

# reins...

Recovery and Insolvency News

"Each time I have referred a client to Bailey Ahmad I have been impressed with their sensitive, fair and practical approach. Without hesitation, I would recommend their services to those who require recovery and insolvency advice."

Neil Johnson FCA  
Bryden Johnson

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The clouds and showers are dominating the weather so far this summer, and the forecast for economic recovery is equally gloomy.

### Cost of living still rising

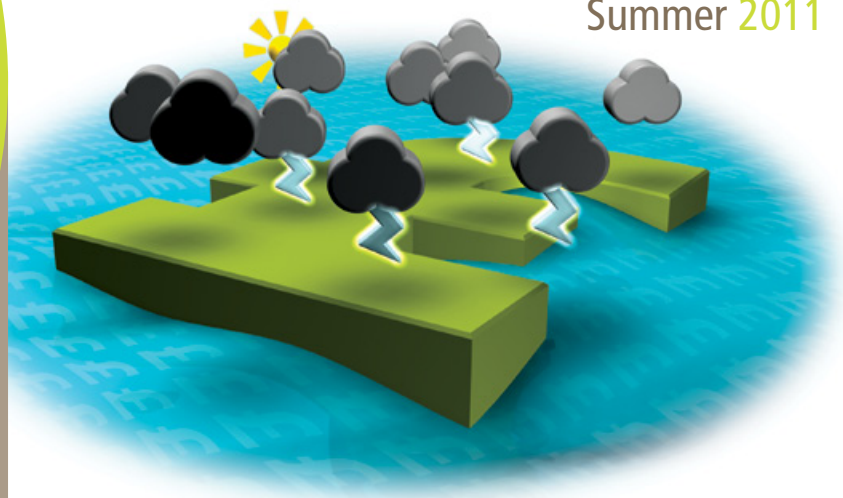
CPI annual inflation was 4.5% in April – more than double the Bank of England's target of 2%. The key culprits are increased global fuel prices, higher import costs and increased VAT, which is now running at an eye-watering 20%.

As a result, life is becoming more expensive for us all on a day-to-day basis: from filling up the car to warming our homes to buying essentials. So will employers be able to increase wages to help meet these rising costs? We fear that this will be extremely difficult for many business owners in the current climate. Cash-flow is tight, funding is difficult to come by and the outlook is uncertain.

### HMRC takes a tougher approach

In the last issue of reins we highlighted the reduced number of 'Time to Pay' arrangements being accepted by HMRC. Now, HMRC is taking a more proactive approach to debt recovery.

We are seeing more instances of distraint upon assets in lieu of unpaid debts, which we understand is HMRC's preferred route to debt recovery. When key assets are removed, this often results in an abrupt cessation of trade. Formal insolvency usually follows if there is a shortfall to HMRC or any other unpaid creditors exist.



Summer 2011

## heavy weather ahead for economic recovery

And it gets worse: under paragraph 4(2)(a) of Schedule 11 to the VAT Act 1994, HMRC may require any taxable entity to give a security deposit for the payment of VAT that is, or may become, due where there has been a previous default to HMRC in relation to VAT. Whilst as a firm we have rarely seen this applied, we fear it may become more prevalent in the future and restrict the rescue of insolvent businesses.

### Funding still hard to come by

The message we're receiving from many small business owners is that much needed bank funding is still extremely difficult to obtain. Unfortunately, with a shortage of alternative forms of funding, the best that businesses can do is try to survive until the banks soften their approach to lending.

### So what's the forecast?

The general expectation – and one which we share – is that the UK is facing a long and protracted recovery. However, every cloud has a silver lining and where there's a recession, a recovery will surely follow... eventually.

**If any of your clients are facing financial difficulty in the current economic climate, please call Paul Bailey or Tom Ahmad on 020 8662 6070 for friendly and professional advice.**

## spotlight on the referrer

Meet Denis Day of TaxAssist

**Denis Day is the proprietor of TaxAssist Accountants of Caterham. His firm is part of the largest network of accountants for small businesses in the UK.**

Earlier this year, Denis put the directors of a company in touch with us after their business got into serious financial difficulty. In addition to the recession, the company had suffered as a result of an unfortunate incident involving a customer claim. Although fault lay with a supplier, the supplier entered into liquidation leaving Denis's client to bear the full cost. This left the company with a significant amount of unsecured debt and an HMRC investigation followed.

Denis explains how he came to refer his clients to us and what happened next (names and identifying details have been withheld in order to protect identities).

"My clients chose Bailey Ahmad because they thought they would be best-placed to achieve this objective and it proved to be a good decision."

**Q** How do you know Bailey Ahmad?

I met Tom Ahmad at the Croydon Business Executives Association (a networking group in Croydon) and was immediately impressed with his manner.

**Q** What prompted your initial call to Bailey Ahmad in this case?

To be honest, not having worked with Bailey Ahmad before, I introduced my clients to another insolvency practitioner at the same time and let them make their own choice.

My clients – the directors of the company – knew that their business couldn't survive in its current state but they had built up a strong brand locally and wanted this to be preserved if at all possible. My clients chose Bailey Ahmad because they thought they would be best-placed to achieve this objective and it proved to be a good decision.

**Q** What was Bailey Ahmad's assessment of the situation?

Bailey Ahmad quickly concluded that my clients' company could not survive via informal negotiations or by restructuring its business through a Company Voluntary Arrangement. But at the same time, if my clients ceased trading and placed their company into voluntary liquidation, this would damage the reputation of the business and reduce the value which could be extracted for its creditors.



**Q** So what was the solution?

Given that the directors wanted to preserve their company's brand and were keen to acquire the company's business and assets as a going concern, Bailey Ahmad recommended a 'pre-packaged' administration sale. In the circumstances, they felt that this solution would be in the best interests of the company and its creditors.

**Q** How did your clients feel during this process?

They were very happy with the solution Bailey Ahmad found. They also felt that Bailey Ahmad really listened to them and helped them through each stage of the process.

**Q** Do you think that a pre-packaged administration sale was the right solution for your clients?

I do, it met all of their objectives. Most importantly, the reputation of my clients' brand wasn't damaged and they could continue to use the same company name.

**Q** Was there any particular aspect of Bailey Ahmad's service that specially impressed you?

My clients told me they particularly appreciated the way that Tom Ahmad helped them through the creditors' meeting and made sure they were well prepared for this previously-unknown process.

**Q** How are your clients doing now?

Their new business is up and running and they've just returned from their first holiday in years. Trading is still difficult, as it is for many businesses in the recession, but they're working their way through it.

**Q** Would you use Bailey Ahmad again?

Absolutely – and this time they'll be my first and only port of call!

reins... was talking to Denis Day of TaxAssist Accountants.

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[www.taxassist.co.uk/caterham](http://www.taxassist.co.uk/caterham)

## what are pre-packaged administration sales?

In cases where there is no reasonable prospect of turning a company's business around, a pre-packaged administration sale can ensure the survival of the failed company's trade, protect the jobs of its employees and maximise the return to all those owed money.

In a 'pre-pack', the sale of a company's business and assets are pre-packaged **before** the company goes into administration. However, the sale is only completed **after** an insolvency practitioner has been appointed as administrator of the insolvent company. The sale is also subject to an independent valuation to ensure that a fair value is achieved, in addition to a review by the appointed administrator.

This gives the purchaser – whether a company, individual or partnership – greater protection, because they are buying from an appointed administrator rather than a director of an insolvent company. So the sale is less likely to be challenged if the vendor company subsequently enters liquidation.

The purchaser may be an unconnected third party, or related to the insolvent company in some way (as is the case in a management buy-out).

Following completion, the sale will be subject to full disclosure to the creditors and the net proceeds will be distributed amongst them in the order of priority laid down by insolvency legislation. Generally banks, creditors with security and employees who have preferential claims will benefit first, followed by unsecured creditors.

**Other key reasons to consider a 'pre-pack' include the following:**

- The sale of the company's business and assets could raise significantly more money for the benefit of creditors than liquidation, which often results in the cessation of trading and a break-up sale of assets;
- It provides an opportunity for potential purchasers to be identified;
- The majority of cases involve a going concern sale, which means that jobs are saved and customer and supplier relationships are preserved;
- The purchaser will often find it easier to raise investment to ensure the long-term growth and survival of the business without the historic debt burden.

Bailey Ahmad has successfully implemented a number of pre-packaged administration sales and all have enjoyed the benefits listed above.

If you or your clients would like more information on any of the topics featured, please call Paul or Tom on **020 8662 6070**.



## how to avoid **illegal dividends**

If dividend payments to shareholders of limited companies are found to contravene the requirements of the Companies Act 2006, they have to be repaid.

As a result of the recession and the speed at which some sectors have suffered a downturn in trade, we are seeing more and more cases where shareholders have to repay illegal dividends. So here's our guide to how directors and company owners can stay on the right side of the law and keep their hard-earned cash.

- Remember that dividends are a privilege of ownership and should only be paid out of relevant profits.
- Make sure that any dividends paid are supported by the appropriate paperwork, including management accounts and board minutes. Without proper supporting information, it could be concluded that such payments actually represent loans, which would have to be repaid.
- It is important that professional advice is sought from a qualified accountant to ensure that the level and nature of remuneration is reasonable and justified, and decisions made in relation to dividends are fully documented.
- If there are concerns about the solvency or viability of a company, the remuneration policy should be reviewed. Salary payments may be less tax efficient than dividend payments, but they also carry a reduced risk of being overturned if the company enters into an insolvency process at a later date.



## environmental **policy**

Bailey Ahmad has recently launched an environmental policy to highlight our commitment to operating in an environmentally conscious and sustainable way. Some of the key measures that we have taken to reduce our environmental impact are as follows:

- Recycling of office waste;
- Fully utilising technology to minimise paper waste (including digital signing, electronic records filing, document management and issuing correspondence and circulars electronically wherever possible);
- Installation of new double-glazed windows at our head office in Beckenham, together with a new energy efficient heating system;
- The use of energy efficient computer equipment and monitors;
- Introducing a Sustainable Procurement Policy.

Full details can be found on our website: [www.baileyahmad.co.uk/blog](http://www.baileyahmad.co.uk/blog)

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## same name new company: when is it allowed?

In certain circumstances, it is possible for directors to re-use the name of a company which has been placed into liquidation. However, with heavy penalties – including imprisonment – for any breach of legislation, it pays to seek professional guidance.

The Insolvency Act 1986 provides creditors with protection against unscrupulous directors, by prohibiting directors of a company which has entered insolvent liquidation from starting a new 'phoenix' company under the same name (or a name so similar as to indicate an association). This is to prevent such directors deliberately repeating the cycle at the expense of unpaid creditors. In such circumstances, the law should indeed prohibit directors from re-using the name of their previous company.

However, in the vast majority of cases we see at Bailey Ahmad, there are genuine and understandable reasons for a company's failure. In such cases, both the company name and the trading style can sometimes be re-used if the following conditions are met:

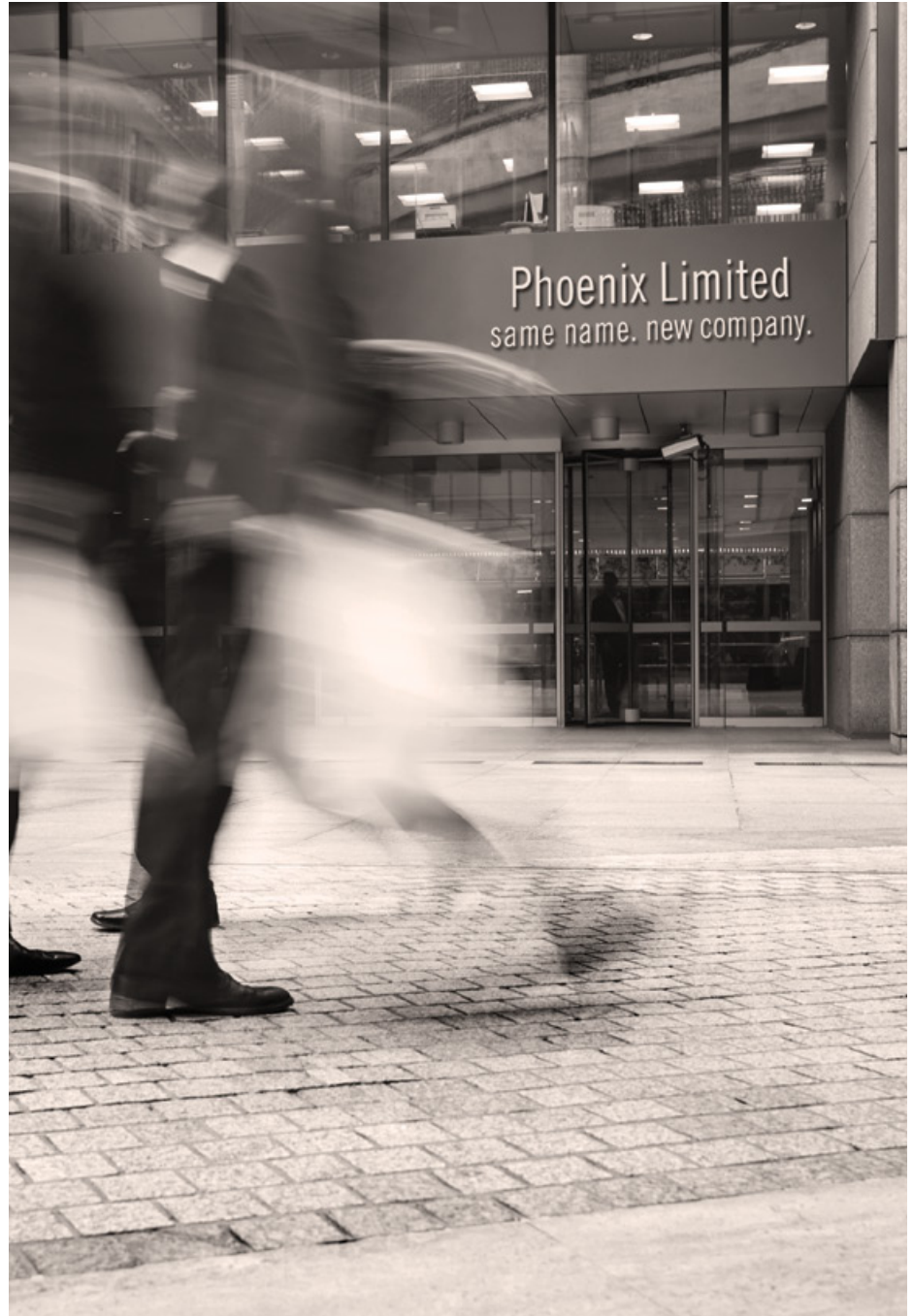
- The rights to use the name and trading style have been acquired, together with the company's other assets, from the liquidator of the insolvent company (subject to creditor notification and approval);

AND

- The creditors have been notified in accordance with the relevant statutory provisions of the intended re-use of the same name and trading style (prior to re-use);

OR

- An early application has been made to Court to seek approval to use the prohibited name and such approval has been granted.



If you or your clients would like to know more about the possibility of re-using a company name following liquidation, please call **Tom Ahmad** on **020 8662 6070** for confidential advice.

## coming up ...

In the next issue of reins our topics will include:

- The advantages of solvent (Members' Voluntary) liquidation;
- The role an Insolvency Practitioner can play in mediation;
- Who's Lucy Franks?

If there are any subjects that you would like to see included in future issues, please email Tom Ahmad at [tahmad@baileyahmad.co.uk](mailto:tahmad@baileyahmad.co.uk)



## who's who at Bailey Ahmad?

Founded by Paul Bailey and Tom Ahmad in 2007, Bailey Ahmad has grown to a strong team of approachable and highly-qualified professionals. All are dedicated to providing a sensitive service for those in financial difficulty, and in this issue we invite you to meet Tony Connor.

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#### Accreditation

Bailey Ahmad is licensed and regulated by the Association of Chartered Certified Accountants and is a member firm of R3 - the Association of Business Recovery Professionals.

### Who's Tony Connor?

Prior to joining Bailey Ahmad, Tony already knew both directors and judged them to be dependable, trustworthy and forward-thinking. So when he was offered the chance to manage the firm's young and dynamic team in 2008, Tony was both delighted and excited. Since joining Bailey Ahmad, in addition to managing a varied caseload of insolvency appointments, Tony has been central to the development of systems and working practices to ensure an exceptional standard of service delivery to clients.

Born and educated in the Croydon area, Tony started his insolvency career at the local Official Receiver's office in 1993. Since that time he has gained a wealth of experience, handling a wide range of insolvency appointments at a number of highly respected corporate and personal recovery firms.



Away from the office, Tony is a member of a local tennis club and it is here that he met his wife, with whom he 'tied the knot' last summer. A fanatical sports fan, he is also a lifelong Manchester City FC supporter and has recently enjoyed the club's first major success since he was a toddler! Tony also enjoys watching cricket and would one day like to fulfil his dream of following the England Test team on tour.

If you think any of your clients could benefit from our insolvency or recovery services, please call Paul or Tom on 020 8662 6070.

Whilst we have made every effort to ensure that the information contained in this newsletter is both accurate and current, it is intended for guidance only and should not be relied upon. Please contact us for professional advice regarding your specific circumstances before taking any action.