

Restructuring opens up opportunities for troubled companies

More than ever, companies wanting to improve their organization's competitive position now look to debt and corporate restructuring options.

"Companies can explore a broad range of restructuring strategies including Chapter 11, exchange offers or other recapitalizations depending on the capital structure, whereas during the financial

crisis, the credit markets were far less amenable to aiding troubled balance sheets of otherwise healthy businesses," says Jonathan A. Carson, co-founder and managing director of Kurtzman Carson Consultants.

Aaron Hammer, chair of the bankruptcy, restructuring & creditor's rights practice at Freeborn & Peters, says corporate restructuring doesn't offer guaranteed

solutions. "Even the returns from liquidation can prove disappointing," he says. "As such, the most suitable restructuring option for a troubled company is a fact-intensive inquiry decided on a case-by-case basis.

"In each situation, the company must assess the breadth of their liquidity issues, analyze the available options with their professionals and decide on

an identity going forward," Hammer says.

Jeff Zappone, senior managing director at Conway MacKenzie, says a company needs to determine whether the challenging issues it is facing are operational or financial. "Is the root of the problem the income statement, which may be addressed through a turnaround, or is it the balance sheet, which most likely requires a restructuring through the Chapter 11 process.

Be better prepared for restructuring

How can a company better prepare itself? TMA Chicago/Midwest experts answer:

Tom O'Donoghue, CRG Partners:

- **Know where you are making money and where you are not.** Where you're not making money, investigate if you can. If you're a commodity-related company, do you have price increases built into contracts?
- **Identify how much cash you need to make a dollar.** It's not just if I buy \$1 and sell for \$2, I've made a dollar. If you need to spend \$5 today for five units and sell those units for \$10 in a couple months, you must account for the time it will take to recover your cost. Ask if you have enough cash to be that "lender" to your customers.

Jonathan A. Carson, Kurtzman Carson Consultants:

- **Get experts to help.** When a company finds itself in an insolvent situation, it should seek assistance from outside experts (attorneys, financial advisors or others depending on the nature of the situation) to proactively develop a suitable restructuring strategy.
- **Be organized.** Organize information efficiently. All key information should be clearly accessible and centralized to help expedite the process. Needed data typically includes financial statements, as well as contact information for vendors, employees, contract and lease counterparties, for example.
- **Maintain open dialogue with key constituents.** Develop a strategic communications strategy to disclose forward progress to relevant constituencies, from employees and vendors to financial institutions and the media.

Jeff Zappone, Conway MacKenzie:

Restructurings are complex animals and professionals who specialize in this industry exist for a reason. A great restructuring professional and restructuring attorney will pay huge dividends in the long term.

- **Dispel preconceived notions about the business and customers.**
- **Be willing to look under every rock.** Consider almost anything to position the business for success.

"Nobody has a crystal ball, but a defined strategy and goals should be developed to better ensure a successful restructuring," Zappone says.



Bankruptcy not as popular

Tom S. O'Donoghue, a managing partner at CRG Partners, says more people are recognizing that bankruptcy is an expensive option. The administrative process in bankruptcy, cost of lawyers, notice to creditors, etc. all carry a price tag. As such, a \$50 million company could spend between \$500,000 to \$1 million to go through bankruptcy. When creditors look at that cost of bankruptcy as compared to the company's liabilities, they generally are more inclined to work with debtors out of court.

"Creditors may be tough, but they will work with distressed companies if they're straight-forward," O'Donoghue says.

Jonathan Green, a principal at Miller Canfield, says while out-of-court restructurings are more commonplace, companies with significant real estate interests, such as

businesses with many retail locations, likely will file for Chapter 11 protection because lease negotiations are difficult outside of bankruptcy.

Carson says the likelihood of executing an out-of-court restructuring has increased significantly because lenders are willing to extend debt maturities to give companies time to work through their issues rather than forcing such situations into chapter 11.

Smaller distressed companies or companies with a smaller group of creditors, both secured and unsecured, sometimes find they can negotiate a settlement with their existing creditors according to the priority rule. With larger companies, the certainty of settling with creditors will continue to require a bankruptcy process, O'Donoghue says.

What should creditors know?

Michael Traison, a principal at Miller Canfield, says his firm frequently is contacted by clients who have an interest in what a debtor is about to do. Creditors need to take an active role in the restructuring, he says.

"It's very important for creditors to know they can turn to a turnaround professional," he says. "We encourage questions all the time because it's good for everybody."

Creditors should be aware that when a debtor files for federal bankruptcy, an injunction automatically goes into effect. Creditors cannot take further action against the company, such as sending demanding letters or litigating in court, unless the bankruptcy court permits it, Traison says.

Be cautious of sales to a debtor in Chapter 11. Debtors may offer to buy in Chapter 11 from an unsecured creditor, placing that creditor's claims just below secured creditors and perhaps other priority creditors and pari passu with yet more on the payment ladder. All that is true, Traison says, but make sure the superior creditor's debt is not so great that the sale offers no real value for the acquiring unsecured creditor.

Join the creditors committee in a Chapter 11. In addition to recouping your administrative expenses, the creditor's representative will learn much more about the debtor's operation. Plus, sitting on a creditor's committee will teach the your representative about the Chapter 11 process so he or she becomes an expert.

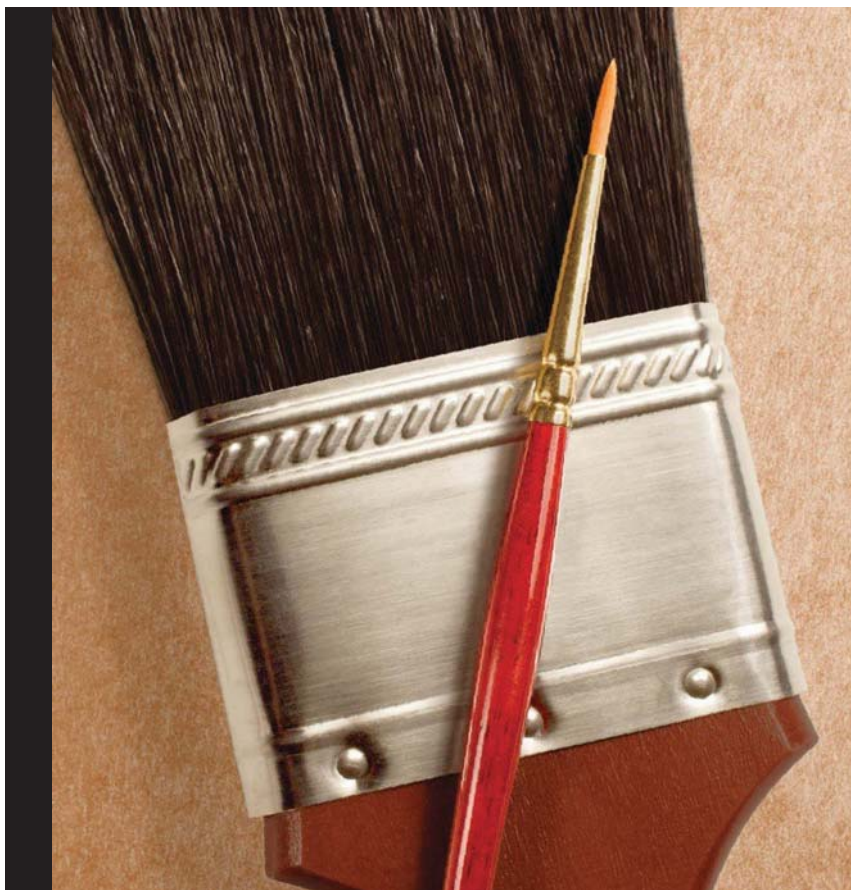
Distressed companies also have greater access to capital today to address balance sheet issues. Carson points to Moody's reporting earlier this

year that firms issued more than \$200 billion in junk bonds in 2010, up 40 percent from 2009 and 400 percent from 2008. In addition,

Moody's found 59 percent of this high-yield issuance was used to refinance debt.

O'Donoghue says state

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and federal receiverships offer another restructuring option. "They have more flexibility," he says. "Receiverships make sure the process is done right and cut down on court time," O'Donoghue says, noting they also don't have formal creditor committees.

Michael Traison, a principal at Miller Canfield, says he too has seen much more use of out-of-federal-court processes. "That's something I've always done a lot of ... relying on state law or something outside the statutory/court system and creating agreements among creditors and debtors on how to deal with the debt," he says.

Changing picture

In the last 10 years, Green says, he has seen significant changes both in creditor

committees and what kinds of things are accomplished in bankruptcy cases.

"Now debt is sold and traded on a frequent basis," he says. Even creditors committee members change during the restructuring process. Those credit holders have different incentives and want quick returns that result in large returns which makes restructuring cases much more complicated and much more fluid, Green says.

Expect restructurings to be busy the next few years, Zappone says. "The slow economic recovery and significant amount of debt that will need to be addressed in the coming years has the potential to create a great deal of activity in the restructuring space," he says. ❖

Insolvency goes global

Aaron Hammer, a bankruptcy partner at Freeborn & Peters, says cross-border insolvencies create their own set of challenges. "Disparate insolvency laws have caused considerable headaches for multi-national companies in restructuring," he says. In 1997, the United Nations passed the Model Law on Cross-border Insolvency to harmonize cross-border case administration. The United States adopted a form of that law, which is Chapter 15 of the U.S. Bankruptcy Code.

Once recognized by the U.S. bankruptcy courts, the bankruptcy court has considerable discretion to recognize foreign orders entered by the foreign court, to sell U.S. assets of the foreign debtor or to enjoin enforcement activities against the foreign debtor by U.S. creditors, among many others.

Hammer cautions that each cross-border insolvency matter brings its own particulars, but Chapter 15 has proven effective in assuaging many concerns that U.S. courts would complicate administration of a foreign proceeding, at least with respect to U.S. claims or assets.



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