

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 wave of insolvency and creditor action anticipated

A new study by insolvency trade body R3 has found that 93.7 per cent of practitioners expect a higher number of corporate insolvencies in the next 12 months, with 56.1 per cent saying they expected a 'significantly higher' number of cases and action. This would seem to be at odds with the statistics from the Insolvency Service for April, May and June, which show that the number of insolvencies is down respectively by 17, 30 and 50 per cent compared to the same months last year.

However, insolvency practitioners, such as the team at Newman and Partners, believe that the reduction of Government support in the coming months, combined with the end of the temporary suspension of statutory demands and winding up petitions means that a sharp rise in business failures could be just around the corner.

This suspension has been in place since 23 April following an announcement by the Government that it would suspend actions against struggling businesses. This has since been codified and built upon in the Corporate Governance and Insolvency Act 2020, which backdated the suspension from 1 March onward.

Former president of R3 Duncan Swift says most companies have not been abusing the suspension period. He said: "[The suspension] is a fairly blunt instrument to prevent unwarranted enforcement action that has a risk of being abused by businesses. In my experience, the vast majorities of UK corporates and their boards of directors are navigating the pandemic crisis with a straight back."

The temporary suspension outlined in the Act will end on 30 September, unless the Government decides to extend it until March 2021. This would mean that courts, which are likely to be also dealing with other claims, such as evictions and repossessions, will not start hearing creditor

petitions and demands until 1 October. Of course, many creditors cannot afford to wait for the courts to reopen and are instead renegotiating contracts and terms of payment with debtors.

Jo Windsor, a Partner at legal firm Linklaters, said: "There is a recognition that companies need to be given a little bit of time to work out where they stand on what their options are. That being too hostile, too early will be inappropriate in many cases. There is an element of people stepping back and saying should we give [debtors] a chance? Should we give them a bit more time to see how the economy is fairing?"

According to Duncan Swift, it is likely to be the third and fourth quarter of 2020 that is most critical as most projections in a single 'hit' scenario see a large pickup in the UK economy during the second half of the year. He added that most insolvencies do not tend to occur at the bottom end of an economic cycle but rather during the recovery period.

"There are more formal insolvencies as you exit recession than going into one. During the recession companies and businesses are finding their way and trying to navigate through a low period," added Swift. "Coming out of the recession businesses begin to 'accelerate'. They start to see demand restored to normal or in some cases higher level to what



it was before. If you're coming out of a recession, invariably the corporate as an entity has a weakened working capital position. They end up with a position of over trading where the company runs out of working capital trying to meet the restored or enhanced level of trade."

If you or a client is concerned about a surge in insolvencies later this year and the impact it may have on their business then it is important that they seek professional advice at the earliest opportunity.

TO FIND OUT HOW OUR INSOLVENCY EXPERTS CAN HELP, PLEASE CONTACT US.

The rise and fall of the 'Zombie Company'

The Coronavirus pandemic has had a devastating impact on businesses up and down the UK, leading many companies to face significant financial difficulty. New analysis from the BBC shows that a large number of businesses failed in March before much of the financial support was made available.

The broadcaster's Shared Data Unit looked at how many companies posted insolvency notices in the London Gazette – the official public record for insolvencies. It found there was a spike of 4,200 insolvencies during that month as the country entered lockdown.

However, the rate of insolvencies slowed over the next three months, with a further 5,000 businesses becoming insolvent – 23 per cent fewer compared to the same period in 2019.

The major discerning fact between March and the following months was the availability of support on offer to business from the Government and this has led

some to suggest that the UK now faces a 'Zombie Company' crisis. A Zombie Company is a business that continues to function on a day-to-day basis but is unable to pay off its debts in full or invest and grow.

According to the Institute for Fiscal Studies (IFS), businesses have incurred significant debt under the current circumstances, with some estimates saying that UK companies may have £100 billion of unsustainable debt by the first quarter of 2021. Considering the levels of debt within some businesses and their lack of prospects for the future it is likely that just as we have seen the rise of Zombie Companies during the pandemic, so are we likely to see their decline as

many enter insolvency as financial support measures are removed.

Stuart Adam, from the IFS, said: "Many firms have been tidied over during the period of hibernation partly through loans and tax deferrals, but those mean piling up debts that will make it harder for them to carry on in the longer term."

If you are aware of a business that is struggling with debt and faces the prospect of insolvency, our specialists are here to help.

TO FIND OUT MORE ABOUT OUR INSOLVENCY AND BUSINESS RECOVERY SERVICES, PLEASE CONTACT US.

Insolvency rules must be eased to prepare for a surge in insolvencies

A senior American economist and policymaker has sent a warning to Britain to prepare its courts for a potential flood of insolvency cases in the coming months. Professor Randall Kroszner, a former member of the US Federal Reserve's Board of Governors, has called on British policymakers to take a pragmatic approach to corporate insolvency to protect jobs and the economy.

Professor Kroszner, who held his position at the Federal Reserve during the last economic crisis, said that politicians should accept that a V-shaped recovery may not occur and should consider the impact of a slower and more difficult economic period. He said: "Everybody wants a V and if you have a V you don't have to worry about widespread bankruptcy and restructuring. But we have to acknowledge that this might not be the case, so it's important to be prepared for that and to minimise the damage."

A relaxation of the insolvency rules could help to protect jobs and economic activity, according to Professor Kroszner. "Given the number of bankruptcies is likely to go up quite significantly, it can be better for the economy and better for the debt-holders to not [wind down the business] and to do a restructuring that maintains employment," he said.

"You won't have the same liquidation and everyone being turned out of work. You can say, 'OK, there's a solid operation here with

a high debt, so we want to restructure the debt burden but we want to maintain the underlying economic activity.' That's good for the economy, good for the workers and good for the bond-holders."

The UK has already taken action to reform the insolvency system in response to the pandemic by introducing the Corporate Governance and Insolvency Act 2020. Under this new legislation, the UK has suspended laws on wrongful trading, allowing directors to keep technically insolvent companies open during the pandemic without fear of legal action. It also introduced a new company moratorium to give businesses more breathing space from creditors to help companies to restructure without the need for more formal insolvency procedures.

Professor Kroszner said that more countries, including the UK, needed to adopt something akin to US Chapter 11 proceedings. These allow businesses to operate while paying creditors through a restructured payment plan and for directors to continue to run

the business. Elements of Chapter 11 are somewhat mirrored in the new company moratorium, in particular the ability for directors to maintain control of the business, but it does not include all of the benefits available to companies in the US.

However, even in the US, there have been recent issues with Chapter 11 filings after proceedings soared by 48 per cent in May leading many experts to warn of potential delays, which could force businesses into premature liquidation. Professor Kroszner said that British courts would face similar challenges. He said: "Having a very effective and efficient bankruptcy, where you have expedited bankruptcies and sufficient resources in the legal system, is very important."

If you or a client requires advice on the UK's insolvency rules and procedures our experienced team are here to help.

TO FIND OUT HOW WE CAN ASSIST YOU, PLEASE CONTACT US.

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