The Insolvency Service

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DEAR INSOLVENCY PRACTITIONER
Issue 106 – July 2020

Message from the Insolvency Service

Dear Reader

Please find enclosed the latest updates from the Insolvency Service, including the steps being taken during the COVID-19 pandemic.

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Article 25	Court Practice Directions for the Corporate Insolvency and Governance Act 2020 These links were inserted by R3 and was not on the original issue - https://www.r3.org.uk/technical-library/england-wales/legislation/guidance/more/29474/page/1/practice-direction-relating-to-the-corporate-insolvency-and-governance-act-2020/ https://www.r3.org.uk/technical-library/england-wales/legislation/guidance/more/29465/page/1/practice-statement-companies-schemes-of-arrangement-under-part-26-and-part-26a-of-the-companies-act-2006/

68) The Insolvency (Amendment) (EU Exit) Regulations 2020

On 30 June 2020 the Government laid the Insolvency (Amendment) (EU Exit) Regulations 2020 (the "2020 Regulations").

As insolvency practitioners will be aware, the UK left the EU at 11pm on 31 January 2020 and we are currently in a transitional period, during which there is no change to the insolvency framework that operates between the UK and the EU. EU rules continue to apply until the end of this period on 31 December 2020. As part of the Withdrawal Agreement with the EU it was agreed that the EU legal framework will continue to apply after that date to all main insolvency proceedings that are opened before the end of the transitional period.

The 2020 Regulations implement that Withdrawal Agreement in the UK and remove the conflicting provisions contained in the Insolvency (EU Exit) Regulations 2019 (the "2019 Regulations").

In particular the 2019 Regulations (which anticipated the UK leaving the EU without a withdrawal agreement) included an incompatible power for use by the courts when dealing with insolvency cases commenced under the EU rules. The power in question permitted a court to depart from applying the EU Insolvency Regulation, where for example creditor interests were prejudiced by a member State not treating the UK as a member State. That power is no longer needed, as the Withdrawal Agreement itself provides that the EU rules will continue to be applied by both the UK and the EU in respect of insolvency proceedings opened before the end of the implementation period.

Enquiries regarding this article may be sent to: Policy.Unit@insolvency.gov.uk

24) Voluntary Arrangements – HMRC's position going forward

This article explains HMRC's approach to variations and new proposals in respect of Individual Voluntary Arrangements (IVAs), Partnership Voluntary Arrangements (PVAs) and Company Voluntary Arrangements (CVAs) from 1 July 2020 until 30 November 2020.

Existing arrangements

Some companies or individuals subject to voluntary arrangements (VA), believe they'll continue to have difficulty in paying contributions because of COVID-19. In these cases, supervisors can use any discretion within the terms of the arrangement to allow a contribution break without reference to creditors.

For IVAs where the IVA Protocol Standard Terms and Conditions apply, clause 8(8) allows flexibility. For arrangements where this isn't an option, the supervisor should work with the consumer or company to understand whether the arrangement as it stands remains viable, or whether it would be viable if varied. This is a matter for case-by-case consideration and HMRC will not support 'mass variations' in connection with COVID-19.

For companies and individuals where the HMRC liability arises from on-going trading, HMRC support is given provided payment of post voluntary arrangement (VA) taxes is a priority.

HMRC recognises that paying these taxes whilst maintaining VA contributions will be a challenge for some as we emerge from the pandemic. HMRC will support variation of proposals:

- to allow contribution breaks in each of the two years following approval of the variation; these can be taken in aggregate or as on cases where the supervisor is satisfied that they are necessary and that they will enable post-VA taxes to be paid on time and in full,
- to allow any fixed duration to be extended to allow a catch-up of missed contributions.

HMRC may also:

- support a longer contribution break in appropriate cases, where this is likely to ensure the longer-term viability of the arrangement,
- agree to the deferral of equity realisation where the current situation prevents the debtor or company from complying with the existing deadline.

HMRC will look critically at variations that seek to end the arrangement early. HMRC is unlikely to support the removal of asset realisation clauses in any but the most exceptional circumstances.

New proposals

HMRC will continue to look at proposals within the framework set out in the **VAS help-sheet**.

The impact of COVID-19 means that a good history of paying taxes on time may no longer be a reliable indicator for individuals or companies proposing a VA. HMRC is reliant on insolvency practitioners reporting as fully as possible on the nature of the business, the impact of COVID-19 on its trade, what countermeasures have been taken and to bring their professional judgment to bear on the viability of the business and VA.

For those with a longer, less positive history, this objective reporting is even more critical. It should explain pre-COVID-19 tax arrears, as well as the impact of the pandemic on that business.

On new proposals, HMRC views the payment of post-arrangement taxes as vital. HMRS asks that practitioners look critically at how this can be achieved. Depending on the circumstances of the company or individual, HMRC would support a flexible approach, looking positively at:

- Variable contributions from the outset to accurately reflect cash-flow variations, and some limited flexibility for supervisors to reduce contributions temporarily,
- Contribution breaks in years one and two, as outlined above.

Given the substantial support that has been provided, HMRC would also expect to see that PAYE and National Insurance Contributions (NICs) arising from Coronavirus Job Retention Scheme (CJRS) payments have been paid. If not, these must be treated as priority payments in the arrangement, ahead of all other unsecured creditor claims (including other elements of HMRC's claim).

A condition of the CJRS grant is that related PAYE tax, employer NICs and pension contributions due on wages are paid. Until 31 July, a claim can be made for these for the hours the employee is on furlough. From 1 August employers will no longer be able to claim for employer NICs and pension contributions.

If practitioners become aware that a taxpayer may struggle to pay outstanding tax liabilities, they should contact HMRC as soon as possible. The taxpayers concerned may be eligible to receive support with their tax affairs through HMRC's Time to Pay service.

25) Court Practice Directions for the Corporate Insolvency and Governance Act 2020

The Lord Chancellor of the High Court, Sir Geoffrey Vos, with the approval of the Lord Chancellor the Justice Secretary, has by Order made new Court Practice Directions for the Corporate Insolvency and Governance Act 2020.

A new Schemes Practice Statement has also been published for the new Restructuring Plan under Part 26A of the Companies Act 2006.

Both of these documents are attached to this issue of Dear IP.

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