INSOLVENCY UPDATE

MESTON REID & Co
CHARTERED ACCOUNTANTS

Introduction

The January blues have been banished and as we venture into 2019, one wonders what challenges will be faced. Looking back at 2018, some have remarked that it was something of a zombie year in the North East from an economic viewpoint because house prices struggled to show any movement, the continuing supply of commercial properties on the market meant stagnation of rent levels, the bank base rate only changed once : from 0.5% to 0.75% in August 2018 (the last time base rate was 1% was in February 2009), and Brent crude averaged about US $70 throughout the year.

Much of the media attention seemed to focus upon Brexit but one suspects that the reality of economic factors throughout 2019 will be influenced by the level of trade that Scotland has with the rest of the UK and how the ongoing spat between China and the US evolves.

Meantime, anecdotal evidence in the North East suggests that whilst the oil and gas industry is beginning to gain some traction, many of the higher paid jobs tend to be ad-hoc contractor tasks rather than permanent full-time positions.

An interesting 2019 awaits us.

More bad guys!

Late last year a businessman based in Stirling was banned from being a company director for nine years i.e. cannot be directly or indirectly involved without the prior permission of court, in the promotion, formation or management of a limited liability company. Euen Snowie owned a company which was liquidated in March 2016 and, shortly after, he was sequestrated, as was the partnership in which he had an involvement. The liquidator's enquiries showed that Mr Snowie transferred £161,000 of assets from the company in liquidation (presumably he did not tell the liquidator of such transaction!) in order to help reduce personal debts.

In another case, Brian Chalmers from Edinburgh was banned for six years from being a director because he failed to ensure that the company maintained adequate accounting records, did not file statutory accounts with Companies House, failed to deliver accounting records to the liquidator, and allowed the company to make payments to a third party of just over £180,000 without adequate explanation.

Once a Disqualification Order has been granted by court, The Insolvency Service are always keen to publicise the result in the hope of demonstrating that delinquent directors should be aware of the long arm of the law and therefore think twice before acting inappropriately.

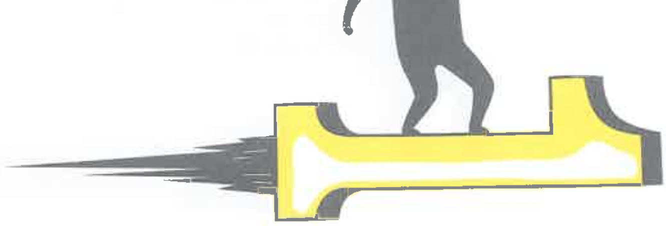
New corporate insolvency rules for Scotland

With effect from 6 April 2019 some of the Scottish insolvency procedures will be updated. The changes are designed to contain some of the administration costs inherent in any formal insolvency process and therefore enhance dividend prospects for the general body of creditors. For example, the new rules have more modern language and follow a more logical structure in order to make them easier to understand.

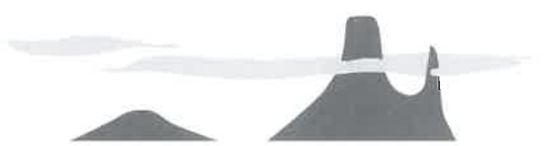
There are significant changes to the way in which decisions are made in insolvency proceedings e.g. holding virtual meetings, having more information available on the internet rather than sending vast amounts of documentation to creditors, and abolishing the need for a final meeting in a liquidation. The fact that creditors can now opt out of receiving correspondence, particularly by post, will help to reduce costs.

Allowing an office-holder to write to creditors advising that a fee will not be claimed in a specific accounting period rather than making an application to court will contain costs, as will the change to filing requirements where an administration converts to a creditors voluntary liquidation. Further, the fact that the new rules merely advise how a notice, report or return is to be organised rather than enforcing the use of a prescribed form means that more flexibility is introduced to the system.

The insolvency profession in Scotland has been waiting many years for a consolidation of existing legislation/rules and whilst course attendance is almost mandatory in order that the insolvency practitioner and staff are aware of all the changes, a few teething issues may emerge during the familiarisation process. Please be patient.



12 Carden Place, Aberdeen
AB10 1UR, Scotland
T/ +44 (0)1224 625554
F/ +44 (0)1224 626089
E/ info@mestonreid.com
www.mestonreid.com



Corporate insolvency statistics

Whilst the fourth quarter statistics are awaited for calendar year 2018, it is instructive to note that the third quarter statistics show 232 company insolvencies in Scotland (an increase of 1.3% compared to the same period in 2017) of which 212 were liquidations.

Reviewing a recent survey by the Association of Business Recovery Professionals "R3", the resultant report suggested that companies between four and nine years of age, with a turnover of less than £1 million and employing between 20 and 40 people, have the highest rate of insolvency. The R3 report also remarks that once a company becomes established and grows to a certain size, it is not as nimble as smaller competitors but is too small to enjoy the economies of scale seen in larger companies. Further, companies trying to expand often encounter difficulties such as the founders refusing to "let go" and trust new management, whilst new products or methods of working do not always perform as well as expected despite significant investment. As one might expect, R3 comment that access to finance and limited over control working capital is a key challenge. The board of any small/medium company must always be alert to the benefits of financial forecasting and keeping a very close eye on cash flow.

Always remember : cash is king.

Brexit

Nothing is complete at the moment without some reference to Brexit. The government has made it clear that it is in the interests of the UK and the EU that there continues to be an effective framework for resolving cross-border legal disputes, in the event of Brexit, and that includes insolvency issues. As part of the preparations, the government published the rather snappily titled The Insolvency (Amendment) (EU Exit) Regulations 2018 which contemplates some of the issues which might arise upon leaving the EU in a no-deal scenario. The document seeks to address deficiencies that arise in relation to cross-border insolvency, particularly EU Regulation 2015/848 and the problems likely to arise by the UK exit from the EU in relation to the Employment Rights Act 1996 and the Pension Scheme Act 1993 which set out certain guaranteed employee protections upon the insolvency of an employer.

Not very exciting for many perhaps but, the insolvency profession must be prepared for all eventualities.

Who is handling my case?

As noted in the March 2018 Update, the Meston Reid & Co insolvency team has experience of a wide number of cases, both formal and informal. Sarah Bedford is part of the team and she answers questions below :

When did you join? 26 April 2011

Most interesting case? The sequestration of a local professional adviser. It has thrown up many unique and interesting challenges.

Best bit of advice that you have received? Don't be too impatient : what is before you won't go by you. Thanks Mum!

Best bit of advice that you would give a company director? Understanding your options is essential when your company is in financial distress. Don't be afraid to talk to someone, ideally Meston Reid & Co.

Married with children? Married Alan in October 2014. Our beautiful little daughter Lyla arrived in October 2015.

What is your favourite song and why? Crazy in Love by Beyonce. It brings back many happy memories.

Any unusual hobbies? I'm fascinated by criminal psychology and can often be found reading true crime books and watching documentaries about serial killers.

What is your exam qualifications status to date?
Awarded an honours degree in law from the University of Aberdeen in 2009. I obtained a Certificate of Proficiency in Insolvency from the Insolvency Practitioners Association in 2012 and sat the UK-wide joint insolvency exams at the end of 2018 – results awaited!!

GDPR

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Conclusion

This Update is provided for general interest purposes and does not purport to offer definitive advice. Please contact either Michael J M Reid (reidm@mestonreid.com) or Michelle Byrne (byrnem@mestonreid.com) if you wish to discuss anything raised herein.

Thank you for taking the time to read this Update and feel free to pass it to anyone who you think might be interested in reading it.

Meston Reid & Co