

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

Restructuring plans – what you need to know

Given the challenges that businesses currently face, it is not surprising that many companies are facing unsustainable balance sheets and the growing prospect of insolvency. In recent months we have seen a steady increase in the number of business failures in the UK, as organisations face debts as a result of the pandemic, inflationary pressures and a decline in consumer appetite.

Businesses in this position may previously had to deal with Schemes of Arrangement or Company Voluntary Arrangements (CVAs). However, since the changes implemented by the Corporate Insolvency and Governance Act (CIGA), restructuring plans offers a new approach for distressed businesses. These plans, typically prepared by a business recovery and insolvency specialist, offer a flexible, efficient and powerful tool that allows companies to restructure their operations and improve their balance sheets.



Restructuring plans are an option for any company liable to be wound up under the Insolvency Act 1986 that is “likely to encounter financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern”.

You may already be familiar with a restructuring plan, but it doesn’t hurt to outline what they entail to understand their benefits in more detail. Put simply, a restructuring plan is a court-approved agreement between a company and its creditors that allows for a solvent restructuring of the business.

Creditors must vote on the plan before it is approved. However, unlike a Scheme of Arrangement, the plan does not have to be approved by the majority of creditors. Instead, creditors are separated into different classes, with each class deemed to have approved the plan if 75 per cent, by the value of that class, votes in favour.

However, to complicate matters slightly a plan may become binding on all creditors if only a single class of creditors vote in favour and the remaining creditors or shareholders in the dissenting classes aren’t left worse off as a result when compared to an alternative

approach. Restructuring plans were created in this way to get around the issue of ‘hold-out’ creditors, which has affected other approaches.

This is clearly a benefit, but there are other advantages to struggling companies considering a restructuring plan. First and foremost, a plan can help to integrate numerous processes into a single proposal. While restructuring once involved companies undertaking multiple steps and completing various hurdles, a restructuring plan simplifies this process, particularly where there are cross-border considerations.

Another clear benefit of a restructuring plan is that it doesn’t force a business into a formal insolvency procedure and all that this entails. Throughout the process, the company remains solvent and uses the respite afforded by the plan to reorganise and streamline its operations.

For restructuring plans to work well, management teams must engage with them at the earliest sign of distress. If businesses wait too long, then they may not have the support of creditors or finances to successfully conduct a restructuring. If you know of a company that might benefit from this approach, please **speak to us**.

Spotting the signs of financial distress

Lots of businesses are experiencing challenging times, but there can be a big difference between a struggling business and one in true financial distress. Whether a business can survive tough economic periods often relies on how quickly they act.

However, to take action, they must first be able to spot the signs of financial distress. The Institute of Chartered Accountants in England and Wales (ICAEW) has defined several signs of distress, which include:

- **Higher interest** – While many companies are already facing higher interest as a result of inflation, there are more extreme cases where banks and other lenders become suspicious of a company's viability and push rates even higher. If a lender sees a business as a high risk they will face higher debt costs, which can compound their existing struggles.
- **Defaulting on payments** – If a business is unable to make regular payments or bills, or has long periods where invoices go unpaid this suggests that it doesn't have the cash to meet its costs. This might indicate that its credit control processes aren't rigorous enough, it is underfunded, or in the most extreme case, it is no longer solvent.

- **Declining margins** – Ask any experienced entrepreneur and they will tell you that for long-term survival what matters are profits, not sales. As the old saying goes, turnover is vanity, profit is sanity. Falling margins suggest that costs are too high, and prices or income is too low. This is not a sustainable position.
- **Cash flow crisis** – One of the first and most significant signs of distress is a shortfall in cash throughout a business. Cash is the lifeblood of a business. Without it, an organisation cannot meet its debts and obligations or invest in projects that deliver growth. If more goes out than comes in a business will fail eventually.

If you have spotted one or more of the signs of distress above or get the impression that a business and its owners are generally unhappy or concerned, act quickly. We can help businesses explore their recovery, restructuring and insolvency options to find a solution that meets their needs. To find out how we can help you, please **contact us**.

How businesses can deal with energy costs

In our own lives, we are all too conscious of the rising energy costs and many of us are likely to be setting the thermostat a little bit lower this year and making sure the lights are turned off. However, as individuals, we are afforded at least some mercy thanks to the energy price cap.

For businesses, however, this winter is looking much bleaker as energy prices spike in the months ahead and they are afforded less protection. While the Government has brought in a discount scheme to help, energy-intensive businesses are likely to have their finances tested into the new year.

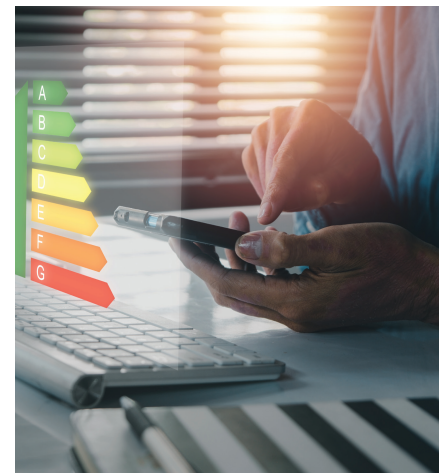
While some of the costs can be passed to clients and customers, or offset in other areas of a business, there is only so much that can be done without more drastic action being taken. Those businesses that are unable to put up their prices or take these steps, whether due to contractual agreements or other issues, need to think about the viability of their operations.

So, what can businesses do if they are experiencing difficulties with energy bills? If a business is unable to meet its energy costs and pay its bills, then it is effectively insolvent. Under the duties of directors, the company must take action to improve the position of its creditors or prevent further loss.

While this may sound extreme, this doesn't mean that the company needs to shut its doors, but it may need to take immediate steps to recover. The first of these should be to seek time to pay. Most energy companies will give businesses additional time to pay. They are, in the main, fairly understanding of the current situation and would rather have businesses pay off their debts over time, rather than join a list of creditors, so negotiate first.

If you have negotiated a deal but are still struggling with debts. Then a Company Voluntary Arrangement (CVA) might be another option. If you can get three-quarters of unsecured creditors to agree, debts can typically be paid back over three to five years with a proportion also written off. While this process requires the oversight of an insolvency practitioner it allows the directors of the company to remain in control of their business and gives them the option to turn the business around.

If a client is struggling with their energy costs or any other debts they must seek advice as soon as they can. We can offer advice on a range of restructuring and insolvency options, so please **get in touch**.



CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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