Mini-guide to Choosing the Right Advisers

For a company in distress, the choice of advisers can be critical. It is not easy to change horses down the line so it is important to get it right first time. It is a decision normally taken under pressure and frequently rushed.

In the UK there has long been a typical pattern:

- Bank passes loan to workout department
- Bank decides it wants an Independent Business Review (IBR) at the company's cost. This is expensive and time consuming.
- Bank recommends a firm of accountants from its "panel".
- Company assumes this must be normal practice and engages accountants as advisers to the company.

There are a number of problems with this. Firstly, the company tends to gain the impression that it has to go along with this. That is not true. Management has a choice and does not have to comply with the bank's request. A credible alternative needs to be presented and if appropriate, the bank can normally be persuaded to accept that. Better still, appoint your own advisers before the bank asks for their panel member to be appointed and get on the front foot.

The "panel" arrangements are also highly questionable. Advisers have to be on these panels to win work from the bank, either directly or by recommendation. This is supposed to maintain quality standards. However, any advisory firm that is on a bank's panel is reliant on that bank for future work. Consequently, we cannot see how they can be in any way independent. There will always be the perception that if the bank desires a particular outcome, a quiet word with the advisers will ensure that it happens. This type of cosy relationship was behind many of the allegations in the Tomlinson report http://www.tomlinsonreport.com. Judge for yourself.

Banks are now more sensitive and aware of such sensitivities, but there are now many non-bank lenders and their approaches may differ. Often management still finds itself being guided towards seeing an Insolvency Practitioner (IP). We have nothing against IP's, they have to undertake extensive training and examinations, are well qualified and regulated. But their training and experience is all about how to deal with the affairs of a business after an insolvency filing.

It used to be that an IP would run a business for months while arranging the sale of assets etc. but that is very rare now because of liability issues. Indeed, a generation of IP's is growing up who have never traded a business. Those that have will have done so under the protection of insolvency legislation, a very different environment to normal business management.

IP's are trained to deal with a process that's set out in law and broadly predictable. It is the antithesis of the unpredictable situational based work of a turnaround. In our opinion, an IP will generally be happier dealing with the formal process of insolvency than the much less defined work of a consensual turnaround. Are they really going to fight to keep your business out of insolvency or would they actually prefer it to become insolvent and pick up the resulting appointment? At BM&T we have always felt this is another huge conflict of interest. It's like finding yourself talking to a doctor who also owns the undertakers next door.

It is often instructive to look at an IP's website. They will talk of how they can help a business but when you look at the case study section, every one involves a formal insolvency. Others extol the virtues of a CVA, seemingly without considering there could be any other solution. When the only tool you have in the box is a hammer, every problem looks like a nail.

So how should you go about choosing an adviser:

- Act early and make sure it is your decision rather than one imposed on you
- Ensure the adviser is appropriate for your business in terms of size, skills and cost
- Check whether they are IP's or on bank panels or both and make your own judgement as to whether that is a potential conflict
- How do they approach and staff a job. How would their team be structured and operate?
- Check their qualifications and whether they adhere to the professional standards of recognised bodies such as TMA and EACTP
- Look at the types of work they have done and how it was done. Ask for references if available
- Discuss how they would approach the problems and assess whether they are open minded or whether they are pre-disposed to a particular solution (e.g. a Pre-Pack or a CVA)
- Consider the personal chemistry between management and advisers. It will be a stressful time so they need to be able to work together.

This is normally a whole new world for a management team, one they have no experience of and one riddled with potential conflicts of interest. Often the survival of the business is at stake so choosing the right adviser is critical. There may not be a lot of time available but use what you have to examine the choices in an informed way and ensure your business has the best chance you can give it.