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Corporate Casualties – Decisive Action for Companies in Trouble



With all the downbeat news, regarding the current economic slowdown, credit crunch, job losses, gloomy pre budget predictions etc. many business owners/ operators could be forgiven for thinking that there are few options available to them in these challenging times other than to liquidate.

“However, whilst there will undoubtedly be further corporate casualties in the current climate, early and decisive action by management is crucial to alleviate many of the problems” says Brendan O’ Donoghue, Director of Corporate Recovery with Russell Brennan Keane Chartered Accountants.

Seeking advice from an experienced Corporate Recovery professional at an early stage to identify and address the critical issues is essential. “Do not wait until relationships with your customers, bankers and creditors have broken down. The earlier difficulties are faced up to and dealt with in an open and transparent manner, the greater the chances of survival. Many of the problems being faced are not unique to individual businesses but are commonplace now” says Brendan “There are very few we haven’t seen before.”

There are several options for distressed companies to consider, one of which is an **Informal Scheme of Arrangement**. “This is a process whereby proposals are put to creditors to discharge a portion of the debt owed based on the available assets of the company. It does result in a write off of debt but can work in circumstances where the proposed return to creditors is both greater and timely than in a formal winding up process” says Brendan.

In many cases, tax arrears form a significant element of a companies’ overall debt. “The Revenue Commissioners by law cannot write down / off tax liabilities but may be prepared to consider an instalment agreement for the arrears on condition that all current taxes are discharged as they fall due. Secured Creditors such as banks and other financial institutions will rely on their security and will not normally countenance any write down of their debt” continued Brendan.

Whilst informal schemes are not legally binding (creditors can pursue their entire debt through formal means including petitioning to wind up), creditors are adopting a more pragmatic approach to such proposals in the current economic environment.

“Informal schemes are suitable particularly for businesses with small numbers of high value creditors” says Brendan. “The key to a successful informal arrangement is communicating with creditors, outlining the reasons why the business is in financial difficulty and setting out in clear concise terms the rescue plan.

There has also been a marked increase in the number of companies availing of the **Examinership** process. “From a low of just four appointments in 2005, twenty five Examiners were appointed during 2007 and in the six months to June 2008, a further sixteen applications were sanctioned” says Brendan.

Examinership is a Court driven process which provides for an insolvent but potentially viable business to be rescued. It affords a company protection from its creditors for a defined period of up to 100 days during which an examiner assesses its viability and formulates a scheme of arrangement for its shareholders and creditors. Typically schemes involve an injection of capital into the business either by new or existing shareholders.

“Whilst it is often the case that a creditor receives only a percentage of its agreed debt, this represents a more positive outcome than through a winding up process and can result in a creditor retaining its customer going forward” says Brendan O’ Donoghue.

A number of hurdles have to be scaled in order for a company to enter into the examination process. The key test to be passed is to prove to the satisfaction of the Court that it has a reasonable prospect of survival.

Well known names which have successfully emerged from the examinership process include City Jet Airlines, Chorus Communications and Shamrock Rovers Football Club.

Clearly where a company is insolvent and all other options have been exhausted, there is a fiduciary obligation for company directors to proceed with winding up. For many owners /directors, this can be one of the most stressful occasions of their lives, some who have been through the process have likened it to a family bereavement. Like everything we face in life, the process is less daunting when you have specialists to provide you with clear and impartial advice in what can be a very complex area and allow you move past this particular difficulty. If you would like to discuss your companies individual circumstances with Brendan O’Donoghue, he can be contacted confidentially at Tel (01) 6440100 or email bodonoghue@rbk.ie

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About RBK

Russell Brennan Keane is one of Irelands leading business advisory and accountancy firms. With 50 years experience providing professional advisory services to a range of clients in the mid to large corporate market in Ireland, from offices in Dublin, Athlone and Roscommon.

Press Contact:

Gillian Mullan

Tel: + 353 (0)90 6480667 / 0860585245

Email: gmullan@rbk.ie
