

ANNUAL REVIEW

BANKRUPTCY & RESTRUCTURING

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UNITED KINGDOM

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Q REFLECTING ON THE LAST 12-18 MONTHS, HOW WOULD YOU CHARACTERISE THE UK IN TERMS OF THE FAILING BUSINESSES AND BANKRUPTCY FILINGS?

BRYAN: Statistics published for Q1 2016 show creditors voluntary arrangements (CVAs) at their lowest level since Q1 1998 and administrations at their lowest level since Q4 2003. There has been a small rise in some other forms of insolvency. With low inflation, interest rates remaining very low and reasonable economic growth, there's no reason to think that is likely to change any time soon. In addition to low interest rates, there is plentiful financing and an increasing amount available from alternative lenders. Most businesses have adjusted to this new normality and for those that do get distressed, consensual restructuring remains the first choice solution before formal insolvency processes are considered. It remains a quiet market for formal insolvency work.

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Q COULD YOU OUTLINE THE PRIMARY MACROECONOMIC TRENDS CURRENTLY AFFECTING BUSINESSES? ARE ANY PARTICULAR SECTORS DEMONSTRATING STRUCTURAL WEAKNESSES, RESULTING IN DISTRESS?

BRYAN: Although GDP growth has been reasonably healthy at 2.9 percent in 2014 and 2.2 percent in 2015, the picture is not uniform across the economy. London and its surrounding areas continue to outperform the rest of the country, although all regions are growing. Manufacturing output has contracted and the lack of productivity growth is something economists cannot explain. Overall, the economy seems to be slowing, although the effects and uncertainties of the upcoming EU referendum may be distorting the more recent figures. The construction and retail sectors remain the weakest and have some of the highest levels of insolvencies. The oil and gas sector has been hard hit, particularly in North East Scotland. Overall, it is a mixed picture and at the time of writing it is hard to predict what the result and consequent effect of the EU referendum will be.

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Q HAVE THERE BEEN ANY NOTABLE BANKRUPTCY/INSOLVENCY CASES IN THE UK, WHICH WILL HAVE AN IMPACT ON THE PROCESS GOING FORWARD?

BRYAN: In the first half of 2016, two high-profile insolvencies have been in the headlines. A large steel producer became very distressed and provoked much debate about the effects of Chinese producers dumping surplus steel at low prices and whether the government should intervene to save strategically important industries. There has also been a very high profile collapse of a large retail chain after it was sold some 18 months ago for just £1 to a new owner with no retail experience and a history of bankruptcy; 11,000 jobs are under threat. This has resulted in televised questioning of the main players by members of parliament and investigations by various authorities into their conduct. Common to both the steel mills and the retail chain are pension schemes with huge deficits. We will have to wait for the dust to settle on all this before we see if it results in any changes to legislation and processes going forward.

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Q TO WHAT EXTENT ARE BANKS SUPPORTING DISTRESSED COMPANIES? HOW EASY IS IT TO RENEGOTIATE EXISTING DEBT IN THE CURRENT MARKET? IS THERE FUNDING AVAILABLE TO FINANCE RESTRUCTURINGS?

BRYAN: In the last few years most of the larger banks have run down their workout departments and seemed to prefer to sell any loans that were deemed non-performing. This was largely driven by the impact of such loans on their own capital position. The general consensus is that such activity has largely run its course. Indeed, there is now some evidence that the banks are starting to rebuild their workout departments. Banks remain reasonably supportive provided they can see a clear path to a resolution of the distress. There is a lot of money looking for yield and alternative financing sources are now becoming well established. Funding is obtainable for restructurings but its availability and pricing will depend on collateral. This can be problematic in service businesses with few assets.

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Q WHAT TRENDS ARE YOU SEEING IN THE MARKET'S APPETITE TO PURCHASE TROUBLED ASSETS? HOW WOULD YOU DESCRIBE RECENT DISTRESSED M&A ACTIVITY?

BRYAN: The market has plenty of investors looking for opportunities to purchase distressed assets but not enough assets available. One of the best know distressed investors in the UK, Jon Moulton, recently called time on his fund and will wind it down citing "an absence of opportunities in the turnaround market". Activity is low and with too much money chasing too few opportunities, prices are inevitably driven up. It is interesting to note that the steel producer and retail chain referred to above were both looked at by a number of trade and distressed investors but the pension scheme deficits were a major factor in the deals stalling. There are some suggestions that distressed M&A activity may pick up, particularly with commodity based businesses being forced to sell assets for liquidity needs.

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Q COULD YOU OUTLINE SOME OF THE PERSONAL RISKS THAT MAY FACE D&OS OF A COMPANY IN THE UK THAT NEARS INSOLVENCY OR ENTERS BANKRUPTCY?

BRYAN: The UK has always had a fairly clear regime. Case law has evolved over the years and directors are required to file for insolvency when it is clear there is no reasonable prospect of recovery. In practice, this means that as long as there is a reasonable prospect of recovery then no personal liability will attach to directors for pursuing that prospect. Arguably, they should for the benefit of creditors. Most importantly, directors should ensure they take good quality advice and record the rationale for their decision making. A certain amount of judgement will be required but common sense should prevail and the courts will look at what directors should have known at the time rather than applying the benefit of hindsight. Most directors who get into difficulties and potential personal liability have acted either recklessly or fraudulently.

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“Perhaps the most dramatic impact in the UK could be the government’s proposals for a radical change in the insolvency laws.”

Q HOW DO YOU EXPECT RESTRUCTURING AND BANKRUPTCY ACTIVITY IN THE UK TO UNFOLD FOR THE REMAINDER OF THIS YEAR, AND BEYOND?

BRYAN: The result and effect of the referendum on leaving or staying in the EU is impossible to predict at the time of writing. That aside there seems little reason to think interest rates will rise in the short term and I think bankruptcy activity will remain subdued. Beyond that there are numerous problems in the global economy that could give rise to increased distress. Excessive debt, particularly in China, weak productivity growth, ageing populations and underfunded pension commitments are just some of the issues. Perhaps the most dramatic impact in the UK could be the government’s proposals for a radical change in the insolvency laws. In essence, these would bring most of the features of the US Chapter 11 process to the UK but without the large costs. This could result in many more distressed businesses being turned around without the need for them to enter formal insolvency. It will be fascinating to watch this unfold and it could be a real game changer.



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David Bryan is a founding principal of BM&T, a boutique turnaround and restructuring firm operating in the UK, Europe and North America. A chartered accountant with many years’ experience in industry with both public and privately owned businesses, Mr Bryan is a passionate believer in the use of consensual turnaround techniques to avoid formal insolvencies and preserve value for all stakeholders. Mr Bryan is a director of the Turnaround Management Association in the UK and Europe and is a Fellow of the European Association of Certified Turnaround Professionals.



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