HR1 forms and Insolvency

Introduction

The insolvency profession has been subject to significant press coverage over recent years in respect of the responsibilities of directors and administrators under employment law, specifically the legal requirement for advance notification of collective redundancies to be submitted by an employer where redundancies are to be made.

HR1s

Under the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"), an employer must give advance notice to the Department of Business, Innovation and Skills by completing and submitting a HR1 form, which must also be sent to any recognised trade union and elected employee representatives.

Where between 20 and 99 employees are to be made redundant from a single establishment within a 90 day period, the form must be submitted at least 30 days prior to the first dismissal being made.

Furthermore, where 100 or more employees are to be made redundancy from a single establishment within a 90 day period, the form must be submitted at least 45 days prior to the first dismissal being made.

The failure to comply with this notification is a criminal offence. The employer, the responsible director, manager, company secretary or other company officer will be liable on summary conviction as well as to an unlimited fine.

Issues arise in insolvency where the parties mentioned above do not comply with these requirements prior to the appointment of an insolvency practitioner. That practitioner, upon appointment, must then attempt to comply with these obligations despite the fact that the deadline for doing so may have long passed.

The most famous example of this can be seen in the administration of Woolworths as well as the liquidation of Comet. In brief, although it should be noted both cases are complex due to a myriad of facts that affected the decisions reached, the failure to adequately consult the employees in these cases resulted in tens of millions of pounds being awarded to those employees by the Employment Tribunal, the Tribunal being in position to award each employee who has not been consulted properly the maximum of 90 days' uncapped pay. In both cases, there were thousands of employees.

To further frustrate matters, because this payment is ultimately made to the employees by the Redundancy Payments Service who then claims in the relevant insolvency process under the doctrine of subrogation, it is the taxpayer who foots these multimillion-pound compensation bills as result of the failure to consult employees.

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Conclusion

Unfortunately the above is an example of where employment law and insolvency law are at odds and the government is clearly not willing to allow insolvency to be used as a defence for non-compliance with employment law obligations; the rational for this being that it is ultimately the taxpayer who suffers as a result of the failure to consult

Employers, company directors, managers, company secretaries and other company officers, as well as their advisors which includes insolvency practitioners advising pre-appointment, will need to be well aware of their employment law obligations and that these are addressed as a matter of priority to avoid personal liability.

The issue for insolvency practitioners is that prior to their appointment they have no power to submit a HR1 themselves. All they can do is ensure that the parties mentioned above receive clear advice on their obligations to consult and submit; however it will be ultimately up to them whether to adhere with those obligations.

By the time an insolvency practitioner takes office, redundancies may be imminent, if not immediate, and they will be unable to comply with TULRCA. The advice received on the matter seems to be to comply in so far as possible once appointed as some compliance is better than none.

This is clearly an unsatisfactory area of law where employment and insolvency law are not in sync.

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