA) without its consent
- The new rules may stimulate increased number of Restructuring Plans under the CIGA 2020

Debtor and Creditor Considerations

Key Considerations for Debtors

- Informal assessment of business recovery plan
- Early engagement with stakeholders
- Improve cash flow as much as possible
- Early engagement with Insolvency Specialists
- Make best use of this time to make a restructuring and recovery plan

Key Considerations for Creditors

- Seek to limit exposure where possible when debt is unsecured
- Engage a solicitor at an early stage to pursue debts
- Obtain court judgments
- Review supply contracts to ensure maximum protection (e.g. Retention of Title clauses)
- Give serious consideration to compromised settlement when dealing with a distressed company

Summary

- We will see an increased number of insolvencies now that Crown Creditor Petitions are on the rise
- CVAs which had historically been a popular restructuring tool within the Manufacturing Industry are under threat due to HMRC preferential status
- A challenging time ahead for unsecured creditors of insolvent companies

Q&A



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Thank goodness it has been successfully
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Thank you



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