

# 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](mailto:insolvency@newmanandpartners.co.uk)

### How can suppliers protect their position?

New rules in the Corporate Insolvency and Governance Act mean that, in most cases, suppliers can no longer rely on terms within their contracts that allow the termination of an agreement on the grounds of a customer's insolvency. Previous insolvency legislation contained some limited protections that ensured companies in financial difficulty are able to continue to access essential supplies, such as utilities, communications and IT supplies. However, the new act has extended protection to almost all supplies of goods and services to companies in almost all insolvency proceedings.

Under the new rules, the suppliers of good and services, who are not excluded from them, are not only prevented from ending a contract due to a customer's insolvency but they are also not able to do so on the grounds of a business is about to become insolvent, sometimes referred to as a pre-insolvency breach in some contracts.

The aim of these new rules is to allow continuity of supply and encourage businesses to continue to trade with a long-term view towards recovery. This new rule only applies to customers that enter a "relevant insolvency procedure" in the UK and do not affect customers who are looking to terminate an agreement with an insolvent supplier.

It has also been confirmed by the Government that the new rules do not generally affect leases, licences and sale agreements for land or property. It is only where there is an element of provision for the supply of goods or services within such an agreement that the particular element would be subject to the prohibition.

The new rule also does not affect smaller suppliers until 30 March 2021, if they meet at least two of the following criteria in their most recent financial year: turnover no more than £10.2 million; balance sheet of no more than £5.1 million; and/or no more than 50 employees. There are similar exemptions for businesses



that have been trading for less than a year. Where a customer or the supplier is involved in financial services, they may also be exempt, including insurers, banks, investment firms, payment institutions and operators of payment systems.

Despite the changes to the rules, suppliers are still encouraged to include rights to terminate on a customer's contract, as it will allow suppliers to apply to the court or ask the officeholder for permission to terminate the contract if the customer does subsequently enter an insolvency procedure. As these procedures cannot always be relied upon due to the new prohibitions in the act, suppliers should also include other provisions within new contracts that allow for a reduction in contract terms and payment methods,

part payment in advance or the provision of financial information on a regular basis, such as management accounts.

Suppliers should also be more mindful of the signs of business failure such as late payments, as these may indicate that a customer is in trouble. They must remember that they will no longer be able to terminate a contract for a pre-insolvency breach after a company has entered insolvency proceedings.

**THERE ARE OTHER STEPS THAT SUPPLIERS OF INSOLVENT BUSINESSES CAN TAKE IN LIGHT OF THESE NEW RULES. TO FIND OUT HOW YOU CAN PROTECT YOUR CLIENTS' BUSINESSES FROM THE INSOLVENCY OF OTHERS, PLEASE SPEAK TO OUR TEAM TODAY.**

# Coronavirus financial support measures suppress UK insolvency

The number of individuals and businesses becoming insolvent has remained low according to the latest data for August, but indications are growing that insolvencies could rise sharply as Government support is withdrawn. According to the latest data from the Insolvency Service, there were 778 company insolvencies in England and Wales, which was 43 per cent fewer than the previous year.

Much of this was due to a decline in compulsory liquidations and creditors' voluntary liquidations (CVLs) in this period, which decreased by 67 per cent and 39 per cent respectively. August 2020 also saw 110 administrations, 15 company voluntary arrangements (CVAs) and one receivership appointment. This means that there also were 50 per cent fewer CVA and 38 per cent fewer administrations than in August 2019.

Many see the sustained decline in insolvencies during the Coronavirus crisis as a reflection of the generous financial measures put in place by the Government, including the Coronavirus Job Retention Scheme and various loans. Many of these measures are now due to be withdrawn in the coming weeks and months. Although the Government has pledged new financial

support in its Winter Economy Plan and local lockdown announcements. However, many of these new initiatives do not provide the same level of support as before and are designed to only assist 'viable' jobs and businesses.

With almost half a million people already made redundant this year and many more still reliant on furlough, there are growing fears about a sudden and sharp rise in insolvencies in the latter half of 2020 and into 2021. As well as affecting corporate insolvencies, the withdrawal of support leading to a loss of jobs and assets, as well as growing debt, is likely to lead to a growing number of personal insolvencies.

However, personal insolvencies were also considerably lower in August 2020 – 6,359 in total compared to 8,892

12 months ago. Colin Haig, President of insolvency trade body R3, said: "There is no question that the pandemic is taking its toll on businesses and individuals, but this impact is not being reflected in the insolvency figures, yet.

"The Government's support measures have provided vital protection for businesses and consumers, but as they begin to wind down and this crucial safety net disappears, we expect to see more requests for personal and corporate insolvency advice and support."

**IF YOU ARE CONCERNED ABOUT THE IMPACT OF FINANCIAL MEASURES BEING WOUND DOWN OR REDUCED AND HOW IT MAY AFFECT YOUR CLIENTS' BUSINESSES, PLEASE CONTACT US.**

## Government provides new extension to COVID-19 insolvency measures

Several measures included in the Corporate Insolvency and Governance Act will be extended to support businesses in distress due to the ongoing Coronavirus pandemic. Changes designed to protect businesses from insolvency were introduced in the Corporate Insolvency and Governance Act earlier this year, but many were due to expire on 30 September 2020.

In light of further restrictions placed on businesses due to the growing infection rate in the UK, these measures have been extended. One of the measures to be extended is the restriction on statutory demands and winding-up petitions, which will now remain in place until 31 December 2020 to protect companies from "aggressive creditor enforcement action" due to COVID-related debts.

The Government has also confirmed that termination clauses are still prohibited, which prevent suppliers from ceasing their supply or asking for additional payments, while a company is going through a rescue process. However, smaller suppliers will remain exempt from the obligation to supply until 30 March 2021, allowing

them to protect their business if necessary.

Under the extension, the amendments to the new moratorium procedure, which is designed to give businesses a breathing space from creditors, will also be extended until 30 March 2021. These allow a company to enter into a moratorium if they have been subject to an insolvency procedure in the previous 12 months.

Finally, companies and other qualifying bodies with obligations to hold annual general meetings (AGMs) will continue to have the flexibility to hold these meetings virtually until 30 December 2020, allowing shareholders to examine company papers and vote on important issues remotely.

Business Minister Lord Callanan said: "It is vital that we continue to deliver certainty to businesses through this challenging time, which is why we are now extending these important and necessary measures to protect companies from insolvency. Through this measure, we want to ensure businesses are able to not only come through this testing period but also to plan, adapt and build back better."

**IF YOU ARE CONCERNED THAT ANY OF THESE MEASURES MAY AFFECT YOUR CLIENTS AND THEIR BUSINESSES AND YOU WOULD LIKE TO DISCUSS HOW WE CAN SUPPORT THEM, PLEASE SPEAK TO OUR EXPERIENCED TEAM AT NEWMAN AND PARTNERS.**

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