

COVID-19: Restructuring Options

With businesses still struggling with both the impact of the current lockdown period and the realisation that the government aid packages may not be available either soon enough or potentially at all, business owners are looking at how they can use more formal insolvency procedures to secure the future of the business.

Planning for the present and the future

Understandably the current focus of many business owners is on the immediate survival of the business and what they can do to secure that survival. That focus is spread across furloughing staff, deferring payments, chasing debtors and working through the spider's web that is the range of government funding that has been introduced whether that be Business Support Grants, Bounce Back Loans or Coronavirus Business Interruption Loans.

In terms of taking advantage of these rescue packages, it is becoming clear that in their current form, they still require the business to be "viable". This is, in effect, no different to what the process for securing funding would have looked like 12 months ago. For many businesses, it is going to be very difficult to present a case which will meet the eligibility criteria. Furthermore, even if the funding is secured, is that simply saddling the business with financial liabilities which it has no real prospect of meeting as and when repayment is required?

We are also talking to a lot of business owners about the future, as, even if a business is lucky enough to make it through the current period of financial stress, it is almost guaranteed that the world in which that business operates in is going to look different in 6 or 12 months' time. Therefore it is going to be crucial that business owners focus on trying to ascertain what that world is going to look like and what their business needs to look like in order to survive and thrive in it.

Options

Obviously the hope is that businesses will survive in their current form and be able to make the most of the undoubted opportunities that will present themselves in the new "normal".

However for some, the best option may well be to take advantage of the relative goodwill on offer from creditors and the increased flexibility of insolvency legislation to restructure the business in a way that enhances both its immediate and long term financial viability.

Company Voluntary Arrangement

The Company Voluntary Arrangement (**CVA**) is particularly useful in circumstances where an essentially healthy business is hit with a specific short/medium issue such as the loss of a major customer or large bad debt.

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Company Voluntary Arrangement continued

If the business simply can't scale down, dig into cash reserves and await better times, the versatile nature of the CVA legislation could prove to be the right solution. The attitude of creditors at the current time is probably as lenient as it has ever been or likely to ever be. Therefore, if a sensible and sustainable proposal is presented to creditors, there is a good chance that the required proportion (75% by debt value) will take the view that it is worth supporting a business which was strong before the crisis and will be after it.

This gives the business owners the breathing space to assess options and restructure the business in a way that gives it the best opportunity to survive going forward.

"Light Touch" Administration

We are currently helping business owners explore what has been termed "light touch" administration proceedings that are intended to protect companies from creditors during the coronavirus pandemic. A light-touch mechanism allows company directors to file for administration but retain day-to-day control, rather than ceding power to insolvency practitioners. Creditors such as HMRC, lenders and suppliers are prevented from taking legal action to recover outstanding debts. At the same time, the administrators will attempt to rescue the business and potentially return control of it to the directors if appropriate.

It should be noted that administrators will need to be persuaded to adopt a "light touch" as primary responsibility in the administration will remain with them. It will clearly be appropriate for some cases and not for others. All parties seeking to engage in a "light touch" administration will need to seriously consider the financial, commercial and practical consequences of implementing this relatively new concept.

For further support with restructuring options, please contact jonathan.williamson@outsetuk.com

Free Employment Law & HR help for your business through the Covid-19 crisis

In light of the current crisis, we have made our Primed online knowledge system available free of charge, allowing you to access the latest COVID-19 information and guidance as well as hundreds of template documents, policies and guidance covering employment law & HR, health & safety and information security.

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