



## WELCOME...

Welcome to 2011 which coincides with the second edition of **rescueIT**, the topical newsletter brought to you by the specialists at Cowgill Holloway Business Recovery.

Despite the almost daily media reporting of the “credit crunch” and “recession” over last 18 months, recently released insolvency statistics show an overall reduction in corporate insolvencies in 2010 by more than 17% with administrations down 34% and liquidations down 9% on the previous year.

In contrast new company incorporations were up by 11% and the total number of trading companies increased by 2%.

The positive spin would be that 2009 saw the economy hit “rock bottom” with 2010 figures reflecting the “green shoots” of recovery. Those of a negative disposition would argue that 2010 was a year where directors sat on their hands hoping to get through the difficult period and 2011 will see the inevitable fallout of those decisions.

A drop in consumer spending, VAT increases, cutbacks in the HMRC’s Time to Pay Scheme, increasing fuel prices and recent publicity surrounding an increase in interest rates, all indicate that insolvencies may significantly rise once again in 2011.

Although there was a significant drop in 2010 figures these were considerably higher than the levels of insolvencies in the pre-credit crunch era of 2007.

Our interpretation is that we have been living in a corporate culture where “restructuring” became a substitution for rolling over debt. If a business is failing to cover its outgoings, rolling over debt will not solve the problem.

In addition lenders and creditors appear reluctant to enforce any security rights which would lead to an insolvency procedure, they recognise that a company going into insolvency is likely to be more costly to them which they feel will be further compounded by the eventual sale consideration being less than its market value as a direct consequence of potential purchasers being aware of the distressed nature of the disposal.

In other words, even though corporate insolvency figures have fallen, this doesn’t necessarily mean that businesses are doing better than 2009.

In conclusion, it is unclear whether the worst of the recession is over or whether we are simply sitting in the calm before the battle commences.

Watch this space!!

If you or any of your clients do require any advice please contact myself or my colleague Craig Johns at our Manchester office on **0161 827 1200** or email [jason.elliott@cowgills.co.uk](mailto:jason.elliott@cowgills.co.uk) or [craig.johns@cowgills.co.uk](mailto:craig.johns@cowgills.co.uk)



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## BREAKFAST BRIEFINGS

With the start of a new year and with the seemingly constant changes to the insolvency rules and with the possibility of corporate insolvencies rising again, many of your clients need to be reviewing what they are doing and where their company's fortunes are heading over the next twelve months.

With this in mind, we intend to run a series of topical breakfast briefings throughout 2011 for like-minded individuals to get together and share their thoughts through a series of informal briefings. The intention is to provide breakfast followed by a short presentation by one of our Business Recovery professionals. It is hoped that this will result in you gaining some valuable information for your clients whilst also being back to your desk by 10.00am!

If you would like to know more, attend these briefings or if you have a particular subject you would like covering please contact [terri.green@cowgills.co.uk](mailto:terri.green@cowgills.co.uk)

# CLOSING DOWN SALE

## INSOLVENCY PRACTITIONERS DUTIES TO EMPLOYEES

Insolvency Practitioners are coming under increasing pressure from the Government to ensure that they comply with requirements under the collective redundancy legislation. The relationship between Insolvency Practitioners and employees has changed significantly over the years. There have been historical reported occasions where the employees appear to have been ridden "roughshot" over by an appointed practitioner and recent legislation has been introduced in an attempt to protect the employees' interests.

Where an employer proposes to make 20 or more employees redundant, under section 188 of the Trade Union and Labour Relations Act 1992 ("TULRA"), an appointed Insolvency Practitioner must make every attempt to "consult" with the affected employees or their representative. If a practitioner fails to comply with the duty to consult, the penalties can be severe. A protective award of up to 90 days' pay in respect of each redundant employee can be given.

Although a protective award will not be made in "special circumstances", recent case law has determined that insolvency does not discharge the employer or the appointed office holder from the duty to consult. As such the role of the Insolvency Practitioner in relation to the dealing with of employees is one that must be taken very seriously.

If the practitioner is adjudged to have failed in his duties to the employees and a protective award is granted then

the award may rank as a preferential debt within the estate, thereby potentially reducing the amounts available to other classes of priority creditors.

A recent example of where Cowgill Holloway Business Recovery have had to work within these rules occurred when Jason Elliott was appointed Administrator of a company that had approximately 150 employees. After being on site for 3 days it was necessary to make all employees redundant. The steps taken both prior to and following the Administration appointment allowed Jason to demonstrate to trade unions that a consultation and notification period had taken place in respect of these employees and no protective awards were made, which meant, all realisations could be utilised to reduce the indebtedness of the classes of creditors.

Insolvency Practitioners are therefore advised to consider carefully in every case whether or not a proper consultation has taken place, bearing in mind that this will help or avoid the amount of protective award. It is also worth noting, that if the Insolvency Practitioner believes that an open consultation could jeopardise the business, the employees can be asked to keep details confidential.

If you need any advice or assistance on this or any other aspect of corporate or personal distressed situations please contact **Jason Elliott on 0161 827 1200 or email [jason.elliott@cowgills.co.uk](mailto:jason.elliott@cowgills.co.uk)**



### 5 Minutes With.....

**Kimberly Wignall, Business Recovery Case Administrator**

Kimberly joined Cowgill Holloway Business Recovery in July 2006 and has enjoyed a varied role working on numerous cases developing her skills and knowledge.

**What was your first job?** Waitress at a bar and restaurant.

**What do you enjoy most about your job?** The thing I enjoy most about my job is the number of different tasks which are required during a standard insolvency procedure, it makes a working day more interesting.

**What does your typical working day involve?** A typical working day involves a variety of tasks, writing reports, dealing with creditor queries, continuing correspondence with company directors and employees and reviewing my case load.

**If you could have dinner with one person from any point in time who would it be and why?** Michael Buble because I would love to ask him all about his journey to becoming an international star and how he has made classic jazz anthems more appealing to the younger generation.

**If you had to give one piece of advice to someone what would it be?** If at first you don't succeed, try and try again!

