

Insolvency Bulletin



NEW RULES AIM TO AID INVESTORS IN SMALL FIRMS

New HMRC rules mean that, in some circumstances, liquidation may soon be the most cost-efficient route to follow in order to extract shareholder funds. Previously, it was possible for solvent companies to avoid having to liquidate to extract shareholder funds by deploying an Extra Statutory Concession (ESC C16).

Taking this route, a company could, subject to certain rules and with approval from HMRC, distribute surplus funds to shareholders which could be treated as capital. This would attract CGT, thus achieving the same tax position as liquidation - without the attendant costs.

Under the new regime, which comes into force on 1 March, there will be a £25,000 limit on the total amount distributed that can be treated as capital. The excess will be treated as income and attract tax at a higher rate.

The new policy, it is claimed, will enable shareholders in small businesses to benefit from their investment at the end of a company's life.

Government back-down welcomed by insolvency professionals

PRE-PACKS HERE TO STAY FOR NOW

The recent decision to drop an overhaul of pre-pack administrations is a welcome 'U' turn says John Travers.

Former employment relations minister, Ed Davey, has revealed that the government is "not convinced" of the benefits of changing the current system.



Liberal Democrat MP Ed Davey is now Energy Secretary.

There had been plans to notify creditors of a pre-pack deal, and allow a three-day period for a challenge to be made. These were in response to unease that despite 'saving' a business, pre-packs have left some shareholders and unsecured creditors with nothing.

John Travers says: "Pre-packs have long been controversial, not least that they prejudice the position of unsecured creditors.

"Personally, I am not aware of any particular case in which unsecured creditors have been left worse off. Indeed, most often they would have received nothing or next to

nothing in liquidation and lost any potential future sales to the business.

"On some occasions, I have seen unsecured creditors receiving a dividend or greater dividend and, in every case trade creditors, to the extent they wanted to, have benefitted from continuing as a supplier."

Creditors can play key role by reporting abuse

In response to the criticism that pre-packs can enable unscrupulous directors to eliminate debts and 'phoenix' a business, John says that creditors themselves can play a key role in reducing potential abuse.

He says: "If a creditor has good cause to complain, they can approach the IP concerned and, if they are not happy with the response, they should provide full details of their dissatisfaction to the IP's regulatory body.

"There is a common myth that the IP's regulators are soft. But, in order to regulate effectively, they need to be made aware of specific instances of bad practice."

He adds: "Without the pre-pack, it is likely that more firms would have had to close and more staff lost their jobs.

"In these tough times, a growing number of businesses are facing collapse, and I am delighted that the proposed changes have been dropped."

Insolvency Service and Companies House reveal changing trends

LIQUIDATIONS REMAIN LOW IN 2011

In the twelve months ending Q4 2011, approximately 1 in 138 active companies (or 0.7 per cent of all active registered companies) went into liquidation, unchanged from the previous quarter. The liquidation rate remains low compared to a peak of 2.6 per cent in 1993, and the average of 1.2 per cent seen over the last 25 years.

The number of active companies has changed considerably over this period; there were 2.4 million active registered companies in Q4 2011; this compares with only about 900,000 in the early 1990s and less than 800,000 in 1986.

In the twelve months ending Q4 2011, approximately 1 in 366 people became insolvent. This is down from 1 in 361 in the previous quarter. This level is currently still elevated compared to the annual average of 1 in 1600 (0.1 per cent) people seen over the last 25 years.

STATS SHOW BUSINESS POPULATION IN DECLINE

The Office for National Statistics has reported that for the second consecutive year, the number of businesses closing down has outnumbered business start-ups.

The report shows that there was a 7.4 per cent increase in business failures between 2009 and 2010 and that there was no increase in start-up businesses. The industries which show the greatest failure rates are:

- Construction with 27,000 start-ups but 44,000 failures;
- Business administration and support services with 24,000 start ups but 45,000 failures;
- Arts, entertainment and recreation with 14,000 start-ups but 21,000 failures.



Challenging Times

ANTICIPATING CORPORATE FAILURE

In these challenging times, it is essential that investors, advisers and other stakeholders are geared up to recognise the early warning signs of corporate failure, writes John Travers.

Research shows that most established businesses fail slowly over time. The decline curve is a well-known model, graphically demonstrating how problems start to compound, and decline accelerates as the business continues to underperform.

As a firm slides down the curve, the symptoms of its ill health become more and more apparent in its accounts, which statistical analyses of accounting ratios and credit ratings can confirm.

But as these are largely historic, it is often the bank that first witnesses the early warning signs of distress. Bosses will be well aware that suppliers are calling for payment, staff turnover increasing and premises and plant require attention. They will be juggling mounting problems on a day-to-day basis in a bid to keep the business afloat and may be in denial about the potential outcome of the deteriorating situation.

It has emerged that subjective views based on a wider understanding of the position of the business within its trading

environment as well as the mindset of its leadership are more important than the figures when getting a struggling business to face-up to the facts, to review strategy and to take the vital remedial action.

Expansion underway

TWO NEW FACES

John D Travers & Co is expanding its corporate team with the appointment of two insolvency specialists.

Nick West has joined the practice as insolvency manager, primarily focussing on the case management of business administrations and corporate voluntary arrangements, as well as supporting the restructuring of struggling ventures.

Nick graduated in Law in 2004, and secured his Certificate of Proficiency in Insolvency in June 2008. He is currently studying for higher level professional qualifications in order to apply for his insolvency licence.

Ravinder Kaur also joined the practice recently as an insolvency administrator. A graduate in Commerce Accounting and Business Law, she has eight year's experience in insolvency.

John Travers welcomes the new recruits: "The appointment of two such promising and enthusiastic candidates is part of our long-term strategy to recruit the best talent, bolster services and develop the practice."

OUR SERVICES

- Corporate Recovery
- Members' Voluntary Liquidations
- Creditors' Voluntary Liquidations
- Compulsory Liquidations
- Administrations
- Company Voluntary Arrangements
- Administrative Receiverships
- Law of Property Act Receiverships
- Partnership Voluntary Arrangements
- Business Advice
- Advice to directors
- Bankruptcy

For further information:

John D Travers & Company,
First Floor, 58 Hagley Road,
Stourbridge DY8 1QD

T 01384 374 000

F 01384 375 300

W johndtravers.co.uk

E john@johndtravers.co.uk

JOHN D TRAVERS & COMPANY

LICENCED INSOLVENCY
PRACTITIONERS
BUSINESS ADVISERS