RE-THINK AND RE-START: RESTRUCTURING TO FACILITATE RECOVERY AND FUTURE GROWTH

IDEAS | PEOPLE | TRUST

DAVID WARNOCK
DIRECTOR, BUSINESS ADVISORY
david.warnock@bdoni.com

Many businesses in the hospitality sector will likely exit lockdown with over-leveraged balance sheets and restricted access to liquidity, thus requiring them to consider restructuring options. Now more than ever, it is crucial that businesses have a strategic plan in place and that any restructure of operations needs to align with this plan if it is to facilitate recovery and future growth.

Restructuring Options

As mentioned in my previous article (Rethink and Restart: understanding your financial options), the main liabilities on the balance sheets of businesses in the hospitality sector will be the build-up of rent arrears, debts to HMRC and secured lending (including Bounce Back loans, CBILS or CLBILS).

When informal payment agreements or increased credit terms are no longer viable with key stakeholders, some operators may be feeling that the only option is to throw the towel in.

However, there are options to be considered before then.

Where trading is viable, save for the cash flow pressures arising from COVID 19, we have seen first-hand the benefits of various restructuring techniques to preserve a business and facilitate continued trading.

Company Voluntary Arrangements (CVA)

A popular tool for restructuring a business, with a significant leasehold estate and substantial creditor arrears, is a Company Voluntary Arrangement (CVA).

This rescue tool allows a company to make proposals to it's unsecured creditors; to effectively compromise their claims. The arrangement can extend up to 5 years, with an acceptable pence in the £ dividend agreed.

The reinstatement of the Crown Preference from 1st December 2020 (relating to certain tax arrears including; PAYE, VAT and employers NIC's) will likely impact on the number of CVA's approved as you cannot compromise a preferential creditor's claims without their consent. HMRC, in our experience, takes some persuading to compromise any claims and will typically include additional stipulations within the CVA proposal.

Administrations

In the past year, there has been a number of Pre-pack Administration sales, whereby a company is marketed through an accelerated M&A process, with the business sold immediately upon appointment of Administrators.

Whilst high profile Pre-pack sales including; Carluccio's, Byron Burger and Prezzo grab the headlines, Pre-packs are also used by smaller SME businesses. Their popularity stems from a number of perceived advantages over other insolvency procedures.

For example, they can be fast and cost-effective, with limited court involvement, and are often the best way to preserve jobs and the business as a going concern.

They can also avoid the loss of value in the business due to insolvency, and allow businesses to select their profitable leasehold properties, with other onerous commitments being left behind in the insolvent company. However, the process has faced a great deal of scrutiny over the potential for a lack of transparency. New Pre-pack legislation is being introduced later this year to address these concerns.

Corporate Insolvency and Governance Act (CIGA)

Newer options for hospitality can be found in the Corporate Insolvency and Governance Act (known as CIGA), which came into effect on 26 June 2020.

This recent legislation was fast-tracked as a result of the pressing need to support UK businesses in light of extensive COVID 19 disruption. CIGA introduces a number of powerful measures to improve the potential for distressed companies to survive, stabilise and grow.

Protection from creditors for viable companies:

A standalone moratorium can be obtained that leaves the directors in charge of delivering a solution (under the supervision of a qualified 'monitor') while providing a standstill from a wide range of historical obligations. The key issue with this measure is that certain liabilities including rents need to be met as they fall due during the period of the moratorium.

A new debtor-led compromise procedure:

The 'restructuring plan', which is modelled on a scheme of arrangement provides greater flexibility, including the power to deal with dissenting creditors if the proposal presents a viable restructuring solution.

Protection from supplier disruption:

This reform prevents suppliers of goods or services to an insolvent company from terminating or amending their contract for supply. This is on the basis that the insolvent company continues to pay for goods under the terms of the contract.

The greatest barrier to an optimal outcome is often time.

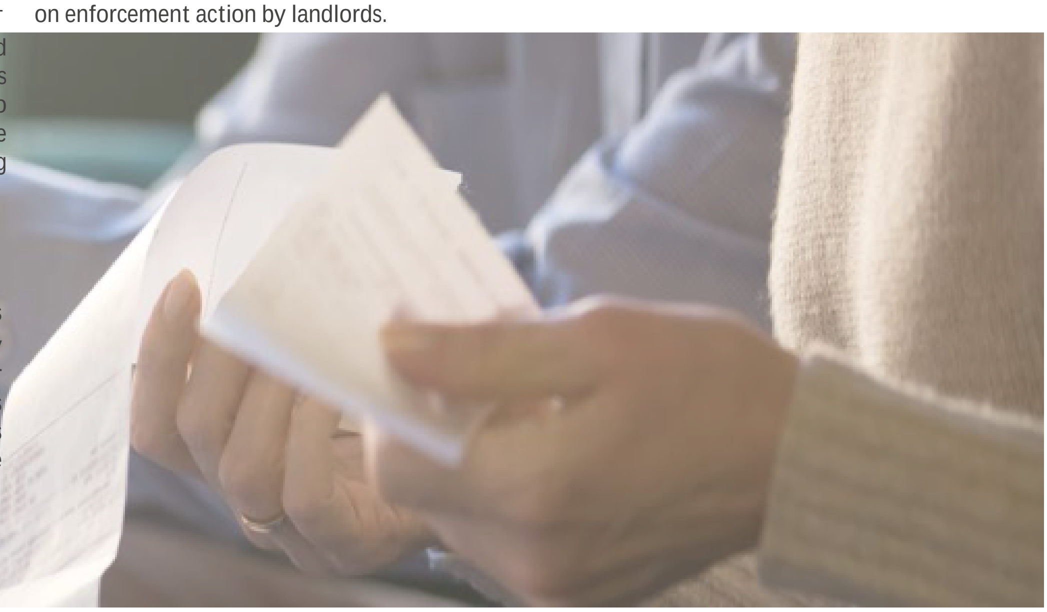
The new measures under CIGA afford companies enhanced scope to develop and deliver structured turnaround plans with an increased opportunity to drive operational and financial restructuring.

These reforms represent one of the biggest changes to the UK's restructuring and insolvency legislation for many years. The measures go to the heart of many of the components of a successful turnaround, including encouraging early engagement with stakeholders and an acknowledgement that reaching out for support should not mean having to give up control.

The new moratorium allows strong boards with credible plans to act early and drive company rescue, supported by turnaround professionals with the right situational experience.

One of the most high-profile uses of the new legislation was that of Pizza Express. Here a restructuring plan effected a major financial recapitalisation and de-leveraging, together with a CVA to effect an operational restructuring of its leasehold liabilities.

More widespread use of the new legislation has been delayed as a result of the Government's continued support measures, particularly with regard to the restrictions on enforcement action by landlords.



Consider all Options and Take Advice Early

As we re-start trading, more business owners will need to explore all of the options available to them, which will likely vary dependant on the specific circumstances of each business. We would recommend that professional advice is taken as early as possible as it provides a business with greater time to implement a solution.

HAVING WORKED WITH MANY HOSPITALITY BUSINESSES OVER THE LAST 30 YEARS, WE AT BDO NI ARE PROUD TO SUPPORT THE SECTOR AND WE WILL CONTINUE TO WORK ALONGSIDE YOU ALL TO ENSURE THAT THE INDUSTRY RETURNS EVEN STRONGER IN THE FUTURE.

www.bdoni.com

BDO

IDEAS | PEOPLE | TRUST

HU Hospitality Ulster