BANG GOES BHS

BHS hit the headlines in April when it entered administration with a £571m pension deficit. Here Addleshaw Goddard's Retail and Consumer team assesses a bleak situation for a former giant of Britain's high streets...

What went wrong?

Just four weeks after company voluntary arrangements (CVAs) were approved for BHS Limited (BHSL) and BHS Properties Limited (BHSPL), both companies crashed into administration.

The CVA proposals cited three main reasons for BHS's demise: a more competitive retail market, a failure to respond to changing consumer behaviours, and a failure to capitalise on the growing trends of digital sales and retail-park shopping.

But there were other key moments, too. BHSL's available cash suffered a negative impact in 2015 when major suppliers of the BHS group had their credit insurance cover cut, pushing BHSL into funding £25m of letters of credit, and a further £10m of security deposits.

How big was the BHS black hole?

Even after creditors had signed up to rent-reducing proposals for a number of landlords, there were still major difficulties ahead.

The CVA proposals detailed how the group needed extra funds in order to trade beyond 25 March 2016, and that the directors were engaged in efforts to raise funding of up to £100m from three different sources. That sum consisted of up to £60m from an asset-based lending facility to be secured against stock and debtors; up to £30m from property funding and disposals; and up to £10m from the release of funds tied up in letters of credit and security deposits held with suppliers of goods not for resale. But it proved a task beyond the reach of BHS's management.

Now 11,000 staff are facing enormous uncertainty, and a number of unanswered questions surround the future of BHS's retail units and its underfunded pension scheme.

Will anyone want BHS's old retail units?

When Woolworths collapsed in 2008, discount retailers, such as Iceland, B&M and Poundland, took the majority of its estate (and seized the opportunity to accelerate their programmes for expansion). BHS's 160+ stores are a different proposition though; they are considerably larger stores than the average Woolworths.

BHS also reaches beyond the high street, with a number of stores in out-of-town retail parks. Indeed, a report by Cushman & Wakefield, quoted in the *Evening Standard*, raised fears that more than a quarter of BHS's stores could lie empty for months.

In light of this, it would be easy to conclude that new tenants for BHS's store portfolio may appear unlikely to be found. But as Joe Maitland, a Real Estate specialist from Addleshaw Goddard's Retail and Consumer team says, "claims like that do not take into account that retail property specialist landlords will not sit idly by waiting for a replacement tenant. They will re-design or sub-divide the awkward-shaped stores and, importantly, will have seen this demise coming for months; it may even be seen by some landlords as an opportunity."

Occupier demand is also much higher than in 2008, with several well-known names – including Primark, H&M, and Next – already being linked with approaches for the empty stores.

"There are still a number of retailers who will be able to make a BHS location work for them," believes Maitland. "It would be a mistake to say that because BHS failed, the individual stores cannot be a success for another retailer."

And what now for the BHS pension fund?

With a reported deficit of £571m, attention is focusing on BHS's underfunded staff pension scheme. Pressure is being put on former owners Sir Philip Green and Retail Acquisitions to explain whether capital extracted from BHS was at the expense of the pension scheme.

Many believe the handling of the BHS case by the UK's pensions regulator is its first genuine test of its 'anti-avoidance' powers. Sir Philip Green has reportedly offered to make a voluntary contribution of £80m towards the deficit, but the regulator is believed to want a much greater sum.

What can the pensions regulator do?

"The Pensions Regulator has draconian powers to render corporate groups, individual directors and shareholders legally liable to contribute towards defined benefit (DB) scheme deficits in certain circumstances," says Jade Murray, of Addleshaw Goddard's pensions team.

"However, many think the regulator has yet to fully flex its muscles – especially in cases where the factual background and, therefore, the justification for sanction, is complex. The Pensions Regulator's response to the BHS case will be closely watched by anyone involved with managing a DB scheme in deficit."

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