

INSOLVENCY UPDATE

Introduction

The challenging financial circumstances reported in the media are beginning to be apparent in the number of insolvency enquiries : both personal and corporate. It is hard to predict how the economy will react to persistently higher interest rates, but rest assured the Meston Reid & Co insolvency team will always be available to provide advice and support as required. 2023 could be a bumpy ride for many.

Insolvency numbers in Scotland

The Insolvency Service “TIS” produces regular updates for public reference. Their November publication reflects that in October 2022 there were 82 company insolvencies, a 22% increase compared to October 2021. This comprised 19 court liquidations, 55 creditors voluntary liquidations and 8 administrations i.e. no company voluntary arrangements or receiverships. TIS comment that the volume of company insolvencies in Scotland tends to have been dominated by court liquidations, but since April 2020, there have been three times as many creditors voluntary liquidations as court liquidations.

This may well be due to a combination of the cost of a court liquidation process and the speed of being able to assume control of a company’s assets by the liquidator. Interestingly, between June 2020 (when the Corporate Insolvency and Governance Act 2020 was introduced and 31 October 2022) there were no moratoriums in the whole of Scotland and only two restructuring plans registered at companies house. Again, this may well be because the 2020 legislation was directed at larger entities whereas most of the Scottish liquidations are smaller and do not tend to feature complex group structures.

HMRC : back on the prowl

Prior to Covid-19, HMRC were probably one of the largest instigators of liquidation appointments, which many consider to reflect the fact that HMRC are an involuntary creditor who, unless they act proactively, tend to be left until last for payment. Whilst HMRC might represent a form of cheap borrowing for companies who are struggling to pay other creditors, it is taxpayers’ money that is being lost and thus, not in the public interest to allow huge HMRC debts to accumulate and remain unpaid. Now that Covid-19

restrictions have been removed, HMRC have reinstated debt collection procedures akin to what existed before 2020 and this has resulted in various “advisors” offering their assistance in negotiating repayment plans with HMRC : corporation tax, PAYE, NIC, VAT, self assessment income tax etc.

Experience suggests that local advice is a more practical and reliable support mechanism, because negotiations can be based upon local conditions rather than those that prevail in Scotland generally, or the UK. Further, if HMRC are to agree a repayment plan, this will often include a requirement for the advisor to maintain a watching brief over the company’s financial performance, which may include visits to the company such that, if there are to be repayment programme variations, they are based upon valid reasons.

Using a faceless advisor based in Manchester or London is unlikely to be cheaper than local rates, and provides little in the way of personal service.

Aberdeen call centre boss : four year disqualification ban for £1 million tax abuse

A press release from The Insolvency Service last month referred to Liam McCreadie from Aberdeen who was disqualified from acting as a company director for a four year period after failing to pay more than £1.1 million in taxes and not submitting tax returns for two companies. Mr McCreadie was the sole director of both companies which were subject to creditors voluntary liquidation proceedings under the hand of the Aberdeen office of a national firm of insolvency practitioners.

As readers will know, a Disqualification Order is registered at companies house and thus, public information. Whilst a Disqualification Order is in force, the person cannot be a director of another UK limited liability company and, this includes taking part in forming a company as well managing it. Current guidance notes indicate that being concerned in the management of a company may include such activities as :



- Undertaking tasks in relation to the company's business e.g. ordering, paying or negotiating with suppliers/customers, renting or buying business premises, hiring or dismissing employees, and dealing with the company bank account.
- Acting as a management consultant to the entity.
- Acting in a governing role within the company.
- Taking executive decisions as to the company's affairs, or making it seem to external parties that you are in a position to take such decisions.

Clearly, as Mr McCreadie found out, running a limited liability company provides certain benefits, but there are also statutory obligations which, if ignored, could result in significant loss.

Can the liquidator help in the fight against fraud ?

It is often said that challenging economic conditions create financial uncertainty, and result in an increase in fraudulent activity by the unscrupulous. For example, the Covid-19 pandemic caused major financial upheaval for almost everyone and many reports of fraud have been published. One might point to the incidence of furlough fraud, which occurred when an employer claimed furlough support from the Government despite the fact that an employee was continuing to work. Various estimates suggested that up to 9.6 million workers benefitted from the furlough scheme : a welcome support mechanism for many, but not the subsequent estimate from HMRC that at least 30,000 companies made fraudulent claims. How were these false claim monies utilised/abused ? We may never know.

Further, a Parliamentary report in 2021 suggested that nearly 40% of bounce-back loans totalling £17 billion would never be repaid, with another £5 billion being lost due to fraud and error. We now know that some company directors inflated annual turnover in order to claim a bounce-back loan to which the company was not entitled, only to remove the cash from the company for personal purposes as soon as it was provided, and sometimes not long before the company collapses into insolvency.

A briefing paper issued by the Association of Business Recovery Professionals "R3" in October reported a 41% increase in fraud since 2019. R3 estimated that 64% of businesses were affected by either fraud or corruption, and that there was a 422% increase in fraudulent applications for grants. When you work hard for money, it is always frustrating when some people defraud the system.

In the fight against crime, it is not unreasonable to ask if a liquidator has a role to help recover monies either for the Government or the general body of creditors of a company which has collapsed after the directors have disappeared with all the money?

One of the challenges in detecting fraud is the ability to obtain documents that support an allegation. Of course, if a company is in liquidation, the liquidator has authority to locate, secure and review the company's accounting records e.g. bank statements, cash book, invoices etc. This provides a quick and effective route to help determine what has happened rather than embark upon a time-consuming court process to try and recover documents for examination. Further, a liquidator has legal authority to interview directors either informally or before a sheriff and, of course, report the conduct of directors to the Director Disqualification Unit. It is not uncommon for a large creditor, often HMRC, to help fund a liquidator's investigations on the basis that recovery of monies (which will ultimately benefit the taxpayer) is expedited and directors brought to justice.

The role of a liquidator helps to speed up the process of obtaining documents, liaising with regulatory bodies and instigating legal action which may well result in a better financial return to the general body of creditors. Using a liquidator and the powers provided under the Insolvency Act 1986 can provide a significant deterrent to fraudsters if they know that a liquidator might be on their tail with the many investigatory powers provided by law.

GDPR

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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