Lyddon
CONSULTING SERVICES LTD

07939 132341
enquiries@lyddonconsulting.com
www.lyddonconsulting.com

Kwasi Kwarteng's British Business Bank wastes at least £5 million of public money by buying a stake in Bolton Wanderers

Introduction

It was recently revealed that the British Business Bank has made us a part-owner of Bolton Wanderers Football Club.[1] The British Business Bank's sole shareholder is Kwasi Kwarteng's Department of Business, Energy and Industrial Strategy, and it also works closely with HM Treasury under Rishi Sunak.[2] The investment was made through the 'Future Fund', designed to support exciting fledgling UK businesses: Bolton Wanderers was founded in 1874. A £5 million investment was made in the form of a convertible loan to a company with a negative Tangible Net Worth of over £16 million at the time.[3] The loan was switched a year later for a reported 8% stake in Bolton, which was neither creditworthy as a borrower, nor had it profit potential for a shareholder. It would likely have been unable to repay the investment as a loan, and as a shareholding our stake is worthless and illiquid.

The British Business Bank thus converted £5 million of real taxpayers' money into a shareholding worth (£1.3 million)[4]. There are also three important unanswered questions. Firstly, what is the shareholding of the taxpayer? Is it the 8% reported in the press, or anything up to 30% based on the movements in Bolton's share capital between October 2021 and now? Secondly, is the taxpayer's stake owned only through the British Business Bank or has it been farmed out to associated government entities in order to avoid any of them having to disclose at Companies House that they are a 'person with significant control'? Thirdly, does the British Business Bank (or any other UK public entity) now share the liability of shareholders, referenced in the borrower's accounts, to cover any future shortfalls of cash as and when they occur?

How much of Bolton the British Business Bank owns

The Bolton News originally broke this story, reporting the stake as 8%. Our analysis of the documents filed at Companies House indicates that it could be as high as 30%. Since October 2020 the club has filed a series of returns about alterations to their share capital, first reducing it from £2.75 million to £2 million by extinguishing 750.000 shares of £1 each.[5] Then 2.125.046 new £1 shares were allotted, and to the creditors under three different loan facilities.[6]

---

[1] https://www.theboltonnews.co.uk/news/19878292.government-future-fund-loan-share-conversion-affect-bolton-wanderers/?ref=rss accessed on 27 January 2022
[2] British Business Bank Annual Report, p. 47 column 3
[3] This analysis draws on the Football Ventures (Whites) Ltd annual report and accounts to 30 June 2020, from Companies House, hereinafter referred to in these footnotes as 'FVWL AR'
[4] Negative numbers are stated in brackets: (£1.3 million) means minus £1.3 million
[5] Reduction of share capital notice filed on 1 November 2021
[6] Statement of capital post allotment filed on 11 November 2021

© Lyddon Consulting

The three loan facilities were listed in the filing in this order as:

- A loan of £3 million plus accrued interest[7]
- Loan notes of £4.5 million plus accrued interest
- A loan of £5 million plus accrued interest – the British Business Bank's loan

The statement does not explicitly link the share allotments to the loans, but the allotments were made on 29 October 2021, are all of the same type of share (now 'A Ordinary') and are listed in the filing in this order:

A. 607.623 at £8.48476 each, valued therefore at £5,155,535.32
B. 117.857 at £8.4876 each but 'unpaid', valued therefore at £999,998.36
C. 1.399.566 at £6.7878, valued therefore at £9,499,974.10

If the British Business Bank was allotted 1.399.566 shares, that is 30% of the 4,596,480 A Ordinary shares in existence now. One hopes not, since the inference would also be that the British Business Bank paid in another £4 million+ to acquire this stake.

Directly after the allotment in October 2021 the share capital was 4.125.046 shares of £1 par value (aka face value). A further filing by the company attests to the allotment of a further 471.434 A Ordinary shares of £1 to two different, undisclosed parties (412.505 to one, and 58.929 to the other), and of a new class of 241.920 B Ordinary shares of £0.0001 (with no voting rights) to an undisclosed party in January 2022.[8]

More filings may follow

1. to attest to the designation of all existing Ordinary shares thenceforth as A Ordinary shares;
2. to attest to the creation of the new class of B Ordinary shares;
3. to attest to the authorisation of the directors to issue these new A and B Ordinary shares;
4. to resolve the anomaly in the number of A Ordinary shares: the addition of the 471.434 A Ordinary shares referenced above to the total after the transactions in October 2021 of 4.150.546 makes a total of 4.621.980 A Ordinary shares, and not the 4.596.480 stated in the return of 21 January 2022. This is an anomaly of 25.499 A Ordinary shares which have apparently been allotted but which appear to be in excess of the company's authorised share capital.

We really do need to know what shares the British Business Bank was allotted upon conversion, whether it had to make an extra payment for them, what the company's share capital now consists of, and how many of the A Ordinary shares the British Business Bank now owns.

This is for good order's sake as it does not matter in a material sense. The investment is worthless, whether it is 8%, or 30%, or anything in between.

The three loans were converted because the company was unable to service them as loans: it was unable afford the interest payments now, or the future repayments of capital.

---

[7] Presumably the Unsecured Shareholder Loan Facility mentioned in the June 2020 accounts in FVWL AR Note23, p. 31

[8] Statement of capital following an allotment of shares filed on 21 January 2022

© Lyddon Consulting Ltd 2014

The company was not creditworthy as a borrower. The loans were used to pay off other creditors and to cover ongoing losses. The losses remain ongoing. An open question is how ongoing losses are being covered now, and how they will be covered in the future.

Unsecured Shareholder Loan facility signed in February 2021[9]

At least we can be comforted that the British Business Bank was not already a shareholder when the shareholders agreed to the £3 million unsecured loan facility in February 2021 that was 'capitalised' on 29 October 2021, and is the first of the three loans listed in the filing referred to above.

How much was the British Business Bank owed when its loan was converted

We know that the interest rate on the £5 million convertible loan was set at 8% per annum, and that the loan was signed on 28 August 2020.[10] We do not know the pay-out date from which interest accrued, but we can assume it was a month later, on 28 September 2020. We know that accrued interest was added to the £5 million principal and then converted into shares. The allotment date for the shares was 29 October 2021 so thirteen months of interest would have accrued by then, which is 365 + 31 days from 28 September to 29 October 2021 = 396 days. £5 million x 8% x 396/365 = £433,972.60. So, on this basis, the British Business Bank was owed £5,433,972.60 on 29 October 2021, The British Business Bank has never received any cash out of its investment: the borrower did not manage to pay a penny of interest on the loan, there have been no dividend payments since the loan was converted, and the shares are unquoted: the British Business Bank cannot sell them.

Eligibility for financing from the 'Future Fund'

The reason that this transaction was eligible for financing from the 'Future Fund' is that Bolton Wanderers went into administration in 2019 and was bought out of it by Football Ventures (Whites) Limited. This company was new, founded in 2019, and it is the one that the British Business Bank has financed.[11] The company's accounts for the year to 30 June 2020 are given for both the Group,[12] and for the Company itself,[13] the latter being the holding company that owns the other Group companies, albeit not all directly.

Football Ventures (Whites) Limited bought the football club and the series of subsidiary companies associated with it, taking over several loans secured on assets like the hotel and conference centre connected to the stadium.[14] This occurred after 1 July 2019, as witnessed by the treatment of Intangible Assets: at 1 July 2019 they were zero, and everything that is owned was added after that date.[15]

---

[9] FVWL AR Note 23 p. 31
[10] FVWL AR Note 23 p. 31
[11] https://www.business-live.co.uk/enterprise/bolton-wanderers-settle-debts-two-21473183 accessed on 26 January 2022
[12] FVWL AR pp. 8-10, p.12 and p. 14
[13] FVWL AR p. 11, p. 13 and p. 15
[14] FVWL AR Note 13 p. 28
[15] FVWL AR Note 10 p. 26

© Lyddon Consulting Ltd 2014

What the new company paid and its Intangible Assets

The new company paid £16 million more for the pre-existing enterprise than the tangible value of its assets. £6 million of this was 'Goodwill' (the excess price paid for an enterprise over and above the value of all the assets stated on its balance sheet) and the other £10 million acquired the enterprise's pre-existing intangible assets. These were overwhelmingly the cluster of assets termed as 'Intellectual Property'. This includes items like the club logo, which could theoretically be used to drive future income, but will also contain transfer fees paid for players. These fees are amortized over the life of the player's contract, since the player can leave the club without any transfer fee at the end of their contract.

The £16 million value of these Intangible Assets (Goodwill plus Intellectual Property) had been amortized by £700,000 to produce a value in the June 2020 accounts of £15.3 million.

It is noteworthy that there could be a latent asset in the form of a contracted player who was acquired for a very low or no transfer fee, who has some time left on their contract, and might have a transfer value. Academy players would fall into this category.

The convertible loan and the borrower's creditworthiness

The British Business Bank signed its convertible loan to the company on 28 August 2020.[16] The company's loss for the year to 30 June 2020 was £3.8 million.[17] Its 'Total equity' at the same date was (£1.1 million).[18] This (£1.1 million) accepted the value of £15.3 million for Intangible Assets. If those were reversed out, the company's 'Tangible total equity' was (£16.4 million). The company was technically bankrupt at both these levels, which are more commonly referred to as 'Net Worth' and 'Tangible Net Worth'.[19]

This is simply a company one should not lend money to on an unsecured basis as the British Business Bank did. The company failed all acid tests of creditworthiness:

- The enterprise was illiquid[20]:
  - Currents Assets of £1.7 million were £6.8 million less than Current Liabilities of £8.5 million[21]
  - the Working Capital Ratio was 20%[22]
  - the Quick Ratio – which excludes Stocks of £190,000 – was 18%[23]

---

[16] FVWL AR Note 23 p. 31
[17] FVWL AR p. 8
[18] FVWL p. 10
[19] 'Net Worth' is all assets less all liabilities and is the same measure as Bolton's 'Total equity'; 'Tangible Net Worth' (synonymous with 'Tangible total equity' in Bolton's case) deducts back any Intangible Assets first, to ascertain tangible assets, and then deducts all liabilities from that figure
[20] 'Liquid', in this context, means having the financial resources to meet its obligations as they fall due
[21] FVWL AR p. 10
[22] The Working Capital Ratio is Current Assets divided by Current Liabilities. The time-horizon is by definition one year, as any asset or liability with a maturity over one year is not 'Current'. The ratio measures a company's ability to meet its obligations as they fall due over that period. The ratio must be above 100% or the company is loss-making
[23] The Quick Ratio is (Current Assets less Stocks) divided by Current Liabilities. The time-horizon is limited to assets likely to turn into cash in up to 90 days, hence Stocks being eliminated. The resulting percentage will naturally be lower than the Working Capital Ratio, but it should be in the range of 60-70%.

© Lyddon Consulting Ltd 2014

- The enterprise was loss-making – a (£3.9 million) post-tax loss was posted for the year to 30 June 2020
- The enterprise had an Interest Coverage Ratio below zero:[24]
    - Earnings before Interest and Tax were (£3.5 million), which is the same as its 'Operating Loss'
    - Its interest bill was £434,278
    - 434.278 divided by (3.5) million is a negative
- The enterprise had negative Net Worth
- The enterprise had a minority of tangible assets[25]
    - only £13.9 million out of £29.2 million of assets were tangible
    - These were Current Assets of £1.7 million plus £12.2 million of tangible Fixed Assets
- The enterprise had a very large negative Tangible Net Worth
    - 52% - £15.3 million - of Total Assets of £29.2 million were intangible
    - With Net Worth already negative at (£1.1. million), Tangible Net Worth was (£16.4 million)

How a proper bank would have evaluated the borrower's creditworthiness and the loan's viability

The British Business Bank is not regulated/authorised by either the Prudential Regulatory Authority or the Financial Conduct Authority. Like the European Investment Bank, the European Investment Fund and the InvestEU programme (formerly known as the European Fund for Strategic Investments), it has a public mandate to supply development finance. This type of mandate is often taken by its holders to mean the supply of finance on terms and/or for maturities not available through commercial banking markets, or else the supply of finance at junior levels of capitalisation (unsecured finance when other lenders are secured, subordinated finance when other lenders are unsecured and so on). The risk management in such situations should draw as far as possible on the methodologies used in commercial banking markets, rather than inventing one's own risk management methodologies or having none at all.

Commercial banks typically run a Risk-Adjusted Return on Capital methodology to evaluate the creditworthiness of their customers and the risks of individual pieces of business.[26]

As a customer, Football Ventures (Whites) Limited would have received a Customer Risk Rating of 16 or 17, on a scale between 1 and 20.[27]

---

[24] https://www.investopedia.com/terms/i/interestcoverageratio.asp accessed on 7 February 2022

[25] FVWL AR p. 10

[26] Risk-Adjusted Return on Capital methodology – a methodology laid down by financial regulators to ensure a bank has an adequate loss cushion in the form of capital to absorb losses from the business it is doing. It can also be referred to as an Internal Ratings-Based methodology, as it is based on the bank's own assessment of the customer and of each piece of business undertaken with a customer.

[27] Customer Risk Rating – the first main dimension for measuring the risk of loss inherent in a piece of business, namely the quality of the counterparty with whom the piece of business is being contracted. 1 is the best rating; 20 is the worst, indicating a customer that is in liquidation. 18 and 19 would indicate a customer in administration, depending upon the stage of the process reached and how much the administrator believes will have to be written off by creditors (such as the bank) in order for the customer to escape liquidation

© Lyddon Consulting Ltd 2014

In addition the circumstances around and the terms of the proposed loan offered the lender extremely weak assurance of repayment:

- The enterprise had recently been in administration
- The direct borrower – the holding company set up to take the enterprise out of administration – was a start-up
- The loan was made to a holding company whereas assets were owned in subsidiaries[28]
- Other creditors were secured on the assets[29]
- There were no 'upstream' guarantees from the subsidiaries so that at least the lender could have a direct claim on the companies where the assets were owned, even if it would have been effectively a subordinated claim by dint of other creditors being secured

The loan would have received a Facility Risk Rating of 16 or 17 on a scale between 1 and 20.[30]

How much capital a proper bank would have allocated to the loan, had it not been convertible

Combining this very poor Customer Risk Rating with the very poor Facility Risk Rating would have led to the loan being accorded a very high Credit Conversion Factor (CCF).[31] The CCF captures the 'at risk' value of the loan, against which the bank must set aside a given quotient of capital. This quotient, known as the Regulatory Capital Threshold, is normally in the order of 8% of the 'at risk' value.[32]

This is less complicated than it appears. The CCF is produced by an algorithm based on historical losses deriving from lending to bad customers (Customer Risk Rating) and lending in a bad manner (Facility Risk Rating). The CCF is in the form of an exponentially-shaped curve, anchored on 0% (which applies to lending to the UK government in £sterling) and with a maximum value of 1,250%. The CCF is applied to the nominal value of a piece of business and the result is the risk-adjusted value of the piece of business. The Regulatory Capital Threshold is then applied to the risk-adjusted value of the piece of business to calculate the amount of capital the bank has to allocate as a loss cushion when it takes on that piece of business.

---

[28] FVWL AR Note 13 p. 28

[29] FVWL AR Note 17 p. 29

[30] Facility Risk Rating – the second main dimension for measuring the risk of loss inherent in a piece of business, namely the nature of the piece of business itself (loan, guarantee, foreign exchange..), its maturity date, the value of any security and guarantees, the impact of contractual clauses and similar

[31] Credit Conversion Factor – a percentage, resulting from the combination of the Customer Risk Rating and Facility Risk Rating, and applied to the nominal amount of the piece of business, which magnifies or diminishes the nominal amount to derive the risk-adjusted amount and drive the amount of capital to be allocated to support this piece of business

[32] Regulatory Capital Threshold – the minimum percentage, determined by financial regulators in the light of global accords, of capital that a given bank must have of its risk-adjusted volume of business. A good average is 8% but this will rise for very large banks that are considered to be of 'systemic importance', either on a national or global level. When the Financial Conduct Authority runs Stress Tests on a bank, it frequently communicates that the bank had surplus capital; by this it means that its capital was higher than the Regulatory Capital Threshold demanded by the risk-adjusted value of the bank's business

© Lyddon Consulting Ltd 2014

A run-of-the-mill loan of £5 million of mean credit quality would attract a CCF of 100%: its ‘at risk’ value would be exactly the same as its nominal value: £5 million.[33] The Regulatory Capital to be set against it would then be £5 million x the Regulatory Capital Threshold of 8% = £400,000.

This loan to Bolton had so high a risk of loss that 7 or 8 times as much capital should have been set against it. The CCF ought to have come out at 700-800%, causing the British Business Bank to set aside £5 million x 700-800% x 8% = £2.8-3.2 million.[34] That would have been 56-64% of the loan’s value.

However, these figures would apply to a loan without a conversion option in it. The existence of the conversion option in this case ought to have caused the British Business Bank to set aside even more capital.

How much capital a proper bank would have allocated to this loan, given it was convertible

The loan was converted and into shares worth (£88,000) based on the company’s Net Worth of (£1.1 million) at 30 June 2020, or (£1.3 million) based on its Tangible Net Worth of (£16.4 million) at the same date, if the shareholding was 8%: these values would have been correspondingly worse if the shareholding was more than 8%. We do not yet have the equivalent figures as at 30 June 2021, or on the date of the conversion (29 October 2021).

The Credit Conversion Factor applied to the loan should actually have been 1,250%: with a Regulatory Capital Threshold of 8%, the bank would then have had to set aside capital of the exact amount of the loan and on the very same date the loan was paid out. The £5 million loan loss cushion would have catered for the chance of the £5 million loan not being repaid, that chance being 100%.

A Credit Conversion Factor of 1,250% would in turn have determined that the interest rate be set in the region of 400% per annum: the logic of that is that within 3 months the bank would have received £5 million in interest, with which to replace the £5 million loan loss provision it made on the date the loan was paid out. The original unfunded loss provision would be replaced in its entirety by interest revenues, catering for the bank not getting its principal amount back.

With a funded loan loss cushion of £5 million being held against a loan of £5 million, the loan could have been put on non-accrual and the amount of the debt would not have increased. Instead the interest continued to accrue and remained unpaid at the conversion date: the amount outstanding increased by £433,972.60 to £5,433,972.60 on 29 October 2021.

Why it was certain that the loan would not be repaid as a loan

Requesting an interest rate of 400% per annum would normally be regarded as absurd. No new business is ever contracted on that basis, but it should have been in this case so as to reflect what ought to have been obvious at the outset: the entire amount of the loan was certain to be lost.

---

[33] ‘Mean’ here is the average, neither good nor bad

[34] Loss provision – a reserve that a bank must hold against bad loans; it diminishes the Regulatory Capital that the bank can apply towards meeting its Regulatory Capital Threshold

The British Business Bank received no interest payments before the loan was converted. It looks as though £2.75 million of its loan was used to pay off another lender on 29 September 2020.[35] The company, being illiquid, would have had difficulty in meeting that payment except from the proceeds of raising new loans: the British Business Bank permitted itself to be cast as the Peter who was robbed to pay Paul.

Given Bolton's low credit quality, it was a stone-cold certainty at the date the British Business Bank committed its £5 million loan that this investment would not remain as a loan but would be converted. The British Business Bank should have analysed its investment as a potential shareholder as well as from the perspective of a lender, before agreeing either the loan or that the loan should be convertible into the borrower's shares. Needless to say, the investment fails to pass muster as a potential shareholding as well.

How convertible financial instruments normally work

Before we analyse that, though, it is first worth setting out how a convertible loan normally works, so as to allow us to appreciate how the British Business Bank has turned this on its head too.

The 'Future Fund' loan was made convertible under several scenarios, including if the company was unable to repay the loan at its repayment date.[36] This is tantamount to being at the borrower's option, and it may have been convertible expressly at the borrower's option.

This is an innovation in itself, because convertible financial instruments are traditionally – in the stuffy old world of real banking – convertible only at the lender's/investor's option, not the borrower's. Furthermore the underlying shares should be quoted on a regulated stock market, have a panel of market-makers in place to ensure that there is a liquid secondary market into which the shares can be sold, and therefore to have diverse – and not concentrated - ownership.

The lender or investor supplies funds at an interest rate lower than for an ordinary loan or bond, because the loan/bond has extra profit potential beyond the interest. This potential derives from the option to convert, meaning the option to exchange the loan/bond for a fixed number of shares determined by the loan/bond amount divided by a 'strike price'.

If the shares trade at £8 when the loan/bond is made, the 'strike price' might be agreed at £10, and then the £5 million loan/bond could be converted into 500,000 shares. The lender/investor has upside profit potential if the share price should rise above £10. If it went to £12, the lender/investor could exercise the conversion option, take ownership of the shares without further payment, and sell them through one of the market-makers to realise the return of their capital (500,000 x £10 = £5 million) plus their profit (500,000 x £2 = £1 million).

[35] FVWL AR Note 23 p. 31
[36] FVWL AR Note 23 p. 31

How the convertible loan to Bolton ensured a loss

The motivation for a borrower, if they can convert the loan, is the exact opposite of the lender's: the borrower will exercise the conversion option if the value of their business is falling, if their cashflow will be strained by making the loan/bond payments of capital and interest, and if they can strike out the debt and replace it with worthless shares that are not even quoted on a stock market, especially if the new shareholder will only own a small minority stake and existing shareholders can band together and outvote them on important decisions. This outcome was made all the more certain in the Bolton case by the interest rate on the convertible loan being fairly high at 8%, when the borrower had a negative Interest Coverage Ratio.[37]

Those who organised Bolton's buy-out from administration now own 92%, if the British Business Bank owns 8%. This is a majority easily large enough to outvote the 8% minority shareholder, who has no exit route and therefore no bargaining power. The 92% are owned by a pre-existing association of shareholders, which exemplifies concentrated – not diverse – ownership. There are no market-makers because the shares are not listed on any stock market, regulated or unregulated. The deal for Bolton breaks every rule. What the British Business Bank has allowed to be done to them - or rather to us - betokens utter incompetence at this supposed representative of the taxpayers' interests.

How the value of a shareholding in Bolton should have been evaluated

A shareholder's investment view can be expressed according to the following rule-of-thumb: an enterprise's value is its current Net Worth plus today's value of the next 5 years' cashflow. This particular enterprise's Net Worth was (£1.1 million); Intangible Assets are permitted to be counted in, as these would be viewed as capable of producing cash over a 5-year period, for example in the case of Nestlé's acquiring Rowntree Mackintosh, where Nestlé had a unique opportunity to acquire a cluster of prominent brands. 'Cashflow' would be assessed at the level in the enterprise's Profit and Loss Account of the 'Profit before Interest and Tax', or 'PBIT'[38]. In Bolton's case this was (£3.5 million) in the year to 30 June 2020.[39] This indicates a current draining of resources, rather than generation of them, as well as an absence of proof that the Intangible Assets could start to generate cash.

Bolton's enterprise value for shareholders at the time was (£1.1 million) + (5 x (£3.5 million)) = (£18.6 million). With an enterprise value of (£18.6 million) for 100% of it, an 8% shareholding in it was worth (£1.5 million), even lower than its value based on Tangible Net Worth (8% x (£16.4 million) = (£1.3 million)).

These two valuations are, though, tolerably close together and underline that there was no alternative story to this enterprise's value. The numbers did not lie. This enterprise was valueless.

---

[37] FVWL AR Note 23 p. 31
[38] Synonymous with the terms 'Earnings before Interest and Tax' and 'EBIT', and, in Bolton's case, with 'Operating profit/Loss'
[39] FVWL AR p. 8

© Lyddon Consulting Ltd 2014

The British Business Bank's mis-valuation of a shareholding in Bolton

The British Business Bank (assuming they made any calculations at all) valued the enterprise at £62.5 million, £81.1 million more. This is the inferred enterprise valuation when a new investor buys a minority stake, and it is arrived at simply by dividing the amount the investor paid for their shares by their percentage stake. If the British Business Bank paid £5 million for an 8% stake, the inferred enterprise value was £5 million divided by 8% = £62.5 million.

If actually they were expecting a 30% stake, in exchange for £5 million, the inferred enterprise value is lower - £16.66 million.

Either way it is hard to find strong enough words to characterise the incompetence of the British Business Bank in committing to this investment, either as a shareholder grossly mis-valuing what they were buying, or as a lender failing to apply normal acid tests of creditworthiness.

Whether Bolton was a 'going concern' when the loan was made

The enterprise was only a 'going concern' at the time if one were to believe in the stated value of the £15 million of Intangible Assets, which is the same as saying that one believed in their ability to generate cash in future, even if they were not doing so currently. The auditor made it plain that it was the directors' responsibility and not theirs to assess whether the enterprise was a 'going concern'.[40] If it was not 'going', the directors should have appointed an administrator (again).

The directors' attestation that it was 'going' makes it plain that this status was dependent upon the ongoing financial support of the shareholders, and not upon the financial strength of the enterprise itself.[41] It appears that even the directors did not believe in the ability of the Intangible Assets to generate cash, which begs the question of why the directors authorised the accounts.

Shareholder undertakings to continue to finance the company

The transparency of the nature of the ongoing financial support of the shareholders leaves much to be desired.

The Note 1.4 states that the shareholders had undertaken not to withdraw funds within a year of the date the accounts: that contractual clause should have been of no comfort to a medium-term lender like the British Business Bank. It also states that 'each shareholder has committed to financing any shortfalls in cash as and when they fall due'. No ceiling was stated to these support payments.

This is concerning if the British Business Bank, at the point it too became a shareholder, also became party to this undertaking. This is a question that needs to be followed up on: is the British Business Bank now committed to cover shortfalls in cash at Bolton Wanderers? If so, is there a stated cap on what its future contributions might be? Where no cap is stated in the accounts it raises the suspicion that the liability is joint-and-several, rather than several-but-not-joint.

[40] FVWL AR p. 6
[41] FVWL AR Note 1.4 p. 17

If it is the latter - several-but-not-joint - the liability should be for 8% of a shortfall and no more, but there may be no cap on the actual money amount, and no natural end date: a shareholder can only escape the liability (i) if they sell their shares, and these shares are unquoted, or (ii) if the directors agree to put the enterprise into administration.

Where the undertaking is joint-and-several, though, it means that the liability may be for 8% in the first instance, but that it can rise if other shareholders, when called upon for the remaining 92%, fail to pay. It can rise to be 100% because 'joint-and-several' is also known as 'last man standing': the last guarantor that remains solvent has to pay the contributions of all the others on top of their own. In this case there would also be no money cap: the liability would be for as much as the enterprise needed, unless it was put into administration, and there would also be no natural end date.

In addition, the liability will be all the larger if the British Business Bank's stake is higher than 8%.

Impact of being a minority shareholder on protecting the British Business Bank's position

Would the enterprise be put into administration if it was failing? The directors and the other shareholders – who would easily outvote the British Business Bank as an 8% shareholder – might find it possible and convenient to keep the enterprise going if they have the British Business Bank to draw on, ad infinitum and with no money cap, and to declare the company a 'going concern' for this reason only. It is in situations like this that an 8% shareholder in an unquoted enterprise feels the full weakness of their bargaining position.

As a 30% shareholder the British Business Bank's contributions would be far larger, making it an even more promising 'cash cow'; its bargaining position would be stronger as well, but still in a minority. Perhaps we should hope that the British Business Bank will fund losses disproportionately, and acquire further shares until it owns a majority. Then, as long as there are no limiting conditions buried in the Articles of Association and/or a separate Shareholders Agreement, it could put the company into administration on its own, and cap its losses, and ours.

Bolton's new Articles of Association

The latest version of the Articles of Association offer little enlightenment on this matter.[42] It is quite unusual to have two new sets of Articles filed within a four-month period.[43] The October 2021 version was filed at the same time as the conversion of the three loans. The newest version appears to be contemporaneous with the issuance of B Ordinary shares and of a further block of A Ordinary shares.

The two versions are approximately the same length, the February 2022 one having two pages more. The 'Future Fund' is prominently mentioned in them, and 20 out of 35 pages concern themselves with how shareholders might or would be forced to behave in different circumstances. This is not normal. The main content is normally the proceedings of the company itself.

---

[42] New Articles of Association have been filed by the company with date 21 January 2022
[43] New Articles of Association were also filed by the company with date 2 October 2021

© Lyddon Consulting Ltd 2014

The IBOS Association Articles of 2002 were spread evenly across the proceedings of the company itself at Member and Board levels, minutes, accounts, reporting, planning, bugetting, insurance, indemnities and risk management.

The new Bolton Articles run to 35 pages: 8 pages of preamble and definitions, 5 pages on the proceedings of the directors, 20 pages on shareholdings, and only 2 pages for everything else.

The new Articles feel lop-sided, heavy-handed, and written in haste.[44] A majority owner would not need such clauses to impose their will: the inference is that the minority shareholder has insisted on them. The questions are why, and what the minority shareholder might have had to offer in return. The articles address a whole range of scenarios except the most plausible ones that follow on from a large, bad investment: administration followed by liquidation.

Who is in control of Bolton now?

The full roster of shareholders and their stakes is not visible at Companies House or in the Articles, save that no 'Person with significant control' is quoted at Companies House. Four persons are named there and their 'control' ceased on 27 August 2019.

The reporting threshold is broadly 25%, be that expressed as shareholding or voting rights.[45] The new Articles afford the British Business Bank the opportunity to sidestep the threshold thanks to the definition of 'Associated Government Entities': it could transfer parts of its holding to other entities, none then owning above 25%, as long as those entities did not themselves count as being owned directly or indirectly by the British Business Bank or the Department of Business, Energy and Industrial Strategy. The extent of UK public sector entities is wide enough to permit this tactic to be used.

This is a sleazy tactic not normally associated with superior corporate governance, and we need to know if it has been used.

It is a tactic used by bad market actors to try to elude the identification of an 'Ultimate Beneficial Owner' - or 'UBO' - of a certain asset, whether it be real estate, investments, bank accounts or flows of cash. Shell companies would be layered in between this UBO and the asset, each shell company owning less than 25% and indeed below 10% given their awareness that extra checks would be carried out down to a level of 10% ownership if certain criteria were met.[46]

It is a very common tactic within the public financial accounting of the EU and Eurozone.

---

[44] A judgment based on experience, and of handling the Articles of my own company, of client companies, and of the international IBOS Association banking club

[45] https://www.gov.uk/guidance/people-with-significant-control-pscs accessed on 7 February 2022

[46] A shell company is a non-personal legal entity (such as a partnership, trust or limited liability company) with no business activity. Anti-money laundering checks would aim to identify any shell companies within a corporate structure, and then identify the natural legal person into whose hands all the shareholdings and intermediate layers run this natural legal person being the Ultimate Beneficial Owner

It is used there - for example amongst the clientele of the European Investment Bank, the European Investment Fund and the InvestEU programme - to enable a public sector entity to indebt itself to these European institutions, to banks and to other financiers, but for the resulting debt to be kept out of the Eurostat figures for member state public debt. The entity's share capital is spread around municipal/regional public authorities, national/European development institutions, and other public sector entities. The shareholdings are minorities, so that the entity's debts do not have to be consolidated into the balance sheet of any one market actor, whose direct debts do count within the General Government Gross Debt of the EU member state in which the entity resides.[47] General Government Gross Debt is the numerator figure for measuring member state compliance with the Fiscal Stability Pact and the Stability & Growth Pact, with Gross Domestic Product being the denominator.[48] The techniques referred to allow the debts of these entities to be excluded from the denominator, while the economic outputs of these entities remain included in the numerator. Several trillions of euro of debt have been created within public sector entities who are not defined as part of the General Government: the debt is hidden, but the related output is not. The member state's debt/GDP ratio falls as a consequence. This makes EU member states appear considerably less out-of-compliance with the Fiscal Stability Compact and the Stability & Growth Pact than they really are.

We need to know who all the shareholders in Bolton are, how much each owns and of what class of shares, and what rights are associated with each class. It would be nice to think that the British Business Bank had carried out a credit assessment on all the other shareholders to evaluate their ability to meet future calls under the undertakings they have made. That is a further point to be followed up on.

Summary and conclusions

Numbers don't lie – this investment was a 'dog' at the time.[49] Only an incompetent would have lent to this enterprise; only a dreamer would have invested in the enterprise's capital. The British Business Bank appear to be both. Kwasi Kwarteng's bank has recorded a remarkable feat of reverse alchemy, rapidly converting taxpayers' treasure into fresh air, and possibly worse if it is party to open-ended shareholder funding commitments. It is not even clear how much of this 'dog' the taxpayer owns.

BL/16.2.22

[47] https://ec.europa.eu/eurostat/databrowser/view/sdg_17_40/default/table?lang=en accessed on 7 February 2022

[48] These pacts supposedly limit a member state's annual public spending deficit to 3% of its GDP, and require that its national debt-to-GDP ratio be brought down to 60% of GDP by 2030

[49] 'Dog' – an epithet commonly used in financial markets to refer to an over-priced investment of poor intrinsic quality, be it a share, a bond or a syndicated loan

© Lyddon Consulting Ltd 2014