

**Baker
McKenzie.**

Restructuring Corporate Debt in a Global Health Crisis

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**Introduction and
welcome...**

Presenters



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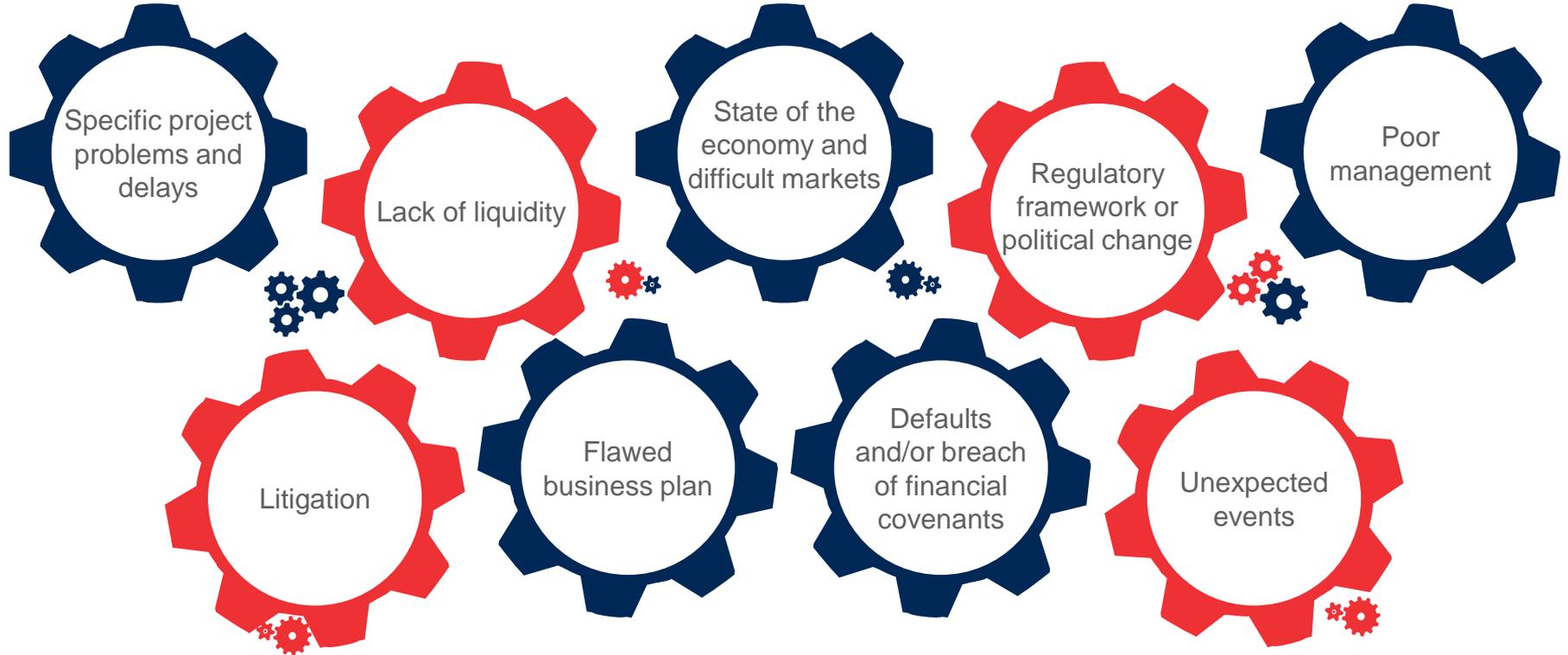
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1

Restructuring considerations

Causes of restructurings



Restructuring goals

Aim: to preserve value and enable the business to continue

Company in
financial
difficulties

Business and/or
balance sheet
restructured

Value preserved
– business
continues



Terminology: 'restructuring' / 'workout' / 'turnaround'



Balance sheet restructuring vs operational restructuring



Outcomes range from covenant resets or 'amend and extend' through to full overhaul of the capital structure, debt for equity, refinancing, debt write-downs and sales



Implementation

- usually aim for fully consensual deal implemented by contractual arrangement
- depending on level of consensus achieved may need to rely on formal processes
- typically seek to avoid (unplanned) insolvency proceedings as can be value destructive

Restructuring vs insolvency

Restructuring

Insolvency



Fully consensual restructuring implemented contractually



Consensual restructuring implemented using an insolvency 'tool'



Rescue-orientated insolvency proceedings



Terminal insolvency proceedings/ liquidation



Significant overlap between the two concepts



Growing international trend towards rescue culture

- liquidation as last resort option
- introduction of rescue orientated insolvency/pre-insolvency regimes
- promotion of informal workouts
- recent changes to UK's insolvency laws and Dutch insolvency laws promote more of a rescue culture



BUT even fully consensual restructurings often use insolvency as the 'stick' to induce stakeholders to agree to a deal

Key considerations



Restructuring options will depend upon valuation, cashflow and the appetite of anchor shareholders.



If the company can meet its payment obligations its preferred approach is likely to be an amend and extend transaction for all of its financing arrangements (e.g. bank facilities and bonds).



If a more comprehensive restructuring is required a compromise proceeding will need to be considered.



What impact will filing for insolvency have on the business and its operations (risk of value destruction)?

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Directors' duties

Directors' duties issues

Key issues for directors during a restructuring



Entity-by-entity analysis of directors' duties and corporate benefit



Directors' duties in the UK — as the company nears insolvency, focus shifts from the interests of shareholders to creditors as a whole (although duties always owed to the company)



Which law governs directors' duties? Particularly important after a centre of main interests (COMI) shift and for multi-jurisdictional corporate groups



When to file for insolvency?



Jurisdiction-by-jurisdiction analysis



Hard filing deadlines or 'softer' ones, e.g. liability for wrongful trading in the UK (temporary easing of wrongful trading liability)



Director liability: civil v criminal



Voidable transactions and 'clawback' — e.g. preferences, transactions at undervalue, new floating charges (see next slide).

Voidable transactions

What are they?



Insolvency officeholders can look back at any transactions entered into within a specified period prior to insolvency.



Potential to clawback property from the beneficiary of any transactions in order to maximise return to creditors.



Directors vulnerable to criticism/disqualification for breach of duties if any transactions found to be voidable.



Different rules will apply in different jurisdictions.

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Accessing liquidity

Accessing liquidity (1) – debt baskets



Covid-19 has resulted in many non-essential businesses having to close their doors leading to a liquidity crunch.



Important for businesses to understand how they can access liquidity: i.e. drawing on committed lines; seeking new cash from shareholders or other stakeholders; RCF drawing issues.



Existing finance documents may permit company to incur certain permitted debt in the form of baskets, e.g.:

- credit facilities permitting third-party financial indebtedness
- ratio basket
- general basket
- unrestricted subsidiaries and asset drop down structures (addressed later)

Accessing liquidity (2) - super senior debt capacity



In a restructuring new financiers may inject further funds on a super-senior basis.



This new debt is understood as super senior debt and the existing senior debt becomes subordinated to this new super senior debt.



Super senior creditors will be paid before any other creditors in an enforcement.



Finance documents may permit company to access this new debt on a super senior basis.



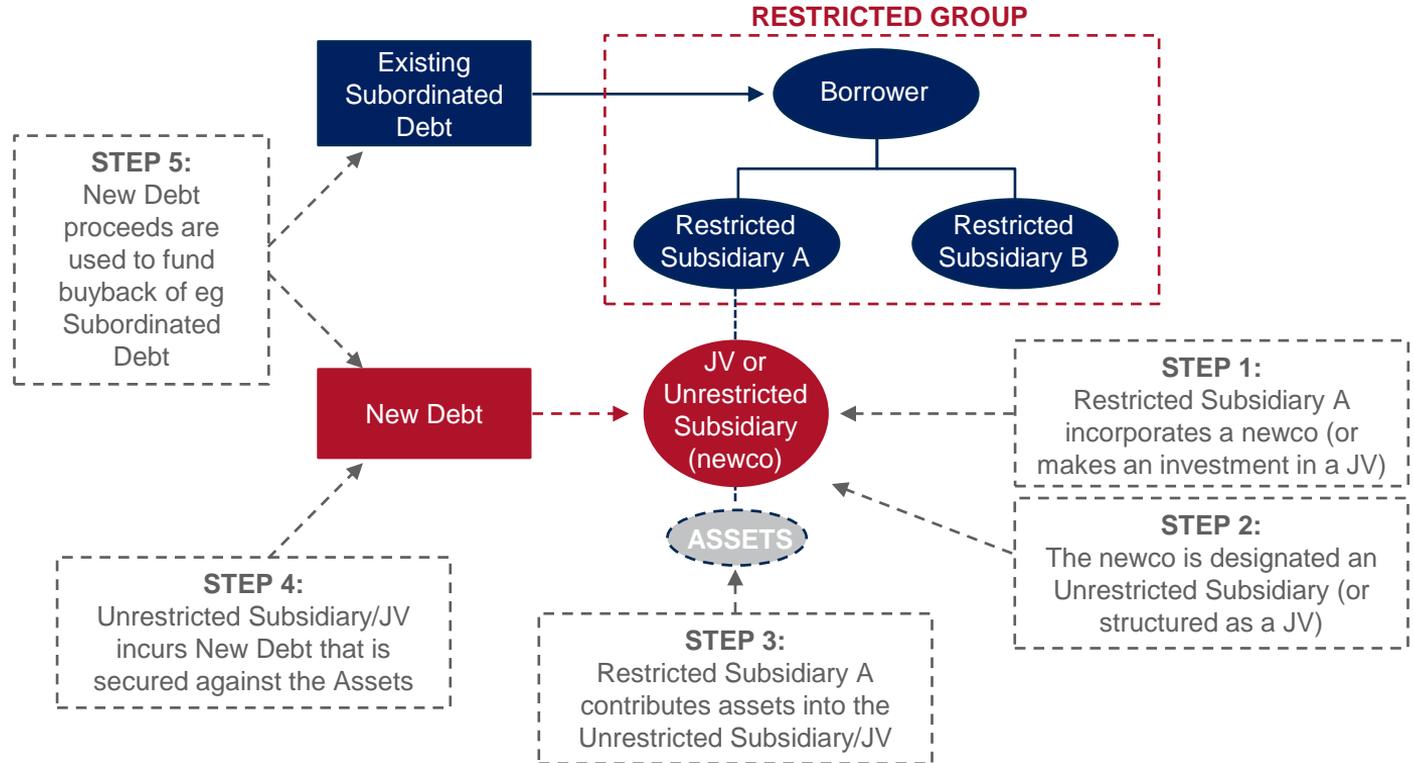
Will depend on terms of credit facility basket and intercreditor agreement.



New financier will need to become a party to the intercreditor agreement.

Accessing liquidity (3) – asset drop down

Raising Structurally Senior Debt through Unrestricted Subsidiaries/JV



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Dealing with distressed investors

Dealing with distressed investors (1)

Important to identify objectives:



Loan to own:



strategy to take control of a distressed company



acquisition of a significant secured debt position to influence control



diligence around value and security position



tax considerations

Dealing with distressed investors (2)

Important to identify objectives:



Trading strategies

Buy and hold/trade vs loan to own.



Effects of credit default swaps (CDS)

CDS credit events can create incentives / disincentives and may require staged completion to permit completion of CDS close-outs before close of the financial restructuring.

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Bondholder committees and trading issues

Bondholder committees and trading issues



Bondholder committee may be formed to represent bondholders' interests.



Bondholders can be difficult to organise – often vast numbers.



It can also be hard to identify bondholders due to the frequency that debt is traded on the secondary market and if the bond is held through clearing systems.



Bond issuer can engage with that committee with a view to agreeing the terms of a debt restructuring.



Location of bondholders may determine what kind of restructuring process is available.



Risk of litigation around issues of value, proposed restructuring structure.

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Liability management exercises

Liability management exercises (1)



Debt buy-backs / tender offers

- Allows issuers to buy back all / a portion of debt securities.
- Trading prices of loans and notes has declined in response to Covid-19.
- Terms of finance documents will need to be checked if they permit a buy-back.



Amend & extend

- Will depend on ability for company to continue to meet its payment obligations.
- Company's preferred approach is likely to be an amend and extend transaction for all of its financing obligations.

Liability management exercises (2)



Exchange offers and exit consents

- an offer by an issuer to all bondholders to exchange existing notes
- offer can be to exchange for new bonds, cash or other types of securities
- allows issuers to refinance existing debt
- exit consent – proposes the bondholders agree to amend the terms of the existing bonds.
- hold out bondholders take the risk of the bonds being devalued
- execution will be complicated if multiple series of bonds and ability to amend each series of bonds

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Cross border compromise proceedings

Cross-border compromise proceedings (1)

UK



	Scheme of Arrangement	Restructuring Plan
Who can propose	Company and creditors	Company and creditors
Court stages	Convening hearing and sanction hearing	Convening hearing and sanction hearing
Thresholds	75% in value 50% by number	75% in value No number threshold
Obligation on creditors to vote in good faith	Yes	Yes (assuming application of court requirements /jurisprudence which applies to Schemes)
DIP financing available	No	No
Appeal	Yes	Yes
Timing	8-12 weeks	TBD
Release of third party guarantees	Yes	Yes (assuming courts follow approach from Schemes)
Cross-border issues	EC Regulation on Insolvency Proceedings does not apply. Chapter 15 recognition is possible in the USA.	TBD

Cross-border compromise proceedings (2) - US

Chapter 11



Relatively low bar for jurisdiction over non U.S. companies.



Only requires a place of business or assets in the U.S. (courts have found a retainer given to a law firm, a bank account, or U.S. law governed contract can be an "asset").



Management stay in control (but there can be oversight from a trustee).



Automatic worldwide stay together with reorganisation plan to facilitate rescue of the company.

Cross-border compromise proceedings (3) - US

Chapter 11 – investor options



Creditor may be able to block a debtor's proposed plan of reorganization.



Options to acquire the business in Chapter 11:

- credit bidding in a 363 Sale
- acquiring the business through a Chapter 11 plan
- buying other claims

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Regulatory issues

Regulatory issues



Anti-trust



National security / sensitive industry ownership issues



Questions

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Team CVs

Practice focus

Geoff O'Dea is a Partner in Baker McKenzie's Restructuring and Insolvency Group based in London and is head of the team. Geoff has extensive experience in cross-border restructuring/insolvency and special situations matters, regularly advising boards, sponsors, special situations funds, creditors, debtors, insolvency practitioners and financial institutions.

He is the co-author of a leading textbook on schemes of arrangement - the predominant restructuring tool in the UK, which has been cited in UK case law, and has contributed chapters on insolvency to other texts. Before joining Baker McKenzie in 2017, Geoff was a partner at Freshfields Bruckhaus Deringer in London for 5 years.

Representative experience, acting for:

- Stemcor on its several restructurings by way of scheme of arrangement. Other schemes of arrangement on which Geoff has advised debtors include among others Bulgarian Telecom, Estro, La Seda, Metrovacesa, NWR, Primacom, Rodenstock, Schefenaker, Telecolumbus and VGG,
- Bounty Brands on its ongoing restructuring in South Africa, Poland, Malta and the UK.
- Jain Irrigation on its ongoing multijurisdictional bank and bond debt restructuring and exchange offers.
- Ideal Standard (a multinational bathroom and plumbing fixture company headquartered in Belgium) on its financial restructuring and prepackaged enforcement sale under English and Luxembourg law to creditors.
- The security agent and creditors on the Debenhams administration appointment and CVA challenge.
- The security agent on the Galapagos group bank/bond restructuring.
- The second largest creditor in the Bartec restructuring.
- Bank of China in connection with the restructuring of a loan to an insolvent mining company in Australia.
- The European Investment Bank in the continuing Access Bank resolution process.
- Barclays Bank PLC in the GHG (a UK healthcare company) financial restructuring and enforcement sale.
- Deutsche Bank in connection with a confidential financial restructuring of an oil services company.
- The administrators of Cobra Beer (a multinational beer company headquartered in the UK) on its pre-packaged administration.
- A credit fund on a confidential loan-to-own pre-packaged receivership enforcement sale of a UK based food manufacturing business.
- The committee of bank guarantee providers on aspects of Imtech's (a Dutch multinational) several financial restructurings.
- A significant creditor in the ongoing Steinhoff (a multinational homewares company headquartered in Austria and South Africa) financial restructuring.
- The shareholders and bidders in the OTAS/Turkish Telecom (headquartered in the UAE and Turkey) financial restructuring.

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Team CVs

Practice focus

Bevis Metcalf is a Partner in Baker & McKenzie's Finance Group based in London. He focuses his practice on advising debt funds, private equity sponsors, debtors, banks and other alternative capital providers in connection with corporate restructurings and leveraged acquisition and asset-backed financings.

Representative matters, acting for:

- Bounty Brands on its ongoing restructuring in South Africa, Poland, Malta and the UK.
- The security agent and creditors on the Debenhams administration appointment and subsequent CVA challenge.
- The security agent on the Galapagos group bank/bond restructuring.
- Aapico Hitech Public Company Limited on the restructuring of its interest in a UK, US and Indian JV.
- A credit fund on the financial restructuring of a UK gaming business.
- Bain Capital in connection with Edcon Holdings' 2014 exchange offer and 2016 financial restructuring.
- A major creditor of Bartec in connection with Bartec's financial restructuring.
- The ad hoc committee of Senior Unsecured Noteholders of Towergate Insurance in connection with its financial restructuring.
- The largest second lien creditor in the financial restructuring of the APCOA Group (IFLR European Restructuring of the Year 2015).
- The junior creditors of PeerMont Group, a South African leisure business, in connection with its financial restructuring.
- Goldman Sachs European Special Situations Group and TPG Special Situations Partners in connection with their joint acquisition of the Lundy Portfolio from Lloyds Banking Group and the subsequent workout of various corporate credits.
- Certain mezzanine lenders to KCA Deutag Oil Services Group, including funds managed by a global investment management company, EIG Management Company, LLC and Golden Tree Asset Management LP, in connection with KCA's financial restructuring.
- A US fund in the LBIE administration and subsequent waterfall litigation.

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Team CVs

Practice focus

James Burdett is a Partner in Baker McKenzie's London Office. He Co-Chairs the Firm's Global Investment Funds Group and jointly leads its Sovereigns Group. He specialises in structuring and establishing private institutional investment funds across the private equity, real estate, infrastructure, environment markets and energy sectors. He acts for fund managers and institutional investors including a number of Sovereign Wealth Funds. His advice to SWFs includes fund platforms, co-investments, direct acquisitions, establishment of SWFs and disputes. James leads the Firm's relationship with the IFSWF which includes the provision of an exclusive on-line Legal & Regulatory Update Service for IFSWF members.

Representative matters, acting for:

- Advising the Japan Bank for International Cooperation on the establishment of the Russia Japan Development Fund
- Advising Government Pension Fund of Thailand on establishment of global real estate and private equity investment platforms with third party managers.
- Advising on the establishment of Egypt's sovereign wealth fund, The Egypt Fund.
- Advising Employees Provident Fund of Malaysia on the establishment of a European logistics real estate fund with Goodman Real Estate, using a series of Luxembourg limited partnerships.
- Advising a number of Asian and Middle Eastern sovereign wealth funds on their private equity, real estate and infrastructure investments globally.
- Advising Mapletree on several significant real estate investments in UK, Europe and the US.
- Advising Samruk-Kazyna on the establishment of a number of regional development funds with partners such as EBRD, IMF and RusNano. Advising Invesco Real Estate on the structuring and offering of Invesco Real Estate European Fund, a pan-European, Luxembourg based open ended fund
- Advising Employees Provident Fund of Malaysia on the establishment of a European industrial real estate development fund platform with German real estate developer, Dietz AG.
- Advising Townsend Group on the establishment of a Luxembourg fund for investment in global real estate by German insurance companies and pension funds
- Advising Arcus Infrastructure Partners on the establishment of a Luxembourg fund holding structure for investment into Swiss logistics assets

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