



CORPORATE RECOVERY SPECIALISTS EXPAND IN SOUTH

Middleton Partners have opened two offices in the Southern Region – in Salisbury and Southampton.

A young, enthusiastic, experienced and professional firm of Corporate Recovery Specialists, Middleton Partners' new offices arrive at a time when their industry faces up to new challenges following the introduction of new provisions in the Enterprise Act 2002 with direct effect on existing insolvency regimes. The provisions of the Enterprise Act 2002 made a number of important changes to corporate and personal insolvency law and some of the changes, mainly those concerning corporate cases came into force in September last year. The remainder, dealing with bankruptcy and Individual Voluntary Arrangements come into force on 1st April 2004 and together, the changes herald the current Government's declared wish to promote Enterprise and entrepreneurship. The corporate changes introduced on 15th September last year did not introduce any new regimes or processes to deal with companies in financial difficulty, but rather honed the existing procedures, improving upon the Insolvency Acts of 1986 and 2000. Creditors' right have been changed and rearranged and procedures for dealing with insolvent companies have been improved and simplified.

One of the most noticeable of the September changes was the abolition of the preferential creditor status previously enjoyed by Government departments, such as Inland Revenue and HM Customs & Excise. Their claims now rank alongside the general body of creditors, which account for the majority of losers when companies enter any form of insolvency.

These changes do not affect employees' rights regarding any claim for unpaid wages and holiday pay, which remain intact. In most instances, employees are able to apply to The

Insolvency Service's Redundancy Payments Service for payment of some or all of the debt owing to them if their employer enters insolvency. Middleton Partners have specialists on hand to deal with employees' claims quickly and efficiently to reduce the hardship and inconvenience, which usually follows redundancy from an insolvent employer.



The holders of fixed and floating charges should benefit from this abolition, as the money paid under the floating element of their charge will no longer be reduced by the Crown debts. However this benefit may be tempered by the removal of the ability of a holder of a floating charge created after the implementation date (15th September 2003) to appoint an Administrative Receiver. A Receiver's duty is to deal with the assets covered by the charge and to achieve the best return for the appointing chargeholder and the perception can be that scant regard is given to the effect their actions have on any other party. In reality, the inability of a holder of a floating charge to appoint may lead to banks and other financial institutions encouraging borrowers to enter into Factoring agreements, perhaps with the bank's own factoring arm, thus retaining the fixed element of

the charge, which has been brought into question by the ruling in re: Brumark and more recently Spectrum Plus. These rulings have caused significant monies to be retained by insolvency practitioners, as the uncertainty of what to do with the money continues.

The most common type of corporate insolvency has always been liquidation, whether

and business recovery.

So often, businesses struggle on, trying to dig their way out of an ever-deepening hole, with the inevitable conclusion being a larger failure and more disgruntled creditors. Such action, whether well-intentioned or not can lead to those in charge of the business being criticised and prosecuted and in some case, those responsible can be held liable for the debts of a limited company they allowed to trade while insolvent. The proper course of action is to get sound advice as soon as a problem is identified. If the business is salvageable, appropriate steps can be taken and the outcome will be better for all involved, perhaps through an Administration of Voluntary Arrangement route.

A business in trouble will generally need protection from its creditors and the Administration regime has been revised to make it much simpler for companies to enter Administration, thus buying valuable time to get its affairs in order and decide the best way forward. Whereas in the past, a petition had to be presented and heard in the Court - a process that could be costly and time-consuming - now the company simply completes a set of standard forms and having notified the required people, lodges the forms in Court and is protected. The actual Administration process has also been revamped to streamline the actions of the Administrator, which should lead to reduced costs and improved returns to creditors.

Another change designed to improve the return to ordinary creditors is the requirement for a prescribed portion of a failed company's assets to be kept aside for the benefit of ordinary creditors. There will still be circumstances, such as cases where there are minimal assets and it is uneconomic to distribute the funds to unsecured creditors, where the liquidator will not be required to make any allowance for this figure.



Personal insolvency can be divided into two procedures; bankruptcy and Individual Voluntary Arrangements. The changes see a massive shake-up in bankruptcy legislation, reducing the length of time most people will be subject to the restrictions placed upon them by a bankruptcy Order, called the discharge period, from three (3) years to just twelve (12) months. In some cases, discharge will be available after just 29 days.



The current state of the housing market also means that individuals declared bankrupt many years ago are now finding that their properties are still subject to a claim by their Trustee in bankruptcy, even though they have been free from the bankruptcy for years. This scenario is not likely to happen again thanks to changes, which introduce a requirement that some action is taken by the Trustee within 3 years of their appointment.

There is also a suggestion that bankrupts be allowed to keep a certain amount of their assets, to reduce the impact bankruptcy has on their lives, but this is not likely to be a popular policy, except among bankrupts with assets to keep.

Currently, the national network of Official Receivers deals with the vast majority of bankruptcies - those in which there are no assets - and those cases where there are assets above a certain level are passed out to Insolvency Practitioners to deal with. Who deals with the case can be decided by the creditors, or by the Official Receiver, who refers the case to the next on their rota. A revision of the funding of the Official Receivers' offices is likely

to see more cases - probably with a low level of assets - being retained by the Official Receiver.

The usual alternative to bankruptcy is an Individual Voluntary Arrangement ("IVA"), where the creditors are offered a deal, usually requiring them to accept a reduced amount. Currently these IVAs require an Insolvency Practitioner to deal with the case, but in future, a bankrupt with assets can make proposals for an IVA and propose the Official Receiver to supervise the case. This is a significant shift in Official Receivers' duties and an enormous effort is being made to ensure their staff is able to assume this new role.

The changes, whether already in force or yet to come are intended to lessen the losses of creditors where at all possible and if the return to ordinary creditors can be increased overall, this will have less of an impact on the creditor's position. Any portion of a debt, which proves to be bad is not good news and bad debts are one of the most common cause of companies and individual traders suffering cashflow problems. Middleton Partners are able to advise on minimising bad debts and risk by improving credit control procedures and in instances where a debtor becomes insolvent, are able to assist creditors with dealing with the Liquidator, Receiver or other appointed Insolvency Practitioner and can even provide representation at meetings of creditors, if considered necessary.



For more information on the changes in insolvency legislation or to discuss any business related, or personal financial problem, contact Middleton Partners on 01722 435190 or 023 8027 1727.

Specialist Insolvency Practice expands

Mike Stevenson & Julie Palmer are pleased to announce the opening of Middleton Partners Salisbury & Southampton.

Middleton Partners are licensed insolvency practitioners and business advisors. The partners and staff have many years experience in dealing with business rescue and insolvency. It is our aim, wherever possible, to save a business either with the assistance of a rescue funding package or an implementation of a rescue procedure under the provisions of the Insolvency Act.

Mike & Julie are both big-firm trained and have over 35 years experience between them (mainly in the South/South West) of advising companies & individuals with cashflow or other financial difficulties. Our experienced team of 12 people based in Salisbury/Southampton are happy to advise on any of the following problem areas:

- **Cashflow difficulties**
- **Bad debts**
- **Negotiations with Banks/Inland Revenue/Customs & Excise**
- **Representation at creditors meetings if one of your debtors becomes insolvent**
- **Directors responsibilities - wrongful trading/personal guarantee issues**
- **Advice on restructuring / refinancing**
- **Personal insolvency advice**

If your business needs breathing space from its creditors or you have additional working capital needs, we are happy to meet with you and provide a flexible and quick response to try to find a solution to your problem.

Too many businesses fail because they do not take specialist advice at an early enough stage.

We have a proven track record and our reputation is everything to us. We do not charge up front fees for an initial advisory meeting. Our reputation and our contact base mean that if we cannot save your company we can explore ways to save your business.



Please contact

Mike Stevenson or Julie Palmer

01722 435190 or 02380 271727