

The road to RECOVERY

Corporate restructuring need not be confined to companies who are facing difficulties and improved profitability is a key driver for restructuring in many businesses. Leading corporate recovery experts examine how restructuring can have a positive impact on improving a company's overall output.

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In recent years most businesses have been restructuring in some form or other including operational restructuring, financial restructuring, debt reduction, downsizing and reducing overheads. In most cases this will be an informal process and may not even be referred to as restructuring. It is simply a series of actions in an attempt to survive the current challenging business environment. Formal restructuring in this jurisdiction normally takes the form of examinership in instances where a company is insolvent and seeks the protection of the Court to formulate a restructuring plan and scheme of arrangement with its creditors.

Apart from the legal mechanics of seeking Court protection, one of the key tasks for management is communication with all stakeholders, most notably employees and creditors. Keeping suppliers apprised of the situation and ensuring that the 'business as normal' message is conveyed, is essential to ensure continued supply of goods and services. Employees will obviously be concerned for their future and are a key part of the continuation of trade, so morale needs to be maintained and reassurance given by management.

For the Court to approve a petition

for protection and the appointment of an examiner, it must be demonstrated that the business has a reasonable prospect of survival and can trade during the examinership period of up to 100 days, paying its debts as they fall due during the protection period. A detailed and accurate cashflow projection for the period and any funding requirements is exhibited to support the application.

Corporate restructuring is an ongoing process for any business, particularly in recent years. Shrinking sales volumes and tightening margins have and are driving continuous reviews of operations, overhead and bottom line profitability considerations. It's important that this continuous review process is focused and involves engagement with all significant stakeholders, particularly lenders, in advance of serious financial distress and/or covenant breaches. This will enable a more controlled restructuring approach with potentially more options available.

In the event that, despite all efforts, the business does find itself in financial distress, it's important that the directors act early in terms of seeking advice in relation to their responsibilities and available options. Recognising insolvency can be a difficult call for a board to make, and good management information is key to ensuring directors are well informed.

Credit continues to be tight and



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the pressure on many over leveraged businesses is immense. 'Right sizing debt' is one of the new phrases in restructuring circles. Falling profits with no corresponding reduction in debt and interest payments can only have one outcome. Refinancing options are few and it is therefore crucial that borrowers actively engage with their lenders. The banks have been re-organising in recent times and have now established restructuring groups with experienced professionals whose role is to work through difficulties with their customers. They are demonstrating increasing levels

of forbearance with borrowers who are prepared to have open and frank discussions with them. Providing timely, transparent information is important in helping the bank to understand the business and the underlying difficulties. This is key to ensuring that a mutually agreeable plan and solution can be worked out with the lender. Enforcement in the form of a receivership is the last resort for the lender and will normally only occur where there is no engagement from the borrower, a restructuring plan has failed or in reaction to the enforcement actions of another lender. Unfortunately, in some instances, it cannot be avoided.

The corporate recovery and insolvency market is continuing to mature with a lot of practitioners in agreement that some sort of slimmed down examinership, perhaps an out of Court process, would be more appropriate for smaller companies. This is not something that is currently on the legislative horizon. Long-term receiverships are more prevalent now than any time in the past. This is primarily being driven by the lack of liquidity and consequently, a limited market for assets, particularly property assets. Insolvency practitioners now find themselves running businesses and holding assets at the behest of appointing banks with a view to improving business performance whilst pursuing a hold strategy in the hope of some market recovery. This approach tends to be favoured by lenders over the examinership process, primarily from a control viewpoint. Recent case law has clarified that secured lenders can be crammed down in a scheme of arrangement in certain circumstances. Consequently, the banks preference is to take control through a long-term receivership in the belief they can achieve a better outcome. The crux of the matter comes down to the ‘bird in the hand...’ argument, i.e. is the value of the banks security and, hence recovery today, in a scheme of arrangement greater or less than what can be achieved over the long-term if held and worked out through receivership.

From a formal restructuring viewpoint, examinership is the only tool in the toolbox at present and can be used to good effect with buy-in from all parties. It is unlikely that a company will be granted court protection without some real chance of new investment being identified at the outset. In the right circumstances, early and consensual engagement in the process, by secured creditors, can achieve a satisfactory outcome for all concerned including unsecured creditors. In the case of large corporates, it is likely to be used as a delivery mechanism for group-wide restructuring on a consensual basis with secured lenders. The formality of the process provides a level of certainty for investors, in that a scheme of arrangement is binding on the company and creditors alike.

