

Restructuring & Insolvency

Contributing editor
Bruce Leonard



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GETTING THE
DEAL THROUGH 

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Restructuring & Insolvency 2016

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Global overview

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In many instances, the year for restructurings thus far has been more about what has not happened, rather than what has. In late 2014 and early 2015, the oil price crash, potential Greek crisis and impending turning of the interest rate cycle were expected to lead to an increase in restructurings in the latter half of 2015. While this may be true to an extent in certain sectors and in certain regions, moderate but improving global growth, continuing ultra-low interest rates and easily available liquidity has resulted in relatively benign restructuring markets.

Looking ahead, Standard & Poor's predicts global growth increasing from 3.4 per cent in 2015 to 3.9 per cent in 2016 and the oil price drop – while very painful for some – is keeping inflation down, thereby reducing interest rate rise pressures. There is also continuing liquidity for refinancings and debt extensions, often on very borrower-friendly terms from the high-yield market or loan products that are realigning their terms to incurrence only or cov-lite. The Greek crisis has lurched to the edge of the precipice, but just survived more times than expected and there seems to be a collective political will to prevent Greece from exiting the euro. Consequently, default rates for 2016 are predicted to be at 2007 levels, well below historic levels and the lowest levels since the 2008 credit crunch.

So where has there been activity? Emerging markets and commodities have probably led the way. Issuers of US-dollar denominated debt without effective hedging have suffered from the strengthening dollar. While the expected US rate raise should be priced in already, the volatility in the FX markets (most recently seen with the August 2015 Chinese devaluation) will result in winners and losers and push some emerging market US-dollar debt issuers into work out. Further, the Chinese slowdown, many economists' number one concern, seems likely to reduce demand across many sectors from commodities to consumer goods. If the Chinese situation worsens, this could cause a serious shock to the markets.

On commodities, after initially strong resilience from the oil sector, the pain of the oil price drop is increasingly being felt and almost all say that it will lead to significantly more restructurings in the coming year. Since mid-January 2015, oil had been climbing back to US\$65 per barrel for Brent crude and US\$60 for WTI in May and June, with hopes of it creeping still higher by year end. However, since then the oil price has dropped back to US\$45 and US\$40 respectively in August. With cash reserves depleted, easy cost-cutting done and older higher priced contracts rolling off, the financial pressure will build still further. While some news reports overplay this and the sector is always cyclical, oil sector defaults and restructurings are already increasing – especially in the oil field services sector. Lastly, on commodities, although oil has grabbed the headlines, numerous other commodities are also suffering – coal, copper, gold and steel to name but a few, and a fair number of these companies have been forced to restructure or file for bankruptcy relief, particularly in the Americas.

Restructuring activity in South America has also been quite active, particularly in Brazil as casualties from the Petrobras scandal have emerged, most notably, the bankruptcy filing of Brazilian builder OAS SA in March 2015. Collective action clauses in sovereign debt issuances have garnered significant attention, including from the United Nations Human Rights Council and the International Monetary Fund, as Argentina battled its holdout bondholders in US courts. Other South American countries continue to reform their insolvency laws, including Chile (where a substantial overhaul of the Chilean bankruptcy laws went effective in 2015) and Mexico, among others.

Legal developments globally have continued to increase in 2015. In the US, the ABI Commission's 400 page Report on Chapter 11 makes impressive reading. It notes that Chapter 11 is seen by many as inefficient, expensive and in need of a major overhaul. The Report has over 240 recommendations; however, it is unlikely that the US Bankruptcy Code will be amended for a good number of years.

In Europe, the EU finally settled on the amendments to the EC Regulation, albeit that the main provisions only come into force in June 2017. The Recast Regulation was broadly welcomed and the changes are considerably less radical than some had feared. English schemes of arrangement remain outside the Recast Regulation and, while tightening scrutiny of COMI shifts, they are still allowed for appropriate cases.

More locally in Europe, many countries continue to seek to make their regimes more restructuring friendly. This is being encouraged by the European Commission Recommendation to member states on a new approach to business failure and insolvency. (This is distinct from the Recast Regulation.) In the Recommendation, the Commission invited member states to set up an efficient framework that allows viable enterprises in financial difficulties to restructure early and avoid insolvency. The Commission also recommended that where an honest entrepreneur is insolvent, that person should be given a second chance.

In keeping with the EU's goal, this year there have been material restructuring amendments in Spain and Italy. The Netherlands has the most interesting development where a new process for debt restructurings outside of insolvency proceedings is expected in 2016. This has been dubbed 'the Dutch scheme' and appears to offer an efficient and effective new restructuring tool.

While other European countries have sought to catch up, an English scheme remains the restructuring tool of choice in Europe with schemes such as Apcoa and VGG. Further, it is increasingly used for New York law governed high-yield restructurings like the Dutch issuer New World Resources and the Ukrainian issuer DTEK – typically alongside a Chapter 15 ancillary proceeding in the US.

So looking ahead, there are certainly plenty of legal developments to come into force or to bed down in practice. It will be interesting to see which ones get used in the wave of restructurings that is building – albeit that the wave may break in the medium term rather than immediately. In any event, with so much change, this 2016 edition of *Getting the Deal Through – Restructuring & Insolvency*, with its summary of the key issues in 42 jurisdictions, will prove to be even more invaluable than before.

This 2016 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, creditors and other stakeholders in each of 42 global jurisdictions.

Getting the Deal Through

Acquisition Finance	Dominance	Licensing	Real Estate
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Anti-Money Laundering	Environment & Climate Regulation	Merger Control	Securities Litigation
Arbitration	Executive Compensation & Employee Benefits	Mergers & Acquisitions	Ship Finance
Asset Recovery	Foreign Investment Review	Mining	Shipbuilding
Aviation Finance & Leasing	Franchise	Oil Regulation	Shipping
Banking Regulation	Fund Management	Outsourcing	State Aid
Cartel Regulation	Gas Regulation	Patents	Structured Finance & Securitisation
Construction	Government Investigations	Pensions & Retirement Plans	Tax Controversy
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Corporate Governance	Initial Public Offerings	Private Antitrust Litigation	Telecoms & Media
Corporate Immigration	Insurance & Reinsurance	Private Client	Trade & Customs
Cybersecurity	Insurance Litigation	Private Equity	Trademarks
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