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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**

A guide to small business restructuring plans

A Small Business Restructuring Plan (SBRP) is a formal mechanism introduced under the Corporate Insolvency and Governance Act 2020 (CIGA). It allows eligible companies to reorganise their debts and continue trading without entering more traditional insolvency procedures such as administration or liquidation. The process is designed to be cost-effective and less disruptive, allowing directors to retain control of the business while working alongside a Restructuring Practitioner (RP), who must be a licensed insolvency practitioner.

To be eligible, a company must be incorporated under the Companies Act 2006 and either be insolvent or likely to become insolvent. There must also be a realistic prospect that creditors will receive a better outcome under the plan than in a liquidation scenario. Accountants are often the first professional advisers to identify financial distress, making your role in guiding clients through eligibility and feasibility critical.

Once an RP is appointed, they assist in drafting the plan and must confirm that the proposed restructuring will provide a better result for creditors than an alternative route. The plan may include a range of measures, such as debt reductions, extended payment terms, or asset sales. Flexibility is one of its key advantages – it allows the business to tailor terms to particular creditor classes while ensuring overall fairness.

Creditors are then invited to vote on the plan. They are divided into classes and each class must approve the plan by a majority of at least 75 per cent in value. If any class votes against it, the court has the power to impose what is known as a 'cross-class cram-down,' provided the dissenting creditors would be no worse off under the plan than in a liquidation and at least one class of creditors supports it. Once sanctioned by the court, the plan becomes binding on all creditors.

From a technical perspective, you should pay close attention to the tax and accounting implications of any restructuring. There may be Corporation Tax consequences from debt write-offs, deferred tax asset considerations and VAT issues related to asset disposals. Additionally, financial statements must accurately reflect the plan's impact, with proper disclosures made under FRS 102 or IFRS.

Common pitfalls include inaccurate financial forecasting, delayed action by directors, or failure to properly engage with creditors. Early intervention is essential. Detailed cash flow projections, clear communication with creditors and a strong working relationship with the appointed RP will all help to smooth the process. You should also be mindful of your clients' ongoing obligations – failure to comply with tax, payroll, or Companies House filings could risk undermining the plan.

If you or your client would like more information on small business restructuring plans, *please speak to our team of experts*.

What happens when HMRC is your largest creditor?

It's not unusual for tax liabilities to be one of the largest debts on a struggling company's books. This can arise due to:

- Delayed VAT, PAYE or Corporation Tax payments when cash flow is tight.
- Penalties and interest accruing from missed deadlines or non-compliance.
- Time To Pay (TTP) arrangements that have defaulted or been extended multiple times.

While HMRC is generally open to short-term negotiation via TTP agreements, persistent arrears or broken arrangements signal deeper financial issues.

Unlike commercial lenders or suppliers, HMRC takes a policy-driven, methodical, approach to debt collection. They have robust enforcement powers, including:

- Time To Pay arrangements (usually up to 12 months).
- Security deposits (especially for VAT and PAYE).
- Distraint powers (seizing assets without court approval).
- Court petitions for winding up (corporate) or bankruptcy (individuals).

If repayment plans fail or communication lapses, they won't hesitate to escalate matters – particularly if there's a pattern of non-compliance.

How this affects the insolvency process

In a formal insolvency procedure – such as administration, liquidation or a Company Voluntary Arrangement (CVA) – HMRC's position has become even more prominent since December 2020. Under the Finance Act 2020, HMRC regained third-place preferential creditor status, ranking just below fixed charge holders and employee claims but above floating charge holders and unsecured creditors for certain taxes like VAT, PAYE, NICs and CIS deductions.

This means:

- **Reduced returns for other creditors:** Because HMRC sits higher in the distribution waterfall, suppliers and unsecured lenders may receive less or nothing.
- **Greater scrutiny of CVA proposals:** HMRC is often a deciding vote. Any arrangement that doesn't offer realistic or improved repayment terms for their debt is likely to be rejected.
- **Increased likelihood of enforcement action:** HMRC's recovery team keeps a close eye on companies in arrears, especially those showing no credible restructuring plan.

As a result, HMRC's stance can often shape the outcome of an insolvency process and limit the restructuring options available to your clients.

How can you, as an accountant, assist your clients?

When your client's largest creditor is HMRC, early intervention is crucial. You can:

1. **Encourage honest communication:**
   Prompt dialogue with HMRC can buy valuable time to explore options.

2. **Prepare accurate financial forecasts:**
   HMRC will want evidence of affordability before agreeing to any TTP arrangement or CVA.

3. **Identify warning signs early:**
   Repeatedly deferring tax payments or relying on HMRC to fund cash flow is not sustainable.

4. **Engage an insolvency practitioner early on:**
   We can assess whether a formal process such as a CVA, administration, or liquidation is appropriate – and handle negotiations with HMRC on your client's behalf.

HMRC being the largest creditor is often a symptom of wider financial strain, not the cause. However, because of HMRC's unique powers and preferential status, ignoring their debts is never an option. As the accountant, your role is vital in spotting trouble early and guiding clients towards the right solutions.

If you have a client facing mounting tax debts or who is struggling to manage their HMRC liabilities *please speak to our team of experts*.

Directors, debts and the blame game

Insolvency invariably invites scrutiny. For directors, this scrutiny often centres on the extent of their liabilities and whether personal responsibility can pierce the corporate veil. As accountants, understanding where the limits lie – and where they may be breached – is crucial when advising your clients facing financial distress.

Ordinarily, directors benefit from the protection of limited liability. Company debts remain just that: the company's. However, the moment insolvency becomes unavoidable, directors' duties shift decisively towards creditors. Failure to recognise and act upon this shift can have significant personal consequences.

The most prominent risk arises from wrongful trading. Where it can be shown that a director continued to trade despite knowing – or when they ought reasonably to have known – that there was no realistic prospect of avoiding insolvent liquidation or administration, they may be held personally liable for losses incurred. Directors are expected to take positive, documented steps to mitigate creditor losses from the point insolvency is foreseeable.

Further risks emerge from antecedent transactions. Preferences, transactions at undervalue and misfeasance claims frequently form the basis of action against directors. Repaying connected creditors ahead of others, disposing of assets for less than market value, or misapplying company funds can all lead to personal claims and, in severe cases, director disqualification.

It is important to note that liability is not automatic. Directors who act prudently, seek professional advice at the earliest sign of financial trouble and demonstrate that they have prioritised creditor interests are far less likely to face personal repercussions. In short, while the principle of limited liability provides directors with a degree of protection, it is not absolute. During insolvency, the actions – or inactions – of directors will be scrutinised closely and the blame game, when triggered, leaves little room for error.

For more information on directors liabilities, *please speak to our team of experts*.

CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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