

Legal and practical impact of insolvency



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Introduction

The dissertation is going to consider the topical area of insolvency and the impact that it has on contracts that are in place with the insolvent company. A company may enter insolvency proceedings either voluntarily or be forced into the position by creditors and/or members. Similar processes exist for partnerships ^[1].

However, when a company enters into a position of insolvency, this creates a potentially difficult position in relation to the contracts that have been entered into on behalf of the company, prior to the company entering into insolvency and ultimately being dissolved. This research paper will look at the effects that insolvency has on these contracts, both in terms of commercial contracts and employment contracts. It will consider not only the legal impact but also the reality of how these situations are dealt with regarding the practicalities ^[2].

Hypothesis

It is suggested that when a company enters into insolvency proceedings, whether on a voluntary basis or on a compulsory basis, the legal structure of what should happen to the relevant contracts is not, in fact, in line with what actually occurs. In reality, those involved in company insolvency will ensure that the contracts simply do not collapse but rather that economic value which exists in the contracts is maintained as much as is possible in the circumstances ^[3].

Objectives

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The main objectives of this research are to consider the legal and real impact of insolvency proceedings on contracts that are in place with the newly insolvent company. As a company can enter into contracts as its own distinct legal entity, this can result in a position where one party of the contract ceases to exist ^[4] .

The aim of the research is to consider what should happen from a purely legal point of view in relation to the contracts that a company has entered into when it becomes insolvent and how this relates to the reality of what actually occurs. Due to the nature of commercial and employment contracts and the different legal principles that apply to these types of contracts and the potentially different implications that may arise from the treatments of these contracts, they should be analysed independently.

It is suggested that the strict legal position is rarely followed due to the complex nature of the situation and this research aims to ascertain whether or not this statement is accurate ^[5] .

Methodology

Several different methods will be followed during this research. Initially, research and analysis will be conducted into what the strict legal position should be. This will involve looking at the relevant legislation and the way in which this should be interpreted strictly in relation to both types of contracts ^[6] .

After the strict legal position has been ascertained, the case law relating to how this legislation has been applied, practically, in the courts will be <https://assignbuster.com/legal-and-practical-impact-of-insolvency/>

established. A range of contracts (both commercial and employment) will be considered and looked at in order to ascertain what the agreed clauses state should happen during insolvency and how these issues are dealt with during court cases.

At this point, it would also be helpful to consider what happens in other jurisdictions, both across the European Union and in one other developed country, in particular, such as the USA. Research will also be conducted as to what is used as the main alternative to insolvency, i. e. distressed business sales or carving up of assets.

Perceptions are important in this field. Therefore, part of the research will be conducted with first hand interviews and questionnaires of business people (ideally company directors) on how they believe the contracts would work in the event of insolvency. This perception will then be compared with what is written in the contracts to see if the real perceptions meet with the legal drafting ^[7].

The research will focus on gaining a strict legal view as well as an understanding of what happens, in reality, in relation to the basic principles of contract, i. e. is there any difference between executed and non-executed contracts? Are there any differences, in reality, to the way contracts that are now frustrated are dealt with, in comparison to ones that could be performed adequately by another party?

Limitation

Commercial and employment contracts are often sensitive in their nature and not readily available for analysis. More specifically, companies that are entering into an insolvency scenario will be extremely reluctant to give information readily that relates to their commercial contracts. Many deals that are done with a company which is entering insolvency will be negotiated rapidly and with commercial secrecy, making the research particularly difficult to undertake.

Insolvency is often something that businesses are simply unprepared to consider or discuss, as discussion of such issues can be seen as a sign of weakness. On this basis, it may prove difficult to speak to a sufficient number of directors about insolvency provisions ^[8].

Resources

Resources used in this research will be relatively variable. Firstly, and arguably the most important resource, will be the legislation that underlies the area of insolvency law ^[9]. This is the fundamental part of the legal area of insolvency and will be the background for the remaining part of the research.

Case law and analysis of legislation will then form the secondary part of the research when looking at the way in which the legislation actually operates on a practical level. Once the legal position has been established, direct contact will have to be made with individual companies.

These resources will include questionnaires, direct analyses of the relevant contracts and perceptions of the contractual terms that are in place, in the

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event of insolvency. Commercial and employment contracts will be looked at separately due to their considerable differences in content, legal position and scope ^[10] .

Timetable

This research is expected to span a period of at least 8 months. The initial part of the research considering the legal context and provisions of the relevant legislation will create the foundation of the research and will be undertaken in the first 2 months of the research timetable. Towards the end of the first 2-month period, the case law and journals analysing the relevant legislation will provide the supplemental part of this initial research.

After a full understanding of the legislation has been obtained, the research will move on to considering the practical reality of what happens in insolvency situations. Questionnaires and interviews will be conducted over a period of 2 months, with the remaining 3 months of the research being used to consolidate and conclude, based on the information gathered.

Suggested Chapters

Suggested initial chapters will include methodology and research background. In the main body of the research, the findings will be broken down to contain legislative provisions (both employment and commercial), case law and legal analysis relating to the legislation, directors' perceptions, contractual provisions and overall conclusions drawing all information together ^[11] .

It is anticipated that the conclusion section will draw together all of the above information and findings to establish whether or not the legal provisions relating to insolvency are followed, in practice, when a company enters into a position of insolvency.

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Footnotes

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