Spotlight On...

Business Turnaround

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Alan Tilley is Chairman and Managing Partner of BM&T. He is a Chartered Accountant and Certified Turnaround Professional and worked in UK and France with Arthur Andersen followed by 20 years' experience in senior executive roles in major international manufacturing companies. He completed an MBI and turnaround of a UK manufacturing business with 3i PLC before becoming a full time turnaround professional in 1997 as Managing Director Europe of US turnaround pioneer, Glass & Associates. He is a past President of Turnaround Management Association (TMA) UK, a former VP of International Relations of TMA Global and a founding Director of TMA Europe and the European Association of Certified Turnaround Professionals (EACTP). Here he talks to *Finance Monthly* about business turnaround procedures

Yourself and David Bryan are co-authors of the Institute of Chartered Accountants in England and Wales' best practice guideline on turnarounds. Before this was published, was there a lack of official guidelines? Has this improved as a result?

In the UK there was no single publication covering the process of turnaround. Several articles existed focussing on headline cases rather than addressing the process as a whole. Prior to the new millennium turnaround in Europe was regarded as something of a black art practised by a few "company doctors" of almost mythical status. The alternative was value destructive formal insolvency.

Turnaround as a profession emanated in the USA following the adoption of the 1979 Bankruptcy Code which introduced Chapter 11, "Debtor in Possession" giving business managers a second chance. At this time the TMA was formed in Chicago followed by the Certified Turnaround Professional (CTP) qualification. The concept of turnaround as a process crossed the Atlantic around the turn of the millennium and progressively developed into a more formal process. Its benefits in preserving value led to significant changes in European insolvency laws which now give better balance to debtor and creditor rights.

EACTP was formed in 2012 and becomes an exam based entry profession in 2016. This gives aspiring young professionals a basis of education in the relevant law, finance and turnaround management. The BM&T ICAEW Turnaround Guide will be essential reading for examination participants.

How do you identify when to attempt a business turnaround and when to consider insolvency?

Turnaround through consensual negotiation should always be the first consideration. It requires a thorough knowledge of insolvency law, insolvency triggers and directors' liabilities whilst a business is in the zone of insolvency. This is a critical area of judgment best handled by professionals dedicated to turnaround who can demonstrate and lead a value preserving plan. Only when continued operation is demonstrably further eroding potential creditor recovery should insolvency protection be sought.

Insolvency by signalling distress is value destructive, erodes goodwill and customer and supplier confidence. Insolvency is a last resort when there is no viable core business, no credible management and no prospect of maintaining liquidity. Whilst secured creditors may maximise their recovery in insolvency it usually is at the cost of the unsecured creditors and employees. Fee levels of insolvency practitioners have also come under scrutiny particularly by the unsecured creditors whose recoveries are reduced by the fee impact. Experience at reduced recoveries have led many creditor advisers to encourage consensual solutions as being the better option.

How do you manage to provide a cost effective service that is still efficient, without being too intrusive?

BM&T use a Senior Professional model. People who have had years of experience in corporate life. They are comfortable in the boardroom and at working at all levels within a business. Experience gives confidence to the client staff and to other stakeholders. It gives the practical knowledge to work with the client's personnel, utilising internal rather than external resource wherever practical. Experience shortens the decision making time line. Faster decision making and smaller focused teams brings efficiency. A BM&T team can concentrate on stakeholder management issues whilst monitoring the client's team who have the depth of knowledge of their own business. It is the optimum use of available resource.

BM&T is adamant about not having conflicts of interests with banks. Is this cross-contamination common within the industry?

BM&T is a debtor advisory business, paid by the debtor, taking an executive role and the obligations of a shadow director. Its fiduciary duty lies with the debtor until erosion of creditor value changes its fiduciary duty to a duty of care to the creditors.

Banks are normally secured creditors. Debtor and creditor interests are not usually aligned. Neither are secured and unsecured creditors, nor financial and trade creditors. This conflict both with debtor and creditor and within the creditor community crystallizes in the zone of insolvency in deciding whether to file for insolvency or not. Determining whether a company is insolvent requires a fine line of judgment. BM&T believe that this judgment and conflict is best handled by complete independence from the creditor. This is not detrimental to secured creditors because we seek to preserve or enhance value, not to erode it. This is ultimately to the benefit of all stakeholders.

Most advisors have sought mandates through their relationship with the banks. Often they purport to be both turnaround and insolvency advisors. It has led to recent criticism and exposure of the evident conflict through the Tomlinson Report commissioned by Dr Vince Cable and the enquiries into RBS's GRG Division both of which have been well publicised. It has led to some changes in practice and some soul searching. But requirements to generate fee income in firms with large overheads can have a subliminal effect on judgment. Only when shareholders and boards of directors recognise that a bank's recommendation of advisors may not be in their best interest will things change.

How important is it to have an empathetic approach when working in business turnaround services?

Most professionals bring skills to their clients and a concept of professional service. This applies equally to turnaround and insolvency professionals. A feature of turnaround specific to working in distress is that it can be opportunistic; the business is under pressure and the value of assets is depressed. This attracts value investors seeking "good businesses with bad management". Value investors have their place but for most stakeholders they will be sacrificing their potential upside in the turnaround if the "vultures" prevail. Equally professionals should be vigilant when proposing "pre-packs" to debtor management. In seeking turnaround advice debtor shareholders and directors would be well advised to check the motives and conflicts of the advisors to determine where their interests lie. They should seek an empathetic conflict free advisor dedicated to turnaround; "caveat emptor"!

About BM&T

BM&T is a turnaround and restructuring boutique of senior professionals specialising in UK and European operational and consensual financial restructuring outside of insolvency. BM&T is the founding partner of European Restructuring Solutions (ERS) consisting of leading turnaround firms in the major European jurisdictions. BM&T is partnered with Conway Mackenzie in USA. ERS and Conway Mackenzie together have over 180 restructuring professionals.

BM&T Principals have completed more than 50 client assignments ranging from £10 million to £2 billion in turnover and have an unparalleled depth of experience in turnaround and restructuring. The BM&T team comprises 14 senior executives with both CEO and CFO backgrounds. BM&T's professionalism and expertise has been recognised by its industry peers having achieved three TMA Turnaround of the Year awards 2011-2015, and UK Turnaround Manager of the year in 2010.