



COVID-19– Geldards Public Sector Update

Business Emergency Advisory Team

23rd April 2020



An Overview of Insolvency

Karl Baranski, Partner, Banking & Finance

Legislation

- Insolvency Act 1986
- Company Directors Disqualification Act 1986



What is Insolvency?

- No definition
- Inability to pay debts – s 123 of the Insolvency Act



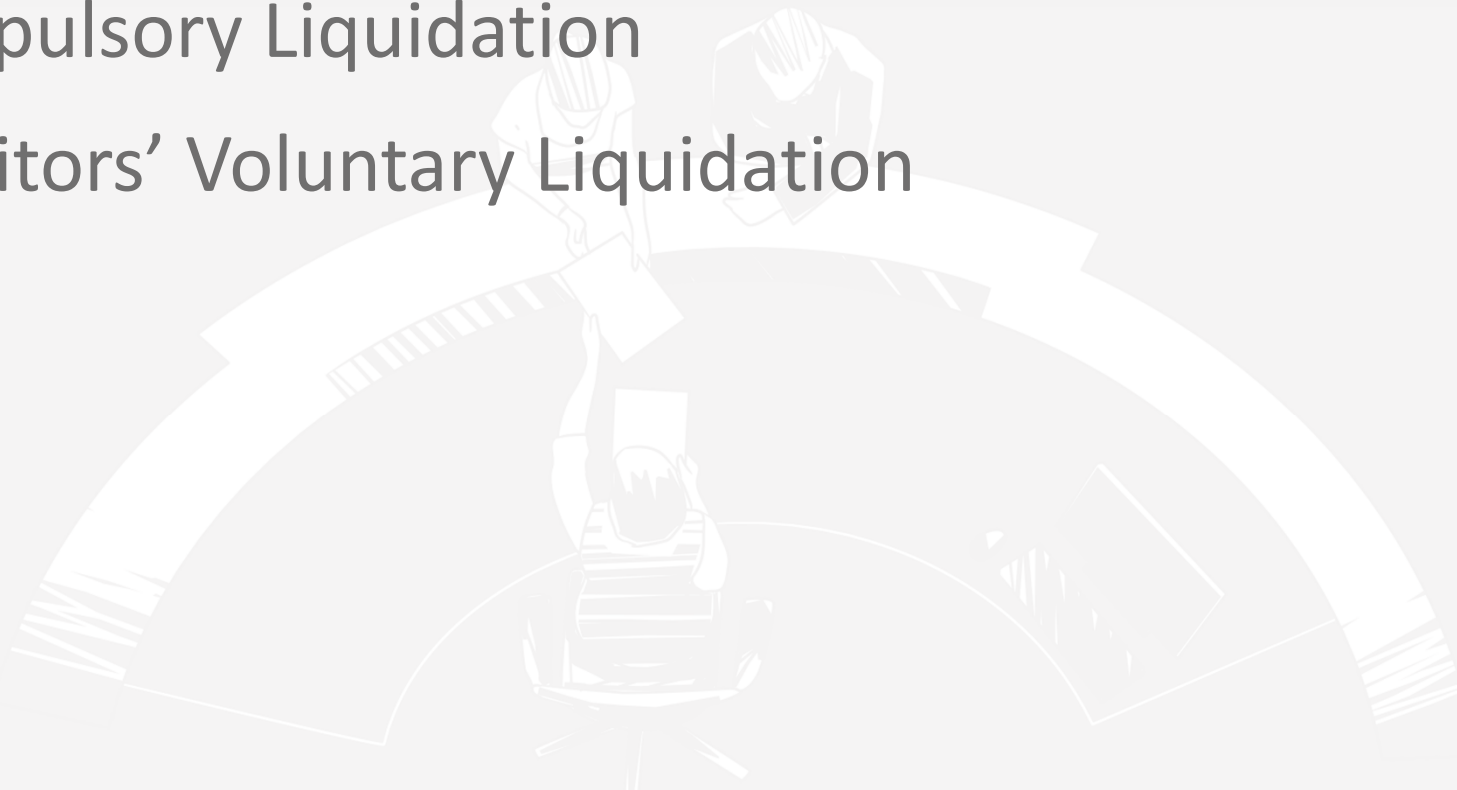
Insolvency Procedures

- Administration and pre-packs
- Company Voluntary Arrangements (CVAs)



Winding up/Liquidation

- Compulsory Liquidation
- Creditors' Voluntary Liquidation





The Implications Covid-19 for your Procurement Programme

Bethan Lloyd, Partner, Commercial Services

23rd April 2020

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Is now the right time to launch your procurement?

- Are bidders willing and able to respond?
- Will the terms they are willing to offer be coloured by the current crisis?
- Procuring now could help bolster your supply chain for the future
- Will a delay adversely impact your wider procurement programme?
- If a contract is awarded now, can it be performed effectively?
- Grant assisted projects – there are often time limits within which grant monies must be spent

Avoiding a new procurement

- Exercise an existing option to extend – but only if ‘clear, precise and unequivocal’ (regulation 72(1)(a))
- Extend the contract - provided you don’t make a ‘substantial modification’ (regulation 72(1)(e) and 72(8)):
 - Does not extend scope considerably
 - No change in economic balance in favour of contractor
 - No significant change in terms
- OJEU form: Modification notice
- Can you call off under an existing framework?

Use of PIN notice

- Use of PIN notice other than as a call for competition
- Allows you to shorten the procurement timetable
- But only if the PIN is published between 35 days and 12 months before the Contract Notice – so check a delay in the procurement does not take you beyond the 12 months

Procuring in a hurry?

- Keep procurement simple, and use open procedure if possible
- Shortened time limits if state of urgency means normal time limits are impracticable
- Direct award may be possible if there is extreme urgency (regulation 32(2)(c)) – truly exceptional circumstances
- Record the grounds in your regulation 84 report

Changing your requirements mid process

- If before the first submission deadline (either PQQ deadline or tender deadline):
 - Publish the new information
 - OJEU form: Notice for changes or additional information
 - Extend timetable if necessary
 - Consider restarting procurement if there is a significant alteration
- Risky if first submission deadline has passed (either PQQ deadline or tender deadline):
 - Be guided by regulation 72(8) (although not strictly relevant) and ask would the changes:
 - Render contract materially different?
 - Attract different bidders?
 - Affect who qualifies to bid, or who wins?
 - Can you rewind the process? Need non-discriminatory reason. Consider risk of challenge.
 - Consider whether timescales ought to be lengthened

Delaying or suspending a procurement

- Usual to reserve right to extend timetable - this would be implied anyway
- If lengthen submission deadline – OJEU form: Notice for changes or additional information
- OK to take longer over evaluation – keep bidders informed
- Can you proceed to award, but just delay commencement date of contract? Not recommended - it could be challenged as infringing principle of non-discrimination – because others may have bid (and won) if they had known about the longer time for contract performance. But there may be flexibility for short delays to assist the contracting authority (rather than the contractor).
- Delay award decision – how long are bids open for acceptance?
- Keep bidders informed

The practicalities

- Evaluation and moderation meetings – can they be done remotely, or observing the 2m rule? How will evaluation team print out large volumes of paperwork at home?
- Demonstrations and presentations – can they be done remotely, or adapted? Be careful bidders are not discriminated against, especially if this stage is scored.
- Contract initiation meetings – can they be done remotely?

Abandoning a procurement

- Ideally you will have reserved the right to do so and said bidders bear their own costs – but there is an implied right to abandon anyway
- You must have a non-discriminatory reason for abandoning
- Inform tenderers and candidates as soon as possible of any decision not to award a contract, or any decision to recommence a procedure (regulation 55)
- OJEU form: Contract Award Notice (in which you must detail the discontinuance of the process)
- Record reasons for non-award in regulation 84 report



The ICO's Approach to Enforcement During Covid-19

Lowri Phillips , Partner, Employment

23rd April 2020

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ICO's Regulatory Approach

- 12 March 2020 – Statement for healthcare professionals
 - Recognised the need to send public health messages
 - Recognised the need for public bodies to collect additional personal data and share personal data
- 15 April 2020 - Statement published setting out its regulatory approach
- Data protection and coronavirus: what you need to know
 - Guidance for data controllers

ICO's Regulatory Approach

- Acknowledges responsibility to consider the exceptional circumstances and adjust its regulatory approach
- Increased flexibility in approach
- Focus efforts on most serious challenges and threats to the public
- Assist in providing advice and guidance on data protection laws

What does that mean in practical terms?

- ICO recognises that a reduction in resources could impact on ability to comply with aspects of data protection law
 - Responding to personal data breaches within 72 hours
 - Responding to SARs within 1 calendar month
 - Responding to FOI requests
- Fines will take into account the economic impact and affordability
- No current ICO audits

However...

- Data controllers (and processors) are not off the hook!
- Statutory time limits will not be amended
 - Document circumstances and reasons for delays in notification/response
- European Data Protection Board Statement clear that:
“...even in these exceptional times, the data controller and processor must ensure the protection of the personal data of the data subjects”

Key considerations for data controllers

- Lawfulness of processing
 - **Article 6** – task in the public interest, legal obligation, legitimate interests
 - **Article 9** – substantial public interest, public health, employment and social care

Key considerations for data controllers

- Data minimisation
 - Data sharing e.g. employee data
 - Collecting data – ICO confirms that it is reasonable to ask for information about symptoms
- Data security
 - Data sharing
 - Homeworking
- Transparency
 - Amend/update privacy notices

Helpful resources

ICO

- <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/>
- EPDB
- https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf

Any questions



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