INSOLVENCY

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(KPMG's UK insolvency operation re-launched in early 2021 as an independent business, Interpath Advisory.)

What were the main insolvency and restructuring trends you were seeing pre-pandemic?

To the [UK] government's credit, there hasn't been a lot of insolvency. The furlough scheme, the business rates protections, the loan schemes; with all of these government-based schemes, the economy has almost been stabilised during the pandemic. But the glass half empty view for the economy predicts we have stored up a lot of problems. It is widely predicted there are going to be a load of insolvencies and a very deep recession coming, because there's just so much pent-up pressure. Imagine you run a bar and you're told you can start having customers again. How much beer do you order? How many staff do you have in? Previous predictions on trade are not going to hold. Combine that with every other business that's trying to start itself back up again and inevitably some will start too slow, some too fast. It's a really hard problem to get right, but the consequences can be serious.

Were the UK government measures to keep companies viable a good balance, or will there be unforeseen consequences?

The ball of string will inevitably unravel. It's just wrongful trading provisions that are suspended – there's still fraudulent trading, there's also all the other breaches under the Companies Act. One man's protectionism is another's ability to abuse. It's widely reported that, for example, the [UK] furlough scheme has been abused. There are some knotty problems there. It's right to suspend wrongful trading, but it might mask problems already there. My practice specialism is fraud and contentious insolvency – I predict that this will be an active area! The halting of winding up petitions seems a good thing, but it also halts people being able to recover their debts properly – the 'won't pay' people will just try to hide behind that and mask genuine cases. There will be many unintended consequences we need to unravel as we come out of this.

As the state support is unwound, many predict a huge wave of insolvency. Is that your assessment?

Unfortunately, yes. It's like a dam we've built higher and higher with the necessary protections – once that dam bursts, and it will only be a matter of time, we will feel and see the effect. We've had some companies that have been rightly kept afloat through this crisis, but having to stand on their own two feet...I can't help but fear many won't survive.

Is this the zombie company debate again? Are there a swathe of UK companies being kept alive that shouldn't be?

There are companies that would have ordinarily failed but are in almost a cryogenic state. They've been frozen and able to remain like that because of all of the help and schemes available. When they emerge from hibernation, they have to face a new world. What does

> "There are going to be casualties – some businesses just aren't right for this new environment."

that new world look like? As an example, we've all done a lot more home shopping. We've got to look at our behaviours as consumers and how that changes; is it temporary or permanent? Retail and casual dining weren't doing well before all this – that's going to be exacerbated.

What happens from a lender point of view? Do banks feel under pressure not to push companies into insolvency?

They will feel cautious, but they always have been. There will be benevolence as we emerge from the pandemic, but that cannot last indefinitely. No bank wants to have customers fail unnecessarily, but for some businesses, it will be an inevitability.

Did any other measures from the UK Budget catch your eye?

I'm very interested in the allowance that lets you take double relief on capital expenditure, which means you get more than your tax relief [to 130%]. Some commentary is saying all it will do is bring forward investment that was already going to happen, but maybe that's not a bad thing. We need to get some stimulation in the economy. When the world comes out of this hibernation, how do people react? What does supply and demand look like on a macro- and a micro-economic scale?

Which sectors do you think will be most impacted?

Retail and casual dining. There will be more fallout in retail, because it's become normal for us to shop online. The holiday and aviation sectors will bounce back as the global vaccinations programme takes effect, but again, in what form? When, if ever, will we be back to pre-pandemic demand?

A lot of borrower-friendly debt has been built up over the last decade – how will that play out in the coming wave of insolvencies?

It's interesting if that just becomes amend and extend. Interest rates have to move at some point. Younger people think that rates are always going to be around this one-percent mark – this has gone into the corporate psyche as well. People haven't understood that we might have had a decade of this, but this is unsustainable long term. There are some moribund businesses out there stumbling along at near-zero interest rates. How will they survive once rates increase?

It's hard to see what that point is though, given years of looming fiscal drag on the economy post-Covid.

That's why I listened intently to the [UK] Budget. The Chancellor was preparing businesses for future tax rises. He was careful to say "profitable" businesses, so it's about taxing the winners coming out of this to pay for what happened. But there are still going to be casualties. Some businesses just aren't relevant or agile enough for this new environment.

The Corporate Insolvency and Governance Act is the first big shake-up of UK insolvency law for years. What's your assessment of it?

Good, but with the caveat "wait and see". We've had reforms before that haven't been embraced. We've got the right toolbox – it's how it's deployed in a globally-connected economy. This is going to be about how the rest of the world responds post-pandemic.

> “The last downturn was a banking-related crisis – this downturn is going to hit all parts of the economy.”

That will also define who and where the winners and losers are. Some of those reforms make the UK a little more US-like – I don’t think that’s a bad thing. The UK is the most established and innovative restructuring market, and this just gives able practitioners more tools to use.

The Part26A reforms have received a lot of attention. What are your thoughts?

An excellent tool in the right circumstances. Anything that’s new makes the litigators salivate – when there’s new law, people want to interpret what it means, so there will be some challenges around that.

Are you expecting people to lean towards CVAs, scheme of arrangements or any other procedure in the years ahead?

We’ve seen CVAs in retail; there might be a lot of debt restructuring in leisure. I do believe that schemes of arrangement will be used more in relevant cases and appropriate circumstances, but you can’t get away from the harsh reality that dead and moribund businesses will always need to be liquidated. There is going to be a need for insolvency. There is also going to be a call for novel restructuring skills that address the where we are now and how we bridge to the new business environment. The skill will be how we take the financing and debt structuring along that journey.

What are the big-picture insolvency trends you expect over the coming years?

The last downturn was a banking-related crisis. This, I fear, is going to be a wider downturn, driven by supply and demand economics. Survival of the fittest will define this; a structural problem, because it will hit all parts of the economy. And whilst some business will thrive and grow, others will inevitably fail.

You mentioned landlords before – how do you see that playing out in a very different environment?

There’s a lot of new-build office space in London, but is that going to be needed? We are all be doing more remote working. We will need offices for collaboration, but it’s possibly the end of the ‘9-5 all week in an office in London’ style of working. That has a knock-on effect on office space and all of the businesses that rely on that physical footfall and presence.

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