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BEWARE THE

Unregulated Insolvency Advisor!

Last year R3, The Association of Business Recovery Professionals, launched a campaign to warn about the risk of using unlicensed insolvency advisors and produced a very helpful guide which can be found on our website.

The problem of unregulated advisors is not a new one but something that has grown over the last few years. The guide highlights some of the common marketing phrases these firms use, including:

- We act for you, not your business' creditors
- Don't take advice from an insolvency practitioner, as they only act for your creditors, whereas we act solely for you
- We can offer you an alternative way to close down your company, leaving you free to launch a new

business debt-free

- We have a way to allow you to continue trading, keep your assets and yet benefit from writing off all your debts

Late last year we experienced one situation with a client and so we thought we would share the story as an example of the advice being given by the unregulated advisor.

Our client X Limited had contacted us via his accountant and after an initial meeting it was clear that the Company had in effect ceased to trade and was insolvent. The director wished to wind the Company up and we were instructed to place the Company into liquidation.

The director asked lots of questions about the process and wanted to ensure he was doing the right thing. The liquidation was explained in great depth and all questions were answered.

A new style decision process was called to place the company into liquidation and on the day of that meeting the director arrived very concerned because he had been contacted by an advisor and was now unsure whether the liquidation was right for him.



He provided me with copies of the correspondence he had exchanged with the 'UK's leading Unlicensed Insolvency Practitioners & Insolvent Business Acquisition Specialists'. He had discussed the situation on the phone with them and thought he may take on this firm and cancel the liquidation process.

However, he was concerned about what they offered so I reviewed the paperwork he had received. The unregulated advisor's offer was as follows;

- The advisor would buy the Company for a nominal £1.
- The director would resign and the advisor replace him.
- He would be free of his debts and free to get on with his life.
- When we read further through the terms and conditions the actual fees would be £5,000 plus VAT or 10% of the liabilities remaining on acquisition whichever is the greater.

In this example the unsecured liabilities were £165,619 so a fee of £16,561, although the unregulated firm had agreed a discounted fee of £9,400 plus VAT. However of those unsecured liabilities £45,000 related to a directors loan account and there were other creditors which the director had personally guaranteed in

any event, so he would not be free of some of his debts, as we had already explained to him.

I also pointed out that within the terms that the advisor had provided, whilst the advisor would try to have the Company struck off, he reserved the right to put the Company into liquidation.

In the end the director agreed the liquidation was the best way forward and we were appointed as the liquidator on that day.

To conclude the story I then found out on 8 January of this year the unregulated advisor was placed into provisional liquidation by the Official Receiver to protect the public interest. We are aware that these advisors commonly chase directors who have received a CCJ and so are aware that the Company may be having cash flow problems. PBC receives the same data and where possible we contact the accountant to make them aware of the situation so they can explain to the client that they may receive this sort of approach.

I hope this provides a clear example of the benefits of advising clients to seek professional help from a licensed insolvency practitioner. PBC offer initial meetings which are free of charge and confidential.

Blog written by Gavin Bates



FOCUS ON

Individual Voluntary Arrangements

An Individual Voluntary Arrangement (IVA) is a legally binding agreement between an individual and their creditors. The agreement sets out a payment plan to repay creditors either in full or an agreed percentage of their debts.

Objectives of an IVA

The objectives of an IVA are:

- To give an individual the opportunity to make a formal proposal to settle their unsecured debt within a reasonable time frame.
- To give creditors a better financial return than if the individual was to be declared bankrupt.
- To freeze interest and charges and

prohibit creditors demanding additional payments.

What does an IVA Consist of?

The individual must declare all unsecured debts in an IVA and discuss the proposal they feel capable of meeting. The proposal includes details of the individual's income and expenditure with a statement of assets and liabilities and a comparison to the expected outcome in bankruptcy.

IVA proposals generally fall into one of the following categories:

- Monthly contributions from surplus income (usually over a period of five years).
- A lump sum from a third party.
- The sale of assets owned by the debtor.
- A combination of the above.





What Protection is Available to a Debtor?

Should the circumstances dictate, the debtor can apply to the court for an interim order. The court, on considering the debtor's financial situation and outline proposals for an IVA, may grant an interim order which prevents creditors from taking action against the debtor (including bankruptcy petitions) whilst the IVA proposals are prepared, sent to creditors and considered.

How is an IVA Agreed?

The IVA proposal is produced (usually with the assistance of the insolvency practitioner) and the debtor nominates an insolvency practitioner to act as nominee. The nominee, if he believes the IVA is likely to be accepted by creditors, serves the proposal on creditors, together with a

date for a decision procedure. Creditors may approve, modify or reject the proposal.

What Happens After an IVA is Agreed?

When the proposal is approved, the nominee becomes the supervisor (or the creditors can choose to appoint an alternative) and takes responsibility for implementing the arrangement in line with the terms of the proposal. The supervisor is responsible for receiving payments proposed within the IVA and distributing them to creditors in line with the terms of the proposal. The supervisor may also consider requests to vary the terms of the arrangement and present such requests to the creditors. In the event of default on the terms of the arrangement, the supervisor may petition for the debtor's bankruptcy.

What Services can PBC Business Recovery and Insolvency Undertake?

- We can advise you whether an IVA (and interim order) is appropriate.
- Where appropriate, we will firstly assist you with the preparation of the proposal.
- We will then act as nominee and convene the decision procedure.



CHARITY

Presentation

On 9th November Kym Carvell and Jamie Cochrane of PBC Business Recovery and Insolvency travelled up to Ronald McDonald House at Alder Hey in Liverpool to present Denise Byrne from the charity with a cheque for £3,303.48. The money was raised on their sponsored walk earlier in the year from London to Northampton along with various other events which were run by PBC to support their chosen charity.

The Ronald McDonald House at Alder Hey Hospital accommodates families with sick children being treated at the hospital free of charge. The home costs on average £600,000 a year to run but normally only receives donations of £450,000 a year and there is no other support towards the costs of the home. Therefore, the amount raised by PBC equates to keeping the whole home open for 2 days.

Kym's baby grand-daughter Billie-Marie was born 10 weeks premature with a number of health issues last in



2016 and the home provided somewhere for her parents to stay close by at this difficult time. Billie-Marie has unfortunately had to return to hospitals on a couple of further occasions and once again the home were there to support her parents.

The visit coincided with Billie-Marie attending the hospital for some routine appointments the results of which were extremely positive! Everyone was also surprised to learn that a leaf on the tree of life at the House is now sponsored by PBC and has a plaque with Billie-Marie's name on.



PBC will be running further fundraising efforts in 2018 – see page 14 for the first!



THE PERIL OF

Working With a Big Company

How many times have you heard the story of a SME securing that “Life changing” contract with a big company?

While many can look back and say that really was a life changer, too many fall into an ever-decreasing financial circle. All is going well until the SME gets told the previously agreed unit price is being revised (usually down) while the double-whammy is the large company also dictates when and how much the SME will be paid. Others, such as those working for Carillion Plc, find they are increasing their exposure while the contractual terms oblige them to continue working (with no guarantee of payment) or face potential claims for (say) unilateral breach of contract.

The Government highlight the late payment interest legislation but their stance is based upon vote winning and not the hard reality of business where the larger corporations will simply ignore such demands with the threat you continue working under their preferred conditions or lose the contract entirely.

I mention Carillion but lest we forget others like British Home Stores, Habitat, Mark One, Toys “R” Us and 56 football clubs that have been subject to insolvency; some multiple times.

It is so easy to sit and write this but when an SME has that large corporation opportunity it can be like offering a starving person food. It takes a brave person indeed to turn down such a business opportunity.

The Achilles heel always seems to centre around the terms of contract. Large corporations will generally lay down their terms. Our advice would be to consult your solicitor and ensure there are safeguards for the SME in that contract. Okay, that may be a deal breaker but what do you prefer, a contract that benefits both parties and encourages success or to sit in front of an insolvency practitioner telling a tale of woe as your business ceases to trade because it could not trade under the conditions imposed? Is that really a tough choice?

Should you need further convincing just think of the 30,000 businesses and the £1.5 billion of unpaid debt Carillion has left in its wake. One of those has already spoken to PBC and is wondering how his business will survive losing the £800,000 Carillion owe. At PBC we are certain this business is not the first victim of Carillion where the owners now see the life changing experience being one of detriment and loss.

Blog written by Gary Pettit



STATUTORY INTEREST ON

Corporation Tax in Solvent Liquidations

This blog is for accountants, tax advisors and directors who are considering a solvent liquidation, commonly referred to as a Members' Voluntary Liquidation or MVL.

During the course of 2017 we have been informed of what appears to be a change of policy by HMRC in respect of statutory interest on Corporation Tax. HMRC now require the payment of statutory interest at 8% from the commencement of the liquidation on any CT that falls due for payment after that date, even if the normal due date for payment of the tax is not until after the commencement of the liquidation, and payment is made before the normal due date.

HMRC are relying on a decision in one of the Lehman's cases for this change in policy. That case indicated that statutory interest was due on both future debts and contingent debts, and since CT payable on a normal due date after the commencement of a liquidation is a future debt then statutory interest falls due. Whilst that judgement related to an

administration, HMRC are arguing that in view of the similarity in wording in the legislation it applies equally to liquidations. The standard letter that they are sending to liquidators with demand for statutory interest says:

"Our understanding of the correct treatment of statutory interest derives from the decision of David Richards J in Re Lehman Brothers International (Europe) : Lomas v Burlington Loan Management Limited. In a supplemental decision he restates his conclusion that "interest under Rule 2.88 (statutory interest) is payable on future debts and on the amount admitted to proof in respect of contingent debts from the date on which the administration commenced".

Rule 2.88 mirrors Rules 14.23 which applies to a winding up. We are assuming it will also apply to other taxes (VAT, PAYE and NIC etc.)

To make matter worse it is clear that HMRC themselves don't understand or haven't made their staff aware of the change of policy. We have had cases where we have paid the statutory interest and it has been paid back to us. The current advice is to pay the CT to the normal office but send the statutory interest to HMRC's MVL team!



Therefore if you are considering a solvent liquidation, further planning will be required to calculate and more importantly pay any tax debts at the commencement of the liquidation (or as soon as possible thereafter) in order to minimise statutory interest.

Gavin Bates specialises in solvent liquidations, commenting on the change Gavin said:

“This is effectively a hidden tax on

entrepreneurs since HMRC are receiving interest that would not be due other than for the decision to cease trading to permit the members to extract their capital from the company. I also find it very unfair that we have no notice of this change of policy. I often sit with directors many months before my appointment as liquidator in order to plan the process so we will now need to calculate and pay the tax debts as well as many other factors which we work through”

RESTORATION OF COMPANY LEADS to Major Pay Out to Creditors

PBC are pleased to report that having already paid preferential creditors in full a dividend of 44.58 pence in the pound was paid to unsecured creditors in a liquidation that, at first, appeared to have no distributable assets.

The company was placed into creditors' voluntary liquidation in 2010 and following closure of the liquidation the company was dissolved. PBC were subsequently approached to restore the company to the register and act as liquidators to

realise the outstanding director's loan of approximately £100,000 which was unrealisable in the previous liquidation.

With the assistance of Katie Summers, a partner at Howes Percival LLP, a successful application was made to restore the company to enable recovery of the loan and subsequently a payment to be made to creditors.

Joint liquidator, Gary Pettit, said, “It is always pleasing to see returns made to creditors but the outcome and “out of the box” thinking surrounding this matter was particularly pleasing. I must also place on record my gratitude to Katie for the advice and assistance received”.



FOCUS ON

Mediation

Litigation often proves to be expensive and time consuming for all parties concerned. Under the heading of Alternative Dispute Resolution, mediation is encouraged by the courts as a means of reaching a mutually acceptable conclusion to a dispute

Objectives of Mediation

Mediation is a formal procedure for the purpose of seeking a negotiated settlement with the assistance of an accredited mediator. It can be used either before court proceedings are issued or, where there are already existing court proceedings, these may be suspended to enable mediation to take place.

Where mediation succeeds without court intervention the mediator will prepare an agreement that is signed

by all parties. Where court proceedings were suspended to facilitate mediation any agreement is signed under the form of a tomlin order that is ultimately approved by the court.

What Happens in Mediation?

Both parties firstly must agree to mediation. Once agreed it is the most appropriate way forward the parties must then agree upon a mediator who will conduct the mediation procedure. When deciding upon a mediator both parties must understand a mediator is a neutral facilitator assisting them to reach a negotiated settlement; the mediator is not there to advise on points of law or any other relevant statement of claimed facts.

The mediator receives submissions (document disclosure) from both parties and a venue is agreed where the mediation is to take place.

The mediation starts with an all parties meeting (known as "The joint meeting") where each side has the opportunity to make a brief, uninterrupted statement of their position. In most cases joint meetings are not held but this will be agreed by both sides. The meeting is then

Litigation negotiate
upt Monies Tomlin Liabilities IVA Affairs
ots Legally Resolution Distributing Mediat
settles Court
Negotiated Court



broken up as the parties go to separate rooms where the mediator will attend upon both in turn. Here, the mediator tries to identify common ground and discuss parameters that would form the basis of a settlement as he alternates between the two separate meeting rooms. If at any time the mediator determines it is beneficial to do so all parties may be called back into a joint meeting.

It is important to note that during the separate meetings the mediator will not disclose sensitive information to the other party without obtaining prior sanction and (where applicable) the limitations of that disclosure.

Should settlement terms be agreed the mediator will prepare the mediation agreement (where there has been no court intervention) or a tomlin order (where court

proceedings have already been commenced) for all parties to agree and sign. If it is a tomlin order then the solicitors acting shall file this with the court for final approval. Generally, the court proceedings are suspended but, depending on the terms of the tomlin order, there may be grounds for the court proceedings to be dismissed.

What Services can PBC Mediation Service Undertake?

PBC director, Gary Pettit, is an appointment-taking licensed insolvency practitioner with over 26 years of experience. During his career he has never lost an action where court intervention has been required. As a mediator accredited by the Centre of Effective Dispute Resolution ("CEDR") Gary draws on his successful litigation record when aiding parties negotiate a settlement.



“

Gary is a no nonsense Insolvency Practitioner with a strong sense for the commercial realities of matters he handles. His knowledge and experience are second to none and I would not hesitate to recommend Gary to anyone, an individual or a business, seeking advice and support through a difficult financial period.”

Nicola Holton – Associate Solicitor, Tollers LLP

“I can recommend Gary very highly. He did a super and well balanced job on one of our [mediation] cases recently. He is now on our shortlist for future cases.”

Steven Cooklin – Manolete Partners



MEET THE TEAM MEMBER

Claire Goodacre



Senior Case Administrator



Began working for the firm in 2005.

Certificate of Proficiency in Insolvency qualified.

Once got a mention on Steve Lamacq's show on 6Music after meeting him at a gig.



clairegoodacre@pbcbusinessrecovery.co.uk



THE TOP 7 REASONS

for businesses or individuals to phone PBC

1.

You are receiving threatening letters from creditors or suppliers.

2.

You have VAT or PAYE arrears.

3.

Your bank is bouncing cheques.

4.

You can't sleep at night because of unmanageable credit card bills.

5.

You have CCJs.

6.

Mortgage arrears are putting your home at risk.

7.

Threat of bankruptcy or liquidation is affecting your health, family or business.



YOU ARE INVITED

to our

CHARITY QUIZ



Wednesday 21 March 2018

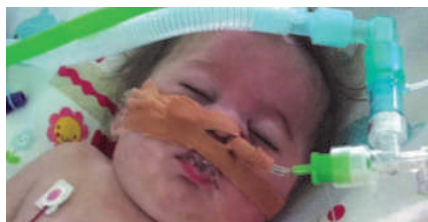
We would love you to join us for a fun evening
to raise money for Ronald McDonald Charity Houses

6pm for arrival drinks and networking
Greens Restaurant,
Collingtree Park Golf Club,
Collingtree Park, Northampton, NN4 0XN

£20 per person, to include a visit to
The Gourmet Burger Bar

All proceeds from the evening will be donated to the charity.

Teams should contain between 4 and 6 people.
You are welcome to invite colleagues, friends and contacts
and enter more than one team





ACCEPTANCE FORM

We would like to enter a team for the PBC charity quiz night on Wednesday 21 March 2018 at Greens Restaurant, Collingtree Park Golf Club.

Business Name:

Team Name:

Contact Email:

Team Members:

.....

.....

.....

We enclose a cheque for £_____ made payable to:
PBC re Ronald McDonald House

OR

We have made a payment for £_____ to:- 20-45-77 80448435.

Please return this form to
lisaparker@pbcbusinessrecovery.co.uk or
9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP

**ALL ENTRIES AND PAYMENT MUST BE RECEIVED BY
WEDNESDAY 7 MARCH 2018**



PBC offers a free initial meeting to all, which is confidential and impartial.

If you have any questions, however small, we will always be happy to help.

For example an accountant asked if we could help his client fill in the new insolvency forms he had received because a customer had failed. It took five minutes but we were happy to help.

PBC has offices in both
Northampton and Coventry and be contacted on:

Northampton:
01604 212150

Coventry:
02476 158234



Follow us on Twitter: @PBC_Business

www.pbcbusinessrecovery.co.uk