

INSOLVENCY BULLETIN SPRING 2011

Volume 2, Issue 1

John D Travers & Co:
Innovative
Insolvency Solutions
for Business

Our services include:

- Corporate Recovery
- Members' Voluntary Liquidations
- Creditors' Voluntary Liquidations
- Compulsory Liquidations
- Administrations
- Company Voluntary Arrangements
- Administrative Receiverships
- Law of Property Act Receiverships
- Partnership Voluntary Arrangements
- Business Advice
- Advice to directors
- Bankruptcy

New ruling protects employees' rights

As a result of a new ruling, anyone buying a business out of administration needs to factor in the transfer of staff and their accrued liabilities to the commercial considerations, negotiations and deal strategy of the purchase.

A recent Employment Appeal Tribunal judgment overturned a 2009 ruling to clarify the position: employees now enjoy full protection under TUPE when the business in which they work is purchased in administration, even in a so-called "pre-pack" administration where it is intended that following the sale, the

"This ruling makes it clear that TUPE will apply in full to the acquisitions of businesses and parts of businesses from administrators."

company will subsequently go into liquidation.

John Travers warns: "How TUPE works in relation to administration and whether it is disapplied has been uncertain for a some time. While clarity is welcome, the situation is now potentially more onerous for purchasers.

"In particular, they will need to consider any potential claims from those dismissed pre-transfer.

"An administrator will almost certainly be unwilling to indemnify the acquirer against any of the relevant liabilities,"

Corporate dominoes fear as economy teeters

As increased VAT, fuel price rises and government cut-backs push many vulnerable businesses over the edge, the resulting domino-like effect could be catastrophic for the unsuspecting, says John Travers.

He explains: "The economy is operating on the optimistic basis that the recession is over and that all will return to normal within a few months.

"I believe that at the start of 2011, many

firms are literally hanging on by their fingernails in the hope that the upturn will come in time to save them.

"As and when these firms fail, it is unlikely there will be much left over for unsecured creditors once secured lenders have taken their share, thus creating a knock-on effect throughout the business community.

"Sectors such as leisure, construction and business services are likely to be hardest hit," he warns.

No room for complacency...

2010 saw a record number of people formally declared insolvent.

The latest statistics from the Government's Insolvency Service show that 135,000 people entered either bankruptcy, an individual

voluntary arrangement (IVA) or a debt relief order (DRO) during the course of last year - only 1,000 more than in 2009, but 30 per cent more than in 2008 and four and half times as many as 10 years ago.

Personal credit no answer to business stress

The number of directors and owner-managers running up their personal credit rather than further deplete their business resources is increasing, observes John Travers.

He warns that this approach can quickly spiral leading to individual insolvency while leaving the problems faced by the business unaddressed.

He says: "As the flow of cash slows, most business people want to believe it is a temporary problem, and will try any measure to keep it going.

"The reality is that if the business is really haemorrhaging money, a situation which could possibly have been resolved will have been worsened by the delay in seeking a business solution."

CVA'S not always halcyon solution

Company Voluntary Arrangements (CVA'S) will not always provide the hoped for lifeline, especially if the underlying business model is unsound, says John Travers.

He believes that when times are tough directors may be seduced by the promise of parking their liabilities for up to five years in the hope that they can turn the business around.

John says: "For a CVA to be successful, the fundamentals of the business must be

CVA'S have recently hit the headlines through Focus DIY and J B Sports, where they were used partly to compromise landlord's claims in multiple outlet businesses.

addressed. There is little point in buying time by negotiating with creditors unless there are improvements to the roots of the problem.

"Entered into frivolously, a CVA will probably fail and the directors' options will have closed," he says.

"Another major point is that a CVA can only bind unsecured creditors.

Secured creditors can continue to rely on their security and pull the plug at any time, so they must be consulted and signify their support," he adds.

Significant fall in county court judgments

The number of CCJs against businesses in England and Wales fell by more than a quarter in 2010 - to their lowest level in two decades.

A total of 150,900 judgments were issued during the year, 27 per cent fewer than in 2009, according to annual figures released by the Registry Trust. The value of CCJs also fell £899m in 2009 to £613m in 2010.

John Travers comments: "This confirms my view that unsecured creditors are taking a more supportive stance when their business customer is starting to struggle."

Thoughts to conjure with...

Not all as it appears: A Worcestershire debt collection officer working for the HMRC was sentenced to two and half years in prison at Hereford Crown Court after pleading guilty to stealing nearly £85,000 from taxpayers by presenting fake documents.

Debt advice boost: The Government has given a £27m funding boost to Citizens Advice Bureaux to secure the future of a face-to-face debt advice programme for 2011/12. The coalition believes this will honour its pledge that the state would take action to help people to manage their own debts. Is this an admission that personal debt will worsen as austerity measures bite?

The average owed by every UK adult is £29,875 (including mortgages) - 126 per cent of average earnings.

JOHN D TRAVERS
& COMPANY

LICENSED INSOLVENCY
PRACTITIONERS
BUSINESS ADVISERS

For further information or guidance, please contact:

John D Travers & Company, First Floor, 58 Hagley Road, Stourbridge DY8 1QD
T 01384 374 000 F 01384 375 300 W johndtravers.co.uk E info@johndtravers.co.uk