View from the UK: More detail and discussion needed…?

Duncan Swift looks at the UK Government's proposals for a new approach to insolvency regulation.

The Government's proposals to change the insolvency profession's regulatory framework are the largest and most significant overhaul of insolvency regulation since the introduction of the Insolvency Act 1986.

This had been planned for some time, with the Government committing in 2015 to carrying out a review by mid-2022. However, beyond an initial call for evidence in 2019, the delivery of this review was delayed by the pandemic and the need to introduce emergency insolvency legislation.

That changed before Christmas, when the Government announced a consultation on a suite of new policies that, if implemented, would be a total overhaul of our current regulatory framework.

At the heart of these is the proposal for a single "independent" government regulator that would have the power to authorise, regulate and discipline individual IPs and firms providing insolvency services, as well as setting regulatory, technical, professional, ethical and educational standards.

This – alongside the other proposed reforms, which include firm regulation, proposals for compensation and other measures – would replace the current system of Recognised Professional Bodies (RPBs), which have carried out insolvency regulation since the introduction of the Insolvency Act 1986.

A need for deeper scrutiny

The Government's proposals could be an opportunity for a constructive discussion on how regulation could be even more effective. Change in the regulatory framework has been mooted for some time and many in the profession are keen to engage in a discussion around what the future of regulation might look like.

However, these proposals are lacking some crucial details. These details need to be provided and discussed – especially if this is going to be an evolution of our current approach.

Given that the UK's existing regulatory framework is internationally recognised as being effective and is a key pillar of our globally-ranked insolvency framework, any system that replaces it needs to build on it, and evolve in areas that have been identified as needing review.

Two critical issues

The key issues with the Government's proposals lie in the plan to effectively house the single regulator within the Insolvency Service and the lack of corresponding regulation of the Government's Official Receiver that undertakes insolvency work. Both raise major conflict of interest issues which should be addressed before the proposals move forward.

In their current form, under the new framework, the Government would set insolvency legislation, regulate insolvency practitioners and their firms and then effectively compete with those same insolvency practitioners for work through the Government's Official Receiver, which is not presently nor as proposed subject to the same regulation.

The Government needs to clarify how it will ensure there is a level playing field for the public and private sector parts of the insolvency profession if these proposals are to form the basis of our new regulatory framework – and provide more detail on how the single regulator would be genuinely independent.

A long, detailed process

Although the consultation on the Government's proposals closes on 24 March, it will be some years before any changes are introduced.

Once the deadline passes, the Government will need time to review submissions received before it publishes its response to the consultation. And as the creation of this regulator will require primary legislation, the timing of the introduction of any changes will be dependent on the parliamentary calendar and the Government's other legislative priorities.

A potential upside to this is that the Government has time to engage with the profession and work with it to develop a new system of regulation. It is critical that the conversation continues after the consultation, so that we can ensure we have a regulatory framework that works for the profession – and all the stakeholders it supports. ■

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