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BM&T host debate on pre-insolvency proposals

Proposals for a new pre-insolvency regime in Europe were the topic for debate at a recent TMA UK panel discussion in London.

Leading figures from the European turnaround community took part in the event ahead of the deadline for the UK Government's consultation into the European Commission's recommendations for a new approach to business failure and insolvency. The proposals, published last March, would allow companies to restructure at an earlier stage, before formal insolvency proceedings are started.

The event, which was hosted by turnaround boutique Bryan, Mansell and Tilley LLP, saw discussion and debate on the proposed changes that promise to have a significant impact on UK, European and cross-border restructurings.

The evening's panel was made up of prominent turnaround practitioners Stephen Taylor, of Isonomy, and Alan Tilley, of BM&T, along with Nicholas Blaney, of the Insolvency Service, and Phillipe Favre, from Prospères France.

Mr Taylor, who was a member of the practitioner group advising the EU Commission, was forthright in his view that the UK had fallen behind European states, particularly France and Italy, in legislation changes aimed at avoiding premature value-destructive insolvency.

Mr Favre, who has extensive experience of French process, supported the view that French 'conciliation' and 'mandate ad hoc' encouraged companies in liquidity difficulty to seek early advice, with the significant effect of preserving greater value for all stakeholders.

Mr Tilley commented that whilst the UK system was efficient and effective once in insolvency, it created potential conflict of interest issues for those firms acting as both restructuring advisers and insolvency practitioners. He said that whereas CVAs could be effective they were run by Insolvency Practitioners which by association eroded key stakeholder goodwill, whereas Schemes of Arrangement were too expensive and time consuming for many SME companies.



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Mr Tilley argued that a pre-insolvency moratorium without IP involvement would be beneficial in helping save jobs and value. He told the event there was precedence of success for such Consensual Creditors Compositions albeit without any automatic stay, in both the USA and UK, and added that he saw a role for Certified Turnaround Practitioners in monitoring such a process.

Fears that rogue directors could exploit the situation to the detriment of creditors was put into perspective by Mr Blaney, who pointed out the negligible incidence of directors being struck off for malpractice.

However, he did highlight a lack of enthusiasm from the professional insolvency bodies for the EU recommendation, observing that it may take an EU directive to enforce the recommendation, which would add up to four years to any process.

Chairman David Bryan, founding principal of BM&T, said: "This proposal has the potential to change the turnaround landscape in the UK. It is up to the turnaround profession and British industry as a whole to press for legislation change in the UK for the benefit of all stakeholders in financial distress."



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