

## ‘Times, they are a-changin’

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As we await the results from the crucial end of the year trading period, the business recovery, restructuring and rescue profession faces a period of unprecedented change, most particularly in the UK. Quite apart from relatively recent statutory changes, we have the *Re Leyland DAF Ltd* and *Spectrum Plus Ltd* cases still casting a shadow, new practice directives on remuneration applications to the Court, the Pensions Bill and a whole raft of new finance products and lenders, which are altering the dynamics of our marketplace.

Formerly the preserve of the larger collapses, distressed debt purchases are now emerging, not only in the mid-market distressed situations but also in consumer debt.

Couple this with the widely predicted retail downturn likely to follow the increase in interest rates in the UK and we are staring at considerable potential volatility.

All this change is set against a background of massive increase in personal insolvency (31% increase year-on-year, although this may have something to do with individuals delaying bankruptcy procedures to take advantage of a rather softer regime that came into force on 1 April 2004), an increase in administrations of 250% year-on-year but a reduction in all liquidations of 12% and of administrative receiverships of 39%.

Despite the massive increase in administrations, which may, in part, be a result of the ease of appointment and the lack of a need for a creditors' meeting in the event of no dividend, I am sceptical as to whether more businesses and/or companies are being rescued under this procedure, as this is not my own personal experience. Many large company rescues are being achieved without the need for a formal solution.

The market is telling us that formal work is on the decline and this may in fact be a trend that continues. The major lenders (this is now starting to include some of the larger asset-based lenders as well as the Clearers) have developed increasingly sophisticated mechanisms for spotting problems early. Given the proliferation of funding options and the trend for lending criteria to be flexed more than ever, the prospect for business rescue, in all its forms, without the need for a formal insolvency (now predominately

used for protection in the more serious cases only), are we seeing the market dynamics for business recovery change for ever?

What of course is less certain is whether an economic downturn in the UK, arguably Europe's most successful economy, would have the effect of dragging the rest of Europe back into the mire again, from which it is only just recently starting to emerge. Co-operation between the European jurisdictions is still at an embryonic stage, indeed there is some evidence of point-scoring by the Courts, and with a lack of judicial consistency across the European Union, it can be quite difficult to advise pan-European businesses on the correct mechanism and forum with which to conduct their rescue or restructuring exercise. The UK is seen as leading the way here but only because the courts and practitioners tend to act quicker when necessary.

Increasingly the work of the practitioner involves getting the stakeholders to work together for the common good, trying to prevent precipitate action, to keep the show on the road. This is what the lenders are expecting from our profession – adaptive solutions rather than sledgehammers. Administration is now often used where stakeholders cannot be persuaded to run with a consensual plan, and provides the protection required to fulfil the rescue process. Other new dynamics include the government departments taking a more active role in rescues and the prevalence of 'pre-pack' administration (although recovery of costs is an issue here)

So, throughout our professional marketplace, 'times they are a-changin''. Quite apart from the impact on many members of the accountancy profession of *Sarbanes Oxley*, what of changes within Europe? New laws are expected in France in January 2005, arrived in Spain in September 2004, and Germany only recently had change. There is no doubt that as businesses continue to expand throughout Europe, there will be a greater call on our services to solve problems in the various jurisdictions. Indeed we are already encountering far more activity, but this is providing some difficulty in giving expert advice in more than one jurisdiction. There have been calls for pan-European Insolvency Licences, currently one person is unlikely to have experience in every Euro-

pean jurisdiction given the very different regimes at the local level.

Flexibility of business models for the business recovery profession is key. We are witnessing some seismic shifts in the marketplace as advisory work becomes more important and formal executory work lessens its influence. Accordingly, more multi-skilled staff will be required, capable of working cross-border, but this should mean that the message to the marketplace is rather easier to deliver.

Perhaps there is an appetite to move across to the unregulated world of rescue without formal procedures because of the disproportionate level of regulation and the less than favourable climate in the courts for practitioners.

The general willingness of lenders to try and retain customers is another important change to the dynamics of the marketplace over the last few years. Market share remains important to lenders and, whilst we have witnessed some building of books at any cost, the relatively buoyant economy has meant there have been perhaps less trouble for lenders than otherwise may have been the case. The proof of the pudding, I suspect, will be over the next 12–24 months as a slightly tighter economy starts to take effect.

In this dynamic and fast-moving marketplace in which we operate, those that are prepared for change will prosper, while those that believe that the excessive formal appointments of yesteryear will return will fail.