

Unlocking value: restructuring in the current climate

2009 Restructuring Conference



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“In these turbulent times, the ability to secure and enhance enterprise value is becoming ever more important.”

Alan Bloom, Ernst & Young

Conference overview



Our 2009 Restructuring Conference, “Unlocking value: restructuring in the current climate,” saw over 100 business professionals come together to gain insight into today’s shifting economic landscape.

Over the last 18 months, the turmoil in the global credit market has led to increasingly challenging conditions for businesses, and 2009 sees continued pressure on financial structures and business performance. In these turbulent times, the ability to secure and enhance enterprise value is becoming ever more important, solutions are increasingly more complex and international in nature.

This conference was a platform for both Ernst & Young professionals and restructuring industry specialists, from across the UK and Europe, to share their insight and knowledge to help navigate this uncertain landscape.

As well as introductory sessions on the state of European markets and the economy, the conference included a series of panel sessions that explored the challenges faced by stakeholders, examined the range of available solutions and considered European perspectives from four of the most active restructuring geographies: Spain, France, Germany and the CIS.

A handwritten signature in black ink, appearing to read 'Alan Bloom'.

Alan Bloom
Global Head of Restructuring, Ernst & Young

Opening remarks

To set the scene for the upcoming panel discussions, the opening presentations examined the current state of European economies and markets.

Undoubtedly, there are some signs of life across Europe, but both opening speakers urged caution. There are still risks on the road to recovery that should remain high on the agenda for companies and stakeholders in the year ahead.

Introduction and market overview

Keith McGregor

Partner, Ernst & Young UK

Economic forecast

Peter Spencer

Economist, ITEM Club

The party in debt is over

This year's conference was held against the now familiar backdrop of global downturn brought on by the global credit crunch. These dual pressures continue to place severe strains on corporate cash flows, stretching and sometimes breaking the complex financial structures that evolved in the last credit cycle. This complexity is, in turn, leading to multifaceted cross-border restructurings and, as a result, the need for more intricate solutions.

Worryingly, this recession looks like providing a harder landing than that experienced in 1991, with the International Monetary Fund (IMF) predicting a Gross Domestic Product (GDP) fall in advanced economies of around 4% in 2009; a dire situation exacerbated by the continuing scarcity of credit. For while there are signs that high-grade credit markets are coming to life, lower grade credit remains tight. Secondary markets are also virtually lifeless, with a notable absence of participants.

With this backdrop in mind, and with trillions of dollars of debt due for refinancing between 2009 and 2011, we advise companies with debt maturing during the next two years to start their refinancing process now.

Where is the greatest default risk?

The industries with the largest amount of debt maturing over the next two years are not necessarily those with the greatest refinancing or default risk; high-grade credits in defensive sectors with large tranches of debt maturing in the next two years, such as utilities, should be able to refinance with relative ease. The sectors under the most pressure are those where high leverage, low credit quality

and economic exposure collide, such as automotive, travel and leisure, retail, and private healthcare. Looking by geography, the highest-risk areas are the Nordic countries, Eastern Europe, the CIS, Spain and the Middle East - these are all areas that Ernst & Young is actively investing in.

Life after the crunch

With banks contending with US\$740 billion of write-downs since the start of the credit crunch, leverage will be lower by necessity and design, at least in the short term. Financial sector regulation will also be high on government agendas. The €3 billion paid so far by European governments to rescue financial entities will certainly cause the governments to focus and limit their ability to further spend and stimulate the economy without added risk to their sovereign credit ratings.

Spring 2009: an economic inflexion point

There have been plenty of "green shoots" in the headlines this spring and Peter Spencer, of the Ernst & Young ITEM Club (an independent UK economic forecasting group sponsored by Ernst & Young), agreed that the massive coordinated efforts of governments and central banks to pump life back into the economy and financial markets do provide cause for optimism. Particularly when these efforts are viewed in conjunction with the more benign economic data released in recent months in both manufacturing and service sectors.

The ITEM Club believes this data indicates an economic "inflexion point," which doesn't translate simply as recovery, but is described as the first step on the road to recovery. It is where falls in production and demand don't necessarily reverse, but they do start to become shallower and confidence begins to return.

“At least when you put your feet out these days, you can touch the floor rather than thin air.”

Peter Spencer, UK ITEM Club

Risks on the road to recovery

While signs of a rebound are appearing, the prognosis for recovery is still subject to uncertainties. These reservations are focused around three elements. The first is the consumer's ability and willingness to spend through the downturn. Thus far, consumer spending has slowed but not stalled, as our European panelists attested to later in the conference. However, if consumer spending suddenly reverses due to the fear or actuality of rising unemployment, it could cause serious economic consequences.

The second question is whether the combined efforts of banks, governments and central banks have dealt with the toxic debt on financial institutions' balance sheets. Are we at the end of the write-downs? Or will more be necessary and will they spread to other asset classes?

Finally, the third uncertain element is the ability of governments and central banks to put the brakes on their massive economic and fiscal stimulus without putting the recovery or their inflation targets in peril. This will be an exceptionally delicate balance to manage in the years ahead.

Recovery expected 2010

With these risks in mind, the ITEM Club will be watching indicators closely in the months ahead, but it remains cautiously positive and expects to see GDP recovery in spring 2010.



The multi-stakeholder restructuring world

A panel containing a wealth of restructuring experience discussed the challenges of unlocking value in a multi-stakeholder environment, when deals are increasingly complex and solutions are limited by a lack of liquidity.

The panel discussed the key themes of resourcing, balancing stakeholder needs and the role of regulation and government.

Moderator

Lee Watson

Partner, Ernst & Young UK

Panel

John Singer

Managing Partner, Advent International

Bob Hedger

Director, The Royal Bank of Scotland

Richard Favier

Senior Insolvency Advisor,
Pension Protection Fund

Gideon Jones

EMEA Channel Manager,
Atradius Collections

Resourcing, resourcing, resourcing

Resourcing is a key topic in the restructuring community at present, underlined by the recurrence of the theme throughout this panel session and the conference as a whole.

Individuals with the ability and experience to bring about expeditious restructuring solutions in a complex multi-stakeholder environment are in high demand and short supply at present. This is due to the complexity of deals unraveling, combined with an increase in the number of stakeholders and the sheer amount of restructurings in progress.

In the panel's experience, deep restructuring expertise facilitates quick and knowledgeable decision-making, which preserves value. However, inexperience leads to delays, due to a greater need to research and confer. These delays can jeopardize value, and even survival, when a business is severely distressed and deteriorating rapidly. The answer is clearly not to re-brand individuals as restructuring experts - a point the panelist felt strongly about - but it is apparent that the limited time of experienced individuals must be used astutely during the busy times ahead.

Talking from a Private Equity perspective, the greatest resource deficit is in experienced managers, without which restructuring is "pointless," according to John Singer of Advent International. He commented that many of the current crop of managers lacked the necessary skills for running companies in the bad times and, worse still, have not even recognized the paradigm shift that has occurred in their industries.

Stakeholder tensions: debt and equity

The most obvious and long-standing tension between stakeholders in a restructuring occurs between debt and equity. It was a tension evident in our panel discussion, which revealed some common themes. Banks would like private equity firms to put additional capital into their distressed assets, but private equity argues that the banks' short-term attitude and their write-down avoidance makes it hard to justify this extra investment. The tension is heightened by the increase in the number of debt-for-equity swaps, which highlight the changing attitude of the banks. No longer just "lenders of last resort," banks are now focused on where value breaks for borrowers in distress. Private equity voiced frustration that this change in focus has led banks to push debt-for-equity for what they see as the "better" distressed assets. Both sides agreed it is not an irreconcilable position, but it will require compromise all round.

Trust and information hold the key to resolution

Stakeholder interests in the current crop of company restructurings are rarely limited to debt and equity. In today's restructurings, there is an expanding cast of additional stakeholders whose competing and often incompatible interests have to be balanced and accounted for. The cast can include pension trustees, unions or works councils seeking to save jobs, credit insurers requiring information on business viability and distressed investors, who can have vastly different value break points among themselves, let alone other investors.

“There are serious tensions built into the restructuring table, brought about by complexity ... all of which means you need more resource.”

Richard Favier, Pension Protection Fund

Governments are also increasingly being drawn in as shareholders or as interested parties with their own agenda to protect significant national assets and jobs.

In the panel's opinion, two elements - trust and information - are vital to balancing these competing interests and bringing stakeholders as quickly as possible to a mutually agreeable solution. Ideally, in their view, negotiations should involve all stakeholders in an atmosphere of openness with a common information platform. But, to do this requires know-how and leadership from the key participants, bringing us back to the original point on how valuable experience is in these situations.

Gideon Jones, of Atradius, stressed the importance, from the point of view of the credit insurer, of putting in place the two vital elements of trust and a common information platform. The credit insurance industry has grown rapidly in size since the last downturn. It has also grown rapidly in notoriety in this recession, since there are few large restructurings that do not involve credit insurers in some way. However, despite their proven importance to business continuity, credit insurers can often be

left in the dark during a restructuring, leaving them with little choice, but to limit or withdraw cover leading to the needless deterioration of deals.

Hopes and fears for regulation

Globalization adds an additional layer of complexity to this already intricate picture, with conflicting legal systems compounding the difficulties of completing deals. However, in the panel's opinion, a unified or even compatible European restructuring structure is unlikely at any point in the near future. Moreover, although they welcomed the return of the “London approach,” the ability of governments and central banks to enforce informal solutions is limited by the number and location of participants. Ideally, government's role is to create the right framework for restructuring, in particular making it easier to enforce “cram downs” out of court and to bring the last few stakeholders to the table as quickly as possible, therefore minimizing the risk of failure.



Solutions: seeking value

The severity of the downturn and the continuing credit restrictions are limiting the variety of solutions available. Debt trading and rescue rights issues are only suitable for those who are big enough, strong enough or who saw the problem quickly enough.

With this in mind, the panel discussed the efficacy of three options available for distressed companies – debt-for-equity swaps, divesting and insolvency – and reflected upon the importance of valuation to a successful outcome.

Moderator

David Hargrave

Partner, Ernst & Young UK

Panel

Alan Hudson

Partner, Ernst & Young UK

Nik Eyton

Director, Ernst & Young UK

Mark Brockway

Director, Ernst & Young UK

Steve Taylor

Partner, Ernst & Young UK

Matching solutions to situations

Finding a solution to optimize value requires an open mind along with a deep understanding of an asset's long-term fundamentals, management abilities, stakeholder priorities, current and future value and potential exit routes.

With this in mind, a panel from Ernst & Young discussed three solutions – a debt-for-equity swap, formal insolvency and divesting – giving the benefits, pitfalls and optimal conditions for each.

Debt-for-equity swaps

The Debt-for-Equity Swap (D4ES) has proliferated in recent years, as lenders look to buy time on distressed investments. But, a D4ES is by no means a miracle cure. It is an invariably lengthy, difficult and expensive process that can be hard to force through and will ultimately crystallize losses for the lender. It also places lenders in an unfamiliar, active equity role that requires much more day-to-day involvement in the running of the business.

Therefore, before proceeding with a D4ES, a lender should ask itself some fundamental questions. Essentially, the lender must be confident in the long-term prospects of the business and confident in its management and their ability to work under a new regime with new incentives. And the lender must be as certain as possible that the value of the asset will increase enough for a profitable exit. The ideal candidates for a D4ES in today's market have sound long-term market prospects and good fundamentals, but operate in cyclical markets that have a depressed balance sheet. This makes

home builders prime candidates, and this is a sector where Ernst & Young has seen a great deal of activity. On the other hand, sectors like printing, where the market is in long-term decline, do not generally offer value through a D4ES.

If the conditions for the D4ES are right, long-term success also depends on getting the right balance sheet structure and business plan at the outset to minimize the chances of relapse. But the greatest challenge will be convincing other stakeholders that a D4ES offers them the best value. Arithmetic may convince those out of the money, but be prepared for difficulties, with no time to spare.

Insolvency

Formal insolvencies have been less prevalent than expected, given the adverse economic climate. To understand why, it is useful to split the process in two, starting with prepackaged insolvency. So-called "pre-packs" have received a great deal of criticism in recent years, which could discourage adoption. However, it is undeniably a useful tool. For instance, a pre-pack deal can allow business preservation when a value has been established but the deal can't complete by any other means due to uncompromising creditors, logistics or simply insufficient time. The collapse of UK retailer Woolworths appears to have softened opinion, but the reaction to pre-packs also serves as a useful reminder of the importance of not just doing the right thing, but explaining why.

Trading insolvency has also been used less than expected. Putting a business into insolvency is a big step, but all the more so now when there isn't a ready exit and breakup could be the only option.

“The severity of the downturn means there are few ‘vanilla’ restructurings with a covenant reset; the situation requires more novel solutions.”

David Hargrave, Ernst & Young UK

However, when faced with a cash-insolvent business with no one willing to invest, it remains the best option for management to put protection around itself and creditors. Equally, it is the best solution when severe events occur suddenly and there is nowhere else to turn, or when creditors need to secure rights and take control after losing their confidence in management.

In any restructuring scenario, there is normally a premium in a consensual solution, since it minimizes operational and management disruption. Expediency is undoubtedly encouraging consensus in some situations, such as the increasing conciliation between retailers and landlords. But agreement isn't always possible and it's vital to understand what your worst-case insolvency outcome looks like, where the value breaks lie and whether you can and are prepared to pull the trigger. If you are, don't blink.

Disposal

The M&A market has also been depressed by a scarcity of buyers and by reluctant sellers, put off by depressed valuations. However, if a company's markets are in terminal decline, the business isn't the

best in class, or if there are concerns over management's ability, value may be better optimized by selling now. Even where a sale is distressed or accelerated, planning is vital. Auctions are rarely helpful in this environment. Testing the market with the right buyers will protect sellers from rumors of distressed sale and will offer better outcomes. If necessary, deal structures can also include earn-outs to bridge market uncertainties and the valuation gap between buyer and seller.

Valuation vital

Valuation underlies the success of all of these approaches. Market circumstances make accurate valuation difficult, but not impossible. And in cases where the outlook is particularly unclear, it could be appropriate to present more than one valuation scenario, based on levels of market recovery, or to use earn-outs as described above. But, however a business is valued, a keen understanding of market dynamics and the position of the business in the value chain is vital to avoid unrealistic evaluations.



European perspective

In this session, we drew upon the experiences of our local teams in Germany, France, Spain and the CIS to examine restructuring trends in their regions. We also took time to discuss the impact of recent changes in insolvency law and the opportunities and obstacles provided by legislation.

Moderator

Angela Swarbrick

Partner, Ernst & Young UK

Panel

Matthias Beck

Partner, Ernst & Young Germany

Lionnel Gerard

Partner, Ernst & Young France

Remigio Barroso Cardenal

Partner, Ernst & Young Spain

Doug Jenkinson

Partner, Ernst & Young CIS

European hurdles and opportunities

In this session, common themes ran across country borders. In particular, two industries automotive and construction stood out as the main trouble spots, although the slowdown in construction has thus far been less pronounced in Germany. Perhaps surprisingly, retail isn't amongst the troubled industries, although the panelists expect retailers' woes to increase if, as expected, job losses worsen this year and into 2010.

Although the sectors in distress are broadly similar across Europe, restructuring frameworks and the approach to solutions vary widely. Moreover, these frameworks are also in a state of flux. Three of the territories discussed – Germany, France and Russia – have made significant changes to

insolvency legislation since the start of the credit crunch in an effort to lessen its impact. Early reaction among the restructuring community to the changes is broadly positive, although in many areas there are still significant legal or cultural obstacles to expeditious restructuring. Moreover, some of these new measures are temporary and only provide enough breathing space for companies in distress to strengthen and put their balance sheets in order.

Nevertheless, while the main message from the discussion was to be cautious in the months ahead, there were reasons to be brave. Even equity providers, who may be totally out of the money in a restructuring, can bring influence to the table as the only stakeholders with cash to spare. There are still opportunities for the bold.



“The situation in Germany changed dramatically due to the situation in the automotive industry.”

Matthias Beck, Ernst & Young Germany

Germany

Economy performing until autumn 2008

The German economy was actually performing well until it was hit by the automotive industry's collapse in the autumn 2008. Looking at the patterns of this and previous recessions, three waves of sector restructuring are expected. The first, and where most sectors are now, is when companies ask for help – be that operational, restructuring or from governmental. Formal insolvencies form the second wave, which is where automotive, the most distressed sector in Germany is now. The third wave comes when distressed investors express interest and recovery begins, which is expected to come in spring 2010.

The automotive industry is already in serious trouble in Germany due to the collapse in global demand. Another sector following automotive and coming under pressure is industrial engineering, which on the whole has a strong balance sheet from the good years pre-downturn. But a dramatic fall in order intake and the summer pause will add additional stress. Logistics and chemical companies are already under pressure, and construction is expected to follow later this year.

In retail, restructuring thus far has mainly been driven by structural issues, rather than falling demand; sales have actually been flat for some time. The majority of the German population also makes its living from sectors relatively unaffected by the downturn; therefore, the retail dip isn't expected until after Christmas when the impact of unemployment hits spending.

Legal change eases pressure

A recent temporary change in law has shifted the focus for insolvency in Germany. The changes center around the questions asked of management. The previous indebtedness test asked on a given balance sheet date: “Do liabilities exceed assets?” The new test asks: “Is this business a going concern?” This shifts the focus from the balance sheet to cash flow, easing the immediate pressures on many companies. It gives breathing space to deal with short-term valuation challenges and to implement restructuring steps.

However, this isn't a time for complacency. The legislation reverses at the end of 2010, when balance sheets will be back on the agenda. Any weakness should be addressed as soon as possible.

Tax and insolvency law limitations

Laws that work in good times can be obstacles in the bad times and German tax and labor laws have proven to be a particular hindrance to restructuring. For instance, profit from waiving debt or converting it to equity is taxed under laws designed to prevent tax evasion.

German insolvency laws and procedures also appear inadequate for the current crisis. The law lacks a creditors voluntary arrangement; there are difficulties in enforcing creditor solutions; and formal procedures are subject to the decision of judges, who are able to appoint their choice of insolvency lawyers as administrators, thus taking the process out of shareholder, debtor and even creditor control.

Moreover, there is a small pool of administrators, which tend to be based in small law firms rather than international practices. This makes cross-border restructurings problematic, and where this is an issue, lenders may be tempted to move the insolvency jurisdiction to other countries for a more favorable and speedier result.

European perspective

France

Sharp falls in demand from late 2008

Demand in France fell rapidly in the final quarter of 2008, hitting the suppliers to larger companies, which are very often family owned businesses with limited equity and cash. This was a dire situation for many that was exacerbated by lack of credit. The impact of falling demand and contracted credit was also particularly hard on the many private equity investments in France, completed at high leverage and existing with tiny equity structures; their situation can deteriorate rapidly with even a 10 to 15% sales drop. Fortunately, for many of these companies, their loan bullets have long maturities, leaving them with breathing space to renegotiate, which they should use now.

At the start of the downturn, when the fall in demand was relatively shallow, many French companies avoided strong restructuring measures. They did this by retaining cash by all possible means, for example by postponing capital expenditure or delaying product launches. As the slump has accelerated, there has been a greater resolve to restructure balance sheets, but this has come six months too late for many companies - providing a strong lesson for those in sectors still to suffer the worst of the downturn to prepare their balance sheets now.

Focus on automotive and construction

Automotive was one of the first sectors to suffer in France, with early signs of distress occurring before the collapse of Lehman Brothers. This decline has left many automotive suppliers in a serious situation. In response, the French government has established a dedicated investment fund (Fonds de Modernisation des Equipementiers Automobiles) to rebuild equity in automotive suppliers, which also has also received contributions from Peugeot and Renault. This fund is confined to limited groups of manufacturers, and many smaller suppliers remain vulnerable to insolvency.

Along with the rest of Europe, the French construction industry is also under pressure. Tax incentives led to rapid expansion, especially in the South of France, during the credit boom. Now credit has dried up, building has stalled. Again, the French government is trying to incentivize the sector through tax gifts, but this looks insufficient to bring about a cure.

Change in French insolvency law paves way for more debt-for-equity swaps

French insolvency law reforms made at the start of 2009 aim to promote the use of the safeguard procedure "la procédure de sauvegarde," which was introduced at the start of 2006. The use of the legislation in its previous form for the restructuring of Eurotunnel, the operator of the channel tunnel, exposed procedural flaws, and the changes made in 2009 incorporate suggestions for improvement from the restructuring community.

One of the key amendments allows decisions to be carried by a two thirds majority vote among debt providers in a syndicate and also sets up more practicable ways to convert debt into equity. This should facilitate decision-making and enable debt-for-equity swaps, whereas previous laws made it difficult for debt holders to get into the equity.

There have been half a dozen cases using the rule change in 2009 along with the first attempt at a pre-pack deal with Le Groupe Autodistribution. These changes have been welcomed, and indications are that debt-for-equity swaps and pre-pack insolvencies will become more common in France in the months ahead.

“The lessons for sectors still to be hit is to start your balance sheet restructuring now.”

Lionel Gerard, Ernst & Young France

“We built houses as if there was no end to it - and there was an end to it of course.”

Remigio Barroso Cardenal, Ernst & Young Spain

Spain

Spanish downturn led by real estate

The Spanish economic downturn started in domestic construction and real estate at the start of 2008, when the impact of the credit crunch literally hit home. These sectors had been crucial to economic growth in the five years leading up to the credit crunch, with such a massive increase in building that activity surpassed the combined amount in Germany, Italy and UK in one year.

By the end of 2008, construction was a sector in severe distress with a number of high-profile insolvencies and restructurings. Moreover, the impact of the building slowdown had spread to related sectors. By the last quarter of 2008, the suppliers of products such as windows, doors, bathrooms and kitchens had finished fitting out completed buildings and their pipeline was empty, which led to falls in demand for building suppliers of 15 to 20% in Q4 08 and 30 to 50% in Q1 2009.

The tourism sector, another industry vital to the Spanish economy, is also expected to come under sustained pressure in 2009. In a normal year, Spain expects to receive approximately 50 to 60 million tourists. It's hard to judge the impact until the end of the summer, but a fall in visitors of 15 to 20% is expected during 2009.

The complications of foreign ownership and investment

The other major sector in Spain shown to be distressed was, unsurprisingly, automotive. However, there is a vital difference between Spanish automotive manufacturing and French and German automotive manufacturing. All of the seven major Original Equipment Manufacturers (OEM) factories in Spain are owned by foreign companies. In practical terms, this means decisions about the future of these factories are made elsewhere with interests outside of Spain in mind. Automotive production and jobs have already been repatriated by foreign owners, and this is not a trend limited to this sector.

Foreign and domestic banks are also displaying very different approaches to restructuring in Spain. For instance, many foreign banks operating in Spain are avoiding taking a direct role in debt renegotiations and are also avoiding putting in additional investment, preferring to use this capital closer to home.

Spanish banks avoiding equity cures

This reluctance by foreign banks to make additional investment has left Spanish banks playing a leading, if reluctant, role in renegotiating debt. However, thus far Spanish banks have shown reluctance to swap debt for equity stakes, particularly in the large distressed real estate companies. This is partly due to the relative size of real estate companies to the banks. But it's also due to the concern about the time it will take for the market to recover. We know of only just one case – Metrovacesa – where banks have taken an equity stake.

European perspective

CIS

European trends magnified in the CIS

The CIS has followed the boom and bust of Europe, but with the trends described in the earlier panel session “accelerated and magnified.”

Most sectors remained “hot” in the CIS until autumn 2008, when demand plummeted and the Russian stock exchange suffered repeated closures – a measure of the seriousness of the situation. The impact of this downturn was then magnified by the number of inexperienced management teams running business models based on 30 to 40% organic growth rates, which made even moderate growth insufficient to meet targets or service aggressive debt structures. The previous stellar growth rates covered up insufficiencies and imperfections in business plans, which are only now being exposed by the slump.

Moreover, to complicate the situation further, most of the CIS corporate debt is short term. One source suggests that around US\$40 billion is due in 2009 to foreign banks, who would ideally like this debt held closer to home. The challenge for these banks now is how to deal with this amount of debt maturing in the CIS marketplace.

All but pharmaceuticals “substantially hit”

Pharmaceuticals is virtually the only sector not under stress from the downturn in the region. Non-luxury retailers are still experiencing growth, or at least moderate declines, but are suffering because their business models were predicated on much higher growth and they don't have a strategy for a low-growth environment.

But the sectors hit hardest by the combined effect of economic slowdown and credit crunch are construction and real estate. Moscow has an area similar to the size of London's Canary Wharf where half-completed structures lie empty. The automotive sector was also heavily reliant on debt, with 50% of car purchases made on credit before financing dried up. The sharp decline in demand has forced some Russian automotive manufacturers to pay suppliers in IOUs with a harsh impact down the supply chain. Russia also has a large exposure to commodities, particularly in metals, where prices and therefore profits have dropped dramatically due to the worsening global economic forecasts. Offense is the best form of defense.

The legacy of the Russian financial crisis of 1998 has left many lenders wary of taking cases to court or using the same hammer they might use in other regions. However, borrowers can take advantage of hesitancy and, in our experience, bold tactics can offer the best chance of success in the region. On the other hand, unlike the other countries discussed here, standstill agreements are still rare in the CIS. This is due partly to owner reluctance to pay for restructuring services to improve performance and also the common perception that information is a weapon, that should not be shared. In this situation, as with any in the region, good advice is essential.

New legislation supports senior lenders

Major Russian law firms regard the January 2009 amendments to insolvency legislation as progressive. The principal change is the improved position the legislation gives to secured creditors, but this does not apply to the vast majority of loans made before 2009. To gain retrospective benefit, lenders might be able to use any opportunities that arise in paperwork changes to reference the legislation. We encourage lenders to speak to their lawyers on this point.

“Take a big camera lens to the trends we've heard about in earlier sessions and apply it to Russia.”

Doug Jenkinson, Ernst & Young CIS

Our restructuring team

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