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Teneo 'plans to build leading global restructuring practice'

Dan Butters, Teneo

Dan Butters, Teneo's new global head of restructuring following the sale of Deloitte's UK restructuring and insolvency practice this month, has ambitious plans to build the world's pre-eminent restructuring practice through acquisitions and individual hires, using Teneo-backer CVC's capital resources.

"We want to be wherever our clients are," declared Butters. "We want boots on the ground. There are many excellent restructuring firms in the US, for instance, specialising geographically or in a particular sector like oil and gas. These are ripe for consolidation."

"We are already starting bid talks," he added.

Until 16 February, Butters was Deloitte's UK head of restructuring, leading the administration of a major UK high street retailer, Arcadia. On that day US-based PR firm and management consultancy Teneo announced that it had acquired Deloitte's UK restructuring practice for an undisclosed sum.

Butters' team started talking to interested parties in the fourth quarter 2020, with the open support of Deloitte. They entered serious negotiations with CVC and Teneo in December, and decided on them in mid-January.

> "We wanted to seal a deal as quickly as possible," said Butters. "We wanted to deliver a clear message to clients and our team. Speed was of the essence."

Teneo is headed by chairman and CEO Declan Kelly, an Irishman who co-founded the firm in 2011 and has built a high level political consultancy in the US, having been a close advisor to President Barack Obama.

In 2019, CVC bought a majority stake in Teneo. CVC has experience in investing in restructuring firms, having held a stake in AlixPartners, which they sold in 2016.

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Letter from the Editor

Waiting for the uptick.

Restructuring and insolvency numbers are in the doldrums in Europe and elsewhere. The US Chapter 11 boom of last year faded in the fourth quarter.

Yet firms are 'splashing the cash', recruiting restructuring lawyers, financial advisers and turnaround managers at a dizzying pace (see pages 5-7).

When are all these highly renumerated professionals going to start earning their way?

Cash is still free. The equity markets are frothing away. You can refinance virtually anything. Most importantly, governments are bending over backwards to support businesses through the impact of the pandemic lockdowns.

This has forced restructuring and insolvency numbers down to record lows (see page 9).

The contrast between the quietness of the restructuring market and the frenzy of the 'musical chairs' between firms couldn't be more extreme.

This may tempt some to wonder whether expectations of the much-predicted surge in restructurings and insolvencies will actually come. After all, there have been numerous times in recent years when ratings agencies and economists have confidently forecast a boom in corporate distress, only for some new factor, like the hi-yield market, to come along and solve the problem. Or at least to 'kick the can down the road'.

This is one instance where I think the can can't be kicked, as it were.

Much of government support around the world has been to keep interest rates down and to encourage lenders to forebear, in other words to load up companies with even more debt.

Another popular measure has been to suspend the right for creditors to foreclose, or for landlords to take action against tenants.

When this kind of support is withdrawn, together with all the job schemes, the rise in corporate distress could be savage and sudden.

Most professionals I have spoken to recently are expecting the second half of the year to be 'when it happens'. At the latest, goes the consensus, it could be the start of 2022.

And I'm with the consensus. As vaccines enable economies to reopen, paradoxically creditors will be encouraged to enforce, as at last administrators will have business and assets worth selling, and access to buyers able to buy.

Meanwhile expect another few months of relative inactivity, and for the music in the recruitment market to continue.

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News

Who will buy KPMG's UK R&I practice?

A number of PE funds are bidding for KPMG's UK restructuring and insolvency arm, including Epiris, one of Britain's biggest mid-market buyout firms; HIG Europe and Intermediate Capital Group (ICG).

Epiris also owns The Big Table, the owner of restaurant chains Café Rouge and Las Iguanas. It is understood that both KPMG and the R&I team are keen to complete a deal as soon as possible.

The new unit will be headed by three of KPMG's top restructuring partners in the UK: Blair Nimmo, Will Wright and Mark Raddan.

KPMG recently handled the administration of one of the UK's biggest real estate groups, Intu Properties. Separately, last year the firm sold its pensions advisory business in a management buyout backed by Exponent Private Equity.

Some market sources are suggesting the auction will fetch as much as UK£400 million.

US Chapter 11 filings continue to stagnate

After a boom in Chapter 11 filings in the first half of last year, numbers fell off in the last quarter, and January's figures are still well down on the same period a year ago.

According to figures from the American Bankruptcy Institute (ABI), Chapter 11 filings in January 2021 totalled 479, a 24 per cent drop from the 631 filings in January 2020.

Chapter 11 filings in January 2021 represented a 22 per cent increase from the 394 filings recorded in December 2020.

Amy Quackenboss, ABI Executive Director, said: "Continued government relief programs, moratoriums and lender deferments have helped families and businesses offset the challenges of elevated unemployment rates and growing debt loads during the Covid-19 pandemic.

"As further stabilisation efforts are considered by Congress, an extension of the eligibility limit for small businesses electing to file for subchapter V under Chapter 11 will provide vulnerable businesses with a proven shield in financially uncertain times," said Quackenboss.

UK insolvencies halve in January compared to last year

UK corporate insolvencies fell by 39.1 per cent to 752 in January 2021 compared to December's figure of 1,235, and were 50.4 per cent lower than January 2020's figure of 1,515.

Colin Haig, president of the UK's insolvency trade body R3 and head of restructuring at Azets, commented:

"January's fall in corporate insolvency numbers has been driven by a fall in Creditors' Voluntary Liquidations, Administrations, and Company Voluntary Arrangements.

"These figures don't reflect the fact that the economic fallout from the pandemic is continuing to hit businesses, individuals, and the wider economy," said Haig.

"It's clear the Government's support packages – which were extended again in December – are helping prevent the rise in insolvency numbers we would have expected to see in an economic climate like this one.

"However, the support packages and bans on creditor enforcement actions can't last forever. We hope that the Chancellor will use his Budget on March 3rd to outline how they will be wound down in an orderly manner in the medium term, and how businesses, staff, and the self-employed will be supported during this period," said Haig.

continued from page 1

Butters now becomes Teneo's global head of restructuring, and will work closely with his leadership team: Rob Harding, head of UK domestic insolvency; Ian Wormleighton, head of complex and international cases; Stephanie McMahon, head of the creditor practice; and Jarek Golebiowski, head of the corporate practice.

Butters has taken 27 partners and 250 people across to Teneo in a consensual deal. This point was crucial, said Butters. "I'm really glad we did the deal this way, with Deloitte's full agreement."

As a result of the deal, Teneo's total headcount will increase to more than 1,100 employees.

Butters added that Teneo still had the option of buying in services and support from Deloitte where necessary – although this will become less important as Teneo builds out its practice, something he wants to do as quickly as possible.

Butters said Teneo now has teams in place able to handle special situations, vanilla and accelerated M&A, PLC advisory, restructuring tax advice, restructuring real estate and pensions.

Geographically, the sale to Teneo includes the R&I teams in England, Scotland, Wales and the Channel Islands. The new team at Teneo is currently looking at offices in London, and a regional network around the UK, although the Covid-19 lockdown paradoxically means this is less urgent than in 'normal times,' since almost all business is conducted online. Butters said:

"Zoom meetings are good for starting a deal, less so for completing it."

"When you get multiples of stakeholders, purchasers, lawyers, it can be quite tough," he said.

Now Butters and his team are expecting an uptick in restructuring and insolvency business in the UK in the second half of the year, as the Government ends a moratorium on winding-up orders and reduces the furlough scheme.

Who is Teneo?

Teneo, the Irish-founded PR and corporate consultancy with headquarters in New York, has now completed 14 acquisitions since it was established in 2011. The firm was launched by Declan Kelly, the largest shareholder, together with Doug Band, a former White House intern who end up as one of President Clinton's closest aides, and Paul Keary, COO. Band left Teneo at the end of last year.

In December 2014, New York private equity firm BC Partners, made a minority investment in Teneo.

Then in 2019 CVC bought a majority stake in Teneo, netting the three founders US$700 million in the process.

This is the first big investment in restructuring and insolvency by Teneo. It comes as UK regulators continue to push to separate audit from non-audit work in the Big Four. Regulators are unhappy with the performance of audit in a number of big recent company collapses including Carillion, BHS and Patisserie Holdings.

All of the largest auditors have submitted plans to the UK's Financial Reporting Council (FRC) demonstrating how they intend to 'operationally separate' their audit and consulting arms during the next few years.

Ian Wormleighton, Teneo

Rob Harding, Teneo

Some leading Deloitte figures stay put

Several leading figures in Deloitte's UK restructuring and insolvency practice are remaining with the Big Four firm as they have continuing roles there.

These include Henry Nicholson, head of debtor advisory, who has been appointed chief strategy officer in the firm; Andrew Grimstone, who continues as the head of Deloitte's global restructuring practice, which the firm has ambitious plans to grow; and Nick Edwards, a former head of UK restructuring, who also now has several other roles within the firm.

Declan Kelly, chairman and CEO of Teneo, said:

"We are delighted to welcome Deloitte's UK restructuring team to Teneo as we strengthen our worldwide consulting capabilities."

"The combination of the UK's best distressed restructuring specialists with our existing advisory expertise will reinforce and extend Teneo's position as the world's leading CEO advisory firm.

"Teneo intends to use this acquisition to build a global restructuring practice, leveraging our existing capabilities in the United States, as well as through further M&A and organic growth," said Kelly.

Richard Houston, senior partner and chief executive at Deloitte UK, added: "We're thrilled with this outcome.

"Our overriding priority throughout this process has been to ensure the stability and future success of the business as well as the individual progression and development of its talented partners and people.

"The deal announced today offers an exciting opportunity for that, and we wish Dan and the team every success for their future journey," said Houston.

Advising on the Teneo deal

This is the third deal announced by Teneo in the UK and Ireland in the past six months, with the company previously buying London-based Ridgeway Partners, an executive search firm, and Dublin-based Kotinos Partners. CVC Capital Partners is making an incremental equity investment as part of the Deloitte deal.

Macfarlanes advised the Deloitte team on the deal, led by corporate and M&A partner Stephen Drewitt and senior solicitor Nicholas Page. Employment advice came from partner Hayley Robinson and senior solicitor Tabitha Al-Mahdawie.

Drewitt commented: "We are delighted to have advised the restructuring team of Deloitte on their sale to Teneo."

"The move provides a new opportunity for the team with an excellent platform for their future growth plans."

Corporate finance advice on the deal was provided by Michael McDonagh and Jeff Soh of Liberty Corporate Finance.

Italian insolvency law: Four reforms and an 'early warning'

Italy is poised to launch major reforms to its company rescue laws, encompassing in the process the EC's Preventive Restructuring Directive, in a package titled the Italian Crisis and Insolvency Code, due to be enacted on 1 September.

There are also some amendments which may be approved by various competent bodies in the near future.

Whether the Code will actually be launched on that date is, however in doubt; much depends on Italy's political scene, and whether legislators can get round to dealing with it.

Which is a shame, considering the Code was approved by the Italian Parliament back at the beginning of 2019, long before Covid-19 had been heard of.

According to Juri Bettinelli, a counsel, and Stefano Sennhauser, a partner, with Allen & Overy in Milan, there are four main parts to this reform package.

The main features of the reform include:

(i) the introduction of a notion of group insolvency, which is not currently provided for under Italian insolvency law

(ii) an 'early warning' procedure aimed at anticipating and preventing the occurrence of insolvency situations

(iii) several amendments to the rules governing composition agreements with creditors, debt restructuring agreements and the bankruptcy proceedings, that shall be renamed as judicial liquidation in compliance with European legislation

(iv) the introduction of a coherent and uniform framework for, and regulation of, corporate insolvency in Italy

How the reforms could speed up the process and improve predictability

Gaetano Carrello, a restructuring partner with Gattai, Minoli, Agostinelli in Milan, commented:

Gaetano Carrello, Gattai, Minoli, Agostinelli, Partners

"Italy has over the years materially improved its legislative framework, introducing a number of flexible tools aimed at minimising the risk of outright insolvencies and helping companies to restructure – both their capital structure and/or operations - on a going concern basis and under safe harbours."

Gaetano said that the new legislation potentially entering into force in September could improve the framework further by introducing tools aimed at allowing early detection of crisis situations.

"The main issue is therefore not so much the legislative framework but the practical issues arising in the context of in-court restructurings," he said.

'Concordato preventivo' has proved a particularly powerful tool to restructure companies when there is a need to cram down dissenting creditors, Gaetano observed, but it is still perceived by investors as an extremely long and cumbersome process.

> "It is not unusual to see concordato processes lasting 18 to 24 months from pre-concordato filing to the completion of the restructuring."

"It is very much this lengthiness, and associated costs, which make investors still wary," said Gaetano.

Another key factor is the uneven application of rules across local courts. For instance, in-court restructurings are held in front of the territorial court where the debtor has its seat. This further adds to the unpredictability of outcomes, he added.

"Having said that, the consolidation of a body of precedents and of cases is helping practitioners in providing companies, creditors and investors with some sort of increasingly reliable guidance," concluded Carrello.

Italy's concordato - 'lengthy and unpredictable'

The 'concordato' is one of Italy's most often used restructuring mechanisms for medium to large sized businesses. As restructuring activity is forecast to pick up later this year, and competition from new laws across Europe increases, one recent example of the use of concordato shows why Italian lawyers are so frustrated by its slowness and unpredictability.

Dario Bortot, a senior director in restructuring with Alvarez & Marsal who splits his time between Milan and London, said: "In terms of length and unpredictability, Officine Maccaferri's concordato is a recent example currently on top of the news."

The company's restructuring plan was unexpectedly rejected by the court of Bologna. Bortot explained why:

Officine Maccaferri is a solutions provider to the construction, geotechnical and mining industries headquartered in Zola Predosa, Bologna.

In August 2019, Officine Maccaferri started exploring, unsuccessfully, alternatives to refinance its 2021 bonds. In December 2019 the company missed the coupon due on 1 December, 2019 and started discussions with its bondholders.

The Carlyle Group, which is leading an Ad Hoc Group of former bondholders/now shareholders to the company, agreed a restructuring plan in the beginning of 2020 with Officine Maccaferri.

The plan, subsequently submitted to the court of Bologna, envisaged a 70 per cent haircut and post-reorganisation equity of 13 per cent for bondholders, while providing 60 million euro in new money.

Bortot said: "The plan and related proposal were pushed back by the court in July 2020, as the proposed financing structure was deemed too expensive, for a number of reasons. The court pointed to high interest and default rates, additional costs, collaterals and recourse to English law."

A second proposal comprising of a 40 million euro, 18-month bridge financing (8 per cent interest rate and a 5 per cent default rate), split into two 20 million euro tranches to be subsequently converted in a longer-term facility with at least four years maturity, paying a cash margin of 650bps and a PIK margin of 650bps, was rejected by the court of Bologna in December 2020.

Dario Bortot, Alvarez & Marsal

Concurrently, in December, the ad hoc group won 100 per cent of Officine Maccaferri's equity in a court-supervised auction worth up to 10 million euro.

Bortot concluded: "A third proposal will be submitted in February/March 2021 and will entail a new, pre-deductible, 20 million euro bridge financing from two banks and no new money injected by investors at the current stage.

If the plan gets court homologation, the investors will provide new money to refinance or repay the bridge loan."

Simpson Thacher launches restructuring practice in Europe with Adam Gallagher and James Watson

US 'white shoe' law firm Simpson Thacher & Bartlett has made a decisive move into the European restructuring market by hiring Adam Gallagher from Freshfields and James Watson from Kirkland as partners to build a new practice based in London. The firm doesn't intend to stop there as it looks to rapidly develop strength in depth, including a third restructuring partner hire in the coming year.

Gallagher has been with Freshfields for 20 years, where he has been heavily involved in one of the UK's biggest and most complex retail restructurings, that of Philip Green's Arcadia group. Gallagher has advised the company and is presently representing the administrators from Deloitte.

Coincidentally Arcadia's lead administrator Dan Butters also heads the UK-based restructuring and insolvency practice of Deloitte, the practice which has just been sold to US-based consultancy Teneo (see page 1).

Meanwhile Arcadia's constituent retail brands are being sold off and a significant pension fund shortfall is being tackled. Some of Gallagher's other many cases include Virgin, Intu (where he advised the SGS RCF banks) and Steinhoff.

Watson originally trained with Freshfields for ten years, where he worked closely with Gallagher, before joining Stephenson Harwood in 2015. Two years later he joined Kirkland in London, where one of his representations was advising the lenders to Getronics, the IT group. Meanwhile Gallagher, still at Freshfields, was representing the company.

Watson's other recent cases include the Spanish supermarket chain DIA and the German industrial company Galapagos. He also advised some of the leading lenders to General Healthcare Group (GHG) /BMI Healthcare. Both Gallagher and Watson are well known in the European restructuring market.

Adam Gallagher, Simpson Thacher — James Watson, Simpson Thacher

> Simpson Thacher has had strategic plans to expand its restructuring practice for some time, both in the US and Europe, as a complement to its strengths in private equity and debt capital markets on Wall Street and around the world.

The plan is to grow a European restructuring practice based in London to work hand in hand with its existing US capabilities. Its US-based restructuring head is Sandy Qusba.

Qusba commented:

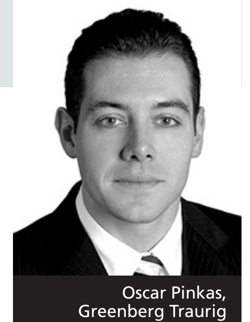
> "We are thrilled to have Adam and James join our restructuring team to establish and build our presence in the critical European market."

"Simpson Thacher's European restructuring practice will complement the firm's existing capabilities in the United States to provide comprehensive services in all aspects of restructurings, and stressed and distressed situations."

Separately, Simpson Thacher is opening an EU office in Brussels led by Antonio Bavasso as a reaction to Brexit, which has made it more difficult to advise clients on EU antitrust, competition and regulatory law from its existing office in London.

Founded in 1884, Simpson Thacher employs more than 1,000 lawyers across 10 offices, including New York, Beijing, Hong Kong and Palo Alto, California.

Oscar Pinkas joins Greenberg Traurig from Dentons


Oscar Pinkas, Greenberg Traurig

Oscar Pinkas has joined Greenberg Traurig as chair of the New York restructuring practice, after thirteen and a half years at Dentons.

Recognised as one of the rising stars of the US bankruptcy profession, Pinkas is a former leader in Dentons' restructuring practice, where he made partner in 2015.

At Dentons he worked on many cross-border restructurings. These include: the non-US operations of Toys R Us; the Chapter 15 of Sanjel (USA) Inc, where he represented STEP Energy Services; the Chapter 15 of Global A&T Electronics; and advising the UK-based Administrators of Lehman Brothers International (Europe) (LBIE).

Pinkas also worked on bebe stores, Deluxe Entertainment, Dura Automotive Systems, Magnetation, Mesabi Metallics, Ranger Offshore, Sanjel, Vivus, and Walter Energy.

A key part of his practice is representing funds and high net worth individuals. Before joining Dentons, he had a year clerking for the Hon. Donald Stekroth in the US Bankruptcy Court, District of New Jersey, and he has an MBA from the Solvay Business School in Brussels.

At Greenberg Traurig Pinkas will work alongside Nathan Haynes, who will now be vice-chair of the New York restructuring practice. The firm's global restructuring practice is co-chaired by Shari Heyen in Houston and David Kurzweil in Atlanta.

Heyen and Kurzweil commented in a joint statement: "Oscar's multi-faceted experience and stellar reputation for handling the most complex, unique, and sensitive legal matters with creativity and practicality will be a tremendous asset to our clients.

"He understands how to proactively help clients resolve and take advantage of opportunities that may arise in complex distress situations," they said.

Greenberg Traurig made hires to its restructuring practice last year, including Baker McKenzie's former global co-head of restructuring and insolvency Ian Jack in London, and Jason DelMonico from Holland & Knight in Boston. Chairman Richard Rosenbaum has previously cited bankruptcy and private equity as key growth areas for the firm.

Adam Plainer to join Dechert in London

Adam Plainer, Dechert

Weil Gotshal's co-head of restructuring in London Adam Plainer is moving to Dechert as global co-chair of the firm's financial restructuring group, joining Allan Brilliant in New York at the helm of the practice.

Plainer's move was announced on 17 February and there is no leaving date as yet. Meanwhile Andrew Wilkinson will remain as sole head of Weil's London restructuring practice.

Plainer is one of the London market's leading restructuring lawyers, having worked on advising Lehman Brothers; advising KPMG as joint administrators in the special administration of global financial derivatives broker MF Global UK; and acting on the restructuring of UK retailer BHS.

He is also a past president of the UK's Insolvency Lawyers' Association (ILA) and the Turnaround Management Association UK.

Dechert's announcement follows the 2020 hires of London-based financial restructuring partners Solomon Noh, whose practice focuses on advising sophisticated investment managers in financial restructurings, financings, and M&A; and Alastair Goldrein, who advises creditors, debtors and sponsors in complex international restructurings and insolvencies.

Both Noh and Goldrein joined Dechert from Sherman & Sterling last year.

Dechert chair, Andy Levander, said, "Restructuring is a core and expanding practice for us globally. We have been building our team to meet growing client demand and Adam's appointment will significantly enhance our capability to support our clients in their most challenging restructuring work."

Allan Brilliant, co-chair of Dechert's global financial restructuring practice, said, "We are very pleased to welcome Adam to the team. He is a strong strategic fit for us, and his arrival will be transformative for our presence in the European market."

Some of Dechert's recent high-profile cases include advising the Official Committee of Unsecured Creditors of Chile-based LATAM Airlines in its Chapter 11 proceedings, securing a victory when the bankruptcy court refused to approve an insider financing deal which would have resulted in millions of dollars in value going to shareholders rather than creditors; and also advising bondholders in connection with the Irish Bank Resolution Corp.'s US$2 billion Chapter 15 proceedings.

Dechert advised the funds managed by Franklin Templeton Investment Management Limited, as creditor, in connection with the challenge to the restructuring of US$500 million of notes (Eurobonds) issued by the International Bank of Azerbaijan.

The firm currently is advising an ad hoc group of holders of bonds issued by YPF in connection with YPF's recently launched exchange offer and consent solicitation.

Geoff O'Dea joins Goodwin in London

Geoff O'Dea has joined Goodwin's private equity (PE) practice in London after three years with Baker McKenzie, focussing on the distressed and restructuring space.

Geoff O'Dea, Goodwin

Richard Lever, a partner in Goodwin's PE practice, commented: "We have been incredibly focused on building out our platform in the United Kingdom and Europe in response to the increasing demand from clients operating at the intersection of capital and innovation."

In 2019 Goodwin hired Simon Thomas from Addleshaws to set up a European restructuring practice. Thomas works extensively with funds, including Cerberus and Oaktree, as well as Lone Star and Hilco. Restructurings Thomas has recently worked on include the shoe retailer Clarks, casual dining chain Cote and BMI Healthcare.

Goodwin's global restructuring practice is co-chaired by Michael Goldstein and Bill Weintraub, who are both based in New York.

Another recently recruited Goodwin private equity partner in the UK, Christian Iwasko, commented on O'Dea's hire: "Geoff is highly regarded for both restructuring and leveraged finance and perfectly complements our team.

"With Geoff and our existing bench, we are well-positioned to provide our sponsor clients with the highest level counsel in the distressed space."

O'Dea has more than 20 years of experience, and in September 2017 he joined Baker McKenzie from Freshfields. He specialises in acquisition finance, corporate lending, and restructuring and insolvency. He advises sponsors, special situations funds, creditors, debtors, insolvency practitioners, and financial institutions.

O'Dea's appointment at Goodwin follows growth of the firm's PE practice in London in 2020 including adding James Grimwood in May and the arrival of Erik Dahl, Christian Iwasko, Sava Savov, Michelle Tong, and John Van De North in September.

The firm now has more than 130 PE lawyers in Europe across its London, Paris, Frankfurt and Luxembourg offices.

Amo Chahal joins Alvarez & Marsal to launch Global Portfolio Advisory Business

Amo Chahal has joined Alvarez & Marsal as a managing director from Deloitte in London to develop a Global Portfolio Advisory business.

Chahal will be joined by an initial team of five senior professionals including Nahuel Callieri and Ankur Patodi. Other recent hires from Deloitte include Christian Ebner, James Dervin, Michael Magnay and Floris Hovingh.

Amo Chahal, Alvarez & Marsal

Chahal has over 14 years of financial services experience, covering both restructuring and transactions. He also has expertise in bank wind-downs and implementing core and non-core strategies.

Richard Fleming, who leads A&M's restructuring practice in Europe, said: "As we move from the current health crisis, a larger financial crisis will start to emerge. It will drive banks to redefine their core business and pursue strategies to reinforce their capital structures.

"Amo, and team, have the expertise to help our clients navigate these complex issues. We are committed to building a market-leading practice in response to growing challenges facing the sector," said Fleming.

Rainer Bizenberger rejoins AlixPartners

Rainer Bizenberger, AlixPartners

Rainer Bizenberger, one of Germany's leading operational turnaround professionals, has rejoined AlixPartners a year after joining EY as its head of restructuring for EMEIA.

Bizenberger joined EY at the beginning of last year in a senior management role just before the Covid-19 crisis struck in Europe. The nature and implications of the pandemic crisis caused him to have a re-think, he said:

"I reflected; would this [role] be my best personal contribution in such an exciting, big crisis?

"In the Autumn, I decided instead that I wanted to focus one hundred per cent on clients, on hands-on operational restructurings, solving large-scale international problems – to follow my passion," he said.

He added that joining such a large, complex organisation like EY with over 280,000 people globally meant a big change for him, compared to his previous time at AlixPartners. While he still did client work at EY, he said, it was naturally a smaller share of his time than at his previous firm. Now he has decided to return to AlixPartners and full-time client work.

The project Bizenberger went to EY to help with, the expansion of the EMEIA practice, went well, he stressed.

"We consensually agreed an exit before the year end. I started at AlixPartners on 1 February."

For the last 20 years, work for Bizenberger has meant travel. Lots of it.

During that time he has always lived in Berlin, and from there travelled widely. For instance when he was previously at AlixPartners he also had a base in Munich, with a PA in Dusseldorf.

Now on his return to AlixPartners he has an office in Dusseldorf, a PA in Munich and his home in Berlin.

One of the colleagues Bizenberger is re-connecting with at AlixPartners is Alastair Beveridge. The duo spent two years co-leading one of Europe's biggest cases from the immediate pre-Covid era, the restructuring of Agrokor, the agricultural combine accounting for 15 per cent of Croatia's GNP.

Like many of his counterparts in the German turnaround profession, Bizenberger originally worked for Roland Berger, the operational turnaround firm that had its own roots in the gigantic 'Treuhand' program to integrate the former East German economy following the fall of the Berlin Wall in 1989.

As for today, Bizenberger anticipates a busy restructuring market in the second half of the year, when government support for business due to the Covid-19 crisis begins to wind down.

He is pleased with the recent improvements to German insolvency law, in particular the StaRUG restructuring mechanism.

"Before StaRUG, most restructurings in Germany were consensual. StaRUG addresses how to deal with a [holdout] minority. It completes the toolbox," he said.

Imran Aslam heads up European restructuring expansion at Armstrong Teasdale

Imran Aslam, Armstrong Teasdale

Imran Aslam has joined the London office of a newly merged law firm with a parent firm in the US, Armstrong Teasdale, with ambitious plans to build a European restructuring practice.

In December Aslam left the London office of Fried Frank to join Kerman & Co, a local law firm with around 50 lawyers and staff, knowing that the firm would soon be combining with Armstrong Teasdale. The acquisition was completed in February 2021.

Armstrong Teasdale is a top 200 US law firm based in St. Louis, Missouri, with a dozen offices in the US. The merger has created a firm with over 340 lawyers and 300 professionals worldwide.

Aslam's move comes after four years with Fried Frank in London, where he worked with Ashley Katz on restructurings and cross-border cases, including Chapter 15s; and before that nearly six years at Sidley Austin, where he worked alongside Patrick Corr (now at Faegre Drinker).

Armstrong Teasdale's head of bankruptcy and financial restructuring in the US Richard Engel, who is based in St Louis, Missouri, said: "Our clients need restructuring advice in Europe and beyond. This is a wonderful opportunity for us."

Engel pointed to clients from the airline industry and to oil and gas, which by their very nature had international activities. "We have a very diverse client base," Engel said. "None represents more than about five percent by turnover."

Aslam observed: "Following my time at Sidley and Fried Frank, the opportunity to set up a restructuring and insolvency practice for Armstrong Teasdale is very exciting."

"The combination between Kerman and Armstrong Teasdale affords us the opportunity to grow a pre-eminent cross-border restructuring practice."

"We are looking at an aggressive growth trajectory, not just in the London practice," said Aslam. "We are looking to Africa and Asia."

"We expect the restructuring market to grow quite quickly in the second half of the year."

Engel observed: "Many of the companies that filed for bankruptcy last year had pre-existing problems, such as retail and energy. The Covid-19 crisis was the straw that broke the camel's back."

This year, Engel reckons, mid-market companies in particular may be hit, as Government support programmes are rolled back, and where their scale means they are not big enough to access the capital markets. "In the third quarter of this year, we're expecting a lot more activity," said Engel.

Dean Merritt returns to THM

Dean Merritt has rejoined THM in London as a senior adviser after having previously been a partner with the firm from 2008 to 2015.

In 2015 Merritt joined GoldenTree Asset Management LP, heading up its European restructuring operations. Anthony Place, THM's managing partner, said: "Dean brings a unique mix of experience from his roles as a board member, investor and adviser to both our chief restructuring officer (CRO) and value delivery service lines, and I very much look forward to working with him as we continue to develop and grow our business.

Dean Merritt, THM

"We expect Covid-19 and Brexit to result in a significant increase in CRO mandates over the next two to three years and the firm is continuing to expand, through targeted recruitment, in anticipation of this strengthened demand."

THM added in a statement that Merritt "will be available to take a leadership role in THM's largest and most complex projects and to provide experienced support to the team where appropriate.

"THM now has ten experienced CROs and a plan in place to increase this to 15 with the next two years," said the firm.

gategroup: UK court rules Restructuring Plans are insolvency proceedings

The ruling in gategroup may significantly impair international recognition of UK Plans post Brexit. Restructuring Plans were only introduced last June under the CIGA reforms.

The Court's decision arose out of an application by gategroup Guarantee Limited for the Court's permission to convene meetings of its creditors to vote on and, if thought fit, approve a Restructuring Plan that would amend certain debt instruments issued by members of the gategroup group.

The group is the world's largest provider of airline catering services, with a global network spanning approximately 60 countries and territories on six continents.

Comment

Mark Fennessy, partner at law firm McDermott Will & Emery, said the gategroup ruling had far-reaching implications:

"The decision in gategroup may have signalled a high-water mark for the utility of the new UK Restructuring Plan for debtors and debt issuers especially when it began to show such promise following decisions in the Virgin Atlantic, Pizza Express and the Deep Ocean restructurings.

> "The decision in gategroup to class the Restructuring Plan as an insolvency proceeding may significantly impair the means to have such a plan recognised internationally especially post-Brexit when it has lost the automatic recognition mechanisms under European regulations."

"Post Brexit the Lugano Convention and the Hague Conventions formed the foundation of a likely path to recognition and assistance for UK Restructuring Plans.

"There was a hope and expectation that the Restructuring Plan would not fall into the bankruptcy exception under either of the Lugano or the Hague Conventions and therefore, like its sibling the UK Scheme of Arrangement, would benefit from these recognition mechanisms," said Fennessy.

"It looks like a door has been shut on this possibility at such a formative stage of the Restructuring Plan, which only came into force in late June last year as a part of the Corporate Insolvency & Governance Act 2020 (CIGA).

"Where a door shuts another would need to be opened for debtors and we at McDermott are already exploring alternative ways of bypassing this decision in relation to future UK restructuring options which are now very likely to be needed," Fennessy concluded.

The judgment explained

Clifford Chance acts for gategroup, led by restructuring head Philip Hertz. They were represented in court by Felicity Toube QC and Riz Mokal of South Square.

In its judgment, the Court determined that Restructuring Plans were insolvency proceedings, so were not covered by the Lugano Convention on the recognition of civil and commercial judgments between the EU, Norway, Iceland, Switzerland and Denmark

The UK is currently applying to become a member of the Lugano Convention, following its automatic withdrawal on 31 December 2020, at the end of the Brexit transition period

This decision does not directly affect Schemes of Arrangement.

The Lugano Convention

According to a note by Clifford Chance, over the course of a two day hearing, the UK Supreme Court considered whether the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial matters between the EU, Switzerland, Iceland, Norway and Denmark (the Lugano Convention) applied to UK Restructuring Plans.

If it did, then it was accepted that the Court would not have jurisdiction to sanction the Plan.

If, however, Restructuring Plans fell outside the scope of the Lugano Convention because they constitute "proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings " (the "bankruptcy exclusion"), then the Court would have jurisdiction to sanction the Plan.

This issue arose because one of the debt instruments subject to the Restructuring Plan contains an exclusive Swiss law jurisdiction clause.

Under the Lugano Convention, proceedings relating to "civil and commercial matters" must be brought (subject to certain exemptions) in the jurisdiction benefiting from the exclusive jurisdiction clause.

The Court's decision

The Court held that Restructuring Plans fell within the bankruptcy exclusion and were not, therefore, civil and commercial matters. In reaching this decision, the Court held that:

- The Lugano Convention should, to the extent possible, dovetail with the recast EU Regulation (2015/848) on Insolvency Proceedings (the EUIR) such that, if a proceeding fell within the EUIR, then it should not fall within the Lugano Convention;
- The Court needed to examine the substance of the Restructuring Plan procedure to determine whether it was an insolvency procedure or not;
- To be an insolvency proceeding, the Court held that:
  - The proceedings must be collective proceedings;
  - They must be based on laws relating to insolvency and have as their purpose rescue, adjustment of debt, reorganisation or liquidation; and
  - They must encompass at least one of the following:
    (a) The debtor is partially or totally divested of its assets;
    (b) The assets and affairs of the debtor are subject to control or supervision by a court; or
    (c) A temporary stay is imposed, by a court or by operation of law, on individual enforcement proceedings to enable negotiations to take place between the debtor and its creditors.

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Restructuring Plans had all of the hallmarks of insolvency proceedings. In particular:

– **Collective proceedings:** To be collective, the proceedings need to affect (or have the potential to affect) a "significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected". The Restructuring Plan met this criteria as it affected all of the Plan Company's financial creditors;

– **Law relating to insolvency:** While the legislation enacting Schemes and Restructuring Plans is contained in the Companies Act (and not the Insolvency Act), this was not determinative. Unlike Schemes which, as explained above, are available to all companies (whether solvent or not), Restructuring Plans are available only to companies facing actual or anticipated financial difficulties. Furthermore, the purpose of the Restructuring Plan must be to eliminate, reduce, prevent or mitigate, these difficulties. The fact that Article 1(1) of the EUIR made clear that proceedings which had as their purpose the "avoid[ance of] the debtor's insolvency or the cessation of the debtor's business activities" could be considered insolvency proceedings even if they "may be commenced in situations where there is only a likelihood of insolvency", meant that Restructuring Plans represented a "law relating to insolvency";

– **Subject to the supervision of the Court:** Finally, the Court considered that Restructuring Plans met the third requirement set out above, as the Court had supervision of the procedure. As the Court noted: "There is undoubtedly significant court involvement. No plan meeting may be convened without the court's order. The composition of the classes must be approved by the court. No plan can become effective until sanctioned by the court. At all stages the court is required to reach a judgment based on established principles and all interested stakeholders are entitled to be heard by the court."

European bankruptcies fell and then slightly rose last year

Eurostat, the EU's statistics body, has prepared some ground-breaking tables based on 'experimental statistics' gathered on a voluntary basis from around 20 EU and EFTA member states.

As such these figures are incomplete and only go up to the third quarter of last year. On the other hand they provide a uniquely broad illustration of the process of 'creative destruction' in modern Western economies, and the initial impact of the Covid-19 crisis.

Seeing Eurostat's statistics for the end of last year and for 2021 when they come out will be fascinating, especially when Government support schemes for businesses start to be wound down.

Bankruptcy numbers continue to fall

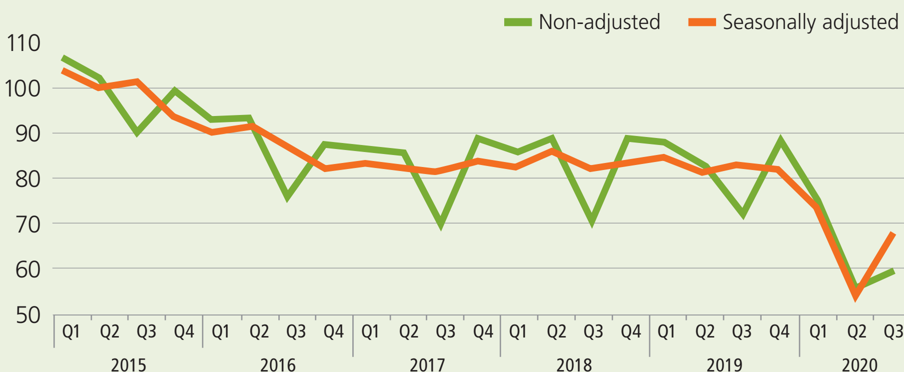
In further Eurostat research not shown in these particular tables, the number of bankruptcy declarations continued to decrease in the third quarter of 2020 compared with the same quarter of 2019, by 17.7 per cent in the EU and 19.8 per cent in the euro area.

The largest decreases in the number of declarations of bankruptcies were found in Lithuania (-0.9 per cent), France (-34.9 per cent) and Belgium (-32.3 per cent).

The highest increases of bankruptcy declarations were observed in Estonia (+83.5 per cent), Portugal (+40.3 per cent) and Spain (+6.3 per cent).

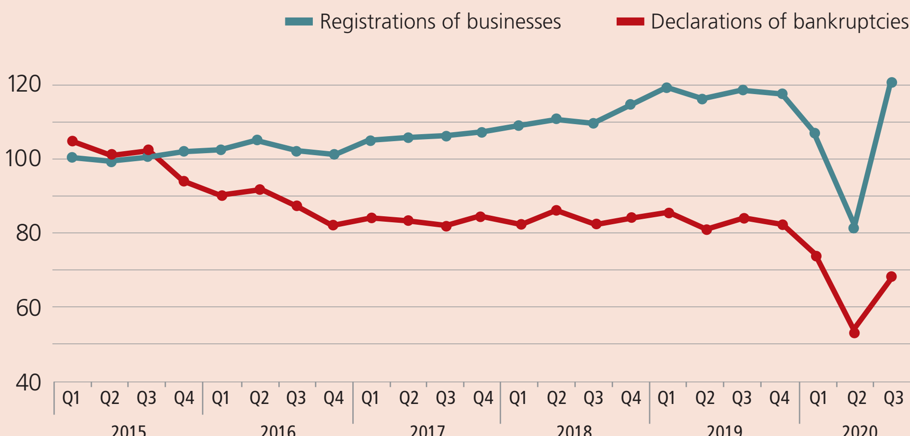
Eurostat observed: "The relatively low number of bankruptcies in many countries may be explained by the government measures supporting businesses during the crisis that may have allowed businesses that would otherwise have filed for bankruptcy to continue their activities."

EU (available countries), declarations of bankruptcies
Q1 2015 to Q3 2020 (2015=-100)



Source: Eurostat

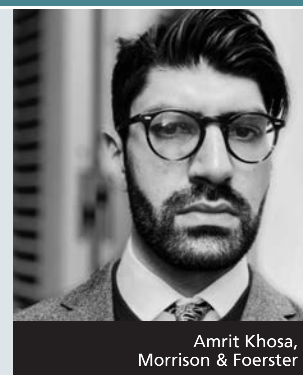
Registrations of businesses and declarations of bankruptcies in the EU
Q1 2015 - Q3 2020, seasonally adjusted (2015=-100)



Source: Eurostat

The offshore industry – all at sea

By Amrit Khosa, Of Counsel at Morrison & Foerster in London


Amrit Khosa, Morrison & Foerster

It is safe to say that the offshore industry is no stranger to restructurings.

The 2014-2016 oil price crash weeded out the companies that relied on higher commodity prices. Those that remained survived by restructuring, relying on lucrative legacy contracts and sound financial management in the good years.

Unfortunately, these industry veterans, who are well used to keeping their nerve amidst oil price cycles, have continued to face oil price volatility, oversupply of rigs and slowing of investment in new projects, whilst being highly levered.

> The global pandemic added further pressure, forcing many to restructure yet again.

However, as these oil services companies emerge from restructuring proceedings with purportedly healthier balance sheets, the market conditions remain unchanged.

Operating in a mature and declining industry with continued oversupply of rigs, low demand and dismal day rates, these restructured groups will have to make some painful decisions that could see further restructurings down the line.

Unsustainable debt levels

Much of the oil services industry has struggled with unsustainable levels of debt since 2014. Despite some companies undergoing multiple restructurings, it was not uncommon to see net debt to EBITDA ratios at multiples above 25.0x.

The purpose of many of the 2020/21 restructurings, prompted by the OPEC-Russia oil price war and the pandemic, has been to deleverage and strengthen balance sheets through pre-pack Chapter 11 proceedings in the US.

The term pre-pack here refers to the practice of a company agreeing a restructuring proposal with its creditors prior to implementing the same through the US Chapter 11 process.

> In April 2020, Diamond Offshore was the first to file for Chapter 11, but was soon followed by a string of others, including Noble, KCA Deutag, Valaris, Pacific Drilling and Seadrill.

While these drilling companies are emerging or will soon emerge from the process with healthier balance sheets, oil prices are nowhere near recovered and market conditions are still dismal.

Oversupply of rigs

The fundamental problems in the sector persist: oversupply of rigs, reduction in new drilling campaigns, and low oil prices resulting in low day rates.

The reduction of indebtedness has not lessened the impact of any these factors, and these newly restructured entities will need to make fundamental operational changes to remain competitive and increase utilisation of rigs.

Consolidation and downsizing of rig portfolios to prevent oversupply and match demand is long overdue.

Diamond Offshore retired or sold 30 rigs between 2012 and 2020; others, such as Valaris and Seadrill, have also retired or plan to retire rigs to tackle oversupply.

Drillers with older rigs may struggle to attract lucrative contracts, and trying to sell old equipment may prove challenging. In such circumstances, rigs will have to be sold for scrap metal.

Needless to say, reducing fleets also reduces the assets available for creditors and whatever, if any, income was projected from them.

Those with new build contracts will have to rethink the strategy of bringing yet more rigs into a saturated market, though that is only if they have not already rejected such contracts through their restructurings.

> Keppel Corporation's announcement earlier this year to exit the rig building business is a clear sign that there is no market for new rigs in the foreseeable future.

It remains to be seen whether there could be more interest from actual oil companies for acquiring rigs.

Brazilian oil company PetroRio acquired a semi-submersible drilling rig for US$1 in December 2020 with the intention of reducing operational costs and increasing efficiencies. Were other oil companies to follow suit, this would have the double impact of not lessening supply while decreasing demand for other rigs.

With there being no near-term recovery anticipated in the oil market, companies will also need to consider how to maintain their portfolio of rigs that may impact liquidity since stacking rigs and re-activating them for operations is a costly endeavour.

It was reported that it cost Pacific Drilling approximately US$15 million to bring its Pacific Khamsin drilling rig back to work.

The longer a rig is stacked, the more expensive it is to bring back to work and the greater the drain on liquidity.

Reallocation of contractual risk

Oil majors, in an attempt to reduce capex costs, are delaying, if not cancelling, new drilling campaigns.

Those that are proceeding are benefiting not only from low day dates

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but also by shifting the risk profile of drilling contracts more and more on to the service providers, who are hungry to accept any contract that prevents stacking cost.

The industry practice of "knock for knock", where each party covers its own losses howsoever caused, had already been eroded to provide more "skin in the game", whereby service providers accepted a limited allocation of risk.

Greater pressure to win contracts has resulted in service providers being willing to accept a far greater share of liability.

For example, originally it was customary for the oil company to be responsible for any pollution from the well, regardless of how the pollution was caused and including if caused by the drilling contractor.

With skin in the game, the drilling company agrees to take on anywhere between the first US$2-5 million of such pollution claims, but now they are being asked to take anywhere between the first US$50-500 million or, in some cases, unlimited exposure for pollution claims where caused by the gross negligence or wilful misconduct of its personnel.

> Not all of this risk is insurable. Major incidents such as Deepwater Horizon continue to be rare, but when they do occur, the numbers involved are substantial.

In such circumstances, creditors may find themselves competing for assets and control with an oil major who is vital for the business, if it is to continue.

Smaller incidents are more regular and, though the numbers may not be large, these can accumulate, rendering a once profitable contract unprofitable for a contractor.

Drilling contractors are also more vulnerable to jurisdictional risk as they are invited to operate in certain African and South American jurisdictions who do not recognise the knock for knock indemnity regimes.

Thus, any pollution risk may end up with the contractor notwithstanding the contract specifying otherwise.

Again, this is not an insurable risk and could result in service providers making large payments whilst pursuing their clients for reimbursement in courts. Termination clauses are increasingly more favourable to oil companies, allowing termination for convenience with limited or no compensation payable to the contractor, or providing termination rights for the slightest of breaches.

The growing risk profile and ease with which contracts may be terminated threatens the liquidity and cash flow of oil service companies.

Increase in costs

A number of oil majors have set ambitious goals for reducing greenhouse emissions, with some European majors aiming for net-zero emission by 2050.

The targets, in turn, require contractors to reduce their footprint. Offshore drilling rigs generate significant greenhouse emissions, with one report suggesting that daily fuel consumption of 40t and 10t is not unusual for a harsh semi or an ultra-deepwater drillship and a premium jack-up, which translates into an estimated 130t and 35t of CO_2 per day, respectively.

New build rigs tend to be more efficient, but as day rates do not support the introduction of new builds into the market, companies will need to invest in improving existing fleets.

Combined with demands for ever-higher health and safety standards, which are easier to meet with new rigs, the need for technical improvements to meet the ever-growing oil company requirements, investment in sustainability and the need to reduce emissions, the cost base for services providers has continued to increase at time when contract day rates are low.

The oil companies' push for efficiencies and technical improvements has reduced the time drilling contractors need to drill a well, which results in shorter contracts that are already at competitive day rates.

Finding additional liquidity to continue to make improvements is unlikely to come from cash flow, and companies may struggle to raise financing with the growth of environmental, social, and corporate governance (ESG) requirements for certain financial institutions.

> The drive for net-zero emission is not without its opportunities.
> Carbon capturing and storage, where an empty well is used to store liquefied CO_2, can provide some idle rigs with work.

However, the recent and developing nature of such opportunities means it is unlikely to be a substantial source of income for any one oil drilling company.

The offshore industry is no longer the cash cow it once was, and investors need to be aware of the increased costs and the liquidity requirements caused by industry shifts, which may not support even the restructured debt burdens of drilling contractors.

Cash-pooling

How drilling companies manage cash flow and liquidity is vital.

Use of cash-pooling or zero balance accounts is heavily prevalent in the industry.

Sweeping the bank accounts of several operating group companies, either physically or notionally, to the parent company can have its benefits: reducing the need to borrow externally and the costs associated with same, better internal management of resources and lower procurement costs.

However, it can also create challenges as it impinges on the individuality and independence of each group company.

In financial difficulties, where each company must consider its own creditors, the lack of control over the cash pool can raise concerns of whether sufficient value was obtained by each company in the cash pool or whether such exchanges could constitute antecedent transactions.

Where, following a merger or acquisition, companies seek to consolidate cash pools, creditors will need to be mindful of the impact such arrangements can have on value within their restricted group/collateral package as leakage of value can occur.

Conclusions

The offshore drilling industry has faced many challenges over the last years and service companies have felt the brunt.

The 2020/21 restructurings have aimed to address the unsustainable debt burdens that arose following the 2014-2016 price collapse and have created capacity for consolidation and M&A activity.

However, the underlying issues in the industry are still there and will continue to exert pressure on already unreliable cash flow.

The greater need for investment may, in turn, make what is currently sustainable debt unsustainable relatively quickly.

> Those contractors willing to make sacrifices by reducing fleet size, being more competitive on contractual terms and not being afraid to invest in reducing emissions may survive the long winter of low oil prices, but we are likely to see more casualties along the way.

Preparing for possible sponsor distress

Liam Goulding, Sackers

Liam Goulding is an associate with Sackers in London who advises pension scheme trustees, employers and pension providers. Here he provides some advice for sponsors on how to deal with restructurings and the pension regulators.

Sponsoring employers have been facing unprecedented challenges in recent years, and this year in particular as a result of COVID-19. With recent high-profile cases of sponsor insolvencies, trustees will need to scrutinise employers more closely than ever, in order to assess the covenant strength and the risks of any covenant leakage.

> Given the speed at which distressed employer scenarios can unfold, it is important that trustees take steps to prepare now, and the UK's Pensions Regulator (TPR) has recently published guidance urging trustees of defined benefit schemes to be prepared for the possibility of their sponsoring employer experiencing financial difficulties.

Being prepared

Taking decisive action before a sponsor shows signs of distress increases the chances of minimising downside risk in the future. Trustees must therefore prepare to spot the warning signs of employer distress or insolvency.

Where possible, trustees should work with their sponsoring employers to agree a mechanism by which the employer will notify them of potentially material financial events (such as the issuance of new debt, granting of legal charges or other security, as well as any planned business acquisitions or disposals).

Trustees should consider current arrangements and whether any governance or risk management arrangements should be amended to understand the employer's legal obligations to the scheme, or to put in place or update crisis management plans and information sharing protocols.

Trustees should have processes in place (including lining up relevant advisers) to monitor the strength of their sponsoring employer's business and ensure that they have access to all relevant employer information, such as cash flow analysis, details of loan facilities and management accounts. Trustees should review and challenge such information and stress test assumptions as a part of the monitoring process.

Sponsor in distress

Where financial distress is apparent, trustees should be taking professional advice to make sure that all options to protect the scheme's position have been explored. Trustees should consider and be open to an employer's turnaround plans where these appear achievable but must also ensure that such plans are in the best interests of scheme members.

1 Suspension or reduction of deficit repair contributions (DRCs)

When faced with financial distress, a sponsor may seek various easements from the scheme as part of a wider restructuring process. Should the sponsor seek concessions from the scheme, such as a deferral of DRCs, the trustees should take advice.

In brief, trustees should be satisfied that the scheme is being treated fairly in comparison with other stakeholders and creditors and should look to other forms of security to help mitigate risk.

Trustees should be provided with sufficient information to make a fully informed decision and should undertake due diligence on the employer's financial position before agreeing a new suspension or reduction of DRCs.

2 Impact of corporate activity

Corporate distress can trigger corporate transactions. When considering a corporate transaction, trustees should review the impact on the sponsor's ability to continue paying scheme contributions, as well as the impact on the scheme's likely recovery in an insolvency scenario.

A corporate restructuring could have a detrimental effect on members' benefits where it results in the employer being less well equipped to meet its scheme funding obligations. It is therefore important for trustees to consider and understand what is being proposed and why, as well as what impact this may have on the scheme. Where possible, trustees should seek mitigation, albeit the chances of obtaining this may be limited in a distressed situation.

Both employers and trustees will be keen to avoid triggering TPR's anti-avoidance powers, including the new criminal and civil sanctions coming down the track under the Pension Schemes Bill.

Seeking clearance in advance for transactions in scope should help alleviate concerns here. In addition, where insolvency is inevitable, opening an early dialogue with TPR and the Pension Protection Fund will be crucial.

3 Restructuring plans for employers in financial difficulty

The Corporate Insolvency and Governance Act 2020 introduces two new options for companies in financial difficulties – a free-standing moratorium (similar to the one afforded employers in administration) and a restructuring plan. Both are intended to enable a corporate rescue (which could, ultimately, benefit a related defined benefit scheme).

While the Act sets out a renewed focus on business rescue and survival, which may be beneficial for schemes that are reliant on long-term employer support, there are potential new risks that will need to be taken on board. Trustees must ensure they understand the potential ramifications of these changes for their scheme and should seek professional advice in this scenario.

> Ultimately, the sooner trustees act and engage with distressed employers, the more options they are likely to have. Taking some preparatory steps now should help ensure that trustees are better placed to deal with such a situation, should it arise.