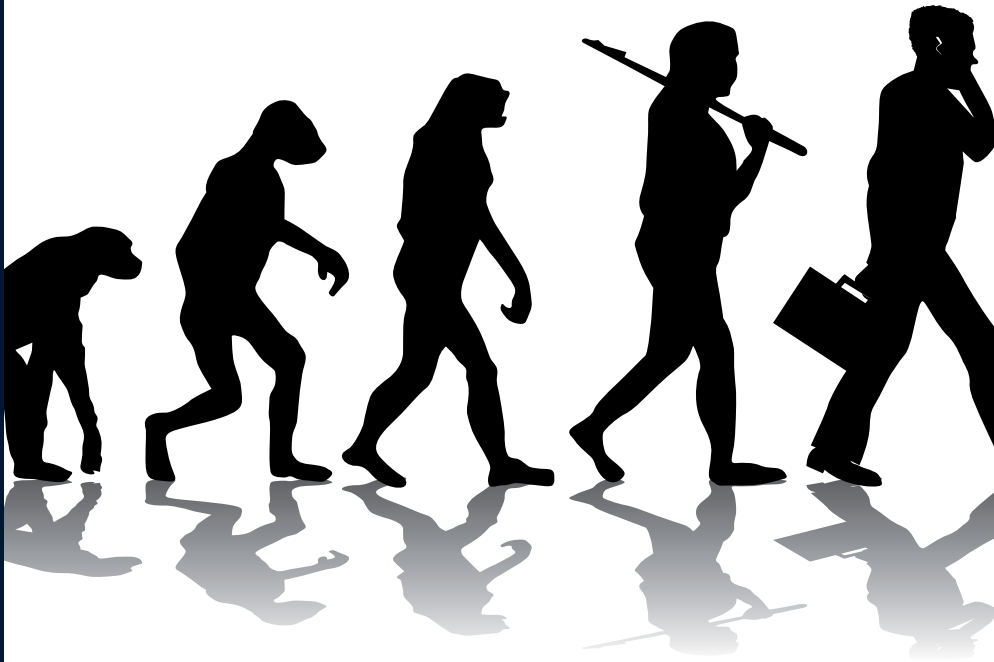


HILL DICKINSON

Surviving the Recession



“In the struggle for survival, the fittest win out at the expense of their rivals because they succeed in adapting themselves best to their environment.”

(Charles Darwin)



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Introduction

The UK is now officially in recession and the current economic climate presents difficult challenges for all businesses. The key to survival will be for businesses to focus keenly on their key drivers of value and their key risks so as to put themselves in the prime position to take advantage of the upturn when it comes.

Hill Dickinson LLP is experienced in helping clients through difficult situations. This means that we are well placed to work with you on all of the challenges and opportunities which your business may face in this economic climate, including:

- Financial and corporate restructuring
- Acquisitions and disposals
- Supplier and customer solvency risks and their mitigation
- Employment issues
- Landlord and tenant issues
- Risk and reputation management
- Directors' personal duties and liabilities

Our aim is to assist you in ensuring that you have the tools, structures and flexibility necessary to handle whatever should come your way. To that end, we have highlighted in this brochure some of the main issues to consider when planning your strategy for surviving this recession.

We hope you find it interesting and useful. Please let us know.



Corporate

1. A recession presents a key opportunity to review your business and decide whether it is in the best possible shape to weather the economic downturn and take advantage of the upturn when it comes. Careful planning can help mitigate some of the main issues that can impact your business. Businesses will need to be leaner and fitter to be successful in the downturn; cash flow and business viability are key and should be uppermost in your mind when considering restructuring options and strategy.
2. Businesses should concentrate on their core competencies and perhaps focus on organic over acquisitive growth. However, businesses that are cash-rich have an opportunity to make acquisitions at lower prices and build their corporate structure to steal a march on their weaker competitors.
3. Any restructuring strategy should begin with an in-depth review of the current business operations and an understanding of the costs, profits and cash flow drivers. Any restructuring plan should aim at reducing financial burdens on the business; this may include rationalising the cost of premises, employees and contracts (which are reviewed later) but may also require disposal of loss-making, non-core subsidiaries or operations (either by way of sale or by winding up) and winding up of dormant group companies. Where there are few buyers, closure may be the most viable option for stemming cash leaks. "In a recession, cash is king" - therefore businesses need to look at shoring up their cash flow and reserves by reviewing their stock and debtor levels, reducing overheads and improving their returns on investment and margins. Not just cutting costs but cutting the right costs.
4. You should review the legal structure of the core business - should this operate as divisions to reduce administration costs or should discrete assets/business streams be floated off into separate group subsidiaries, which can assist with ring-fencing of liabilities and help to "recession-proof" the rest of the group (although this can be eroded where there are inter-group guarantees or other financial arrangements)? You may also wish to consider whether it is possible to streamline the business into a single corporate structure (which may work best for smaller operations) to avoid the additional expense of drawing up group consolidated accounts.
5. Consider reducing dividend levels and reinvesting/reserving any profits rather than distributing these. It would be prudent to ensure that appropriate "wet-weather" provisions are included in your group accounts at this stage to give you breathing room as the downturn progresses.
6. If you are undertaking an acquisition, take extra care when undertaking due diligence. Make sure that your investigations focus on business-critical issues, provide appropriate risk analysis and propose solutions in a timely manner so that you can make an accurate costs and risk assessment of the opportunity. To assist you in this, Hill Dickinson has launched *Intelligensia*, our in-house due diligence product and we would be happy to talk to you further about this. It could help your business make informed investment decisions and save you money.



Banking/Financial Arrangements

1. You should review your bank facilities to ensure that there are no breaches of the agreements (however small). Banks will take every opportunity to bring borrowers back to the table to refinance at a higher price or even withdraw funding altogether. In particular, you should focus on:
 - 1.1 financial covenants;
 - 1.2 consents that may be needed for disposals; and
 - 1.3 any material adverse change clause (*MAC clause*) - most facility arrangements will contain a MAC clause which may give the bank the right to withdraw funding if the business has suffered what the bank would view as a significant change that is materially adverse to its interests.
2. You should also consider the extent to which you need each of the facilities that you are paying for. Are you using them now and will you need to use them in the future (even if you are not using them currently), bearing in mind that, if these facilities are cancelled they may be more difficult and expensive to obtain in the future?
3. Consider whether you are making full use of the facilities available. Some facilities offer a base rate option (which is now very cheap money). Some also contain headroom that is not being fully utilised which, if agreed over a year ago, may offer very favourable rates of borrowing.
4. You should ensure that you allow sufficient time to put refinancing in place. Facilities now take much longer to put in place than a year ago and cost significantly more. Borrowers now need to conform to much stricter credit criteria to gain internal credit committee approval and some sectors are finding it very difficult to obtain funding (e.g. property development), with lenders being reluctant to lend new money even to existing clients.
5. Consider bringing private equity or development capital into the business as a way of taking advantage of opportunities in the market place to build the business.



Commercial Contracts

1. Review each instance where supplies are made on standard terms and conditions. Now is the time to make sure you win the “battle of the forms” by ensuring that all supplies are made on your standard terms, rather than those of the other party. This goes both for sale and purchase terms. Consider making your standard terms stronger if necessary e.g. by shortening the credit periods allowed to your customers.
2. Look carefully at contracts and decide whether they ought to be terminated. If they do, care needs to be taken to ensure that the termination takes place exactly in accordance with the contract, including giving the right period of notice and doing so in the way prescribed by the contract. Often, for example, notice by email is not valid.
3. Take care when negotiating new contracting arrangements and, in particular, be careful of long term lock-ins or exclusivity arrangements, unless these work to your advantage.
4. If you are a manufacturer, keep your ability to review trade prices as flexible as possible. Commodity prices may fluctuate to such an extent that you may require the flexibility to amend sale prices more frequently than you might otherwise (or than you might think is “accepted market practice” to date).
5. If you are a supplier bidding for contracts in competition with others, ask for as full a debrief as possible if you are unsuccessful and think you have been unfairly treated. Public purchasers may be required (or decide) to re-admit you if it transpires that tendering rules have been broken.
6. Be wary of relying too heavily on a few key contracts; diversity spreads the risk to your business of any of these arrangements failing. If you are dependent on a few key relationships, then make back-up plans now and review your existing contract terms carefully.
7. Try to establish whether you have any customers or suppliers who might have high levels of trading activity with other companies who are not weathering the recession as well as you. If those other companies fold, leaving your supplier/customer might also be put at risk. Consider flexibility around credit terms, seeking out alternative suppliers or strengthening customer bases elsewhere (if at all possible), or at least negotiating more favourable terms with the supplier/customer in question.



Employment and HR

1. Whilst the prospect of making redundancies is never a nice one, it may be a “necessary evil” to ensure the future survival of your business. You should have in place a clear and fair redundancy policy and you must ensure strict adherence to the law, particularly where you are proposing to make 20 or more employees redundant. A failure to carry out a fair redundancy dismissal or a breach of the legislation relating to collective redundancies could result in expensive litigation, which will nullify the intended cost-saving effect of making the redundancies.
2. If the business aim is to preserve the workforce, you should consider cutting the overall costs of the business. One way to achieve this would be a short-term lay-off, whereby operations are shut down temporarily to save paying wages to staff. However, unless there is a term in the contract providing for a lay-off, you will require the consent of the employees to take such action. Another method would be to introduce short-time working, whereby the operation is carried out on a reduced scale and workers’ hours are reduced. Again, you will need a contractual right to introduce short-time working or the employees’ consent to do this. A review of discretionary schemes such as bonuses and sick pay schemes could also be undertaken to identify where cost savings could be made.
3. Ensuring you get the best out of your employees will ensure that you are getting the best for your business. The most effective way to achieve this is to use a performance management system, which will enable you to set targets and goals for employees and measure their development. Such a system will ensure that your employees understand what is expected of them and will also assist you in identifying strengths and weaknesses which can be addressed accordingly.
4. Leadership during recession is crucial and you may wish to review your leadership team to review their effectiveness in the market.
5. Recruitment may be far from most employers’ minds at the moment, but this may be an ideal time to seek out the best talent and acquire staff that will add value to your business. To maintain a competitive edge, retention of good staff is also critical and you should ensure (via the performance management system) that your staff have the right skills and training for the role that they are carrying out.
6. In these testing times, maintaining staff morale has never been more important or more challenging. Honesty and communication are key to achieving a happy workforce and employees will quickly lose faith in employers who fail to keep them informed. Engage your staff by making them feel that they have a stake in the business and its future success. Emphasising the non-financial rewards on offer will also remind your employees of the benefits of working for your company.



Property

1. The costs of owning and occupying property (including rents, rates and other outgoings) are a significant expense for most businesses and any attempt to cut costs should include a review of your property portfolio. As well as identifying any surplus properties which should be disposed of, the review should also identify dates on which leases of surplus properties can be terminated or break clauses exercised. Any notices to terminate leases should be served promptly to ensure that rents cease to be payable at the earliest opportunity.
2. It is important to be flexible in your approach to the disposal of surplus properties. You may prefer to sell, but you should also consider letting unsold property if suitable buyers cannot be found. Following the recent reforms to empty rates you may also wish to consider short-term lettings and possibly demolition of the properties to reduce rating liabilities on empty properties.
3. It is even more imperative in an economic downturn to ensure that all available tax and rating reliefs are being claimed and that capital allowance claims are being maximised. There is simply no point paying unnecessary taxes, yet many businesses do not appreciate the full range of reliefs available to them.
4. If you are a landlord, you should deal promptly with actual and anticipated tenant defaults and tenant insolvency. Rent arrears should be monitored and early action taken. Consider all the remedies available, including rent deposits, the ability to appoint bailiffs to distrain for rent and ultimately the right to forfeit the lease, although forfeiture may not be desirable if reletting is expected to be difficult, since the landlord will assume liability for rates and other outgoings. Whilst the landlord's remedies will be reduced if the tenant goes into administration or other insolvency procedure, there are still strategies which can be used to the landlord's advantage. You should also preserve your ability to pursue previous tenants and guarantors by serving statutory "section 17" notices in respect of arrears.
5. If you are a tenant, you should consider approaching your landlord if you are in financial difficulties to see whether they are willing, for example, to discuss changes in payment terms. There may be opportunities for you to renegotiate the terms of your deal with your landlord, as landlords are likely to be reluctant to lose a good tenant in the current climate.
6. It is a buyer/tenant's market and there will be bargains to be had for businesses looking to expand and investors with ready access to funds. Sellers and landlords, on the other hand, need to act quickly on any deals agreed to minimise the risk of deals aborting.

About Hill Dickinson

With over 150 partners and more than 1000 staff, Hill Dickinson offers a comprehensive range of legal services that add value to our clients' commercial needs. With corporate expertise located in our Manchester, Liverpool, London, Chester, Singapore and Greece offices we are considered leaders in:

Asset Finance	Media
Banking	Mergers and Acquisitions
Commercial Litigation	Private Client
Employment	Private Equity
Health	Property
Insurance	Sports and Leisure
Intellectual Property	Tax and Regulation
Logistics	

We invest strongly in our client relationships ensuring the organisations we do business with benefit from a seamless and fully integrated service.

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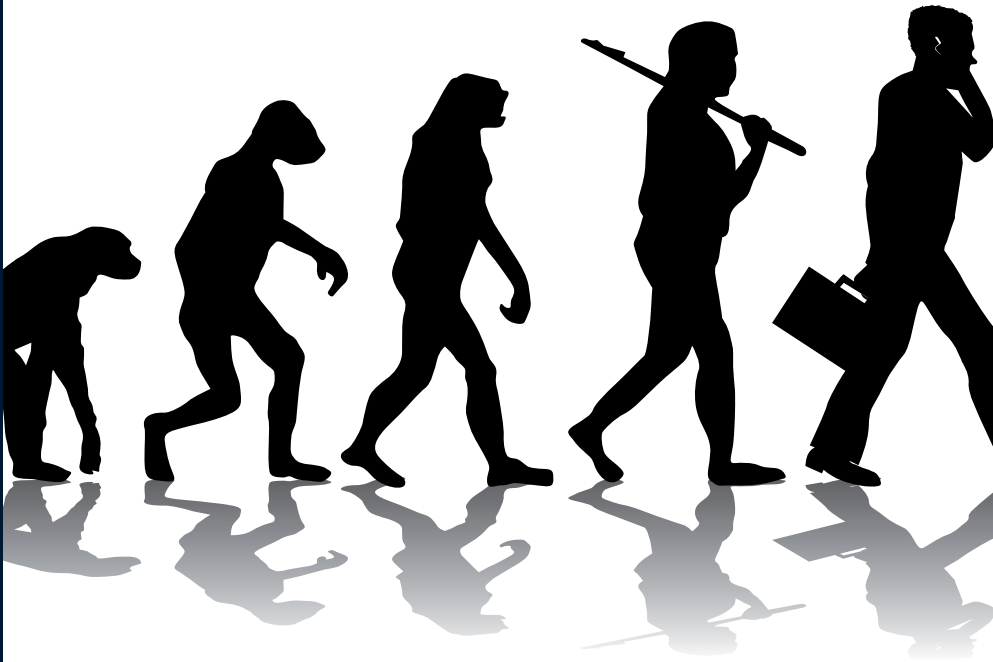
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“What does not destroy me, makes me stronger.”

(Friedrich Nietzsche)