

# Cross-Border Debt Restructurings: Innovative Approaches for Creditors, Corporates and Sovereigns

## Summary

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Cross-border debt restructurings are booming.

Over recent years, the global financial markets have witnessed an explosion in both the number and complexity of international workout cases. Unfortunately, sovereign and private-sector debt defaults have occurred in the past, are occurring now and will occur again. As such, the topic of international debt restructurings is likely to be one of continued abiding interest.

Reorganisations of distressed firms, either through a judicial or an out-of-court route, are aimed at preserving and maximising going-concern value for the benefit of all involved parties, including creditors and shareholders. Reorganisations are immersed in the paradigm that liquidation of productive assets is not generally the best alternative for maximising recovery. Economic theory indicates that troubled companies should be reorganised if such firms are viable enterprises and if the value of the assets of such on-going, productive concerns is greater than in liquidation. Absent such assumption, non-viable enterprises in theory should be liquidated and the assets transferred to other productive concerns.

Recent financial crises around the world (such as the East Asian, Russian or Argentine crises) have clearly shown that massive, system-wide corporate debt distress situations could only find an effective policy response through the use of out-of-court, private workout solutions among lenders and debtors. Empirical evidence has shown that no country's judicial system or legal institutional framework has been fully prepared to absorb, withstand and provide a meaningful solution for the complexity and number of corporate reorganisation cases generated by a systemic economic storm.

As the pattern and dynamics of multinational distress cases have changed dramatically over the last decade, the out-of-court debt restructuring practice has accordingly found an increasingly fertile ground for its evolution and development across the boundaries. Unquestionably, the changes witnessed in the practice of cross-border debt restructurings are striking. Currently, global debt restructurings are often conducted outside bankruptcy courts or are undertaken following middle-of-the-road alternatives, such as prepackaged insolvency proceedings. Furthermore, in the current environment, large workout cases frequently extend beyond the national boundaries of a firm and involve multiple jurisdictions. In addition, a complex workout process typically involves numerous professional practice specialties: from international insolvency law to securities, banking and corporate law; from finance and business law to forensic accounting and auditing; from corporate finance and financial analysis to mergers and acquisitions, and so forth.

In that regard, the purpose of the book is to address the topic of debt restructurings – also

## INTRODUCTION

known as “workouts” – on a global, multidisciplinary basis, and to develop what may constitute the new global approach for conducting cross-border workouts during the 21st century. As such, this book is very timely as it focuses its attention on all of the above-mentioned issues with a view to providing the necessary tools for dealing with the dynamics of current corporate workout practice on a global basis.

*Cross-Border Debt Restructurings: Innovative Approaches for Creditors, Sovereigns and Corporates* presents the topic of workouts on a comprehensive basis, starting from the basics and proceeding to a more sophisticated level. In addition, the book tackles the subject matter of out-of-court debt restructurings with a new global, international dimension and from the perspective of multiple disciplines, including business, law, finance and accounting. In that regard, it provides a comprehensive analysis of that unique mixture of legal, business, financial, social and psychological issues experienced in any workout transaction.

In the current times, no workout professional can have a complete knowledge of all practice areas needed for restructuring the debts of a large multinational company on a global basis. As such, the book timely serves the needs of the “international workout specialist” since it covers a significant number of topics that are critical to achieving a comprehensive understanding of the restructuring process.

This book consists of three parts. Part I deals with the basics of debt restructurings and is intended to provide in-depth material (a manual) on the A to Z of workouts for both beginners and well-seasoned practitioners. Topics covered include:

- a description of the historical evolution of workout practices, principles and approaches from the origins of sovereign debt default to the launching of our new global approach to restructurings, including the workout decalogue;
- an introduction to the subject of out-of-court debt restructurings;
- an overview of the restructuring dilemma: out-of-court versus in-court solutions and middle-of-the-road alternatives;
- an elaboration on the different stages, elements and aspects of the workout process;
- an overview of the main financial analysis techniques used by workout professionals; and
- a review of the main strategies, options and solutions used in current restructurings.

Part II deals with special topics on restructurings. Subject matters covered include:

- an elaboration of various early warning signs of distress;
- an overview of the US Chapter 11 rules, prepackaged solutions and cross-border insolvency issues, including ancillary proceedings, all from the perspective of a global workout case;
- a practical description of the main US securities law issues related to exchanges, exit consents, tender offers and other securities law matters affecting the restructuring of international capital market instruments;
- a narrative explanation of the historical evolution of sovereign debt restructurings;
- an introductory chapter on the hot topic of collective action clauses;
- a description of the peculiar issues associated with restructuring transactions financed on a non-recourse, project financing basis; and
- an analysis of the implications and issues arising out of political risk insurance coverage when applied to workout matters.

Finally, Part III briefly describes the East Asian and Argentine crises experiences and also

presents four workout case studies in Central Europe, Latin America, Eastern Europe and East Asia to provide practical examples of the application of all concepts dealt with in the book in actual or theoretical transactions.

The book is not intended to be a collection of papers but, rather, a manual addressing the topic of workouts on a comprehensive basis. As each aspect of a workout process requires references to other related topics, chapters often purposely overlap to allow the most complete treatment of ideas. Chapters are also written as self-contained papers to ensure that the book or any of its chapters can similarly be used as stand-alone material of reference.

This work is one of the first books to treat the various disciplines involving a multinational workout case as an interrelated whole. As such, the book can be used as a reference manual for workout practitioners, bankers, consultants, lawyers, corporate executives, finance professionals, auditors and accountants. It can also be used as class material for business or law schools, for professional seminars and courses or as an invaluable asset of any business and law library. Anyone familiar with or interested in the present debt restructuring reality undoubtedly would find this book enlightening and authoritative.

The book enters the marketplace at a time when the harsh reality is that cross-border debt restructuring cases are occurring with more frequency. Business failures are part of modern economic life. While workouts have been a well-known practice for some time, they increasingly are becoming a global reality. As such, this book launches, following the broader guidelines promulgated by the London Approach and the INSOL Principles, the workout decalogue, which we believe may become the new global approach to workouts in the new economic order of the 21st century.