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Advice on risk management and monitoring

Interview with Dr Vincent Cable MP

Personal debt, Northern Rock and the credit crunch

All rise Key issues in the food supply chain

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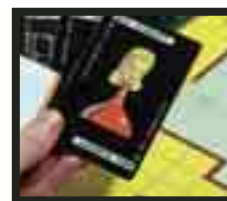
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The future corporate

In a recent seminar at the Insolvency Service on the future of corporate insolvency Steven Law put forward a few ideas for improvement. He outlines these in this opinion piece.

Editorial



Reform is on the minds of many of our contributors. Steven Law's views on changes in the administration procedure and the general structure of corporate insolvency provisions (opposite) have much to commend them, as does Nick O'Reilly's (page 4) presidential focus on regulatory inconsistency (how can eight regulators for two thousand or so licence holders work well?). Also, Patrick Cook engages with the European High Yield

Association on page 5, identifying, correctly in my view, that the more US-style system proposed by the EHYA is more confrontational and therefore more likely to lead to increased cost and delay than the UK system.

Tony and Sue Casey suggest on page 22 how the IVA rules could be amended to avoid the inappropriate rejection of IVAs by aggressive lenders such as Northern Rock. We also look at the nationalised bank through the eyes of Vince Cable, who mentions with some concern the £50 million being paid to city firms in relation to the failure.

Our main theme of *Surviving a Crisis* is introduced from a risk management perspective by Ed Brittain on page 18 (although some of the concepts are foreshadowed in Kevin Murphy's review of *The Black Swan* on page 5). Ed also includes a useful reminder about health and safety risks for IPs.

A final point of linkage between two articles is Richard Curd's mention on page 26 that the discharge of a bankrupt extinguishes the remedy of enforcement against him but not the underlying cause of action. The observation in Mike Bacon's tax piece on page 28 that the European Insolvency Regulation allows foreign tax claims to rank for dividend should be considered in the context that foreign tax claims are nevertheless not liabilities that are extinguished on a bankrupt's discharge.

Chris Laughton is editor of *RECOVERY* and a partner at Mercer & Hole.

Since the introduction of the Enterprise Act 2002, I have undertaken a number of administration appointments, mainly achieving successful outcomes in terms of business rescues and saving jobs. In two cases, I attempted to rescue the company through a company voluntary arrangement (CVA) following the administration. Both CVAs failed after the first 12 months – not through flawed processes but because there were too many hurdles to overcome.

Changes in the administration procedure

To improve the situation, I would like to see the following changes to the administration procedure.

The advising IP should be given greater authority during the period after notice has been served on the qualifying floating charge holder by the directors or the company. The IP has an important role to play in paving the way for the future administration yet he has no authority and, ironically, present rules do not allow him to recover his costs post administration. The decision to appoint the administrator has already been made and the directors need help to run the business in the interim. Consideration should be given to making the IP an interim manager for the period following the serving of the Notice of Intention to Appoint, for which he or she should be paid from the administration pot.

One instance in which a more formal role for the IP would have benefited the company was in a motor dealership where, upon receipt of the Notice, the financier of the loan for stock withdrew its cars, practically making the business unsalvageable. Often those in authority are emotionally fragile and not best placed to negotiate in these circumstances. An IP has the experience to deal with such situations.

development of insolvency

The interim manager-type role would also assist the company in circumstances where there is more than one QFC and the appointment has to be delayed until either the slowest QFC holder consents or the expiry of five days.

One area where we could benefit from the Chapter 11 procedure is the provision of some friendly 'debtor in possession' finance, where the administrator can borrow to trade

¶ Perhaps there should be a more formulaic approach so that, for example, there is an automatic disqualification term of two years for all directors who preside over a company with a deficit of more than ten times share capital. ¶

and secure against the free assets of the company (including future book debts). Could such a fund be made available from monies held in the Bank of England's £1 billion insolvency service account?

The threat of contract determination remains live in most trading administrations. Recently, a car hire business I was running as administrator was at risk of coming to a shuddering halt because a fuel card supplier decided they should withdraw their service. It took four days of discussions to get the service restored. Companies in administration deserve greater protection if we are to preserve them.

Focus on CVAs

I believe that the main focus for improvement in corporate insolvency should be on the beleaguered CVA. There are still only some 500 CVAs per year, possibly because there are many obstacles facing a company in this type of arrangement. Legislative changes could help to make them more workable. Some of the practical issues I have encountered include:

- An electrical trade body initially refused to renew a company's accreditation because the rules prohibited a company in CVA from being authorised. But accreditation was essential for the company to get 90 per cent of its work.
- It is often difficult to obtain credit for payment of an insurance premium, which is not helpful to achieving a positive cash flow at a time when help is needed most.
- I also wonder about the impact of advertising a CVA at Companies House with regard to its ability to attract new business. In 1986, when CVAs were

introduced, systems for searching the public record were less sophisticated. The competitive playing field is lopsided as not only are details of the CVA lodged but also the chairman's report, annual reports and r&p accounts are disclosed. I would like to see this changed.

The general structure of corporate provisions

Some observations on the general structure of our corporate provisions include:

- It is right that most procedures should remain debtor initiated – but a shame that debtors often don't recognise the problems until it is too late.
- It is right that we retain the liquidation option. Some companies just need a decent burial. However, does there need to be as many as 13,000 liquidations per year? That is some 80 per cent of the total.
- A strength of our system is that we do not have to run to court every time we want to make a decision.
- All corporate insolvency, with the exception of compulsory liquidations, should go through the administration gateway first. This process provides a timely, flexible and cost-effective regime in a secure environment and affords time for an IP to guide the company into the most appropriate procedure.

It is too early to comment on the 'prescribed part' but it remains an admirable concept, which should be a success.

CDDA provisions

I believe that it is time to review the CDDA provisions. The present system is costly to the tax payer and produces inconsistent and unsatisfactory results.

There is merit in saying that there should be no conduct report for directors taking their company into CVA via an administration. This seems a pointless requirement given that the direct CVA route requires no report.

Perhaps there should be a more formulaic approach so that, for example, there is an automatic disqualification term of two years for all directors who preside over a company with a deficit of more than ten times share capital. Something like that may achieve some good. Many of us would like to see a greater commitment in terms of higher share capital – £2 or £100 companies have always been a concern of mine. Such a policy might also encourage directors to consult earlier about the company's problems. Now there's a thought! □



Steven Law is a partner at Ensors Chartered Accountants and chairman of R3's Smaller Practices Group.



President's column

Nick O'Reilly outlines his priorities for the coming year as president of R3.

I am really pleased to be addressing you as president of the Association – I consider it a great honour to be able to lead the profession at a time when there is great change within both the domestic and the global economies.

Desmond Flynn

Sadly, the first task of my presidential year is to mention within this column the death of Desmond Flynn at the end of March 2008. In this edition there is an obituary about Desmond written by his former colleague, Peter Joyce, but I would like to add a few personal words. I was lucky enough to share a platform with Desmond on a couple of speaking events. When he spoke he did so with great intelligence and knowledge of the subject matter and I was very impressed with his rich vocabulary and humorous delivery. He was someone who I did not always see eye to eye with but I respected his views and I enjoyed his company. Our profession is a sadder place without him.

I see it as one of my tasks to ensure that members' views on the initial period of operation of the IVA protocol are aired at the correct forum.

Priorities for the coming year

In my year of office I aim to look at a number of areas.

1) Firstly, as you may be aware, the IVA protocol came into effect on 1 February 2008 with regard to straightforward consumer debtor voluntary arrangements. I see it as one of my tasks to ensure that members' views on the initial period of operation of the protocol are aired at the correct forum. I feel it is a significant step forward for us to have the protocol but if members have any concerns regarding creditors' actions

in failing to comply with the spirit of the protocol please e-mail me or Graham Rumney at R3 so that we can investigate further.

2) The second area is a return to traditional values in the way that individuals deal with personal debt. I am keen for R3 to be at the forefront of the government's initiative regarding financial education as our members see the effects of not being able to cope with debt. I want to warn young people of the risks of the

I want to warn young people of the risks of the 'buy now pay later' culture, which seems to have grown up over the last decade or two.

'buy now pay later' culture, which seems to have grown up over the last decade or two. A return to the traditional values of saving up before buying something would, in my view, be very good for the economy both in terms of consumables and also in terms of saving for a deposit on a property.

3) A third point of focus is to try and lead a debate about our members' perceived differences in approach to both monitoring and disciplinary sanctions between the various licensing authorities. R3 commissioned a report from the Centre for Economic and Business Research on the strengths and weaknesses of our profession as it affects UK Plc. The primary weakness identified by the survey participants was the inconsistency of approach. It is a subject I intend to take up with the Joint Insolvency Committee and the individual

licensing bodies as well as the Insolvency Service during my term of office.

It's good to talk

I hope to be able to get round to see as many of you as possible during the forthcoming year. Anyone who knows me will tell you that I am very keen to hear your views especially about what R3 could be doing better. Following the success of the Annual Conference in Cannes, I am looking forward to the other major

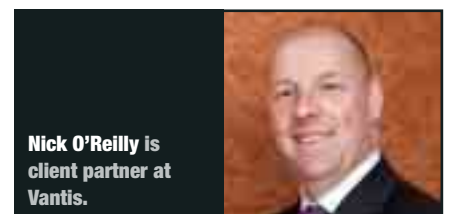
member events of the year: the Lite Conference (10 July at the University of Warwick) and the SPG Forum (16–17 October at Chesford Grange, Warwick), as well as attending regional events throughout my term of office. If you have any issues that you want raised please e-mail me (which is the best way of getting hold of me) at nick.oreilly@vantispplc.com.

The new team

It is nice to have an enthusiastic vice-president in Peter Sargent, who has already stepped in for me on a number of occasions in terms of press coverage and dealing with issues that have come up. Peter and I, along with the rest of the council, will be working hard this year to keep R3's name in the public eye. We have a very good communications and policy team at R3 with Victoria Johnson, Orla Hurst and Will Black, and they are tasked with increasing our press profile and in conjunction with financial strategies to try and keep us in front of politicians as insolvency and restructuring become higher profile topics.

Thank you

Finally, I wish to thank my predecessor Patricia Godfrey for all the hard work and effort that she put in as president over the previous twelve months. It has been a pleasure working with her and her personal assistant, Carlamarie, as both of them have put in an awful lot of hours on behalf of R3. □



Nick O'Reilly is client partner at Vantis.

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Burning platform

Have your shout. If you have comments about articles in *RECOVERY* or concerns about the industry we'd like to hear from you.

Dear Sir,

I read with interest the recent report of the call by the European High Yield Association for a US-style reform of the UK insolvency laws to assist with the restructuring of complex financial instruments.

The call is a response to the frustration caused by the ability of the holders of a relatively minor interest in a complicated financial instrument or a small group of bond holders to delay or prevent the restructuring of the instrument or bond. This occurs most frequently where there are different classes of creditors who must each agree to a restructuring in so far as it adversely affects their interests, and who, although having different interests, are treated as ranking equally for voting purposes by the UK insolvency regime.

UK restructuring has long been based on the principle of consensus. While undoubtedly capable of producing frustration and the possibility of relatively low value stakeholders getting more value than their position might merit, there is also a sound and long-standing track



record of producing discreet and relatively inexpensive restructuring through this method in this jurisdiction.

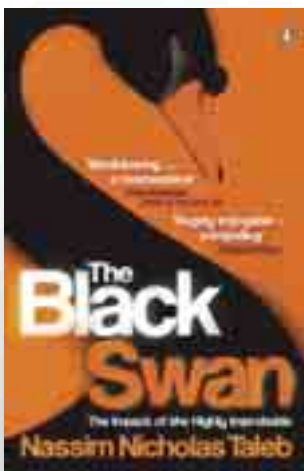
The US system is more formal and court driven and has many merits, including a more robust approach to minority creditors who can be forced to tow

the line. Nevertheless, it also comes with the disadvantage of involving more lawyers, more formality and the likelihood of each party being represented even at creditor committee stage. Overall the system is more confrontational and therefore more likely to lead to increased cost and delay.

Furthermore, there are relatively severe delinquency clauses in the common terms of many financial instruments and structures. These make it likely that, in circumstances where such financial instruments and structures run into trouble, as has happened during the freeze of the London interbank market, the US solution may well be Chapter 7 and not Chapter 11 (liquidation rather than restructuring). The more flexible UK system may well be able to avoid this.

Understandably, in looking for a solution for the more obvious potential flaws with our current system, it seems likely that the solution proposed by the EHYA may well be a case of the cure being more deadly than the disease. □

Patrick Cook is a partner and head of Reconstruction and Corporate Recovery at Taylor Wessing LLP.



The Black Swan

Edition: Paperback

Author: Nassim Nicholas Taleb

Publisher: Penguin

ISBN: 978 0 14103 459 1

Price: £8.99

Book review

Most readers of *RECOVERY* will have some involvement in risk assessment in their professional lives, whether on behalf of clients or for their own firms. For those of us without advanced mathematical skills, the thought must have crossed our minds that our risk analysis could be so much better if only we knew advanced probability theory or could understand value at risk modelling.

Well, thanks to Nassim Taleb, we need feel inadequate no longer.

In his highly enjoyable (and non-mathematical) book, Taleb explains the failings of the complex risk models used by investment banks and hedge funds. He is particularly critical of the widespread assumption that most probabilities can be modelled using the Gaussian bell curve (or normal distribution). Taleb asserts that, for most business risks, these models underestimate the likelihood of extreme events.

The current liquidity crisis is a perfect example, although it came too late for inclusion in the book. While the existence of liquidity risk was recognised by financial institutions and regulators, the probability of it leading to the failure of a major UK lender and to the current credit crunch was considered highly unlikely.

Taleb maintains that, for many real-life situations, even the most complex mathematical models are too simplistic, and therefore a commonsense approach is often best.

Since readers of *RECOVERY* are generally good at common sense (and less good at advanced maths), this book is well worth a read. □

Kevin Murphy is a partner at Chantrey Vellacott DFK.

News update

Regular round-up of news.



Victoria Jonson
and Will Black

New faces at R3

Victoria Jonson has joined R3 as head of policy and Will Black as communications executive. They are both part of the new Communications, public affairs and policy team.

Victoria previously worked at ACCA for eight years, in policy and public affairs roles. She also worked for ECOTEC Consulting and the government office for the North West where she managed a range of European Social Funded projects. Victoria will be developing issues to promote R3 among politicians and the press.

Will formerly handled UK media operations for a New York-based conservation organisation for seven years. He was also a political researcher for GMTV's the *Sunday Programme* with Alistair Stewart, and a features producer for the BBC's Russian World Service. Will is undertaking a thorough audit of R3's media activities to date with a view to raising R3's profile in the coming year.

New Banking Code and Business Banking Code

The new Banking Code and Business Banking Code came into effect on 31 March. They contain an enhanced promise by banks and building societies to treat customers fairly and reasonably. Changes to the codes were made after consultation with consumer groups, HM Treasury, the FSA and the OFT. The eight key commitments are:

- a new commitment on responsible lending;
- more help for customers who may be heading towards financial difficulties;
- strengthened credit assessment practices to enhance responsible lending;
- clearer information about products, including pre-sale summary boxes for unsecured loans and savings accounts;
- prohibition of account closure as a result of a customer making a valid complaint;
- information on how to find your lost account (dormant account);
- greater clarity of cheque clearance times; and
- clearer information about credit cards and credit card cheques.

Dramatic extension of Pensions Regulator's 'moral hazard' powers

The government has amended the Pensions Regulator's so-called moral hazard powers with effect from 14 April 2008.

The moral hazard provisions allow the Regulator to issue contribution notices (CNs, which require payment of a specified sum to a pension scheme) or financial support directions (FSDs, which require financial support for a scheme to be put in place) in certain circumstances against parties associated or connected with scheme employers.

Lite Conference

University of Warwick
10 July 2008

If you want to know what
went on in Cannes...

Contact: **Maggie Dean**
020 7566 4200 mdean@r3.org.uk

The key aims of the changes are:

- to allow CNs to be issued where the effect of an action or transaction 'is materially detrimental to a scheme's ability to pay members' current and future benefits'; so the Regulator would no longer need to prove intent on the part of a party to avoid properly funding the scheme;
- to remove the existing provision in the legislation that states that a CN may not be issued where a party has acted in good faith;
- to clarify that the issue of a CN can be triggered by a series of acts, not just a single act (this change only will be backdated to 27 April 2004);
- to amend the legislation so that the resources of the whole group of companies may be considered when judging whether to issue an FSD. This should make it easier for the Regulator to find companies within a corporate group that could potentially be subject to an FSD; and

- to ensure that the Regulator's use of its powers 'is not frustrated by bulk transfers of members between pension schemes'.

New report from Standard & Poor's

A clear divergence in the fortunes of major European banks means some players face particularly difficult conditions in the near term, says a report entitled *Mind the gap – diverging trends as major European banks face testing conditions*, published by Standard & Poor's Ratings Services in April. Moreover, the structural effects of the ongoing dislocation in credit markets could have far-reaching effects on some banks' business models.

Even though traditional loan books are generally still performing well, several European banks have suffered large write-downs on various fixed-income securities and leveraged exposures and several banks have had to raise capital.

The report points out that the pressures affecting major European banks are four-fold:

- material exposure to investment banking and capital markets-related activities;
- retail and commercial banking exposure in countries with overheated retail banking markets, and unwinding property market conditions;
- significant exposures to structured credit investments;
- systemic pressures resulting from tougher funding conditions, the global repricing of risk, and economic weakening.

At the end of first quarter 2007, only one bank was on CreditWatch with negative implications and none were assigned a negative outlook. At present, 14 of the top 50 banks have a negative outlook assigned to their long-term ratings. Only three are assigned a positive outlook.

See www.standardandpoors.com for more information.

Banks must overhaul risk management following credit crunch

A recent report, *Credit crunch: are you legally protected?*, says that banks made poor business decisions, did not have adequate risk management processes in place and failed to understand the true nature of the complex transactions in which they were involved. The report is based on a survey of financial institutions by Norton Rose LLP.

IPs on BBC *Business Daily*

Stephen Hunt of Griffins and Nick O'Reilly, R3 president, appeared on BBC *Business Daily* on 17 April. They explained in simple terms the terminology used in the insolvency and restructuring sector and what an IP does. This type of exposure is very valuable as it demystifies the profession and helps potential clients to understand how an IP can help them. The speakers also pointed out that the earlier clients ask for help the greater the number of options available to them and the higher the chance of saving their company.

Desmond Flynn: a brief remembrance



Desmond was an extraordinary talent, and a man of many talents. He joined The Insolvency Service in 1968; went off to university in 1971 from which he graduated with honours in philosophy and economics; returned to The Service in 1976; and shot up through the ranks to

become Deputy Inspector General in just 13 years. What marked him out as someone different, and special? He will obviously have been best known to those in the profession at conferences, dinners and similar events where his appearances were awaited with eager anticipation; he never disappointed, providing his audiences with illumination and entertainment in equal measure.

But he marked himself out with The Service, and the then DTI, by the clarity of his thinking, the elegance and preciseness with which he used the English language and his ability to provide solutions to problems – although he would say that it was all about analysing the problem correctly, which made the solution obvious. He enjoyed an easy relationship with ministers – his submissions were models of clarity and succinctness, well weighted and to the point; and he gave advice that ministers needed, even if they did not always want to hear it. Not that he was averse to deploying obfuscation and prolixity – but he did it so well that no one seemed to notice at the time!

Desmond became Inspector General of The Service in 2001. His stewardship was marked with signal achievements as he looked to maintain its history, traditions and values; and to sustain a modernising, progressive approach to the way it went about its business and the policies that it promoted. His retirement was announced in early 2007, and shortly thereafter he was diagnosed with inoperable cancer. His later days were cheered by the prospect of attending Nottingham Trent University, which accredits The Service's qualifications, to receive an honorary doctorate of law – a subject of which he was very much the master. Regrettably, that was not to be, and he died on the day after his 59th birthday.

Desmond is survived by his wife, Kumari, and their two children.

Donations in memory of Desmond may be made to the Garden House Hospice, where he spent his last days, Gillison Close, Letchworth Garden City, Herts SG6 1QU, or online through www.justgiving.com/northhertshospice/donate.

Obituary: Phillip Tate



Phillip Tate, founding member and investment director at Endless LLP, died tragically on 2 March in a skiing accident while holidaying in France with family and friends.

Phil's talent, ability, integrity and tenacity were always evident throughout

his career and were remarked upon by many. He had a true entrepreneur's spirit that always made a mark wherever he worked and his business experience, which included projects and secondments across Europe, the US, the Far East and Australia, far outweighed his age at just 32.

Phil's colleagues will always remember a big-hearted young man, someone who lived life to the full and a huge ambassador for Yorkshire. Phil made lasting friends wherever he worked in the world; his passion for life will be sorely missed.

Phil was born on 17 August 1975 and was raised in Bramhope, Leeds, where his parents still reside. He had three brothers, Martin, Andrew and Paul, and lived with his long-term partner, Kristine Grimshaw, whom he met while on secondment in Australia and now works with PricewaterhouseCoopers in Leeds. Phil attended Durham University where he studied Natural Sciences.

Prior to joining Endless in January 2006, Phil was a highly rated senior manager at Ernst & Young and Arthur Andersen, providing restructuring advice to a variety of companies, banks and other financial institutions. He qualified as a chartered accountant (ACA) in 1999.

As an investment director at Endless LLP, Phil led a number of high profile and complex transactions in which his ability and investment acumen always impressed those involved. Of particular note is the management buyout of H&L Garages Limited in September 2006 and the subsequent highly successful sale of the business to the incumbent management team one year later. Phil was also immensely proud of the successful turnaround of Endless' first investment, Speedframe PVCu Windows Limited, in which he was instrumental.

Garry Wilson is a partner at Endless LLP.

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Legal update

The ruling in *McGrath & Anor v. Riddell & Ors* [2008] UKHL 21 in the House of Lords will have a direct bearing on multinational proceedings in insolvency. Hamish Anderson examines the outcome of the case.

As a sometime editor of this journal, it is a pleasure to be invited to contribute an article and to begin by congratulating the present editorial team on the consistently high standards of the publication in its present form.

Insolvency cases rarely reach the House of Lords and so the subject of this legal update is the recent decision in *McGrath & Anor v. Riddell & Ors* [2008] UKHL 21 (otherwise known as '*HIH*'), which was delivered on 9 April 2008. This is the first time that s426 of the Insolvency Act 1986 (co-operation between courts exercising jurisdiction in relation to insolvency) or any of its predecessors has been considered by their Lordships, although there was some previous Privy Council authority.

The case concerned 'turnover orders' ie orders that local assets be remitted to a foreign insolvency representative to be distributed in the course of foreign proceedings – an issue that is likely to be of increasing importance. Their Lordships

reversed decisions in the High Court and Court of Appeal and held that turnover should be ordered.

This will be important in respect of future use of the s426 jurisdiction but the comparisons between statutory and common law powers, on which their Lordships disagreed, will be of at least equal interest.

☞ **This is the first time that s426 of the Insolvency Act 1986 (co-operation between courts exercising jurisdiction in relation to insolvency) or any of its predecessors has been considered by their Lordships, although there was some previous Privy Council authority.** ☞

Background

The case arose out of the Australian liquidations and concurrent English provisional liquidations of four subsidiaries forming part of the *HIH* group of insurance companies. *HIH*, prior to its liquidation in 2001, was Australia's second

largest insurance group. The overwhelming bulk of the companies' assets and liabilities were in Australia but there were significant assets in England resulting, in the main, from reinsurance in the London market. The English provisional liquidators had originally been appointed to act in aid of the Australian proceedings but none of the orders for

their appointment had ever made any provision for the remittal of English assets to Australia. Sooner or later, that issue had to be faced.

In the event it arose in the context of schemes of arrangement that were proposed in both England and >>

Australia (where the schemes, legislation is comparable) for the distribution of the assets. The problem was that there were fundamental differences between the distribution regimes in the two jurisdictions and, in particular, a priority accorded to insurance creditors in respect of reinsurance money under Australian law, which contrasted with *pari passu* distribution under English law as it then was (but which has subsequently been amended). Inevitably, this meant that some creditors would be better off if the English assets were remitted to Australia but others would be worse off. In order to base schemes on a liquidation comparator, as is

countries and territories for these purposes are the Channel Islands, the Isle of Man and other jurisdictions so designated by statutory instrument. Three such orders have been made designating a total of 20 jurisdictions (including Australia). The criteria for designation were that the jurisdictions to be included should have insolvency laws that were comparable to English insolvency law and that they would offer reciprocity (an expectation that has not always been realised). The full list appears in the box below.

It will be noted that the list does not include the US or any EU trading partner other than Ireland.

The criteria for designation were that the jurisdictions to be included should have insolvency laws that were comparable to English insolvency law and that they would offer reciprocity.

usual, it was necessary to know whether (absent schemes) the English court would make a turnover order in favour of the Australian liquidations or insist upon applying English distribution rules to the assets within its own jurisdiction.

To that end, the English provisional liquidators applied for directions and the Australian liquidators applied for remittal pursuant to s426 on the basis of a letter of request issued by the Supreme Court of New South Wales.

Section 426

Some provisions for acting in aid of foreign insolvency proceedings have existed in bankruptcy legislation since the mid-19th century. In contrast, there was no equivalent provision applicable to corporate insolvencies prior to the Insolvency Act 1986. The *Cork Report* recommended that the bankruptcy provisions should be remodelled and extended to corporate insolvencies. At first this recommendation was largely disregarded but, in response to pressure, amendments to the Insolvency Bill were tabled and s426 was the result. It relevantly provides:

The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

and

...a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.

Section 426 provides that the relevant

Section 426 and its analogues have been used in a wide variety of different situations, both by the English courts and courts elsewhere, involving both inward and outward requests. Thus the powers have been used:

- for the purposes of conducting examinations and the production of records
- to make an administration order in respect of an Australian company
- to bind English creditors to an Irish scheme of arrangement
- to apply an Irish suspension of rights of set-off in England
- to stay proceedings
- to apply the laws of set-off of Scotland and the Isle of Man prior to the remittance of money to a main liquidation in Luxembourg
- for restoration of an Australian company to the register
- to manage the UK assets of an Irish company
- to sanction a Cayman liquidators' compromise
- to enable Manx companies to enter into English voluntary arrangements
- to set aside Cayman trusts on the application of a Bahamian trustee
- to enable a South African liquidator to bring fraudulent trading actions in England but under South African law

- to enable a Cayman liquidator to bring misfeasance, wrongful and fraudulent trading, and claw-back actions in England.

However, the largest single category of cases where judicial aid has been given comprises those where a foreign liquidator or trustee has successfully invoked the relevant provisions to get in local assets. This has been done in a number of different ways: by recognition, by vesting and by receivership.

The courts below

In the High Court, David Richards J held that the court had no power to order remittal to a foreign liquidation if that liquidation does not feature a scheme for *pari passu* distribution, which is substantially the same as the English scheme. The Court of Appeal disagreed on jurisdiction but held that, as a matter of discretion, remittal would not be ordered because of the absence of countervailing advantages to outweigh the disadvantage to creditors who stood to benefit from the application of English rules.

Although the authorities have consistently recognised that the duty under s426 and its predecessors has never been an absolute or unqualified duty, the previous approach can broadly be summarised as having been to the effect that the English court should act in accordance with a properly made request unless there is a compelling reason not to do so. Against the background of the authorities already mentioned, the decisions in *HIH* stood out as the high-water mark of judicial *non-cooperation*.

House of Lords

In the House of Lords, the Australian liquidators pursued their application on the basis of s426 and conceded that, if remittal was not appropriate in exercise of that statutory jurisdiction, they could not succeed under the common law. That was not to say that there was no common law jurisdiction capable of being exercised, merely that, if it was not appropriate to order remittal in the performance of a statutory duty, it was inconceivable that it would nonetheless be right to do so as a matter of judicial discretion.

Their Lordships were unanimous in holding that the application succeeded under s426 but divided on whether it also succeeded at common law. As ever, the reasoning is instructive.

Lord Hoffmann, with whom Lord Walker was in full agreement, based his decision on

...the principle of (modified) universalism, which has been the golden thread running through English cross-border insolvency law since the eighteenth century. That principle requires that English courts should, so far as is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors

Section 426 jurisdictions

- | | |
|---------------------|--------------------------|
| ■ Anguilla | ■ Ireland |
| ■ Australia | ■ Isle of Man |
| ■ Bahamas | ■ Malaysia |
| ■ Bermuda | ■ Montserrat |
| ■ Botswana | ■ New Zealand |
| ■ Brunei Darussalam | ■ South Africa |
| ■ Canada | ■ St Helena |
| ■ Cayman Islands | ■ Turks & Caicos Islands |
| ■ Channel Islands | ■ Tuvalu |
| ■ Falkland Islands | ■ Virgin Islands |
| ■ Gibraltar | |
| ■ Hong Kong | |

under a single system of distribution. That is the purpose of the power to direct remittal.

In Lord Hoffmann's view, it was not necessary to invoke s426 because the power existed at common law as part of the concept of ancillary liquidation and should be exercised. The distinguishing characteristic of s426 was that it enabled the English court to apply foreign law, but that was not a power that was needed in the instant case because the court is not

rejected Lord Hoffmann's analysis of the process of remittal as involving only English law (because it was the foreign liquidator, and not the English court, which applied foreign distribution law).

Lord Phillips supported the remainder of the panel in its conclusions on s426 but declined to stray into the 'controversial' question of whether the same result could have been reached under the common law.

¶¶ **Having established that remittal could be ordered in favour of Australia under s426 even though it would result in a different distribution of the English assets, Lord Scott was at one with Lord Hoffmann in regarding the differences between the English and Australian regimes as affording insufficient reason to withhold co-operation.** ¶¶

applying foreign law when it exercises its English power to direct remittal: it is the foreign liquidator who applies foreign law when distributing the proceeds of the remittal.

Lord Scott sharply disagreed. Following his own decision in *Re BCCI (No 10)* [1997] Ch 213, he held that the inherent power to order remittal (which he agreed existed) could not be exercised so as to disapply the English scheme. In Lord Scott's view, s426 made all the difference. Parliament had resolved the conflict between the duty to apply English law, on the one hand, and the principle of universalism on the other hand, by making s426 part of the English scheme. Having established that remittal could be ordered in favour of Australia under s426 even though it would result in a different distribution of the English assets, he was at one with Lord Hoffmann in regarding the differences between the English and Australian regimes as affording insufficient reason to withhold co-operation:

These four companies are Australian companies whose principal place of business, as well as their place of incorporation, was Australia. The Australian statutory scheme allows insurance and reinsurance creditors of insolvent insurance companies to be paid in priority to ordinary creditors. There is nothing unacceptably discriminatory or otherwise contrary to public policy in these statutory provisions.

Lord Neuberger supported Lord Scott. He too considered that, while there was an inherent power to order remittal, the power to do so where distribution would not be in accordance with the English scheme derives from s426. That did not mean that the inherent power was completely valueless because it might still be possible to achieve administrative convenience even if the recipient was bound to distribute in accordance with English law. He distinguished between a decision to remit and a decision whether to permit distribution in accordance with foreign law. The former was governed by common law but the latter by s426. In expressing this conclusion, he implicitly

Where next?

This is more difficult to assess.

As between EU jurisdictions these questions will usually be resolved by reference to the EC Regulation on Insolvency Proceedings. However, it must be remembered that, under article 44(3)(b), s426 obligations to Commonwealth members trump the EC Regulation. This is an interesting provision because, strictly speaking, only nine s426 jurisdictions (Australia, the Bahamas, Botswana, Brunei Darussalam, Canada, Malaysia, New Zealand, South Africa and Tuvalu) are members of the Commonwealth. Ireland is an independent sovereign state with its own EU membership and the remainder are either part of the British Isles (the Channel Islands and the Isle of Man) or are (or were at the time of designation) UK overseas territories.

¶¶ **It seems clear from *HIH* that UNCITRAL would be sufficient to overcome the difficulties felt by Lords Scott and Neuberger in relation to the common law jurisdiction – an alternative statutory power to order remittal now exists.** ¶¶

For jurisdictions outside the EU the decision may prompt renewed interest in s426 status, in particular from the US. It is not generally known that the US has sought designation in the past but nothing came of it because of concerns that differences between US and English insolvency laws might lead to the English courts being required to offer assistance that was not appropriate.

Those concerns were probably overplayed in the light of Lord Hoffmann's observations in *HIH* on Lord Scott's earlier decision (as vice-chancellor) in *BCCI (No 10)*. The issue in *BCCI (No 10)* was whether English ancillary liquidators should or should not remit assets in their hands to principal liquidators in Luxembourg (which did not recognise rights of set-off) without making provision to ensure that English rights of set-off were applied. Lord Scott had held that provision had to be made because he had no jurisdiction to disapply the English rules. While Lord

Hoffmann disagreed with this reasoning, he thought that the decision was right on its facts because the connection between the debts in question and England was such that justice required English set-off to be applied. Significantly he added that his view would have been the same even if Luxembourg had been a section 426 jurisdiction. This confirmed that the duty under section 426 is neither absolute nor unqualified but it is a striking feature of all the judgments in *HIH* that they do not discuss the nature of that duty.

This will be of particular interest in connection with the Cross-Border Insolvency Regulations 2006 (enacting the UNCITRAL model law). Article 21 provides that a turnover order is one form of relief that may be granted upon recognition of a foreign proceeding 'provided that the court is satisfied that the interests of creditors in Great Britain are adequately protected'. This is a discretion, not a duty, but does it differ in substance from the duty under s426? It seems clear from *HIH* that UNCITRAL would be sufficient to overcome the difficulties felt by Lords Scott and Neuberger in relation to the common law jurisdiction – an alternative statutory power to order remittal now exists. But, as to whether that power will be exercised, *HIH* affords no insight into whether s426 jurisdictions will have stronger claims. More specifically, can the interests of local creditors be said to be 'adequately' protected if different distribution rules are going to be applied?

Lastly there is the common law, in so far as it remains relevant to turnover orders following the enactment of the UNCITRAL model law. The judgments in

HIH were evenly divided with each of the opposing conclusions cogently and logically articulated. Ultimately this is a question of policy where, in the author's opinion, Lord Hoffmann's conclusions are to be preferred, but that is for another day.

In the meantime, foreign liquidators who cannot invoke s426 may be well advised to consider seeking their own appointment by the court as receivers to get in English assets without bringing the English statutory liquidation scheme into play. □

Norton Rose acted for the Australian liquidators.

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Recent case summaries

Corporate and personal insolvency update from Martin Ouwehand.

Corporate insolvency

Thorniley v. Revenue and Customs Commissioners [2008] EWCA 124 (Ch) (Patten J)

Facts: The administrators completed all of the achievable realisations in respect of a company resulting in an unsecured shortfall under a creditor's fixed and floating charge. Considerable amounts were owed to other unsecured creditors. Section 176A(2)(a) of the Insolvency Act 1986 provides that an administrator shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts. Sub-section (b) provides that he shall not distribute that part to a floating chargeholder except insofar as it exceeds the amount required for satisfaction of the unsecured debts. The issue in the application was whether the meaning of 'unsecured debts' in section 176A(2)(a) included the unsecured balance of debts owed to the floating chargeholder. If so, it would be able to compete with unsecured creditors for a distribution of the prescribed part.

Held: Section 176A contemplated that a distribution of the prescribed part under section 176(2)(a) would not be made to floating chargeholders in respect of their unsecured debts.

🔗 **The issue in the application was whether the meaning of 'unsecured debts' in section 176A(2)(a) included the unsecured balance of debts owed to the floating chargeholder.** 🔄

Comment: The judge noted that the government's intention behind the recent changes in the legislation was to benefit unsecured creditors at the expense of floating chargeholders, given that the floating chargeholders would be the most immediate beneficiaries of the reduction in preferential creditors and the abolition of the Crown preference.

The judge approached the issue through the language of the Act. He observed that there was an emphasis on the *identity of a creditor* rather than the *nature of his debt*. However, the judge found that the most compelling reason for his conclusion was that the phrase 'unsecured debts' must have the same meaning in both section 176A(2)(a) and (b). Sub-section (b) provides for distribution of the surplus portion of the prescribed part to the floating chargeholder where 'unsecured debts' have been discharged in full. The judge said that this provision would be inoperable if 'unsecured debts' included the unsecured debts of a secured creditor because, by definition, the prescribed part would have discharged those debts under sub-section (a).



Personal insolvency

Giles v. Rhind [2008] EWCA 118 (Buxton, Sedley and Arden LJ)

Facts: In 2003 the claimant obtained a judgment for £1.5 million against the first defendant. In 2004 he obtained a charging order over the first defendant's interest in a property held in the name of the first defendant and his wife, the second

defendant. In proceedings in 2006 the claimant sought to amend to challenge a deed dated 2 April 1992, which provided that the wife held 80 per cent of the

🔗 **The present decision confirms that section 32 can mitigate the harsh consequences of a limitation period running in such circumstances.** 🔄

beneficial interest in the property. This was on the basis that it was a transaction defrauding creditors under section 423 of the Insolvency Act 1986.

The applicable limitation period for such a challenge was 12 years so the claimant needed to show that the start of the limitation period had been postponed under section 32 of the Limitation Act 1980 on the grounds of deliberate concealment. Section 32(2) deems there to have been deliberate concealment of facts involved in a breach of duty where that duty was breached deliberately. The claimant's case was that the disproportionately favourable allocation of the interest in the property to the second defendant (wife) was a deliberate breach of the first defendant's duty to the claimant. David Richards J

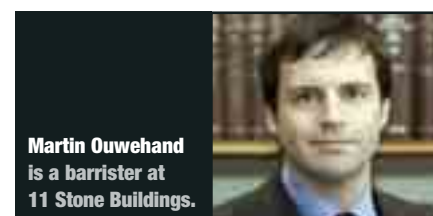
allowed the claimant permission to amend deciding that if the claim under section 423 was proved then there will have been a 'breach of duty' for the purpose of section 32(2) and therefore the start of the limitation period will have been postponed. The second defendant appealed.

Held: The Court of Appeal dismissed the appeal. The expression 'breach of duty' in section 32(2) had a wide meaning; ie, 'a legal wrongdoing of a kind that can properly be raised in an action to which section 32 applies'. The Law Reform Committee had not recommended limiting section 32(2) and the general structure of the Limitation Act 1980 was consistent with a wider meaning. Section 32 did not require a narrow construction of 'breach of duty' and this would not promote the statutory purpose.

Comment: The court had very recently held in *Hill v. Spread Trustee Co Ltd* [2007] 1 BCLC 450 that section 423 was subject to the Limitation Act 1980. This had the potential to restrict the availability of section 423; a creditor could become a 'victim' of a section 423 transaction many years before being able to discover that this was the case, for example where the creditor suffered from delays in the enforcement its claim. The present decision confirms that section 32 can mitigate the harsh consequences of a limitation period running in such circumstances.

As Arden LJ said, '*outside of s423, a person who incurs credit or liabilities undoubtedly owes responsibilities to his present and future creditors. A person should not incur a debt unless he has reasonable or probable grounds for expecting to be able to pay it when it is due*' and

section 423 actualises those responsibilities in particular circumstances. Arden LJ observed that there were heightened policy reasons for construing a section 423 transaction as a 'breach of duty' under section 32 because such a transaction is likely to be concealed. Arden LJ considered that it would be wrong for the court to impose an indirect restriction on section 423 by excluding it from section 32(2). □



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Legal Q&A

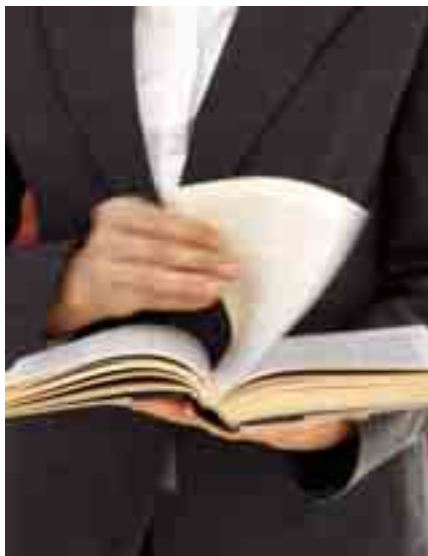
Michael Mulligan answers your insolvency queries.

I am a trustee in bankruptcy. The bankrupt wishes to apply to court for an annulment of his bankruptcy. He has sufficient equity in his property to enable him to pay his creditors in full. A mortgage company has offered finance on the understanding that these funds will be paid to the bankrupt's solicitors who will hold and release the funds only when the annulment order is made. They will then undertake to pay his creditors in full together with costs and expenses. What is the current practice in these situations? Will the bankrupt have to pay all debts and expenses before the court hearing, or will the undertaking suffice for an annulment of the bankruptcy order?

Undertakings have regularly been accepted in the county courts as a means of providing adequate security to creditors, on the basis that they were tantamount to payment. It offers a practical solution in the typical scenario where the mortgagee of the property is not prepared to release its security over the property until such time as it has been paid. A state of deadlock thus ensues if the annulment order cannot be made until all the creditors are paid.

☞ The court affirmed that section 282 (1)(b) of the Insolvency Act 1986 and rule 6.211(2) of the Insolvency Rules 1986 state quite clearly that all bankruptcy debts and the expenses of bankruptcy must be paid in full before a bankruptcy order can be annulled. ☞

For a long time there has been a divergence between the practice in the county courts and the practice in the Registry of the High Court. Clarification on this matter was provided in the recent High Court case of *Halabi (a bankrupt) v. Camden London Borough Council and another*. John Jarvis QC, sitting as a deputy judge, held that the court has no jurisdiction to annul a bankruptcy order on the basis of an undertaking from the bankrupt's solicitor. The court affirmed that section 282 (1)(b) of the Insolvency Act 1986 and rule 6.211(2) of the Insolvency Rules 1986 state quite clearly that all bankruptcy debts and the expenses of bankruptcy must be paid in full before a bankruptcy order can be



annulled. In this case the court made an annulment order, subject to the condition that it should not take effect until the bankruptcy debts had been satisfied.

As a result, it will be more difficult to obtain an annulment of a bankruptcy order successfully in circumstances where lenders will not allow funds on an equity release to be paid over until the annulment is granted. The judgment in *Halabi* is open to criticism and it will be interesting to see whether conditional orders are workable in practice. Perhaps the safest route is to provide security for the debt by payment into court or third-party guarantee.

I have recently been appointed liquidator of a company with substantial property assets. Is it possible to convert the liquidation to an administration to save on Secretary of State fees?

It may be possible to convert the liquidation into an administration, so long as you are able to prove that the *overall* effect of the conversion from liquidation to administration would be in the best interests of creditors of the company as a whole. Paragraph 38(1) of Schedule B1 of the Insolvency Act 1986 provides that the liquidator of a company may make an administration application. These applications are not common and you will need to demonstrate to the court that substantial savings will be made for creditors in an administration and that the tasks you are likely to need to carry out would be more appropriately carried out in an administration of the company as opposed to its winding up.

As you will be aware, in a compulsory liquidation, Secretary of State fees are payable as a percentage of total chargeable receipts relating to the company (but ignoring the first £2,000) at the rate of 17 per cent, subject to a maximum of £100,000 being payable. These fees are payable as an expense of the liquidation. By contrast no such fees are chargeable in respect of an administration. In the present case, where there are likely to be substantial property realisations this will result in savings for the company's creditors as a whole.

☞ Paragraph 38(1) of Schedule B1 of the Insolvency Act 1986 provides that the liquidator of a company may make an administration application. These applications are not common and you will need to demonstrate to the court that substantial savings will be made for creditors in an administration. ☞

Some of the properties that the company owns may require monitoring, administration and management prior to their sale. In addition, a strategy for the sale of the properties will need to be developed. These tasks would in my view be more appropriately carried out in an administration of the company as opposed to its winding up.

A further factor to consider before applying for a conversion is that the administrators will be unable to initiate actions for wrongful or fraudulent trading against the directors of the company. You must therefore be satisfied that the powers of an administrator to bring actions for misfeasance, transactions at an undervalue and preference claims, and/or to report on disqualification of directors to the Department for Business Enterprise & Regulatory Reform, are likely to be sufficient in this case should it prove necessary to commence such proceedings. ☐

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Technical update

Richard Heis on how the UK leads the way in Europe on reducing the stigma of failure.

We hear a lot about how reducing the stigma of bankruptcy is supposed to encourage the flourishing of enterprise. We hear it from our own government, of course. But, as with many things, there is also a European angle to this, which is not so often mentioned.

Bankruptcy – a Fresh Start

Many readers will remember the consultation document called *Bankruptcy – a Fresh Start*, which was issued in March 2000. In his foreword, Stephen Byers spoke of the need to distinguish between culpable and non-culpable bankrupts, and to temper the rigours of bankruptcy for honest debtors in order to soften the perceived costs of failure. When the insolvency provisions of the Enterprise Act were introduced, the relaxation of the

bankruptcy regime was one of the factors that we were told would act as a stimulus to enterprise. More recently the chancellor alluded again to this idea in his Budget speech.

Many people have questioned this purported connection. Writing about the Enterprise Act in these pages in autumn

believe that this... has anything to do with enterprise?’

Overcoming the Stigma of Business Failure – for a Second Chance Policy

Well, one body that seems to think so is the European Commission. For some time the Commission has been calling on member

“Growth and jobs depend on support for small and medium-sized enterprises, and the fostering of a more entrepreneurial culture. Entrepreneurship is inherently risky, but essential for a properly functioning market economy. Addressing the negative consequences of business failure and its negative image will help to boost enterprise and promote innovation and job creation.”

2003, Mark Andrews asked: ‘Who but the current incumbent of 10 Downing Street and his loyal lieutenants could seriously

states to reduce the stigma of failure as part of its action plan on the European Agenda for Entrepreneurship. In October 2007 it

devoted a whole paper to the subject in the form of a communication addressed to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions, entitled *Overcoming the Stigma of Business Failure – for a Second Chance Policy*.

The thrust of the paper can be summarised as follows. Growth and jobs depend on support for small and medium-sized enterprises, and the fostering of a more entrepreneurial culture. Entrepreneurship is inherently risky, but essential for a properly functioning market economy. Addressing the negative consequences of business failure and its negative image will help to boost enterprise and promote innovation and job creation.

Four key measures

The paper sets out measures that member states are encouraged to adopt in order to achieve this. First, they should adopt education programmes and information campaigns. The paper suggests that the media can play a role in dissociating bankruptcy from fraud and improving the image of entrepreneurs with previous failures. Secondly, member states should reform their insolvency laws in order, for example, to distinguish between fraudulent and non-fraudulent bankrupts and reduce restrictions on the latter. The paper states, in bold type, that 'only 4-6 per cent of bankruptcies are fraudulent' (an intriguing footnote adds: 'the percentage would be 3-4 per cent in Italy and the UK and 7 per cent in Austria'). The paper also suggests that proceedings should be made simpler and faster, and should generally last no longer than one year. Thirdly, member states should implement programmes to help entrepreneurs avoid insolvency and rescue viable businesses from failure. Fourthly, they should help entrepreneurs to start and



receives a pat on the back for its Enterprise Act reforms. However, since measures planned or only partially introduced score the same as measures already implemented, Austria scores slightly higher marks by virtue of its good intentions.

The paper debated by the European Committee

This document was the subject of a debate in the European Committee of the House of Commons on 25 March this year. The minister, as might be expected, emphasised how fully the UK had complied with EU policy, and rehearsed at length the many benefits of the Enterprise Act. The opposition used the occasion to launch a wide-ranging political broadside. However, there were also some pertinent exchanges. In particular, the minister was asked: 'How can the government show that the Enterprise Act 2002 provisions for reducing a period for honest personal bankruptcy to a maximum of 12 months

The problem with all this is the unsatisfactory way in which the paper (and the minister in his reply quoted above) conflates personal and business failure. Reducing the stigma of personal bankruptcy doesn't do much to promote enterprise in an economy where the majority of individual bankruptcies are caused by personal rather than business debts, and most businesses of any substance are incorporated. In the UK most business failures are dealt with through the liquidation or administration procedures, which are already fairly stigma free. Moreover, insolvency law, as a set of rules, procedures and principles, is rooted in an underlying stratum of property rights, contract law and so on, from which it cannot be divorced, and which vary from one jurisdiction to another. There is a limit to the extent to which insolvency procedures can be harmonised between one jurisdiction and another.

📄 **It is clear that recent developments in UK insolvency law have been closely in accordance with EU policy.** 📄

make a success of a second venture. In this connection the paper suggests that banks and credit institutions should revisit their cautious attitude to those with previous failures, and that member states should ensure that the names of non-fraudulent bankrupts do not appear on lists restricting access to loans in the banking sector.

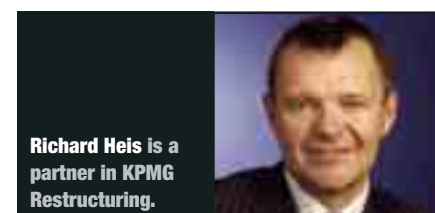
A table sets out how each of the 27 member states scores in terms of measures already introduced, or proposed to be introduced, in the various areas that the Commission considers necessary to achieve its objective. The UK comes out top in terms of the number of measures already adopted, marks being awarded for reduced restrictions and better legal treatment for honest bankrupts, short discharge period and its streamlined proceedings (the terminology is that used in the paper), and

have encouraged enterprise?'

He replied: 'We did that precisely for one of the reasons in the Commission's report: to try to recognise the difference between fraudulent or dishonest bankruptcy, and bankruptcy that is of no fault of the person in those circumstances.' He then went on to explain that as a bankruptcy restrictions order can last for up to 15 years, the government felt that it was right to reduce the period to one year so that after that period someone would have a chance to start again. It stood to reason, he said, that the provision increases the chances of someone starting again when compared with the previous period of two or three years. However, he did not cite any empirical evidence of a link between the reduced bankruptcy discharge period and the encouragement of enterprise.

UK leading the way

It is clear that recent developments in UK insolvency law have been closely in accordance with EU policy. But is the UK a follower or a leader? It may be, of course, that the Commission's thinking in this area has to some extent been influenced by former UK politicians who have since been elevated to office in the EU. If this is so, we can truly say that the UK is taking a lead in Europe. However, there remains a real concern that the incentives intended to benefit honest bankrupt business people have served as incentives for irresponsible personal borrowing.. □



Richard Heis is a partner in KPMG Restructuring.

Risk management in a distressed situation

Ed Brittain offers advice on how to identify, assess and manage risk in a distressed situation. Although this might start with a risk management audit, risks need to be continually monitored.

In a distressed situation the least desirable event is one that is unanticipated, uncontrolled and unbudgeted. Risk appetite can be expressed as:

risk appetite + liquidity = risk capacity

Therefore, in difficult trading conditions where liquidity is an issue risk capacity will be restricted, making risk management an essential tool in the survival of the business. Therefore, it can be argued that risk management has far greater importance in a distressed situation compared with a company that has a healthy balance sheet and the capability to absorb financial loss.

Consider the situation that, had the Kobe earthquake not occurred causing a downturn in the Nikkei index, Nick Leeson might still be trading successfully in Japan for Barings. Was it a combination of unforeseeable events that led to the problems, a failure in risk management to identify the risk, or a failure to police compliance rules that created the risk? Latterly, one could question the adequacy of the risk controls in place at Northern Rock.

Background

In the insurance world risk management was introduced as a general concept in the 1970s and 1980s. It was mainly focused on what were described as pure risks at the time, ie non-business risks that only have a downside such as fires, injury to employees, or liability arising from defective products, damage to motor vehicles and the like.

Much of the philosophy and literature was emanating from the USA where self-insurance was more commonplace and therefore loss mitigation and control were seen to be of great importance.

Slowly risk management evolved and gained greater sophistication. This coincided with the emergence of stricter corporate governance and the requirement to demonstrate that the major risks faced had been identified and adequate controls put in place.

Nowadays risk management is applied in all walks of life and appears in various guises from holistic risk management, taking an overview of all threats to the business; liquidity management, containing some very complex risk modelling; to enterprise risk management, dealing with the upside of opportunity risks as well as the downside.

Risks can be defined in many ways for example:

- Financial risks – liquidity, interest rates, exchange rates or credit risks
- Strategic risks – market changes, competition risks, product development
- Operational risks – regulatory risks, IT, political risks, supply chain risks
- Hazard risks – injury to employees or third parties, contractual risks, property risks

From another viewpoint risk can be categorised under the three main headings that are most likely to cause an event (see diagram 1).

Diagram 1



Also, it is now generally accepted that risk is part of doing business and that it cannot be entirely eliminated if satisfactory shareholder returns are to be made; although zero tolerance targets are still set for certain risks such as employee injury.

The risk management process

However the exposures are categorised there are some basic steps that are universally

accepted and form the basis of the risk management process (see diagram 2).

With the emphasis given to risk management and corporate governance a whole industry has emerged with consultancies and services on offer for every conceivable aspect of dealing with any part of the risk management process. These include environmental studies, flood analysis, non-destructive testing, behavioural studies, work injury investigations and product recall programmes.

Finding your way through the risk management maze and determining priorities and actions can be an arduous, time-consuming and sometimes a seemingly impossible task, particularly at the start of an appointment when there are many other urgent issues to deal with.

An insolvency practitioner owes a duty to stakeholders to ensure that the assets and business are protected and that there are no unacceptable exposures. Insurance for the assets and liabilities of the distressed firm is only a part of risk management; there are many other facets of risk including the regulatory and compliance issues. There are also issues relating to the personal exposure of the insolvency practitioner (IP) and the reputation of the IP's firm. For example, a professional negligence claim or a regulatory breach for which the insolvency practitioner may be deemed responsible.

Diagram 2



Ultimately the aim is to produce best practice within a firm, which enables risk to be identified and controlled.

In a distressed company situation the first task is to determine the existence of, or the robustness of, the existing risk management process and controls in place. While it has been suggested that the HSE will allow an IP time to gain management control before stepping in to enforce any health and safety regulations, they cannot afford to ignore situations that threaten the

☞ There are established techniques for modelling and quantifying risks and problem solving including the Monte Carlo and Stepladder techniques. ☞

safety of employees and members of the public. If an employee or third party is seriously injured, or worse, killed, even in the first few days of an appointment, there is a strong possibility that a prosecution will be brought against whoever they may consider responsible, whether the pre-appointment management or the IP.

Identification and assessment

There are numerous risk areas that need to be identified and assessed including property (such as fire and security), business continuity, motor, environmental, product liability, political, financial, contractual and regulatory requirements. To highlight the process I will expand briefly on two of the more relevant areas, health and safety, and pensions issues.

Health and safety

When an IP assumes responsibility for a distressed company, they may through their actions become responsible and owe a duty for the health and safety of employees of the insolvent company. The IP needs to be aware of numerous issues, which include:

- Is there a health and safety policy?
- Is there a competent person and have they been retained?
- Are the risk assessments up to date? ie COSHH, noise, manual handling.
- Have engineering statutory inspections been carried out?
- Are accident records up to date, including RIDDOR?
- Is there a risk of asbestos at the premises, which could give rise to long-tail liability?
- Is all machinery protected by guards where required?
- How are visitors and contractors controlled?
- Is there provision of personal protective equipment where required?

The consequences of a failure of any of the above areas can result in a breach of the health and safety regulations, leading to fines being imposed by the HSE, potentially up to £5,000, or even higher, for each breach, as well as Improvement or Prohibition Notices being issued. These may restrict the ability to trade, impact on the reputation of the IP or even the value of the business.

From April 2008, consideration also needs to be given as to whether the company's health and safety systems are comprehensive and robust enough to withstand any claim against them for corporate manslaughter. Fines of up to ten per cent of the value of the company's turnover can be imposed, and any successful claim against the company may need to be reported in a prescribed manner in the local and/or national press as determined by the courts or HSE.

Pensions

Historically risk management has not had a significant impact in the pensions' world but over the last few years it has assumed a much greater importance when considering the potential impact on the viability of the company.

Not only are there risks associated with the governance of the scheme and the risks run personally by the trustees and IPs where they might be acting in a similar capacity, but pensions may now also be one of the greatest areas of risk surrounding the financial position of the company. This issue is of greatest importance where the company is trying to survive rather than one where the insolvency event has occurred and a section 120 notice issued.

Trustees have the right and expectation of the Pensions Regulator to fully understand both the current and ongoing financial strength of the sponsoring employer and it is the Covenant Report, and its use, that could have a massive impact on the survival of the company.

☞ With the emphasis given to risk management and corporate governance a whole industry has emerged with consultancies and services on offer for every conceivable aspect of dealing with any part of the risk management process. ☞

A risk management technique may be the use of a professional trustee who understands the issues and can negotiate with both the employer and Regulator.

Modelling and quantification

There are established techniques for modelling and quantifying risks and problem solving including the Monte Carlo and Stepladder techniques.

Ad hoc studies can be undertaken to qualify risks and hazards, particularly when a business is being sold as a trading concern eg product liability review including recall and warranties, property title defects, environmental issues, business continuity and protecting goodwill/brand image.

Less easy to analyse is a failure in overall controls that could damage reputation and business goodwill as well as

damaging the brand, impact on liquidity or possibly incur penalties such as fines.

Elimination, mitigation and controls

In its simplest form, elimination could be ceasing a hazardous activity such as welding or exporting to the USA.

With the aid of a professional who undertakes a risk management survey a number of risk improvements and loss mitigation measures may emerge such as safeguarding certain machines, a stricter security regime or implementation of a compliance and audit system.

Self-assumption or transfer

When choosing to accept or transfer risks self-assumption could be active or passive, or simply assumed in ignorance. Risks can be transferred in a number of ways, which include disposal of unattractive assets or contractual transfer to suppliers, customers, agents and the like, insurance of insurable risks or possibly transferred via personal undertakings from stakeholders.

Continuous monitoring

Risk management is not a one-off process and needs to be continuously monitored. Risk management control procedures can become outdated in a relatively short period of time eg those that do not respond to changes in legislation or changes in valuations, which could affect the decision to transfer or retain. Failure to enforce a risk management programme may effectively be no different to not having one at all.

In conclusion

With so many decisions to be made at the time of an appointment an IP will use entrusted advisors to assist with valuations,

provide legal opinion, or place insurance. An IP should be careful this does not lead to a silo approach to risk management where each discipline within a business identifies its own risks.

To provide the insolvency practitioner with an overview of the company's risk profile, and to identify actions to eliminate or mitigate losses, a risk management audit should be undertaken. This may also lead to avoiding a loss that a company already in distress simply cannot withstand. □



Interview with Dr Vincent Cable MP

Vince Cable has been a concerned observer on the problem of personal debt for several years, and he has been particularly vocal on the subject of Northern Rock and the credit crunch. He talked to Sarah Houghton about these ongoing matters at the beginning of April.

On Northern Rock and its background

I took up the gauntlet of consumer debt about four years ago. As an economist I could see potential dangers arising and started warning Gordon Brown that the problems of the late 1980s could be repeated.

There was a combination of very rapidly rising personal debt linked to a bubble in the housing market. This trend has grown and has become unsustainable. Even in my own surgeries in Twickenham there are problems of debt and repossession.

I'm not an ideological nationaliser – most things should be done in the private sector – but with Northern Rock I became persuaded that once the government had committed itself to spending £30 billion in loans and guarantees, temporary public ownership was the only way of ensuring that the taxpayer would be repaid.

I'm not totally confident that the taxpayers will get their money back. It depends on the strength of Northern Rock's mortgage book. But there is a reasonable chance that, if the management plan of Mr Sandler's team is focused very clearly on repaying the taxpayers' loan, by a combination of generating cash from the redemption of mortgages and by passing mortgages on to the other banks, sufficient cash will be generated to repay the taxpayer within a couple of years.

☞ **Even in my own surgeries in Twickenham there are problems of debt and repossession.** ☞

The big question is whether there will still be sufficient high-quality mortgages at the end of the period to ensure that the money is returned to the taxpayer. Also, in the longer term, we want the bank to be sold off for a profit and this assumes that it will still be a going concern.

The payout to Adam Applegarth is appalling. He is the guy who actually ran the bank and devised the strategy. He expanded the portfolio dangerously rapidly last year at the peak of the housing market and has now been rewarded for failure. This sends a terrible signal to the rest of British business. There is a case for the British government suing these individuals for the money involved. Not just him but all the directors. They have come away with about a £15 million pension pot between them. The same is



equally true of the £50 million in fees being paid to City firms. I think the government should take a very tough line with the invoices.

On the role of the FSA

The FSA, the Bank of England and the government all have different roles but there is some inherent tripartite structure there. What happened last year was that the different bits of the tripartite structure didn't communicate or work together.

It was clear from what happened with Northern Rock that the British government weren't able to act very decisively in a crisis of this kind. Comparisons have been made with the US. This might be unfair because Northern Rock is a retail bank and Bear Sterns isn't. There wasn't the regulatory apparatus in place to allow for early intervention and it is right that this should now be rectified.

The FSA's report was damning. The FSA has said that it is going to boost its staff, but the issue is not about quantity but quality. It needs staff who are highly motivated, completely independent and capable of challenging financial institutions.

On the role of the Bank of England

The Bank of England has a key role in all of this. I think the governor of the Bank of England has the right instincts. He has to ensure that there is basic stability and try to stop rewarding incompetent, greedy behaviour. Striking a balance between these things is difficult. His job is to safeguard the public interest not private interest.

What is missing is any kind of

mechanism in the system to stop this boom-bust cycle from occurring. This is now being argued by economists such as Charles Goodhart, who was formerly on the monetary policy committee. The reserves of the banking system need to be adjusted to allow for fluctuations in the economic cycle, particularly in the housing market.

The international crisis of confidence of last week (end of March) seems to have gone away, in part because central banks, including our own, have been making liquidity available more freely. But it hasn't gone away fundamentally because there has been a complete collapse of trust in lending between financial institutions.

On the political handling of events

Gordon Brown presided over the boom all last year. He seemed quite complacent about it. Alistair Darling could be faulted for not moving more decisively and quickly on the nationalisation issue.

If other institutions get into serious trouble, the government shouldn't rule nationalisation in or out. But it is less likely now because we have depositor protection. However, if there were a severe threat to a leading bank we would have to take a pragmatic approach to it and, if substantial sums of money and public guarantees were involved, it might have to be taken into public ownership.

With regard to competition, Mr Sandler is preparing a business model that has to be approved by the European Commission. There is clearly an awareness of this issue and the bank has closed down some of the tax haven offers and some of the overseas institutions, such as the Danish subsidiary, that have been particularly greedy in their deposit taking.

Public spending over the next three years should not be affected. The plans for this are more or less covered by tax receipts or borrowing within the government's own fiscal limits. The problem about a large public sector debt, which is in danger of going beyond 40 per cent of GDP even without Northern Rock, is that it limits the government's freedom of manoeuvre. If we get into a serious economic crisis, the government doesn't have a great deal of scope for Keynesian-type of borrowing and spending, as we have seen in the US, because we are already up against the fiscal limits.

Dr Vincent Cable MP

Vince Cable was chief economist for Shell before entering public life. He served as a Labour councillor on Glasgow City Council from 1971–1974; contested Glasgow Hillhead (Labour) in 1970, York (SDP/Alliance) in 1983 and 1987 and Twickenham (Liberal Democrat) in 1992. He has been MP for Twickenham since 1 May 1997, shadow chancellor since 2003 and was acting leader during 2007.



On the social and personal cost

The job losses in the North East are less draconian than they could have been – about 2,000. What the city authorities in Newcastle are trying to secure is that the Northern Rock disaster doesn't have permanent repercussions for the economy of the area; that it can be turned around and kept as a going concern so that the North East continues to be a centre for financial services companies, to make up for the loss of the old manufacturing industries.

In the current economic climate, there is a very real threat of a large number of repossessions and personal bankruptcies. There is tension between two objectives: on the one hand we want to stop great hardship,

loan] Northern Rock has been accused of sweeping these sums together as a charge on a property, possibly depriving other creditors. I am less concerned about the creditor return than the fact that this [type of mortgage] makes people more vulnerable to repossession. If people have unsecured loans they should have nothing to do with their property.

I welcome genuine attempts by trade bodies both to create codes of conduct for their own industry and to participate actively in financial education and advice. However, this does not obviate the need, identified in the *Thoresen Review*¹ a few weeks ago, for a genuine system of independent financial advice.

I've always seen a role for IVAs because they protect people's houses, and for that reason banks get impatient as it stops them getting access to a property. I don't want IVAs to be marginalised by the process. They clearly have an important role, and I will defend that.

but on the other, it would be wrong for the public to subsidise mortgage buyers who took on more than prudent levels of borrowing. In any repossession proceedings people should have genuinely independent financial advice (CAB counselling etc) to ensure that they are pursuing the most sensible financial policies. Also, the banks should be required to offer a range of options, such as shared ownership, as a way of keeping families in their homes. The banks have recently introduced a new code of conduct in which they undertake to do that but it remains to be seen if this is adequate or whether it needs some statutory reinforcement.

On matters relating to insolvency practitioners

Northern Rock is being very aggressive with people in arrears. I've come across cases where, at the first appearance of arrears, they go straight to court and there isn't any allowance for alternatives – such as IVAs. I've always seen a role for IVAs because they protect people's houses, and for that reason banks get impatient as it stops them getting access to a property. I don't want IVAs to be marginalised by the process. They clearly have an important role, and I will defend that.

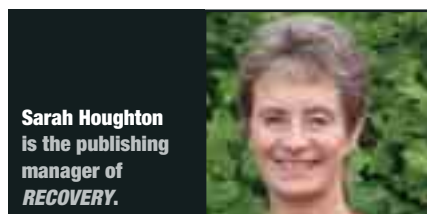
In the case of the 'Together' mortgages [comprising 100 per cent loan to value lending plus £25,000 unsecured

On the broader economic situation

The credit crunch is very bad. There are two things that are worrying: one is that for six months or more there has been a complete breakdown of inter-bank lending, and it seems to be getting worse. Nobody knows where the bad debts are. It is too complicated and it will take years to sort out. Adding to the problem, we have the issue of a declining American economy and threats to our own economy from a failing housing market and declining consumer confidence.

The drop of sterling against the Euro is the one bit of good news. For a long time British manufacturing industry has been operating under a very high exchange rate regime and struggling to compete so the devaluation that has occurred is good news for those selling products and services in an international market. This is potentially one of the few sources of growth. □

¹ *Thoresen Review of Generic Financial Advice*, 3 March 2008.



Sarah Houghton
is the publishing
manager of
RECOVERY.

■ Northern Rock timeline

From 2002 billions of dollars were loaned to people with low incomes for mortgages in the US. Interest rates were raised from June 2004 and many defaulted on payments. The scene was set for economic waves to ripple around the world.

- 14.08.07** Mervyn King, BoE governor, alerted to potential problems with NR
- 10.09.07** NR abandons attempts to find buyer and turns to the BoE as 'lender of last resort'
- 14.09.07** Emergency funding from BoE agreed. Customers rush to empty accounts. NR shares fall by 31 per cent in a day
- 20.09.07** BoE makes U-turn in its handling of credit crisis and agrees to pump £10 billion into longer term money markets
- 01.10.07** Government announces guarantee of 100 per cent of an individual's bank or building society account savings up to £35,000
- 12.10.07** Virgin Group confirms interest in NR
- 07.12.07** Olivant group enters race to secure NR
- 13.12.07** Adam Applegarth leaves NR
- 15.01.08** All but one of the four proposals put forward by hedge funds SRM Global and RAB Capital to restrict the NR board's ability to issue shares and sell assets is defeated
- 21.01.08** Treasury announces plans to back private-sector rescue of NR through the sale of government-guaranteed bonds to pay off the lender's £24 billion debts
- 26.01.08** FSA criticised for 'systematic failure of duty' by the Treasury Select Committee. MPs recommend new protection for depositors
- 04.02.08** Olivant withdraws from the race to rescue NR
- 13.02.08** Virgin favourite but must offer better terms
- 17.02.08** Government announces a period of public ownership as neither Olivant nor Virgin offer 'sufficient value for money to the taxpayer'
- 18.02.08** Ron Sandler assumes position of executive chairman of NR
- 19.02.08** The Banking (Special Provisions) Bill to nationalise NR begins its passage through the House of Commons
- 21.02.08** Legislation clears its Parliamentary stages in Commons and Lords
- 18.03.08** European Commission to check that government's plans for NR remain within the EU rules on state aid
- 18.03.08** NR announces 2,000 jobs to go by 2011, with most staff going in first year; plan to focus on growing deposits while shrinking mortgage book
- 19.03.08** NR shareholders reveal plans to take legal action over compensation
- 26.03.08** FSA admits its lack of supervision over NR
- 31.03.08** Adam Applegarth to receive £750,000 plus £346,000 pension top-up, City advisers to receive £50 million.

Debtors deserve a choice

Northern Rock appears to be riding rough shod over debtors. Should the personal insolvency regime be changed to stop this?

Insolvency practitioners working within the field of personal insolvency will be well aware of the difficulties encountered when debtors propose Voluntary Arrangements in which Northern Rock (NR) appears as the major creditor.

In recent years NR has offered substantial unsecured loans to individuals, often in the riskier segments of the market, through a variety of products, which include the now infamous Together loan. These lending strategies have caused NR to appear regularly as controlling creditors in personal insolvency procedures.

NR's apparent response to increasing levels of default within the market, and presumably to its internal financial concerns, appears to have been to formulate an aggressive recovery policy in an attempt to mitigate its losses. This policy has been based on securing previously unsecured debt on borrowers' properties wherever possible.

This has acted to the detriment of many individuals seeking an acceptable solution to their debt problems and to that of other creditors, who are left with a severely diminished asset pool against which a recovery of the remaining liabilities may be made.

Northern Rock and IVAs

Prior to September 2006, Northern Rock regularly supported IVA proposals and was not particularly aggressive in respect of modifications required. However, at this time, a new policy era dawned and NR began to reject IVA proposals as a matter of course, apparently regardless of the level of return offered. Typically, nominees' attempts to negotiate terms, or even to establish the reasons for rejection, were fruitless.

It would appear that NR's new policy was to vote to reject IVA proposals wherever it had a controlling vote and to simultaneously instigate legal proceedings, which would allow it an early opportunity to secure its outstanding debt on debtor's property. Consequently, by acting first, NR would be able to secure for full repayment of its debt while the remaining body of creditors would have a diminished pool of assets from which to pursue a recovery. In most cases the return to residual creditors would be insufficient to gain acceptance of any new IVA proposal, and bankruptcy remained the only viable option for the debtor.

A further matter of interest to IPs concerns the quantification of NR claims within insolvency procedures. Claims in respect of NR fixed rate loans often include all interest through to the end of the loan

term (seeking to invoke a contractual clause capitalising all *future* interest due on default of the loan conditions). This has the effect of maximising NR's claim for voting purposes, which may be significant to the outcome of creditors' meetings and control of the proceedings.

The speed with which NR has been able to act to obtain judgments and charging orders is remarkable. In fact, NR has been known to obtain an interim charging order within days of a default judgment.

Northern Rock's aggressive policy has in turn led to the situation where many debtors considering an IVA as a potential solution have been advised that it is unlikely to be possible because of the controlling position of NR and that bankruptcy is their only alternative.

☞ Northern Rock's aggressive policy has led to the situation where many debtors considering an IVA as a potential solution have been advised that it is unlikely to be possible because of the controlling position of NR. ☞

Implications for insolvency regime

This recovery policy is a commercially sound strategy for each individual creditor, but would appear to contravene the accepted principle of *pari passu* in insolvency situations. It would also appear to present a real threat to the public policy objective of making IVAs widely available as a realistic alternative to bankruptcy.

However, in the current difficult economic climate it is apparent that this strategy has now been adopted by other lenders, suggesting that once creditors are alerted to a potential insolvency situation there will increasingly be a race for the assets. This securitisation is likely to increase the numbers of properties susceptible to repossession, with holders of such charges instigating possession and sale proceedings should repayment of newly secured liabilities not be forthcoming.

In order to combat this I believe it would be appropriate to consider some changes to the IVA process that would deal with the evolving situation.

Suggestions for change

Currently, the use of the interim order procedure appears sporadic, therefore it may be appropriate to instigate a simpler mechanism under which a moratorium may be obtained within personal insolvency proceedings. Such a procedure could be based upon the CVA small company procedure, where a moratorium comes into force immediately following the submission to court of the nominee's report.

Further, where an IVA proposal is rejected at a creditors' meeting, a mandatory bankruptcy petition should be automatically submitted by the nominee. This petition would effectively preserve the debtor's assets within a continuous procedure and remove the incentive for creditors to vote against a good IVA proposal in order to seek to maximise their own commercial position at the expense of other creditors.

Therefore, once insolvency is established, and a formal procedure is deemed appropriate, *pari passu* would be automatically preserved throughout the process. This would also prevent speculative proposals from debtors and would provide certainty of outcome to creditors in voluntary arrangements when considering their voting options.

Finally, we would propose that the court should satisfy itself as to solvency prior to granting a charging order against an individual's property. Such comfort could be provided from an independent IP's report, which would be funded by the applicant, to establish the position prior to granting a charge.

Other creditors becoming aggressive

It is apparent that creditors from within the financial services sector are becoming increasingly aggressive in seeking to maximise their individual recoveries when faced with potential personal insolvency situations. This response to obvious commercial pressures, although understandable, is likely to create additional short-term pressures in the housing market at a sensitive time. Further, this is an undesirable situation in the context of the current personal insolvency regime, as the availability of procedures such as IVAs are effectively denied to certain debtors. We therefore suggest that, following the experience arising from the NR situation, the current personal insolvency regime may require some amendment to ensure it remains an effective tool of public policy. □

Tony Casey and Sue Casey
are partners at J Casey & Co.



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All rise

Against a backdrop of significant price inflation Duncan Swift highlights the key issues in the food supply chain.

With annual Gross Value Added (GVA) of £74 billion¹ and approximately 10,000 food producer and processor businesses² supplying the Big 4 supermarkets, which employ over 350,000 people³, you could be forgiven for thinking that the UK food sector is in rude health. Dig a little deeper though and a different picture emerges.

The statistics

- The overwhelming preponderance of supermarket buying power; about 70 per cent of the UK's grocery trade is sold through the four biggest multiple retailer chains (Tesco, Sainsbury's, Asda and Morrisons).
- The multiples' buying power coupled with their price competition wars, which seek to consolidate and grow the ever more important share of consumer spend, has heaped significant deflationary pressure upon suppliers. In real terms overall UK food prices have effectively deflated over the last 10–15 years.
- The rise of the supermarkets' own-labels (OLs) means that OL suppliers (accounting for over 35 per cent of food volumes⁴) as well as commodity suppliers (together with OL sales representing about 50 per cent of retail sales⁵) have no brand protection for their margins. This

means that their potential unique selling points are restricted to price, the quality of their new product development and the extent to which they meet the supermarkets' serviceability standards (these are accredited and monitored with

⌋ **About 70 per cent of the UK's grocery trade is sold through the four biggest multiple retailer chains (Tesco, Sainsbury's, Asda and Morrisons).** ⌋

significant financial penalties for service shortfalls). The effect on margins is all too apparent as shown in the graph below.

- There is a lack of written terms in contracts of supply; a feature when allied to massive buyer power that can, and on occasion does, lay itself open to abuse of supplier trust. A survey we undertook in the sector in 2007 revealed:
 - (i) Almost two thirds (64 per cent) of suppliers operate without formal contract terms with supermarkets. Just 22 per cent enjoy written terms and 12 per cent some written terms. The majority of those supplying without certain terms of reference believe these make no difference (41 per cent); 30 per cent are unwilling to have them, while for a further 23 per cent it's the supermarkets that refuse to formalise the agreements.

- (ii) Largely because there are no written terms, almost a quarter of suppliers complained of having an order cancelled or significantly reduced within 72 hours of delivery (nine per cent often, nine per cent a few times, six

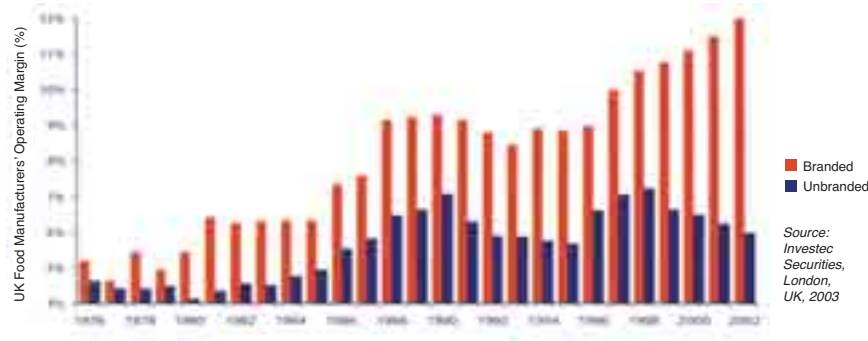
per cent once) without obtaining any compensation. Even with businesses with turnovers running into several hundreds of millions supermarkets do not place order commitment much beyond one week in advance, preferring instead to give indicative forecasts of expected 'call off' demand for product and thereby leaving all of the supply risk with the supplier.

- (iii) 20 per cent of suppliers reported that supermarkets regularly require credit for unsold goods, citing a range of reasons including: poor quality, apparent damage to goods and even their inability to sell them.
- The fast moving consumer goods sector is characterised by bulk discounts. In food these discounts, typically about 2–4 per cent (and occasionally much larger percentages) are known as over-riders.

Manufacturing food products: output price inflation



UK branded and unbranded net operating margins for food manufacturers (1976–2002)



Source:
Investec
Securities,
London,
UK, 2003

Managing food production and processing sector insolvencies.

What factors should IPs consider in insolvency situations? Here are some specifics.

Producers

- Most farming businesses are unincorporated and reliant on family owners for management and labour. Typical forms of insolvency being Law of Property Act (1925) appointments over land and buildings and Agricultural Receivership appointments over farming business assets and stock. Both are difficult as the family home is often at stake and are complicated due to these being governed by old areas of the law augmented by much case law notably in the area of tenant rights over the years; specialist legal advice pre-appointment is vital.
- Good animal welfare is of paramount importance as is an understanding of seasonality and the farming year.
- Having a good independent farm manager available pre-appointment to advise and assist is highly recommended.

Processors

- Typically incorporated businesses with fixed and floating charge security.
- Need to understand all of the key trade terms with major customers, particularly retrospective rebates and other supplier contributions, which are often not talked of in the sector as part of

the usual trade terms. Early meetings with any major supermarket customers are essential to agree the account position and basis of any ongoing trade. If supermarkets are the main customers they will often want to vet potential purchasers of the business.

- Maintenance of food hygiene is paramount if production and trading is to continue. Do not make the person who is responsible for this in the business redundant even if there is another employee ostensibly as capable of fulfilling the role – the customers will be spooked.
- Securing proofs of delivery is essential for successful debt collection. Beware third party haulage and warehousing arrangements as these frequently give rise to duress payments to secure PODs and finished goods stock.
- Businesses supplying supermarkets are accredited to ensure consistency of product content and quality and have to meet challenging serviceability standards set by the supermarkets – with high-volume, short shelf-life products often produced on a just-in-time basis the potential for supply disruption is acute. Identify and retain the person(s) responsible for the account management to avoid costly penalties being levied against debts owed.

These are negotiated either up-front or in the early stages of supply but are not calculated and charged by the customer (retailer) until the end of the supply term, or periodically – typically annually, occasionally quarterly and normally applied in direct set-off against the debt due to the supplier.

- The multiple retailers' buyers' teams have refined retrospective discounts almost into an art form where the 'discounts' only notionally bear relation to actual volumes. In effect these are like more direct price reductions and/or another form of listing fee, or another supplier contribution to secure retail shelf space, product prominence and promotion.

Polarisation and consolidation

The overall effect has been significant polarisation and consolidation in the sector over the last ten years with fewer larger (typically branded) corporates and numerous small niche businesses. While it is difficult to assess the churn rate our research suggests that:

- (i) about five per cent of food supply turnover changes hands every ten years whether through merger, takeover or failure; and,
- (ii) the declining number of VAT registrations in this sector illustrates the extent of consolidation seen. At the beginning of 1994 there were 246,555 VAT registered businesses in food, drink and tobacco retail; food processing and manufacturing; food, beverage and tobacco wholesaling and farming and agriculture. By 1 January 2006 the

number had fallen by 22 per cent to 191,390 with almost 8,500 of the closures being insolvencies. The drop is 38 per cent if farming and agricultural businesses are taken out of the equation. These statistics are against a broader economic backdrop where VAT registrations as a whole have increased by 14 per cent between 1994 and 2006.

☞ The supermarket effect will have squeezed suppliers' gross margins further in the own label and commodity sectors to the point where many of those businesses are fast becoming anaemic. Hence I expect to see the attrition of food producer and processor businesses continue unabated. ☞

The impact

What impact will the sharply rising food commodity prices around the globe over the last 12 months have on this? Farm gate prices have risen sharply due to a combination of circumstances including poor wheat harvests in Russia and Australia last year, allied to rising demand in China and India, and the increased use of land for alternative bio-fuel crop production. Together these have combined to reduce world wheat stocks to their lowest level for over 30 years.

World cereal prices have soared as a consequence, with the price volatility added to by financial speculators seeking better returns in food sectors seen as 'defensive' investments in times of economic turmoil and potential recession causing political concern to be expressed around the world.

The rampant rise in cereal prices from lows of £80–£100 per tonne just 12 months

ago to £150–£200 now has knock-on effects in the livestock sector where animals are fed cereal-based foodstuffs. The short-term winners are those producing cereals; the losers are those rearing intensive livestock. The consequence is rising food commodity prices across the board impacting on food processors, with all parts of the sector being hit by increased fuel costs.

While the supermarkets' general response has been to try and keep a lid on supplier price increases, with the trade press carrying many stories of the efforts of the Big 4 supermarkets to cap supplier prices, the success of their efforts has been limited as food inflation at the consumer end is estimated to have been running at approximately 12 per cent over the last 12 months⁶.

Nevertheless the supermarket effect will have squeezed suppliers' gross margins further in the own label and commodity sectors to the point where many of those businesses are fast becoming anaemic. Hence I expect to see the attrition of food producer and processor businesses continue unabated.

Our view is supported by the industry. A survey of company directors in the food supply chain conducted by Grant Thornton in early 2007 revealed that 83 per cent of UK food suppliers expect to see more companies within their sector become insolvent during the next 12–18 months with more than 50 per cent laying the blame squarely on supermarkets and specifically pointing to price pressure, excessive power, de-listing and the refusal to renegotiate prices in light of higher costs as the main examples of unreasonable behaviour by the major multiples. Other potential triggers of more insolvencies

include the usual culprits of rising costs, competition and poor management. In my experience I would also add suppliers' enthusiasm for product proliferation and unfocused new product development to this list. ☐

¹ ONS, 2002 figure reported in 2004

² Competition Commission, 2000

³ ONS, 2000

⁴ Planet Retail: Private Label Trends Worldwide 2007

⁵ British Brands Group hearing with the Competition Commission, September 2006

⁶ ONS statistics reported in the *Telegraph* on 16 January 2008.

Duncan Swift is joint head of the Food & Agribusiness Recovery Group at Grant Thornton UK LLP.



Insolvency exposure for professional indemnity insurers: a new era for insolvency practitioners

Following a recent decision, trustees in bankruptcy may find themselves in a difficult position in deciding whether or not to admit a proof of debt. Richard Curd explains why.

In an important judgment for insolvency practitioners and professional indemnity insurers, the court has decided that while discharge from bankruptcy will mean that a client can no longer pursue a bankrupt professional in respect of his bankruptcy debts (including potential liability for professional negligence) it is possible for the client to pursue the bankrupt's professional indemnity insurers direct under the Third Parties (Rights Against Insurers) Act 1930 using the proof of debt mechanism.

In the judgment, against which there has been no appeal, the Law Society has won the right to pursue a claim directly against the insurers of a solicitor in respect of his alleged professional liabilities by using bankruptcy procedures in circumstances in which it is no longer possible to obtain a judgment against the solicitor personally.

☞ The Law Society has won the right to pursue a claim directly against the insurers of a solicitor in respect of his alleged professional liabilities by using bankruptcy procedures in circumstances in which it is no longer possible to obtain a judgment against the solicitor personally. ☞

The Law Society v. Official Receiver & Another [2007] EWCA 2841 (Ch) **Facts**

Over a two-year period, Dixit Shah acquired a number of solicitors' practices. The Law Society subsequently intervened in September 2000 only to discover that Mr Shah, so the Law Society alleged, had misappropriated £12.5 million of client funds before disappearing abroad.

The Law Society compensated the victims of Mr Shah's alleged misappropriations and then sought to recover, by way of a subrogated claim, the monies that it had paid out to individuals who had been partners of Mr Shah. It is important to note that there were no allegations of dishonesty against those partners.

Three of those pursued by the Law Society (including a Mr Barda) were bankrupts who had been discharged from bankruptcy before the Law Society issued the recovery proceedings; they maintained that discharge from bankruptcy gave them a complete defence to the Law Society's claim and this was ultimately accepted by the Law Society.

The critical question for the court was, therefore, whether the Law Society could proceed direct against the professional indemnity insurers of the discharged bankrupts under the 1930 Act in circumstances in which no judgment had been, or now could be, obtained against the discharged bankrupts themselves.

The decision

It was common ground that the statutory transfer of Mr Barda's rights against his professional indemnity insurers to the Law

indemnity insurers) for the Law Society to obtain a decision admitting its claim against Mr Barda in his bankruptcy. This would give the claim sufficient 'elevated status' for the purposes of the 1930 Act; as the court put it, 'Upon the debt being admitted, the inchoate rights which were transferred to the third party [ie the Law Society] are made good'.

The appropriate provision by which the court can deal with the question of admission of a proof of debt is Section 363(1) Insolvency Act 1986, which gives the court a widely drafted power to determine all questions 'whether of law or fact arising in any bankruptcy' and the Law Society's action will continue for a judicial determination on the proof via this route.

Analysis

Given that the 1930 Act is now more than 75 years old and that many changes have been made to bankruptcy law since it was entered on the statute book, the operation of the 1930 Act is ripe for review. As there is to be no appeal in this case, this judgment is now of considerable practical importance.

In particular, following the Enterprise Act 2002, a discharge can be obtained one year from bankruptcy whereas, in contrast, adherence to the professional negligence pre-action protocol would, if no negotiated settlement was achieved, give very little time for a claimant to obtain a judgment or arbitral award against a negligent professional for the purposes of enforcement direct against insurers under the 1930 Act in the event that that professional is adjudged bankrupt. Accordingly, this alternative route of acquiring the necessary right by proving in the bankruptcy is likely to be very attractive to clients and other third party claimants in such circumstances.

Professional indemnity insurers will need to review their exposures in the light of this judgment. It is possible, if not likely, that they will have taken comfort from the fact that those who are insured and bankrupt will have been discharged

Society took place immediately on Mr Barda's bankruptcy. That said, the Law Society's own right to pursue the professional indemnity insurers direct would remain contingent, or inchoate, until Mr Barda's liability to the Law Society was established.

The Law Society could no longer pursue Mr Barda as his discharge from bankruptcy had the effect of extinguishing the remedy of enforcement against him. However, the court decided that it did not (despite authority indicating otherwise) extinguish the underlying cause of action against Mr Barda.

Accordingly, it would be enough to establish an indemnifiable loss under the policy (which could be pursued by the Law Society direct against the professional

without potential professional negligence claimants acquiring the right, by the methods previously understood to be effective, to pursue insurers direct under the 1930 Act in respect of such claims. It is clear from this judgment that discharge is not the end of the story and insurers cannot be confident that such claims will not now materialise. A proof of debt can be submitted to the trustee in bankruptcy of the insured professional even after discharge and, if the proof is admitted by the trustee, then that is as the judge found: 'adequate establishment of a claim against an insured to enable [the client] to say that the insured has suffered an indemnifiable loss under the policy of insurance', which can then be pursued direct against insurers.

How this will affect IPs

This decision, of course, is likely to put trustees in bankruptcy in a difficult position in deciding whether or not to admit a proof, the real purpose of which is to acquire rights under the 1930 Act. It is a decision that the trustee is required to make after a quasi-judicial enquiry and the burden is, therefore, potentially very onerous. How is the trustee going to be able to discharge this duty in circumstances in which, in many cases, there will be no funds in the bankrupt estate to meet his or her costs of doing so?

Happily for insolvency practitioners, a convenient answer was provided by s363(1) Insolvency Act 1986, which gives the court the power to determine the validity of the proof. This will mean that the claimant with the alleged professional negligence claim and the professional indemnity insurers can contest the validity of the proof, at their own risk as to costs, and the

¶¶ **Insolvency practitioners will also be very interested in these findings given that the principles will be equally applicable to company liquidations.** ¶¶

trustee will simply have to comply with the court order either to admit or reject the proof at the conclusion of that dispute, and need incur no costs in participating in it.

Consistent with that approach, the trustee in bankruptcy for Mr Barda in this action, obtained specific directions from the court that he was to be at liberty to take no part in the proceedings and to incur no costs in respect of them; no documents or correspondence were to be sent to the trustee or to his solicitors to reinforce this principle. It seems likely in the future that such novel orders will gain greater prevalence as trustees in bankruptcy will regard the prospect of being drawn into what is, in effect, someone else's complex professional negligence dispute with an understandable degree of horror,

particularly, when there are no funds in the bankrupt estate.

Insolvency practitioners will also be very interested in these findings given that the principles will be equally applicable to company liquidations. Indeed, the court recognised that using the proof procedure for the purpose of enforcing rights under the 1930 Act (rather than obtaining the

right to vote in, or gain a dividend from, a bankruptcy) was unusual and carried with it the possibility (which we suggest is very strong) that the proof procedure will become widely used for this collateral purpose in the future. □

CMS Cameron McKenna acted for Mr Barda's trustee in bankruptcy.

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Construction Insolvency: Security, Risk and Renewal in Construction Contracts

Edition: Third

Author: Richard Davis

Publisher: Sweet & Maxwell

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Price: £145

Book review

What is it like to see construction through the eyes of insolvency? What happens when abstract insolvency principles encounter the intensely practical world of construction? The idea behind this book is that, when brought together in legal practice, these two apparently unconnected disciplines have much to offer each other.

Similar difficulties are experienced wherever insolvency affects the construction process. Drawing on case law from common law jurisdictions worldwide, the author gives an in-depth account of this phenomenon with a view to gaining insight into insolvency risk and reasons for the extensive, and arguably excessive, use of security devices in building and engineering contracts.

The book includes an analysis of:

- insolvency procedures and claims, using industry examples
- the uneasy relationship between the Housing Grants, Construction and

Regeneration Act 1996 and insolvency law, with particular reference to the adjudication of disputes

- concepts such as assignment, novation, guarantee, trust and set-off as applied to complex construction contracts
- insolvency termination clauses found in the standard forms and methods for procuring the completion of the works.

Understanding one thing in terms of another is a feature of metaphor. The author begins and ends the book by placing law in the context of hermetic imagination, arguing that images – visual and verbal – can bring a particular subtlety and power to legal thinking as well as being sources of pleasure and refreshment to practitioners. □

'An invaluable point of reference.'

Gabriel Moss QC

'Fast becoming a standard text.'

Construction Law Journal



The role of the corporate restructuring tax adviser to IPs undertaking a formal insolvency procedure

The role of the corporate restructuring tax adviser in insolvency procedures is of increasing importance. This article outlines some of the key skills required to undertake it.

Traditional position

Before the introduction of the Enterprise Act 2002, the role of the corporate restructuring tax adviser to insolvency practitioners (IPs) undertaking a formal insolvency procedure was primarily to assist, via tax structuring, in the sale of company assets and/or in utilisation of company losses to help maximise or unlock value.

🔗 **Now it is extremely important that IPs involve specialist corporate restructuring tax advisers in order to help ensure estate values are maximised.** 📄

Except for the more complicated liquidation procedures, corporate tax advice to help minimise, or even determine, corporate tax costs in the estate was not generally required due to the unsecured status of corporate tax and/or the often relatively simple tax affairs of the company (eg post cessation of trade, interest only returns etc) which could be dealt with by the IP's insolvency team.

Following legislative changes in the insolvency and tax codes and developments in case law and businesses in general becoming more complicated (due mainly to financing arrangements and the global marketplace) the position has changed dramatically. Now it is extremely important that IPs involve specialist corporate restructuring tax advisers in

order to help ensure estate values are maximised.

The key legislative changes in the insolvency and tax codes are summarised below.

Changes in the insolvency code Enterprise Act 2002

For new administrations, corporation tax costs incurred during the procedure are

treated as expenses of the procedure and therefore are payable ahead of dividends to both preferential creditors and floating chargeholders (now found at rule 2.67(f) and 2.67(j) Insolvency Rules 1986).

Accordingly, with effect from 15 September 2003 the corporate tax position of companies entering into administration has become much more important to IPs, in their capacity as administrators, due to their inherent duties to minimise costs and preserve value for stakeholders in the estate.

Similarly, the adoption of the mutuality of dealing provisions (rule 2.85 Insolvency Rules 1986) for new administrations (commonly referred to as 'Crown set-off' in the context of tax and VAT) together with the introduction of the prescribed part provisions (s176A Insolvency Act 1986) which may allow all or part of an otherwise unsecured corporate tax claim to obtain a dividend payment, also increases the importance of corporate tax to IPs.

Council Regulation 1346/2000/EC

The introduction of the concept of 'centre of main interest' (COMI) and hence the possibility of UK IPs taking formal insolvency procedures over non-UK entities and vice versa, may create an additional international tax element to insolvency procedures.

Any IP accepting a COMI Regulations appointment without considering the potential corporation tax impact (eg tax residency, double tax relief, availability of losses etc) and indeed general tax consequences does so at their peril! This regulation has also created the possibility that tax claims from other EU jurisdictions are eligible to rank for dividend payment.

Changes in the tax code**Finance Act 2003**

The ending of a tax accounting period immediately before the day a company enters into a new administration can have a significant effect on the availability of tax losses in the estate (s12 Income and Corporation Taxes Act 1988).

Accordingly, this seemingly innocent provision can have a major impact on the tax costs arising in administrations and ultimately on the dividends returned to stakeholders. This requires IPs to understand and plan the tax consequences of entering administration.

Finally, the addition of the administrator as the designated proper officer of the company for corporate tax purposes ensures responsibility and authority for addressing the company's tax affairs lies clearly with the administrator (s108 Taxes Management Act 1970). This provision, together with the existing similar provision for liquidators, will also increase the importance of corporate tax to IPs.

¶ If the tax work streams are ignored as unnecessary and onerous, IPs may not maximise value in the estate and therefore be potentially exposed to challenges from stakeholders. ¶

Current position

Against the background of the above changes, and the other factors noted, the role of the corporate restructuring tax adviser to IPs undertaking a formal insolvency procedure now typically requires work under one or more of the following broad headings:

- sale of tax assets and/or utilisation of tax losses to help maximise or unlock value;
- minimisation or eradication of corporate tax via mechanisms such as pre-appointment planning, effective loss utilisation etc, in order to help preserve value; and
- filing of corporate tax returns, ruling requests (both pre and post transaction) etc in order to help reach agreement on the tax position of the company on a timely and tax efficient basis.

Such work streams should be considered whether the IP is undertaking



the formal insolvency procedure in the capacity of liquidator, administrator, receiver or supervisor. If the work streams are ignored as unnecessary and onerous, IPs may not maximise value in the estate and therefore be potentially exposed to challenges from stakeholders.

Skills required of the corporate restructuring tax adviser

The typical commercial environment in which IPs operate includes:

- stressed stakeholders;
- incomplete records including lack of up-to-date audited accounts;
- time pressures vis-à-vis asset values; and
- inherent concerns of the tax authorities in respect of potential lost revenues.

- a strong commercial mindset to consider corporate tax issues on the basis of the cost versus benefit to the estate; and
- experience of dealing with taxation authorities (potentially in many jurisdictions) involving insolvency scenarios.

Of course, these skills are in addition to the general requirements of strong technical tax knowledge, particularly with regard to sales of assets, and maintaining a high level of client care including being readily available to the IP undertaking the formal insolvency procedure.

Summary

In recent years the relevance and importance of corporate tax to IPs undertaking formal insolvency procedures has increased significantly.

Accordingly, to help ensure IPs meet their inherent requirements and duties to maximise and preserve value in the estate, commercial corporate tax advice should be obtained from corporate tax restructuring advisers working in this field.

These are exciting and challenging times for corporate restructuring tax advisers, who need to update their specialist skills continually. Of course, reading *RECOVERY* provides a fundamental part of this. □

The views and opinions expressed herein are those of the authors and do not necessarily represent the views and opinions of KPMG LLP (UK).



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The long march from Marshalsea – the changing face of UK insolvency

Desmond Flynn retired as head of the UK's Insolvency Service at the end of September having spent some 34 years working in the field. From 1989 he was principally responsible for insolvency policy and was inspector general and chief executive of the Service from 2001. This article is printed* in tribute to him following his recent death.

In looking to identify a unifying theme that will lend a structure to this retrospective I need to remind readers of the recent history of insolvency in the UK. It was on 1 January 1870 that the doors of the Marshalsea debtors' prison (and of the other, similar establishments) were thrown open following the abolition (with certain limited exceptions) of imprisonment for debt. It was a great humanitarian reform but arguably owed little to any radically revised view of the role of credit and risk-taking in the economy. The 1883 and 1914 Bankruptcy Acts were predicated on the idea that financial failure equated to moral

became a great deal easier for, particularly, the consumer. Credit and consumer indebtedness became increasing facts of life and when, in the early 1990s, the economy went into recession, the number of consumers being made (or more likely making themselves) bankrupt rose dramatically to exceed the number of business people and other self-employed. In this of course the UK was beginning to do no more than reflect the experience of the USA and Canada where the fact of bankruptcy as a debtor's remedy had been long established.

Between 1990 and 1993 the number of individual bankruptcies quadrupled and in

Insolvency Service's dealings with bankrupts and the directors of failed companies pretty well completed and shift of mindset away from what I would call the 'Marshalsea' model.

That journey was completed by the passage of the reforms to individual bankruptcy contained in the Enterprise Act 2002. In future bankruptcy would not automatically imply moral turpitude and for the great majority would simply be a way of readjusting their financial affairs. For the small minority of the dishonest, reckless or otherwise culpable there would be a Bankruptcy Restrictions Order (BRO) procedure (very much like director disqualification), which could, if the court were satisfied, extend the restrictive effects of bankruptcy for up to 15 years. Nearly all the subsidiary legislation which imposed automatic restrictions, disqualifications or prohibitions in relation to a plethora of public and quasi-public offices has now been changed so that they apply only where a BRO has been made – in other words where a bankrupt has been proved to be unworthy of the public's trust.

☞ **The Insolvency Act 1986 may have led to the end of the routine public examination of the bankrupt but the basic structure of the law remained intact.** ☞

inadequacy and the automatic disqualification of a bankrupt from a long list of public offices made it clear that a bankrupt was not seen as someone in whom society could place any trust. In addition the process of bankruptcy was calculated to reinforce this view with the public examination of the bankrupt seemingly more concerned with ritual humiliation and exposing the detail of his private life than in eliciting information about the debtor's financial affairs.

Although the Insolvency Act of 1986 introduced a new voluntary arrangement procedure to enable individuals to compound with their creditors whilst avoiding bankruptcy and streamlined the administration of bankruptcy cases, it did not disturb the essential view that financial failure equated to moral deficiency. The Insolvency Act 1986 may have led to the end of the routine public examination of the bankrupt but the basic structure of the law remained intact.

The impetus for more radical change can be traced to a number of socio-economic developments within the UK economy. In the latter part of the 1980s the government liberalised the provision of financial services so that access to credit

order to deal with such numbers Official Receivers began to exploit fully the streamlined approach to case administration offered by the Insolvency Act. It became clear that investigative resources would need to be concentrated on

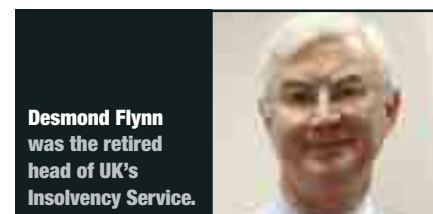
☞ **That journey was completed by the passage of the reforms to individual bankruptcy contained in the Enterprise Act 2002.** ☞

the small minority of cases where there appeared to be evidence of dishonesty or other financial misconduct. A de facto twin-track approach emerged, which recognised that for most people financial failure was the result of 'life accidents' (divorce, ill-health or unemployment) or miscalculation rather than a desire to defraud or otherwise do down their creditors.

There was another factor at play from the mid-1990s, which reinforced the change of attitude towards people going bankrupt. John Major's premiership may well be remembered above all else for the establishment of the Citizens' Charter, which sought, in brief, to ensure that, in their dealings with the state, citizens were not supplicants but much more customers with legitimate rights and expectations. The application of this standard to the

So we have finally reversed the burden of proof on the bankrupt. In so doing I think we have finally brought the UK into step with other modern, credit-based economies. The responsible use of credit is a major driver of economic growth, and a recognition that occasionally things will go wrong is no more than a sensible and inevitable change. ☐

* This article previously appeared in *INSOL World* in the fourth quarter of 2007.



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Re Rajapakse – the final chapter

The progress of *Re Rajapakse* to the court's final decision is discussed. The case is a good example of the UNCITRAL Model Law in action.

In the spring 2007 edition of *RECOVERY* we described the first recognition application in the Central Registry of the High Court under the UNCITRAL Model Law, enacted in Great Britain as the Cross Border Insolvency Regulations 2006 (the 2006 Regs). (The Bristol District Registry claimed the accolade of hearing the first application anywhere in the case of *Re European Insurance Agency AS* a few weeks previously.) This article describes how the case progressed to the court's final decision (*Re Rajapakse*, unreported, 1 November 2007).

¶¶ The trustee applied under article 21 of the 2006 Regs and section 310 Insolvency Act 1986 (the 1986 Act) for an income payments order (IPO) directing the transfer of the majority of the remaining funds to the trustee and the balance to the debtors. ¶¶

Case background

The debtors went into joint bankruptcy under Chapter 7 of the US Bankruptcy Code in 2003. The trustee discovered undisclosed assets owned by the debtors in England and obtained initial relief from the English court under the 2006 Regs:

- a recognition order under article 15;
- an article 21 relief order enabling the trustee to sell a UK freehold property;
- an article 21 relief order requiring a bank with a branch in London to transfer funds held in accounts in the debtors' names to the trustee's solicitors, pending investigations, and to provide information to the trustee;
- a subsequent article 21 relief order directing the release of certain of the funds, which on analysis represented funds held at the date of bankruptcy, to the trustee.

Income payments order

Finally, the trustee applied under article 21 of the 2006 Regs and section 310 Insolvency Act 1986 (the 1986 Act) for an income payments order (IPO) directing the transfer of the majority of the remaining funds to the trustee and the balance to the debtors.

The sums claimed by the trustee were received by the debtors under UK State, occupational and private pensions between the date of bankruptcy and its third anniversary. Rights under an approved pension scheme are excluded from a bankrupt's estate by section 11(1) of the

Welfare Reform and Pensions Act 1999. However, income received under such a pension may be the subject of an application for an IPO (see section 310(7) of the 1986 Act).

An IPO may not extend to 'payments by way of guaranteed minimum pension' or 'payments giving effect to the bankrupt's protected rights as a member of a pension scheme' – section 310 (8).

Enquiries of the pension providers established that small sums had been paid during the relevant period in respect of guaranteed minimum pension, and these

were deducted from the sums sought by the trustee. There were no protected rights.

The debtors' plea

Further, the court may not make an order the effect of which would be to reduce the income of the bankrupt, when taken together with any guaranteed minimum

¶¶ The trustee submitted that both the lump sum and the accrued pension payments were capable of constituting income susceptible to an IPO. ¶¶

pension payments and payments giving effect to protected rights, below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family – section 310 (2).

The debtors' evidence was that they had saved the sums in the UK accounts believing them to be immune from their bankruptcies and intending them to be available to them if they ever relocated to the UK, or needed them for the benefit of their son. But there was no evidence that

they required the funds for their reasonable domestic needs or those of their family.

The trustee submitted that both the lump sum and the accrued pension payments were capable of constituting income susceptible to an IPO. In the case of *Kilvert v. Flackett* [1998] BPIR 721 a lump sum payment was made subject to an IPO¹.

Had the payments not been susceptible to an IPO, they might have been claimed as after-acquired property. As a precaution, the trustee served notices under section 307(1) of the 1986 Act in respect of these funds upon the debtors, without prejudice to the IPO application. In the event this was not necessary. The court accepted that it had the power to make an IPO in respect of both the accrued income and the lump sum.

Achieving a balance

The maximum period during which an IPO may be in force is three years beginning with the date on which the order is made – section 310(6)(b). While it might therefore have been argued that the IPO could run for up to a further three years, it was felt that it would be fair to invite the

court to give the trustee no more than three years' worth of accrued post-bankruptcy income, and that this struck a fair balance between the interests of the creditors and the debtors, as required by articles 21(1) and 22(1).

The court drew comfort from the fact that the funds transferred to the trustee would then come under the control of the US Bankruptcy Court where the debtors could raise any issues they still had. □

¹ See also *Jones v. Patel* [1999] BPIR 509.

Neil Griffiths (left) is a partner and Simon Johnson (right) is a senior associate and barrister at Denton Wilde Sapte.



Jeremy Goldring probes the cases of trading receivership and trading administration, asks if they are really deceased and, if so, who done it?

Good parenting?

“The primary beneficiary of the successes of Tradrec and Tradmin was the secured creditor, invariably a bank. During the recession, the demand for and values of secured assets fell.”

that in passing the great challenges of the UK recession of the early 1990s, a series of events occurred that has potentially culminated in their murder.

prices that purchasers were willing to pay. Suppliers had learned to refuse to provide critical goods and services and thus achieved a kind of super-priority, forcing secured creditors to pay these 'ransom' demands or risk the loss of going-concern asset sale values. In truth this weakness was a function of the company's business dynamics but fingers of blame were pointed at Tradrec and Tradmin. In a minority of cases, there were insufficient recoveries to pay expenses from which ripples of disquiet among suppliers led to increased taking of ransom positions. Company management, invariably ceding control to the IP fraternity, became increasingly reluctant to start processes that would see their jobs disappear.

Enter irony, again. Government felt that the banks were far too friendly with Tradrec, and were withdrawing support from ailing customers too readily. So, in the virtuous name of enterprise, new law was proposed in which opportunities for Tradrec would be restricted by the realm of capital markets and Tradmin would become obliged to operate primarily for the benefit of all creditors. It was the intention of the Enterprise Act to promote Tradmin – with a view to corporate and business rescues. But the new laws did

Decline and fall

Other forces were at work undermining Tradrec and Tradmin. Employment laws had been introduced, which deflated the

nothing to address the weaknesses. There was nothing to discourage suppliers adopting ransom positions; nothing to encourage management to overcome fear of displacement; no incentive for anybody other than the secured creditor to provide cash; and secured creditors were disenfranchised by the (at least notional) duty imposed upon the IP fraternity to have regard to the interests of creditors as a whole.

Pre-packs – the pros

While attention was distracted, an approach towards transferring businesses was enjoying increasing popularity – known as ‘pre-packaging’.

☞ **In the UK, where financial creditors are all in a holding company, subsidiaries can be marketed and ‘rescued’ via a pre-pack share sale. But the practice has also been adopted for asset sales.** ☞

The expression ‘pre-pack’ was, in fact, a distortion of a practice that had been occurring in the US, whereby majority stakeholders formulated a reorganisation plan between themselves and the debtor. In order to impose the ‘pre-packaged’ plan on minorities of impaired classes, court approval was sought through a filing under Chapter 11 of the US Bankruptcy Code. Invariably the plan provided for the survival of the debtor company.

In the UK, where financial creditors are all in a holding company, subsidiaries can be marketed and ‘rescued’ via a pre-pack share sale. But the practice has also been adopted for asset sales. A sale is negotiated by the debtor, the proceeds of which, together with any remaining assets, will be insufficient to pay all creditors. The bank is involved, because the buyer requires a release of the secured assets. Management is understandably reluctant to cause the debtor to sell its assets in this way, so the practice relies upon the appointment of an IP who will immediately execute the sale.

Nervous at first that pre-packs could somehow be undone to their detriment the banks were comforted by their lawyers. Even if a pre-pack sale is improper it cannot be unravelled, and the only party at risk is the IP. The banks began to see advantages in pre-packs over Tradmin and Tradrec. If a buyer was willing to pay a price meeting the bank’s recovery expectation and an IP was willing to execute the sale, it could achieve an immediate recovery without any uncertainty of further advances and eventual sale price. The temptation on IPs to co-operate was intense. But how could they justify the decision to sell the business in the absence of any marketing campaign through a Tradrec or Tradmin? And how could a pre-pack be squared with the primary objective of company rescue imposed by the Enterprise Act? Would IPs refuse to accept appointments unless trading finance was provided?

Entirely predictably, given the commercial dynamics, the availability of professional valuations and the lack of any sign of disapproval from the courts, IPs soon considered that they could decide to sell the business *before* accepting an appointment. They could rely on the *potential* trading difficulties referred to above as well as the hypothetical risks of customer and employee drift. The mantra that any insolvency appointment causes immediate loss of enterprise value became chanted from more and more rooftops and at increasing volume. Buoyed and encouraged by their ability to exert influence, banks became bolder still. Why not fund an MBO to acquire the assets

from a customer in financial difficulty? The result would be hardly any write off and security over assets operated by a solvent company for a debt of similar value. IP risk was limited to the unlikely event that somebody could demonstrate that a Tradrec or Tradmin would have resulted in a better return for unsecured creditors.

Pre-packs – the cons

Pre-packs do have some disadvantages. There is no scope for avoiding the consequences of TUPE by trimming the workforce; and preferential creditors arise. Elaborate schemes were devised – see *Re Oval 1742 Limited* [2006] All ER 57 – to overcome these irritants. Though unsuccessful, judges tacitly acknowledged the legitimacy of the practice thus pushing on the rising tide of the pre-pack. Even if the existing secured creditor had no stomach for one, there was no shortage of new financiers willing to buy the secured creditor’s debt and to then orchestrate through a robust IP a pre-pack ‘solution’.

☞ **Perhaps, if the Enterprise Act had done more to stimulate attempts to rescue companies, shareholders might have been more protective towards Tradmin.** ☞

Now it must be stated that the author, having managed a few himself, sees distinct benefits for stakeholders in the pre-pack approach in a variety of situations. Minimal brand impairment and risk to continuation of supply are obvious candidates. But too dogmatic a view, and one that is blinkered by the aspirations of only one stakeholder group, mocks the high standards of integrity and resourcefulness for which the IP fraternity has striven hard to gain recognition.

But there are other risks arising from a pre-pack, notably the question of whether trading activities during the negotiation phase will lead to personal liability. As soon as it is clear that the business will be sold it is plain that insolvent liquidation is

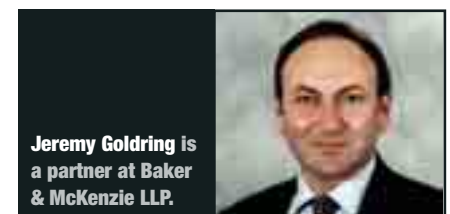
inevitable; will negotiating a pre-pack be sufficient to satisfy the requirement to minimise losses to creditors? And if it is insufficient, will the secured creditor and/or the IP (who will have guided management) be regarded as shadow or de facto directors? Mindful of this risk (and that of fraudulent trading, since some suppliers to whom credit is extended will not be paid) we have seen the use of a declaration of trust to ring-fence income for certain actual or potential creditors (see *Re Farepak Food & Gifts Limited* [2006] All ER 265 and *Re Sento International Limited* [2006] EWHC 2935). While in some circumstances this device may alleviate risk, in others it could exacerbate it by achieving preferences and constituting a breach of the duty to act for the benefit of creditors *as a whole*.

The role of the Enterprise Act and commercial imperatives

There is one more party for our list of suspects. Who else has motive? Perhaps, if the Enterprise Act had done more to stimulate attempts to rescue companies, shareholders might have been more protective towards Tradmin. But where shareholders also manage the company they will be supportive of a pre-packaged MBO: their shares in OldCo may be valueless but their shares in NewCo will be a much sounder investment.

Beware the Ides of September, the soothsayer should have said to Tradrec and Tradmin in 2003. In keeping with classic Shakespearian irony, this would have focused their attention upon the Enterprise Act and the well-meaning but ill-executed intentions of government. Instead, they should have been fearing the commercial imperatives of secured lenders, IPs and owner-managers. These have conspired, abetted by professional valuers, to promote the pre-packaged business transfer so that it has become the principal method of salvaging a business. They

appear to have assassinated Tradmin (while the government bumped off Tradrec). But the author suspects that Tradmin is not dead, merely in hiding; and that while it may take a major piece of litigation to knock the pre-pack off its perch, like the phoenix that the pre-pack so often spawns, Tradmin will some day rise from its proverbial ashes. ☐



How to identify someone participating in management or acting as a de facto director

Robin Henry explains how to spot someone participating in management or acting as a de facto director, and that there are penalties for breaching disqualification or bankruptcy.

A director subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 (CDDA), or an undischarged bankrupt, may be subject to further penalties if he acts as a director (including a de facto director) or is involved in the management of a company.

Penalties for breaching disqualification or bankruptcy

Breach of a bankruptcy order or undertaking is a criminal offence, as is breach of a disqualification order or undertaking, with the possibility of a further disqualification order¹.

A person is also personally liable under section 15(1) CDDA for all the relevant debts of the company if:

- in breach of a disqualification or bankruptcy order or undertaking, he is involved in management of the company, or
- acts or is willing to act on instructions given by a person whom he knows is disqualified or bankrupt.

The relevant debts are those incurred when the person was involved in management. No special order is required to make a person liable under section 15 and it is therefore open to any creditor of a relevant debt of a company to proceed against a person to recover that debt.

Meaning of de facto directors

A de facto director is someone who acts as a director, even though not formally appointed².

There is no single test³, but the following factors will be taken into account. A de facto director must:

- be part of the company's governing structure, even if he does not have day-to-day control of the company's affairs or only acts in relation to part of the company's activities;
- participate in directing the affairs of the company (and not for example, advise the real directors and then withdraw to allow them to make the decisions);
- have a real influence on the decision-making process – in a recent case, a wife who was aware of her husband's decisions without vociferously objecting was not a de facto director;⁴

- be on an equal footing with other directors of the company (eg not be accountable to a line manager); and
- have access to relevant company information (eg management accounts).

The following factors may also be relevant:

- whether the person was held out by the company or claimed to be a director;
- a family relationship with other directors might be evidence of acting as a de facto director out of family loyalty; however, it could equally show that they were only acting as a dutiful relative; and
- being a shareholder, but only if this leads to participating in directing the affairs of the company to protect their investment.

☞ **No special order is required to make a person liable under section 15 and it is therefore open to any creditor of a relevant debt of a company to proceed against a person under section 15 to recover that debt.** ☞

Meaning of involvement in management

Whether someone is involved in management will be decided on the facts.⁵ The test is not precise, but it is less onerous than that for a de facto director. It has been defined as meaning an involvement of some kind in the decision-making process and a degree of responsibility. Since the purpose of the statutory provisions is to prevent someone participating in management who might put the company's solvency or probity at risk, only those who have a significant discretion or advisory role in decision-making should be affected.

Examples of being involved in management

- negotiating credit facilities, even if the terms have to be confirmed by someone else;
- a management consultant who acted as adviser to the board of a company; and
- execution of management's decisions which go beyond the mere carrying out of directions.

Management activities might include negotiating and signing contracts on behalf of the company or dealing with employees and major customers. It is not a defence to say that someone else has the final say in decision-making or signed all the cheques.

Examples of not being involved in management

- A former director who acted as a marketing adviser and attended board meetings in that capacity; and
- In another case, a son of a director and controlling shareholder who was employed as a management trainee but who had authority to sign company cheques; his functions were held to be too lowly for him to be considered as a manager; he was never more than an office boy, although he had received some management training.⁶

Non-management activities would tend to be day-to-day routine functions, such as clerical or other tasks involving ordering or supplying goods or services.⁷

Where a person is merely carrying out someone else's instructions rather than actually taking or participating in decisions himself, he might not be regarded as taking part in management. ☐

¹ Sections 2, 11 and 13 CDDA

² See section 22(4) CDDA

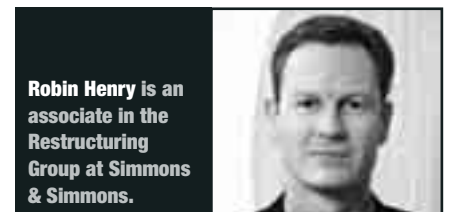
³ See the following cases for the factors referred to: *SoS for Trade and Industry v. Tjolle* [1998] BCC 282; *Re Kaytech International plc* [1999] BCC 390; *SoS for Trade and Industry v. Deverell* [2001] Ch 340; *In Re Richborough Furniture Ltd* [1996] BCC 155; *SoS for Trade and Industry v. Hollier* [2006] EWHC (1804); *Re Red Label Fashions Ltd* [1999] BCC 30; *SoS for Trade and Industry v. Jones* [1999] BCC 336

⁴ *Re Gemma Limited (in liquidation) v. Davies* [2008] EWHC 546 (Ch)

⁵ See the following cases for the factors referred to: *Re Market Wizard Systems (UK) Ltd* [1998] 2 BCLC 282; *CCA v. Bracht* (1989) 7 ACLC 40; *Re Magna Alloys & Research Pty Ltd* (1975) CLC

⁶ *Re Clasper Group Services Ltd* (1988) 4 BCC 673

⁷ See *Bracht* above.





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Tenon Recovery

Tenon recovery

Tenon Recovery has expanded threefold in two years. Carl Jackson explains the rationale behind its success.

A year is a long time in a dynamic business and Tenon Recovery certainly qualifies for that category. It has seen significant expansion through organic growth, strategic acquisitions and the recruitment of top quality people.

The result? A leading business advisory group offering a compelling proposition to entrepreneurs.

Range of services

Our range of services includes corporate finance, tax, interim management, audit, financial services, outsourcing and recovery. They are delivered by 1,900 staff with a can-do attitude operating from 48 offices across the UK.

Corporate growth

For most of 2007 the UK economy was benign, not a conducive environment for Tenon Recovery (a service line of the Group) you would think. The reality was that our representation in the corporate marketplace increased to the extent that we are now the second largest appointment taker. In addition we are supervising 3,500 IVA cases. We have trebled the size of our recovery business during the last two years.

Our range of services includes corporate finance, tax, interim management, audit, financial services, outsourcing and recovery. They are delivered by 1,900 staff from 48 offices across the UK.

Acquisitions are a key part of our growth strategy and we are delighted with the quality teams from Unity, Jackson Jolliffe Cork, Hurst Morrison Thompson Corporate Recovery and Haines Watts BRI, all of whom have hit the ground running. They are already experiencing the positive effect of a national brand in both winning and retaining work. We now have a cohesive and consistent service offering across our network of 32 recovery offices.

The acquisitions were perfectly timed in respect of our personal insolvency business. We were determined that Tenon would not adopt a 'one size fits all' approach to IVAs and bankruptcies, even if that resulted in us lagging behind some pioneers in the IVA marketplace. We are convinced that our steady growth in this area leaves us with our credibility intact and well placed for future growth.



Left to right:
Carl Jackson,
Matthew Bowker
and Martin Austin

Forensic service

Our forensic offering has been widened via focused recruiting and now encompasses an investigations team concentrating on risk management and IT. This has resulted in a number of new business wins.

Training and development

We are delighted that we are attracting high calibre individuals and teams who clearly like the Tenon Recovery culture – a culture that has changed dramatically over the last two years. We continue to develop our up-and-coming talent via the Tenon Academy, which will ensure our staff are not just technically competent but also have strong commercial acumen and interpersonal skills.

So what does the future hold for Tenon Recovery? It won't surprise you to know that we have some exciting plans for growth, which will test our entrepreneurial team. We will not compromise on our values and integrity – they will remain constant to ensure we retain our brand collateral and credibility. Our focus on the SME marketplace will also continue to mirror the focus of the other service lines within the Tenon Group.

Future plans remain largely unchanged, while acquisitions need to

demonstrate a geographic and strategic fit. We are keen to talk to individuals or teams who feel that their career paths are unclear or simply not sufficiently stimulating. We

We continue to develop our up-and-coming talent via the Tenon Academy, which will ensure our staff are not just technically competent but also have strong commercial acumen and interpersonal skills.

are developing new services that will benefit our key business partners and we will broaden our routes to market in both the corporate and personal sectors. □



Carl Jackson
is head of
Tenon Group.



Crunch or bite?

Whichever way the economy turns, Tenon Recovery can help troubled SME's. We are well placed to provide turnaround, recovery, restructuring support and advice to businesses challenged by lenders tightening their criteria and strengthening their covenants.

Through a combination of organic growth and acquisitions we have trebled the size of our business over the last two years. We now have 350 quality staff with a "can do" approach operating from 32 offices across the UK.

We help businesses turn a challenge into an opportunity.

Talk to Tenon Recovery, call Carl Jackson on **020 7935 5566**
or email carl.jackson@tenongroup.com.

R3 conference

Jane Moriarty reviews the highlights of the R3 conference in Cannes.

Lights ...

Camera ...

Action ...

... and that's a take!

Well done to Nick O'Reilly and his conference committee for winning the Oscar (in insolvency terms) for the 18th annual conference. It had edge (thank you Kate Silverton), but also demonstrated depth and incision in tackling some very topical issues. The only X-rated elements of this performance occurred after hours... or so I'm told.

Change in timing – a good move

This year's conference started a day earlier than usual on Wednesday evening, indeed a few weeks earlier than usual, with two full days of sessions and a Gala dinner on the Friday night. The change in timing worked well with many people still free to get home on Saturday morning for the Bank Holiday weekend. The change in start time on the second day (to 10 am) allowed delegates to maximise both evening networking and course attendance, a very sensible move!

Review of the presentations

The conference itself was excellent as the feedback forms have evidenced. The first day started with Bjorn Gudmundsson, one of Landsbanki's senior economists, giving his views on how the credit crunch is likely to affect liquidity and interest rates in the UK and the G8. Brent Osborne of Landsbanki then told the delegates how



and a very timely session on pension and restructuring from a Pinsent Mason/PwC team. Jamie Constable of R Capital then challenged delegates with his views on the appropriate rewards for directors where the companies for which they are responsible are in trouble. That gave the delegates plenty to talk about over lunch.

The afternoon session started gently with Anne-Marie Laing's tales of working in Eastern Europe and then proceeded with a most appropriate session on film



border cases or personal insolvency, and then after lunch a choice of panel sessions on where restructuring or personal insolvency is going. These sessions offered delegates in-depth insights on common themes. Both were interactive sessions in which a number of delegates engaged actively. The conference closed with a few words from our vice-president, Peter Sargent, on his conference in Geneva.

Time to relax

The Gala dinner followed the high standard established in Berlin and was enjoyed by all. It was a perfect opportunity for the delegates and speakers to relax and enjoy the beginning of the long weekend.

Thanks to the organisers

So to conclude, many thanks to Nick, David and their team for what has been another fantastic conference. A heartfelt thanks also to Malcolm Cork for his hard work and to Angela Laxton and her team for all of the superb course administration. It is only when the event runs so seamlessly as to look effortless that you realise the amount of hard work that has gone into it! □

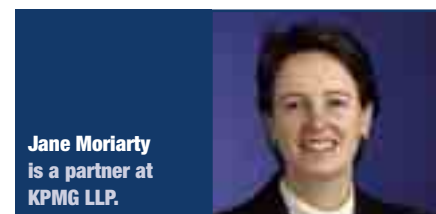
☞ **The conference then moved on to one of a series of well placed 'Hot Topics' with Caroline Jones of Matthew Arnold & Baldwin presenting on some of the problems faced by IPs where their appointments in administrations are defective. If you want to know the answer you'll have to sign up for the R3 Conference Lite on 10 July 2008.** ☞

these factors are affecting his marketplace. The conference then moved on to one of a series of well placed 'Hot Topics' with Carolyn Jones of Matthew Arnold & Baldwin presenting on some of the problems faced by IPs where their appointments in administrations are defective. If you want to know the answer you'll have to sign up for the R3 Conference Lite on 10 July 2008.

The day continued to inform with a very insightful session on directors disqualification following the changes in the Companies Act 2006 presented by Morris Peacock of Howes Percival and Jeremy Hawksley of the Enforcement Directorate of the Insolvency Service,

finance in the twilight zone! A great session for budding Tarantinos! The day came to its end with a briefing from INSOL International's president followed by a punchy corporate legal update.

Friday continued Thursday's great performance, with a considerate slightly late curtain call. A team from AlixPartners grabbed the audience's attention, with a fascinating insight into the Märklin turnaround. This was followed by an update from Dr Sandra Frisbee on her continuing research into prepacks, an issue close to most IPs' hearts. The conference broke into the first of two parallel sessions offering delegates a choice of legal developments in cross-



Jane Moriarty
is a partner at
KPMG LLP.

STP Focus

Christine Elliott analyses the ongoing credit crisis and rightly surmises that nobody likes to catch a falling knife.

Wisdom is knowledge reflected in a rear-view mirror. Six years ago in 2002, researchers Claessens and Klapper stated that, 'Recent financial crises have further highlighted the importance of well-functioning insolvency systems to prevent and resolve corporate sector financial distress.' They proposed that, 'A good insolvency regime should also prevent managers and shareholders from taking imprudent loans, and lenders from giving loans with a high probability of default.'

Jon Moulton to address the Treasury Select Committee

Alchemy's Jon Moulton, a leading light in STP, is scheduled to give a presentation to the Treasury Select Committee. Mervyn King (Bank of England Governor) and Hector Sants (Financial Services Authority Chief Executive) will attend – to answer questions. Their theme? Financial stability. It seems a little late. When the global financial liquidity shortage became apparent last year, the markets, regulators and governments tried to talk themselves out of the problem. It was described as a crisis of confidence. It calls to mind the majority governmental reaction to climate change. Stern, who wrote the seminal report, was recently reported as warning that his dire predictions *under* estimated the speed and impacts of rising temperatures. In the economy, the measures taken so far to lower the temperature have had a cooling effect in some quarters but the hotspots are there and future explosions are keeping lenders indoors. Commentators no longer dismiss the credit crunch as an issue for the financiers. Now, it is polluting the domestic consumer economy. Tesco has pledged to invest some of its handsome profits in keeping its customers' shopping basket prices relatively stress-free. Many retailers will lack that possibility. To state the obvious, new mortgages have become an expensive rarity and the cost of servicing existing ones has escalated. Debt, when it can be obtained, is prohibitively expensive. Job cuts have started in the City but will spread elsewhere. The Bank of England is proposing to take back mortgages – the quality is yet to be specified – from lenders' existing books in return for bonds. King injects cash and cash is king.

SMEs are key

In the real economy, small businesses (SMEs) and their owners have a pivotal role in economic recovery or failure. According

to Klapper and Sulla, SMEs account for more than 43 per cent of employment in the UK. Cruickshank states that just three banks are responsible for 67 per cent of all UK commercial lending to these companies. Trade creditors, trade insurers and more recently, asset based lenders provide much of the remainder.

With the economy in a tailspin, how are our insolvency codes equipped to deal with downturn? Insolvency regimes have defining characteristics. The general attributes cover the degree of automatic legal intervention when liquidity problems emerge, the balance of power between debtors and creditors, the right to file for bankruptcy, reorganisation or liquidation, management's role and responsibilities and the ability to implement a moratorium.

In a well-functioning system, secured stakeholders' rights will be protected in order to preserve the capital liquidity and investment pipeline. At the same time, viable firms will be supported and employment optimised.

☞ **SMEs account for more than 43 per cent of employment in the UK.** ☞

One early study (Franks and Sussman) on how the Enterprise Act has affected SMEs shows that administrators have been incentivised to generate additional stakeholders' recoveries in cases where, in the past, they had been senior claimants' fiduciaries. The study did not find a significantly greater incidence of continued trading or going-concern from the pre-Act period, suggesting that the new procedures are not preserving more employment. Recovery rates in UK SME liquidations are 22 per cent lower than in going concerns, according to Davydenko and Franks.

Banks, usually the key lender to SMEs, carry much of the risk and have most to gain from preserving sustainable businesses. Banks that opt for debt-to-equity conversion can achieve a huge upside if a turnaround is successful. It could not be a worse time for rescue options to be diminished or closed down due to liquidity and regulatory pressures. Plain vanilla finance is off the menu. Pensions power is a sword of Damocles. Order famine is decoupling supplier chains. We need effective action to avert a recession. Our politicians are talking. Nobody likes to catch a falling knife. □

STP News



Founded in 2000 as STP, the Society for high quality accredited turnaround executives, we will henceforth be known as the **Institute for Turnaround (IFT)**, Europe's leading professional body for the operational, funding and advisory community. Our mission is creating stakeholder value.

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Prestigious first Annual Lecture

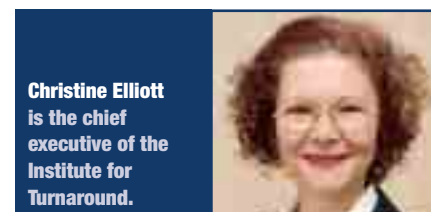
IFT Honorary Fellow Sir Stuart Rose will deliver the first IFT Annual Lecture on 18 June in London. The venue is Imperial College London and bookings are being handled by Vanessa Barham. To contact Vanessa, please email: iftevents@yahoo.co.uk.

Europe's Top Turnaround Awards

IFT Director Paul Thompson has been appointed to chair the 2008 Awards judging panel. Plans include introducing carefully selected new categories.

Marathon achievement

Duncan Parkes, the member who leads LloydsTSB's business turnaround operation, completed the London marathon for the first (and only, he says!) time and achieved a faster time than his already challenging target.



Christine Elliott
is the chief
executive of the
Institute for
Turnaround.

R3 events, courses and conferences

Date	Event title	Venue
June		
2	North West Quarterly Regional Meeting	Old Trafford Cricket Ground
2	Southern Regional Women's Group Committee Meeting	
5	STP/TFG 1st Thursday Networking Event	London
6	Yorkshire Region Womens Group Ladies Lunch	
10	Business and Options Reviews	Thistle Hotel, Bristol
12	South West and South Wales Region Annual Dinner	
17	Introductory Programme – Rescue 2	etc. Venues, London
17	Introductory Programme – Rescue 2	Deloitte, Birmingham
19	Introductory Programme – Rescue 2	Irwin Mitchell, Leeds
19	Scotland Region Golf Day	
19	STP SW/Wales Regional Meeting	South West & Wales
20	European Issues	Jurys, Gt Russell Street, London
23	South West and South Wales Region Meeting	The Bristol Golf Club
24	Asset Tracing	Renaissance Hotel, Manchester
24	Liquidation	Renaissance Hotel, Manchester
26	Yorkshire Regional Meeting and AGM	
27	JIEB Graduation Ceremony	Gray's Inn, London
July		
3	STP/TFG 1st Thursday Networking Event	London
3	STP Yorkshire and NE Regional Meeting	Yorkshire & North East
7	Eastern Regional Meeting	
8	STP Members' Meeting	London
10	Lite Conference	University of Warwick
15	Introductory Programme – Rescue 3	etc. Venues, London
15	Introductory Programme – Rescue 3	Deloitte, Birmingham
17	Introductory Programme – Rescue 3	Irwin Mitchell, Leeds
August		
21	SWIG Fringe Festival	Scotland

For further information on R3 courses and conferences, please visit the R3 website www.r3.org.uk, where you can download the full 2008 programme. Alternatively, call the Courses team on 020 7566 4234 to request a programme by post.

regional events
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Industry announcements



Pinsent Masons is delighted to announce the promotion of Alastair Lomax to Partner. Alastair leads our Birmingham Restructuring team.

Alastair has over ten years experience in all aspects of restructuring and insolvency work, in particular corporate restructuring, disposals in administrations and receiverships, and liquidators' claims. He acts principally for insolvency practitioners, financial institutions and corporate clients.

Alastair Lomax

T: 0121 260 4007

E: alastair.lomax@pinsentmasons.com



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Smith & Williamson



Smith & Williamson team welcomes Money

Smith & Williamson is pleased to announce the appointment of James Money as a director within the Restructuring & Recovery Services team.

James has 20 years' insolvency experience across a range of sectors including banking, engineering, transport, energy, agriculture, and pubs and clubs. He has also acted as court-appointed receiver in fraud investigations.

James is a chartered accountant and licensed insolvency practitioner. He is a regular speaker at restructuring seminars and courses.

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Menzies Corporate Restructuring (MCR) is delighted to announce the promotion of Geoff Bouchier to partner.



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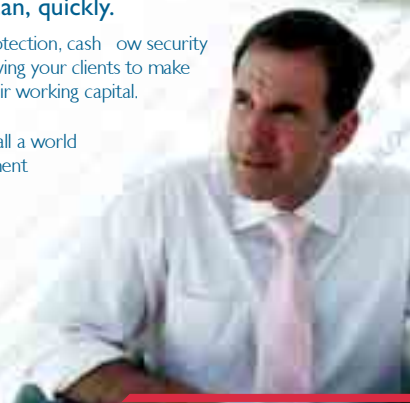
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This role is based in the London office of a top tier international practice. The group provides solutions to under-performing businesses on both debtor and creditor led assignments. You will be providing a range of strategic options from advisory assignments and turnarounds to debt restructuring and recovery. You will be ACA/ACCA/JIEB qualified with exceptional commercial acumen, analytical skills, verbal and written communication skills, and strong understanding of this exciting and challenging sector. IBR or business review skills are desirable in addition to staff management experience. Excellent career progression, training and development, and benefits.

For a totally confidential consultation please contact;
Simon Haynes on 020 7499 2744 email: shaynes@wardsimpson.co.uk or
Peter Lockhart on 020 7499 2751 email: plockhart@wardsimpson.co.uk

Why use us?

We worked in practice!

Harvey Sutton is in a unique position within the world of Corporate Recovery Recruitment. We offer a truly national service and therefore are available and happy to meet you in your preferred location. Our consultants have the added benefit of many years experience working in small to mid-tier and Big 4 corporate recovery firms. So whether you wish to follow up one of the jobs advertised below or one from our website, or you simply wish to seek advice from one of our JIEB qualified consultants in terms of your current role and salary, please get in touch for a confidential discussion.

Senior Administrator

Manchester – Top 10
Up to £38,000

This firm is currently seeking an ambitious senior administrator to join their already impressive team. You will be responsible for a portfolio of cases. Some of your work will include devising and implementing strategy with support from senior team members and dealing with creditors including preparing and distributing reports. You will also assist with pre-insolvency reviews and ensure all compliance issues are being met. Experience of trading administrations is a must. The successful individual will gain not only excellent experience but also an exceptional salary and benefits package.

➔ contact Sam Doshi on 020 7250 0000

Senior Relationship Manager

Large Corporate Banking, London
£80,000 + Bonus and Rewards

An exciting opportunity has arisen to appoint a Relationship Manager within the Business Support team of this Clearing Bank. The role provides an exciting opportunity for a highly motivated individual to further develop their risk management and relationship skills. The successful candidate will be responsible for managing their own demanding portfolio of under-performing and distressed clients across a wide range of sectors. Extensive liaison with customers, venture capitalists and other professionals will be essential in order to resolve difficult situations and to turnaround businesses, whilst at all times managing the Bank's risk.

➔ contact Darren Edwards on 020 7250 0000

Global Corporate Advisory Practice

London
£NEG + Bonus and Rewards

An exciting opportunity has arisen for the appointment of an Analyst within the Corporate Advisory Services Group of this leading international investment banking firm. The role provides an exciting opportunity for a highly motivated individual at either Senior Manager or Director level within a Big 4 Restructuring team who has high level restructuring experience on both Creditor and Debtor review work, and is in need of a fresh challenge. The successful candidate will be responsible for working within a small team on big ticket, high profile review work and be offered a rewarding remuneration and benefits package.

➔ contact Darren Edwards on 020 7250 0000

Senior Administrator

London
£30,000 - £40,000

Due to the upturn in the Corporate Recovery market we have a number of top ten firms and mid tier firms who require experienced Senior Administrators. Ideally candidates will be CPI qualified and have experience of trading and pre pack administrations coupled with the confidence to deal with cases from day one. If suitable you will have the option to pick from a number of well known and reputable firms that are all offering excellent remuneration and career progression.

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H A R V E Y S U T T O N
Recruitment

Davies Kidd

Corporate Recovery and Restructuring

Recruiting for staff?

If you are recruiting for staff at any level in the Restructuring, Recovery and Insolvency fields why not register your vacancy with us to see if we can help. We will happily advertise it for free on our own recruitment website www.big4careers.com which attracts candidates looking for career moves both to and from the 'Big 4' as well as among non 'Big 4' firms. With nearly 20 years Senior level recruitment experience behind us we are also highly skilled and discrete in handling opportunities at Senior Manager, Director and Partner level.

Partner & Director Search

If you are a Partner or Director or a Team considering a career move then feel free to consult us for advice. With nearly 20 years senior level recruitment experience in the Restructuring, Recovery and Insolvency markets we fully understand the 'close' nature of the market and the need for tact and discretion. We currently have Director and Partner search assignments throughout the UK.

Insolvency Manager / Senior Manager Cayman \$US105-130,000 Tax Beneficial

Unique and exciting opportunity for a qualified (accountant or JIEB) to join a leading international firm in Cayman. The ideal candidate will have good all-round Insolvency and Corporate Recovery skills together with good management experience. The role is likely to suit someone at experienced Manager or recently promoted Senior Manager level who is looking for a new challenge.
chris@davies-kidd.co.uk

Corporate Restructuring Manager South China Competitive Package

Exciting opportunity within a leading international Restructuring practice for a qualified accountant with at least 2 years post qualification experience in Corporate Restructuring and Business Recovery work.

You will need previous relevant experience at Manager level and the ability to read and write reports in both Mandarin and English.
jeff@davies-kidd.co.uk

Corporate Recovery Senior / Manager Caribbean Flexible

Fantastic opportunity for a qualified accountant and / or CPI / JIEB with 3-4 years Corporate Recovery and Insolvency experience to join a market leading practice in the Caribbean.
chris@davies-kidd.co.uk

Corporate Recovery Senior Manager Milton Keynes £ Competitive

Excellent career opportunity for an established Manager or a Senior Manager to join a leading Recovery team. You will benefit from exposure to a wide range of Corporate assignments and a busy, friendly professional environment. The ideal candidate will be a qualified accountant or JIEB with good all-round Recovery skills including previous exposure to Bank work and a good team player with strong commercial and management skills.
jeff@davies-kidd.co.uk

Restructuring Managers / ADs Sydney / Melbourne Aus \$competitive

Exciting opportunities for Chartered Accountants to join a leading international Corporate Restructuring team. You will be responsible for analysing the financial and operational influence of underperforming businesses and establishing valuable strategies to recover and re-establish successful company performance.

The role is likely to suit a Chartered Accountants with a sound knowledge of Corporate Restructuring in a strategic advisory manner.
chris@davies-kidd.co.uk

Corporate Restructuring Manager Germany Negotiable

Ideal opportunity for a bi-lingual English / German speaking Chartered Accountant or equivalent to join a leading Restructuring team in Northern Germany. You will need at least 3 years Restructuring / Business Recovery experience gained in a recognised professional services firm and should be able to conduct business in both German and English.
jeff@davies-kidd.co.uk

Corporate Restructuring Executive Leeds Competitive

Excellent career opportunity in an international firm for a qualified accountant with previous Recovery / Restructuring experience and the ability to run own varied caseload. Friendly, growing department.
chris@davies-kidd.co.uk

Corporate Recovery Seniors / Managers Brisbane Aus\$ Competitive

Excellent opportunity for newly or recently qualified Chartered Accountants with at least 1-3 years Corporate Recovery experience to join an international firm on the Gold Coast of Australia.
jeff@davies-kidd.co.uk

Corporate Pensions Advisory Senior Manager London £70-90,000

This leading Recovery practice has a team of financial advisors in the area of defined pension schemes to respond to the growth in demand for advisory services from companies and trustees. They are now seeking to expand their offering by recruiting a Senior Manager. Working closely with the firm's corporate finance, pension scheme, audit and personal tax practices. The ideal candidate is likely to be a qualified accountant or equivalent with a Corporate Recovery / Corporate Finance background and experience of dealing with pension schemes and the Pensions Regulator. This is an excellent opportunity for career development with possible secondment opportunities.
chris@davies-kidd.co.uk

Corporate Restructuring Managers to Directors Africa £ Competitive

Excellent opportunities in a leading international accounting firm for qualified accountants or JIEBs with Corporate Recovery or Restructuring experience who are keen to work in Africa. Ideal candidates will have previous experience of living and working in Africa and should be keen to contribute to the long term development of the practice. Opportunities exist from Manager to Director level in Ghana, Tanzania, Kenya and Nigeria.
jeff@davies-kidd.co.uk

Corporate Restructuring Seniors, Managers, Associate Directors Singapore Competitive Packages

Outstanding career opportunities in a leading international firm for qualified accountants with relevant experience in providing advisory services to distressed companies. You are likely to gain exposure to varying industry sectors in a number of countries with involvement in e.g. debt restructuring, cash management, turnaround, company break-up and formal insolvency work.
chris@davies-kidd.co.uk

Davies Kidd are recognised as Market leaders in the recruitment of Recovery professionals having built up an extensive network of contacts through 15 years of experience. We are fully aware of the need for tact and discretion in this close and tightly knit market place and will treat discussions in the strictest of confidence. Below is a small selection of our current opportunities.



Recruitment Specialists

For a confidential discussion on the market or any of these positions contact:

Jeff Davies on 020 7812 6688 or email jeff@davies-kidd.co.uk

Christopher Kidd on 020 7812 6688 or email chris@davies-kidd.co.uk

Corporate Recovery Senior

Ipswich £ Flexible

Leading professional firm offers a qualified accountant / CPI / JIEB the chance to work on a wide range of Corporate Recovery and Insolvency work and assignments including Receiverships, Liquidations, Administrations and Investigation work as well as the opportunity to become involved in marketing work.

jeff@davies-kidd.co.uk

Corporate Recovery Director

South East England

Negotiable £6 Figure Package

Outstanding 'Big 4' opportunity for an ambitious Restructuring / Recovery specialist to 'make a name' for themselves in a 'Big 4' office in the South East of England. You are likely to be a qualified accountant and JIEB with at least 7 years post qualification experience and a specialist background in Recovery and Restructuring work, particularly for mid-market clients. You will need a strong history of successful delivery and a proven business development record. This role represents a great opportunity to be part of a growing national team.

chris@davies-kidd.co.uk

Restructuring Senior / Manager

Southampton £ Flexible + Car

One of the national market leaders seeks a qualified accountant with at least 1 year's post qualification experience in Recovery and Restructuring work. You will rapidly be able to develop your experience working on a wide range of mid market corporate assignments and career prospects are excellent.

jeff@davies-kidd.co.uk

Transaction Services Opportunities UK and International

Executive to Director Levels £ Various

Globally, we are handling a number of interesting career opportunities for qualified Chartered Accountants who have Transaction based experience and are considering an international career move. Locations include UK, Australia, Russia, Middle East, Hong Kong, China, Singapore, Germany and others. A second relevant language may be useful for some locations.

chris@davies-kidd.co.uk

Contract Senior Insolvency Administrator

West End £ Flexible

An opportunity exists for a senior administrator to assume responsibility for a range of cases including CVLs and administrative receiverships. Ideally you should be able to start at short notice and be available for up to 6 months. Excellent working environment in a quality medium sized firm.

jeff@davies-kidd.co.uk

Directors & Assistant Directors Mixed Advisory and Formal

London £85,000 – 6 Figures

Recovery department of this leading international firm can offer challenging and rewarding careers to qualified accountants and / or JIEBs with a strong mix of advisory and formal insolvency experience. You are likely to be operating at a similar level in a Big 4, Top 20 or large boutique environment and should be able to add value to the existing team via e.g. an industry sector or service line specialism or strong contacts with work referrers. Good onward career prospects.

chris@davies-kidd.co.uk

Corporate Recovery Partners / Directors Individuals or Teams

London and Nationwide

£ Competitive Base Salary, Equity, Benefits & Performance Related Profit Share with no upper limits.

Our client is one of the leading independent accounting, financial advisory and investment management groups in the UK. Ideal candidates for the above opportunities will be established Partners or Directors who will be qualified accountants and / or JIEB with several years' all-round corporate experience. You will be proven business generators with strong marketing and team management skills. As key members of the national Recovery practice your overall objectives will be to produce profitable business and build the firm's profile in this area. To this end you will be given the responsibility and support to develop the practice and will be rewarded with a generous compensation package including a competitive base salary, equity, benefits and a transparent, performance-related profit share with no upper limits. First year salary guarantees will also be available for existing Partners. Individuals or teams will be considered for both locations.

jeff@davies-kidd.co.uk

Corporate Recovery Seniors / Managers

Scotland £ Competitive

Expanding Recovery team of an international practice can offer a challenging mix of Corporate Recovery work to qualified accountants who will ideally already have some relevant experience. You will rapidly develop your experience on a broad range of case management and pre-insolvency reviews.

chris@davies-kidd.co.uk

Corporate Recovery Senior

Cambridge £ Competitive

Great opportunity for a qualified ACA, ACCA or equivalent with a good professional services training to join an international firm specialising in turnaround, investigation and restructuring work. Some previous relevant experience would be useful and, in any event, you will need a strong appreciation and commercial understanding of the skills required for advising underperforming businesses.

jeff@davies-kidd.co.uk

Investigation Senior Managers and Managers

London £60-90,000

The Corporate Recovery department of this leading international firm is seeking a number of Managers and Senior Managers to join its busy and expanding Investigations team. Ideal candidates will be qualified accountants, JIEBs or equivalent who can supervise and direct a team of staff on investigation assignments. The work will involve analysing historic trading performance and understanding the key drivers of business performance and operations, understanding the impact of current and projected trading and cash flow on the position and security of key financial stakeholders, preparing detailed assessment of management and their capabilities and coordinating the fieldwork and subsequent report writing on investigation assignments.

chris@davies-kidd.co.uk

'Big 4' Restructuring / Recovery opportunities

Manager to Director level

London / South East

£45,000 – Substantial 6 figures

Our client, a 'Big 4' firm, is experiencing significant growth in its Recovery and Restructuring practice and is consequently looking to make a number of key appointments to its team in London and the South East. They are interested in talking to dedicated specialists at all levels from Manager to Director. At Manager levels ideal candidates will be qualified accountants, JIEBs or equivalent with a strong grounding in Recovery and Restructuring assignments. Senior Managers and Directors will need 5-10 years of directly related experience and should be able to demonstrate a wide range of skills across the discipline, together with strong management and business development ability.

jeff@davies-kidd.co.uk

Practice Mergers and Acquisitions

Looking to merge or acquire a Restructuring or Recovery team? Whether you are a sole practitioner or a team seeking a move or a firm looking to acquire a practice call us for a confidential discussion. Current assignments in London, Birmingham, Leeds, Manchester, Scotland.

Interview with Nick O'Reilly

Nick O'Reilly is one of life's optimists. His take on life is unlikely to mean that, over the coming year as president of R3, he will 'paint it black'.

What has been your career path?

I left school at 18 and applied to the Civil Service and for various management trainee positions. In the information that the Civil Service sent there was a list of vacancies, and one was in the Official Receiver's office. It sounded interesting, and it also gave you the opportunity to study for a recognised qualification on a day-release basis. So I joined, and I loved it. The job touched a chord in me; you had to be down-to-earth, kind and respectful of others and recognise that life is full of traumas – for all of us. I empathised with this.

Five years later, I moved to Booth White & Co and qualified as an accountant. I studied for my exams at Accountancy Tutors and, at the end of the course, they offered me a job as a lecturer specialising in financial management and taxation. I stayed there for three years but I missed what I had been doing so, in 1991, I joined Rothman Pantall & Co and passed my JIEB examinations in the same year. Two years later I was made a partner. It was while I was there that I first became aware of SPI (the forerunner of R3) when I went on some of their courses. As a former lecturer and an IP, I thought I would make a good lecturer on SPI courses. However, it took five years for me to persuade them to take me on. This has made me determined to give younger people a chance. You never know what they can do until you give them an opportunity.

In 2001 I joined Levy Gee, which is now part of Vantis, as a director in the business recovery group.

What are your main areas of interest?

In the early 1990s lots of hotels and nursing homes were going bust so I developed a lot of experience in the leisure and healthcare sectors. More recently my experience has incorporated professional practices (mainly firms of lawyers). Some law firms that specialise in residential conveyancing and legal aid are not doing well and, although they may not become insolvent, they do need some help with restructuring. Personal insolvency remains my principal area of technical interest.

What about the credit crunch?

IPs are not yet seeing a huge rise in the volume of work through insolvency but, in the US, they reckon that it took about nine months for the sub-prime housing problems to work their way through. At that rate, given that it was August 2007 when Northern Rock's problems first became known, we might be due for an



The Ron Lewis Partnership

upturn in business. However, part of the satisfaction IPs get from their work is in saving businesses. Intellectually it is not very stimulating closing a business down, so I hope the squeeze on businesses is not too bad and that there aren't too many liquidations.

Competition is still rife between institutions to lend money to tried and tested ventures (although the conditions may be different) but new businesses will find it hard to get cash.

☞ **It is part of any IPs job to give something back to the industry that has given them a rewarding career.** ☞

For the big clearing banks, the crunch is as much an opportunity as a threat. For example, HSBC has recently announced that it will not be borrowing but using its own reserves to match people's expiring mortgage rates for another two years; and Barclays may increase its share of the commercial property market. But second-tier lenders, such as those specialising in invoice discounting and factoring, could struggle.

What are your objectives for R3 for the coming year?

I have three:

- ensuring that the new IVA protocol runs smoothly
- getting R3 involved in financial education for kids
- raising the debate about the eight professional bodies that license IPs.

(These are outlined in more detail in my president's column on page 4).

How do you see the industry developing over the next three years?

The number of people involved in the industry has grown and their skills-base has changed. Originally there were insolvency departments, these became business recovery departments and now they are called restructuring departments. Within these groups there are many people who are involved in restructuring but who do not hold insolvency licences. There are also those who work in the specialist IVA factories (even in the JIEB examination there is now a special module to reflect this). These people are currently outside of R3 so we need to develop an offering to attract them and embrace them in membership.

How do you relax?

My family comes first. I have two small children under six. I also have a wide circle of friends, including about 25 people that I went to school with. I play in a band called the Ron Lewis Partnership. And I'm a season ticket holder at Watford.

I also have a terrific passion and enthusiasm for my work, enjoy lecturing for other professional bodies and I'm on the IPA membership and authorisation committee. It is part of any IPs job to give something back to the industry that has given them a rewarding career. ☐

Nick O'Reilly was interviewed by Sarah Houghton, the publishing manager of RECOVERY.

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The Professional Standards Department (PSD) is responsible for implementing the Institute's disciplinary and regulatory arrangements under the Institute's Bye-laws and Regulations.

All aspects of complaint handling, monitoring and enforcement in the reserved areas of insolvency, audit and investment business, are carried out by the Professional Conduct Department.

A vacancy has arisen in our Milton Keynes office. The main responsibility of the role will be to supervise and review insolvency casework ensuring that casework is conducted to a consistently high standard in a professional and sensitive way. This includes overseeing the work of other team members to ensure increasingly high standards of professional expertise and behaviours across all casework are observed. The successful individual will be able to demonstrate:

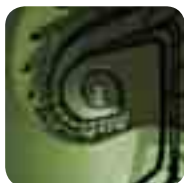
- A wide and up to date knowledge of the insolvency profession and its current challenges including the oversight of the profession.
- Thorough understanding of work undertaken by members/firms.
- Extensive understanding of insolvency legislation.
- Highly developed interpersonal skills, including excellent organisational and time management skills.
- Relevant professional qualification (or equivalent).

Please reply in complete confidence by 31st March 2008 stating your current remuneration and the reference number ATA50743 to our retained consultants, Witan Jardine at r3.ss@witanjardine.co.uk



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Insolvency

Insolvency Investigations Senior

£35,000 - £40,000 + benefits

London

This boutique insolvency firm has a solid reputation in both insolvency and investigations. An opportunity has arisen in their forensic investigations department, reviewing the activities of Directors in relation to insolvent trading activities. A strong insolvency background will be essential.

E: sea.r3@witanjardine.co.uk (Ref: ATA50754)

Accountancy Practice

Business Recovery Manager

£60,000 + benefits

London

A Big 4 international firm is looking for a qualified professional to undertake Independent Business Reviews and deliver innovative commercial solutions to distressed businesses. Working across a variety of commercial and industrial sectors, you will have proven experience in executory insolvency work.

E: sea.r3@witanjardine.co.uk (Ref: ATA49734)

Pension Administration

Employer Manager

£45,000 + benefits

Surrey

This pension administration specialist requires an insolvency professional to advise employers who have invested in the pensions. You will review the investors' company accounts, analyse their financial situation and chase any debts owing. If you have strong corporate insolvency skills, apply now.

E: sea.r3@witanjardine.co.uk (Ref: ATA50495)

Accountancy Practice

Insolvency Compliance Officer

£52,000 + benefits

London

An expanding Top 20 firm has a role reporting directly to the Partners. The position is likely to develop to include the development of the IPS system and updating the manuals and checklists. Experience covering a range of cases including personal and corporate casework is essential.

E: sea.r3@witanjardine.co.uk (Ref: ATA43603)

For independent and professional advice, our specialist corporate recovery consultant will help your career move in the right direction.

Established for over 28 years, Witan Jardine has strong links with the leading accountancy firms in London, the Home Counties and overseas.

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