Newsletter

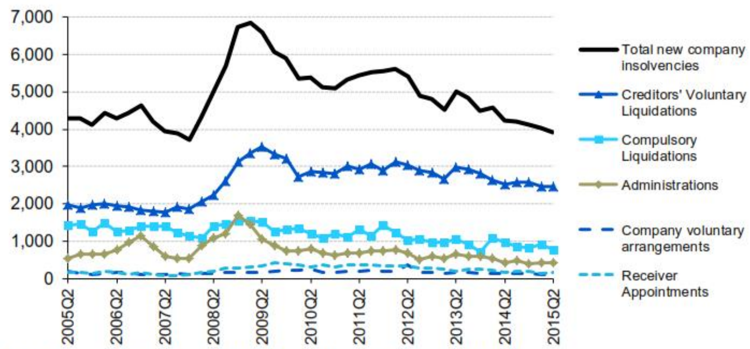
Can UK Economic Growth Bounce Back?

The latest corporate insolvency figures published by The Insolvency Service for Q2 2015 show the total company insolvencies in England and Wales has decreased and were at the lowest level since Q4 2007.

The key points for the Q2 findings show:

- Compulsory liquidations decreased to the lowest level since Q4 2013
- The number of creditors' voluntary liquidations was fairly stable
- Receivership appointments increased, but company voluntary arrangements and administrations decreased
- The liquidation rate was at its lowest level

Figure 1: Company insolvencies in England and Wales (quarterly data, seasonally adjusted)



Source: Insolvency Service and Companies House. Excludes CVLs following administration.

Low interest rates and creditor patience have given businesses an easier time than might historically have been expected during the recovery after a recession. However, these factors will not last forever. Inflation seems likely to rise back towards its 2% target by the end of 2016, so the MPC may start to raise interest rates gradually from early next year. Businesses and households should plan for rates to be back to around 3-3.5% by 2020.

Rising interest rates could prove to be a big test for those businesses already on just surviving. And there are still plenty of businesses which are just about able to service their debts but have no capacity to repay the capital outstanding on their loans.

Business confidence could also be affected by increased international risks relating to Greece, recent turbulence in the Chinese stock market (which could have wider contagion effects within China and beyond) and continued unrest in parts of the Middle East and North Africa, as well as uncertainties around the planned referendum on UK membership of the EU. But the domestic outlook still seems reasonably favourable for UK business investment, helped by the corporation tax rate cut announced in the Budget. There are also upside possibilities if these problems can be contained and a virtuous circle of rising confidence and spending can be established as in past economic recoveries.

A Flavour of The New Simplified Insolvency Rules...

The project to modernise insolvency rules has moved forward with a final draft sent to Insolvency Rules Committee in mid-July. Practitioners will have - hopefully - a window of around six months to acquaint themselves with the new rules.

Among the changes we expect to see are:

- provisions to replace creditors' meetings with communication by way of correspondence as the default method for decision-making
- creditors will be deemed to have consented unless 10 per cent or more of creditors by value or number object in writing
- the abolition of final creditors' meetings in liquidation and bankruptcy
- a simplified process for resignation of a liquidator or trustee in bankruptcy
- clarification of the obligations to notify the company under rule 2.20 (notice of intention to appoint an administrator)
- removal of the requirement for administrators to state prior professional relationships with the debtor company
- administrators will be able to advertise extensions to the time to submit the initial report
- a new application procedure for a debtor's bankruptcy petition which will involve a new adjudication process, which will operate on an administrative rather than judicial basis.

The current rules date originally from 1986 and encompass several rounds of amendments, located in numerous different statutory instruments. Accordingly, the new rules should be welcomed. Look out for further updates when the rules are in final form.

The Misconceptions Of Insolvency

The issue of corporate insolvency can be a minefield for company owners and directors. So, to help you better understand company insolvencies, your obligations, and the role of insolvency practitioners, we thought we'd try to dispel some of the myths around insolvency .

Entering into a corporate insolvency will damage my personal credit rating

Your personal credit rating will not be affected unless personal guarantees have been signed for the repayment of company debts. No applications for personal credit can ask for information regarding the insolvency of companies you have been involved with in the past.

The insolvency practitioner is on the company's side

An insolvency practitioner will work to achieve the best result for the company's stakeholders (including creditors, employees and directors), and will try to perform a company rescue and keep the company trading wherever possible, if such a resolution is in the stakeholders' best interests.

The directors or owners of an insolvent company cannot operate or manage another business

An insolvency practitioner must submit a report to the Insolvency Service that details the conduct of all directors involved in the insolvent company in its last three years of trading. If their conduct is deemed unfit, the Insolvency Service can take disqualification action. However, directors who are cleared of any wrong doing are free to become or continue as directors of other limited companies. There are no disqualifications in the majority of corporate insolvencies.

Directors can not use the same business name as an insolvent company

Whilst there are restrictions on the re-use of the same or a similar business name to that of the insolvent company, if the company with the same name has already been trading for 12 months, it may continue to trade without changing its name. It is also possible for a director to purchase the old company name out of liquidation, and then give notice that it intends to trade under this name.

If my company becomes insolvent I can enter a pre-pack administration and buy it back without its debts

A pre-pack administration can be the best way of preserving value for the business, creditors and shareholders. If a business enters administration it may result in disruption, uncertainty and a real certainty that the business would cease to operate, meaning losses to all stakeholders. A pre-pack transaction can mean a smooth transition with enhanced realisations for creditors and the preservation of value for goodwill and the brands of the business.

Top 10 Indicators That A CVA Is The Right Choice

A CVA may be suitable for your clients if:

Creditors can be repaid if given time

This point is the basis upon which a CVA can be agreed, as 50% of the creditors who vote, must agree to the repayment proposals. If there are debtors to collect, assets to sell or good profits forecasted, this makes a CVA far more likely to be viable.

Ultimately want to repay creditors and save the business

If there is a feeling/ moral obligation to repay creditors ahead of any other factors then a CVA is a good choice. In some instances, it can be better financially through other processes so the business owner must be aware of this and still be happy to commit to a formal agreement.

A winding up petition has been received but the business is generally sound

If one or a number of creditors have issued the Company with a winding up petition then this can be stopped in its tracks on the grounds of the intention to propose a CVA. The petition can then be dismissed if the CVA is agreed, therefore, providing a solution to an immediate problem.

Current creditors are up to date

If historical debts are the issue and all current creditors are paid to date a CVA may be a good option as it allows the business to formalise a repayment plan on the historical debts rather than have to pay them all in one go.

Suppliers willing to support you during a CVA

If the relationship with suppliers isn't great or are there is no alternative supplies then it may be best to avoid a CVA. Suppliers can often withdraw credit terms or stop supplying companies in CVAs.

Trying to avoid a report on conduct as a director

If a Director has had previous failures or if there is uncertainty as to how the conduct of the insolvent company may be considered then a CVA is a good tool as there is no report on the conduct of a director.

Want to retain complete control of the running of the Company

If there is concern over the dsamage of customer relationships or that an Insolvency Practitioner controlling trading would be detrimental to the business then a CVA may be the right option. Complete control remains with the business owner. You do however have to comply with the terms of the CVA proposal and this means providing annual accounts to the Supervisor for review and maintaining current liabilities without fail.

HMRC are not the only/or majority creditor

As creditors must vote through a CVA, if HMRC have a claim which is disproportionate to the trade creditors or a history of poor payment then they are likely to reject the CVA proposals. Having multiple creditors at similar debt ages and percentages of the total debt will help avoid any one creditor having the casting vote on the proposals .

Unable to raise finance to pay creditors

One way of supporting cash flow, other than an injection of funds, is to delay the payment of the creditors, if no injection of funds can be raised, cash flow can be helped with a CVA.

A service based business

In order to get a CVA approved, it often must be demonstrated that the return to creditors is better than the alternative processes. It is easier to demonstrate in businesses with no assets as the return to creditors through liquidation is often minimal. This doesn't however mean that if you are a product based business, a CVA is not an option because many product businesses would still show better returns in a CVA from profits if their assets are likely to diminish in value upon forced sales in Liquidation processes.