

Finance director – the loneliest position?

A Guest Article by Nigel Stanford
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Demands of the recession

The job of a finance director (FD) has seldom seemed harder than during the current recession. In today's climate it seems that it is not enough to simply be managing your own cash flow and profitability. In addition:

- You are often called upon to help your customers' cash flow by agreeing extended credit terms.
- You may well be involved in assisting in re-tendering for a customer's business.
- You may be required to deal with the fallout from the insolvency of customers.
- You will no doubt be required to assist in difficult budgeting discussions.
- You may be required to consider redundancies, short-time working, pay cuts or pay freezes or a combination of all of these.
- Last but by no means least, you will no doubt be spending much more time in discussions with your bankers.

As if these demands were not enough, FDs working in listed companies will also be required to consider the obligations imposed upon them by the rules of the market on which their equity is listed, and many will no doubt have needed to consider whether or not to issue profit warnings during the last year or so.

Finally, FDs of businesses of a sufficient size (turnover in excess of £200 million or with a balance sheet total of over £2 billion) will have had to get to grips with the new provisions of the Finance Act 2009 (Schedule 46), which imposes further duties and potential penalties upon "the senior accounting officer" of the company.

Getting support from an advisory network

The multifaceted and wide-ranging demands placed upon today's FD sometimes make the job feel extremely challenging and extremely lonely. Whereas many CEOs are heavily reliant on their FD as a sounding board, an FD can often feel that he or she has no equivalent confidant/counsellor.

The more savvy FD will seek to put in place an appropriate support network of peers and professional advisors.

An obvious port of call would be representatives from the company's auditors. However, some companies may be slightly wary of being too open with their

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auditors, given the statutory obligations placed upon auditors and the concerns many are having at the moment in interpreting “going concern” issues.

In light of this, the FD’s legal advisors can often be invaluable. Experienced corporate lawyers are advising FDs across a wide range of businesses, and will often have come across a number of the issues being faced by an FD while advising other clients. A solicitor’s professional obligation of confidentiality should also give an FD comfort that they can be completely open with their legal advisors.

A company’s legal advisors can also advise on a number of specific areas that have been common during the recession. These include:

- banking arrangements
- credit terms
- re-tendering for business
- employee issues.

Banking arrangements

A common theme of the current recession has been the need for a number of corporates to renegotiate/refinance their bank facilities. Experience suggests that the most successful renegotiation/refinancing happens when the corporate is open with its bank, approaches it early with regard to any issues, and is flexible as to potential changes.

For example, if the corporate is a property company and has unencumbered assets, it may well be that offering to put some or all of those unencumbered assets into the bank’s security web will be able to address any loan-to-value covenant shortfalls.

Non-property companies could consider whether or not new subsidiaries or related companies that did not exist at the time the facility was entered into could cross-guarantee the main borrower’s obligations. Equally, the owners of the borrower could consider whether not they could stand behind the borrowings as guarantors if they are not already doing so.

Credit terms

Another theme of the current recession has been that of customers having cash flow problems and seeking to have their suppliers be part of their solution to such problems. Often, the solution proposed by the customer involves a supplier agreeing some form of deferred payment plan.

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Many suppliers have taken the view that they have little choice other than to accept the customer's requirements, particularly if they wish to continue their relationship with the customer. However, before simply agreeing such a course of action, a number of issues need to be considered.

For example, any agreement as to extended payment terms should be appropriately documented. The parties should be clear as to whether or not what is proposed is a one-off variation to existing contractual terms or a permanent change to those terms. Clearly, from the supplier's perspective the former is preferable.

The supplier should also bear in mind that if it credit-insures its exposure to customers, any extended credit terms for that customer would usually require the prior approval of the credit insurer. Clearly, any credit insurer should be informed about what is being considered at an early stage.

Re-tendering for business

Another common feature of the current recession in certain industries (in particular, those related to marketing services) has been for clients to require suppliers to re-tender for the business. (It will not surprise readers to note that any re-tendering exercise seems usually to involve a reduction in the commercial terms payable to the supplier.)

If you are involved in a re-tendering exercise it is important to be aware of your existing contractual rights and obligations and to consider these in the light of any re-tendering. Clearly, these rights should apply until such time as any re-tendering exercise has been completed and any new contractual terms agreed.

If a re-tendering exercise is unsuccessful you must be aware of your accrued rights and obligations under the contract in question.

In addition, you may be able to take advantage of legislation such as the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). These regulations provide that, on the change of service provider, any employee who was employed for the majority of its working time for that customer will transfer to the employment of the new service provider.

TUPE is potentially a very helpful piece of legislation for those who have just lost a major customer.

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Employee issues

Many businesses have looked at their payroll costs recently and are considering measures to reduce such costs. Again, the advice must be to involve your employees at the earliest possible stage.

If you do not have a unionised work force or elected workers' representatives in place, you may well need to ensure that workers' representatives are elected. A dialogue with workers' representatives can be helpful when things such as possible redundancies or alternatives such as short-time working, temporary or permanent pay cuts or the reduction and/or removal of certain employment related benefits are being considered.

A key feature of the current recession compared with previous ones has been flexibility on the part of workers and their willingness to consider things such as short-time working, pay cuts and reductions in benefits as an alternative to outright redundancy.

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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.