Restructuring Principles
Selective case study: Mercator

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Loren Richards, Partner
Frankfurt

CLIFFORD CHANCE

Some context:

- Poslovni sistem Mercator, d.d. ("**Mercator**") is the largest Slovenian retailer and the second largest consumer staples company in Southeastern Europe with ca. €3bn of revenue
- A significant post-Lehman contraction of GDP and intense competition from discounters across its operational territories led to declining consumer sales
- In response the Company's current management undertook:
  - a comprehensive operational restructuring effort to reduce costs, focus on core programmes and regain market share
  - a restructuring of its c.€1.1bn financial liabilities to address its capital structure
- The macro-economic environment, pressure in the banking sector, coupled with tight liquidity, the parallel takeover of the Company by Croatian competitor Agrokor resulted in a sensitive financial and political situation and, by far, the region's most complex financial restructuring case
- **Clifford Chance** was hired in Summer 2013 and, together with Mercator's financial advisor (**Lazard**) and local counsel (**Jadek & Pensa**) ran an expedited restructuring process across all jurisdictions with Mercator's financial advisors to close the restructuring successfully in June 2014

Some key issues:

- Diverse lender group with predominantly bilateral facilities
- High leverage/debt maturities
- Macro-economic operating environment
- Tight liquidity
- Limited legal tools
- Listed business/parallel M&A process
- High political and media interest
- Ripple effects

What role could/did the INSOL principles play in facilitating the successful restructuring?

Could have, should have, would have?:

Standstill	**Composition of lender universe; evolution of standstill arrangements throughout the process**
No lone enforcement	**How exposed was the process to such persons? Correlation to degree of standstill?**
No favouritism	**Equality of treatment; the shareholder/lender dynamic; the "bilateral lending" mindset**
Co-ordination	**Buy-in to a CoCom; make-up of CoCom; an easy path?**
Access to information	**Barriers to information sharing and overcoming these**
Respect the starting position	**Perception that all creditors are equal but that some creditors are more equal than others?**
Equality of information and confidentiality	**Navigating deal/dynamic specifics – listed business, ongoing M&A process**
Priority for new money	**Ensuring (i) market terms could be offered (ii) availability to all and (iii) liquidity needs could be met**

…and next time?

Loren Richards, Frankfurt

Loren Richards
Partner

T: +49 (0)69 7199 3167

M: +49 (0)175 729 0361

E: loren.richards
@cliffordchance.com

Loren has been with the Firm over 15 years and is currently based in the Frankfurt office (having previously worked in the London and Warsaw offices). He is a fluent German speaker and one of the partners responsible for the Firm's CEE/SEE finance practice. Chambers Global and other directories have ranked him as an expert for the CEE/SEE region. Loren and his team act for debt providers/steering committees, sponsors and other transaction parties on all aspects of domestic and cross-border debt finance transactions and restructurings.

Selected experience includes advising:

- **Mercator** on their landmark debt restructuring comprising a consolidation of a largely bilateral loan portfolio with a structure that "grouped" creditors into a structure with aligned terms, collateral and decisionmaking;
- **CIECH Group** on their last 2 major debt restructurings involving: (2011) the restructuring of derivatives exposures and replacing approx. 60 bilateral loan facilities with a single club structure also involving EBRD; and (2012) multi-sourced/multi-layered refinancing of the Group's debt with a mix of HY bond/local PLN notes/super senior revolving facilities *(Shortlisted: Restructuring Deal of the Year, 2012);*
- the coordinating committee of creditors lenders on the restructuring of **Rodenstock** GmbH's implemented by way of Scheme of Arrangement. This was the first ever fully-reasoned judgement of an English court as to the availability of an English Scheme of Arrangement for a non-English company *(Shortlisted: Restructuring Deal of the Year, 2011);*
- the coordinating committee of creditors on the multi-layered debt restructuring of a **CEE/SEE-based metals business**, also involving related subordination/intercreditor issues arising from certain lenders being exposed to different parts of the group;
- the coordinating committee of creditors on the debt restructuring of a **Ukrainian steel pipe producer**, also involving multiple creditor classes such as export credit insurers;
- the coordinating committee of creditors on the multi-layered debt restructuring of **debis AirFinance** (now AerCap), also involving shareholder/lenders and collateral in relation to a pool of owned but largely leased-out assets;
- Secured creditors in connection with the restructuring/insolvency of various airlines/manufacturers including **Air Canada, Swissair, Ansett** and **Fokker**;
- the MLAs in connection with the 2012 EUR 1.3bn refinancing of **Techem** by a multi-sourced multi-layered refinancing of the Group's existing debt with a mix of credit facilities/HY bond/subordinated notes;
- the MLAs on numerous corporate, bridge to bond, working capital and proposed acquisition financings for **Agrokor** (including also in the context of high yield bond placements); the MLAs on the financing of **Atlantic Grupa**'s acquisition of **Droga Kolinska** and innovative intercreditor arrangements between the post-acquisition Group's multiple creditor classes; and
- the MLAs on various privatisations and acquisition financings (and refinancing thereof) in Turkey, including **Erdemir** (steel), **Petkim** (petrochemicals), **BEDAŞ** and **SEDAŞ** (electricity DisCos) as well in the real estate, FMCG, financial services, transportation, healthcare and industrials sectors (with sponsors such as **Blackstone, Bridgepoint, Carlyle and 3i**).

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