

Race to recovery

Dealing with workplace
change in times of crisis
and evolution

20 May 2021

**What will we cover in
today's session?**

Case study: GlobalTech

- Global tech business realises huge growth, has sales offices across many regions including the UK, Europe and Asia.
- Business moves from hardware based deliverables to having a focus on digital subscription packages (strong sales element). Accelerated by Covid.
- Hardware production part of business is diminishing and the group decides (with advice including from tax specialists) to carry out an orderly wind-down of the loss-making English subsidiary, HardwareCo Ltd through an administration process. There will be redundancies on the hardware side as government support/furlough comes to an end.
- There is some key talent and support staff with transferable skills who will be transferred to the new company. We will need to put in place an incentive arrangement and also hire on the software side of the business.
- Let's explore the practical issues...



Pre-Covid rapid expansion

- New leasehold premises
- Increased headcount
 - New product lines
- Opened up distribution channels – logistics
- All funded by ... **INCREASED BORROWING**



Covid pandemic – significant business set-back

- Supply chain impacted
- Production slowed
 - Sales dropped
- Workforce on furlough
 - Rent arrears
 - Default on facility



Corporate restructuring to:

- Reduce costs
- Streamline workforce/make better use of talent
- Decrease debt by consolidating operations and “cutting off” loss making company
- Save money and put business back on a solid financial footing

Restructuring of HardwareCo Limited



Insolvent

Administration

- to restructure the company
- to try to save jobs

Business and asset sale

Administration: Practical Points

- Plan going in
 - How purpose will be achieved
- Administrator agent of the company
 - Employment contracts not automatically terminated
- Pre-pack sale: connected party rules
- Consideration of employee base
- Redundancies – consultation periods
- Adoption of contracts
 - after 14 days
- Dismissal of employees
 - Within 14 days
- Retention of key employees
- Communications – staff representatives
- Unions

Sale of business



Impact on employees

1

Sale of business – transfer of employees

- TUPE – automatic transfer of employment rights to new employer
- ‘Permitted variation’ of contracts by administrators
- Claims risk against NewCo purchaser

2

Employees left behind - preferential creditors

- Entitled to payment out of assets for:
 - Salary outstanding for previous 4 months, up to a maximum of £800
 - Accrued holiday pay of up to 6 weeks
 - Some occupational pension payments

3

National Insurance Fund (NIF)

- For payments not recovered from company assets
- Can also claim via Redundancy Payments Service where made redundant provided completed 2 years of service, based on age and length of service

4

HMRC

- Recovery of statutory sick pay, maternity, paternity and adoption pay

HR issues to consider



- Clear employee plan that accounts for timing
- Clear communication strategy
- Tension between redundancy and incentivisation
- Protecting goodwill
- Information and consultation obligations for TUPE and redundancy
- Mitigating litigation risk
 - Discrimination
 - DSAR
 - Collective claims

UK redundancies



- Obligations – individual and collective consultation
- How long will it take?
- Interaction with TUPE
- Selection process
- Contamination – especially in context of incentivisation
- To enhance or not to enhance?

Poll #1

What sort of redundancy package would you offer to employees in this situation?

Redundancies outside UK



Hong Kong

- More straightforward than UK
- No process requirements
- No consultation requirements
- Objective selection criteria
- Statutory severance for employees with 2+ YOS
- Tricky issues:
 - Prohibition on dismissal of pregnant / mat leave / sick employees

Brief mention: Singapore; China

Europe

- More complex than UK
- Information and consultation:
 - European Works Council
 - Local Works Council
 - Trade Union
- Social Plan
 - Severance pay
 - Financial incentives
 - Redeployment / retraining
 - Outplacement
- Notification to public authorities / court approval

Alternatives to redundancy

Cross-border redundancies



Tricky issues

1

Planning

- Crucial to success
- Identify affected employees; selection pools; selection criteria; redundancy terms; numbers and timetable; business case for redundancy; alternatives to redundancy
- Preparation of communications; briefings; Q&A; PR; template documents

2

Trigger for consultation

- “Contemplated” vs “proposed”
- Global or local announcements?
- Phased approach?

3

Timing issues

- Impact of actions in one jurisdiction on consultation process in another
- Careful planning and vetting of communications

4

Differing severance packages

- Price for swift consultation?
- Employee relations issues

Up to completion of restructuring

- Treatment of existing outstanding awards
- New retention awards

Post restructuring

- New incentive plans
- Equity or cash awards

Q&A

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