

Track Changes

Track Changes

June 2020

RESTRUCTURE YOUR BUSINESS FOR A SUCCESSFUL RESTART POST COVID-19 CRITICAL COMPONENTS OF DEBT RESTRUCTURING

Driven by the COVID-19 crisis, many companies are struggling to cope with evolving economic circumstances and are facing new challenges. The overall situation remains uncertain and projections for the future are very much unclear. To best support our clients in these unusual times, Boston Consulting Group and WOLF THEISS decided to take an unconventional approach and have teamed up to create a comprehensive Practitioner's Guide for a Successful Corporate Comeback in 2020.

Whilst the [Practitioner's Guide](#) generally covers critical aspects from both an economic and legal point of view, the following aims at highlighting certain aspects of debt-restructuring typically considered from a legal perspective.

DEEP-DIVE DEBT RESTRUCTURING

Debt restructuring can be achieved by adapting existing financing arrangements and/or refinancing existing debt with new creditors on adjusted terms with a view to improve the debtor's ability to manoeuvre in demanding times.

Depending on the relevant debtor's/debtor's business (changed) needs, one or more of the following outcomes may be needed: (i) relieve (potential) pressure from existing creditors, (ii) improve/restore liquidity, (iii) lift/relax financial covenants, (iv) avoid insolvency scenarios and (v) support funding for general operations, investments or restructuring measures.

The above restructuring goals may be achieved by (i) extending maturity dates of interest and/or principal payments, (ii) changing interest payments to payment-in-kind (PIK) interest or pay-as-you-can (PAYC) interest and/or (iii) re-scheduling of debt and amendments of terms and conditions.

In the context of debt restructurings, waiver agreements and/or standstill arrangements are usually entered into to document changes required to implement restructuring measures.

AMENDMENTS AND WAIVERS – CREDITORS' VOTES

All the foregoing measures affect the respective creditor's rights and thus requires negotiations with, and the cooperation of, (existing) creditors. **It is therefore critical to bring all (the majority of the) creditors on board.** Consequently, an in-depth analysis of provisions dealing with amendments and waivers and determining relevant majorities set forth in existing financing arrangements is required.

Many financing agreements differentiate between all lenders' and majority lenders' matters, whereas important changes affecting lenders' rights (such as a change of maturities, reductions of interest and/or increases of commitments) are typically designated as all lenders' matters. Moreover, certain changes may, irrespective of majority requirements, need the involvement of the relevant affected lender.

Voting disfranchisement or so called "snooze and loose" provisions are not uncommonly included in facility agreements. Pursuant to such provisions, creditors failing to respond to requests for consent are disregarded for purposes of determining whether required majorities have been obtained.

An even more aggressive alternative of the "snooze and loose" concept is the "delay and it's ok" concept, pursuant to which a lender failing to respond to requests for consent is deemed to have voted in favour of requested amendments and/or waivers.

In addition, a replacement of lender provision ("yank the bank") which gives the debtor the right to replace a creditor which does not consent to a decision to which a certain level of consent (but not the required level of consent) has been obtained, may be considered.

REFINANCING VS. ADAPTING EXISTING DEBT

Whilst in a refinancing the above-mentioned aspects play less of a role, other potential roadblocks deriving from the existing financing may have to be tackled. By way of example, an existing security package may have to be released and re-taken, which, however, may trigger a reset of contestation periods. Further, cost considerations may have to be taken into account (early repayment fees, break costs and/or make whole provisions).

CONCLUSIONS

In order to achieve a successful debt restructuring, certain critical aspects need to be considered and tackled accordingly. General speaking, a higher amount of bilateral financing arrangements with different layers of debt and different security arrangements typically multiplies complexity compared to syndicated financings. Certain provisions of financing agreements (such as e.g. determining the required lender majorities needed for amendments and waivers) are often considered "boiler plate language" in normal times, but are of the utmost importance in crisis situations.

In essence, **debt restructuring concepts need to be tailor-made to cope with special situations and require a detailed analysis and assessment of existing financing**

arrangements. When attempting to refinance and re-structure debt, a particular challenge is the alignment of the debtors' strategy with the existing (and new) lenders' perceptions.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



Leopold Höher

Partner

leopold.hoeher@wolftheiss.com

T: +43 1 51510 5431

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com