BOND IS BACK

I return to the theme of the Government's review of the insolvency bonding regime, as its call for evidence has now been published, and you can have a say in how the system is shaped going forward. The period for responses runs until mid-December.

Insolvency Practitioners (IPs) are required by law to take out a bond to provide appropriate levels of security to cover any losses as a result of fraud or dishonesty on their part. Stakeholders have suggested that the current arrangements are inflexible, prescriptive and fail to protect creditors.

The call for evidence will help the Government to decide whether it should propose changes to the legislation governing bonding arrangements.

The call for evidence considers:

- How the current bonding system works
- The weaknesses with the current bonding system
- What similar system operates in other professions
- Potential non-legislative and regulatory changes
- Potential options for legislative change.

The call for evidence document can be found on the Insolvency Service's website gov.uk/government/consultations. If you have experience of insolvencies where bond claims have arisen, or indeed where losses have been suffered in cases involving fraud or dishonesty, your evidence and responses can be sent by email to IPRegulation.Section@insolvency.gsi.gov.uk.

Responses will be considered by the newly retitled Department for Business, Energy and Industrial Strategy (BEIS), formerly (pre-referendum) Business, Innovation & Skills (BIS) – and long before that (when insolvency bonds were first introduced in 1986) the Department for Trade & Industry. The purpose of bonds was initially set out in the 1984 White Paper 'A Revised Framework for Insolvency Law'. The White Paper, in addition to proposing the regulation of insolvency practitioners, proposed that IPs should be required to take out insurance cover against losses caused by their dishonesty and negligence in insolvency appointments. Negligence is covered separately by regulators' requirements for professional indemnity insurance.

One key aspect of the creditor protection that is (theoretically) provided by the bond is its scope. It covers only acts by the IP personally. As creditors will know well, it is not always the IP who deals with the entirety of an insolvency assignment; indeed, it is in creditors' interests for IPs to delegate some work, not least to keep costs in check. However, where delegation extends to the control of funds, this opens up a gap in the cover afforded by the bond.

A separate piece of work is underway to review the practice statement ('Statement of Insolvency Practice 11') which deals with the handling of funds in formal insolvency appointments; this was last updated in 2007. It predates many of the developments in insolvency practice and banking arrangements since then, particularly around volume operations dealing with Individual Voluntary Arrangements.

Potential revision of bonding and funds handling must go hand-in-hand. The latter is to be addressed by the Joint Insolvency Committee, chaired by Philip King. None of the changes are likely to be implemented before next year, but it is important that the process for change is not delayed. This is about creditor protection, and the profession needs to demonstrate that it can plug the gaps and maintain creditor confidence in the regulatory regime.

It should be emphasised that the number of cases in which bond claims arise is very small. This is not a major feature of the regulatory regime, as most insolvency work is conducted professionally and honestly without the need for any call on the bonds. But as a safeguard, it needs to be effective, and the call for evidence provides an opportunity to ensure that it remains so, and is therefore a welcome development in the continuous process of improvement in standards in the insolvency profession and preserving public trust.

PS For your eyes only

Of course, one option the Government is considering (on Her Majesty's secret service) is doing away with bonds altogether. That is not a likely outcome in my view. The odds of winning the lottery, or Thunderball, are somewhat greater!

But the absence of a bond raises the spectre of non-payment where a dividend might otherwise have been paid in the wake of a fraud, and might frighten the living daylights out of some creditors. That said, seemingly little money from the bond finds its way to creditors in many cases – a fact from which some might take a quantum of solace, whatever the outcome of the review.

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