MESTON
REID & Co
CHARTERED ACCOUNTANTS

INSOLVENCY UPDATE

Introduction

In December 2020 there were harbingers of doom regarding the number of corporate and personal insolvencies that would occur in 2021. Whilst a number of business are reported to have closed, wholesale insolvencies have not happened which for many, is a cause of great relief. That said, there are clear signs of "zombie" companies who have managed to plot their way through 2021 by means of grants, bounce-back loans, furlough support, repayment agreements, etc. without changing their basic economic model. That cannot last forever.

Recent information published in The Gazette indicated the following Scottish company statistics (England in brackets) for quarter three of 2021 :

- 33 court liquidations (105)
- 182 company voluntary liquidations (3,471)
- 16 administrations (169)
- 0 company voluntary arrangements (20)

Curiously perhaps, the Scottish statistics do not bear close comparison to a country with ten times the population, but of course, one has to take statistics with a pinch of salt because one liquidation with liabilities of £50,000 creates the same statistic as a liquidation with liabilities of £50 million. Generally speaking, 2021 has been fairly quiet for handling formal insolvencies. It may be that the harbingers of doom are correct : but were simply one year too early, because one can see an upturn in requests for advice from company directors and individuals, trading or otherwise, who are encountering cash flow problems. Indeed, the recent restrictions on social gatherings will not help those businesses in the hospitality, events industry or high street sectors survive another challenging Winter.

We shall see what challenges 2022 has to offer but meantime, the support and referrals from the local business community have been much appreciated. Thank you.

Cause of liquidation : Cyber attack

A growing number of cases are being reported of cyber attacks. For example, the Mail on Sunday published a story about an attack on jewellery firm Graff where it is alleged that more than 69,000 confidential documents with details of famous/celebrity customers would be released to the public if a large sum of money was not paid to a criminal gang. In another situation, Recovery News (a regular insolvency publication) in October 2021 referred to a ransomware attack on a large firm of professional advisors. Some of the ransomware demands have been substantial and, for example, demands of up to £1 million are not considered unusual.

Any firm of accountants or lawyers will hold significant amounts of personal data including bank accounts, dates of birth and national insurance numbers : all particularly useful to a criminal with malevolent intentions.

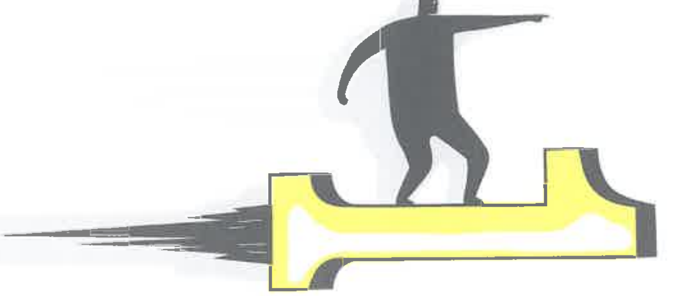
If a ransomware attack results in a huge claim and the insurer declines to pay on the basis that the company being attacked took insufficient steps to protect its data, the ability to fund a ransom might be lost, resulting in both corporate insolvency…..and perhaps even worse for a professional firm, a substantial negligence claim because personal data has been made public.

All businesses need to take care.

Crown preference : one year later

With effect from 1 December 2020, HMRC reverted to being a preferential creditor for dividend purposes in formal insolvencies. The law was changed in order that HMRC could receive full payment of VAT, PAYE and employee NIC deductions before anything was paid to either a bank holding a floating charge or unsecured creditors. Many commentators suggested that this would result in less creditor engagement with a formal insolvency process because the chance of a meaningful dividend would be reduced significantly. Others suggested that banks and other specialist creditors might take steps to ring-fence assets in a more creative way in order to retain their position in the event of corporate failure.

The statistics quoted above regarding corporate insolvencies have yet to manifest themselves sufficiently to allow meaningful comment about whether there has been any difference in focus when either a liquidation or administration incepts.



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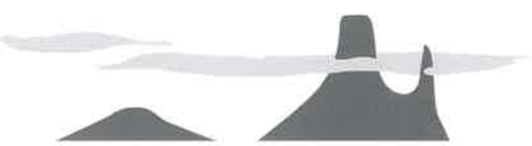

Indeed, anecdotal evidence, together with the experience of insolvencies handled by Meston Reid & Co in 2021 suggest that directors took little notice of the change in legislation because they were more interested in the bigger picture e.g. acting responsibly when it became apparent that a company was insolvent with no realistic prospect of recovering. No comment to date from creditors, because they have been largely blocked from liquidating companies due to Covid-19 legislation which sought to protect entities whilst they dealt with the economic pressures of lockdowns etc.

Recent pronouncements from HMRC indicate that they are not keen to embark upon a liquidation quest, but wish to work with companies in order to manage and recover a debt where possible. Banks appear to be supportive of their customers (with notable exceptions where there are specific reasons) and thus, it is perhaps too early to say whether the change in Crown preference has made any difference to the decision to liquidate.

ICAS Code of Ethics : Insolvency Practitioners

The Institute of Chartered Accountants of Scotland updates the Code of Ethics on a regular basis in order that best practice is always maintained. At the forefront of the delivery of professional services an updated Code will be launched in January 2022 and is designed to promote the role, mind set and behavioural characteristics expected of all professional accountants. Indeed, ICAS has been promoting "The Power of One" for many years which seeks to place ethical leadership at the heart of professional responsibilities and, for example, encourages a chartered accountant not to shirk from challenging what appears to be wrong : ethically, morally or legally. The 2022 Code of Ethics tightens the focus of how an insolvency practitioner should act, with particular reference to conflicts of interest. The fundamental principles of the Code of Ethics remain :

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

Any insolvency practitioner not acting in accordance with the Code of Ethics might expect an inquisitive call from ICAS in order that ICAS can meet its focus of protecting and promoting the public interest.

Who is handling my case?

The Meston Reid & Co team has experience of a wide number of cases, both formal and informal and Zaneta Resiak is an integral part of the team. She joined Meston Reid & Co in March 2018 and passed her Certificate of Proficiency in Insolvency (Scotland) with merit in January 2021. Let's get to know her :

Best bit of advice that you have received?

It is drawn from the Admiral Grace Hopper's quote "It's easier to ask forgiveness than it is to get permission" because it encourages me to take small risks in order to succeed at something rather than wait for the permission and lose the opportunity. I found it very useful in various situations.

Favourite Christmas movies?

It has to be Elf and Home Alone.

Home Alone has become a family tradition now and must be watched at least once over the festive season.

Any unusual hobbies?

I am quite an active person and learned to roller skate in the first lockdown. I still consider myself a beginner and can often be seen skating in the firm's car park in the summer learning new moves.

Where were you born?

I was born in Poland and moved to Aberdeen in 2006. I've settled in well and love the people, city and culture.

Educational profile?

I have a bachelor's degree in sociology, specialised in psychosocial counselling.

Would you advise others to become involved in the insolvency sector?

Absolutely. Insolvency provides an interesting and challenging career which provides an exciting variety of duties every working day and allows me to develop a diverse skill set.

GDPR

The names and addresses contained on the Meston Reid & Co Insolvency Update database are used only for this communication. If any reader wishes to be removed from such database, please e-mail ryriel@mestonreid.com.

Conclusion

This Update is provided for general interest purposes and does not purport to offer definitive advice. 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

December 2021