

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

Consultation response to Insolvency Service corporate pre-insolvency moratorium plans

Results from the recent Insolvency Service (IS) consultation on proposed corporate insolvency regime changes show widespread support for a pre-insolvency moratorium – provided it lasts only three weeks.

The consultation, which launched in May, requested responses to proposals to introduce a moratorium on legal action against distressed companies investigating rescue options. The proposals included widening the definition of 'essential supplies', developing radical new 'restructuring plans' and increasing rescue finance availability.

More than two thirds of respondents agreed that a temporary moratorium would help to facilitate business rescue, and that it should be court-approved, despite the likely counterproductive effect of the costs and procedural delays of formalising a 'breathing space' agreement.

Most respondents opted for a moratorium period of less than three months, with 21 days being seen as financially viable and manageable in terms of risk. Views on suspending director liability – which the government is reviewing for wrongful trading – were mixed. The government is also considering whether unfairly treated creditors should have a general right to apply to court for redress during a moratorium. All respondents agreed that strengthened creditor safeguards were essential during the moratorium.

The issue of 'essential supplies' produced support for helping companies to continue trading during a restructure. However, a number of respondents wished to exclude

certain suppliers from the IS proposals, notably finance and financial service providers. They also supported permitting suppliers to request company directors' personal guarantees. Nearly 70 per cent of respondents believed the IS 'essential supplies' proposals offered inadequate supplier safeguards.

A restructuring plan with power to bind a minority of dissenting creditors was considered to be a valuable addition to the insolvency process. Opinion was divided on whether new restructuring plans should operate as a standalone procedure, rather than extensions or modifications of existing insolvency arrangements, such as CVAs, although a large majority of respondents saw the first option as more flexible and likely to offer companies greater benefits.

More than 60 per cent of respondents agreed that a court-approved 'cram down' on officially-classified creditor groups would be acceptable, provided the company evidenced the necessary assent for this rescue solution. The proposed minimum liquidation value test to determine a 'cram down' plan's fairness – which would ensure impaired classes receive at least what they would have received in a liquidation situation – received 40 per cent support, but value determination methodology challenges were anticipated.



The Insolvency Service's rescue finance proposals, which include priority administration expense reordering, duplication of company property loan security and existing charge holder safeguards, were opposed by 73 per cent of respondents, who felt they would increase borrowing costs and stifle lending prospects.

Please ask about the specialist advice and assistance Newman and Partners can offer your corporate clients on dealing constructively with financial problems.

UK Pension Protection Fund issues new guidance on scheme deficit intervention

The effect of the current challenging economic climate on businesses across Britain has led the UK Pension Protection Fund (PPF) to update its general guidance for restructuring and insolvency professionals.

The PPF works to help employers avoid pension deficits and protect employees whose employers face insolvency and have a shortfall in their pension schemes. PPF has acted in a number of high-profile insolvency cases, including Kodak, which has prompted the organisation to review its rules for assisting failing business to meet their pension liabilities.

The PPF is not obliged to manage pension scheme deficits, and its refreshed guidance sets out the key factors that will decide if a pension scheme will be eligible for admission to the PPF on a restructuring plan. The key principles that will determine intervention are: inevitable company insolvency in the absence of restructuring, a better outcome than ordinary insolvency would achieve, and fairness to other creditors and shareholders in respect of restructuring benefits conferred on the

pension scheme, which will take account of the financial effect of continued trading.

The PPF requires at least ten per cent equity in a restructured company for the pension scheme, where future shareholders are not currently involved in the company and a 33 per cent equity share if current shareholder involvement continues. The PPF will ask the Pensions Regulator if a Regulator Contribution Notice or Financial Support Direction would place the scheme in a better position than if the PPF were to adopt it, to assess alternative restructuring routes.

If Regulated Apportionment Arrangements are proposed, the Regulator must have considered draft clearance submissions. The PPF must also consider bank fees charged for refinancing to be 'reasonable' and will require the party seeking



restructuring to pay all PPF costs, fees and liabilities.

Any organisation facing insolvency with a pension deficit needs to seek professional advice. Newman and Partners can advise your clients on the full range of insolvency issues, please contact us for more details.

Fewer than half of UK businesses have fraud risk coverage

Recent research by insolvency trade body R3 has revealed that fewer than half of the UK's businesses have formal measures in place to deal with the prevention, detection and reporting of fraud.

R3's survey of 500 senior financial directors found that 54 per cent operated no specific anti-fraud policy, and 11 per cent were uncertain if they existed. R3's Fraud Group Chair, Frances Coulson, said: "Fraud is a staggeringly expensive problem for the UK economy, yet 13 in 20 of the country's companies don't have precautions in place to deal with fraudsters. Businesses in every sector and of all sizes are at risk."

Small businesses are the most unprepared for fraud. The study found that 70 per cent of sole traders and 56 per cent of companies with between two and five employees had no agreed policy, compared to just 11 per cent of large companies (250+ employees). Fraud-related losses suffered by smaller companies are usually much harder

to absorb and overcome – but bigger companies frequently offer richer rewards.

Fraudsters are becoming more professional and innovative – presenting a danger to businesses, both externally and from within. R3 has seen evidence of fraudulent employees ordering fund transfers via skilfully replicated senior manager email addresses and then absconding with the cash.

R3 also found that, despite the greater vulnerability to fraud from an online presence, 53 per cent of organisations with a website and 48 per cent of businesses that accept online payments had no fraud policy. This leaves them – and their customers, who may sue for loss and damages – unnecessarily exposed. Frances Coulson added: "It's no surprise that the

internet has proved the most popular way for fraudsters to target individuals and businesses so successfully."

R3 is advising all businesses, with or without an online presence, to produce a comprehensive written policy to reduce fraud risk. "Agreeing a written fraud policy doesn't have to be onerous or expensive," said Coulson. Additional risk prevention measures, such as employee vetting and financial standing orders are also recommended.

Fraud is an increasing concern for many businesses, especially as it poses a significant solvency risk. When things go wrong for your clients, our team is at hand. Please contact us to find out how Newman and Partners can help.

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