August 2014

Newman & Partners

Licensed Insolvency Practitioners

FOCUS ON INSOLVENCY BULLETIN

Welcome to the latest issue of our Focus on Insolvency 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**

New lifeline for struggling businesses on the way

Proposals to ensure that insolvent businesses continue to receive utility and other key supplies have been put forward in a new government consultation.

The proposals would stop essential suppliers from activating termination clauses in supply contracts in the event of a customer's insolvency. As well as being required to continue providing their services during the business recovery process, suppliers would not be able to make increased charges or the payment of debts a condition of supplying their services to the business.

Announcing the consultation on 8 July, Business Minister Jo Swinson said: "Businesses are currently closing down because insolvency practitioners are unable to secure the essential supplies they need to continue trading whilst they restructure or seek a buyer. This measure will ensure they can secure the supplies they need to deliver the best outcome for creditors and employees."

Giles Frampton, president of insolvency trade body R3, said: "Termination clauses which take effect on insolvency are one of the biggest obstacles to business rescue that insolvency practitioners come across. They force the closure of potentially viable businesses, posing unnecessary risk to jobs. Our members estimate that banning termination clauses in supply contracts could help save over 2,000 businesses a year. Scrapping termination clauses will give many struggling businesses a better chance of survival."

The changes would ensure that suppliers of gas, electricity, water, IT and telecommunications would be unable to withdraw their services in an insolvency situation. Safeguards would also be put in place to protect suppliers obliged to continue supplying the insolvent business.

The consultation runs until 8 October.

Taking dividends - the risks

Many directors of owner managed companies take a minimum salary (up to the National Insurance limits) and draw the rest of their pay as dividends. By doing so, they benefit financially since they do not have to pay National Insurance contributions.

It is normal in these circumstances for the directors to draw an amount per month and class this as a director's loan and then at the end of the year, declare a dividend and offset the two. If you do receive your pay in this way, you must make sure that you do it in accordance with the Companies Act.

For dividends over £10,000 you should have a shareholders resolution approving the loan, together with a memorandum detailing the particulars of the loan, such as the nature, purpose, amount and extent of the company's liability.

For a dividend to be lawful, it must be taken from your accumulated realised profits. This is all fine if the company is doing well and making sufficient profits, but what happens if the company is not doing quite so well? You could find that the dividend is illegal and needs to be repaid to the company.

So what happens if the company does not declare a dividend at the end of the year? You could end up with a substantial director's loan account at the end of the year, which is money you would owe to the company. This means you have worked for a year and the only pay you have to show for this is perhaps less than £8,000. A director's loan account is also taxable at 20% if it is not paid back within nine months of the end of the Corporation Tax accounting period. This adds fresh financial burdens to the company, although the tax would be repaid when the loan is repaid.

Another, perhaps worse scenario is that the company fails and enters into insolvency. Even if the company enters into Liquidation, Administration or a Company Voluntary Arrangement (CVA), the director would still be liable for paying back the loan since it is money owed to the company. In the event of this happening it is usual for settlements to be reached with the liquidator.

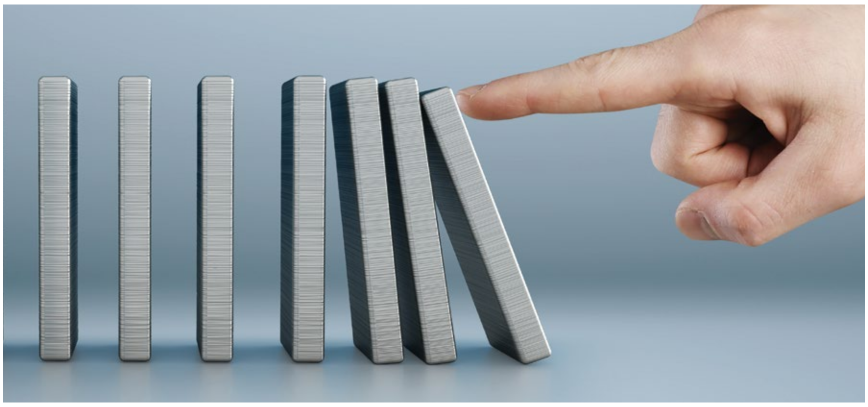
If you are concerned about the financial position of your company, our experts at Newman and Partners Insolvency can advise on the options available and any workable solutions for the future. For more information, please contact us.

HMRC's new powers could push firms into insolvency

New powers given to HM Revenue & Customs (HMRC), which enable the department to demand money upfront in disputed tax payments, are expected to push a number of firms into insolvency. The new powers, which came into force in July are called 'accelerated payments' and enable the taxman to treat taxpayers as "guilty until proven innocent", meaning they will have to pay up if officials suspect them of tax avoidance.

Taxpayers who are sent the notices in July could be made to pay as early as October and, if the sum due is more than can comfortably come out of cash flow, it could see some small firms going into insolvency. Anyone in receipt of an accelerated payment notice must pay the disputed tax within 90 days and penalties will apply for late payment, although the department has said that it will use its discretion under its 'time to pay' arrangements if a taxpayer cannot afford to pay the money upfront.

According to the department, some 33,000 individuals and 10,000 businesses could be sent accelerated payment notices by the taxman in the near future and, even though taxpayers will be able to make representation about them, there will be no means of independent appeal against HMRC's final decision. There is



also the potential for companies issued with an accelerated payment notice to face a contingent liability, which means that any dividends taken out of the business by its shareholders ahead of the demand could later be deemed illegal and therefore repayable.

For more information about HMRC's new powers, please contact us.

Newman & Partners Insolvency
Lynwood House
373/375 Station Road
Harrow
Middlesex HA1 2AW

T: 020 8357 2727
F: 020 8357 2027

E: insolvency@newmanandpartners.co.uk
W: www.newmanandpartners.co.uk

Newman & Partners
Licensed Insolvency Practitioners