

INSOLVENCY AND LEASES: WHAT ARE MY OPTIONS?

The Corporate Insolvency and Governance Act 2020 (CIGA 2020) came into force on 26 June 2020, which restricts the presentation of debt-related winding-up petitions, until 30 September 2020 where a company is unable to pay its bills (including rent) due to COVID-19. It has serious consequences for landlords who may now be unable enforce their rights, whilst the tenants have been provided with some breathing space as they look to reopen their business and settle outstanding debts. We have provided a quick overview of some of the options available to a tenant; and common pitfalls to avoid when facing cashflow issues.

LEVEL OF COMPANY DISTRESS

What are my options as a tenant?

- **Rent reductions:** where the only alternative may be an insolvent tenant, a number of landlords are willing to offer rent reductions or deferrals, particularly in the current economic climate;
- **Working capital optimisation:** where viable business exists, you may be able to optimise your cashflows through creditor stretching. For small to medium sized businesses this will only marginally improve cashflows as suppliers will often require shorter credit terms;
- **Provide additional security:** you may be able to reduce or defer rental payments where a tenant is able to provide some security. Ideally this should be avoided where the road to recovery for the business is uncertain, as it may lead to you being liable to the landlord going forward;
- **Reassignment:** under the terms of the lease, you may be able to reassign the lease thereby reducing your liability;
- **Insolvency:** will mean the landlord will rank as an unsecured creditor and under certain conditions, you may be able to resume business without having to worry about previous debts. Please speak to us for a free initial consultation and see how we can help you and your business.

Some common pitfalls to avoid:

- **Preferences:** preferring one creditor to the other is an offence under the insolvency legislation and may result in the Directors being liable. You should therefore avoid paying your landlord at the expense of other creditors;
- **Ignoring statutory demands:** under certain circumstances a statutory demand can be made by the landlord as a way of getting the tenants attention, although in cases where the business is genuinely struggling this is only likely to achieve a quicker insolvency process;
- **Seizure notices:** landlords are entitled to seize assets in lieu of unpaid rent under the CRAR regime. Although, this has become increasingly difficult due to the requirement to give prior notice to the tenant, nonetheless any such notice should not be ignored; and
- **Uncertain legal position:** it is critical to understand your legal position as the Company entering formal insolvency could have serious financial consequences for you as a Director or shareholder, particularly where a personal guarantee has been provided.

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