

5TH ANNUAL MSBM
ROUNDTABLE
MONA VISITORS' LODGE & CONFERENCE CENTRE



**TRANSFORMING
ORGANIZATIONS FOR GROWTH**

Turnaround & Restructuring for Growth

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- **Summary of Current US and European Events Re: Company Rehabilitation**
- **Key Lessons for Jamaica**
- **How Turnaround Specialists can help Corporate Rehabilitation & Reorganisation**

Summary of Current US and European Events Re: Company Rehabilitation

- All insolvency legislation seeks to find a balance between creditor and debtor rights in distress; - Some do it better than others
- US Bankruptcy code of 1979 set the pace and is the benchmark in giving failing businesses a second chance with “Debtor in Possession”
- European legislation was “default insolvency” and slow to change, but since 2002 the larger countries have changed legislation to encourage the “Rescue culture”. Live companies are worth more than dead ones
- Post Lehman brothers and the deep recession in US and Europe many companies are now heavily over leveraged with little chance of repaying debt. The phenomenon of so called “Zombie companies” holding back national GDP growth
- Banks have been reluctant to trigger insolvency and asset fire sales in a depressed market, deferring bad debt recognition on their over leveraged balance sheets as they adjust to Basel 111 and stricter regulation

Summary of Current US and European Events Re: Company Rehabilitation (cont'd)

- There is a growing recognition with more sophisticated financial creditors that **insolvency is value destructive and fee intensive, damaging enterprise value and employment whilst diluting returns to creditors**
- Chapter 11's and European insolvencies are at a historic low level and financial restructuring and consensual restructurings are becoming more prevalent
- Debt to equity swaps, Creditors Consensual Compositions (CCC's), CVA's, Pre packs ahead of Administration are now the new normal over liquidation
- **But beware!!** -- Banks are selling debt at a discount to distressed investors who use their secured creditor status to seize control from equity and disadvantage unsecured creditors
- A failing business that wishes to survive without equity dilution or destruction must act early to change direction with a viable plan and a credible management before a liquidity event erodes leverage to negotiate a restructured balance sheet consensually

Key Lessons for Jamaica

- Current legislation belongs to another era (pre-rescue Culture) when protection of secured creditors was paramount. It is value destructive
- The new draft Jamaican Law does not incorporate best practice from other jurisdictions (such as France, Italy and USA)
- Jamaica could seek a better balance between creditor protection and debtor engagement to avoid damaging the viable elements of a failing business which publicly signals distress ahead of attempted creditor compromise. This will result in better creditor returns and better results for “Jamaica Inc.” than will be achieved in a formal process
- Facility for a pre insolvency out of court process should be considered with a short (60-90 day) stay on creditor action and a basis for cram down of minority dissenting unsecured creditors without an appointed administrator. The EU has recently recommended such a course for all member states to embrace before end 2015

Key Lessons for Jamaica (cont'd)

- Under the current Jamaican legislation whilst there is scope for pre insolvency Creditors Consensual Compositions (CCCs) with the emphasis on commercial reality, rather than legal “rough and tumble”, **without a pre insolvency stay the leverage is too much weighted to the secured creditor and it is more difficult to negotiate**
- Creditors Consensual Compositions (CCCs) rely on support of both the secured creditor and the persuasive management of the unsecured creditors by presenting a compelling and well structured business case, credible management change, with credible cash flow forecasts and a **demonstrated recovery substantially in excess of recovery in insolvency proceedings**
- CCC is a preferred course in France (mandate ad hoc and conciliation) and in Italy, has recent precedence in USA as an alternative to Chapter 11, and has recently (2012/13) been accomplished in UK by challenging accepted practice of formal and more value destructive CVA's
- CCC is an attitude of mind (can do) and a departure from “normal process” by imaginative professionals with a commercial over a legal mind set

How Turnaround Specialists can help Corporate Rehabilitation and Reorganisation

- Management should select **Turnaround Advisers** on the same basis as any other Corporate adviser and not feel their capability is diminished by seeking help. Company directors are hired for their industry knowledge not their turnaround skills. **Turnaround Management** is a specialised skillset in its own right. Seek a Certified Turnaround Professional (CTP) with demonstrated skills in Management, Finance and Insolvency Law and knowledge in leveraging concessions from aggressive creditors to mutual advantage
- Early action will deliver better results as there is more time, liquidity and scope to prepare a credible reorganisation and recovery plan without excessive creditor pressure
- Unfortunately this rarely happens so select a Turnaround specialist with demonstrated experience of working in the zone of insolvency and under cash pressure
- Management should select their own advisers and not recommendations from Banks and other stakeholders with vested interest. Make sure your adviser is independent of all other interests, real or perceived

How Turnaround Specialists can help Corporate Rehabilitation and Reorganisation (cont'd)

- A reorganisation plan benefits from having an adviser with both operational experience and financial restructuring skills. Too many restructurings are balance sheet only and ultimately fail because they don't address the business fundamentals. **The optimum is a re-focused business, a re-invigorated management, and a restructured balance sheet that can be serviced from credible forecast profits and cash flow**
- Negotiating and selling the plan to different stakeholders with conflicting positions is not a situation for on the job training. It requires **experience, integrity** and **tenacity**. Select advisers with a track record of success in demonstrating those capabilities
- Give preference to advisers who are independent of other vested interest and who work only outside of formal insolvency as filing or not filing in the zone of insolvency can be a matter of fine judgment
- **Turnaround is a team game** involving Company management, Turnaround advisers, Legal advisers and Stakeholder advisers

Be in control rather than be hostage to events; Get the best coach on your team