

THE ROLE OF THE OFFICIAL RECEIVER & THE NEW INSOLVENCY FRAMEWORK

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ROLE OF THE OFFICIAL RECEIVER

- ✓ Act as Liquidator for the Company;
- ✓ Control the company's affairs;
- ✓ Scrutinise the company's accounts and financial situation;
- ✓ Realise the company's assets;
- ✓ Investigate the conduct of directors prior to the liquidation proceedings.





LEGISLATIVE DEVELOPMENTS

- ✓ EU Directive 2019/1023
- ✓ Insolvency Practitioners Act, 2022 (Cap. 632 of the Laws of Malta)
- ✓ Pre-Insolvency Act, 2022 (Cap. 631 of the Laws of Malta)
- ✓ Commercial Code (Cap. 13 of the Laws of Malta), as amended by the Commercial Code (Amendment) Act, 2022 (Act No. XXIII of 2022)
- ✓ EU Harmonisation Directive Proposal



EARLY WARNING TOOLS

- Self-assessment platform for businesses in the likelihood of insolvency;
- Early detection of distress, flagged after recurring delays in payments for utilities and to fiscal & regulatory bodies;
- Guidelines for preventive restructuring.



A photograph of a modern glass skyscraper with a grid-like facade, partially obscured by a white diagonal shape that serves as a background for the text.

INSOLVENCY PRACTITIONERS

The work of the insolvency practitioner will be an essential part of the preventive restructuring framework, giving failing businesses a vital second chance and providing them with tools which increase the efficiency of restructuring procedures, insolvency procedures and discharge of debt procedures.

PREVENTIVE RESTRUCTURING - THE UK EXPERIENCE

UK CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020

RESTRUCTURING PLAN

- A compromise in the amount of debt;
- A debt for equity swap; and
- Rescheduling debt repayments or amending their terms.

ULTIMATE TEST

Hurricane Energy plc -

- The company has to be likely to encounter “financial difficulties”;
- Creditors and shareholders would not be “any worse off” than if the relevant alternative is chosen.

PREVENTIVE RESTRUCTURING - THE UK EXPERIENCE (2)

FITNESS FIRST

- The court ensured that any dissenting creditor is “no worse off” than the relevant alternative;
- The directors of the company, advised by professional advisers such as insolvency practitioners, are best placed to identify the relevant alternative.

VIRGIN ATLANTIC

- Satisfied the test of being close enough to the point of financial distress;
- Certain creditors can be excluded if their claims are not compromised under the plan;
- Companies do not have free range to pick and choose which creditors to include within a plan.

VIRGIN ACTIVE

It is generally creditors who are “in the money” who determine how to distribute the “restructuring surplus”, since the dissenting lower ranking classes of creditors would be out of the money in the relevant alternative to the plan.

PREVENTIVE RESTRUCTURING - THE UK EXPERIENCE (3)

AMICUS FINANCE PLC

- First SME to successfully obtain a restructuring plan in the UK;
- Solvent exit from administration, enabling it to be rescued as a going concern;
- Involved the cram-down of a secured creditor.

HOUST LIMITED

- First case where the court used its power to cram down the HMRC, as a dissenting creditor;
- Subsequently, UK courts repeatedly reaffirmed that a restructuring plan is not to be used to escape unpaid tax bills;
- There needs to be a good and justifiable reason to cram down the tax authority.

KEY ELEMENTS

In order for a restructuring plan to be sanctioned and to be effective it needs to be inherently flexible and justified.

INSOLVENCY HARMONISATION PROPOSAL

Harmonised standard of insolvency regimes across EU Member States, focusing on three key areas of insolvency:

- Effective recovery of assets;
- Efficiency of proceedings; and
- Distribution of recovered assets among creditors.



INSOLVENCY HARMONISATION PROPOSAL (2)

- Actions to preserve the insolvency estate, including avoidance actions;
- Tracing of assets of the insolvency estate;
- Pre-pack proceedings;
- Creditors' committees;
- Duty on directors to file for insolvency when they are aware the company is insolvent;
- Simplified winding up proceedings for microenterprises.





THANK YOU

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