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Taking advantage of the recession: buying insolvent businesses.

As always, one man's loss is another man's gain. In the coming months there will be an increasing number of insolvent businesses up for sale at knock-down prices. If you have the funds to buy and the business fits with what you want, you can make a good deal.

However, there are some key issues you need to be aware of if you have not bought an insolvent business before and you are not familiar with the process. It is totally different from a normal business acquisition, where there can be due diligence, long and detailed negotiation and significant legal protection for the buyer in case the position of the target business is not as it was thought to be.

Insolvent businesses will be offered for sale by their administrator, who will be looking for a quick sale. He will therefore go with the buyer who has the funds to do the deal and move quickly. The administrator will not accept any personal liability and is unlikely to respond in a meaningful way to any due diligence questions the buyer may have. You therefore assume a greater risk than normal, but this is reflected in the low price.

The administrator will not confirm that the assets the insolvent company is selling are owned. Goods in stock may be covered by retention of the title claims and belong to suppliers, so you may have to return such goods or pay the supplier for them. If assets are subject to lease or hire purchase agreements, the company owing the assets may take the assets back or require you to pay any unpaid rentals as the price for keeping them.

The position with employees will need to be carefully considered since employees with their existing terms of employment can be automatically transferred to you. If you want to trade from the insolvent company's premises, you may have to take the risk that the landlord will be willing to let you stay, although in today's climate he may well be happy to have a tenant. The insolvent company will not be free to transfer its lease to you and there is rarely the time to get the landlords consent.

You take more of a risk in buying an insolvent business, since there will be no 'come back' on the seller but this risk is often balanced by the much lower price you will be paying. However, you should still take legal advice to ensure that the matter is properly handled and that ownership of the business is transferred to you..

ENDS

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