



Financial**Recovery**

NEWSLETTER ISSUE - 12

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Changes to Insolvency Legislation effective from 1st October 2015

PROTECTION OF ESSENTIAL SUPPLIES

The Insolvency (Protection of Essential Supplies) Order 2015 (SI 2015/989) comes into effect on 1 October 2015. Its purpose is to give further protection to the essential supplies of insolvent businesses. The Order expands the scope of Section 233 (in respect of corporate insolvencies) and Section 372 (in respect of individual insolvencies) of the Insolvency Act 1986 to include a wider list of private suppliers of gas, electricity, water or communication services including the supply of utilities from a landlord to tenant. The scope of these sections is also widened to include the supply of certain goods and services that are made for the purpose of enabling or facilitating anything done by electronic means. These are:

- point of sale terminals;
- computer hardware and software;
- information, advice and technical assistance in connection with the use of information technology;
- data storage and processing;
- website hosting.

The Order also inserts new Sections 233A and 372A into the Insolvency Act to provide further protection for essential supplies in administrations and company and individual voluntary arrangements (but not in any other type of insolvency proceedings). Under these new provisions certain 'insolvency-related terms' in contracts cease to have effect, thereby preventing a supplier from terminating a supply or contract, altering the terms of the contract or compelling higher payments for the supply when a company enters administration or when a voluntary arrangement is approved in respect of a company or individual. The insolvency-related terms cease to have effect only in a contract for the supply of those utility and IT supplies listed under Section 233 and 372.

However, the supplier may terminate a contract if:

- the insolvency office holder consents,
- the court grants permission (which it may only do if it is satisfied that the continuation of the contract would cause the supplier hardship), or
- charges in respect of a supply incurred after the insolvency commenced remain unpaid for 28 days after the date due for payment.

The supplier may also terminate a supply if it gives the office holder written notice that it requires a personal guarantee to continue the supply and the office holder does not give the guarantee within 14 days.

Sections 244A and 372A only apply to contracts entered into after 1 October 2015.

BANKRUPTCY PETITION DEBT LEVEL

The minimum level of debt in respect of which a creditor can present a bankruptcy petition will increase from £750 to £5,000 for petitions presented on or after 1 October 2015. The change is introduced by the Insolvency Act 1986 (Amendment) Order 2015 (SI 2015/922).

BANKRUPTCY – AFTER-ACQUIRED PROPERTY – PROTECTION OF BANKERS

Section 307 of the Insolvency Act 1986 is amended so that a trustee in bankruptcy has no remedy against a banker in respect of a transaction relating to after-acquired property before notice under that section is served on the banker. This applies whether or not the banker has notice of the bankruptcy, and whether before or after notice under the section is served on the bankrupt. (DA 2015, section 19, Schedule 6, paras 12 and 16)

DEBT RELIEF ORDERS - CHANGES TO MONETARY LIMITS

The maximum level of debts for eligibility for a debt relief order is increased from £15,000 to £20,000, and the maximum value of property increased from £300 to £1,000. The change is introduced by the Insolvency Proceedings (Monetary Limits) (Amendment) Order 2015 (SI 2015/26)



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Validation of property dispositions after a winding-up petition Wilson V SMC Properties Ltd [2015]

The High Court has identified its approach in respect of granting validation orders, in considering an application to validate a transaction under Section 127 of the Insolvency Act 1986. Section 127 provides that in a winding-up by the court, any disposition of the company's property made after the commencement of the winding-up (presentation of the winding up petition) is void, unless the court otherwise orders. The principles behind Section 127 are concerned with the fundamental insolvency ethos to provide a *pari passu* distribution of a company's assets and prevent a dissipation of those assets to the detriment of general, unsecured creditors.

In this case the court also considered the interaction between the requirement of good faith and market value in the context of Section 127 of the Act. The court's view was that good faith does not relate solely to knowledge of the winding-up petition, but also extends to the value of the transaction. In summary, the prevailing judge said that the court "would be slow to validate a transaction if there were a significant reduction in the company's assets".

THFR Support Services – a brief synopsis

Insolvency law, rules and case law are constantly evolving. In order to render *your firm* with a comprehensive service, as Licensed Practitioners we will provide expert resources, free of charge. Indeed we will supply up to date FREE technical insolvency advice and support to **either you or your clients**. With many years experience, we are able to provide expert advice on various matters regarding insolvency to both debtors and creditors. Examples may include:

- Personal Guarantee advice
- Retention of title claims and validity
- Debt recovery advice and considerations
- Statutory Demands and Winding up petitions
- Bailiffs, Landlord and / or Council disputes
- Attendance at Insolvency meetings
- Advice on security
- Purchase of assets from an insolvent estate
- H M R C liaison

In summary, we will advise your clients on all insolvency related matters **FREE OF CHARGE**. Our goal is to work *with* you to provide your firm with additional service to your client.

This newsletter is for general information only and is not intended to be treated as advice to any specific person. It is recommended that appropriate professional legal advice is sought before acting or relying on any information contained in this publication.

SERVICES WE CAN PROVIDE

Business Rescue and Turnaround:

We use an extensive range of options, strategies and solutions to stop your business failing and shield the Directors, owners or managers from the firing line, putting you back in control.

Administration:

Usually instigated by the Directors or the bank, and used to provide protection whilst a solution is found.

Company Voluntary Arrangement:

Useful where a company has accrued aged debt which it is unable to service, but is profitable moving forward. An offer is then made to creditors for settlement based on affordability (requires 75% of creditors voting to vote in favour).

Liquidation of solvent or insolvent companies:

Results in the formal closure of the business entity
-solvent liquidations often provide tax advantages

Re-finance:

Seek new funding via bankers and private investors.

Individual or Partnership Voluntary Arrangements:

An alternative to bankruptcy, which allows individuals to offer to repay what they can afford to creditors and freeze the aged debt (requires 75% of creditors voting to vote in favour).

Bankruptcy advice:

We can advise on the options available and implications of bankruptcy on the individual.

REGAIN CONTROL, SECURE THE FUTURE

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