

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

Changes to the taxation of distribution in winding-up

From 6 April 2016, the way in which dividends and other company distributions are taxed has been fundamentally reformed for owners and shareholders, following a drive by HMRC to limit so-called 'disguised remuneration'. The changes are more likely to affect MVL's (i.e. solvent liquidations).

They are only likely to affect CVL's (insolvent liquidations), if there was to be a return to shareholders, which would be extremely rare.

The changes have the possible effect of taxing such distributions as income rather than as capital, which is taxed at a lower rate.

Under the new rules, a new Targeted Anti-Avoidance Rule (TAAR) has been introduced that will deny capital treatment of a distribution during the winding-up of a business, if certain conditions prevail. The new rules also amend the Transactions in Securities legislation in Part 13 of the Income Tax Act, which modernises the way in which interventions are conducted and clarifies some key terms, which have previously been subject to dispute.

The new TAAR treats a distribution from a winding-up as if it were income distribution, rather than a capital distribution where an individual who is a shareholder in a close company receives a distribution, if within a period of two years after the winding-up, that individual (a) carries on a similar trade or activity and (b) the main purpose, or one of the main purposes of the arrangement is to obtain a tax advantage.

In response R3, the trade body for the insolvency profession, has argued that if the TAAR is to include liquidations then it should only be limited to voluntary liquidations, which are the only likely



mechanism for returning value to shareholders. To do otherwise would see HM Revenue & Customs (HMRC) receive many clearance applications from those involved in the insolvency process. HMRC are yet to clarify their position in regards to this at the time of publication. However, the Government has said: "That it would still expect the vast majority of distributions from a winding-up to be

treated as capital (as is currently the case)."

If your client is involved in a close company winding-up or liquidation and has concerns about their position in regards to TAAR and Transaction in Securities following the new tax rules then our team at Newman and Partners may be able to advise you. To find out more please contact us.

Bankruptcy goes online

Since the start of April 2016, those seeking to make themselves bankrupt have no longer needed to apply to the court thanks to the introduction of a new online service. Under the new interactive government service, individuals can now complete an online application on the gov.uk website, which will be assessed by an official adjudicator employed by the Insolvency Service.

Unlike the previous court system, online applications will be less expensive and can even be paid for in instalments through a direct debit agreement. As a comparison, the current application fee for a personal bankruptcy application to court, known as a 'debtor petition', is £180, while online applications to the adjudicator cost a reduced £130. This option will only be open to those wishing to declare themselves bankrupt as opposed to those who are owed money who are seeking to have someone declared bankrupt. They will have to continue to apply to a Court Registrar.

The Insolvency Service says the online bankruptcy application process has been developed using research with people experiencing problem personal debt, former bankrupts, debt advice charities and other organisations to ensure it is simple and easy to use. An assisted digital option will be available for those who are unable to complete the online application themselves.

Sarah Albon, Insolvency Service chief executive said: "Online bankruptcy applications will be easier for people to complete and will remove the perceived

stigma of going to court, which we know stops some people from applying."

The introduction of online bankruptcy applications is accompanied by the launch of a new interactive online tool which has been designed to help people choose which debt solution is right for them. While the new online system may be effective for those with less complex debt issues, you may find your client still requires a helping hand with their affairs. At Newman and Partners our experienced team can help you.

The potential effects of Brexit on insolvency

The British population will decide whether the UK should leave or remain in the EU at a referendum on 23 June this year. If Britain were to leave the Union (Brexit) a number of regulations affecting insolvency are likely to change, in particular when it comes to complicated cross-border insolvency proceedings in the UK.

Cross-border insolvency and restructuring is already a complex exercise, requiring action across multiple insolvency regimes, all with their own particular insolvency procedures and rules on jurisdiction and recognition of foreign proceedings.

In the case of compulsory winding-up, creditors' voluntary liquidation (CVL), administrations, company voluntary arrangement (CVA), independent voluntary arrangement (IVA) and bankruptcies, both jurisdiction and recognition is governed by the European Commission (EC) Regulation. Main proceedings opened in the UK are automatically recognised across the EU and office holders in UK main proceedings are able to deal with assets located in other EU member states. As an example, a UK administrator could deal with assets located in the UK, but also in France without the need for local, secondary proceedings in those countries. The powers of an office holder in territorial and secondary proceedings opened in the UK are limited to assets located in the UK only and as such the need for recognition is less relevant.

Jurisdiction for, and recognition of, MVLs

(Members Voluntary Liquidations), schemes of arrangement and receivership is determined by a combination of UK domestic law and the domestic laws of other EU member states. The EC Regulation has no bearing on jurisdiction and recognition for these types of proceeding.

Considering all these points, it is clear that a departure from the EU would mean the UK would not be bound by EC Regulation and as part of its renegotiation post-Brexit the EU and UK will hopefully maintain this relationship since it obviously allows for simpler cross-border insolvency. Choosing to maintain this relationship would mean that the UK would continue to be bound by EC Regulations, but may no longer be able to participate in future debates regarding policy.

In the initial fallout however, the change would have no effect on MVLs, schemes of arrangement and receiverships, which already fall outside the EC Regulation. Jurisdiction for these areas of insolvency would continue to be governed by UK laws. The UK is also likely to revert to its domestic laws to determine jurisdiction when opening compulsory liquidations,

CVLs, administrations, CVAs, IVAs and bankruptcies. These are part of a complex set of domestic rules, comprising of statutory provisions and common law principles, replacing the relative clarity and consistency of the well-developed EC Regulation.

Subsequently, recognition of cross-border compulsory liquidations, CVLs, administrations, CVAs, IVAs and bankruptcies would become incredibly complex. There would no longer be automatic recognition of main, territorial or secondary proceedings in other EU member states. Therefore if the UK does leave without renegotiating its continued participation in the EC Regulation regime, this could create additional complexity and is likely to increase the cost of cross-border insolvency.

However, all of this is yet to occur and what the final outcome will be is yet to be seen. In the meantime if your client requires assistance with cross-border insolvency then our team at Newman and Partners can help. To find out more, please contact us.

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