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A CHANGE TO THE PRE-PACK

The agreed transfer of the business and assets of an insolvent business, prior to entry into administration, has long been under scrutiny from the Government and creditors alike.

At the end of this month The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 become law.

These new regulations seek to reduce the concerns of stakeholders, who often view the actual transfer of a business to its former directors and shareholders immediately after entering administration, as unfair and suspicious. In brief, the new regulations are as follows:

An administrator cannot make a *"substantial disposal"* to connected persons (in effect the directors and/or the shareholders) of a company's business or assets, for a period of eight weeks following the entry of a company into administration, unless:

- creditors approve the disposal, by a majority and not more than 50% of non-connected creditors disapprove; or

- a qualifying report is prepared and signed off by an "evaluator", providing an independent opinion on whether such transfers are reasonable.

It remains to be seen whether the new regulations are workable. Currently, no formal qualifications are required, the only criteria being that the evaluator must have relevant knowledge and experience, be trustworthy, not have been made bankrupt, independent and have professional indemnity cover. R3 have raised concerns in that regard.

CIGA RESTRICTIONS CONTINUE

With lock-down restrictions not being lifted in full until at least 21 June 2021, the Government has extended the following provisions under the Corporate Insolvency and Governance Act 2020.

- The ban on the use of statutory demands and winding up petitions unless a company's business has been unaffected by COVID 19 has been extended to 30 June 2021.

- Small suppliers will continue to be exempt from the requirement to supply to a company which is going through a rescue process until 30 June 2021.

- Suspension of liability for wrongful trading by directors is also extended to the end of June 2021.

- Under CIGA, companies which are unable or likely to become unable to pay their debts can enter a free-standing moratorium for 20 business days, extendable for 20 more business days, without creditor consent. Most pre-moratorium debts will be included whilst moratorium debts will not. The temporary relaxation of the requirement that a company entering a moratorium has not been subject to an insolvency procedure or moratorium in the previous 12 months is now extended to 30 September 2021.

Editor's note

The extension of the CIGA provisions provide clear evidence that the government is committed to protecting business for as long as possible and at least until the economy is functioning on something approaching normality.

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