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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**

Proposals leave UK insolvency practitioners out of sync

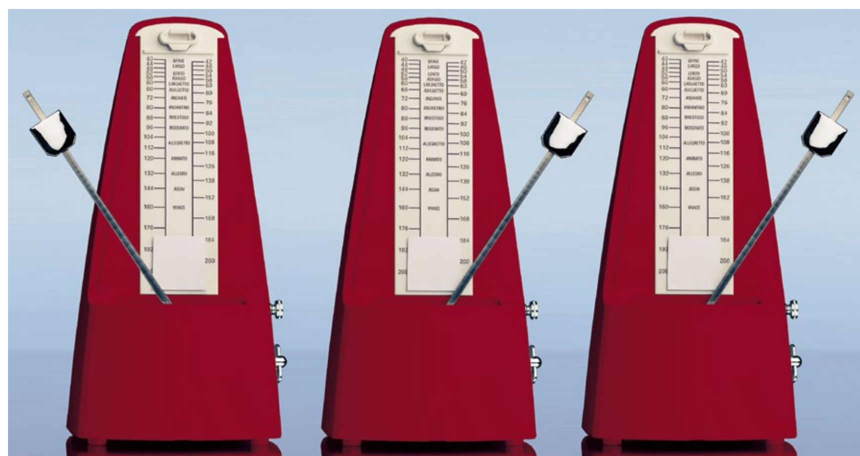
Proposals to change the setting of insolvency practitioner (IP) fees in the UK has become a hot topic among members of the profession in recent months, after the Government conducted a consultation, which looked into the regulations that govern the industry.

Currently the majority of the UK's IPs use a system that sets fees based on a time-cost basis. However, under the latest rule change currently being considered by the Government, that could be set to change over to a system based upon fixed fees. This change in policy has been met with a lot of criticism by IPs, who fear that it will be in conflict with the rest of the world's fee systems putting them at a disadvantage when trying to find new clients.

The consultation is based upon two independent reviews, one from the Office of Fair Trading (now known as the Competition and Markets Authority) and another report conducted by Professor Elaine Kempson. It found trends that suggested IPs charged different fees based on whether or not there was a secured creditor involved in the process, with discounts being given in cases where one was involved.

Under the proposed changes IPs handling cases where there is no secured creditor or in cases where creditors are paid in full, would adopt a system where fees would be set by one of two principles: either (1) a percentage of total realisations of assets and/or distributions or (2) set fixed fees.

In an article published in its own in house magazine, Recovery*, the trade body R3 studied the global IP market and found that only France used a system of set fees, similar to those



proposed by the UK Government. The article written by Chris Umfreville and Peter Walton found that Britain was ranked highly (7th) in the World Bank's Doing Business project, a study of 189 world economies the ranking on the ease of resolving insolvency is based on the recovery rate for creditors. The ranking on the ease of resolving insolvency is based on the recovery rate for creditors.

"All jurisdictions considered have, to some extent, adopted a system where IPs are predominantly paid either on a time-cost basis or as a percentage of realisations or as a mixture of the two methods," the article stated. "The only exception that has been identified is lower value liquidations in France, where the set fees total less than €75,000."

It added: "The consultation's lack of uniformity in its proposed approach to IP fees would be contrary to overseas practices and the recommendations of the Cork Committee**".

"It would seem at best a brave decision for the Government to alter a fundamental part of the UK insolvency regime when the current system is so highly regarded by the World Bank. It may be a costly mistake to ignore the lessons from abroad."

At Newman and Partners we pride ourselves in keeping up to date with the latest developments in the insolvency sector and can help you with a wide range of problems.

For more information, please contact us.

** Recovery Autumn 2014 pg 38-40   **Insolvency Law and Practice, Report of the Review Committee 1982*

Businesses call on Government to stop pushing for insolvency change

A number of leading business groups are calling on the Government to accept a raft of amendments made to the Small Business Bill currently going through Parliament. Two weeks ago the Small Business Bill went before a committee at Parliament for review. During this committee stage members of the Labour Party managed to prevent a rule going through that would have restricted physical creditors' meetings in insolvencies.

The Government had hoped that the amended rule in the bill would ban physical creditors' meetings, unless they were requested by 10 per cent of creditors, which could add up to potentially hundreds of businesses and millions of pounds. Under the amendment passed by the Opposition any creditor could request a physical meeting, without the need for other creditors to be involved or the approval of an insolvency practitioner. Currently physical meetings only take place during a compulsory liquidation, and require creditors to hold at least 10 per cent of the value of claims.

A business group formed from the Federation of Small Businesses, the British Property Federation, ICAEW, and insolvency trade body R3, have raised concerns that restricting physical creditors' meetings will lock smaller creditors out of the insolvency process. They believe that passing the bill will make it harder to uncover unethical behaviour committed by insolvent companies' directors, potentially leading to the loss of money creditors receive during insolvency.

Giles Frampton, president of R3, said: "Creditor engagement is a crucial part of the insolvency processes. It means transparency for creditors, while insolvency practitioners benefit from creditors' insight.

"The Bill is supposed to boost creditor engagement, which makes restricting physical creditors' meetings illogical. Not all small businesses have the broadband access necessary to take part in online meetings, while correspondence with creditors will only tell an insolvency practitioner so much. Face-to-face meetings are hugely valuable.

He added that ideally, physical creditor meetings should be held at an insolvency practitioner's discretion, but conceded that the Labour amendment was an acceptable compromise.

At Newman and Partners we appreciate that there is often a lot of uncertainty around insolvency change. We pride ourselves on keeping up to date with these changes and altering our comprehensive range of services to help clients. If you would like to find out more or have any concerns about upcoming changes, please contact us.

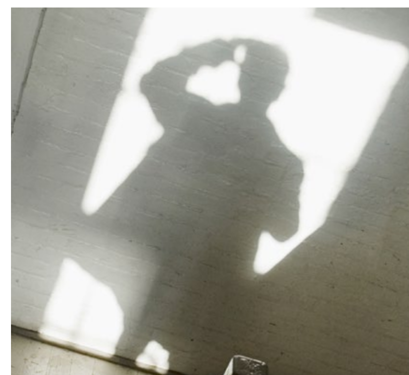
Creditors lose more than £200m from 'shadow insolvencies'

A new study has shown that companies which fail to follow the formal insolvency route may have cost creditors and HMRC up to £200m in 2013. Some companies have applied to Companies House to be dissolved, thus avoiding the investigatory process which comes with formal insolvency.

Research carried out by insolvency trade body R3 has suggested that the problem may be much bigger than previously thought. It discovered that the number of companies opting to be simply removed from the Companies House register has jumped by 28 per cent in the last three years, from 139,594 in 2010-11 to 178,996 in 2013-14. The same study also showed that creditor objections to 'strike-offs' had grown by 38 per cent during the same period, rising from 1,738 in 2010-11 to 2,406 in 2013-14.

Andrew Tate, deputy vice president of R3, said: "In formal insolvencies, creditors' interests are paramount. Insolvency practitioners will treat them on an equal basis and carry out important tasks like investigating directors' actions. Although growing faster than the number of applications, it's slightly surprising those objections to 'strike-off'' applications are relatively low: it may be that many creditors aren't aware of their rights."

This latest research highlights that a substantial number of businesses are disappearing, possibly having had their assets illegally removed, and creditors are undoubtedly concerned that this is being allowed to happen. If your client has concerns about a customer carrying out similar actions or unaware of how it may affect his or her business, then now is the time to speak with Newman and Partners. In fact, this firm's senior director, Laurence Factor, has been in touch with R3 and it is hoped that measures may be taken to plug this lacuna in the law.



We may be able to help your clients becoming victim to this form of abuse before it affects them. Please contact us for more information.

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