

INSOLVENCY BULLETIN SPRING 2010

Volume 1, Issue 1

John D Travers & Co:

We offer 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

The Danger of Recovery

Pundits seeking the green shoots of recovery were not disappointed when early in the year economists and experts revealed a decrease in corporate failures, with the rate falling to its lowest point since June 2007.

The news should be greeted with some caution, comments John Travers, who says that the long road to recovery is likely to be littered with yet more corporate corpses.

“An analysis of government figures confirms that this recession has been the deepest on record, and I believe that the worst is not yet over for a wide cross section of firms,” he said.

The ‘insolvency lag’ was very much in evidence after the last recession, when the number of company failures peaked more than a year after the ‘bust’ had ended.

“I am seeing many businesses with deteriorating cash flow and starved of investment who will find it very tricky to trade through a continued downturn.

“What’s more, these firms will find trading in an upturn doubly difficult and many will lose the struggle for

survival once the recovery has started in earnest.

“We will be urging the next government – of whichever colour - to increase their support for business and to

ensure that the banks make as much funding as possible available for businesses with potential for renewed growth,” he added.

Winding up is hard to do...

To assist professionals looking for more cost-effective support when winding up failing companies with no assets, we are trialling a new fast track service.

To qualify, the liquidation will be the first for directors and shareholders, and there should be no pension fund.

John Travers says: “These liquidations can prove relatively expensive to

administer due to the disproportionate complexity of current regulation.

However, in restricted circumstances and with the full co-operation of the directors we can provide a streamlined approach which meets the all the statutory requirements while keeping costs to a minimum.”

Email john@johndtravers.co.uk or call 01384 374000 for more information.

Insolvent trading - legal or not?

It is a commonly held belief that trading whilst insolvent is unlawful, but this is not necessarily the case.

Under the Insolvency Act 1986, it is 'wrongful trading' that is the offence and is committed when directors of businesses continue to trade whilst insolvent to the detriment of their creditors.

It can only occur in the case of a limited company that has gone into insolvent liquidation.

*The Insolvency Act 1986 defines two tests for solvency:
Do liabilities exceed assets?
Are debts being discharged as they fall due?*

Directors should be made aware that failure on either count could have a serious impact on their personal finances.

The distinction arises because wrongful trading only occurs as a result of continuing to trade beyond the point at which the

directors ought to have been aware that the company could not avoid insolvent liquidation, invariably increasing losses to creditors.

This concept is, however, sometimes applied to other insolvency proceedings in support of other

actions that may be taken against directors, partners or sole traders.

A recent World Bank report showed that the costs of closing down a business in the UK are higher than in other countries with similar or better recovery rates.

OFT Reviews Insolvency Market

The Office of Fair Trading is currently conducting a study into corporate insolvency in the UK to ensure that the market is working effectively and in the best interests of end-users, practitioners, and the economy as a whole.

The OFT is consulting with interested parties, including law practices and accountancy firms, and the results are due to be published at the end of this year.

Finally, thoughts to conjure with...

Britain has been labelled Europe's 'bankruptcy brothel' by creditors of Greek telecoms firm Wind Hellas in the aftermath of a deal in which the company used the UK's attractive insolvency regime to off-load its debt. It is possible that many failing foreign firms will attempt to follow suit.

The Consumer Credit Counselling Service has revealed that men are more likely to become insolvent than women, based on the number of IVAs in 2009.

"There is nothing in insolvency legislation that provides for football debts or other transfer fees of clubs in administration to be paid prior to other unsecured creditors." Stephen Timms, HM Treasury, Hansard March 9th 2010.

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