Believe me, of course I won't let you down

The practice of setting up serial 'phoenix companies' – as recently reported in *The Huddersfield Examiner* – gives the whole of the window industry a bad reputation. So, why don't more of us cry foul? Alan Burgess, managing director of Masterframe Windows asks why the window industry fails consistently to do more to denounce the serial abusers.

Most of those in the window trade are thoroughly professional; in the business to make a product, provide a service and grow, for the good of themselves and their customers. But the persistent public perception is of dodgy dealers and cowboy installers. A recent survey showed that window salesmen are seen as less trustworthy than estate agents and secondhand car salesmen, proves difficult to demolish. When the quality of product and installation is far better than ever before, why is this perception so outdated and so far from reality?

Recently, a small proportion of people in the industry have given it a terrible name. They have another agenda, whose only beneficiary is themselves and to exploit the potential to rip off suppliers, customers, and employees too.

TAKING SUPPLIERS FOR A RIDE

The practice of setting up 'phoenix companies', by running firms into the ground to wipe out debts, damages everyone in the industry, not just those immediately affected by lost jobs, money and damaged reputations. Those who do this exploit loopholes in the law which enable them to move on quickly, setting up one firm after another. For some, it can become addictive. Like a street magician trying the old 'which cup is the ball under' trick, if they keep moving fast enough, you never catch up.

"Whether you are an employee, supplier or a customer of such a [phoenix] company, it is time to stand up and blow the whistle" – Alan Burgess, Masterframe.

ROGUE DIRECTOR

A recent example, as cited in *The Huddersfield Examiner*, is of a well known figure in the window industry, who has gone through 28 companies in just four years. According to the article, the rogue director admitted to 'running firms into the ground to wipe out debts'. In 1997, he registered eight companies – all with slightly different names. Six went into liquidation just a week later and the other two were dissolved in 2001.

Former workers who have not yet been paid, could be in for a long wait for their money because the taxpayer may have to foot the bill if no assets are left over after the liquidator sells the director's most recent company. Meanwhile, Manchester based window stockist, Magden, also reported problems and says the offending company obtained deliveries in the past by presenting cheques which were then immediately stopped. Receiver, BWC Business Solutions, states that there is little chance of home owners with small claims getting their money back.

But now Huddersfield MP, Barry Sheerman, is demanding action and calling for a top level solution to plug the trading loophole which allows directors to set up these 'phoenix' companies. *The Huddersfield Examiner* has passed on its findings to Alan Johnson, the

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Secretary of State for Trade and Industry, at the request of the Insolvency Service.

A GROWING TREND

The window industry is not the only one where this behaviour has become common place. The construction sector as a whole has seen examples of phoenix trading for a variety of reasons. It has recently become prevalent again in response to increased competition after the slowdown of the property market at the end of 2004. In order to maintain sales, companies selling goods, from lighting to bathroom and kitchen fittings, were forced into promotional warfare with one another.

Undercutting, an increase in lost leaders and promises to customers that were supposed to add value, were all pulled out of the bag to maintain market share in a demanding and diminishing homes marketplace. But these practices cannot be sustained when long term profitability is at stake. Customer offers, like product lifetime guarantees, become untenable when returned goods have to be replaced and refitted at no extra cost. Companies can struggle to honour price and replacement promises, particularly if there is stiff competition and businesses begin to undercut one another for custom, selling at unsustainable prices.

Dumping the offending company and starting afresh, using the same suppliers and distributors after a minor name change has proven to be the answer for some unconcerned about flouting the law.

THE LAW IS NOT AN ASS

Many believe that the phoenix company phenomenon is due to rise in response to the updating of bankruptcy laws. Previously, bankruptcy would typically last for between two and three years but now bankruptcies can be discharged after only 12 months. However, contrary to what might be rumoured about the Enterprise Act 2002 (which became law in April 2004) – which states that certain classifications of bankrupts could be discharged in a year – this is unlikely to happen in most cases.

The wanton and serial bankrupts should take heed though. Where it is believed the debtor has brought about the bankruptcy through their own irresponsible or imprudent conduct, there are now more severe consequences. Those who have been bankrupt before are liable for a minimum period of bankruptcy of five years, continuing for up to 15 years before being discharged.

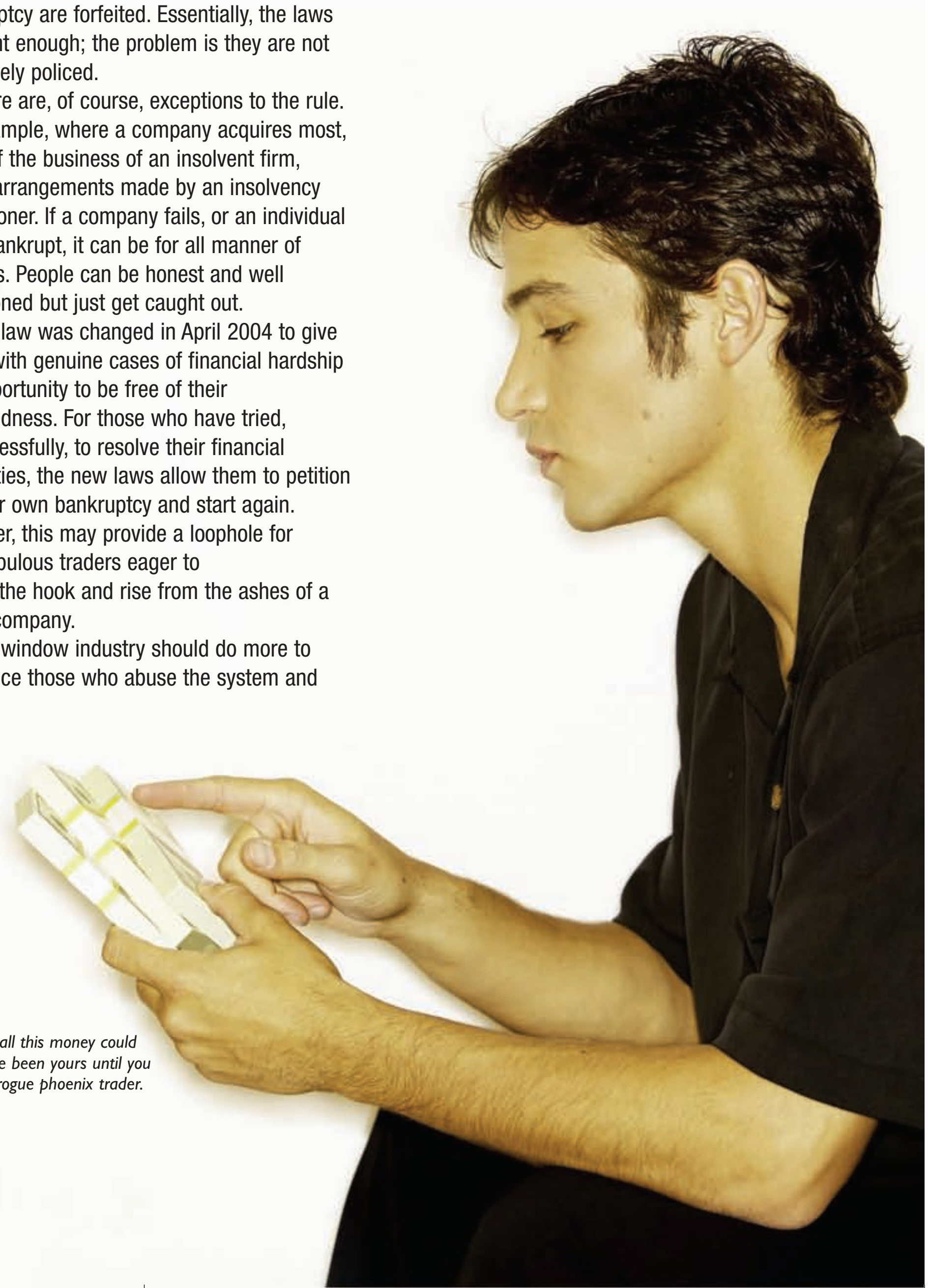
Section 217 of the original Insolvency Act 1986 details that a person who is involved in the management of a company in contravention of Section 216 is personally liable for the debts of the company incurred during the period of that involvement. Those who think that putting the company in a partner's or spouse's name will exempt them from liability are on shaky ground. This is regarded as a criminal activity by The Trustees in Bankruptcy and assets earned during the bankruptcy are forfeited. Essentially, the laws are tight enough; the problem is they are not effectively policed.

There are, of course, exceptions to the rule. For example, where a company acquires most, or all of the business of an insolvent firm, under arrangements made by an insolvency practitioner. If a company fails, or an individual goes bankrupt, it can be for all manner of reasons. People can be honest and well intentioned but just get caught out.

The law was changed in April 2004 to give those with genuine cases of financial hardship the opportunity to be free of their indebtedness. For those who have tried, unsuccessfully, to resolve their financial difficulties, the new laws allow them to petition for their own bankruptcy and start again. However, this may provide a loophole for unscrupulous traders eager to get off the hook and rise from the ashes of a broke company.

The window industry should do more to denounce those who abuse the system and give all of us a bad name. Serial abusers are people who effectively make a living by defrauding others. In its raw form this is theft. So why don't more of us cry foul? Whether you are an employee, supplier or a customer of such a company, it is time to stand up and blow the whistle (calling charity helpline Public Concern at Work* could be one option). This practice puts the whole industry into disrepute. And deliberately trading insolvently is not only morally wrong, it's illegal.

For further information, contact Alan Burgess, tel: 01376 510410. *Call Public Concern at Work on 020 7404 6609, or e-mail: helpline@pcaw.co.uk



To think, all this money could once have been yours until you met the rogue phoenix trader.