

# Insolvency

## Buying a business in distress?



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### Introduction

Even successful businesses with excellent prospects can falter if for example they have inadequate funding or have been brought down by a bad debt. These can make excellent purchases.

There are however things you should consider before signing on the dotted line. Always take specialist advice and be ready to ask questions, such as:-

#### **Is the insolvency practitioner legally appointed as Administrator / Receiver?**

Get your solicitor to check their credentials and in particular that they are authorised by the authorities and creditors to deal with the company's affairs.

#### **What warranties will there be if I buy a buy a business in distress?**

If the business is in administration or receivership there are no guarantees. It is up to you to make the necessary enquiries into what you are taking on.

#### **Are there any charges or leasing agreements on property?**

If you are buying premises, equipment or stock for example, do suppliers, lenders or other parties have a claim to it?

If so, you would pay the asking price, minus the total claims.

**Does the business have employees?** They may be a major attraction but remember, their employment contracts will probably transfer to the buyer. If they were dismissed due to the sale, you, as the new owner, could be liable for unfair dismissal compensation.

There may also be issues and costs relating to transferring their employment contracts (TUPE), as well as the possibility of having to settle unpaid wages.

### Fact Sheet

The answer is to check the situation carefully, take advice and either seek indemnities from the seller or reflect the liabilities in the purchase price.

#### **Is there a company pension scheme?**

This is a vital consideration. Take specialist advice about whether or not you should take on the liabilities of any pension scheme, as there could be significant future costs.

#### **Has any landlord consented to a transfer of premises?**

If the business you are buying occupies premises under a lease you must obtain the consent of the landlord for the transfer of the leasehold agreement. Otherwise it could be invalidated.

Get your solicitor to check the lease agreement as well for other liabilities, such as your repair obligations. Are the premises in good order now?

#### **Are you taking on the debts of the business?**

If so, these are part of the cost of acquiring the business and should be reflected in the purchase price.

Money owed to the business on the other hand, may look like an attractive asset but should not simply be set off against the money owed by the business to others. You must also consider how likely it is that you can collect the debts owed to the business and if so, how much this might cost you.

#### **Are the books and ledgers included in the sale?**

Information such as customer ledgers and records might be extremely valuable, so you should check the quality of these and make sure they are included in the sale agreement.

Remember, even if you are buying a small business with a handful of employees it is important to cover all the bases, taking specialist advice as needed.

None of the above pitfalls are insurmountable, but they may have a bearing on your decision to buy and the price you are willing to pay.



Find out how we can help,  
contact Nick Oliver

**023 9231 2050**

e: [nick.oliver@verisonalaw.com](mailto:nick.oliver@verisonalaw.com)



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