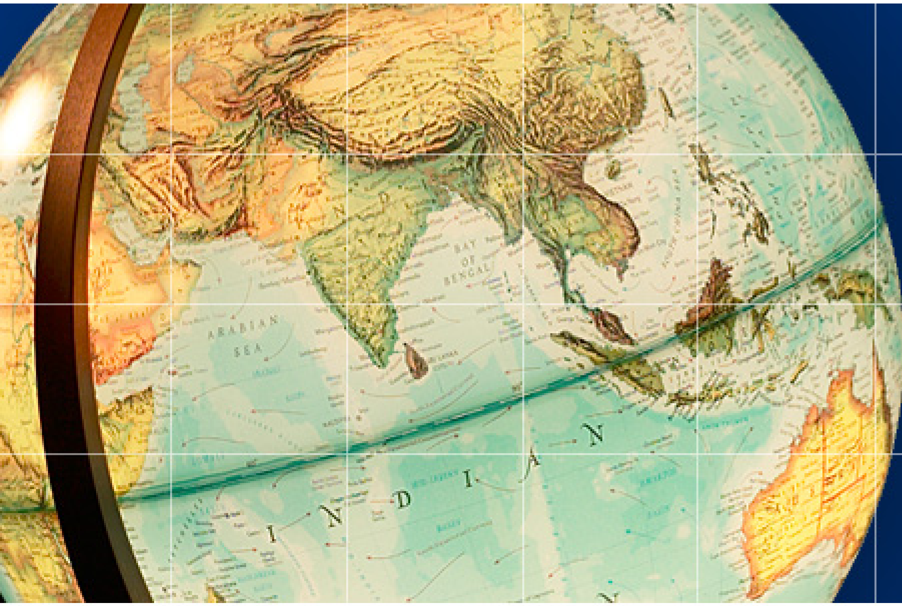

Random Observations of One Lawyer:

The Impact of the Banking Crisis on Corporate Borrowers in Europe

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The Impact of the Banking Crisis on Corporate Borrowers in Europe

I. Banks are currently facing a difficult conundrum.

A. Due to their “bailouts”, banks are under pressure from the Governments and the public to keep lending or even lend more to help kick-start economies.

B. But they are also being pressured to improve their balance sheets (to comply with Basle III and re-instill public trust) and to cease risky lending in general.

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C. But shareholders – and the threat of takeover or worse -- now motivates banks to be, if anything, over cautious and not take on risk.

D. The result is that the balance has in this view "from the field", moved considerably to render corporate borrowing more difficult than at any other time in the past 25 years, stifling economic growth, dampening employment and leading to increased bankruptcies due to cash flow problems.

II. Concrete Examples of actual problems we have encountered on behalf of European corporate borrowers.

- Lenders use the current economic crisis and the consequent reduction in the business of the borrowers to cram down reductions in the available lines of credit, leaving those borrowers with no flexibility as and when their business picks back up.

- Lenders request high interest rates for new financing.

- Lenders condition the availability of new facilities needed by the borrower on the receipt of multiple security and guarantees. As most of the security are registered and public, and guarantees will appear in the financial statements, this creates a risk for the borrower that third parties become aware -- and more wary -- of its financial difficulties, resulting in tougher commercial conditions for the borrower (reduction of payment terms from suppliers or fewer and/or lower advance payments from clients).

- Lenders are taking second- and third-ranking security over assets which have already been pledged in previous financing rounds. This seems to derive primarily from distrust amongst lenders that the priority ranking they may have secured will be respected and applied. That, in turn, creates a very complex situation in terms of security and the management of assets, and adds significant legal costs while not affording any substantive (economically-speaking) additional comfort for the lenders.

- If, in order to reduce their exposure, the lenders have already required a borrower to sell one or more profitable companies/assets to repay part of its debt, this only further weakens the ability of the group to repay the remaining debt outstanding. It is a short-term approach without following an overarching restructuring strategy.

- To reduce their exposure, lenders are requiring borrowers to sell profitable assets and apply the sale proceeds towards paying down debt. This demand is made all the more difficult to execute in practice, due to the numerous elements of security that the lenders may have taken over various of the borrowing group’s affiliates and assets. The sale of certain subsidiaries/assets cannot go through without a release of the pledges for the benefit of the lenders, which may have conflicting rank in the waterfall. There is then a risk that one of the lenders will refuse a sale agreed by the remaining banks and try to renegotiate its rights to be repaid. From a borrower’s point of view, this renders any sale process highly uncertain, as it must conduct negotiations with potential purchasers that may ultimately be rejected by the lenders in any case, thereby discrediting the borrower’s <u>bona</u> <u>fides</u> for any future sale process.

- If the lenders keeps requesting a sale process be initiated, that can prove counterproductive, as potential purchasers are then being approached again and again. That, in turn projects a negative image (as well as value proposition) in the eyes of the potential buyer.

- Lenders begin mistrusting the management of borrowers and then seek to impose changes to their corporate governance. E.g., the appointment of independent Board members with rights to supersede any contrary decision of the other Directors representing the shareholders.

- Lenders are requesting ever-increasing reporting by and monitoring of borrowers up to the point where management is overwhelmed with information requests. Then, to top it all off, lenders may require the appointment of other, expensive independent restructuring experts, resulting in significant increases in expenses, that are elsewhere supposed to be reduced.

- Lenders may often impose severe cost controls and, in particular, reductions in bonus and other benefit plans. While this is understandable in principle, too strict a position may result in key managers leaving the group, which will then have an adverse effect on its business and the lenders’ prospects of recovering their money.

- We know of several instances in which lenders have requested that the shares of the parent company be transferred to a voting trust-type vehicle (e.g., a Dutch Stichting) to ensure that pledged shares can be sold without any risk of blockage by a minority shareholder. By means of this mechanism, the lenders seek to take control of the sale process and the related management duties of the Board while not taking on any of the concomitant responsibilities and liabilities.

- The liquidity crisis has also prompted lenders to toughen the provisions of loan/facility agreements relating to market disruption and reserve their right to unilaterally apply a rate of interest that reflects their own cost of funding, without reference to any external index such as Euribor or Libor (leaving aside the problems of using those indices). This results in uncertainty for borrowers, which may see an increase in their interest rates without any objective reference.

- As a result of what lenders are doing, suppliers and other creditors have begun tightening up their own payment terms vis-à-vis the borrower. This is counterproductive, as it merely results in additional cash needs.

- Where separate lenders make separate financing available to the Borrower while trying to treat each new financing as part of a single debt, the result is a very complicated utilization mechanism for the borrower, restricting its ability to manage its cash needs. Such complications often arise from or are exacerbated by distrust between lenders (mistrust that they will not comply with their respective funding obligations or their undertakings with regards to any waterfall).