



# Practical experience on restructuring

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# What is Recession?

- “A temporary depression in economic activities or prosperity” - *Collins English Dictionary*
- “In macroeconomics, a recession is a decline in any country's GDP, or negative real economic growth, for two or more successive quarters of a year”
- Great recessions of modern time
  - 1634-1637 Dutch Tulip Mania
  - 1873-1896 The Long Depression
  - 1907 Great Panic
  - 1930s Great Depression

## “What is restructuring?”

- “The process or an instance of changing the way in which something is organised or arranged” - *Bloomsbury*
- It is not a legal term (Black’s), it is not even an official economic term
- This is a key note: It is saving the viable part of an entity, and the law just gives the tools for making it possible to achieving that goal!

## “90’s was a mess in Finland”

- -6.2% GDP growth in 1991, -3.7% GDP growth in 1992, -0.9% GDP growth in 1993
- 18% unemployment by the end of 1993, increase from 3.5% in 1990
- 80,000 unemployed people in December 1990, 512,000 unemployed people in may 1994
- EUR 840 million the aggregate credit losses of all the Finnish banks during 1988-1990; EUR 8,500 million the aggregate credit losses of all the Finnish banks during 1991-1993
- Two devaluations of the Finnish markka, in total by 30%, fall of Soviet Union export

## What was done?

- Heavy cuts in public spending
- The so-called reorganisation laws for companies and private individuals were quickly introduced (8.2.1993)
- Different types of interest support programs were adopted
- Subvention of the whole banking sector (EUR 10.2 billion - the 90's money)
- The labor market was co-operative: "Salary Patience"
- Re-allocation programs and trainings were established for the unemployed

# The legal background

- The law on restructuring of enterprises was drafted in a hurry (in force 8.2.1993)
  - Main objective of the law was: “To create legal basis for restructuring (reorganising) viable enterprises and to avoid unnecessary bankruptcies”
- The debtor was able to file for restructuring if at least two significant creditors supported it
- The early law was formalistic, there were loopholes, there was no practice and almost everyone tried to get to the program
- The main idea was that creditors are grouped and not all creditors, but majority is needed for passing a positive decision on confirming the restructuring plan

## The practise - The outset and objectives

- Most successful restructuring starts early, so that restructuring is not an alternative for immediate bankruptcy
- It is about corporate restructuring and improving the business of the debtor to make it again profitable
  - It is NOT just about debt restructuring
- Objective: Restructuring must give more money to creditors than a bankruptcy would
- A precondition for a successful restructuring process is close co-operation between debtor, main creditors, the trustee and the court.
- The interest of the State is to save jobs (especially in the so-called net-loss-moving cities) and keep the debtor alive to pay taxes.

## The Practise - Starting the process

- The debtor first contacts its main creditors, agrees with them about applying for restructuring and agrees with them even main terms for it
  - Bank creditors, State institutions (like Finnvera in Finland)
- The debtor contacts a judge to plan suitable filing date
- The judge, creditors, debtor and proposed trustee would agree between themselves all actions to come
- It takes from 9 to 13 months to sail through the filing to confirmation of the restructuring plan (average 10 months)
- Threat: Competitors finding out trade secrets and claiming unfair competition

## The Practise - The Actions of the Trustee

- Contact the MB (and management team) of the debtor, informing them about the rights and obligations of the trustee as well as their rights and obligations
- Works very closely with the debtor and creditors: His main purpose is to save the viable part of the debtor
- The trustee should make sure, that all new debts generated while the company is under restructuring process shall be paid in full
- MB and trustee may become liable, if new debt is accumulated by debtor

## The Practise - Grouping of the creditors

- The creditors are put into 3 or 4 different categories:
  - 1. secured creditors, 2. creditors secured with a commercial pledge, 3. unsecured creditors etc.
- A qualified majority of creditors in each category must vote in favor of the restructuring plan
- Creditors with commercial pledge are guaranteed 50% of their receivable, the rest 50% is considered unsecured debt
- A compromise/cut can be made regarding all unsecured debt (50 - 80%). The creditor may sometimes change the unsecured part into new equity of the debtor (a rare occasion)
- In Finland taxes, pensions, and salaries (i.e. all unsecured creditors) are all on the same line with other creditors.

## “How did it go - The early years?”

- In 1993-1997 a total of 1,945 applications for restructuring were filed with the Finnish courts
  - In 663 cases a restructuring plan was confirmed (34%)
  - 20% of the applications were dismissed right away, conclusion: Many sought only for the interim protection against their creditors
- 10% of the debtors whose restructuring plan was confirmed went, anyway, bankrupt during the first two years of restructured operations
- But: In 1991-1994 a total of 36,000 enterprises went bankrupt (or app. 17% of all enterprises)

## “How did it go - After the storm?”

- Total number of active enterprises in 2004 was 232,305
- During 1998-2002 the amount of bankruptcies was 1%-2% on yearly basis (7/10 cases by the debtor itself)
- 200 applications for restructuring filed in 2008. Most seek protection against bankruptcy.
- Around 30-40% go bankrupt before restructuring plan is confirmed
- Around 40% go bankrupt after plan is confirmed
- During last years only around 20% survive the restructuring!
- Cutting rate is in average 50% (compare to early 90's rate of up to 80%)

## Conclusions

- Restructuring is very much like an acquisition process: The law sets the framework, but individual negotiations will determine the success rate
  - “The London Approach”
- It is not enough to just “cut” debts, the restructuring plan must convince the creditors and the court that the debtor is viable and that the debtor can turn the course of its business in the future
- The real work starts only after the hammer of the judge has confirmed the restructuring plan

“Even the big ones have returned from the edge of the cliff...”

- 1928 - Texaco became the first U.S. oil company to sell its gasoline nationwide under one single brand name in all 48 states
- 1987 - Texaco files for bankruptcy; company continues trading under protection of U.S. bankruptcy laws
- 2001 - Texaco and Chevron merge to create a USD 800 billion revenue mammoth

# Thank you!

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