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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**

HMRC becomes a preferential creditor during insolvency procedures

From 1 December 2020, HM Revenue & Customs (HMRC) has become a preferential creditor in insolvency cases where debts are owed to the tax authority. This means that if a company or individual becomes insolvent the taxes paid by employees and customers, which the insolvent business was temporarily holding will now go to the public purse, instead of being used to pay other creditors that hold debts with the insolvent business or individual.

The move to make HMRC a preferential creditor was first announced in the 2018 Budget as a means to protect taxes temporarily held by insolvent businesses. This was then enshrined in the Finance Bill 2020 to give preference to certain tax debts owed to HMRC in the event of insolvency.

During formal insolvency procedures, licensed insolvency practitioners have a statutory obligation to realise the assets of the insolvent business and pay those realisations to creditors in an order set out in legislation. This generally means that asset realisations are paid out to the various classes of creditor in the following order:

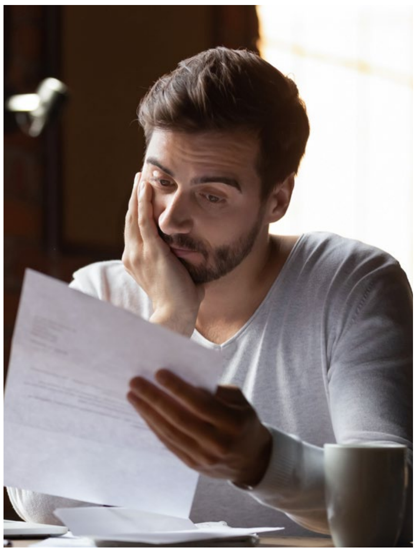
- secured creditors with a fixed charge
- insolvency practitioners' fees and expenses
- preferential creditors
- secondary preferential creditors
- prescribed part creditors
- secured creditors with a floating charge
- non-preferential creditors
- shareholders (for insolvent companies) or individuals (for personal insolvency cases).

Following the latest change, the majority of sums due to HMRC that are held by businesses when they enter formal insolvency rank as secondary preferential debts. This means that in most cases they will be paid ahead of secured creditors holding a floating charge, such as banks, and ahead of non-preferential creditors like suppliers.

The recovery of these amounts owed only relate to certain debts to HMRC, which include VAT, Pay As You Earn (PAYE) Income Tax, employee National Insurance contributions (NICs), students loan repayments and Construction Industry Scheme (CIS) deductions. This broad class of debts relate to where a business is required to deduct these taxes from payments they make to another other person and pay those deductions to HMRC and the payment to HMRC is credited against the liabilities of the other person.

In light of the current situation that we face, HMRC has also confirmed that PAYE and NIC deductions that were withheld by a business from funds claimed from the Coronavirus Job Retention Scheme fall within the preferential claim class.

HMRC is only the preferential creditor where an insolvent business entered a formal insolvency procedure on or after 1 December 2020. The full amount of the specified debts, which arose before the date of insolvency is payable to HMRC for businesses that entered insolvency on or after this date.



To help businesses in distress, but not yet in formal insolvency procedures, meet their tax-related debts HMRC provides a flexible range of support and will help viable businesses with Time to Pay arrangements that allow tax to be paid in smaller instalments over a longer period.

IF YOU OR A CLIENT ARE LIKELY TO BE AFFECTED BY THIS CHANGE TO THE LIST OF PREFERENTIAL CREDITORS AND WOULD LIKE ADVICE, PLEASE SPEAK TO OUR EXPERIENCED TEAM.

Ann Summers seeks rent cut on 25 stores under a CVA

Adult retailer Ann Summers has begun a restructuring plan using a Company Voluntary Arrangement (CVA) as it looks to reduce the rent at 25 of its stores. The move is part of the company's plans to recover from a decline in trade due to the COVID-19 pandemic.

The store, which sells lingerie and a wide range of adult products, has announced that it is now in discussions with landlords over plans to switch to turnover-based rents. The chain operates around 90 stores in the UK and is understood to have already negotiated new rental agreements with landlords at many of its branches in recent months.

By using a CVA, which allows a firm to repay creditors over a fixed period, Ann Summer hopes it can move its remaining stores on to turnover-based rents. By moving to this different rental system, it will pay rent that is calculated by reference to income and other receivables generated at their leased properties, instead of paying a fixed-rate rent, which is often set as a percentage of open market rental value at the time of the grant of the lease.

Ann Summers is following in the footsteps of several other British retailers who have already begun to move many of their stores to this different rental model. This includes the likes of shoe store Clarks, who were criticised by landlords for plans to switch to turnover-based and zero rental terms. After much negotiation, however, Clarks was given the green light to push on with its rescue plan thanks to a CVA, which saw 90 per cent of its creditors vote in favour of the proposals.

If Ann Summers' CVA plan is successful it says it hopes to secure £10 million of new funding to drive its turnaround. It will, however, need to secure approval from 75 per cent of its creditors, in value, during a vote.

Ann Summers Chief Executive, Jacqueline Gold, said: "Ann Summers has a bright future but, if the business is to fulfil its potential and prosper in the post-Covid trading environment, we need to align our property costs so they reflect the challenges facing today's high street."

IF YOU ARE AWARE OF A BUSINESS THAT IS STRUGGLING WITH ITS RENTS AND YOU FEEL IT MAY BENEFIT FROM A RESTRUCTURING OF ITS ORGANISATION OUR TEAM CAN HELP. TO FIND OUT MORE ABOUT OUR WIDE RANGE OF INSOLVENCY AND BUSINESS RECOVERY SERVICES, PLEASE CONTACT US.

Arcadia and Debenhams – a one-off or a sign of things to come

In the last month, two of the UK's largest retailers announced administration plans, leaving the fate of their stores and staff in the balance. Each business has taken a big hit due to the COVID-19 pandemic, which has forced them to temporarily shut up shop and generally led to a decline in trading.

Arcadia Group is the retail empire behind brands such as Topshop, Burton and Dorothy Perkins, which has entered administration as it deals with mounting debts and a decline in sales. The retail group, which is owned by Tina Green and her husband Sir Phillip Green, is understood to primarily have failed due to cash flow issues.

While many other fashion retailers have managed to survive this crisis through online sales, many experts have indicated that Arcadia's failure to build a strong e-Commerce offering and a decline in the popularity of its brands may have led to its insolvency.

Despite a significant investment of around £200 million in 2019, the retail group had been seeking an additional £30 million loan to keep it open and operational. After talks with lenders failed in November, the decision was taken to put the entire group into administration to give the business protection from its creditors, while parts of it are either sold or additional finance is found.

It is now looking far more likely that the Arcadia Group and its brands will be broken up by the administrators and sold off to ensure its debts to creditors are paid off. The Arcadia Group includes brands such as Wallis, Evans, Dorothy Perkins, Burton, Miss Selfridge and, of course, its most well-known store Topshop. With inherent value in each of these brands, due in part to their history on the British High Street, administrators will be keen to sell off the resources of each brand, including existing stock and, of course, their names and intellectual property rights.

Debenhams meanwhile has gone into liquidation and could be set to close all of its 127 stores, putting 12,000 retail jobs at risk. However, new interest from Mike Ashley's Frasers Group may mean a rescue is still possible. Its liquidation is thought to have been partly the result of Arcadia's collapse, as the Group's brands accounted for around £75 million in sales at the department store.

The loss of these two retail giants may not be as surprising as first seems. Both were clearly in trouble before the pandemic and retail experts have pointed out that both groups have failed to invest in their online offering, which has limited their ability to trade during these difficult times.

Whether this a true sign of what is to come is hard to determine. The Government's ongoing support has helped a lot of businesses and so the true scale of future insolvencies is hard to determine. It does, however, seem certain that sectors such as retail and hospitality have been harder hit and could face additional insolvencies in future.

IF YOU ARE AWARE OF A BUSINESS THAT IS IN FINANCIAL DISTRESS AND FACES THE PROSPECT OF ADMINISTRATION IT IS IMPORTANT THAT THEY ACT NOW. TO FIND OUT HOW WE CAN HELP, PLEASE SPEAK TO OUR EXPERIENCED TEAM.

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