

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

New rules to help third parties bring claims against insurers of insolvent companies

On 1 August 2016 the Third Parties (Rights Against Insurers) Act 2010 ("TPR") will come into force, making it easier for third parties to bring claims against insurers of insolvent companies. The new policy replaces the antiquated Third Parties (Rights Against Insurers) Act 1930 (the "1930 Act") and has been nearly seven years and three governments in the making.

The act seeks to amend a gap in common law where a company is insured, but insolvent. The principle of privity of contract means that only the parties to the insurance contract can enforce its rights. Meaning that, under common law, only the liquidators or the insolvent company could bring a claim under an insurance policy and the proceeds would then be absorbed into the assets of the company and distributed to its creditors.

This leaves third parties, who were protected under a policy, in a long queue of unsecured claimants rather than being compensated. As an example, if a car builder takes out a policy to cover post production issues and then becomes insolvent, the purchaser of the car could no longer benefit from the policy as the policyholder is insolvent.

This unfairness was initially rectified to some degree by the 1930 Act, which allowed a third party to recover from a company's liability insurer if the company became insolvent. Yet, the 1930 Act only went so far and neglected to deal with many unsatisfactory situations that are resolved by TPR.

The 1930 Act required third parties to first establish their liability to the insolvent insured company and if dissolved after liquidation, restore the company to the Companies' Register. However, TPR permits a third party to bring claims directly against the insurer and can join the insolvent company as a party. Third parties will also no longer be



required to reinstate a dissolved company before liability can be established.

Third parties have also been given the right to request information regarding the policy from the insured company, the broker and/or any other relevant party, which includes the terms of the policy, whether the insurer has disputed liability, any proceedings between the insured and insurer relating to the supposed liability and whether there is any limit on funds available.

TPR repeats the 1930 Act in transferring the contractual rights of an insured insolvent company to a third party. Yet, TPR removes some of the defences which insurers have used to prevent paying out on the policies in the past.

From the outset TPR has been designed as a very pragmatic piece of policy and will lead to a number of practical outcomes including fewer speculative claims, a reduction in administrative work for insurers and a reduction in often unnecessary legal costs.

The overall outcome though is that third parties will now have greater confidence when contracting services knowing that it is now easier to access the company's insurance policy should the company ultimately become insolvent.

If your clients have concerns about any of the points raised and would like advice before or after this new policy is introduced in August, please contact us.

Outstanding property debt in UK rises

According to new research from De Montfort University, U.K. commercial real-estate lending last year has pushed the total amount of outstanding property debt higher for the first time since 2008. In 2015, the total amount of debt secured against U.K. property (both residential and commercial) was £168.4 billion; up two per cent on the year before.

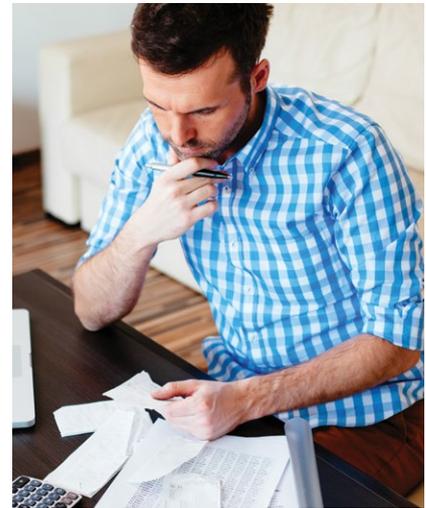
Following the financial crisis in 2008, the amount of outstanding property debt had for some time been consistently falling year-on-year up, as banks quickly got rid of poor property loans faster than they offered new lending.

However, last year lending rose 19 per cent to £53.7 billion, according to De Montfort University's study. This was a slower rate than the record pace set in 2014, which saw a 51 per cent jump to £45 billion of loans. During this period, the amount of outstanding distressed loans fell to £12.1 billion, down from £23.2 billion in 2014 and £47.6 billion at the end of 2009; showing that more people were avoiding defaulting on their debts thanks to historically low interest rates and growing wages.

Falling levels of distressed loans coupled with the rise in new loans "hints at a robust and stable commercial property lending market," said Ian Fletcher, director at the British Property Federation. "It will be interesting to see whether commercial real-estate lending accelerates from here or grows in a more measured way."

If your client is struggling with their property debt and would like assistance speak to our team at Newman and Partners today. We have experience in helping individuals with debt issues and can help your clients manage their solvency.

To find out more about our services, please contact us.



Government proposes three month break for corporate insolvencies

The business secretary Sajid Javid has announced proposals for a new corporate insolvency framework, which will include a three-month moratorium from creditor action. Launched by the Department for Business, Innovation and Skills (BIS), the plan also contains a new process to prevent creditors from blocking a rescue plan.

Speaking during the launch of the new policy proposals Mr Javid said the measures would seek to create a world where businesses had the confidence to restructure when times were tough, while still protecting creditors and employees.

The BIS consultation includes a number of proposals, the first of which is a moratorium which will give companies a minimum of three months to consider the best way to rescue the business, while protecting them from creditors. During this period creditors will have the right to request information about the company from their insolvency practitioner.

The second proposal will help businesses to continue trading through the restructuring process. This would include maintaining contracts that are necessary to keep the business going and

thus preventing businesses becoming 'hostages' to their key suppliers who may seek to profit from the situation, as is sometimes the case with SMEs and micro-businesses.

BIS's third proposal will create more flexibility in devising a rescue plan, including binding secured, as well as unsecured creditors, and introducing a cram-down mechanism that will impose a restructuring plan on junior classes of creditors even if they vote against the plan, as long as they would be no worse-off in liquidation.

"Whether it's a kitchen-table start-up or massive multi-national, nobody ever wants to see a company in trouble. But, sometimes, insolvency is unavoidable," said the business secretary during the launch.

"And should the worst happen to a business, we have a duty to give it the best possible chance to restructure its debts and return to profitability while protecting its employees and creditors. The measures detailed in this consultation are intended to create a regime that does just that, and I welcome the views of all those with an interest in these proposals."

The consultation is due to end on 6 July 2016 and while it is impossible to predict its eventual outcome, the document does reveal a number of common issues faced by businesses facing the prospect of insolvency. If any of your clients require assistance with a rescue plan or need advice regarding insolvency, then our team at Newman and Partners can help.

To find out more about our services, 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

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