



Preparing for the risk of tenant insolvency?

Have you done your planning?

It has been widely reported that British business has not undertaken full contingency planning for a leave vote. This comes at a time when the global economy is experiencing significant uncertainty and volatility. Recent research by data compiler Real Capital Analytics shows worries over the world economy and a possible Brexit triggered an £8 billion slump in spending on UK commercial property in the first three months of 2016. You might have done your contingency planning, but your tenants might not.

Olswang are offering risk management tools to support contingency planning over this period. These include high level contract audits to deal with counterparty insolvency risk and quick lessons on tenant insolvency. Please speak to us if you are interested in these topics or any other practical support in risk management issues.

Tenant insolvency – Quick lessons

According to the Confederation of British Industry, retail sales fell at their sharpest rate since January 2012 over the year to April 2016 and the first half of 2016 has certainly seen its fair share of high profile retail insolvencies, including BHS and Austin Reed. Time will tell whether this is a trend which is set to continue.

In any event, there are some lessons which can be learned from these failures, which are applicable across the real estate sector more broadly:

- Consider whether your arrangements with tenants contain adequate insolvency related protections.
- Have systems in place to identify the early signs of tenant difficulty, even before the tenant has breached its rent covenants.
- Take appropriate and timely pre-emptive action, where possible. This may include, for example, exercising forfeiture rights or utilising a rent deposit. The aim here is to maximise your recoveries and avoid being in a position where you are prevented from exercising or enforcing your rights by any administration moratorium.
- Understand your rights with respect to the payment of rent as an expense of any administration or liquidation.
- Consider other potentially liable parties, such as guarantors of the lease or former tenants that can be pursued for lease arrears.
- Ensure that you are provided with any CVA proposal at an early stage and engage quickly with the nominee and their professional advisers as it may be possible to negotiate improved terms. Although your rental income will be restricted in the short term, CVAs can prove worthwhile in the long term in respect of a reliable tenant and may avoid the prospect of your property being empty.
- As recent history shows, however, CVAs are not always successful in helping the company to avoid a formal insolvency procedure. Scrutinise the terms of the CVA proposal, in particular as to what happens on an administration or liquidation of the company.

Please speak to us about how we can help with any of the above.



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