

Debentures, assets and the limited company

BUSINESS MATTERS

Lisa Thomas an insolvency practitioner with Plymouth-based Neville & Co explores how debentures provide creditor security, with loans legally charged to the assets of a limited company



One of the ways banks and other lenders secure themselves when they lend money to a limited company is to obtain a legal charge over the company's assets in the form of a debenture. This is much like a mortgage that most of us have over our homes.

This debenture gives the bank security because if things go wrong and the company is unable to pay back its debts the bank can call in its charge and repossess company assets to clear the debts.

There are two types of charges; fixed and floating.

In the world of insolvency the general rule of thumb is if the asset cannot be moved it is a fixed asset, such as land and property. Other assets such as plant, stock, book debts and motor vehicles are classed as floating assets.

There are some exceptions to the rule – goodwill, for example, is a grey area as to whether it is a fixed or floating asset as it will depend on what the goodwill itself attaches to. If it is based on the name of a company for example this can be moved so would be classed as floating and if it is attached to the company's premises it would be classed as fixed. Usually the terms of the charge will dictate this but some older charges can remain silent.

Who cares? Ordinarily, directors are not particularly interested in what type of charge a bank has over the company's assets however they might just well do, if things go wrong for several reasons.

If a company is unable to make its repayments in accordance with the terms of the loan then the bank can use the power under their charges to do two key things.

Under its fixed charge the bank can appoint a law of property act receiver (LPR) to repossess and sell land or property. An LPR only has one main objective – to realise

assets for the benefit of the bank. As you can imagine the sale of the company's property will often force the company to cease trading.

Alternatively under its debenture the bank will have the power to put the company into administration and appoint insolvency practitioners like ourselves to take control of the company. This usually consists of us trading the business for a brief period whilst trying to find a buyer for the business and assets on a going concern basis in order to rescue it and maximise returns to everyone including the bank.

The administrator has to distribute any asset realisations to creditors in a certain order. The cost of administrations are usually high and these costs are paid before any debenture holders so there may well be a significant or full shortfall to the bank depending on the circumstances. The bank will then look to the directors to settle the shortfall if they have given personal guarantees.

Directors or individuals can also obtain a debenture over the business to cover their own loans to the company for moneys advanced at the time. This gives them the comfort of security because if the company enters into an insolvency procedure their charge will rank above other creditors so they should get paid back first.

If you are considering lending money to a business or have a question about a debenture please feel free to call me and I can explain the various options open to you.

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Neville & Co are a firm of licensed insolvency practitioners. Contact Lisa on 01752 786800

The WMN's Annual Business Guide to be published on July 4

The *Western Morning News'* flagship guide to the region's economy, featuring a list of the top 150 companies in the region, will be published on July 4.

The free 64-page Annual Business Guide lists the largest employers in the Westcountry as well as featuring detailed analysis of the region's economy by area and by sector.

The guide includes expert analysis of economic trends by main sponsors Bishop Fleming. Associate sponsors to the guide are: Foot Anstey, HSBC and Viridor.

It features analysis of the

region's main economic sectors including renewables, manufacturing and tourism, as well as updates on developments at the Westcountry's universities and airports.

The aim is to create a comprehensive picture of the economic health of the Westcountry and the main issues and developments affecting each part of the region and its main industries.

The guide will be launched at a breakfast event at Exeter Racecourse which will include a keynote speech by Augusta-Westland chairman Graham Cole, who is also chairman of the CBI in the South West.

Ready to serve – Simon's pasties head for Wimbledon

A Westcountry pie and pasty-maker will be selling its wares at Wimbledon.

Alongside traditional strawberries and cream, spectators will be able to indulge in Chunk of Devon savouries, during the course of the two-week tournament, which begins on Monday.

The Ottery St Mary business is baking more than 10,000 products that will be served up by Wimbledon caterers.

The supply deal follows the company's success in supplying pasties and pies at eight venues at the London Olympics, last year.

"Our business is surging on at the moment," said managing director Simon Bryon-Edmond.

"For a little business in Devon to get picked-up in this way is brilliant. It shows last year was not just a fluke and that we're actually quite good at what we do.

"We will be offering a quality, traditional option at Wimbledon. The main line will be steak pasties, but our pork pies will also be on the menu. It will be a fantastic opportunity for us.

"We use the best ingredients, sourced from Devon. It is all local and all free range and there are no additives whatsoever," he added.

Chunk, which been trading for six years, sells its products via eight wholesalers into a



Chunk of Devon managing director Simon Bryon-Edmond

network of farm shops, butchers and other outlets, across the South West and into the Midlands.

It also recently secured a listing with US-based Wholefoods and through this, an opening into its upmarket London-based delicatessens.

Chunk has grown to employ a team of 30 staff and produces some 30,000 pies and pasties every week.

The products are sold in three formats; freshly baked, baked and wrapped for chiller displays and frozen ready for baking by retailers.

Chunk of Devon has built links with Exeter Chiefs, with its products sold at the rugby club's Sandy Park base on match days.

The relationship was enhanced earlier this year when the pasties were used by

Chiefs players to – literally – kick off Hospiscare's Men's Walk campaign.

The Devon business was controversially named Britain's best 'Cornish' pasty at the British Pie Awards in 2009.

But the subsequent row resulted in the company being refused entry to the contest the following year, due to geographical reasons.

Half of firms in the region do not plan to export

A business confidence survey from accountants KPMG has found that almost 50% of companies in the region have no plans to export.

Despite overseas sales being highlighted by the Government as a key means of achieving growth, 49% of firms in the South West said that they either did not consider exports to be relevant to them or that they were choosing to focus on the domestic market.

Ian Brokenshire, Plymouth-based office senior partner at KPMG, said this trend could leave South West businesses vulnerable to overseas competition.

He said: "The high percentage of businesses relying solely on the domestic market is somewhat surprising, particularly given the stagnation in the UK and wider EU economy. Whilst international expansion is daunting, companies can consider a phased approach, a joint venture or a strategic alliance before committing to outright acquisitions.

"They should also be aware of the increased flow of inward investment from fast growing and developed economies into

'These foundations should give us more confidence'

Ian Brokenshire

the UK, attracted by our talented people and a competitive tax rate. This trend brings with it more competition; some may be vulnerable to foreign companies impinging on their market share."

The Business Instinct survey found that, in general, confidence in the region was higher than last year, with 77% of firms expecting to see both turnover and profitability increase over the next year. However, the majority said they do not expect to recruit to fulfil these ambitions, with 59% saying they expected their workforce to remain the same or decrease.

Mr Brokenshire said: "This local optimism appears to have its roots in the strong performances achieved by businesses last year, when a high percentage of those surveyed said they'd boosted their turnover and profitability. These strong foundations should give us much more confidence that the growth forecasted will be delivered."

Cost control and reduction, achieving sustainable growth and countering margin erosion were named as the main business challenges.

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