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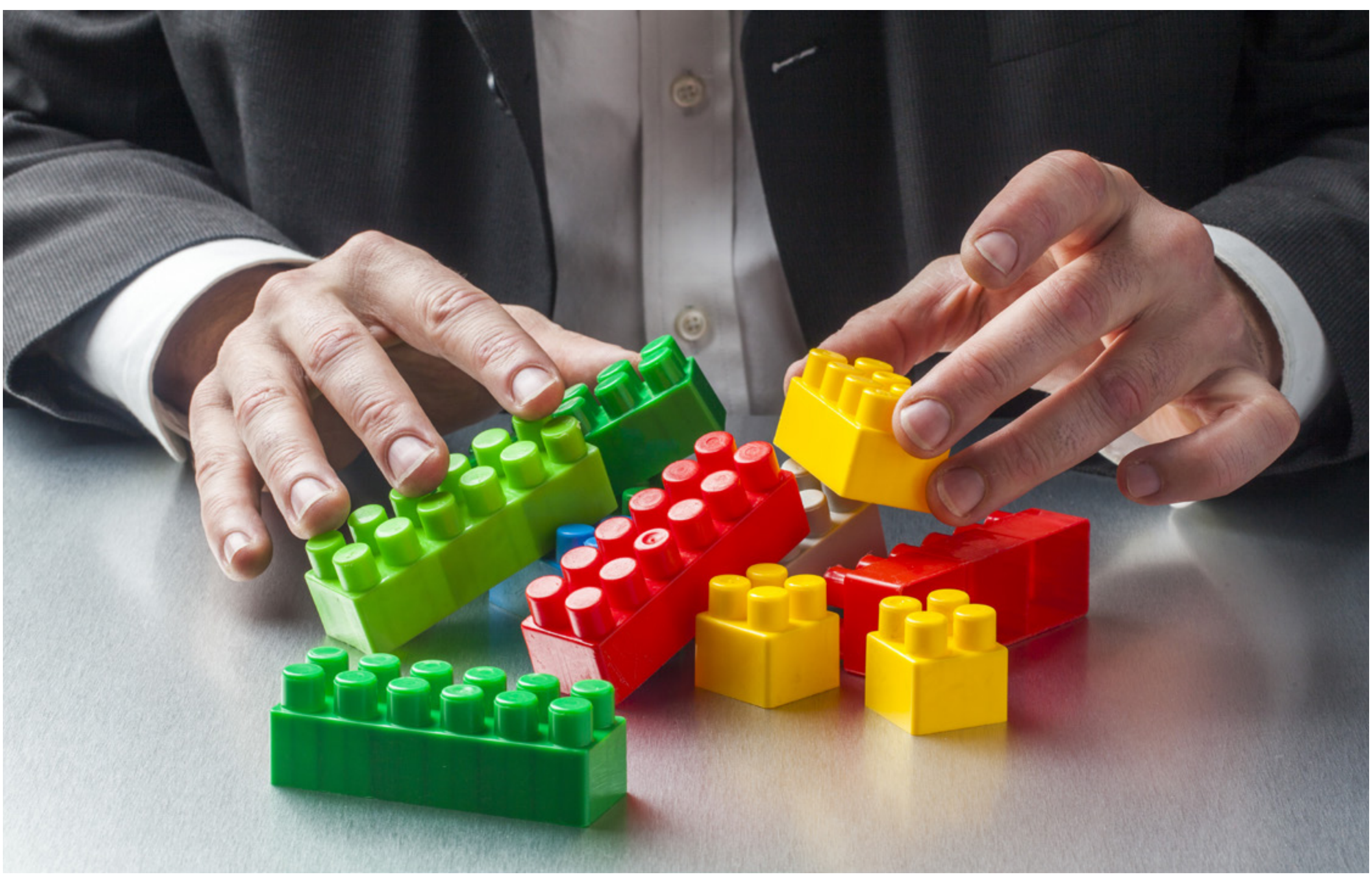
BANKRUPTCY & RESTRUCTURING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in bankruptcy & restructuring.



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Paul Bagon specialises in advising stakeholders in all aspects of cross-border and domestic insolvencies, financial restructurings, corporate turnarounds, complex workouts and recovery mandates. He has extensive experience advising companies and individuals in relation to all aspects of domestic and cross-border insolvency and restructuring matters. He has represented all types of stakeholders across capital structures in relation to distressed debtors, including company boards, funds, lenders, bondholders, ad hoc committees, insolvency practitioners, trade creditors and other parties-in-interest. In addition, Mr Bagon has advised clients in relation to complex fraud situations, domestic and international debt and asset recovery mandates and financial regulatory matters.

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Advising clients on all aspects of personal and corporate insolvency law, Tim Moynihan is part of the firm's Restructuring and Insolvency team. Mr Moynihan provides advisory, transactional and contentious advice in both distressed and formal insolvency situations. He acts for the full range of stakeholders including insolvency practitioners, debtors, lenders, creditors and company directors. Mr Moynihan has recently acted on significant matters in the retail, life sciences and, insurance and financial services sectors.

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Q. How would you describe corporate bankruptcies and insolvencies in the UK over the last 12-18 months? Are you seeing more or fewer business failures in general?

A. Despite large parts of the UK economy effectively being closed during the COVID-19 pandemic, the number of corporate insolvencies in the UK over the past 12 to 18 months has actually fallen. This is because the UK government has put in place a combination of financial support and legal protective measures that are specifically intended to avoid a wave of corporate insolvencies. Those measures include government-backed loans, a prohibition on creditor debt enforcement via insolvency proceedings and a relaxation of the directors' duties regime. It is widely expected that when the government withdraws that financial support and relaxes the COVID-19 related legal protections there will be a large wave of corporate restructurings and insolvencies.

Q. In your experience, which sectors seem to be demonstrating structural weaknesses leading to more restructuring efforts?

A. There have been structural weaknesses across several industries arising from the enforced closure of large sections of the UK economy in response to the pandemic. In particular, industries that have been directly affected by social restrictions and a lack of direct consumer spending have borne the brunt of the financial impact of the pandemic. Some of the main areas of stress have been in the hotels, leisure, tourism, aviation and retail sectors. In the case of the latter, however, it is important to note that this is the continuation of a long-term trend arising from digital disruption and other factors affecting the retail sector that have been accelerated by the effects of the pandemic. In addition, the historically low interest rates that have prevailed since the 2008 financial crisis have facilitated the continued trading of many otherwise unviable businesses. One economic consequence of the COVID-19 pandemic may be that many of these structurally weak so-called 'zombie companies' need to restructure or cease trading.

Q. To what extent are troubled companies able to refinance and renegotiate existing debt structures in the current market?

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It is possible that due to the large quantity of undeployed capital held by distressed debt funds that asset values in sectors deemed to have strong post-COVID-19 prospects will be driven up by stiff competition.

A. The capital markets in the UK remain benign, with a surplus of available capital resulting in the continuation of borrower-friendly lending conditions. This position has been compounded by lenders generally being supportive of struggling corporate borrowers facing financial hardships due to the COVID-19 pandemic. This trend can be attributed to the large volume of government-backed corporate loans provided under financial stimulus packages, the prospect of low asset realisations from enforcement actions and concerns about adverse PR if lenders are deemed to be unsupportive of corporate borrowers struggling due to global economic factors outside of their control. These lending conditions have enabled distressed companies to refinance, even in circumstances where there is a high degree of uncertainty regarding post-pandemic business and management plans.

Q. Have there been any recent legislative or regulatory developments, including high-profile cases, in the UK that will have a significant effect on bankruptcy and restructuring?

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A. The pandemic led to the biggest change to insolvency legislation in the UK for over 20 years. A key development was the introduction of the new Restructuring Plan regime – a debtor in possession process modelled on the existing English law scheme of arrangement framework but which also adopts key features from US Chapter 11 proceedings. It also introduces the cross-class cramdown of debtors into the UK regime for the first time. The new process will bolster the UK's status as a primary jurisdiction for large restructurings at a time when that has come into question due to the impact of Brexit and developments in other jurisdictions. In addition to the introduction of the Restructuring Plan, a new moratorium framework has been introduced and a number of insolvency legislative provisions have been suspended to grant businesses and their directors additional protections in response to the economic disruption caused by the pandemic.

Q. What trends are you seeing in the market's appetite to purchase troubled assets? How would you describe recent distressed M&A activity?

A. With the notable exception of the retail sector, distressed M&A activity levels have generally been low in the UK. This trend appears to have been driven by a willingness of existing stakeholders to support investments through refinancing and recapitalisations. Further, due to entire economic sectors facing financial distress, including, aviation, hotels, leisure and hospitality, asset realisation levels are generally perceived to be low. This has discouraged secured parties from taking enforcement action. Consequently, distressed debt funds have been frustrated by the low number of available targets and an inability to deploy capital.

Q. What trends are you seeing in cross-border or multijurisdictional insolvencies? What additional challenges do such engagements present?

A. The long-running tussle between the UK and the US to act as the hub for large cross-border corporate restructurings and insolvencies continues. Recent reforms in the UK, including the introduction of the Restructuring Plan and with it the possibility of cross-class cram down restructurings, arguably tips the balance in

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favour of the UK. However, Brexit means the English courts can no longer rely on the automatic recognition of court orders in the EU, resulting in a further layer of legal process. EU jurisdictions, including the Netherlands, have also introduced new restructuring and insolvency regimes, raising the prospect of new restructuring and insolvency hubs emerging. In the short to medium term, however, it seems likely that the experience of the US and UK judiciaries and the large number of legal and restructuring professionals in these jurisdictions will mean that the UK and US will remain the leading jurisdictions for cross-border matters, with US and Latin American debtors generally preferring to restructure under Chapter 11 and European and Asia Pacific debtors turning to the English courts.

Q. Looking ahead, what developments do you expect to see in restructuring and bankruptcy processes in the coming months?

A. We expect to see an increase in corporate insolvencies as the UK government's support begins to reduce and entities are left to deal with the combined effect of trading out of the economic shock of the pandemic and repaying or refinancing the lending that has allowed them to trade through that period. We also expect to see an increasing use of the new Restructuring Plan as a route toward strengthened balance sheets and a stable future post-COVID-19. It is possible that due to the large quantity of undeployed capital held by distressed debt funds that asset values in sectors deemed to have strong post-COVID-19 prospects will be driven up by stiff competition. In contrast, early indicators suggest that businesses in less marketable or redundant sectors will be deemed unviable, resulting in liquidations and the redeployment of resources to other more sustainable sectors of the economy.❑

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