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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**

Pension pots at risk from bankruptcy under new reforms

While the introduction of the new pension reforms by the Chancellor, George Osborne, have been welcomed by most people about to retire, there may be an unexpected consequence that could see some individuals' pension funds being made available to creditors in the event of bankruptcy.

Under the overhaul of pension tax rules, which comes into force from April 2015, a pension scheme member aged 55 or over can withdraw their entire pension fund at once. While this may seem like a positive step for pension holders, a recent ruling in the high court has shown this may leave some pension pots open to creditors.

In the case of Raithatha v Williamson, bankruptcy trustee Situl Devji Raithatha won the right to claim against Michael Roy Williamson's £1m pension fund to repay creditors using an income payments order. The court said that the right to draw his pension fell outside the bankruptcy estate, but it held that the power to issue an order could be exercised on any amount of money to which the individual would be entitled "merely by asking for payment". This meant that the 25 per cent tax-free lump sum currently accessible by a person of pension age could be targeted.

An appeal on the decision has since been vacated upon settlement, but the significance of this case is that the decision of the High Court Chancery Division will still stand as a precedent for District Judges. As a consequence, a bankruptcy trustee could apply an income order on a bankrupt's entire pension-fund from April next year.

Any individual approaching pension age could see their pension at risk and, if considering petitioning for their own bankruptcy, ought to take advice on this issue before doing so. Conversely, creditors pursuing payment are likely to see this change as an opportunity to obtain access to an additional asset.

While it is not yet completely clear how many people will be affected, it is never a bad time to get professional advice on your affairs and our team of experts at Newman and Partners can help you identify problems further down the line.

For more information, please contact us.

Insolvencies are costly for taxpayer

Insolvencies cost the British taxpayer up to £4.4bn in unpaid taxes during the 2012-13 financial year in taxes because businesses were becoming or had become insolvent, according to HM Revenue & Customs (HMRC) – accounting for 13 per cent of the total 'tax gap' over the year. During this period the tax gap – the difference between the money HMRC expects to receive in taxes during a tax year and the amount it actually gets – was estimated as £34bn last year, an increase of 6.8 per cent.

Following the report, the insolvency trade body R3 said the amount lost due to firms going broke could be reduced if the taxman became more involved in the insolvency process, as HMRC is often a firm's biggest creditor. According to R3, input from experienced creditors, like HMRC, could help insolvency practitioners and official receivers get more money back, but it is frustrated that HMRC is not properly engaging with the insolvency process.

A spokesman for the organisation said that the implementation of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LAPSO) next year means that the taxpayer will lose even more money, as the Government has refused to make insolvency litigation exempt from the legal reforms, which come into effect next April. He added that the reforms will make it very difficult to fund insolvency practitioners' attempts to get money back from 'rogue directors' for creditors, which would include around £300m worth of creditors' money pursued by them every year – £70m of which is owed to taxpayers by rogue directors.

Our team of highly qualified insolvency practitioners at Newman and Partners can help you negotiate fair terms with even the largest creditors to help with your company on the road to recovery.

For more information, please contact us.

UK firms with pension funds experience fewer insolvencies

A new study conducted by the Pension Protection Fund (PPF) has found that the insolvency rate of sponsoring employers with defined benefit (DB) pension plans that are eligible for inclusion in the PPF fell sharply over the nine months to March this year.

Figures published in the latest Purple Book, which covers UK pension funds and their risks, has shown that the national insolvency rate has been falling gradually over the past two years.

The book, which covers 6,057 pension funds in the UK, most of which are in the private sector, also showed that allocations to fixed income had fallen to 44.1 per cent as of 31 March, down from 44.8 per cent, which had been on an upward trend since 2006, when the allocation was 28.3 per cent on average.

The Purple Book also shows that the insolvency rate of the PPF universe increased less than the national insolvency rate around the beginning of the financial crisis.

Sponsoring employers who wish to enter the PPF must pay a levy to make them eligible and the PPF then takes on the benefit payments to employees in the case of the employer's insolvency.

However, despite this positive news, a spokesman for the PPF said that the body does not feel as though, for future claims, the country is "out of the woods" yet.

The PPF has also noted a "tailing off" of the use of contingent assets, which a sponsoring employer will allocate for the pension fund's use for funding in the event of an insolvency. Certain eligible contingent assets earn the sponsoring employer a reduction in its levy payment.

These latest figures may however, be a result of fewer and fewer employers offering such defined benefit schemes, meaning that there are fewer companies to become insolvent in the first place, rather than being down to the economic strength of companies that use these schemes over those that opt not to. Most firms these days have instead turned to defined contribution pension plans, as the nature of employee, employer relationships change.

It is never a bad time to get professional advice on any aspect of your company's affairs, from pensions through to cashflow. Our experts at Newman and Partners can identify different ways of strengthening your company's future and provide services and advice tailored specifically to your needs.

For more information, please contact us.

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The matters discussed in this bulletin are by necessity brief and comprise summations and introductions to the subject referred to. The content of this bulletin should not be considered by any reader to comprise full proper legal advice and should not be relied upon.