

Managing life in the Twilight Zone: Director Duties



Mercer & Hole Restructuring Partner, Henry Page was recently engaged to advise an early-stage tech company through a forecast cashflow squeeze while it prepared for a funding round which would provide the investment needed to achieve forecast future profits.

Henry commented: *“The company had a great product which attracted lots of interest, but as is often the case for early-stage tech companies, limited cash.*

As restructuring advisers and insolvency practitioners we often bemoan being called in to distressed situations too late, however, in this instance the company had a strong finance function and proactive Finance Director who had spotted the forecast cashflow shortfall early and had begun work on raising additional finance. Nevertheless, the board were concerned about their duties, not making the position worse for creditors, and protecting value should funding not materialise.”

After initial work reviewing the forecasting model, stress testing assumptions, and running through sales forecasts and pipeline opportunities with the Sales Director, Henry attended the weekly board meetings and was able to assist the board in its decision to continue to trade.

Managing cashflow for a short number of weeks in the run up to the fund raise ensured that the company continued to pay its debts as they fell due. Being able to consider the directors’ duties in the light of possible insolvency, alongside the recent decision in Sequana, (giving appropriate weight to creditor interests when balanced against other stakeholders including members) meant that the directors were able to document and justify continuing to trade in the face of the financial stress the company was experiencing.



Spotted the forecast cashflow shortfall early and had begun work on raising additional finance



Ensuring that directors have good financial information available



Applied a balanced outlook when considering the impact of decisions on different stakeholder groups

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In addition to reviewing the ongoing financial position and funding opportunities, Henry was able to work with the Finance Director to set out a proposed timeline for an accelerated sales process, should the likelihood of achieving the required funding decrease. This provided a safety net to the board's decision making and protected the position of creditors should circumstances change.

It was clear that while there was a short-term threat of insolvency, the company was acting prudently in pursuing funding. The future forecasts were reasonable and the prospects for the company beyond the immediate few weeks were good. Advising the board provided comfort for the directors and helped to protect value for creditors and members alike by avoiding the premature commencement of an insolvency process.

This case is a great example of getting advice early, ensuring that directors have good financial information available, and how to apply a balanced outlook when considering the impact of decisions on different stakeholder groups.

Henry concluded, *"It has been fantastic to work with such a proactive board and to help them manage the company through a tricky period, providing comfort to the directors that they were making the best decisions on the information available to them at the time. I look forward to seeing the company go from strength to strength over the coming years."*

If you have any queries or would like some advice on this subject matter, please don't hesitate to contact Henry.



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