

Finance Monthly

July 2010



Welcome to the new monthly finance bulletin from our banking and corporate recovery department. The intention of this bulletin is to provide an overview of some recent market developments and trends in the finance sector. In this first issue we also include a spotlight on CVAs. I hope that you find it interesting and please get in touch if it raises any issues that you would like to discuss.

Jeremy Walsh, Head of Banking Department

Liquidity in the leveraged finance market

Recent tensions in the leveraged finance market caused by restricted liquidity and a predicted wall of refinancings by investee companies have been well-trailed in the financial press. However, how has this been borne out in the market in terms of actual transactions?

At Travers Smith, we have been involved in a number of recent headline-grabbing deals, such as the sale of Pets at Home to KKR, the acquisition of CPA by ICG and the disposal of Marken. However, there have also been a number of less prominent buy-outs and refinancings (but nonetheless important, when taken together) in the mid-market sector. What we have found on many of these transactions, however, is that there continue to be only a limited number of lenders in the leveraged finance market who are prepared to lend. This makes the debt process less competitive and more likely to involve a club of banks than a single arranger.

In addition, mezzanine funds have begun to provide liquidity in the space previously occupied by senior lenders, and some deals are being done with the assistance of finance from vendors.

Hard statistics also point towards a patchy leveraged finance market. The Centre for Management Buy-Out Research encouragingly noted that the total value of UK buy-outs in Q1 2010 already exceeded the aggregate value for the whole of 2009. The AFME/EHYA also published figures showing that leveraged finance issuance in Europe increased from €24.6m in Q4 2009 to €26.5m in Q1 2010.

However, only time will tell if these indications of a recovery in the leveraged finance market can be sustained.

EC internal markets chief Michael Barnier to unveil derivatives regime this summer

Michael Barnier, the European Commission's internal markets chief, recently announced his plans to propose a new derivatives regime this summer. Barnier intends to introduce measures to reduce counterparty risk in order to avoid failures such as that of Lehman Brothers.

The scheme will require "compulsory clearing by central clearing counterparties for eligible, standardised contracts" and recommends the use of trade repositories to ensure information is available across the EC. Barnier also called for European countries to agree to the introduction of new "super watchdogs". Britain has campaigned to reduce the influence of such new authorities due to fear of losing control over London's financial centre.

Insolvencies in the first quarter 2010

The Insolvency Service recently released statistics showing insolvencies in the first quarter of 2010. The figures show a drop in company voluntary liquidations and relative stability in the compulsory liquidation figures. This reflects our experience of lenders generally not commencing formal insolvency proceedings until other consensual outcomes have been explored, as well as lenders' reluctance to crystallise losses at this stage.

Spotlight on... CVAs

The last twelve months have seen a marked growth in the use of Company Voluntary Arrangements ("CVAs") as an increasing number of companies (including, for the first time, listed companies) have successfully employed the procedure, often without the protective wrapper of administration, to address their financial issues in preference to other forms of insolvency procedure.

If 75% by value of voting creditors approve the proposal it binds all unsecured creditors (provided that more than 50% of 'unconnected' creditors do not reject the proposal). Potential benefits for companies proposing a CVA include that it:

- offers a quick, economic and flexible tool by which a company can renegotiate certain of its liabilities with its unsecured creditors thereby reducing stresses on its cashflow;
- allows existing management to shape the restructuring proposal and to remain in place following the implementation of the procedure while avoiding the disruption of administration;
- offers the opportunity for a solvent restructuring allowing the company to survive (thus preserving an interest for shareholders);
- allows for separate deals with separate creditors, provided there is no unfair prejudice; and
- is likely to offer a better return to unsecured creditors and shareholders than in an administration.

However, CVAs do not (save for small companies) provide a statutory moratorium protecting the company from creditors taking action to recover their debts (although an extension to larger companies is under consideration). In addition, CVAs cannot affect the ability of secured creditors to enforce their security without their agreement.

Travers Smith recently advised on the CVA for Blacks Leisure.

In the courts

Gray and ors v G-T-P Group Ltd Re F2G Realisations Ltd (in liquidation)

[2010] All ER (D) 80 (May)

There is ongoing debate in legal circles regarding the meaning of "possession or control" which is required over an asset to satisfy the definition of "security financial collateral arrangement" under the Financial Collateral Arrangements (No 2) Regulations 2003 ("FCAR"). This is important because security financial collateral arrangements do not need to be registered like most other charges.

In *Gray*, two companies entered into an deed by which one (the "Trustee") declared a trust over a bank account in favour of the other company (the "Beneficiary"), and the Beneficiary agreed that in certain circumstances the Trustee could withdraw from the account amounts owed to it by the Beneficiary. The Court ruled that the Trustee's withdrawal right amounted to a floating charge. As such, it was void against the liquidators because, as well as not being registered, it did not constitute a "security financial collateral arrangement" under the FCAR, as the holder of the security did not have "possession" of, or sufficient "control" over, the charged account.

Recent Transactions

The Travers Smith banking and corporate recovery department has recently been involved in the following transactions:

Acertec Group

A restructuring and refinancing of Acertec, a leading supplier of car bodies. This involved, amongst other things, the group's two defined benefit pension schemes being taken into the Pension Protection Fund.

Liverpool Airport

Refinancing of Liverpool Airport in connection with its holding company becoming subject to a JV between Peel and YVR Airports Services.

CPA Global

The acquisition by ICG of CPA Global, the global legal process outsourcing specialist.

Pets at Home

The sale by Bridgepoint to KKR of Pets at Home, the leading retailer of pet food, services and accessories.

Durrants / Gorkana

The financing for the bolt-on acquisition of Gorkana by Durrants, the media monitoring and analysis services company owned by Exponent.

Practice development

Pensions restructuring

Banking Partner Peter Hughes recently co-presented a seminar on the restructuring of pensions liabilities.

European Restructuring

Banking Partners Jeremy Walsh and Matthew Ayre recently visited leading law firms in Madrid to discuss latest developments in restructuring in Spain, and the use of UK processes to effect a restructuring of a non-UK company. Please click [here](#) for a copy of our note.

CVA training

Banking partners Keith Bordell and Peter Hughes co-presented (with Richard Fleming, head of UK restructuring at KPMG) a training session for company directors on the use of CVAs as a restructuring tool.



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