Why Trusting The Insolvency Advice of an Unqualified Advisor Could Spell Disaster

Image by [Money]

In recent years, the economic uncertainty caused by the recession has allowed an entire market of unregulated and unqualified advisors to thrive. Although such advisers claim to have your best interests at heart, in order to attract custom, they often make wild and unsubstantiated claims as to what they can do.

Yet because such individuals are unlicensed, they are able to promise the earth without having to worry about adhering to regulations. As such, unlicensed advisors can often cause more harm than good and their 'help' should be avoided.

The Current Climate and Seeking Business Insolvency Advice

Even though the UK is experiencing an economic recovery, now is not the time for businesses to relax. Historically, the number of corporate insolvencies has grown to its peak during the early stages of an economic recovery.

On the reasons that might cause such an increase, William Ballmann, Chairman of the Yorkshire region of R3, said: "As the economy starts to pick up, businesses are exposed to new stresses and strains: cash reserves, exhausted by a recession, begin to run out; creditors can become less patient; businesses can grow faster than cash flow or supply chains can cope with; and the consequences of failing to invest during a recession can be felt."

As such, The BusinessDesk has reported that 56% of the members of R3 who work within corporate insolvency believe insolvencies will increase in the next 12 months. Unfortunately, too many business owners don't know who they need to turn to in their moment of need.

If you want to buy a loaf of bread you can pop to the supermarket. If you are unwell you know that a doctor can prescribe medicine that will make you better. However, if your business runs into financial difficulty, do you know who you need to call for business recovery advice?

Pre-pack Insolvency Issues and the Claims of Unqualified Advisors

This level of uncertainty has created an opportunity for unqualified advisers to promote their services, and in the process propel themselves into the consciousness of struggling business owners. One of the most common spurious claims unqualified advisors promote is that they are able to initiate a pre-pack administration that benefits you and not your creditors.

The reality is that a qualified insolvency advisor, by law, cannot make such unfounded claims but will ensure that you proceed along the most appropriate route, whether that may be a formal insolvency procedure or otherwise determined by your specific business circumstances and current law.

A formal insolvency process will involve the proposed liquidator or administrator – up to their appointment – advising you to protect the business and to ensure creditors receive as much of the money that they are owed as possible.

This both protects the creditors and directors, ensuring they do not fall foul of the numerous and sometimes complicated laws, including the Insolvency Act and CDDA Companies Act.

Once a liquidator or administrator is appointed, they are duty bound to act on behalf of the creditors.

What Can Go Wrong if I Take The Advice of an Unqualified Adviser?

Of course, to a struggling business owner, a qualified insolvency advisor stating that they intend to act on behalf of the creditors doesn't sound quite as appealing. However, if you take the advice of an unqualified advisor and set in motion a pre-pack insolvency that unfairly prejudices your creditors, you could still land yourself in serious trouble.

In a scenario of this nature, unpaid creditors can still seek recovery action, which can result in a qualified insolvency practitioner looking into the actions you took in the period leading up to insolvency. Consequently, if you are deemed to have acted in an unfair manner, you could incur personal liability for the debt, be disqualified from acting as a director or even face prison.

Why Should I Seek Business Recovery Advice from a Licensed Insolvency Practitioner?

Currently, the only way to qualify as a Licensed Insolvency Practitioner is to sit the Joint Insolvency Examination Board (JIEB) examinations. Would-be Insolvency Practitioners will already be qualified as an accountant, solicitor or barrister. Despite being highly-qualified, the pass rate of people embarking upon these exams is little more than one in three.

In short, Licensed Insolvency Practitioners are extremely qualified, which in itself illustrates the inability of unqualified advisors to give valuable advice to struggling business owners.

Unqualified advisors may suggest that entering into a formal insolvency procedure with a Licensed Insolvency Practitioner is more expensive and may leave you out of pocket. But because they are highly-qualified – and highly regulated - a Licensed Insolvency Practitioner may prevent you from becoming exposed to recovery action and the consequences of acting unfairly in the period leading up to insolvency.

Instructing a Licenced Insolvency Practitioner Will Prevent You From Paying Twice

Only a licensed Insolvency Practitioner can act as a Liquidator, Administrator, Trustee in Bankruptcy or Supervisor in an Individual Voluntary arrangement. All of these roles relate to procedures involved when performing a formal insolvency. However, an unqualified advisor is none of these.

Instead, many unqualified advisors are 'middle men', who act as brokers for referring clients to a qualified practitioner for commission. As such, you will usually have to pay a referral fee before you get to see a qualified Insolvency Practitioner.

To prevent yourself from paying twice to access the proper advice, make sure the advisory firm you hire directly employs an Insolvency Practitioner. Unqualified advisors who act as middle men tend to refer to the industry in the third person in their marketing materials. So to avoid paying twice, look out for advisors who talk in this way.

Are The Insolvency Service Clamping Down On Unqualified Advisors?

In 2013, the Insolvency Service issued winding-up orders against eight firms that were providing inaccurate advice as unqualified and unlicensed ‘insolvency’ advisors. The majority of the firms were guilty of preying on distressed businesses by sending mailshots that contained misleading advice about pre-pack administrations.

The firms gave the impression that the pre-pack administrations they sold were a closed process that prevented the chance of recovery action in the future. They also suggested that the pre-pack administrations benefited the directors rather than the creditors and that disqualification could be avoided by providing the 'right' answers. Of course, all of these claims were untrue.

Tackling unqualified advisors is an important part of safeguarding the insolvency and recovery market, as disparaging headlines cast the entire industry in a bad light. However, it remains a difficult task because unqualified advisors are not subject to the stringent regulation of qualified insolvency practitioners.

Final Thoughts

Because unqualified advisors are unregulated, they can make wild and unsubstantiated claims without fear of reprisal. Also, because many people don't know the best place to seek financial help, the inaccurate advice they sell can appear attractive to the uninitiated.

Whilst it might seem like a good idea to initiate a pre-pack insolvency that favours you and not your creditors, in the long run such actions can do more harm than good. This is because pre-pack insolvency can never be the closed process that it is sold as.

Insolvency is a highly complex area of law and dealing with matters in the wrong way can have serious consequences; you could face personal liability for the debts, or worse.

For this reason, you should only seek advice from a fully licensed and qualified Insolvency Practitioner. They will be able to offer the best advice in relation to your situation.

What Should I Do Next?

If your business is in trouble, don't panic by seeking help from an advisor that offers what appears to be the easier and cheapest solution. Instead, seek help from a Licensed Insolvency Practitioner. They are the only individuals who can offer full, clear, impartial, correct advice.

At Byrne Associates, we realise that financial distress is an emotionally charged time, so we go to great lengths to take of our responsibilities with a degree of empathy, sensitivity and fairness. If you have any questions or need to seek professional advice on this topic, please contact us now.