

reins...

Recovery and Insolvency News

Winter 2011

"Thank you for the support given to my client. The advice you gave and the care and attention were all I could ask for."

Derek Speller FCA
AVN Churchmill

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world economy hangs in the balance

At the time of writing, the International Labour Organisation (ILO) has just warned that the world economy is on the verge of a new and deeper jobs recession.

If the ILO is right, then the repercussions will be widespread. Unless world leaders can find a way to avert the jobs crisis, we can expect to see greater social unrest unfolding across more countries.

Degrees of social unrest have already been seen in Greece, Italy and – to some extent – the UK, as a result of the perception that the burden of the global economic crisis has not been fairly shared.

The ILO has advised that a net 80 million new jobs would have to be created over the next two years to return to pre-crisis levels of employment. World leaders must try to restore confidence with the creation of such jobs, otherwise it seems that a worsening of the global economy is inevitable.

UK inflation continues to rise

Inflation in September this year jumped to 5.2% – the highest rate for three years. Small businesses and households alike are facing significant pressure on their cash flow, thanks to steeply increasing prices.

At the same time, average pay increases are far below this level of inflation, as are returns on savings deposits (for those lucky enough to have them). Unfortunately, this is leaving consumers poorer in real terms month on month.

Every penny counts, in business as in life, and we are all going to have to think very carefully how best to spend our money to ensure that nothing is wasted.

Euro in crisis

At the time of writing, the Greek Prime Minister George Papandreou has recently stood down to pave the way for a coalition government who will approve the euro bailout package. Italy's 10-year bond rates have hit a new euro-high and, after intense pressure, Mr Berlusconi has finally resigned as Italy's Prime Minister.

The economic position in Europe remains extremely volatile and whatever global plan is implemented, it will take time, a great deal of money and strong political leadership to have any chance of success.

As we head into 2012, one thing is clear: whilst Britain may not be in the eurozone, our economic success (or indeed failure) will be determined as much by what happens outside our borders as at home.

If the unstable economy is causing you or your clients financial difficulty, please call Paul Bailey or Tom Ahmad on 020 8662 6070 for friendly and professional advice.

spotlight on the referrer

Meet Rob Colepio and Daniel Glover of Ledger Sparks Ltd
Chartered Certified Accountants

Rob Colepio and Daniel Glover are the principal directors of Ledger Sparks of Croydon, a Chartered Certified accountancy practice that offers compliance accounting, business support, planning services and financial services to small and medium sized businesses and family companies.

Over the last five years, Ledger Sparks has recommended that clients facing severe financial difficulties (whether corporate or personal) should seek professional guidance and support from Bailey Ahmad.

Bailey Ahmad has provided invaluable recovery and insolvency support which has resulted in peace of mind for Ledger Sparks' clients, a reduction in creditor losses, the preservation of jobs and – where possible – the survival of an (often stronger) successor business.



Q How do you know of Bailey Ahmad?

Tom and Paul are highly respected members of the Croydon business community. We met them both at a Croydon business networking group about five years ago.

Q Why do you turn to Bailey Ahmad when a client is in financial difficulty?

Right from the start, Bailey Ahmad impressed us with their efficient and professional manner. Their approach inspired confidence from the very beginning and over the years this has proven to be well-founded, as they have generated the right results for our clients.

Q What do you think of Bailey Ahmad's approach to supporting your clients?

We have been delighted with the level of service both we and our clients receive from Bailey Ahmad.

They return our e-mails and phone calls promptly and always answer questions patiently, politely and without jargon – even when our questions may seem to have self-evident answers from their perspective! Our clients typically report the same excellent level of service.

“We have been delighted with the level of service both we and our clients receive from Bailey Ahmad.”

Q Do you feel that the solutions provided by Bailey Ahmad have been right for your clients?

Absolutely. Insolvency practitioners usually only get involved with businesses that are failing or are in financial difficulty, so by definition Bailey Ahmad enters into relationships with our clients when they are experiencing difficult and stressful times. The fact that so many clients thank us for introducing them to Bailey Ahmad – and report that a great burden has subsequently been lifted from their shoulders – tells us that the correct solutions were indeed provided.

Q Have you been especially impressed with any particular aspect of Bailey Ahmad's service?

Yes, their technical knowledge in such a complex area is especially impressive, as is their compassionate approach when dealing with clients.

Q Would you use Bailey Ahmad again?

Undoubtedly. Ledger Sparks has used a number of insolvency practitioners over the years and Bailey Ahmad for the last five years. For all of the reasons outlined above, we hope to continue using Bailey Ahmad's services for many years to come.

reins...was talking to Rob Colepio and Daniel Glover of Ledger Sparks Ltd Chartered Certified Accountants.

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Members' Voluntary Liquidation and why it makes sense for shareholders

Members' Voluntary Liquidation (MVL) is an insolvency process which may be instigated by the directors of companies that have come to the end of their economic life IF they have sufficient assets to pay their creditors in full.

Typically, an MVL is used when:

- a company has fulfilled its purpose and the shareholders wish to realise their investment;
- a group of companies reorganises its operations and wishes to tidy up its group structure.

The process involves the appointment of an insolvency practitioner to act as liquidator. Their duty is to ensure an orderly winding down of the affairs of the company and a return of assets to the company's creditors (if not already done by the directors) and thereafter its shareholders.

MVLs offer considerable advantages over the alternative approach sometimes favoured by accountants – the Section 1003 Companies Act 2006 (formerly s.652) strike-off route, which relies on Extra-Statutory Concession 16 (ESC16) – including the following;

Tax savings

First and foremost, the tax benefits offered via ESC16 are about to be significantly reduced, making MVLs the more attractive option for tax savings in the future.

Up to now, ESC16 has allowed a company's surplus value to be distributed as capital rather than income, so shareholders have been liable to capital gains tax rather than income tax (resulting in considerable tax savings). However, HM Revenue & Customs is proposing to limit the capital element of any distribution under ESC16 to the first £4,000 of assets only. Any further sums distributed to shareholders via the strike-off route will

then be regarded as income and subject to greater tax. This change was initially expected to come into effect via the Finance Act of 2011, but we understand that HMRC will raise the issue again in 2012.

James Gransby of Larkings Chartered Accountants (Maidstone) attended an ESC16 tax planning course earlier this year and commented:

"There were a few accountants with perspiring brows when it was announced what the consequences were of ESC16 becoming statutory. HMRC have (mis)interpreted the bona vacantia rules to mean that striking off under ESC16 would only allow the first £4k as capital and the rest as income – very costly!! Unless MVL is used, in which case all can be taken as capital."

Other benefits

In addition to substantial potential tax savings, MVLs also offer a number of other advantages over the strike-off route.

- The MVL process reduces the risk of any creditors inadvertently remaining unpaid, as the liquidator will write to all known creditors and advertise for further creditor claims. However, if an MVL is not used and a creditor is inadvertently missed prior to strike-off, they may apply to have the company resurrected with a view to winding up the company through the courts, with adverse consequences. MVL is therefore particularly beneficial when there have been numerous changes within management or when certain directors or shareholders have had limited involvement in day-to-day trading.

- An MVL ensures that the distribution of assets is dealt with appropriately by an independent practitioner. This reduces the risk of dispute between various stakeholders and also ensures that the directors receive full support throughout the process.
- In an MVL, the distributions to shareholders are made by an insolvency practitioner, which means that directors mitigate the risk of subsequent criticism.

Whenever Bailey Ahmad's directors act as liquidators in a MVL, they ensure that they actively coordinate the MVL process with a full understanding of all circumstances affecting it. This not only provides a 'fresh set of eyes' but also ensures that any potential risks are highlighted and properly managed. As experienced practitioners, we also know when to call upon the services of external specialists such as accountants, tax advisers and solicitors, to ensure the distribution process is managed successfully.

For all of the above reasons, we recommend that business owners, accountants and other advisers consider using MVLs as a mechanism to distribute value to shareholders when a solvent company has come to the end of its economic life.

If you or your clients would like to know more about MVLs, please call **Paul Bailey** or **Tom Ahmad** on **020 8662 6070** for confidential advice.



the advantages of a Company Voluntary Arrangement



A Company Voluntary Arrangement (CVA) is essentially a deal made between a company and its creditors, to offer creditors a better outcome than other insolvency processes such as liquidation.

The CVA process, which can last up to five years, can only be initiated if 75% or more of creditors in value at a meeting convened to consider the CVA agree to it. It will then be supervised by an insolvency practitioner, to ensure that any terms stipulated by the CVA are complied with. It's quite common for a CVA to propose extra time to pay off historic debts, or even seek a write-off of a proportion of the amount due.

The advantages of choosing a CVA will vary according to the circumstances of the company in question, but can include the following:

- breaks in trade will typically be avoided, so goodwill and customer relationships can be maintained throughout the process;
- directors can remain in day-to-day control of operations;
- assets do not have to be bought back by a successor business, as is often the case with administration and liquidation sales – this is particularly helpful when prospective purchasers have limited funding;
- personal guarantees offered by directors may be deferred or reduced in certain circumstances;
- tax benefits can apply because (i) historic losses will continue to be available to set against future profits and (ii) balances that are due to directors in respect of loans or current accounts will be preserved;
- a CVA is an extremely flexible process which promotes the survival of a company with its business largely intact. It therefore maximises the chances of shareholders benefiting from ongoing trading, assuming a return to profitability can be achieved.

Finally, a CVA carries less stigma than other insolvency processes such as liquidation or administration, which can be an important consideration – and one to which we are, as ever, sensitive.

Bailey Ahmad shortlisted for Corporate Recovery Firm of the Year



We are extremely proud to announce that Bailey Ahmad has been shortlisted for Corporate Recovery Firm of the Year (Small Firms) in the Insolvency & Rescue Awards for the second year running.

The Insolvency & Rescue Awards are the most prestigious in the Corporate Recovery and Insolvency industry and give recognition to firms and individuals who have demonstrated excellence in this sector.

We are delighted that our commitment to continual development, innovation and exceptional service delivery has been recognised by our industry once again.

help spread the word

Bailey Ahmad has developed a strong base of professional referrers – mainly accountants – throughout the South East. Can you help us make it even stronger?

As the testimonial page on our website shows, we enjoy very strong relationships with our referrers. These have been founded on trust, our sensitive approach to clients in financial difficulty and our focus on delivering an exceptional service to those who need our help.

Like many businesses, however, we grow through word of mouth. If you know of an accountant, solicitor or financial professional who may be interested in the support we can offer their clients, please email their details (with their consent) to pbailey@baileyahmad.co.uk or tahmad@baileyahmad.co.uk so we can get in touch. Thank you.

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



insolvency practitioners can be ideally placed to assist in mediation



When two or more parties cannot agree how to resolve a dispute, an independent and impartial mediator may be brought in to negotiate a fair settlement that is agreeable to all parties. But why choose an insolvency practitioner as your mediator?

Insolvency practitioners are – by their very nature – used to working with financially distressed businesses, as well as individuals, who are struggling to satisfy competing stakeholder interests. As such, we are experts at finding and implementing solutions which represent the best form of compromise for everyone concerned.

In our experience, these solutions rarely meet the exact needs of all competing parties. Instead, they represent the best possible outcome in the circumstances, with all parties reluctantly conceding ground in some areas in order to gain ground in others. The result is a settlement that all parties can accept as fair and reasonable.

Insolvency practitioners are especially well-placed to assist in mediation in cases where failure to agree on a settlement would result in insolvency for one or more of the parties in dispute. By outlining the implications of

failure to reach settlement and facilitating a practical dialogue between the disputing parties, potentially catastrophic and expensive outcomes can be avoided.

Bailey Ahmad case study

One such example involved a case where Paul Bailey mediated on behalf of two individuals who couldn't agree how to dissolve their Limited Liability Partnership (LLP). One partner wanted to retire, while the other wanted to take the residual business forward. By the time Bailey Ahmad was consulted, the partners were no longer on speaking terms, negotiations had stalled and they had both instructed lawyers.

In principle, the solution was clear: the partner who wanted to continue to trade would simply buy out the retiring partner's share of the LLP. However, the partners were unable to agree on a value for the business and as each day passed, the breakdown in their relationship meant that the business was continuing to deteriorate – customers were leaving, profits were turning into losses and jobs were under threat.

Bailey Ahmad was instructed to assist both partners in negotiating a solution, with Paul Bailey acting as mediator. Paul brought a

highly specialised skill-set to the mediation process, including:

- strong commercial acumen;
- in depth understanding of insolvency legislation;
- thorough grounding in finance and law;
- excellent communication skills;
- awareness of stakeholder issues;
- a knack for problem solving.

As a result, Paul was able to help both parties agree on a value for the retiring partner's share of the LLP, and draft an agreement which enabled one partner to continue trading the residual business and the other partner to exit and retire.

Whilst both partners had to compromise as part of the mediation process, the outcome was far better than a formal winding up of the LLP, which would have had negative implications for all stakeholders.

If you or your clients would like more information on any of the issues featured, please call Paul Bailey or Tom Ahmad on 020 8662 6070 for a confidential chat or a free consultation.

coming up ...

In the next issue of reins our topics will include:

- Wrongful Trading and its implications for directors
- Creditors and the priority of payment in insolvency
- Who's Tom Ahmad?

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

This Bailey Ahmad newsletter is printed on Cocoon Offset 100% recycled 250gsm paper, made from 100% genuine de-inked post consumer waste.



win a Christmas bottle of bubbly!

'Tis the season to be jolly' ... so if your caption is the one that makes us laugh the most, we'll publish it in the next issue of reins and send you a bottle of champagne with our compliments.

Just send your caption to tahmad@baileyahmad.co.uk and put 'champagne' in the subject line.

Happy Christmas!



Caption

Standard terms and conditions apply – please contact Tom Ahmad for details.

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 Lucy Franks.

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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 Lucy Franks?

After graduating from Sussex University in 2007 with a BSc in Psychology, Lucy began working for a firm of chartered surveyors as an administration officer. Unfortunately it wasn't too long before she witnessed insolvency from the sharp end, when her former employer was placed into administration.

Lucy joined Bailey Ahmad in March 2009 as a junior case administrator and has since gained a wealth of experience in dealing with various types of insolvency appointments. In addition, she assists in the maintenance and development of Bailey Ahmad's internal systems and IT and the new procedures she has established have resulted in increased efficiency across the practice.



Earlier this year, Lucy passed her Certificate of Proficiency in Insolvency examination and this well-earned qualification has broadened her knowledge and technical understanding of insolvency matters.

In her spare time, Lucy is a keen golfer and enjoys the company of her family ... especially her niece aged 18 months.

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



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.