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A cross-jurisdictional outlook for restructuring and insolvency

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The uncertainty that has descended on global economic markets brought about by the global covid-19 pandemic has been widespread and unprecedented. Anyone looking for clear wisdom on the likely trends in restructuring as we look now to the second half of 2022 and beyond may find the milky darkness of a Magic 8-ball a better barometer of future forecasting.

Here, we provide an overview of the offshore restructuring landscape in light of governmental fiscal stimulus measures introduced due to coronavirus either being reduced, withdrawn or, in some cases, never being put in place.

General overview

Finally (and fingers crossed) it looks like the COVID-19 pandemic is moving into a new phase, at least in the UK. During the pandemic, over the last 24 months or so, many jurisdictions have offered support to businesses in differing ways in order to keep the economy propped up and to ensure survival of those businesses as much as possible after the pandemic.

Support has varied in different countries, but measures taken have been, for example, cash injections, tax moratoria, employee furlough payments and restrictions on creditor enforcement actions.

Slowly, this support is being withdrawn as the world starts to get back to something resembling life prior to 2020. However, has the support that has been provided been enough to keep businesses going or will some find that the new world into which they emerge is tougher than the one left behind? Will businesses and their workers adapt to the "new normal", and have consumer demands changed, favouring some sectors over others?

Undoubtedly the answer to these questions is going to be yes and no. Although the main stay of focus has been survival, some businesses have been flourishing during the pandemic and others have been struggling. We are likely to see, with a decrease in the level of government stimulus support, businesses go two ways depending on the nature of their supply.

Some will thrive as people start to commute, travel and live a normal life again. Some will decline as habits change or have been modified in some way. Some very obvious examples here are the travel industry, which hugely suffered during the pandemic and is likely to see a huge uptick as people start to travel, for work and leisure, and the construction industry, which is suffering from supply chain and labour issues even where demand outstrips supply.

Many other sectors that have been able to survive because of governmental support, but that may emerge out the other end of the pandemic unable to adapt to their new markets, may see a large number of failures or attempts to restructure or diversify.

In addition, the current geo-political climate cannot be overlooked: with a sharp global increase in energy costs, localised inflation at record highs and interest rates trying to offer some counterbalance to the soaring costs of living driven by the increases in prices of goods and services, many companies will now, literally, struggle to keep the lights on, so an increase of insolvent restructuring is inevitable to some degree.

However, emergence into the world's "new normal" will see some businesses turning keener focus to long term sustainability, good governance and management, structural rationalisation and a drive for cost efficiencies. We should see larger volumes of non-contentious restructuring as a result, whether through private equity-backed takeovers, bond or debt restructurings and/or intricate internal reorganisations, all of which we are starting to see in the market.

Key jurisdictional points of note

BVI: There has been a flow of traditional insolvency-side mandates coming from Asia and we have seen a shift in pre-enforcement insolvency and restructuring advice required by security trustees and finance parties, which may be a sign of parties getting their “ducks in a row”.

Cayman: Again, the Asian markets (although not exclusively) are leading the flow of restructuring work in Cayman post-covid. Compared to insolvency related work, there is a modest amount of non-insolvency related pre-acquisition and pre-IPO restructuring work starting to be seen.

Guernsey: The wave of expected insolvency work has not yet begun, although administration applications have been seen last year, as well as less classic insolvency related work, like fraud enquires, for example. Similarly with our other jurisdictions, the non-contentious side of restructuring work has been more prevalent.

Hong Kong: In respect of BVI/Cayman in Asian markets, there has been a lot of front end and intricate restructuring work that hasn't necessarily been insolvency related. The well-publicised strain in capital markets in China is expected to bear more restructuring fruit throughout the year and we have received instructions relating to various Chinese-related bond issues.

In addition, we have seen the rather blunt antecedent tool of statutory demands increasing. This may portend of the start of the expected wave of distressed debt restructuring in the market.

Jersey: We have seen little uptick in instructions of note at this stage, although we have been involved on the Jersey advice of a collapsed sports gaming business as a direct result of the cessation of live sports during the pandemic. Similarly with other jurisdictions, there is a lot of contingency planning being seen, and with a large banking and finance market, the increase in interest rates is something to keep a keen eye on together with how the credit institutions react with their borrower counterparts – this being a key horizon issue across all our jurisdictions.

Conclusion

The world is slowly learning to live with covid in some way or another. How businesses and sectors deal with this today may well be different to how they deal with this in the longer term in the face of new global and political challenges that are not related to coronavirus.

Credit institutions will undoubtedly play their part in the financial markets by working with businesses to amend existing credit facilities to help stabilise the uncertainly of potential insolvent restructuring scenarios to extend their life expectancy during this unknown period of uncertainty.

However, with China – one of the world's largest net-exporters – pursuing a zero-covid policy, and with soaring energy prices exacerbated by Russia, the longer-term global supply-chain disruption may well lead to further insolvent casualties that non-contentious restructuring may not be able to save.

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