



# Change is coming...

This briefing considers the statement on proposed insolvency law reform included in the Chancellor's Budget Report of 22 April 2009.

The Chancellor's Budget Report on 22 April included the following statement:

'The Government will work to ensure that the regulations and procedures for dealing with troubled companies work to facilitate company rescues whenever they are appropriate, that the maximum economic value is rescued from companies that get into difficulties, and that the knock-on effects of company insolvencies on their creditors are minimised. Budget 2009 announces that the Insolvency Service will consult on:

- providing for new funding lent to companies in Company Voluntary Arrangement (CVA) or administration to have absolute priority status, to allow firms in difficulties to access the funding they need to get back on track; and
- extending the moratorium on creditor action against small companies trying to agree a Company Voluntary Arrangement to medium and large companies, so giving them breathing space to try to reach agreement with creditors.

To prevent creditors from being treated unfairly through abuse of pre-pack sales, the Insolvency Service will also publish a report in June 2009 on the operation of the first six months of the regime monitoring pre-pack sales and will then publish further follow-up reports on an annual basis.'

This is the first indication that the government is considering legislating two reforms that reflect some of the arguments put forward for a more US style 'debtor in possession' type proceeding. In particular:

- making a moratorium available to any organisation while it seeks to agree a voluntary arrangement would, for the first time, enable large corporates to access a moratorium without the use of a formal court supervised insolvency process. The ability of management to retain control of their business while they seek to explore a CVA under the protection of a moratorium would be a very new pasture for UK insolvency law; and
- the concept of administration and CVAs allowing 'absolute priority' new funding is a response to pressure over a period of time to produce something equivalent to 'debtor in possession' financing, which is a common feature of US chapter 11 cases. As always, the devil is in the detail. Does 'absolute priority' really mean that fixed charge holders will be subordinated to this new lending? It will take a significant change indeed in the culture of the UK insolvency regime for the rights of security holders to be subordinated in this way.

We wait to see what the consultation process brings...

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