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HART SHAW

Business Recovery & Insolvency

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The Adviser

Business Recovery

Welcome to the Business Recovery issue of The Adviser.

In this edition we cover some of the key issues surrounding under performing businesses and the steps they can take to ensure business survival and long term growth.

Typically a negative subject, we intend to shed some light onto the options available and provide reassurances that employing an Insolvency Practitioner does not always spell the end for a business.

We focus on a key case study of Timberline Ltd, in which Hart Shaw helped to save a struggling business, saving numerous jobs in the process, highlighting how different departments at Hart Shaw work together to achieve a positive outcome for the client.

Strategic steps to help protect your business in the current economic cliamte were presented in a recent seminar, which is reviewed in this issue.

We hope you find our Business Recovery edition of interest and we welcome your feedback.

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Insolvency Practitioners - The Truth!

Its probably fair to say that, in general, business people have a negative impression of Insolvency Practitioners. That if you go to see one, liquidation and the end of your business is inevitable. However this really isn't the case. A recent review of all Hart Shaw's company insolvency appointments during the last 10 years showed that in 55% of cases the company's business survived and in only 45% of cases did the business cease for good.

Most of the companies we deal with are owner managed and if there is a viable business there, we do what we can to ensure that the owners retain their business, jobs are saved and the return to creditors is maximised. The three main insolvency procedures we use when dealing with insolvent limited companies are Liquidation, Administration & Company Voluntary Arrangement.

Liquidation is the process by which the life of a company is brought to an end. Its assets are liquidated (turned to cash) and once its affairs have been dealt with, any remaining funds are returned to creditors. Although at the end of the process the company will cease to exist, quite often its business can be saved by selling it either to the existing management or to a third party.

Administration is the process by which the company is protected from its creditors while the Administrator attempts to either save the company, or if this is not possible, do better than if the company had gone straight into liquidation. Quite often the business will be sold as a going concern thus saving jobs and maximising the return to creditors.

A Company Voluntary Arrangement is basically a commercial deal between the company and its creditors in settlement of its debts. Usually the company agrees to make payments into a fund for a period of 3 to 5 years and creditors get paid out of the fund, typically receiving 30 to 50p in the £. The company survives and its directors and shareholders retain control. Creditors must vote in favour of the arrangement, and a majority of 75% by value of creditors voting is required.

Provided there is an underlying viable business, no matter how bad the situation seems, there is usually something positive that can be done. The key to saving a company or it's business is to take advice sooner rather than later – while there is still something to save.

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Case Study - Timberline Ltd

Hart Shaw were appointed Administrators of Timberline Limited, a company based in Chesterfield, at the beginning of November 2011. The company manufactured and marketed wooden play equipment to schools, nurseries and playgrounds. Although the company had a good product and position in the market, its problem was that it sold principally to the state education sector and the public sector cuts meant that its turnover was only going to fall. In its last year the company had incurred losses, fallen into arrears with payments to creditors and enforcement action from HM Revenue & Custom was imminent.

Timberline
The Natural Choice

Immediately prior to our appointment we discussed with the directors the various insolvency options available to the company. The decision was taken to place the company into Administration and for trading to continue while a buyer for the business was sought. The working capital requirements of the company whilst it was in Administration was funded from debtor receipts and fortunately the company had a strong debtor ledger which could be used to fund ongoing trading.

Soon after our appointment we carried out a review of the business and concluded that a number of redundancies were required to stabilise the business. 30 employees were declared redundant out of a total of 80. The company continued to trade, taking on new orders and supplying product whilst the process of finding a buyer took place.

Following our appointment we put out a press release which generated publicity in the local press and on local TV and radio. Hart Shaw's Corporate Finance team were engaged to market the business for sale and substantial interest was generated with more than 60 companies expressing an interest in buying the business. Of these 60 companies, 20 took their interest further with ultimately six formal offers being made.

The best offer was pursued and after further work and due diligence, the sale of the business was completed on 15th December 2011 – six weeks after the company had entered Administration. The purchaser was a company in the education sector but with a different product line and so the purchase was a great fit for them.

By taking prompt action the directors of the Company were able to ensure that the business was sold as a going concern thus saving the jobs of 50 employees – a good result for all concerned.

Jobs saved by Timberline sale

Metalliform Holdings, the Barnsley-based school furniture and stadium seating manufacturer, has acquired Chesterfield based outdoor play equipment manufacturer, Timberline, saving 50 jobs.

Sheepbridge-based Timberline called in administrators from Sheffield accountancy firm Hart Shaw after hitting financial problems in November.

Joint administrator and Hart Shaw business recovery and insolvency partner Christopher Brown said: "Following our appointment we continued to trade the business while we marketed it for sale.

"We are delighted that the sale of the business is now complete. This is a fantastic outcome for all stakeholders – employees and creditors – of the business and the acquisition by Metalliform has saved 50 jobs."

Timberline's Foxwood Industrial Park headquarters and insert, Hart Shaw's Christopher Brown

Hart Shaw's corporate finance team, led by Steve Bell, also helped to achieve the deal with Hoyland-based Metalliform, which employs 90 people, has a turnover of £8 million and has made furniture for schools, colleges and universities for more than 60 years.

Steve Bell said: "The underlying business of Timberline has strong brand recognition and we attracted a high level of reputable companies looking to secure the business.

"The nature of the administration was such that we had to react very quickly and were able to prepare the information pack and arrange site visits shortly after appointment with the result that the sale was completed within six weeks."

Metalliform's chief executive Peter Brier said: "Timberline is a business that has a good customer base and a skilled workforce.

"We are very pleased to have concluded this deal quickly as this presented the best chance to preserve jobs. There are good synergies between the two businesses."

How to protect your business

Unless your business is in retail, you probably give credit to your customers. This of course is a risk to your business if your customer fails and goes into liquidation without paying you. The following are some of the practical things you can do to limit the risk to your business:

Know Your Customer

You need to know who your customers are and whether they are worth the credit you are giving them. So carry out a credit check on them, look at their accounts and understand them and see how long they have been trading. Do the owners or directors have a history of failing companies? Speak to other people who have traded with them to see how they pay and carry on their business. Build up a credit profile and set a credit limit that you are comfortable with and then stick to it. Because ultimately that is the amount that you are going to lose if your customer fails and they don't pay you. Of course circumstances can and do change, so you need to regularly review your customers and their credit limits to make sure that they are still relevant.

Retention of Title

Do you supply a product where you can make use of a Retention of Title clause? This is where you retain title to the goods supplied so that you can recover them if they are not paid for. If so make sure the clause you are relying on is correctly worded and is incorporated into the contract of sale. We often see claims where the clause is only on the invoice and an invoice is a post contractual document. Ideally you should get your customers to fill in a credit application form which includes a Retention of Title clause so that it is incorporated into the contract of sale. However, remember that future paperwork between you could change this.

Personal Guarantees

If you are updating your paperwork why not introduce a personal guarantee into your terms of business? This will mean that if your customer goes into liquidation you can pursue the director who signed the guarantee for payment. Having a guarantee, and the threat that you will pursue the director for payment, may well mean that you are more likely to be paid by your customer before it goes into liquidation.

Cash Is King

You need to bill your customers promptly and often. A few days delay in getting an invoice out can put it into the following month's batch for payment. That can be the difference between getting paid or not when a company fails. We often see creditors who have not issued an invoice for some time and so are a creditor when otherwise they would have been paid.

He/She Who Shouts Loudest

In the period prior to a Company failing, there will still be cash available and some creditors will get paid. You just need to ensure that you are one of them. When we speak to directors about the events leading up to liquidation, we are often told that those who shouted loudest were paid or at least got something. So you need to do some shouting. Of course, what matters is how you do it. You need to be firm, insistent but polite. If you upset them they are less likely to pay you.

Fit for purpose

Since the economic crisis of 2008 the country continues to sail through choppy waters. Recent reports state that the UK economy has re-entered recession. The continuing weakness in the banking sector means, now more than ever, companies have to take control of their resources.

At a recent seminar we commented that business owners have to control their business, relying on the bank to support you through these challenging times is short-sighted. With the banking sector being cautious in their approach to funding existing businesses, a company that can show it understands its operations and has a clear, defined plan is more likely to be successful.

As a business do you focus your energies on those factors that are in your control? Do you consider the opportunity costs of decisions? Can you reduce prices to maintain volumes? Or can you maintain margins, at lower volumes but rationalise operations to maintain profitability?

A key element of our corporate finance work is developing, with our clients, robust strategic plans and identifying key performance indicators that allow them to fully understand their business and their plans, enabling them to react quickly to market events.

Our knowledge of the banking sector and experience of working with many businesses across a wide variety of sectors mean we can deliver constructive advice to ensure you survive and thrive in the current market.

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Insolvency terms explained

As in all specialism's insolvency has its own language and terminology. The following are a selection of the common terms used:

Insolvency – there are several tests of insolvency, the two practical ones are the Balance Sheet Test – you are insolvent if the total value of your assets is less than the total value of your liabilities – and the Commercial Insolvency Test – you are insolvent if you can not you pay your debts as and when they fall due.

Liquidation – there are three methods by which a company can be placed into liquidation:

Members Voluntary Liquidation is for solvent companies where creditors will be paid in full and funds will be returned to shareholders. This process is often used when the business owners are retiring, the business has been sold and cash remains in the company. The shareholders pass a resolution to place the company into liquidation and the liquidator distributes the surplus funds to shareholders. Such a distribution is taxed as a capital distribution rather than income, which is usually more tax efficient.

Creditors Voluntary Liquidation is for insolvent companies. The process is started by the shareholders who pass a resolution to place the company into liquidation. A creditors meeting is held at which creditors receive a report explaining what has happened and any creditors present have the opportunity to question the directors.

Compulsory Liquidation is when an insolvent company is wound up by the Court, often on the petition of a creditor. The Official Receiver will initially be appointed liquidator and if the circumstances warrant it, may seek the appointment of an Insolvency Practitioner to act as liquidator to deal with any assets. The Official Receiver will retain the responsibility to investigate the affairs of the company.

Wrongful trading - if a company is insolvent, its directors have a duty to act primarily in the interests of creditors. Wrongful trading occurs when the directors allow the company to continue trading and incur losses beyond the point that a reasonable person would have concluded that the company could not avoid insolvent liquidation. If wrongful trading can be proved the directors can be made personally liable for the additional losses that have been incurred by the company.

Individual Voluntary Arrangement (IVA) – is a deal between an insolvent individual and his/her creditors in satisfaction of his/her liabilities. It will often involve monthly payment into a fund for a period of five years after which the individual's liabilities are written off.

Bankruptcy – is the formal Court process for dealing with an insolvent individual. Subject to certain exceptions, the individual's assets are realised for the benefit of creditors and at the end of the bankruptcy period – usually one year – the individual is released from his/her debts.

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Seminar review

Managing your business and its customers: Strategic steps to ensure business survival and long term growth in the current economic climate

With the economy falling back into recession, it is more important than ever to be proactive, rather than reactive, in managing your business through these difficult times.

In April 2012 Hart Shaw teamed up with Wosskow Brown Solicitors to provide a timely breakfast seminar focusing on the practical steps business owners can take to reduce risk and maximise the value in their businesses. Topics discussed included:

- Cash flow management
- Understanding your business
- The funding market
- Successful management
- Getting your terms and conditions right
- Effective debt collection
- Business survival strategies
- Recovery options available

Delivered by Christopher Brown, Business Recovery & Insolvency Partner & Steve Bell, Head of Corporate Finance at Hart Shaw and Kiley Tan, Head of Commercial Law at Wosskow Brown, this event provided a crucial insight into how a thorough review of business operations can ensure survival and long term growth.

Due to the great turnout and success of this event, Hart Shaw will be looking to run similar events later in the year. Please contact Brendan Hall, Marketing Co-ordinator on T: 0114 251 8872 or email: brendan.hall@hartshaw.co.uk for further information.

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