

Thank you for joining us.

The webinar will begin shortly.

# Your host for today

David Saab  
Business Alliance Manager





**CONSIDERATIONS FOR DIRECTORS OF FINANCIALLY DISTRESSED BUSINESSES AND PRE-PACK ADMINISTRATIONS.**

Adam Dowdney Partner

Accompanied by

Gareth Roberts, Partner in KRE Corporate Recovery LLP, Reading

## Introduction

- Statutory Directors' Duties
- When Duties may change
- Board meetings during COVID-19
- Options for Companies
- Pre-packs: What are they
  - How do they work
  - An IP's perspective
  - A Buyer's perspective
- Q&A





# Companies Act 2006 sections 171-177

Act within powers

Promote success of the company

Exercise independent judgement

Exercise reasonable care, skill and diligence

Avoid conflicts of interest

Not accept benefits from third parties

Declare an interest in a proposed transaction

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# Company is “distressed”



When is a company insolvent?



Existing government measures and changes to the rules



For directors – duties are then owed to creditors



Risk of personal liability



Reviewable transactions



# Board meetings during COVID-19

Need for remote Board meetings

Clear agenda and structure

Choose the right communication channel

Security of information

Minutes and resolutions



# Directors Options

- Setting the Scene
- Rescue of Company – New Moratorium?
- Company Voluntary Arrangement (“CVA”) – But Beware of Crown Preference
- Administration – Sale of Business
- Liquidation

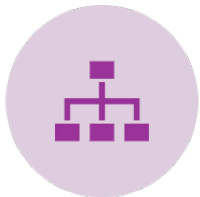


# Pre-Pack sale of a Business

- Past Abuse/creditor displeasure/government intervention
- Statement of Insolvency Practice 16
- Market widely but sale often dependent on key personnel
- MBO conflict: Duty to creditors



# What the IP wishes you knew



The insolvency practitioner (IP) is just as new to the business as you



The independent valuation is to ensure a proper price is paid – no mates rates



The process needs to be transparent for all potential buyers



Get comfortable with risk – the speed of the process ensures you are flying blind



The IP is acting in the interests of the creditors as a whole



# Advantages of buying a business from administration

You may get a cracking deal

Most liabilities to creditors stay with the seller

You can select which assets you want to acquire

Other bidders

Speed of acquisition

The employees – you may get a highly skilled workforce you could not otherwise afford to recruit – likewise you may not want them...



# Perils of buying a business from administration

Don't hang around – be ready to move quickly

Limited information / due diligence

What are you buying?  
Business/assets – does TUPE apply?

No warranties or indemnities from the Administrator, as the Buyer you may have to provide some

Check encumbrances / authority to sell





## Asset purchase

Premises

Book Debts – who owns them and who gets to collect them?

Contracts – can you novate them will the other party agree?

Intellectual Property – who does it actually belong to?

Forecasting & Capital requirements – consider using a newco to purchase



**Any questions?**



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# COVID-19

## Business Continuity Toolkit



Every Thames Valley business – no matter its size, sector, age, county or town – is currently facing unprecedented challenges. We can only overcome those challenges by sticking together, supporting each other and promoting a common-sense approach in all we do and plan for.

That's why the Thames Valley Chamber, alongside our network partners in the British Chambers of Commerce, is working tirelessly to help businesses on the front line – your business - as the 'first responders' on the ground.

We have launched a Business Continuity Toolkit, aimed at ensuring you have access to a single portal.



[www.thamesvalleychamber.co.uk/covid-19-business-guidance/](http://www.thamesvalleychamber.co.uk/covid-19-business-guidance/)

# About Us

Local engagement Regional representation Global opportunity



Entry level membership for businesses looking to network locally.



Profile raising and support for growing companies.



Providing established businesses with region wide opportunities to inspire.



Leaders in established businesses sharing best practice and insights.



Empowering organisations to champion for real change.



Helping businesses to achieve their international potential.

We want to lead the UK's Chamber network.  
Now is the time to be part of the UK's most innovative and ambitious Chamber.

[www.thamesvalleychamber.co.uk/membership](http://www.thamesvalleychamber.co.uk/membership)

# Meet the team



Adam Dowdney, Partner  
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Adam is a well-known and experienced corporate and M&A lawyer, in the Thames Valley. He works on all aspects of corporate law, including mergers and acquisitions, MBOs and MBIs, and private equity/venture capital transactions.

Adam is respected for his constructive and commercial approach and is included in the Legal 500 Hall of Fame.



Harriet Jones, Partner  
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Harriet Jones is a Partner in IBB Solicitors' [corporate and commercial team](#) and acts for both businesses and business owners – from international companies to small and medium-sized enterprises. Harriet specialises in corporate and commercial matters, including business restructuring, shareholder's agreements and commercial contracts.



Sarah Jackson, Partner  
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Sarah is a partner in IBB's Commercial Dispute Resolution team and Corporate Restructuring & Insolvency team. Sarah is an experienced commercial litigator, who specialises in company litigation, predominantly involving the Companies Act and Insolvency Act and high-value professional negligence actions. Sarah regularly undertakes high value commercial and insolvency litigation, partnership and shareholder disputes and contractual claims.



Ami Bhatt, senior solicitor  
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Ami is a Corporate commercial solicitor with special focus on owner managed businesses. Ami is a dual qualified (India and England) Corporate Commercial Solicitor with a broad range of experience including mergers and acquisition, management buy-outs and buy-ins, private equity investments and corporate restructuring. Ami has advised numerous owner managed businesses on shareholders' agreement, articles of association with focus on personal planning and key employee retention strategies. Ami advises regularly on general company law, partnership and LLP matters. Ami has experience of working in variety of sectors including IT, real estate, health and telecom



KRE Corporate Recovery was founded in November 2012 by Rob Keyes, Gareth Roberts and Paul Ellison with David Taylor joining as the fourth partner in April 2018.

All were formerly partners with RSM Tenon in Reading, their former business HMT Corporate Recovery, having been acquired by RSM Tenon in 2007. All three partners have spent more than 25 years each in Thames Valley.

KRE is the only independent firm in the Thames Valley which has three permanently based appointment taking Licensed Insolvency Practitioners.

This will ensure that you are always dealing with one of the principals. As a result of our very low overhead structure, our charge out rates are significantly less than our direct competitors.



**Rob Keyes**

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Rob's cornerstone philosophy when dealing with clients in a distressed position is to find a commercially sensible solution which benefits all of the stakeholders. This approach has, in the past meant that Rob can act on behalf of directors and Banks without conflict as all viewpoints are taken into account.

This approach can be seen in Rob's appointments which notably include the following:

- £10m wine retailer: Sale of business to third party, full repayment to the bank, no exposure on directors personal guarantees
- £15m Cosmetics Company: Share sale to foreign franchisor. All jobs secured
- Data company £24m net debt: Successful sale of business. Preserving jobs
- £7m Masts manufacturer: Sale of business
- £5m Hotel: Sale of business, full repayment to Bank with no exposure to directors guarantees.

Rob has over 25 years insolvency experience and has acted in a vast array of business sectors from retail, to construction to sports management and beyond.

When not working Rob divides his time between his family (wife and 3 young children) and the golf course (handicap of 9)



**Gareth Roberts**

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Gareth has considerable experience with a wide variety of businesses in many industry sectors in the Thames Valley and down the M4 corridor to Wales and the West, and has particular expertise with sporting clubs and manufacturing businesses. Gareth was previously a partner with HMT Corporate Recovery and prior to that a Senior Manager with Ernst & Young. He has over 30 years experience in the Corporate Recovery field and qualified as a Licensed Insolvency Practitioner in 1998.

**Career highlights include;**

- Acting as Administrator to London Welsh Rugby Football Club, managing the business and liaising with the Rugby Football Union. This culminated in the refinancing of the business via a new investor leading the solvent exit from Administration and handing the Club back to the directors.
- Acting as Receiver for Reynard Motorsport Limited, a leading motorsport company in particular in Nascar racing in the USA. Various parts of the business were sold to competitors, leading to a significant and unexpected recovery for certain stakeholders.

Gareth is married with 3 children and his leisure interests include golf (social handicap of 18) and watching the Welsh rugby team win Grand Slams.



**Paul Ellison**

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Paul was the founding member of HMT Corporate Recovery in 1996, having formerly worked for Ernst & Young in Reading. A qualified Chartered Accountant and Insolvency License holder with over 25 years experience in all aspects of insolvency and recovery work.

**Career highlights include;**

- Advising three Championship Football Clubs, all of which were sold and avoided insolvency.
- Administrator of a £80 million turnover motor parts business.
- Administrator of a sub prime lender with a loan book of £8 million.
- Supervisor of the CVA of a multi office estate agency culminating in a sale for in excess of £12m, repayment in full to creditors and return to shareholders.
- Administrator of retail chain with 32 outlets resulting in a sale to management of slimmed down operation of 15 outlets.

Notwithstanding the above the majority of clients are small owner managed businesses across a variety of industries.

Paul is married with two girls and his leisure interests include golf (handicap 16) and following for his sons, Sunderland football club.



**David Taylor**

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David has worked in Restructuring for 15 years, initially within the "Big 4" before moving to RSM where he was latterly the Partner in the Reading office covering the Thames Valley. David is a qualified accountant and licensed insolvency practitioner with experience in all formal insolvency processes. In addition, David has extensive experience in providing Independent Business Reviews for both Companies and their Lenders.

**Career highlights include;**

- Acting as Administrator for a multi-jurisdiction online gambling firm, achieving a sale of part of the business for a consideration of £1.8m including the settlement of all outstanding player deposits.
- Acting as Administrator of an £80m turnover publishing firm based in Oxfordshire with 125 staff and group companies worldwide.
- Sale of a large high street clothing brand out of Administration for in excess of £1m. In addition, David has undertaken numerous small insolvent and solvent Liquidations which form the majority of his day to day work.

In his spare time, David plays golf (badly) and follows Wolverhampton Wanderers and Bristol Rugby in between watching his three children participate in various sports.

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