New Guidance Note Anticipated on Collective Redundancies in Insolvency

Friday, June 8, 2018

The Insolvency Service intends to publish a new guidance notice to address the issues faced by employers in dealing with collective consultation when a company is facing insolvency, following consultation with the industry last year.

The guidance note is expected to require insolvency practitioners to notify the government in advance of collective redundancy proposals and to comply with the requirement to consult when seeking to rescue or wind up a business.

The consultation sought (1) to understand the difficulties faced in practice by directors and insolvency practitioners when redundancies are proposed in an insolvency situation and (2) suggestions on how to improve the position.

The new guidance is likely to require directors and insolvency practitioners to commence consultation procedures even if time is limited and full consultation is not possible.

It will be interesting to see if the guidance note truly redresses the tension between the rights of employees on the one hand (who in some cases are entitled to 90 days consultation) with the objectives of insolvency practitioners on the other, to wind up or rescue a business when time is limited – particularly so when many insolvency practitioners already seek to address this issue by instigating collective consult procedures, even if time is short.

At the very least it is hoped that the guidance note will provide some clarity and assurance to insolvency practitioners on best practice without imposing additional requirements which frustrate the objective of corporate rescue.

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