

3. Appointing Investigating Accountant

Restructure/Standstill
 DOCA Restructure

6. Receivership Restructure







Early Warning Signs

- n Default.
- Request for covenant waiver / relaxation.
- Request to reschedule repayments / provide additional funding.
- ASX Announcements / press release.
- Rating agency action (down-grade).
- Adverse audit comment.
- Creditor action / litigation.
- Declining share price.
- » Deterioration in financial performance.
- » Adverse industry / market / economic conditions.
- Regulatory action / change in tariffs.
- Increase in off-balance sheet financing.







Dealing with syndicate members

Some observations.

- Banks move at different speeds (and some banks don't move at all!)
- · Banks have different levels of resources.
- Some banks have dedicated workout and restructuring teams (e.g. the Australian trading banks)
- Some banks with smaller local representation run workouts through their local credit executive roles.
- Some banks leave the issue with the person who wrote the deal.
- Some banks deal with the issue entirely offshore which gives rise to time zone issues.







How do Syndicates deal with the problem?

- What is the role of the agent bank.
- Is there a need for a lead bank? If so which bank?
- Should the agent bank lead or should it be an Australian trading bank with the largest exposure?
- Formation of the steering committee/representative bank group.
- Which banks should join?
- What are the rules for committee members?

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Protocol of the Steering Committee

- Legal Counsel
- Indemnity for steering committee
 - From lenders and the company
- Release from any conflict of interest
- Use of confidential information
 - Stavs within workout group
 - Information barriers created
 - Share with wider syndicate, when reasonably able to do so
- » No trading of a bank's debt, until all information public







Steering Committee

Role of the Steering Committee

- Dialogue with debtor
- » Liaison with Syndicate

Initial Considerations by Steering Committee

- Quality and level of reporting;
- Transparency and credibility of information;
- Competency of management;
- * Lender concerns, need for earlier involvement or intervention
- Need for an investigating accountant (IA)... Who to appoint?









The Investigating Accountant The Triggers

- Events of default potential or actual
- Separate class of triggers?
- Debtor concerns, rule 3.1 issues
- Automatic acceleration?







The Investigating Accountant

Terms of reference would typically cover:

- Historical and projected project performance
- » Project model and key sensitivities
- » Integrity of model and key inputs
- Future cash flow, debt service capabilities, lender covenant sensitivities
- Enterprise valuation
- » Kev project risks
- * Assessment of management
- » Financing alternatives and workout solutions
- « Structuring solutions

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The Investigating Accountant

The IA is expected to play a key role in communication:

- Managing debt expectations
- « Managing equity expectations
- Assisting management to communicate effectively with key stakeholders, particularly lenders
- Providing an "unbiased" opinion
- Reducing confrontation / tension between parties by acting as a sensible conduit / mediator / interpreter
- Setting clear priorities and agreed milestones to measure and report progress towards ultimate solution

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The Investigating Accountant

Who appoints the IA:

- Lenders
- « Company
- Jointly
- Jointly with a default to Lenders







Epic Energy

- 28 Lenders, debt \$1.85 billion
- Took 22 months from initial appointment of IA to finalisation
- Agreed strategy post IA report was a refinance via sale by the company
- Standstill agreement put in place and sale strategy agreed
- IA represented Lenders on a Sale Steering Committee with equity
- Protocols established for co-operation and open dialogue between Epic Board, Lenders Steering Group and Equity
- Sales process timetable agreed and milestones monitored and reported upon by IA to Lenders
- The number of lenders and potential conflicts meant IA had a key role to play in managing ℓ massaging information flow
- IA formed a view sales process was unsatisfactory and not capable of being concluded. IA took control as Receiver appointed by Lenders
- « Sale concluded and Lenders paid in full



Mestpac InstitutionalBank



CrossCity Motorway

- 16 Lenders, debt \$600 million
- Equity appointed "advisers" to negotiate with lenders
- Equity wanted lenders to "take a haircut"
- » Inability to pay interest, slower ramp up profile
- Standstill solution not capable of being put in place
- » Sale via receivership
- Report Political issues had to be diffused
- In process of completion; Lenders to be paid in full
- Substantial return to equity

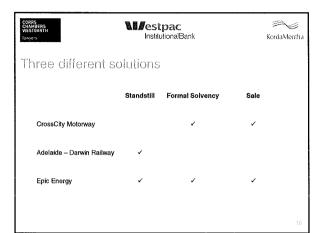


MI/estpac



Adelaide - Darwin Railway

- * Equity sale unsuccessful
- Inability to pay interest
- Maintain reserves, slower ramp up profile
- ³⁷ IA appointed and standstill effected
- Standstill designed to give maximum flexibility to achieve ramp up (capex specifically addressed)
- Equity / debt / company contributed to the solution resulting in a debt restructure and additional equity to meet the terms of the restructured facilities









Don't Spook The Debtor

Although not an infrastructure project the HWE example is also interesting:

- IA appointed
- weekly standstill arrangements initially
- $_{\mbox{\tiny 20}}$ Longer standstill (6 months) to allow IA to complete his work and develop a solution with management
- Board got nervous after a downturn in results and called in Administrators without discussions with Lenders / IA
- Value destructive equity wiped out
- E Legal Perspective
- Lenders' Perspective

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Time for Action

- » Need to bring negotiations to a head
- 3 Lenders concerned
- Subsisting Event of Default?
 - Need for clarity
 - « MAC clauses useful?
 - « Timing of measurement for ratios and covenants
 - mportance of not accelerating
 - Rendering facilities "on demand"







Standstill

Key Considerations in Strategy Development

- » Current and future project value
- « Likelihood of loss to Lenders
- Upside for Lenders
- Financier appetite for risk
 - « Different Lenders
 - Different jurisdiction
- Relationship with management and equity
 - → Competence
 - Confrontational or co-operative
 - * Trust
 - · Other project relationships

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Standstill

Key Considerations in Strategy Development

- » Nature of facilities
 - Impact of credit derivative products
 - Term of facilities
 - Security, current and potential
- What is being requested
 - » Can interest be paid?
 - « Can any amortisation be made?
 - * Are equity's demand reasonable?







Standstill

Fundamental Pre-requisite to a Restructure / Standstill

- Key drivers
 - Equity wants to retain ownership
 - Eenders want to be kept whole
- 2. No deterioration in a Lender's position i.e. a "standstill" not a "step back"
- No new risks i.e. exposure to market risk where it previously did not exist No "hairout" (CrossCity)
- Increased risk = increased return

 dentity of lender... extent of derivative and hedge exposure?
 - 5. Can each lender's risk exposure be addressed?







Highlights of a Restructure / Standstill

- Preservation of rights
 End of standstill-sale or refinance / restructure
- No Action
- No enforcement action
 Waiver of existing defaults
- Liquidity
- Need for new money?
 Priority issues
- Principal Payments







Standstill

Highlights of a Restructure / Standstill (continued)

- Interest
 Paid in full, part paid, pik?
- = Consents Required
 - Enforcement
 General waivers

 - New money priority
 Different percentages in a default scenario?
- a Reporting
- » Restrictions

Expenditure / capex
Business in ordinary course







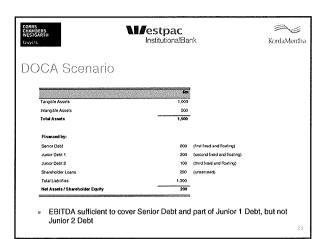
Standstill

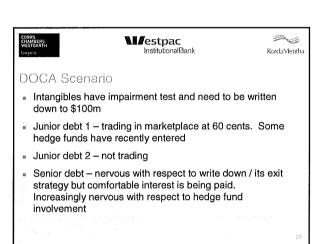
Highlights of a Restructure / Standstill (continued)

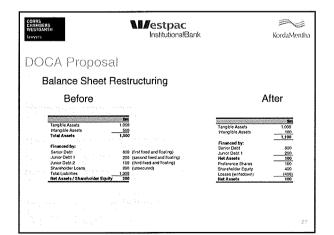
- Sale Process / Refinance
 Restrictions
 Reporting
- Role of IA
 - Involvement in sale / refinance Involvement in business plan Attendance of critical meetings
- Fees / Costs

 - Fixed
 Upside sharing
 Equity participation

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DOCA Proposal

Assets writedown by \$400m but net impact only \$100m i.e. net assets reduced by \$100m due to:

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Reduction of Junior Debt 2	100
Conversion of Shareholder Loans	200
Writedown of Intangibles	(400)
Net Reduction	(100)

Existing shareholders to acquire Junior Debt 1 and a second charge at a significant discount (60 cents)

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DOCA Proposal

Restructure Proposal

- Junior Debt 2 convert to preference shares
- » Shareholder loans convert to pure equity
- Junior Debt 1 offer of 60 cents by existing shareholders

Legal Parameters

- Need for 50% in value and number to vote in favour (if votes not consistent Chairman normally "casts" with value)
- Secured creditors who do not vote in favour can still realise and otherwise deal with security

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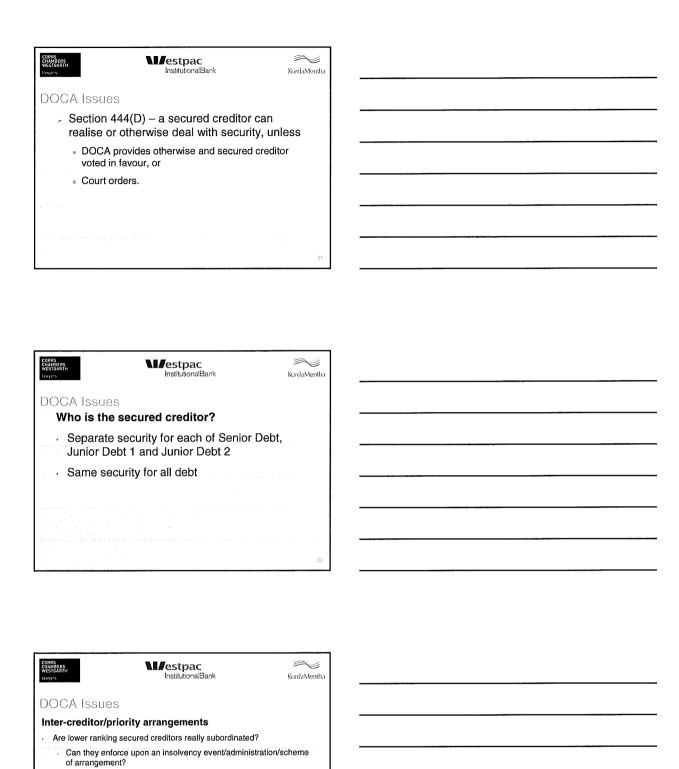
DOGA Arrangement

- Shareholders obtain agreement of Junior Debt 1 to sell but only \$150m (for \$90m). Hedge funds refuse to sell
- Junior Debt 2 asked to convert to participating preference shares ranking above existing equity. Interest coupon increased but only payable out of profits (cumulative)

BUT

- # DOCA issues:
 - Shareholders insist they want all of Junior Debt 1. Don't trust hedge funds
 - Hedge funds refuse not bound by DOCA?
 - Junior Debt 2 refuse to convert not bound are they a secured creditor for DOCA purposes?

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Do priority arrangements continue to subsist upon an insolvency event?

Is security trustee/senior agent obliged to follow instructions of senior

debt for DOCA voting purposes?

Protection for the junior creditors?

Unfairly prejudiced?







Receivership

Indemnity to receivers

- Risk assessment
- For New Money and Liabilities Incurred
- « Co-ordinating syndicate to give indemnity.
 - Several
 - Given by all lenders

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Receivership Sale

- * Trade and Operational Creditors
- Market Value under Corporations Act
- Sale Advisors
- » Political Considerations
- * Tax and Stamp Duty Issues
- Interaction with administration
 - Epic administration ends
 - CrossCity
 - Vendor DOCA
 - Sale Entity DOCA

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Receiversh					
Consents required from financiers					
	Unit Holders ←	> (Shareho	olders	
Vendor Entities	HOLDING TRUST		HOLDI	INY	
	units		share	95	
Sale Entities	PROPERTY TRUST	FINANC	DE .	OPERATOR GO	
G: Guarantor					
B: Borrower					
Borrowing and Guarantees secured					
*Need for extinguishment of debt at Sale Entity level					
*Need for rele	ase of Sale Entities from s	ecurity			4.6

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Receivership Sale Consents required from financiers

Alternative Structures?

- Less than 100% consent for debt extinguishment on enforcement?
- Security over ultimate equity/units?... Tax consolidation issues
- > Equity agreements automatically come to an end

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Receivership Restructure

The 85¢ in the \$ Scenario

- Differing Lender Agendas
 - Exit and Sell?
 - « Increase and Buy?
 - Retain?
 - * Equity upside?
- Role of the Steering Committee
 - . Dissemination of information
 - Formulating solutions

