

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

EU makes cross-border insolvency easier with new legislation

An agreement to adopt a “rescue and recovery” approach to insolvency by the European Union Justice Council could mean that viable businesses in the UK get a second chance to recover from cross-border bankruptcies.

In March this year the European Union’s Commission put forward proposals to modernise the current rules on cross-border insolvency, which date back to 2000. The new rules approved in December 2014 by the Justice Council shift the focus away from liquidation and instead concentrate on helping businesses overcome financial difficulties, while still protecting creditors’ rights to get their money back. It is hoped that these new changes will increase the efficiency and effectiveness of cross-border insolvency proceedings, which affect more than 50,000 companies across the European Union (EU) every year.

Under the proposals, businesses will be able to restructure cross-border arrangements more easily with help of member states in which they operate; allowing more businesses to be saved from liquidation and administration. The change to how cross-border insolvency is dealt with will bring the EU’s current legislation up-to-date with developments in national insolvency legislation that have made the process easier for multinational companies.

The proposal will also give companies greater legal certainty by providing clear rules determining jurisdiction, and will help debtors facing insolvency proceedings in

several member states by ensuring the courts handling the different proceedings work together. Importantly, information available to creditors from different member states will be improved by obliging member states to publish key decisions, such as the opening of insolvency proceedings.

Viviane Reding, the EU’s Justice Commissioner, said: “Small and medium-sized enterprises are the backbone of the EU’s economy. Europe needs a ‘rescue and recovery’ culture for viable businesses – the modernised insolvency rules will facilitate a fresh start. The changes will allow for increased entrepreneurship in Europe, boosting growth and jobs. Citizens can also rest assured that when their employer faces financial difficulties, the business will stand a better chance of survival.”

According to figures from the EU around 200,000 firms go bankrupt in the EU each year, while around half of enterprises survive less than five years. This means that some 600 companies in Europe go bust every day and it is believed a quarter of these have a cross-border element.

Dealing with companies abroad during insolvency is never an easy process, but at Newman and Partners we can help find the right solution for you. For more information, please contact us.



Areas worst hit by insolvency revealed

Areas of coastal Britain had the highest total insolvency rates of anywhere in the UK, according to the Insolvency Service's latest research.

The Service's latest geographical breakdown of insolvency in the UK found that coastal areas of the South West, North East, along with parts of Yorkshire and the East Midlands had the highest rate of total insolvency in the UK. In comparison London, the South East, West Wales and the North East had some of the lowest total insolvency rates in the country.

The report also showed that bankruptcies per 10,000 adults in England and Wales fell to 5.4 in 2013 from 7.1 in 2012. The constituency with the highest bankruptcy rate in 2013 was Blackpool North at 12.3, while the lowest rates tended to be found in London and the Home Counties. With this in mind many might expect the number of DROs to have risen, but in fact during 2013

the rate of DROs per 10,000 adults fell to 6.1, down from 7.0 in 2013 – the first decrease since the orders were introduced in 2009.

Where the biggest change seems to have taken place is in the number of IVAs. This is a voluntary means of repaying creditors some, or all, of what they are owed. Once approved by three quarters or more in value of those individuals' creditors, the arrangement is binding on all. During 2013 the amount of IVAs per 10,000 adults increased to 10.9, from 10.5 in 2012. The area with the highest number of IVAs was Easington in Yorkshire, while Hampstead in London had the lowest rate of IVA applications.

The overall trend in this latest data suggests that people are choosing more

managed forms of insolvency to handle outstanding debts. This is most likely down to improvements in the general economic well-being of individuals, who are finally starting to see the wage-gap shrink and commodity prices dip. It also shows that creditors are more open to agreements that will help them reclaim at least part of the debt owed to them.

If your client feels that he or she could benefit from advice on their debt, then it may be time to talk to an insolvency practitioner who can find the best solution for their situation. This data proves bankruptcy isn't the only option and there are other ways of mitigating a person's debts that may be more beneficial to them and their creditor. For more information, please contact us.

The Do's and Don'ts of ROT terms

The importance of Retention of Title (ROT) stock is something that is often overlooked by businesses, but failing to consider the impact of the ROT terms could cause problems should the worst happen.

A retention of title (ROT) term is a provision in a contract for the sale of goods, which means that the seller retains legal ownership of the goods until obligations are fulfilled by the buyer – usually payment of the purchase price. This can cause an issue if a company goes into administration or liquidation, as it is sometimes not clear where the seller will get their money from.

In a recent case a provider of games machines attempted to take the administrators of a collapsed gaming company to court, alleging that they had allowed the company in administration to continue to use the machines for the company's benefit, while not repaying them for their use.

Fortunately for the administrators, the courts found against the games machine company on the basis that the administrators never personally took possession of the machines. The court said that while it was the administrator's job to handle the games company's assets they were able to reject the ROT terms on the basis they did not have all the evidence in regards to the

ROT terms. The court also found that the company seeking damages had not clearly identified the assets that belonged to them, or unequivocally demanded the return of the goods, and were therefore not entitled to make a claim against the administrators.

Businesses can learn a lot of lessons about ROT from this case and there are a few simple steps that can be taken to ensure that your business protects itself from potential ROT issues. One important thing that all companies should do is ensure all goods and assets are easily identifiable, so that ownership can be assured should either they or a customer go into administration. This is especially important in 'simple' rather than 'all monies' terms, where goods are referenced by particular purchase orders or invoices.

Another important issue is separation of goods following a company's liquidation. It is easy to confuse one asset for another if a company deals with similar products on a regular basis. By creating a system that easily identifies and references items this can be avoided. Another thing to consider

is whether the goods have been onward supplied or sold or incorporated into other assets, such as a component in a much larger item which cannot be removed without devaluing the larger asset. Failing to take this into account could have wide ramifications on securing money back from a company that goes under, as the courts may find against claims if it significantly affects the price of a company's assets.

Finally, possibly the most important lesson is to ensure there is a clear revocation of the express or implied permission to on-sell, which should be combined with an unequivocal demand for the return of goods from the company attempting to recover an asset. Being clear with administrators that you and you alone own the assets makes it far more likely that any hearing will find in your favour.

The team at Newman and Partners can help with all aspects of ROT both before and during insolvency and can give clear and concise instruction on the right action to take. For more information, 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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