

ENCOURAGING COMPANY RESCUE

– a consultation

SMALL BUSINESS SUMMARY

June 2009

A consultation has been launched on measures aimed at improving further the rescue culture, to give struggling, but viable, companies a greater chance to succeed, thus saving jobs where possible and providing better returns to all creditors.

This is a summary aimed at small businesses. We hope that all interested parties will give us their views by 7th September 2009 on the proposed measures.

Our corporate insolvency regime is highly regarded by external commentators and ranks well internationally. The regime is being tested in the current economic downturn and we believe it is working well. However we want to hear your views on whether we should make some targeted changes, to give those involved in the rescue of struggling companies more chance of working out a rescue package.

The first proposal relates to moratoria for Company Voluntary Arrangements (CVAs), which are presently only available for small companies. Small companies facing financial difficulty are currently able to obtain a moratorium on creditor action while seeking agreement with their creditors to deal with their debts. While an agreement is being pursued, the existing management stays in place. The proposals would give viable large and medium-sized companies the same opportunity for a moratorium while trying to come to an agreement with creditors. This proposal could affect small companies as they may be creditors of larger companies. There is also a new Court-based route for securing a moratorium of up to three months. The costs of this procedure may make it more likely to be applicable to larger companies, but again small companies may be affected as creditors. There are important checks to make sure that there is a reasonable prospect of viability and creditors would not be adversely affected. In both cases, if the proposals lead to more rescues, they should lead to better returns to creditors.

The second set of measures would give greater security to repayment of monies loaned post CVA or Administration, whilst ensuring that existing

secured lenders are adequately protected. The intention is that banks, other financial institutions and trade and services suppliers, and so on, will be more willing to provide finance or supply credit, whilst the company trades out of its difficulties. The proposals are that rescue finance should rank in front of other administration expenses, that there should be a greater ability to create new security in both an administration and a CVA and that certain asset-based lending arrangements should cease on administration or a CVA. These proposals could affect small businesses which are facing difficulties as it may make rescue more likely. It could also affect small businesses who are creditors of businesses in financial difficulty. We recognise that there could be a risk that financial arrangements for solvent companies could be affected, but suggest that these risks could be mitigated. The potential benefits would again be greater returns to creditors of more successful rescues.

All these proposals are intended to apply throughout Great Britain.

For each proposal, we summarise the proposed changes, set out the existing law in the area and outline the possible impacts, and ask for views.

We intend actively to engage with stakeholders throughout the consultation. We will meet with representatives of small business and test our assessment of possible impacts on some small businesses.

We would welcome your views on the proposals, including their likely benefits and any risks or disadvantages, and on whether this package is the best way of achieving our aim of making company and business rescue easier and more successful.

Full details of all the proposals are contained in the main consultation document, available at

http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/compresc/compresc09.pdf

