

INSOLVENCY, RESTRUCTURING & REFINANCING

Autumn 2021 Online Conference

An Entrepreneurial
CASE STUDY

Session 1 - Development but Failure of Pioneer Company

Brian, an IT nerd, and Andy, a financial adviser, are avid golfers, always thinking up new ways to improve their game and lower their handicaps. Although there are several golf simulation games on the market, Brian has created what he believes to be a unique combination of professional training tool with an enjoyable and competitive gaming experience.

His game is played using the player's own golf clubs and a camera that plugs into a computer, laptop or TV with a simple USB. The camera detects the club's motion as it comes into contact with a ball tethered to a turf pad which sends a signal to the computer as to how it is struck. The software takes images of the club swing from the camera, and the ball connection from the turf pad, and calculates the shot based on (a) brand and type of club the player selects; (b) the speed of the club on contact; (c) the elevation angle of the club on contact; (d) how far the club strikes the ball from the centre of the club head; and (e) whether, and the extent to which, the club imparts spin to the ball, resulting in a hook, draw, fade or slice. That information would enable the final position of the ball to be calculated and provides input for a further uniqueness of the game, which is the real-time feedback showing the player their errors, give personalised recommendations for landing a better shot, and give players the ability to watch their swing back from various angles.

Brian intends to acquire licenses of images of famous golf courses around the world so the players can experience immersive gameplay with variations of distance, wind speed and course gradients to challenge their game, whilst the camera reflects drives, fairway shots, bunker play and putting strokes. Andy thinks the project could create considerable revenue through sponsorship and advertising opportunities, and the pair decide to make a not inconsiderable investment to get the project under way.

They are convinced the technology works, and they create a company, Brandigolf Ltd, and reach out to patent attorneys to see if they can protect their game and whether they can afford patent applications.

They then approach a manufacturer Andy advises to quote for making the camera, the turf pad and other hardware which they intend to sell online through a global distribution platform, and which need to marry up with an App they can license to end users.

To pay for prototypes and the manufacture of sufficient quantities of the cameras and turf pads to make the launch of the App successful, they raise money from friends and family (including wealthy golfing buddies) who take advantage of investor schemes such as the EIS scheme in the UK. In order to structure their business to protect their IP and reflect a substantial organisation, they create a holding company which will own Brandigolf Ltd, as well as a newly created IP company, and take advice as to where this should be located.

The company is initially successful but faults develop with the turf pads which affects the way the trajectory of the golf swing is shown on the screen, and customers return the turf pads demanding refunds. This creates significant adverse cash flow issues for Brandigolf, and the directors discuss with insolvency experts how they can rescue their idea through a Company Voluntary Arrangement or a Restructuring Plan. Brandigolf starts legal proceedings against the manufacturer and at the same time the pair consider their options as to how they can rescue the company. They are advised that in the short term, in order to protect the company and its business from creditor actions, they should take advantage of the new moratorium procedure created during the recent pandemic. This will allow them time to formulate a proposal to their creditors, potentially in the form of a CVA or other arrangement.

During the moratorium period however, the Company's cash-flow position worsens significantly and unfortunately the manufacturer of the turf pads goes into liquidation. As a result, Brian and Andy are advised that the Company should be placed into administration.

Session 2 - Resurrection and Ultimate Success of Phoenix Company

As part of a new plan to rescue the concept, a new company is created called Anian Golf Ltd. While it is intended that Anian will source a new manufacturer of the turf pads, it will require the technology created by Brian to restart the business. Anian will be backed by sufficient cash raised from a venture capital fund which will hopefully allow the company to develop more securely than its predecessor.

The insolvency expert advises Brian and Andy that the business and assets of Brandigolf can be purchased by Anian, and an asset purchase agreement is agreed which will take effect as and when Brandigolf enters into administration. They have to consider, among other issues, how the existing license agreements for the courses around the world can be transferred to Anian Golf Ltd as well as potentially third parties.

The new company secures better manufacturing materials and prices for both the cameras and the turf pads, and then develops a very sophisticated sponsorship and marketing program.

It needs to acquire space on servers in different locations on which its algorithms can support the Apps sold through its e-commerce platforms along with the cameras and turf pads. These algorithms are designed to produce the USP of the entire business concept, which is the interaction of information from both the cameras and the turf pads along with the feedback explaining where the user has made errors in calculating wind, gradient, distance, club selection, swing style, putting strokes and other issues which the golfer would experience on a real course.

The venture capital fund introduces the concept to others in the private equity world of finance, and together they have the idea of creating a cryptocurrency which would be called the Anian, and would be offered to all golfers as the golfing 'bitcoin'. These could be earned by players as a reward for excellent shots, winning mini challenges or online tournaments, and could be exchanged at all participating golf courses for green fees, coaching fees or golfing products.

The Anian cryptocurrency takes the market by storm, with golfers around the world clamouring to purchase the currency, and golf clubs recognising the benefits of attracting currency holders through offering products with Anian alternatives in addition to the dollars, sterling or euros marked for the fees or products. The IP rights to the Anian could become more valuable than the e-commerce sales of the cameras with the App attached, and the private equity firms wish to separate the Anian from the company. A new company is created in which Andy would have a minimal interest, and in which a new management team is employed. Brian is aware that his earn-out will be affected by the transfer of rights to the Anian to the new company, and seeks legal advice as to his rights.

Unfortunately, Brian and Andy fall out and disagree on how the company can move forward with its existing and new private equity partners. Lawyers get involved in an acrimonious argument about share rights, valuations and how the two can either move forward together or agree who should pursue the company's future.

The private equity firms are alarmed and threaten to 'pull the plug' with the security they hold if the two cannot reach a settlement. Eventually, Brian agrees to sell his shares to the venture capital fund with an earn-out mechanism reflecting future growth of the company.

Andy and Brian then meet to discuss how their interests have been materially changed by the private equity firms, and the two agree to co-operate to resolve the situation. Eventually, a deal is agreed with the private equity firm that the new company becomes a subsidiary of the new holding company of Anian Golf Ltd in order for Brian's rights to be protected, and also so that Andy's interest in Anian Golf Ltd and the Anian is preserved.

All parties now agree that the way forward is to raise capital on either the main or secondary markets of either the New York or London stock exchanges, and the management team employed to develop the Anian are now tasked to create a prospectus detailing the current trading and future prospects of Anian Golf Ltd and the subsidiary's Anian prospects.