

Welcome to Mackrell Turner Garrett's Focus On Insolvency Practitioners, our quarterly bulletin focusing on insolvency-related news and developments and how Mackrell Turner Garrett's services can be of assistance.

If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact James Atton at our London office on 00 44 (0) 207 240 0521 or at james.atton@mackrell.com or John Dudley at our Woking office on 00 44 (0) 1483 755609 or at john.dudley@mtg.uk.net

BILL SET TO BRING INSOLVENCY CHANGES

New legislation designed to reduce barriers that can hold back small businesses from growing and competing includes changes affecting the insolvency regime.

The Small Business, Enterprise and Employment Bill incorporates measures that the government says will "streamline insolvency law to remove unnecessary costs and ensure effective oversight of insolvency practitioners."

The legislation is also designed to strengthen the director disqualification regime. It includes measures to:

- enable liquidators and administrators to sell or assign to third parties, e.g. creditors or insolvency litigation firms, certain rights of action that only they can bring under the Insolvency Act 1986 and to extend to administrators liquidators' right to bring fraudulent and wrongful trading actions
- remove physical meetings of creditors as the default decision-making process in insolvency proceedings, including abolishing final meetings in bankruptcy and liquidation
- allow an insolvency office holder to pay certain dividends without a creditor having to submit a claim and remove the requirement that they must seek the creditors' approval for routine actions
- introduce a reserve power to prohibit pre-pack administration sales to connected parties if certain criteria are not met, to be used if voluntary solutions do not have the desired effect
- extend the period for applying for a disqualification order after a corporate insolvency from two to three years
- give the courts and the Secretary of State the power to make a compensatory award against a disqualified director, in favour of one or more creditors of an insolvent company
- allow the Secretary of State to seek disqualification of someone convicted overseas of an offence in relation to a company from acting in the management of a UK company.

The Bill will also include measures to strengthen the regulatory framework for insolvency practitioners, including introducing regulatory objectives to give regulators a clear framework within which to work.

The Bill completed its committee stage on 6 November, with a report due to be presented to the Commons on 18 November.

James Atton said: "While the final form of the Bill is still to be decided, insolvency practitioners may find it helpful to seek expert legal advice on the implications of these proposed changes now as well as when the Bill becomes law. Please contact us if you would like further information or advice."



IP COMPLAINTS INCREASE BY A QUARTER

Complaints about insolvency practitioners have risen by a quarter since a new process for making complaints was introduced.

The Insolvency Practitioners' Complaints Gateway, launched in June 2013, provides a single point of entry for complaints about insolvency practitioners and allows the Insolvency Service to monitor the number and nature of complaints as well as their outcomes. Previously, complainants had to establish which of eight authorising bodies they needed to approach.

A report published by the Insolvency Service on 22 August showed that 941 complaints were received in the Gateway's first 12 months compared with 748 in 2013, an increase of 25.8 per cent. Other findings included:

- of complaints received, 699 were referred to regulators (74 per cent), 170 were rejected (18 per cent) and 72 complaints were being processed (eight per cent)

- most complaints referred to regulators were made by debtors and creditors in insolvency cases. Of these, 190 were closed by regulators in assessment and 272 transferred to investigation, with 66 investigations concluded and 206 ongoing
- where regulators had concluded complaints cases, a formal warning was issued in three cases
- of 31 complaints referred to the Secretary of State, 20 were subject to ongoing investigation, seven were not upheld and four were partially or fully upheld.
- the most frequent causes of complaints involved Individual Voluntary Agreements (32 per cent), administrations (25 per cent), liquidations (21 per cent) and bankruptcy (15 per cent)

Insolvency Service chief executive Dr Richard Judge said: "The detail that we now see routinely is informing our understanding of the nature and number of complaints about insolvency practitioners. It also helps us better monitor the way in which complaints are dealt with by the regulatory professional bodies (RPBs).

"This improved insight is enabling us to tackle recurrent issues: for example, we identified a pattern of complaints about the time taken to close Individual Voluntary Agreements (IVAs) which led to a change in the way some RPBs approach this issue."

Graham Rumney, chief executive of insolvency trade body R3, said: "The Gateway is a significant improvement on the process it replaces and we were pleased to see it introduced. We look forward to working with the Insolvency Service to further develop the Gateway and other initiatives that will help creditors and debtors get a fairer deal from insolvency."

Mackrell Turner Garrett's James Atton said: "While tens of thousands of cases are handled by insolvency practitioners each year, it is encouraging that so few complaints are made. As a law firm experienced in working with insolvency practitioners, Mackrell Turner Garrett is ideally placed to provide any legal support necessary in the event of a complaint. If you would like more information, please contact us."

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