

# The view from the United Kingdom

Duncan Swift, Chair of the Policy Group at insolvency and restructuring trade body R3, provides an update on the insolvency and restructuring policy landscape in the United Kingdom



**L**ike many countries, the UK's policy agenda has been largely dictated by the need to manage and mitigate the pandemic – from a health and an economic perspective.

And the insolvency-related policies which have been introduced have been a mixture of the long-called for (corporate insolvency framework reform) and the long-opposed (the return of HMRC's preferential creditor status), as well as a range of policy proposals which could potentially help the profession – albeit with some refining.

## The future of the COVID support measures

The Government's COVID support measures have been a vital lifeline for many companies and many individuals, and have also delayed the rise in insolvencies we would typically expect to see in this kind of economic climate.

However, the support packages and bans on creditor enforcement actions can't last forever, and Chancellor Rishi Sunak's decision to extend a number of measures until September 2021, which was announced in his Budget on 3 March 2021, provides an opportunity for businesses to plan for their eventual withdrawal.

Lack of clarity in this area has made it difficult for directors to know when to seek advice, so the six months' notice Sunak has provided will hopefully encourage directors to plan ahead and consider their options.

The business climate will continue to be challenging, and another measure we'd like to see the Government introduce is a cross-departmental policy approach on support for restructuring proposals.

Such a policy would remove inconsistencies to give companies which would be viable but for Covid the support they need, and provide time to deal with the liabilities they have accrued during the pandemic.

We'd also like to see a far more engaged and consistent approach from HMRC to make business rescue an easier process. Given the toll the pandemic has taken on businesses and the economy, we consider a step-change in the support for viable companies' restructuring proposals is very much needed.

## Movement on pre-pack reform

The Government has been looking at reforming how pre-pack administrations are regulated, and has proposed new measures which will require mandatory independent scrutiny of pre-pack administration sales where connected parties are involved in the purchase – either by creditors or by a new 'independent Evaluator'.

Given the crucial role the Evaluator will play in determining whether sales to connected parties are fair and appropriate, the qualifying criteria for this role will be crucial. We would like to see the criteria strengthened to ensure that only those with the appropriate experience are able to carry out this role. Updated

legislation published as this column was being written will at least require an Evaluator to have Professional Indemnity insurance. This was something R3 proposed – but we did so as a minimum criterion for taking up the role.

In an ideal world, the Government would maintain a list of approved Evaluators. While this might be a burden, it would help to boost stakeholder confidence in pre-packs – the very reason these reforms are being introduced.

## Changes at Companies House

The Government is also seeking to reform the powers of Companies House and has published a series of further consultations on these reforms as part of a follow up to its 2019 'Corporate Transparency and Register Reform' consultation.

There are two key points we would like to see included in the reforms. The first is recognition of the role of the insolvency profession as an extensive user of Companies House and a key component in the UK's anti-fraud toolkit, and that this fact is reflected as this policy area is developed.

The second is that IPs are included in the category of those persons able to access the proposed new range of additional 'back office' information collected by Companies House. This will allow the profession to carry out investigations into companies' corporate affairs and director conduct more effectively, and identify and disrupt more frauds,

which will benefit stakeholders, creditors and UK plc.

## The future of cross-border work

Now that the Withdrawal Agreement has expired, cross-border insolvency work in EU Member States is set to change – and likely to become more costly and complex.

However, despite the fact we've left the EU, we're well aware the profession is still part of the European insolvency and restructuring network.

Given their previously supportive position on this issue, we're hopeful the Government will explore the options to restoring it in the future, and R3 will be working closely with officials to support this work. ■



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