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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**

Insolvency levels hit a new high – but where are they heading next?

Over the last few months, company insolvency levels in England and Wales have been on an upward trend. This is, perhaps, unsurprising given the difficulties that many businesses are experiencing, not least the rising price of energy, higher interest rates and pre-existing debts.

The latest official Insolvency Service data shows that in the 12 months to August, there were a total of 20,512 business insolvencies in England and Wales. This figure is up 16 per cent on all previous 12-month periods since 2019. If we take a further look back, the 12-month average rate of insolvency is 26 per cent higher than in any given calendar year between 2014 - 2018.

For the month of August alone, there were 1,348 company insolvencies. This is 43 per cent higher than in the same month in the previous year, and 42 per cent above the number of insolvencies registered in August 2019 before the pandemic.

While the number of corporate insolvencies is down nine per cent from a peak earlier this year in March, it is still higher than it has been historically. What's more, the 12 monthly rolling data suggests an upward trend, which has continued to rise at a consistent pace for more than a year.

In fact, a comparison of the annual data shows that the 12-month moving average is 72 per cent higher than last year's figure. The latest full data from the Insolvency Service, also shows that the types of insolvency are changing as well, with:

- Four times as many compulsory liquidations in August 2022 as in August 2021
- Twice as many administrations as a year ago
- Creditors' Voluntary Liquidations (CVLs) were up 33 per cent in the last year – and 77 per cent higher than in August 2019.

These figures are concerning, and the outlook ahead doesn't look much more positive. Businesses throughout England and Wales are having to deal with growing costs, increased uncertainty and less spending among the consumers of their services and products.

Rising inflation is perhaps the biggest concern, particularly for indebted businesses. Given that the rate of inflation keeps rising, it is almost inevitable that the Bank of England will continue to increase the base rate. This will force lenders to increase their interest rates and will see other organisations, such as HM Revenue & Customs, also increase their rates on debts. Businesses will also see the cost of acquiring new finance increase, while also driving up the fees to service existing debts.

This, added to the rising cost of energy and other supplies, is squeezing the cash flow and profitability of many businesses, across a variety of sectors. Many businesses would like to drive up prices to meet these costs, but they are themselves hampered by the appetite of consumers and their limited spending powers. Even where they do decide to push up prices and pass on costs, they are ultimately only contributing to rising inflation, which in turn affects their debts and borrowing.

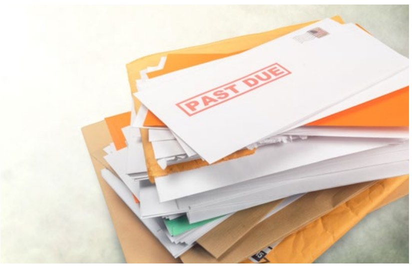
GIVEN THAT MANY BUSINESSES WILL BE DEALING WITH SIMILAR ISSUES, YOU ALSO NEED TO BE CAUTIOUS OF LATE PAYMENTS, WHICH HAVE CONSISTENTLY BEEN ON THE RISE AS WELL FOR SEVERAL YEARS. IT SEEMS THAT A CONTINUING UPWARD TREND IN COMPANY INSOLVENCIES IS MOST LIKELY IN THE MONTHS AHEAD, WHICH COULD BE ACCELERATED IF INFLATION AND INTEREST RATES ALSO CONTINUE TO RISE. IF YOU NEED ANY INSOLVENCY ADVICE, PLEASE SPEAK TO OUR EXPERIENCED TEAM TODAY.

Supreme Court confirm that Directors only owe a duty to creditors on real insolvency risk

In dismissing a claim calling for a change to the law, the UK's Supreme Court has confirmed that directors only owe a duty to creditors where there is a real risk of insolvency. The case in question is concerning a lawsuit filed by debt collector BTI against French paper maker Sequana.

This sought to recover a €135 million (£118 million) dividend paid out to it by its subsidiary AWA. This subsidiary was solvent at the time but had ongoing pollution-related liabilities that increased the risk that it might become insolvent.

Almost a decade after AWA first paid out the dividend, BTI began its claim against the parent company Sequana, arguing that the decision by AWA to pay Sequana a dividend breached creditor duties due to the risk of potential insolvency.



However, in considering the claim, the Supreme Court reaffirmed the existing position in law that directors must only begin prioritising creditors where it is more probable than not that the company will soon enter insolvency. As such the ruling makes clear that directors' duties to creditors are triggered only when a company is either insolvent or on the brink of bankruptcy.

This means that where there are early signs of potential insolvency, but nothing concrete that confirms that a business will become insolvent, this duty does not apply to directors. This ruling is likely to be welcomed by company directors who might be given more time to consider creditors' interests before the real risk of insolvency is realised.

Unfortunately, for creditors, the findings of the Supreme Court are likely to be disappointing. Commercial barrister David Drake said that some would see the ruling as a "bitter pill", with it raising concerns that some directors may "fritter away assets, ignoring an obvious risk of creditors being left short-changed."

Natalie Osafo of the London Solicitors Litigation Association (LSLA) added: "This decision provides some welcomed clarity. However, the precise point in time at which the duty will be triggered and how to balance creditors' interests with other competing interests of the business remains relatively elusive."

ARE YOU CONCERNED ABOUT WHAT THIS RULING MAY MEAN FOR YOU OR YOUR CLIENTS? PLEASE GET IN TOUCH WITH OUR EXPERIENCED TEAM TODAY.

Coping with uncertainty – What can you do?

The UK is facing a period of uncertainty after weeks of change, including a new PM, two new Chancellors, spiralling inflation and a mini-Budget, which has been followed swiftly by a fiscal statement in which many of the measures were overturned. As a result, the UK economy has been weakened and sterling has fallen to historic lows against many other major currencies.

During this tumultuous period, many small businesses have had to re-evaluate their plans multiple times as they try to deal with rising inflation, interest rates and doubt about the nation's prospects. While the promise of support in the form of the Energy Bill Relief Scheme provides some certainty until April 2023, it does little to counterbalance the other issues that have emerged since its announcement at the beginning of the month.

While this support will help initially, UK inflation is likely to hit hard, with it predicted to hit 13 per cent before the year ends. The Bank of England is likely to continue to increase the base rate in response to this, which will mean that the cost of servicing debts and managing costs will affect a company's cashflow.

Looking ahead it is likely that the issues created by this increasing uncertainty will make it even harder for the UK's small businesses to borrow, invest, trade and grow. As a result, many more firms may get into financial difficulty and could face issues with their solvency. This issue is only made worse by the £684 million per year that SMEs are owed in late payments, according to Xero. The same Xero study showed that almost half of invoices issued by UK small businesses were paid late.

The failure of SMEs as a result of these factors could have a domino effect throughout the British economy. After all, small businesses employ 61 per cent of the UK workforce and contribute more than £2 trillion in turnover. Their existence is linked to the survival of many more firms and so their importance should not be understated.

IF YOU OR A CLIENT IS CONCERNED ABOUT CURRENT UNCERTAINTIES AND BELIEVE THERE IS A RISK TO THE FUTURE SURVIVAL OF A BUSINESS, IT IS IMPORTANT TO SEEK ADVICE SOONER RATHER THAN LATER. TO FIND OUT HOW WE CAN HELP TO RESTRUCTURE A BUSINESS DURING THESE CHALLENGING TIMES, PLEASE SPEAK TO US.

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