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GLOBAL TURNAROUND

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Energy price shock raises fears in Germany

Europe's biggest economy is reeling from energy price increases caused by the Russian invasion of Ukraine, with annual rises in August hitting 139 per cent.

Already one major industrial company has blamed rising energy costs for having to file for insolvency, although others point out that the Hakle toilet paper manufacturer has been in financial distress for many years.

Energy-intensive firms such as Hakle were however particularly vulnerable after Russian gas supply cuts to Europe, which Moscow has blamed on Western sanctions following its invasion of Ukraine in February.

"In a very short time, electricity and gas prices have exploded to such an extent that of course they cannot be passed on to our customers so quickly," said Karen Jung, Hakle's head of marketing.

Some 718 German companies became insolvent in August, a 26 per cent jump over the previous year, according to the IWH economic institute. IWH expects that figure to stay at around 25 per cent in September and climb to 33 per cent in October.

In the same week that Hakle filed, shoe retailer Goertz and car supplier Dr. Schneider also filed for insolvency, and economy minister Robert Habeck said he could imagine parts of the economy stopping production due to rising energy prices.

"After a long period of low insolvency numbers, a trend reversal has now set in," says Steffen Mueller of the IWH.

Germany's BDI business association has warned of a "massive recession". In a BDI survey of 593 businesses, more than a third said their existence was threatened by higher energy prices, up from 23 per cent in February.

A survey by leading credit institutions in August suggested non-performing loans (NPL) in Germany would rise to 37.6 billion euro next year from 31.9 billion euro in 2022.

"Our corporate customers did not experience a wave of bankruptcies during the pandemic," Helmut Schleweis, President of the German Savings Banks Association, told a banking conference on 8 September.

"Today, however, this can no longer be ruled out, only the scope cannot yet be quantified."

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Letter from the Editor

Life after death.
It's not a concept that you would readily associate with the world of insolvency.

But recently a series of large bankruptcies have featured the weird phenomenon of 'out of the money' shares suddenly rising in value, even after the company concerned has filed for bankruptcy.

Economic orthodoxy dictates that, as a company suffers financially and enters the zone of insolvency, its equity becomes less valuable and its creditors, particularly secured ones, more so.

Then, at the moment the bankruptcy is confirmed, it is generally assumed that equity is, at worst extinguished, at best, facing an uphill struggle to have any influence at all.

That didn't bother retail shareholders in Revlon, the US beauty products giant that filed for Chapter 11 a few months ago. These armchair investors went so far as to ask a New York bankruptcy judge for the appointment of a shareholders committee - paid for by the debtor- to represent their interests. This was after the beauty products group's shares had risen following its bankruptcy filing (see page 4/5).

The judge in the Revlon case turned them down, but the phenomenon of so-called 'meme stocks' is now a factor in big bankruptcies. Blame it on the rise of the internet and social media.

Keyboard warriors using internet chat rooms to swap market gossip have grown in numbers in the last few years. Cheap share dealing platforms like Robinhood have revolutionised the way crowds of small shareholders can suddenly swoop in and boost the share price of even the most distressed company, no matter how utterly bust it may be.

These investors couldn't give a hoot about the financial world's notions of value. If they think there's a chance for a share price to go up - for whatever reason - then they're in!

Which begs the question; how do you define value? Has the very concept of being out of the money been rendered obsolete by chatrooms and penny stock dealers?

It's even got to the point where the deputy CEO of the world's second biggest cinema chain, Cineworld, said this month that his company might have dodged having to file for Chapter 11 if only it had become a meme stock like its greatest rival, ABC Entertainment. ABC suffered exactly the same financial trauma in the Covid lockdowns as Cineworld, but earlier this year became a meme stock darling.

This enabled ABC to issue new stock and scramble together enough liquidity to escape bankruptcy.

Perhaps all those 'operational improvement' consultants should start employing their children to drum up support for their clients on Reddit.

John Willcock

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News

UK corporate insolvencies rise 43 per cent year on year

UK corporate insolvencies rose in August by 43 per cent compared to 2021, from 1,348 to 1,933 according to the latest monthly figures.

August 2021's corporate insolvency figures were also 42 per cent higher than August 2019's figures of 1,365.

Christina Fitzgerald, president of R3, the insolvency and restructuring trade body, commented:

"The monthly increase in corporate insolvencies, to the third highest set of monthly statistics since January 2019, has mainly been caused by an increase in the number of Creditors' Voluntary Liquidations (CVL).

> "This suggests that directors remain concerned about their ability to continue to trade in the current climate, and are choosing to close their businesses before that choice is taken away from them."

"These figures will be a sobering reminder to government of the scale of the challenge facing the UK economy as we head into the winter months, and reflect the continued toll the sustained economic turbulence is taking on businesses in England and Wales," said Fitzgerald.

"Companies are facing enormous running cost hikes just as household spending is facing its biggest squeeze in several decades which delivers yet another blow to business owners who were hoping to bounce back to normal trading levels post-pandemic.

"Many directors and managers are worried about the rise in prices and energy costs and the effect these will have on their margins and profits, and this is set to continue to be a concern," she said.

Sam Brodie rejoins Akin Gump

Akin Gump Strauss Hauer & Feld has brought back financial restructuring partner Sam Brodie after just a year at Shearman & Sterling. Brodie specialises in complex bond and securitisation restructurings. He previously worked at Bingham McCutchen and Simmons & Simmons.

"The depth of knowledge in the firm's London financial restructuring team and the bench strength in the practice has made them the go-to law firm for buy-side and credit investors for a number of years," said Brodie about his return to the firm.

"I look forward to working alongside my colleagues to continue to serve our clients at the very highest level."

Financial restructuring partner Barry Russell added, "We are delighted Sam is rejoining the London office. His broad and flexible skill set brings value to the full gamut of the firm's financial restructuring practice. Sam will be particularly instrumental in adding additional depth and breadth to Akin Gump's special situations practice."

Kirkland hires James Boswell in London

As the 'fight for talent' in the legal field continues, Kirkland has hired Clifford Chance's infrastructure financing and restructuring specialist James Boswell.

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News

Germany to relax insolvency rules

Germany's justice minister is planning a temporary relaxation of insolvency rules to help keep afloat companies that have fundamentally sound business models but are struggling with debts due to high energy costs.

Marco Buschmann, whose portfolio includes insolvency rules, said on 9 September that his plan would exempt firms from the obligation to file for insolvency if an expert finds they have a "positive going concern prognosis" for four months, down from 12 months now.

Wolfram Prusko, a restructuring partner with Willkie Farr & Gallagher in Frankfurt, said there were two big factors to keep in mind regarding soaring energy costs and their impact on the German restructuring and insolvency market.

“Firstly, it is unclear - so far - how much these energy price rises will prompt insolvency and restructurings,” said Prusko.

“While obviously these rises represent a big challenge for businesses and liquidity across a number of sectors, there is a lot of ongoing discussion and activity about expanding government support, both direct and indirect, with respect to industry and household energy bills.”

“Secondly, the German Ministry of Justice announced that it wants to alleviate temporarily the mandatory insolvency filing.

“Significantly, the solvency forecast period is to be cut from twelve months to four. This should provide reassurance to directors that they aren’t risking criminal and civil liability running the business while facing continued uncertainty of future market conditions,” said Prusko.

Under German insolvency law, directors face criminal and civil liability if they knowingly allow a company to continue in business whilst failing certain insolvency tests. In particular, they have to prepare a forecast that the company will be able to survive for the next twelve months without failing those insolvency tests.

This is challenging, particularly in the present environment when the world is so uncertain.

Therefore cutting that time period from twelve months to four should be a big help to directors who need to restructure their businesses. A four month forecast is far less onerous to produce and fulfil, and therefore less companies should be forced to file for insolvency.

That’s the theory, at least.

Prusko added: “The changes initiated by the ministry should ensure more stable grounds for a company to address upcoming financial distress, as well as grant additional room to find out-of-court restructuring solutions with its stakeholders.”

Insolvency practitioners are seeing an increasing number of headwinds facing the German economy, although exactly how this might translate into a rise in insolvencies remains to be seen.

Gordon Geiser heads up Greenberg Traurig’s German restructuring unit GT Restructuring, and handles formal insolvency appointments as well as taking CRO roles.

Geiser, who is based in Berlin, commented:

“We expected an uptick in work when the Covid-19 crisis came. That largely didn’t happen because of the Government’s programme of support for business.

Gordon Geiser, Greenberg Traurig

> “A lot of companies should have been heavily restructured. Instead, government support encouraged more 'zombification'.”

“Now, with rising energy prices, we’re not sure yet what’s going to happen this time around.”

“Two things are driving restructuring cases in Germany at the moment; Shortages, and the rising cost of energy,” said Geiser.

“We’re facing not only shortages in semiconductors, used in auto, but also shortages in many other products, for example of CO_2, which is essential for breweries and other industries, or simple things like AdBlue, which is required to operate trucks.

“According to the German Federal Statistical Office, in August 2022, the index of producer prices for industrial products increased by 45.8 per cent compared with August 2021.

“This was the highest increase ever compared to the corresponding month of the preceding year.

“How can businesses pass these increased costs onto customers, just as consumer confidence is falling?” asked Geiser.

“These factors suggest that the German economy could be pushed into recession.”

> “I expect that we will see more insolvencies and restructurings. The extent will depend on how the Government will react, and how long the energy crisis lasts.”

Mixed signals for Germany Inc

A survey conducted by the German Chambers of Industry and Commerce, the DIHK, in July found that 16 per cent of the 3,500 companies polled were scaling back production or pausing operations. Deutsche Bank now predicts Germany’s economy will shrink 3.5 per cent next year.

This month, chancellor Olaf Scholz announced a 65 billion euro relief package funded by a windfall tax on electricity producers to help soften the blow. The package includes one-off payments to help households with energy bills, as well as an extension of the 5 billion euro aid package for energy-intensive companies, first introduced in July.

In August, Scholz also announced a cut in value added tax on gas sales from 19 per cent to 7 per cent.

However, some industry experts are warning against drawing the wrong conclusions from the rising insolvency figures.

They may look bad now because insolvency numbers were artificially depressed during the pandemic in 2020-2021 when the government propped up ailing firms with state aid and suspended legislation obliging them to file for insolvency.

Also, insolvency rates have been lower than in the recent past.

There were just under 14,000 insolvencies in 2021, less than half the rate of 32,687 seen during the global financial crisis in 2009 or 39,320 seen in 2003, based on government data.

Though NPLs are expected to rise, industry experts say the mood in the financial sector is still relatively sanguine.

"Banks have now clearly picked up the alarm signal, nevertheless they’re sitting in a very comfortable position,” Juergen Sonder, President of the Federal Association of Loan Purchase and Servicing, said.

"They're counting on the state to also intervene this time to prevent a wave of bankruptcies."

Avoid bankruptcy – by becoming a meme stock

Think equity is wiped out once a business enters the 'zone of insolvency'? Think again. All you have to do is become a 'meme stock,' and your shares will have life after death.

When Cineworld, the world's second biggest cinema chain, filed for Chapter 11 in New York on 7 September, its deputy chief executive, Israel Greidinger, regretted that unlike its great rival AMC Entertainment, Cineworld had never become a 'meme stock'.

"While Cineworld would, of course, have welcomed the liquidity of becoming a 'meme stock' like AMC, we were never so lucky!" he said.

The Cineworld boss was referring to a craze where non-professional investors talked up their favourite stocks on online forums like Reddit's r/wallstreetbets.

Cineworld has struggled to shore up its finances, unlike AMC, which has managed to raise over US$2 billion via sales of new 'APE' preferred stock to its army of retail investors. Despite being under exactly the same financial pressures emerging from the Covid lockdowns and the consequent collapse in cinema revenues, AMC managed to escape filing for bankruptcy.

The Missouri-based cinema chain had also faced bleak prospects but capitalised on its status as a meme stock by selling billions of dollars of shares during the pandemic. Its share price had soared thanks to frenzied trading by retail investors active on Robinhood, the online stockbroker, who often discussed their favourite stocks on message board Reddit.

This buying may have defied 'conventional wisdom' that equity was out of the money. But online investors can think very differently. And this is now becoming a real factor in major US bankruptcies and restructurings.

It started with GameStop

The meme stock craze gained mainstream popularity about 18 months ago as retail investors successfully sent shares of GameStop to astronomical levels.

The movement lost momentum as stocks sold off in the first half of 2022, but powered up again in early August after Bed Bath & Beyond stock caught fire. Much of that revival has since disappeared.

But that didn't stop retail investors in August from asking the bankruptcy judge in the Revlon Chapter 11 for a shareholders committee saying that no one else could be trusted to speak up for minority equity owners.

The shareholders, represented by Thomas Lauria and Gregory Pesce of White & Case, pointed to increases in Revlon share prices after it filed for Chapter 11, saying that the company's equity had long-term term value and was more than a meme stock fuelled by irrational retail investors and social media buzz.

This may have been the shareholders wanting to take advantage of the meme stock price rises without taking on the stigma of being merely an internet craze.

But the phenomenon prompts an interesting question; what is the 'true' value of a business? What the underlying economics of the business indicate it should be? Or what investors are prepared to pay for the shares, however illogical?

Different answers are likely to be thrown up as the meme stock phenomenon continues to interact with distressed businesses.

Revlon judge rejects requests for shareholder committee

A big recent test for the meme stock phenomenon came on 9 August when a group of shareholders asked US Bankruptcy Judge David Jones in New York to appoint an official equity committee in Revlon's bankruptcy, saying that no one else could be trusted to speak up for minority equity owners.

The shareholders pointed to increases in Revlon share prices after it filed for Chapter 11 in June, saying that the company's equity had long-term term value and was more than a "meme stock" fuelled by irrational retail investors and social media buzz.

The minority shareholders' attorney, Gregory Pesce of White & Case, argued that an equity committee was the best way to give a voice to the "little guys," retail stockholders who had invested in Revlon's future.

"There's real value here, and that value needs to be protected," Pesce said in court.

Revlon responded by arguing that the company's US$3.5 billion debt load meant that shareholders would likely receive nothing from the company's bankruptcy, so a committee's "significant" costs would "greatly outweigh any speculative benefit."

Revlon's junior creditors, represented by Brown Rudnick and senior lenders, represented by Davis Polk & Wardwell, also objected.

The senior lenders said the stock price fluctuations were "untethered from market realities."

Official equity committees are rarely approved in bankruptcy. Revlon pointed out that no equity committee was appointed in the Hertz Inc bankruptcy, which ended in a rare win for shareholders in 2021 and was cited as a comparable case by the Revlon minority shareholders.

Revlon argued that since shareholders cannot be paid until all other debts are satisfied, stock price alone is a poor indication of the company's value.

Debt markets show a gloomier outlook of the company's future value, with the company's unsecured bonds trading as low as 10 cents on the dollar despite apparent demand for Revlon's stock, according to Revlon's court filing.

In the event, Judge David Jones rejected the minority shareholders' requests. The Judge sided with the company and junior and senior creditors who said a company-funded panel was unnecessary. Revlon would have to pay its attorneys and professionals at a time when its resources are already stretched, Jones said.

Judge Jones said shareholder interests were already represented in the bankruptcy by Revlon, majority shareholder MacAndrews & Forbes, and the minority shareholder group led by investment advisor Mittleman Brothers LLC, which is free to continue advocating for shareholders on an unofficial basis.

Revlon is represented by Paul Weiss, whose team is led by Paul Basta and includes Alice Eaton, Kyle Kimpler, Robert Britton and Brian Bolin. Non-US issues are being dealt with by Freshfields, led by Ken Baird.

The ad hoc committee of BrandCo lenders is represented by Davis Polk & Wardwell, led by Eli Vonnegut of Davis Polk & Wardwell; and Danielle Rose of Kobre & Kim.

Cineworld Chapter 11

Cineworld, with 747 theatres and 9,139 screens spread across ten countries, filed for Chapter 11 in the Southern District of Texas on 7 September and announced a DIP loan from a consortium of lenders to keep operating while it cleans up its balance sheet.

Representing the debtor is Kirkland, led by Joshua Sussberg, Christopher Marcus, Christine Okike and Ciara Foster. Cineworld is also represented by a Houston law firm Jackson Walker, as well as UK law firm Slaughter & May.

The company had spent the two years of Covid lockdowns refinancing its way out of trouble, with advice from PJT. AlixPartners is serving as restructuring advisor.

In the past, Houlihan Lokey has advised holders of term loans, which are trading at around 70 cents in the dollar. Lazard has advised holders of a separate super senior loan, which would be a critical component of any restructuring.

Cineworld's biggest shareholder is Global City Holdings, which is linked to the Greidinger family, who manage the company.

Meme stock investors aren't the only thing that can drive up a share price after a company has filed for bankruptcy; When Judge Marvin Isgur approved an initial US$785 million of DIP funding on 9 September, Cineworld's shares rose 11 per cent, but fell back slightly in later trading.

The approval provides needed funds for the company, which was in dire straits with only US$4 million of cash on hand.

> The agreement and approval by Judge Marvin Isgur came at nearly midnight on 8 September after a hearing that started in the morning and stretched on and off throughout the day.

The judge noted at the close of the hearing that the DIP deal will keep Cineworld operating. Without it, "this business would have been closed."

"Today's approval of our requested 'first day' relief is a positive step forward for the Group and our restructuring efforts," said CEO Mooky Greidinger.

"As we position Cineworld for long-term growth, through this Chapter 11 process and beyond, we remain steadfast in our commitment to providing our guests with the most memorable moviegoing experiences and maintaining our long-standing relationships with our business partners."

An initial financing proposal by lenders was adjusted, with US$1 billion of the total meant to refinance pre-petition loans from the same group of lenders, now being put into an escrow account pending the expiration of a challenge period.

Cineworld, which had accumulated debt acquiring Regal in 2018, was crippled by Covid theatre closures, weak attendance and a temperamental studio release schedule. A US$1.24 billion judgement against it by Cineplex of Canada is under appeal, with a hearing scheduled for October. A rise in admissions early this year was promising but blockbuster films dried up in late summer, tipping the chain into Chapter 11.

Cineworld took on significant debt acquiring Regal Cinemas in 2018 for US$3.6 billion. While the chain made some progress paying it down, it didn't enter Covid on a strong financial footing. It carries debt of about US$5 billion. Separately, a Canadian judge ruled late last year the

company is liable for more than US$1 billion in damages for backing out of a deal to buy Cineplex.

Cineworld could use a UK Part 26A RP

Cineworld stated on its website following the Chapter 11 filing that it may consider using further restructuring procedures outside the US in parallel with the Chapter 11:

> "Given the international nature of the group's business, certain aspects of the de-leveraging transaction to be pursued in the Chapter 11 cases may require ancillary implementation proceedings beyond the Chapter 11 cases."

"No final decision has been taken in relation to whether any such ancillary implementation proceedings are to be pursued in this case, and any final decision will be subject to a number of factors, nor has a decision been taken on the timing of any such process," said Cineworld.

"However, the possible ancillary implementation proceeding that may be used by the Group in this case could include, among other things, a restructuring plan or a scheme of arrangement under Part 26A or Part 26 (respectively) of the UK Companies Act 2006, or other ancillary proceedings in the UK or other key jurisdictions alongside the Chapter 11 cases in order to achieve the objectives of the restructuring.

"A further update on this point will be provided in due course," said Cineworld.

The RIVA structure
How creditors in Germany can take control of a business without taking equity


Wolf Waschkuhn, One Square

This year Anglo-German restructuring boutique One Square used a restructuring technique it invented in 2010 for the first time to take control of a non-German company.

One Square first used the RIVA structure in 2010 to take indirect control of Primacom, a hopelessly bust telecoms company. The RIVA structure allows creditors to take control of a company and get rid of its previous owners and management, but without those creditors needing to take any equity in the business.

This avoids one of the great pitfalls of business in Germany: Equitable subordination.

Under German law, if you are both a senior secured lender and in the equity, then in insolvency your loan will be equitably subordinated – it will fall to the bottom of the queue for repayment.

Using the RIVA construct, a coordinating agency, One Square, becomes the owners of the business, enabling them to change the Board and management, while allowing the lenders to stay as creditors.

> One Square then provide the creditors with returns which are 'equity-like'. Thus the creditors can exert control without taking equity.

The RIVA structure is an alternative to a trustee taking control for example, where existing shareholders would still be able to exert influence.

RIVA may appear a somewhat mysterious idea, to non-German eyes at least.

It is not a corporate reorganisation or restructuring process. There is no point, for instance, in comparing RIVA to Germany's two leading restructuring procedures, ESUG and StaRUG, since it isn't a 'procedure' in that sense at all.

"The first RIVA deal was Primacom in 2010 ," said Wolf Waschkuhn, co-founder and co-head of One Square. "There were 170 million euro of junior creditors. The eventual exit gave back returns that exceeded all expectations ," he said. "Around 18 per cent IRR."

Since 2010 One Square has used the technique for a lot of businesses, he observed. In 2012-14, for instance, One Square took ownership of over 30 vessels from insolvent ship owners on behalf of Germany's large shipping lenders, and then arranged to sell these ships on.

The RIVA structure has been applied to automotive suppliers, infrastructure companies, energy producers and special machinery manufacturers.

It can be used for a solvent as well as an insolvent business. Many times, it is important to avoid any suggestion of the emotive words 'restructuring' or 'reorganisation' with employers and trades unions, as well as suppliers.

The Metro deal

This June One Square completed their first ever RIVA for a non-German company, in Belgium.

Metro AG, a household name in Germany which sells food and other commodities to small hotels, restaurants and other small businesses, needed to offload its loss-making Belgian subsidiary Makro Cash & Carry Belgium NV. Makro Cash & Carry Belgium had a turnover of around 700 million euro and about 1,800 employees.

Upon acquisition, One Square contemplated its options and eventually filed the company for a Belgian court-supervised 'variation' procedure to separate the business into two parts, one to be sold to a third party, one to be liquidated.

One Square's long-term commercial partner GA Europe will acquire Metro's inventory and sell it off through the Makro Cash & Carry stores in Belgium. The structure allowed GA Europe to enter into this transaction without taking an equity stake in the business, the essence of the RIVA structure

Deutscshe Lichtmiete AG

One Square used the RIVA structure on Deutsche Lichtmiete AG, a company that installs lighting in factories and depots, where the company's liquidation value was higher than its going concern value.

The company's founder had raised a 130 million euro bond, and then charged customers less than its own cost of capital. Rothschild had run a sales process, but no buyer had been found. One Square then put together a RIVA structure on behalf of bondholders. Closing occurred on 1 September.

The payment to the insolvency administrator effectively occurred by way of an exchange offer, where the bondholders of Deutsche Lichtmiete AG received bonds in the new entity DLM Deutsche Leuchtmiete GmbH, secured by the assets transferred to the new entity in the course of the deal.

Conclusion

Waschkuhn recalled an old saying at Andersen, the former audit firm, where he trained.

"If you can't change management, change management."

"Your key task as a new owner is to employ the right management," insists Waschkuhn. "Everything else is subsidiary to that one overriding priority."

"We are expecting to use the RIVA structure a lot in the coming years," he concluded.

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German real estate 'a hot spot'

"Real estate will be a hot spot for restructuring in Germany over the next few years," said Waschkuhn.

A series of large, distressed real estate businesses in Germany are undergoing restructuring at the moment, including Adler, Vonovia, Corestate and Aggregate.

Adler, with over 8 billion euro of German law notes, is the biggest as well as the most controversial; short-seller Viceroy started Adler's latest crisis by publishing a note saying Adler was run by a 'kleptocratic cabal.'

Adler now finds the capital markets closed to it because of the ensuing scandal, and insolvency is a real possibility – with the use of the new StaRUG mechanism being actively considered by some stakeholders. The group is hurriedly selling assets in order to meet debt maturities, but this shrinking of the business cannot continue forever.

In 2018 One Square launched 'One Square Real Estate' a brokerage aimed at the complex and distressed end of the market.

> "Typically real estate is that last asset to be sold out of insolvency," said Waschkuhn. "This area is much more lucrative than distressed M&A".

How the UK insolvency and restructuring profession can help fight fraud

R3, the insolvency and restructuring trade body, has published a policy paper containing a number of recommendations to improve the UK's fight against fraud.

The UK's National Crime Agency (NCA) estimates that fraud costs the UK economy around UK£190 billion a year, while research from the Office for National Statistics (ONS) showed that instances of fraud increased by 41 per cent between 2019 and 2021.

To support Government departments and law enforcement agencies in the fight against fraud, R3 has made a number of policy recommendations in its paper, including:

- Making greater use of the capacity and resource in the private sector to tackle fraud in order to increase the number of disqualifications and prosecutions that can be made; increase the number of large and complex cases that could be tackled; and, reduce Government costs.
- Making the restoration of a company to the Companies Register an administrative process, in place of the current requirement to obtain a court order, to minimise the time and costs involved in restoring a company through the court and to help facilitate more money to be returned to creditors and victims.
- Reforming Companies House's powers so that the tens of thousands of companies that are automatically struck-off the Companies Register can be reviewed, enabling those that are insolvent to then be placed into an insolvency procedure, in turn supporting the recovery of misappropriated company assets for the benefit of the company's creditors.
- Reintroducing the courts' power to impose criminal bankruptcy orders on defendants as a further means to tackle fraud, disrupt fraudulent activities and increase recoveries for victims.
- Creating a joint public-private unit which would be responsible for the recovery of criminal property, to ensure the maximum amount is recoverable for creditors and to help the Government save time and resources.
- Requiring all new pieces of legislation to undergo an assessment of fraud risk – including an estimate for the amount that could be lost by Government or victims, and detailing what has been drafted within the legislation to mitigate this risk.

Christina Fitzgerald, President of R3 and a partner at Edwin Coe, commented:

"Fraud has always been a serious issue – one which takes a toll on individuals, businesses and the economy – but case numbers have increased over the last two years at a time when Government resources are understandably tight.

"We believe the policy recommendations contained in this paper will allow members of the insolvency and restructuring profession to further support anti-fraud efforts, increase prosecutions and convictions, save the Government time and resources, and ensure more money is returned to creditors and victims," said Fitzgerald.

> "We urge the new Government to consider adopting these as the Economic Crime and Corporate Transparency Bill begins its legislative journey so the UK is best-placed to tackle fraud, prosecute those who commit it and recover the money that has been stolen from people and businesses."

To download a copy of R3's "Insolvency and the fight against fraud" paper, visit the R3 website: ***www.R3.org.uk***

Maurice Moses launches restructuring boutique


Maurice Moses, MRC Advisory

Maurice Moses has launched a UK-based restructuring boutique with two colleagues he worked alongside on the turnaround of former Intu shopping centres, Rebecca Ryman and Adrian Croft.

MRC Advisory will not be doing advisory work, said Moses. "We will be joining boards in order to work from the inside, with advisers and stakeholders. So we won't be competing with advisory firms."

> "We have had a lot of response from the restructuring community, who say this is a timely launch, as activity seems to be picking up in the UK."

"We are particularly interested in helping private equity firms, banks and other financial stakeholders, and our target businesses will have turnovers in excess of £50 million to £100 million," said Moses.

The premium on experience is important, he said, since a generation has grown up without knowing a really big cyclical downturn since the global Financial Crisis of 2007/8, after which interest rates have remained flat, and money 'free'.

This historic low period for insolvency activity continued with Governments worldwide adopting emergency measures to support businesses during the Covid-19 lockdowns. Now a combination of factors including rising interest rates, an energy price shock and continuing supply chain problems mean formal insolvency as well as out of court restructurings may be on the way up, particularly in the UK.


Rebecca Ryman, MRC Advisory


Adrian Croft, MRC Advisory

Moses embarked on a career working with distressed businesses as soon as he qualified with Deloitte Haskins & Sells in 1982 – then one of the 'Big Eight' audit firms. Since then he has worked with small family-owned businesses as well as listed companies, for a number of different firms. He has also headed the UK's Insolvency Practitioners' Association (IPA) and has served on the IPA's board for the last 22 years.

> "When sorting out a business, it all boils down to people, and the quality of people. You need the right team, and they all need to be pulling in the same direction."

"Interestingly, family businesses can be the most difficult, since people can be in positions simply because of who they are rather than their ability."

"At MRC Advisory, we want to talk to businesses and discuss what can be done to enhance value before an insolvency process," he said. "If it does mean insolvency, we can advise on what choice of procedure and venue to use."

Moses met Ryman and Croft after being called into help with the Intu shopping mall business, which had entered Administration in 2020 led by Jim Tucker at KPMG (now Interpath Advisory). This was just as Moses retired from EY after 12 years with the Big Four firm.

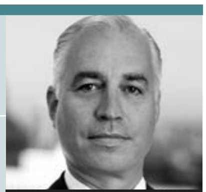
Moses was appointed to the boards of two of the larger shopping centres, in Manchester and Norwich. Each centre was an independent business.

"Rebecca is a chartered surveyor who was on the Intu executive committee and had worked at the company for many years, latterly as customer performance director. Adrian is a chartered accountant who had spent much of his career at Intu, eventually as head of investor relations. He has lots of experience working with stakeholders," said Moses.

"We ended up selling the Manchester centre to a well-known property company, and the Norwich business to the joint venture partner."

Looking forward, Moses said MRC Advisory's watchwords will be "objectivity and pragmatism in seeking the best outcome for clients, underpinned by reassessment of business plans, liquidity requirements and the actions needed to return financial perform to sustainable levels."

Daniel Gendron joins Willkie Farr in London


Daniel Gendron

Prominent PE lawyer Daniel Gendron has joined Willkie Farr in London as a partner after 14 years with Linklaters, where he advised on many restructurings.

His main focus is leveraged finance transactions and high yield bond issuances, and he has acted for a variety of borrowers and lenders.

Before joining Linklaters in 2008, Gendron began his career at Borden Ladner Gervais in Montreal, Canada. He is the third lateral partner to join Willkie's London office this year and the sixth lateral to join Willkie's multidisciplinary private equity platform in this same time period, with others joining in Houston, Los Angeles and San Francisco.

Last year Wolfram Prusko moved from Kirkland to join Willkie's restructuring practice in Frankfurt. Prusko joined soon after two PE partners in Frankfurt, Kamyar Abrar and Georg Linde.

Amongst the many restructurings Gendron has worked on, in 2017 he represented the senior lenders at Pelican Rouge, a leading European office coffee provider based in the Netherlands.

In 2012-13 Gendron was part of a large Linklaters team that advised the senior creditors in the long-running restructuring of Hibu, the re-branded UK-based Yellow Pages business.

Over the years, Gendron has advised a wide variety of funds, including Montagu Private Equity, Cerberus Capital Management, Hg's Genesis 7 Fund, Telemos Capital, Carlyle, Alcentra and Strategic Value Partners. He has also advised the Ontario Teachers Pension Plan.

Interpath Advisory hire three top forensic names


Federica Taccogna, Interpath Advisory


Nigel Webb, Interpath Advisory


David Tull, Interpath Advisory

Interpath Advisory has announced three senior hires; managing directors Federica Taccogna and Nigel Webb, who both join from FTI Consulting, and David Tull, who has worked with the UK's financial regulator and who joins as a director.

The firm, created last year when KPMG sold its UK-based restructuring and insolvency practice to HIG Europe for UK£400 million, has already hired many people this year. When created, the firm numbered over 500 people. This month's appointments comes as Interpath races to fulfil an ambitious strategy to build out its offering both internationally and across new service lines. The trio join Interpath's fast-growing forensic practice led by Dominic Wreford, who joined the business in September 2021 with a mandate to grow the division.

Taccogna and Webb will lead Interpath's new regulatory advisory practice, advising both organisations and regulators on matters of conduct, with a focus on sectors including gambling, online gaming, crypto and the payments sector.

Blair Nimmo, chief executive of Interpath Advisory commented:

"These arrivals represent another exciting milestone in the growth and development of our business. Moreover, we believe this significant investment makes a real statement of intent, demonstrating to the market the strength of our ambition in this space."

Wreford, head of Interpath's forensic practice, added: "Our ambition has always been to develop a market-leading forensic practice with a truly global footprint.

"[These three] bring with them deep experience in assisting clients and regulators from around the world on a wide range of issues, including matters of conduct such as market abuse, governance and regulatory frameworks. Their international focus will see them expand Interpath's capabilities overseas, as well as boosting the firm's work in fields such as gambling, online gaming, crypto and the payments sector."

While at FTI, Taccogna built and led a team of regulatory experts who assess and investigate financial crime concerns on behalf of regulators and enforcement agencies globally, as well as assisting regulated firms in designing and implementing financial crime control frameworks.

Webb meanwhile was the EMEA financial services leader at FTI. This included terrorist financing and sanctions, investigations, regulatory affairs, conduct, culture and the provision of expert support to the legal profession in matters as diverse as derivative trading and online gambling. Clients ranged from major banks, through to hedge funds, casinos and crypto exchanges.

Tull joins the new forensic team as a director. His most recent role was at the Berkeley Research Group. He has more than 15 years' experience across forensic accounting engagements, internal and regulatory investigations and second line of defence assurance. He has particular experience in financial services regulation, having had a number of leadership roles in the UK's Financial Conduct Authority (FCA). This included managing the team responsible for assurance within the FCA's risk and compliance oversight function.

Alvarez & Marsal (A&M) Restructuring expands in Scotland


Ben Cairns, Alvarez & Marsal


Kevin Lamb


Roddy McKellar

A&M is expanding its UK footprint and presence in Scotland with the opening of a new office in Edinburgh and the expansion of an existing one in Glasgow.

This October Kevin Lamb will join the Edinburgh office after nearly three years with BDO, and Roddy McKellar will join as a director in Glasgow after nearly seventeen years with PricewaterhouseCoopers.

A&M's Scottish expansion is headed up by Ben Cairns, who joined the firm in 2017 after 23 years with EY. Cairns is planning to grow the Scotland-based restructuring team to 20 practitioners over the coming months.

Cairns commented: "Businesses across Scotland are under growing pressure as challenges mount. Supply chain disruption, inflation and the rising cost of capital are combining to frustrate business plans, following hot on the heels of the market turmoil of the pandemic."

"A&M is well-placed to help businesses navigate this new context. As an honest, and independent adviser, we instinctively have a bias towards taking action that drives results."

Mark Firmin, A&M's head of UK regional restructuring, said:

"Our UK restructuring team has grown significantly in recent months, to meet our clients' needs and in anticipation of more corporate distress as the economic situation worsens."

"We will continue to invest in our firm across the country, offering a hands-on approach and independent advice to deliver positive outcomes for local companies and their stakeholders," said Firmin.

A&M's UK insolvency and restructuring practice now numbers over 250 people.

Ben Cairns – NMC, J&P Overseas Limited, Toys R Us Limited

Cairns himself joined A&M in 2017 as part of A&M's drive to build a European insolvency and creditor-side practice to add to its existing debtor-side operations. Since then Cairns has acted on a number of high profile restructurings.

In April 2020, Richard Fleming, Firmin and Cairns were appointed joint Administrators of NMC Healthcare Plc.

Two years earlier he was one of the joint liquidators of J&P Overseas Limited, a Guernsey-based compulsory liquidation. Cairns was also a supervisor of the Toys R Us Limited CVA.

During his long career at EY, Cairns was appointed an Administrator of the UK part of the Icelandic banking group Kaupthing Singer & Friedlander, following its collapse in the global financial crisis of 2007/8.

Cairns acted as Provisional Liquidator and Scheme Administrator for The Home Insurance Company, working with US office holders on an innovative reinsurance asset-sharing scheme. Whilst at EY he also worked on a number of German restructurings, including Speymill Deutsche Immobilien Company, as Administrative Receiver.

Further back, in 2007, whilst at EY, Cairns helped Alan Bloom's team as joint liquidators of the UK entities of Refco, at that time the US's largest commodities broker.

Senior US judges head to London

The 18th Annual International Insolvency and Restructuring Symposium will be held by The American Bankruptcy Institute (ABI) at The Biltmore Hotel in London on 13/14 October 2022.

For the 18th year in a row the ABI's annual event in Europe will be chaired by its indefatigable organiser Ian Williams of WCI. He will share his responsibilities with the ABI's current president, retired bankruptcy judge Kevin Carey (now with Hogan Lovells), and the ABI's vice president of international affairs, Stephen Lerner of Squire Patton Boggs.

Williams declared: "We have two days of superb panels.

"We have two former Chief Judges from Delaware talking about cutting edge developments in Asia: Former Delaware Chief Judge Christopher Sontchi will be telling ABI President and his former colleague Kevin Carey all about his new position in Singapore.

"We also have the current Chief Judge of SDNY, Judge Martin Glenn, who will be part of the ever-popular America Now! panel," said Williams.

America Now! will discuss recent trends in US bankruptcy and restructuring and will be moderated by Jay Goffman of Teneo in New York.

The role of new capital in international restructurings is high on everyone's minds, and discussing latest developments will be Marc Hecht of Simpson Thacher in London, together with Raj Apte, head of Teneo's new financial advisory practice, Richard Fisher QC of South Square and Nicholas Shaw, also of Simpson Thacher in London.

Discussing whether the American craze for the 'Texas Two-step' should be imported to Europe is a panel moderated by Paul Zumrbo of Cravath, Swaine & Moore in New York, another SDNY bankruptcy judge, Robert Drain, and Ferdinand Hengst of De Brauw Blackstone Westbroek in Amsterdam.

Meanwhile a panel from TMA Europe will discuss how different countries in Europe have transposed by the EU Restructuring Directive into local legislation.

A panel on crypto will be moderated by Judge Glenn, with Vincent Lazar of Jenner & Block in Chicago, Professor Stephen Lubben of Seton Hall University of Law in Newark, NJ; and a leading authority in English and related law, Justice Nick Segal, Judge of the Grand Court (Financial Services Division) in the Cayman Islands.

INSOL International will discuss the question we're all asking: Is restructuring finally returning.

The final panel, presented by the International Insolvency Institute (iii), promises to be a cracker. The UK Government recently announced a consultation on whether to adopt two UNCITRAL Model Laws, one covering recognition and enforcement of insolvency-related judgments, and the other on group insolvencies.

The panel will include Mark Phillips QC of South Square in London, one of Europe's most high-profile legal commentators, as well as the Honorable Allan Gropper, a bankruptcy judge in the Southern District of New York (SDNY). The panel will be moderated by Harold Foo from Singapore's Ministry of Law Policy Advisory Division, and completed by Irit Ronen-Mevorach from the UK's influential University of Nottingham Commercial Law Centre.

Ian Williams concluded: "I will be delighted to hold things together and keep things flowing in my 18th year as chairman."

For more details see: ***www.abi.org***

China Fishery latest case in rapid evolution of **UK's RP**

A Peruvian division of Hong Kong-based China Fishery group obtained sanction from the UK court on 13 September for a UK Part 26A Restructuring Plan (RP).

The news coincided with Kirkland's distressed Investing Seminar held in London this month, at which the progress of the RP was much discussed.

> The RP has evolved rapidly since its introduction two years ago as part of the UK's emergency CIGA legislation aimed at improving the UK's rescue culture during the Covid-19 crisis (see Table 1).

Thomas Jemmett, a restructuring partner at Kirkland, commented that the RP could be used to bring in operational creditors as well as financial creditors to the restructuring process, one example being Virgin Active.

Jemmett also pointed to the possibility that RPs could be used in parallel with other processes such as Company Voluntary Arrangements (CVA), as had happened at PizzaExpress.

Thirdly, Jemmett said that the RP had proved its effectiveness in delivering a new capital structure against the position of intransigent stakeholders, as had happened at SMILE Telecoms.

Ian Clarke, another restructuring partner at Kirkland, explored possible parameters if the RP were used to 'cram up' recalcitrant stakeholders (in other words, the consent of a junior class used to bind a dissenting senior class).

UK's HMRC 'flexes its muscles'

One truly startling statistic came out of the Kirkland briefing.

At the end of last year, out of the total number of winding up petitions filed in the UK, just eight per cent came from the UK's taxman, HMRC.

On the most recent (June 2022) figures, HMRC accounted for nearly 50 per cent of winding up petitions.

This gigantic increase may reflect the impact of the return of 'Crown Preference', the positioning of certain tax liabilities higher up the insolvency waterfall, above floating chargeholders.

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Table 1. Restructuring Plans to date

COMPANY	NO. OF PLANS	TOTAL NO. OF CLASSES	JURISDICTION "CREATED"?	ATTEMPTED CRAM-DOWN?	OPPOSED?1	SANCTIONED?	DATE
Virgin Atlantic	1	4	X	X	X	✓	2.9.20
PizzaExpress	1	3	✓ co-obligor	X	X	✓	29.10.20
DeepOcean	3	8	X	✓	✓	✓	13.1.21
Premier Oil	2	4	X	X	X	✓	19.3.21
gategroup	1	2	✓ co-obligor	X	✓	✓	30.3.21
Smile Telecoms	1	3	✓ COMI shift	✓	X	✓	30.3.21
Virgin Active	3	21	X	✓	✓	✓	12.5.21
Hurricane Energy	1	2	X	✓	✓	X	28.6.21
National Car Parks	1	5	X	N/A	✓	N/A – suspended upon offer	
Amicus Finance (in administration)	1	5	X	✓	✓	✓	19.8.21
ED&F Man	1	7	✓ co-obligor	✓	✓	✓	23.3.22
Smile Telecoms (2nd round)	1	1	✓ COMI shift	X2	✓	✓	30.3.22
Houst	1	6	X	✓	X	✓	22.7.22
China Fishery Group	1	2	✓ change to governing law / jurisdiction	X	✓	✓	13.9.22

Source: Kirkland
1. Includes opposition at convening stage or other hostile action taken by creditors e.g. seeking insolvency proceedings.
2. Successfully applied to exclude "out of the money" creditor classes from voting.

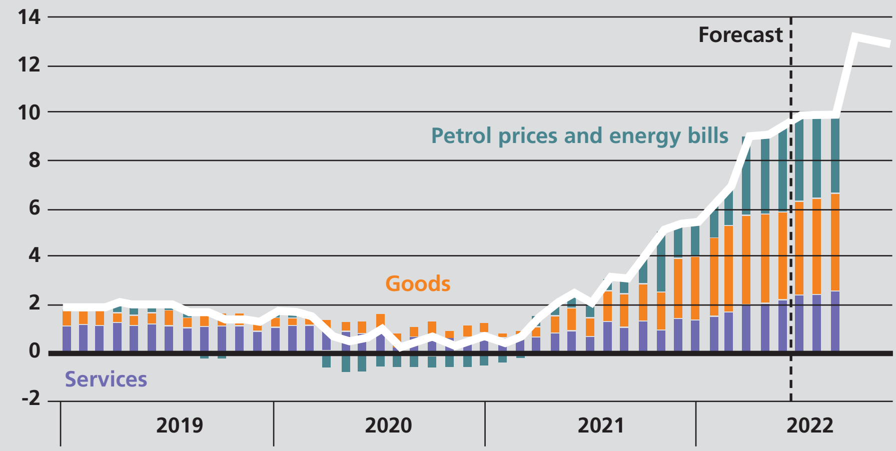
Opposed
Sanction declined

continued from page 11

This rule change occurred at the end of 2020, partially reversing the abolition of Crown Preference in 2002, but its influence might only be making itself felt now - in combination with HMRC pushing harder to recover tax debts given the state of the nation's finances, following greater leniency during the pandemic.

> The tax debts given such priority include VAT, PAYE income tax, employee NI contributions, construction industry scheme deductions and student loan repayments.

Table 2. Annual inflation rate (% change) and the contribution of goods, services and energy prices



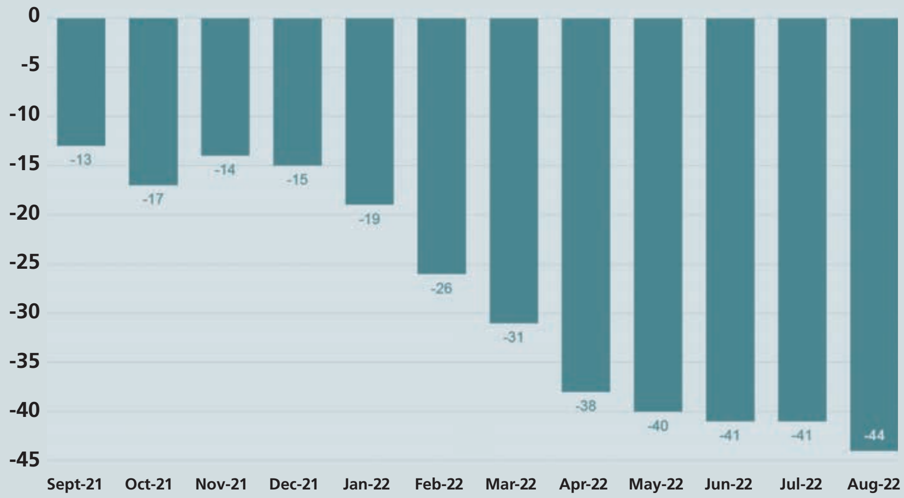
Source: Bank of England Monetary Policy Report – August 2022

UK inflation to hit 13 per cent

Higher energy prices are expected to push UK inflation to an eye-watering 13 per cent in the fourth quarter of this year, according to the Bank of England (see Table 2) - with an accompanying collapse in consumer confidence (see Table 3).

> Elaine Nolan, a restructuring partner at Kirkland, pointed out that UK inflation was at its highest in 42 years. "Price rises are the number one concern for consumers."

Table 3. GfK Consumer Confidence Index[1]



Source: Tradingeconomics.com

1. GfK's survey was conducted among a representative sample of 2,000 individuals aged 16+, 1-12 August 2022

Asmus Ohle joins Teneo

Asmus Ohle, Teneo

Asmus Ohle has left One Square after thirteen years to join Teneo as a Managing Director in London. Ohle said he will be supporting Raj Apte and Maurizio Montesi at Teneo in further expanding the firm's European financial restructuring practice.

"I look forward to the new challenge and being able to offer a wider suite of services to clients in Europe.

"The combination of Teneo's global restructuring expertise as well as the strategic communication business will support CEOs and CFOs with the services they require during a period of stress or distress," he said.

Ohle joined the Anglo-German restructuring boutique One Square in 2013 from SISU Capital. He started his career in 2004 at Rothschild & Co in London.

He has worked on a variety of restructurings, many of them involving bonds, such as in the cases of SolarWorld and Rickmers. SolarWorld, once a listed German solar panel producer, went through a restructuring in 2013/14 including a 1 billion euro debt to equity swap, but which subsequently filed for insolvency. The case is still ongoing, with further distributions to be made to the creditors.

Ohle has also come into contact with the new German StaRUG restructuring procedure, which aims to be a preventive restructuring process and rescue companies as an alternative to filing for insolvency.

Last year he worked on the restructuring of Eterna Mode, the German fashion manufacturer which became the first company to undergo the StaRUG process to become public. The StaRUG is designed to be confidential unless key stakeholders decide it should be made public.