COWGILL HOLLOWAY
BUSINESS RECOVERY

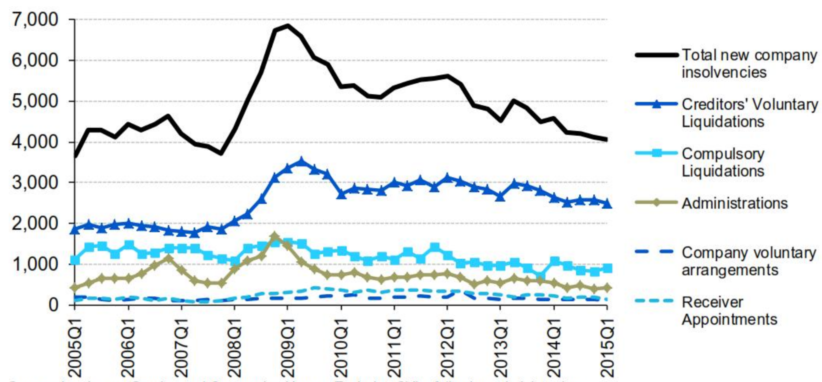
Newsletter

Corporate insolvencies return to pre-crisis levels

The number of business insolvencies has fallen for the fourth quarter in a row and is now at its lowest level since 2007, according to official statistics, although the number of company administrations jumped by 9 per cent during the first quarter.

Insolvency Service figures show there were 4,052 formal insolvencies in the first three months of 2015, 1 per cent down on the previous quarter and 11 per cent lower than the same period a year ago.

However, 432 companies entered administration, up from 396 in the final months of last year. Despite this, when compared with the first quarter of 2014, the number of administrations declined by more than 16 per cent.



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

The general corporate picture remains relatively stable, with a small fall in the number of corporate insolvencies this quarter. Insolvency numbers are back down at pre-crisis levels.

Businesses are still benefitting from record low interest rates and, with inflation currently non-existent, they will probably benefit for a while to come. Indeed, 'non-flation' will be helping businesses keep a lid on their outgoings as much as households.

The first quarter has shown one of the sharpest annual declines since the advent in 2004 of the new turnaround culture for businesses, when the Enterprise Act 2003 first came into force.

There is however, more to the figures than meets the eye. Low interest rates are masking thousands of businesses that would still struggle if rates were closer to historic norms.

Nor do these figures include thousands of businesses that are quietly removed from the Companies House register every quarter. Although most of these are inactive businesses, there are others who avoid the formal insolvency process.

We are over the worst but it is essential that businesses face the warning signs head on and seek advice as early as possible to avoid a formal insolvency procedure.

Tips for the upturn…

Our advice throughout the downturn has been that owners and managers should base their business and investment decisions on what their own management information is telling them. The same advice applies in the upturn. While short-term opportunities can be exploited, growth and innovation must continue to be based on long-term business planning and strategy. Here are some top tips to help businesses stay grounded during the recovery:

Stay true to your business plan: Upturns present new opportunities and the potential of these should be explored, but don't let this distract you from your ultimate goals. Now is a good time to revisit your business plan, and stick to your strategic objectives. T

Don't let good habits go out of the window: Continue to keep a close eye on costs and budgets through the preparation of cashflow projections and prompt production of management information. It is also a good idea to keep the credit control processes put in place to preserve cash in the downturn to ensure that the business feels the maximum benefit in cash terms from the recovery.

Avoid the perils of overtrading: Overtrading happens when new orders you take on result in investment in stock, people and processes, the payments for which occur before cash from customers is received. It is a common occurrence during a recovery and has degrees of severity but if not tackled, it can have serious implications for the business and its directors.

Take advantage of available business support: Growth in a business is a good time to seek grants, which can support investment in capital equipment, employment, product development or training to support the funding of it.

Make the most of available tax reliefs: To maximise the long term impact on the business, it is important to secure profitability and reinvest those profits in the business. The various forms of tax relief can form an important part of this. Making the most of capital allowances and R&D tax relief can help where growth needs investment in new products and plant and machinery.

Small Business, Enterprise and Employment Act 2015 - New insolvency measures coming into force May 2015

The Small Business, Enterprise & Employment Act 2015 has been given Royal Assent in Parliament and will come into effect on 26 May, which means there have been a number of changes that need to be acknowledged and understood going forward.

New objectives will provide insolvency regulators with a clearer, enhanced framework for their activities and the Insolvency Service with a legislative framework to hold the regulators to account.

Director Disqualification

A new approach to the reporting of director misconduct by liquidators is being introduced which includes adding two new grounds for disqualifying a director in the UK against a person convicted of a company-related offence overseas and also against a person who has instructed a disqualified director.

This change means that there is a broader range of matters for a court to consider when assessing if disqualification is the correct punishment for the nature of their misconduct.

Creditor Grievances

The Secretary of State will have new powers to be able to seek compensation against a disqualified director if their misconduct for which they were disqualified for caused identifiable loss to creditors. Liquidators will also be able to assign certain legal claims to third parties such as creditors.

Engagement Changes

The requirement to hold physical meetings in every case will be removed and replaced by virtual meetings and electronic voting. However, creditors will still be able to ask for a physical meeting if they require one.

Changes to Company Administration

Following on from the Graham Review into Pre-Pack Administrations, a reserve power has been taken to either prohibit administration sales to connected parties or to be able to impose conditions to allow connected party sales to proceed. It must be noted however that these powers would only be used if the measures noted in the Graham report prove unsuccessful.

Insolvency Practitioners Regulation

One of the new frameworks will be Insolvency Practitioners being required to provide up-front fees for the entirety of the liquidation in order to help avoid un-reasonable costs. This new framework will also enable a range of sanctions to make sure steps are taken if actions are not in accordance with the regulatory objectives.

Insolvency and redundancy back in the spotlight

The Insolvency Service has launched a call for evidence on how to address the inherent conflicts that exist within employment legislation and insolvency law after two influential groups of MPs demanded a change to the law.

In a damning report into the collapse of delivery firm City Link and the actions of private equity owners Better Capital, MPs from two select committees said the rules governing insolvencies, are too heavily skewed in favour of directors and investors.

As a result of the recommendations, Business Minister Jo Swinson launched a review on how to improve consultation and information sharing between employers and employees when a company is faced with insolvency and how to make consultation more effective.

The call for evidence, which will run for 12 weeks, is asking views on understanding of the current requirements, their purpose and benefits as well as factors that facilitate or inhibit effective consultation and ensuring timely notification.

Current legislation on collective redundancies - where an employer proposes to make 20 or more employees redundant - is clear but often difficult, if not impossible, to implement in some insolvencies and has been criticised as "inflexible" by insolvency practitioners.

Under the Trade Union and Labour Relations (Consolidation) Act 1992, consultation must start as soon as there is a 'clear intention' to make redundancies and begin at least 30 days before the first dismissal takes effect. This is an almost impossible task in many administrations when the business is insolvent and there is little, if any, money left to pay employees while a full consultation is carried out.

In some high-profile cases the cost of this to the taxpayer has run to tens of millions of pounds.

Last year, an employment tribunal found the employees at Comet, had not been consulted on the potential for redundancies as legally required, with the court awarding a protective 70-to-90 day payout - leaving a potential £26m compensation package to be borne by the taxpayer. Deloitte has disputed that figure and estimates that the maximum possible protective award that could be applied in this case is less than half this amount.

Call us today 0808 168 3211

COWGILL HOLLOWAY
BUSINESS RECOVERY

Regency House
45-53 Chorley New Road
Bolton BL1 4QR

6th Floor, Sunlight House
Quay Street
Manchester M3 3JZ

5th Floor, Yorkshire House
18 Chapel Street
Liverpool L3 9AG

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