

# Historic risks

HWM is a successful motor dealership with an interesting past: in the 1940s and 1950s the company built and raced its own sports and Grand Prix cars, and was one of first British teams to compete in Formula One. But, without assistance from Menzies, its history might have cost HWM dearly, finds **Paul Gosling**.

**T**he family business, today the Surrey agency for Aston Martin and Alfa Romeo, was unprepared for attempted legal action when an employee from the post-war period died from asbestosis. Despite having only worked for HWM for a short time, lawyers acting for the ex-employee's family took legal action alleging that his illness dated from his spell in HWM's employment and sought a payment of £400,000 in compensation.

"This particular claim was highly speculative as the person had only been there for a year and it became clear that they had little evidence to support their claim," explains Menzies' Partner Salvador Amico. "My client sought legal advice and, rightfully, everyone realised there was no case to answer."

## Historic liability

However, the experience persuaded HWM and Menzies to look again at the company's structure. If this happened once, could something similar happen again? They decided it was sensible to

protect against other potential liabilities emerging from history that could threaten the existence of the business.

"No one had expected the claim, or could have predicted it," says Amico. "HWM's Managing Director is a lawyer and he understood the risks. At one of our regular meetings we discussed the possibility of restructuring the group."

While we have a responsibility to former employees, we also have a responsibility to our current employees and the people we transact with.

Managing Director Andrew Harting explains that some of the company's potential liabilities had a long tail, particularly under certain types of public employment liability legislation, where there is no time limit. "While we have a responsibility to former employees, we also have a responsibility to our current employees and to the people we transact with on a day-to-day basis to

ensure there is some certainty about our liabilities and to ensure there are no non-time limited liabilities that threaten the future health of business," he says.

"We have put a lot of time and effort into making sure our business is robust and that we can deal with the economic climate, and manage the business's current liabilities. But liabilities that date back 60 years can disrupt all the planning that we have done."

## Insulated

Harting says Menzies helped him to create a corporate structure with a separate holding company and trading company that would be insulated from potential historic liabilities. "It is important to stress that the objective is not to escape liabilities," he adds. "The liabilities faced by the trading company are the current trading liabilities, rather than historic environmental liabilities."

Moves towards restructuring are under way but take time to complete, says Harting. It is essential, he adds, that restructuring is conducted to maximise tax and organisational efficiency. "One of the advantages was that it allowed





HWM's motor racing legacy also had the potential to turn into a business liability



### Small firm, big risk

While corporations typically employ risk managers to mitigate and prepare for risks, most SMEs are unable to devote comparable levels of resources to the role. Yet SMEs often face similar risks to large corporates.

John Hurrell, Chief Executive of the Association of Insurance and Risk Managers, says that more small firms should consider the "emerging risks" of liability and business interruption linked to increased reliance on IT and sometimes termed 'cyber risks'.

"Many corporations are more dependent on IT now than they were a couple of years ago",

Hurrell points out. Hardware failures or cyber attack can cause severe difficulty, as can data loss and breach of data protection regulations.

Globalisation presents another emerging risk. SMEs extending their range of suppliers need to be aware of partner companies' business practices and security. Risks can include political instability, reputational risk where working and environmental practices are poor, and intellectual property theft through counterfeiting. "Many large organisations have been caught out by these problems," warns Hurrell.

us to create a company with a modern constitution, giving us an opportunity to clean up our balance sheet and get rid of some old classes of deferred shares that no longer had any relevance." Restructuring also brings the possibility of creating an employee share scheme.

Harting says that Menzies was an important partner, because it understood

both the business and, as accountants, the future and current trading position. Menzies' tax expertise also means that the reorganisation is tax-efficient and will take into account future tax planning, he adds.

While most companies are not exposed to comparable historic risks, there are many other threats to be considered. One of the most common,

says Amico, is where a proprietor is expecting to take value from a company's property, but the viability of the firm is undermined by current trading conditions.

"Freehold property might be seen by the proprietor as their retirement fund," continues Amico, so restructuring to separate property ownership from a trading operation may be the best way to protect value. There are downsides to reorganisation – group structures create administrative complexities and greater expense. "A decision needs to be taken about whether that is worthwhile," he says.

Businesses and proprietors certainly have a greater need to prepare and protect assets today than they did in the past, Amico advises. "We are seeing more claims being made against companies. We are becoming a more litigious society, partly as a result of the recession."

#### More information

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