

Review

Transport & Regulatory Group



When the engines fall silent – dealing with transport companies in administration

During the course of 2009, the number of transport companies that entered administration increased by around 16% on the previous year. With a continued squeeze on the transport sector, it is inevitable that this number will rise during the next 12-18 months.

All those in the transport sector operate under a set of regulations which manifest themselves in an Operators' Licence ('O-Licence') which is required for the operation of vehicles within the UK. The O-Licence is one of the most valuable assets of any transport company, without which they would not be able to operate legally. O-Licences are policed by the Traffic Commissioners.

REGULATION 31

The Traffic Commissioners are empowered (under Regulation 31 of the Goods Vehicle (Licensing of Operators) Regulations 1995) to direct that if a company enters into a formal insolvency procedure, whoever takes over the business of a company concerned in goods vehicle haulage be treated, for the purposes of the O-Licence, as if they were the original licence holder.

This allows an Administrator to trade the business with the assistance of an appropriately qualified manager pending sale.

In the case of *Brian Hill Waste Management Ltd. v The Secretary of State for Transport* (2009), it was decided that if an Administrator elects to carry on a road haulage business, either personally or by appointing managers, then there must be an application made under Regulation 31. Failure to advise the Traffic Commissioners of a change in material circumstances may lead to adverse conclusions being drawn against the directors. Further, if the Administrator fails to notify the Commissioners under Regulation 31, the company may find itself at a Public Inquiry for loss of repute, loss of financial standing and perhaps unlawful operations.

IMPLICATION FOR INSOLVENCY PRACTITIONERS

The Traffic Commissioners will, in special circumstances, entertain Regulation 31 Applications by a prospective Administrator even though he has no formal standing prior to any appointment. It is essential that Insolvency Practitioners follow a strict set of criteria to ensure that they and the transport operation are compliant.

Hammonds is experienced in dealing with Regulation 31 Applications, attending Public Inquiries and liaising with the Traffic Commissioners on this subject. Should you wish to discuss the matters raised further, please contact any of the Hammonds' contacts listed below or your usual Hammonds' contact:

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FURTHER INFORMATION:

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