

INTEGRA/ABL INSOLVENCY GROUP NEWS BULLETIN

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You will recall at the last Integra/ABL World Conference in Athens, it was intended to formulate an active Insolvency Group within the membership of Integra and ABL. It is hoped that this would facilitate the exchange of information, law and ideas, and act as a point of first call for members that require information about insolvency procedures in a different jurisdictions.

To this end there are around 30 participants who are directly involved in insolvency law, and it is intended to mould this group into a separate group to exchange technical expertise, and make itself available to the general body of members.

It was considered appropriate to launch a periodic news letter to all members to make them aware of the Insolvency Group. Therefore set out below are some topics which it is hoped will be considered interesting?

Current Financial Restructuring in the Current Economic Climate

The world wide financial instability now requires that most businesses will require increased capital levels in order to carry on their business, to finance their activities instead of cheap debt. With it private equity investments will also see decreased utilization of leverage and enterprise values of between 8 to 12 times EBITD will be but a distant memory.

Businesses that are in trouble will find that time to restructure will be shortened, since there will not be enough funding to keep the business going. This process will need to be executed quickly, with adequate flexibility, to allow the business to continue as a viable enterprise, even where the economy continues to deteriorate.

However many businesses will just cease to exist broken up or simply shut, although developed countries will continue to embrace more of a restructuring culture, whereby the assets and business of a Company will be purchased by an acquiring Company to ensure continuity.

Ramifications of the Madoff investment crisis

Reimbursement for all or part of the loss

Investors who lost the value of their investment in Bernard L. Madoff Investment Securities, LLC should be aware that by March 4, 2009 they should file their claim *with Irvin H. Picard, Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Avenue, Suite 800, Dallas, Texas 75201 USA.*

In this way they would be able to obtain reimbursement for all or part of their loss from the Securities Investor Protection Corporation, should the bankruptcy court determine that Madoff's business was a Ponzi scheme,



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Potential ``Claw-Back`` Liability

However, investors who withdrew their investments before Madoff's fraud came to light could face potential claims. If such a determination is made by the Court then Madoff will be treated as if insolvent at all relevant times. Therefore any distribution made by Madoff to an investor during the past few years may then be considered a 'fraudulent transfer' and that investor may be obligated to repay the distribution to the Trustee, since this could be treated as a windfall,

The Trustee can seek to recover any distributions made during the two years prior to the date of bankruptcy. However, under New York state law, the statute of limitations for certain fraudulent transfers can be as long as six years. This means that the Trustee can go back to December 2002. In that circumstance, an investor may be required to repay the 'net' amount distributed, after deducting amounts re-invested with Madoff. Watch this space!

Interim Management and Turnaround Advice

One of the more rewarding aspects of insolvency is to participate in trying to save a business from insolvency by providing assistance and advice in Interim Management and Turnaround.

Set out below is a brief description of these procedures for which no formal insolvency procedure is necessary and therefore can be carried out by more experienced members who have experience in corporate finance:-

Interim Management

This is where a professional will work alongside existing management to:

- Implement a business restructure
- Enhance performance
- Assist with the sale of assets and review systems
- Reduce overheads
- Assist with a managed exit.

Operational Restructuring

An underperforming business requires a stable environment in which to seek a financial and operational solution for which a professional could:-

- Advise on the strategic options to ensure the survival of a business
- Prepare and implement a comprehensive business plan
- Evaluate financial models
- Assist with refinancing

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