

Holding Rescue to Ransom - success! (February 2015)

In February 2015 the government announced changes to the business rescue culture that would save more than 2,000 businesses a year as a result of an R3 led campaign.

Background

In March 2011 R3 launched a campaign in parliament to improve the tools that the insolvency profession can use to rescue a business if it becomes insolvent. The campaign aimed to amend Section 233 of the Insolvency Act 1986 to ensure continuation of supply of essential services e.g. utilities and IT providers to insolvent businesses.

At the time, there was nothing to stop essential suppliers taking a number of actions that would prevent a business being rescued e.g. withdraw their services altogether, demand extortionate 'ransom payments' before agreeing to continue to provide the services they had previously provided, or utility companies putting the insolvent business non a more expensive tariff as a result of entering formal insolvency.

Ensuring continuity of supply is a key element of the UK 'Chapter 11' business rescue procedure; R3 sought the same protection for UK companies. A change in the law would mean:

- Fewer liquidations (more businesses rescued)
- More jobs saved
- Better returns to unsecured creditors (benefitting small businesses and HMRC).
- Better returns to secured creditors (benefitting the lending climate)

The campaign

To achieve our goal R3 needed to win support in parliament and from the business community. During the two year campaign R3:

- Met with cross party MPs and Ministers.
- Won support from business bodies including the BCC, BPF and ABI.
- Achieved support from the Labour Party who included the policy recommendation in their 2013 'Small Business Taskforce' paper.
- Achieved support from the Liberal Democrats who included the policy recommendation in their 2013 'Sustainable Prosperity and Jobs Paper'.
- Won the support of the BIS Select Committee who included the policy recommendation (and called for a consultation on the issue) in their 2013 report on the Insolvency Service.
- Secured an Opposition amendment on the recommendation in the 2013 Enterprise and Regulatory Reform Bill.

Success!

After two years of winning support and discussing the issue with MPs, officials and business organisations, R3's work reached a head in early 2013 when Government amended the Enterprise and Regulatory Reform Bill. The Government amendment to the Bill said that IT providers and other essential suppliers must continue to supply on insolvency and in the future will be unable to vary their terms of supply or increase charges. The Government also committed to carry out a formal consultation on the issue.

The consultation was launched in October 2014 and legislation came into force in October 2015.

R3 welcomed the government's change in the law. Over time, we would like to see more types of suppliers added to the list of 'essential suppliers'. It'll also be important to review the impact of the requirement for Office Holders to give a personal guarantee to suppliers.