

Mills & Reeve LLP economic survey

Results summary



October 2009

Executive summary

Thank you for taking the time to participate in our latest survey. We were very pleased with the number of respondents; you will see that they were drawn from a wide range of industry sectors. The views that have been expressed represent the opinions of businesses operating in very different trading and regulatory environments but are nevertheless facing many of the same underlying pressures.

We decided to take the business temperature one year after the collapse of Lehman Brothers. Following a very intense period of hunkering down for many businesses, we wanted to see what changes the last twelve months had brought about (for example, would sustainability measures be regarded as a luxury and have been put onto the back-burner) and to see whether confidence is returning.

And we have discovered that among our respondents, it is not all doom and gloom. While there is a good deal of caution about and some remain pessimistic, more than half our respondents are now optimistic about the economic outlook. However, businesses must guard against complacency, especially in their dealings with third parties where we feel more can be done by companies to help themselves.

We hope that this research provides a useful insight into current levels of business confidence and what your colleagues and competitors might be doing to combat the economic crisis. If you would like to discuss any of the issues that have been raised or we can help your business in any other way, please do not hesitate to contact any of the following members of our restructuring and insolvency group or speak to one of your usual contacts at Mills & Reeve.



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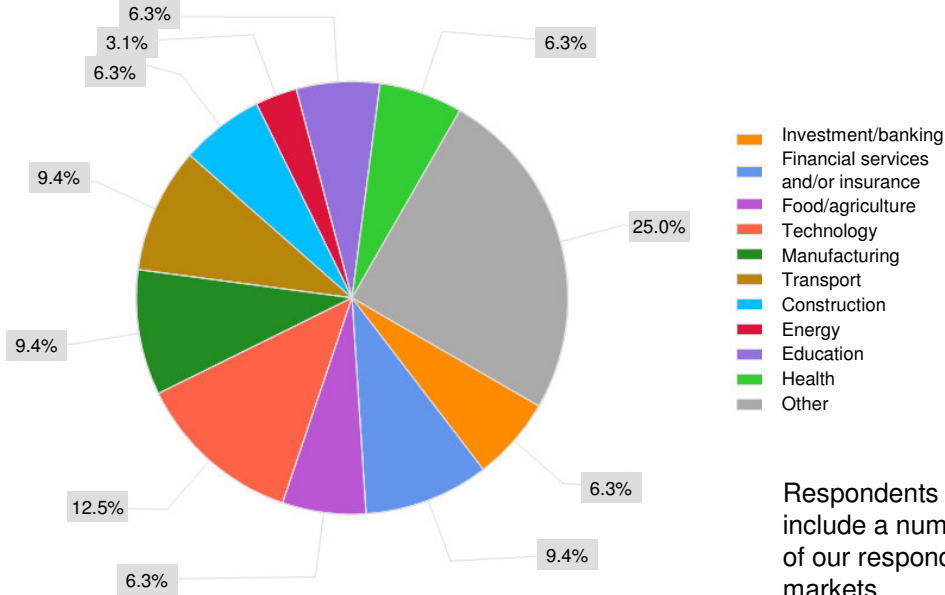
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Setting the scene

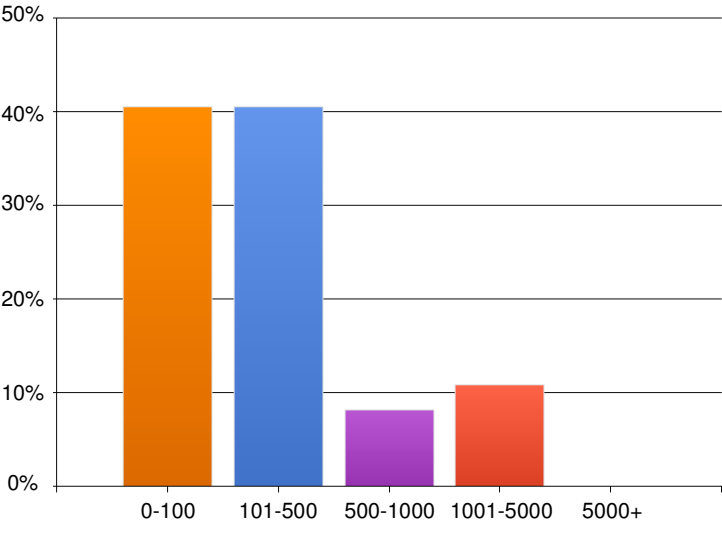
Analysis of respondents by sector:

Qu. Which of these best describes your business?



Respondents in the “other” category include a number of retailers. 60 per cent of our respondents operate in overseas markets.

Analysis of respondents by number of employees:



Most respondents have less than 500 employees. 70 per cent also engage contractors to fulfil manpower requirements.



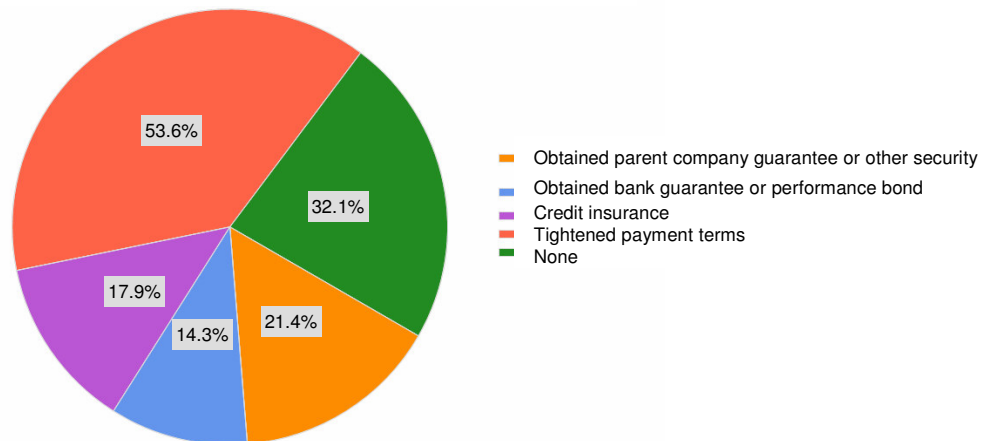
Risky business?

Dealing with third parties is at the heart of commerce but it has become riskier. When you contract with someone, do you review the terms and conditions carefully enough and are you satisfied about that party's creditworthiness? Is it stable and secure or could you be left with a bad debt or unperformed obligations? Is there anything you can do to mitigate these risks at the outset, protecting your own business and ensuring you customers are not let down?

When it comes to preparedness for the insolvency of a supplier, our survey produced quite worrying results and we think some businesses could do more to protect themselves without losing competitiveness. The results show that only around 40 per cent of respondents have prepared a contingency plan in the event of a supplier insolvency. Another 40 per cent have only carried out a risk assessment and 21 per cent are totally unprepared.

To protect against the insolvency of a customer, the majority of respondents have tightened payment terms. This is really the minimum a business should be doing. Other measures include obtaining parent company guarantees or other security, obtaining bank guarantees or performance bonds and taking credit insurance. You should also review contract terms and ensure valid retention of title clauses (if workable) are incorporated into your agreements.

Qu. Which of the following things have you done to mitigate the impact of a customer becoming insolvent?



In uncertain times, an increase in litigation can be expected. The majority of respondents however reported having noticed no change in actual or threatened litigation by customers and/or suppliers in the last 12 months with only a few noticing small changes. This came as a pleasant surprise but might yet be reversed once potential claimants become more confident of their own position and more willing to take up the cudgels against their suppliers and/or customers.

When it comes to threatened litigation from employees and/or shareholders there were only a couple of respondents who had noticed an increase. Many noticed no change at all.

Most respondents are asking for cash up front or have imposed shorter payment terms and/or renegotiated terms. The majority of respondents have renegotiated terms with their suppliers.

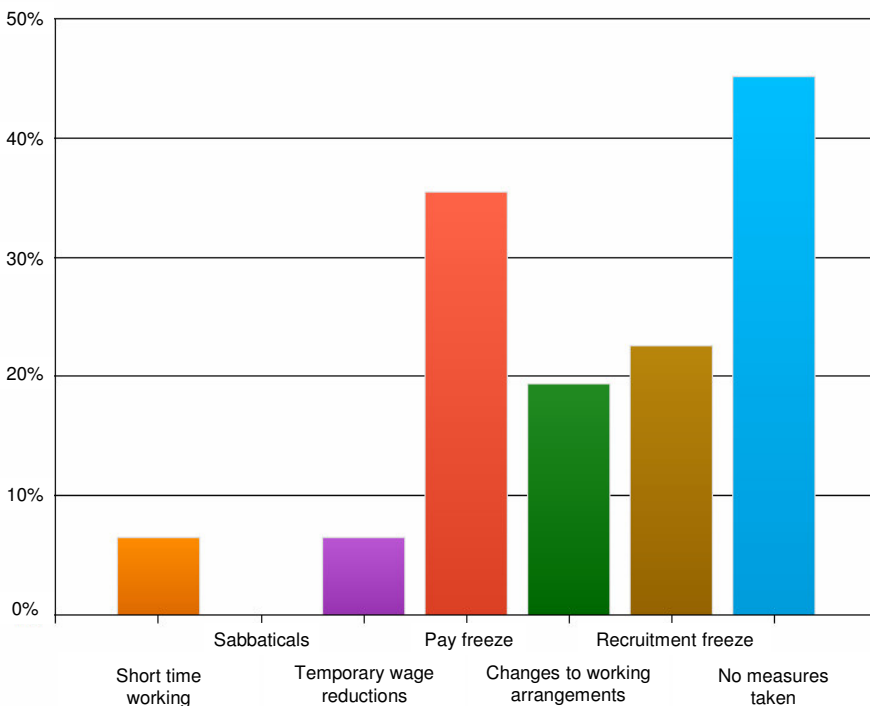
Only around 40 per cent of respondents have prepared a contingency plan in the event of a supplier insolvency

Heads up?

Reducing headcount is frequently one of the first steps during a recession but we were interested to discover whether the trend in some sectors for taking softer measures, such as short time working or unpaid sabbaticals, was spreading. Our survey suggests that, at least among our respondents, it is not and this might be a lost opportunity in some cases.

Just over 70 per cent of respondents have made redundancies in the last 12 months that are attributable to the downturn. Almost half of respondents have not taken any measures to avoid redundancies but those who have chose to implement pay freezes. Interestingly no respondents chose to offer sabbaticals and only small numbers had implemented short time working or temporary pay cuts. These and other soft measures can allow businesses to retain their most talented people during a downturn and to avoid redundancy costs (as well as the costs of rehiring in an upturn). Individuals' terms and conditions need to be considered and appropriate consultation undertaken but we would urge businesses not to discount these measures by jumping straight into redundancies.

Qu. Measures taken to avoid redundancies



On a more positive note, over 70 per cent of respondents reported that they have noticed no drop in morale. There was an even spread of businesses that have noticed their employees feeling less content because of longer hours, uncertain working conditions, pay freezes or fear of redundancies.

We would, nevertheless, urge businesses not to underestimate the effect on employees in these uncertain times. It is important for businesses to continue to engage with and provide information to their employees to ensure that the "psychological contract" remains unbroken.

What is encouraging to see is an acknowledgement that there are human resource opportunities in this climate. When it comes to recruitment 30 per cent of respondents have been hiring and even over-hiring stating that there is good talent available. A further 30 per cent have not changed their approach to hiring at all. Only a few respondents say they have stopped recruiting or have adopted a more cautious approach.

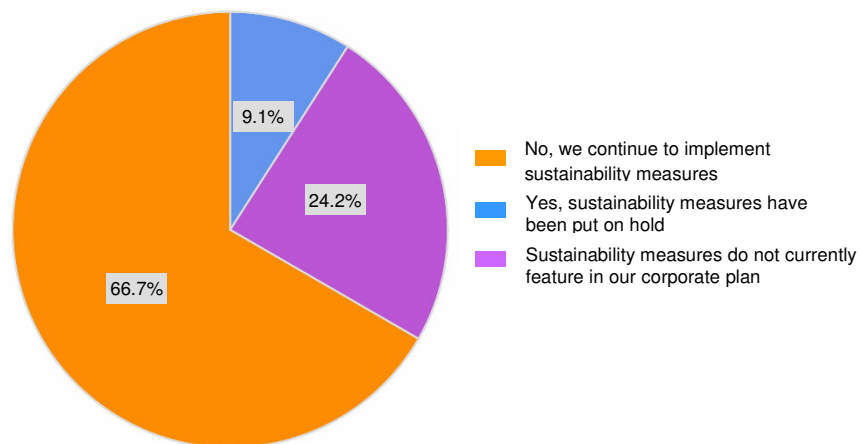
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Green shoots; green issues

In the absence of inspiration from something more celestial, respondents seem to be sticking with what they know. In the last 12 months reducing head count and costs generally was part of the hunkering down necessary in the teeth of such a fierce economic storm. It is going to take a long time to recover while rising taxes and tight public spending will leave businesses feeling the pinch for some time yet. In the coming 12 months many will be reducing costs and some will be looking to diversify into new areas and possible mergers depending upon their level of confidence. No-one reported an existing or potential need to initiate an insolvency process.

We expect that compliance with bank covenants will be challenging for many and this has been borne out by the levels of enquiries to our banking teams from clients concerned about their existing facilities and renewal terms. However, the majority of our respondents in the survey do feel completely confident that they will not need to approach lenders on this front, with the balance of respondents feeling fairly confident. The HMRC “time to pay” arrangements and delayed payment of business taxes have only benefitted 12 per cent of respondents. The majority of respondents have not benefitted at all.

Qu. Has the economic climate impacted on your willingness or ability to implement sustainability measures?



Sustainability and green issues remain a hot topic. For many of you the economy hasn't impacted on your plans. 66 per cent still view sustainability as a core part of doing business. There has been speculation that “being green” is a luxury that could not be afforded for a time. It appears that this isn't necessarily the case for most of our respondents.

Over 50 per cent were optimistic about the economic outlook and see it as mildly or very positive. 30 per cent of respondents see it as mildly or strongly negative. Over 50 per cent of respondents say they have been moderately affected by the economic downturn over the last 12 months while (not surprisingly) only 18 per cent have seen a positive improvement. A quarter of respondents see no negative impact of the recession in the future but nearly half see it impacting negatively for longer than the next 12 months.

66 per cent still view sustainability as a core part of doing business

About Mills & Reeve LLP:

Who are we:

“According to clients, Mills & Reeve is a ‘serious player’ in the market and houses a ‘great bunch of lawyers who provide a great service’. Furthermore, ‘the solicitors are practical, solution-focused and very in tune with what is important to our business’.”

Chambers UK 2009.

Our team:

Our Restructuring and Insolvency Group has extensive experience in advising on restructuring deals and formal insolvencies for the stakeholders of distressed businesses.

Our core team is supported by leading corporate and banking lawyers who regularly work on insolvency matters and work outs.

According to *Chambers* legal directory we are described by our clients as “a superb team” providing “City-quality work at flexible, local prices”. The team is supported by specialists in tax, intellectual property, real estate, litigation, arbitration, construction, employment and pensions.

The team has particular experience of restructuring and insolvency work in the following sectors – agribusiness, construction, education, energy, food, healthcare, manufacturing, real estate, service industries (including law firms!) and technology.

Our experience includes advising:

- on solvent reorganisations and restructurings;
- parent company guarantees, security, performance bonds, documentary credits and other security interests;
- all aspects of credit, legal, insolvency and counterparty risk;
- on the appropriate choice of jurisdiction for restructuring cross border businesses;
- on restructuring schemes to assist financially distressed businesses;
- directors and shareholders, investors and lenders – each with a specific agenda and focus;
- buyers of distressed businesses and assets and their funders;
- insolvency practitioners on all formal corporate and LLP insolvency procedures including administration, administrative receivership, provisional liquidation, liquidation, corporate voluntary arrangements, s110 restructuring, schemes of arrangement and court appointed receiverships;
- in relation to insolvency litigation – for insolvency practitioners or in the supply chain under commercial contracts.

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