



Restructuring & Insolvency

in 52 jurisdictions worldwide

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Global Overview

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2012 saw London play host to the Olympic & Paralympic Games, with a worldwide audience bearing witness to remarkable feats of speed, energy and endurance. Sadly, the global economy failed to take inspiration from the events of the summer – slow out of the blocks at the start of the year, it appears to be limping towards the finishing line...

Looking back to 2011, this is no great surprise. At the time of writing last year's Global Overview, the future of the eurozone seemed to be in the balance as global leaders grappled with the sovereign debt crisis. Expectations of economic growth in developed economies were dampened and analysts warned of a further recession ahead.

Those predictions have been borne out following another challenging year globally. While economic growth in countries like Germany has stagnated, even weak growth would have been welcomed in many other developed economies which experienced varying degrees of recession (from a shallow and potentially short-lived contraction in the UK to ongoing, deeper shrinkage throughout southern Europe). Though quantitative easing has continued, conditions have remained fragile with high levels of unemployment in some countries and increasing civil unrest in response to austerity measures. It may be a different story in the BRIC economies and other emerging markets, yet hitherto impressive rates of growth have started to tail off.

Despite the troubling economic outlook, a sovereign default has thus far been avoided in Europe. Indeed, a number of positive signs point to a stronger eurozone, including the resumption of the ECB's sovereign bond-buying programme and talk of increasing fiscal union. However, the coining of the term 'Grexit' indicates that the possibility of a sovereign default and departure from monetary union has not disappeared, while occasionally heady yields on bonds issued by countries like Spain and Italy indicate that problems extend beyond Greece. The political backdrop against which economic policy is played out is also evolving: following changes in power in France and Greece in 2012, elections lie ahead in the coming 12 months in Italy, Germany and the US, which could well have a material bearing on the global picture.

So what of companies seeking to survive and prosper in this climate? Their position has become increasingly polarised. Some large corporates have thrived by virtue of strong business models and cost control, allowing them to stockpile cash and borrow money at historically low rates. The majority of businesses, however, have had to contend with depressed demand, rising costs and limited access to credit. Default rates have not been as high as might have been

expected (due in part to lenders, not least those that have been fully or partly nationalised, adopting a more benign stance than in the past) but they are inching up gradually.

Sectoral and refinancing issues are key to companies' fortunes. With regard to the former, businesses that are reliant on discretionary consumer spending or the public purse remain most at risk, with retail a particularly challenging market. This is not to say that there are no success stories – businesses with a focused offering, low fixed-cost base and a willingness to harness electronic media can still thrive – but the high street remains under fire. Real estate, print media and shipping are also under stress.

As regards refinancing risk, the 'wall of debt' has long been a popular topic and it remains to be seen whether this is indeed the ticking time-bomb that has been feared. However, it is undeniable that a remarkable amount of corporate debt is due to mature between 2013 and 2017 and many companies will struggle to refinance. Particularly noteworthy is the volume of CMBS debt falling due in the coming year, which will present its own challenges from a financial and legal perspective. It is not only the weakness of corporate credit that presents a risk to successful refinancing but also a contraction in available funding with which to do so, at least from traditional players. Banks are increasingly capital-constrained as a result of recent losses and regulatory reform, meaning companies may need to look to new funding markets and providers. Bonds are expected to become a familiar feature in capital structures in the near future, yet they will not be a realistic option for all companies and markets have proven volatile. Alternative capital providers (funds and other non-bank lenders) will also play an increasingly prominent role as they look to put a considerable amount of money to work, in the form of debt or equity, in the search for returns.

Finally, the past year has seen a number of legislative reforms around Europe. Though significant and crucial differences remain between jurisdictions, the reforms arguably point to an increasing harmonisation of insolvency and restructuring laws, not only procedurally but substantively. This is largely the result of a recognition that domestic systems might be improved by importing tools that have proved useful elsewhere but is perhaps also a reaction to the use by domestic companies of those foreign tools (through COMI shifts and other measures) and a desire to avoid 'forum shopping'.

This 2013 edition of *Getting the Deal Through – Restructuring & Insolvency* outlines the legal framework within which the market operates, as well as the position on key issues for debtors and creditors, in each of 52 jurisdictions around the world.



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