



# Restructuring and Insolvency

Focus on the Bond Market

Oslo, January 2016

# Enhanced restructuring

## Key features

### A situation of “financial difficulty”:

- Breach of own obligations - Financial Covenants
  - Leverage Ratio
  - Equity Ratio
  - Interest Cover Ratio
  - MAC
  
- Cross Default- other obligations:

*“any creditor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described)”*

### Plurality of creditors

- Bond vs. Bond(s)
- Bank(s) vs. Bond(s)
- Others?

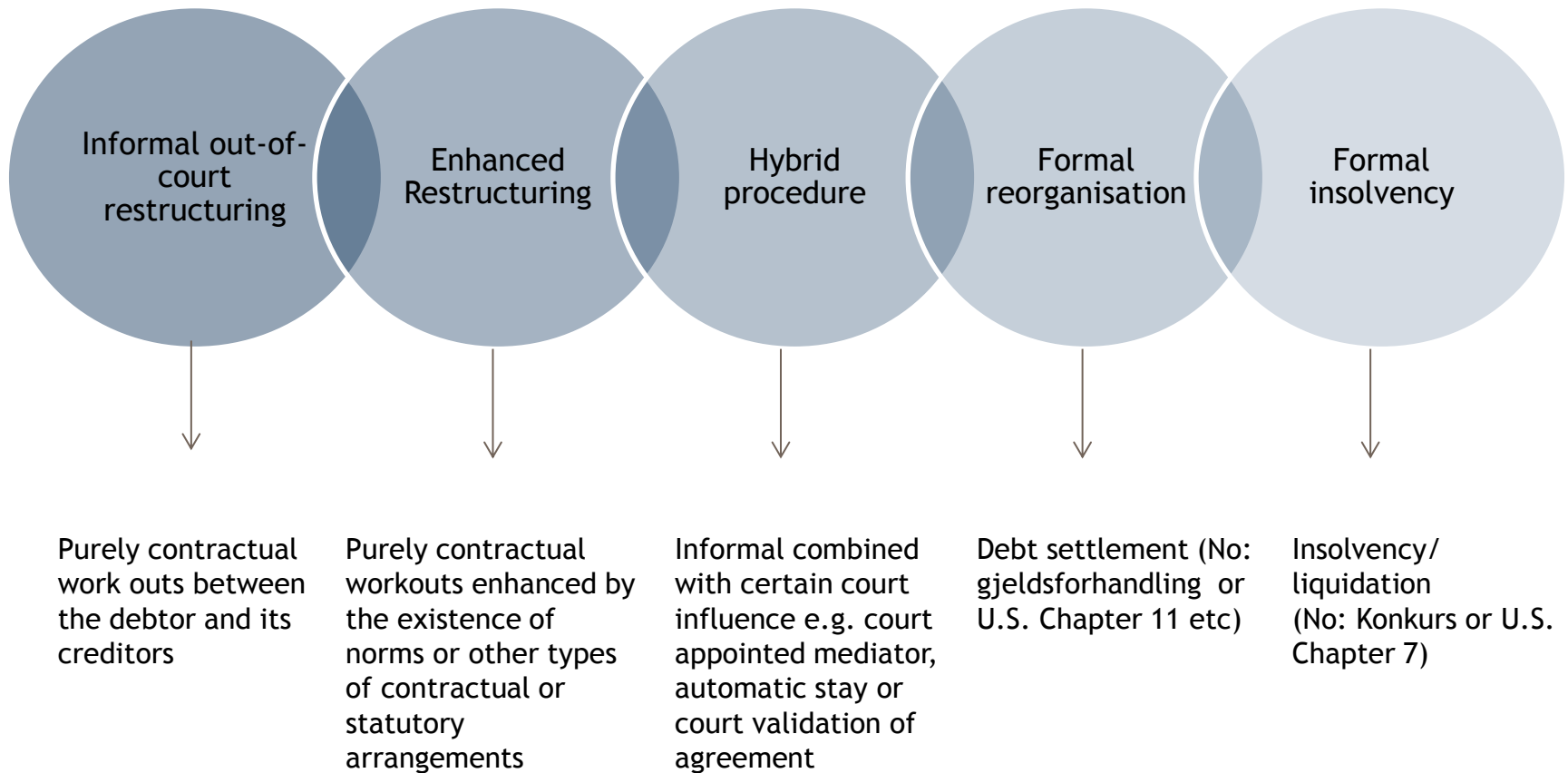
### Challenges

- May e.g. have been caused by failing market and/or bad management
- Failure to recognise facts



# Alternative procedures

## Overview



# Enhanced restructuring

---

## Overview principles and relevant sources

---

### **The «London Approach»**

- ❑ Non statutory and informal framework
- ❑ Introduced with the support of the Bank of England
- ❑ Dealing with temporary support operations mounted by banks and other lenders to a company or group in financial difficulties, pending a possible restructuring

### **Other relevant sources**

- ❑ World Bank principles
- ❑ UNCITRAL
- ❑ More flexible legislation like U.S. Chapter 11 and extension of EC Insolvency regulation to be implemented in 2017

### **The INSOL Principles**

- ❑ International Association of Restructuring, Insolvency & Bankruptcy Professionals
- ❑ A Global Approach to Multi-Creditor Workouts (2000)
- ❑ Expansion of the London Approach

# Enhanced restructuring

## Process overview



- ❑ Initial risk analysis
  - ❑ Organization of creditors and debtor(s)
  - ❑ Engagement of advisors
  - ❑ Negotiations on restructuring principles
  - ❑ Determine aim
- ❑ Detailed analysis operational and/or financial of the company
- ❑ With company, shareholders and creditors (and between creditors)
- ❑ Voluntary or through court process, eventually bankruptcy if solutions not feasible

The presence of non-transparent new players has resulted in the relative decline of the London Approach but INSOL principles normally applied/included in some form during process

# Enhanced restructuring

## Organization

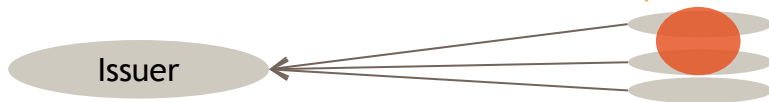
### What to consider?

- ❑ Initial risk
- ❑ Position - Interests
- ❑ Organization of creditors and debtor(s)
  - Internal organization within creditors groups
  - Coordination between creditors/groups
  - Organization debtor and allocation of resources
  - Lead of creditors

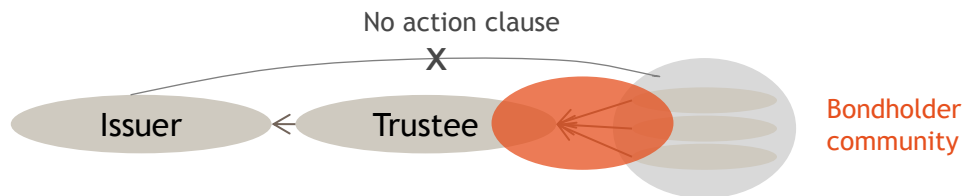
### Challenges

- Available public information
- Difficult to identify which interests are represented and stability of the interest groups
- Appropriate scope of participating creditors and grouping (which creditors to negotiate with?)

### Bond without a trustee - investors act independently



### Bond without a trustee - investors act collectively through the trustee





# Enhanced restructuring

## Organization

### What to consider?

#### □ Engagement of advisors

- Legal
- Financial
- Industrial

#### □ Negotiations on effective restructuring principles

- Standstill and Freeze
- Time Schedule - Start, duration and termination
- Confidentiality
- Liquidity
- Other applicable conditions

#### □ Aim

- Postponement due to cyclical events ?
- Deleveraging
- Obtaining equity instruments
- Obtaining new equity

### Challenges

#### Fee structure

Timing- engagement before or after contemplated debt negotiations?

#### Director`s liability (continues)

Avoid disturbance of operations

Limited time (especially M&A/due diligence)

Relationship between group companies

NDA, trading limitations, successors of financial instruments and communication to the market

#### No fix on debt structure

Fix on debt structure but creates pain on stakeholders

Usually obtained in deleveraging

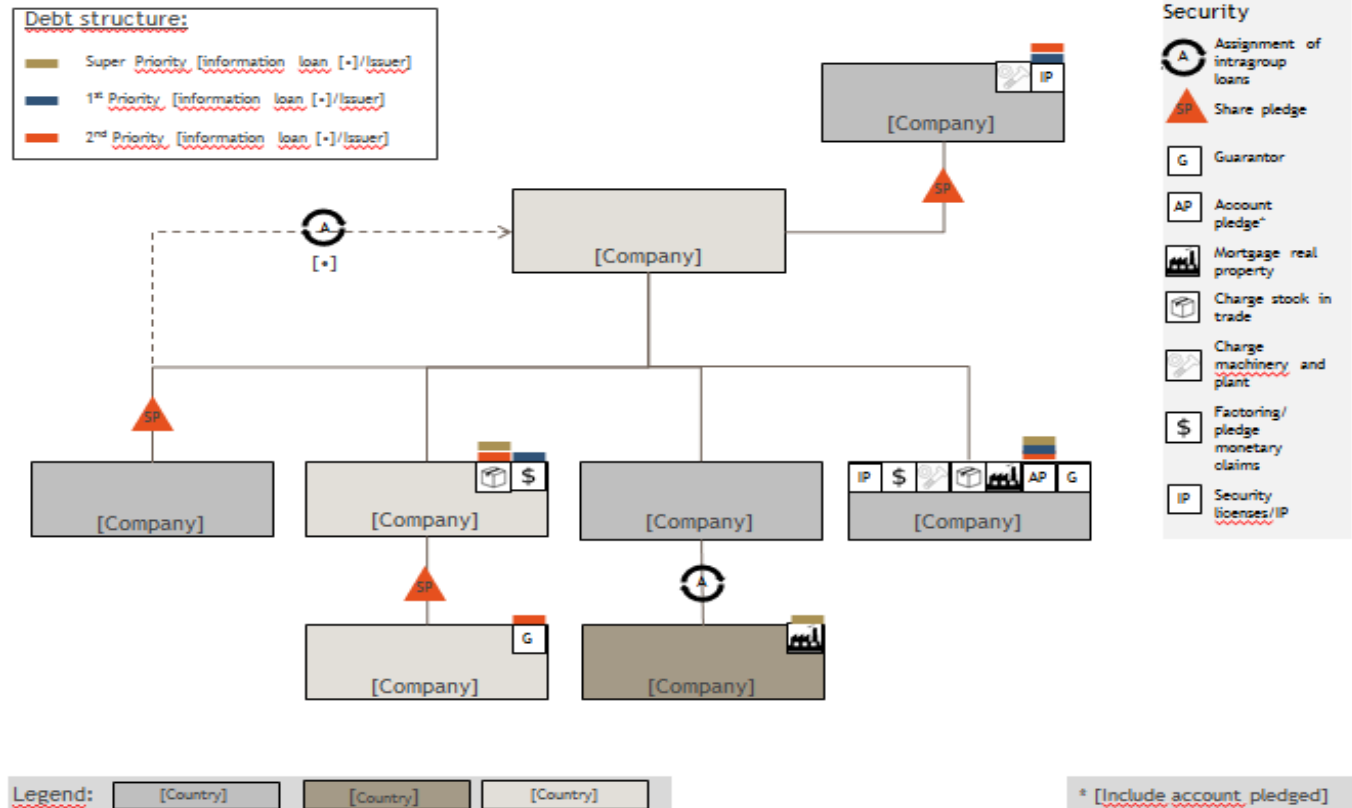
How much deleveraging against new equity

# Enhanced restructuring

## Due diligence - Analyse and understand your positions

### What to consider?

- Security
  - Scope/structure
  - Jurisdictions
  - Perfection
  - Enforceability
  - Value





# Enhanced restructuring

## Due diligence - Analyse and understand your positions

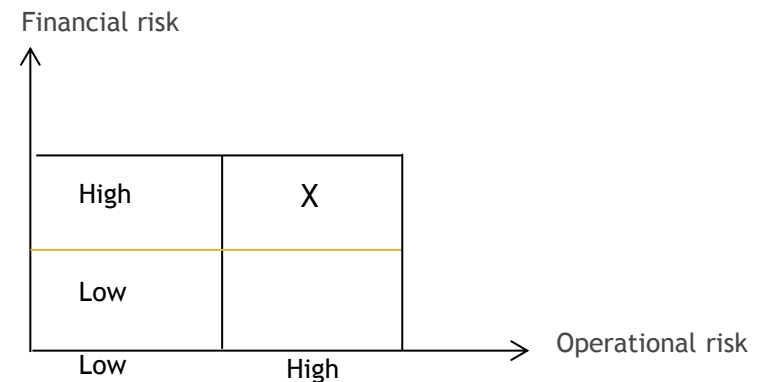
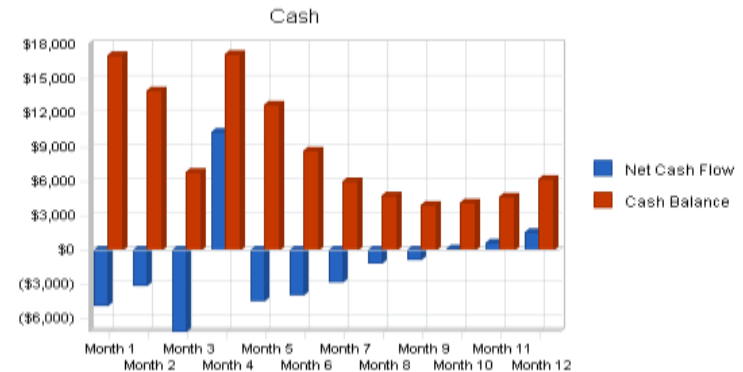
### What to consider?

#### ❑ Debt Service Capacity

- Income
- Opex
- Cap Ex (required/not required)
- Capital lock-up
- Cash flow and Liquidity
- Intercompany debt

#### ❑ Sensitivity/risk of business

- Where is the cash generated?
- Intercompany debt and dividend payments - Equity in different scenarios
- Sensitivity towards other creditor positions
- Sensitivity towards market/operations - different scenarios
- Key contractual positions
- Use of models



# Enhanced restructuring

## Negotiations

### What to consider?

- ❑ How to treat the relative positions of the creditors?

The Prince of Joinville negotiating an out-of-court settlement of the Mexican debt (Veracruz 1838)



### Challenges

Point of reference when considering relative positions?

- Equal treatment vs. Identical treatment?
- Equal outcome or Equal opportunity?
- Diversified creditor groups
- Jurisdictional differences
- Different views within the same group
- Not possible to contact all creditors
- Hostile creditors and minority vs. majority

### Conduct:

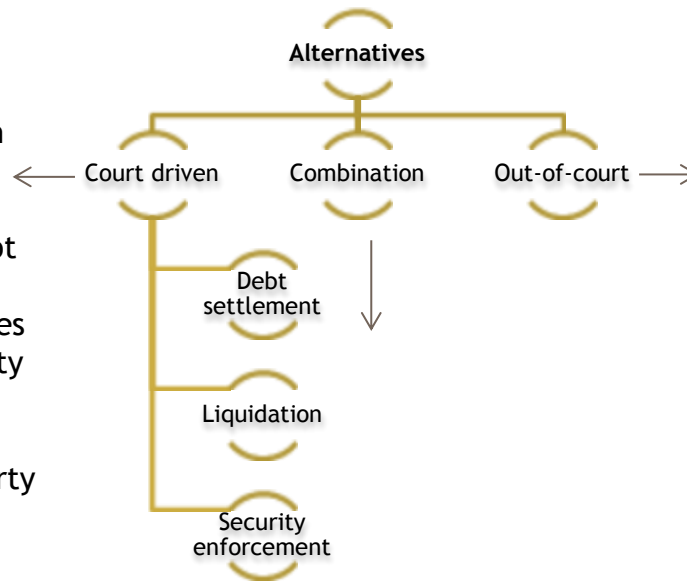
STA Section 5-15; Obligation for Issuer to (1) treat holders of financial instruments on an “equal basis” but exception for differential treatment on justifiable basis and (2) *not adopt measures which are likely to confer upon themselves, certain holders of financial instruments or third parties an unreasonable advantage at the expense of other holders or the issuer (similar obligation (Public) Limited Liability Companies Act Section 6-28)*

# Enhanced restructuring

## Implementation

### Advantages

- Better suited for dealing with fraudulent behaviours and avoidance actions
- Debtors consent (normally) not required
- Better equipped with remedies
- Protection against BoD liability
- Formal proceedings better equipped with remedies
- Better equipped for multi-party negotiations
- Unanimity not required
- (Cross border recognition)



### Advantages

- Flexibility and ease of adaptation to the specific needs of the debtor's business (compared to e.g. court driven process in Norway)
- Ease of negotiation
- Timing issues
- Confidentiality
- Continuation of the debtor's business and exclusion of adverse effects following court driven proceeding)
- Lower costs

Level of cooperation and available “tools/flexibility” in court driven processes may vary between jurisdictions (UNCITRAL, EC Insolvency Regulation, U.S. Chapter 11, Norway). Hybrid arrangements may compensate for shortfalls: E.g. UK Scheme of arrangement, financial collateral enforcement, pre-packed solutions or partial liquidation.

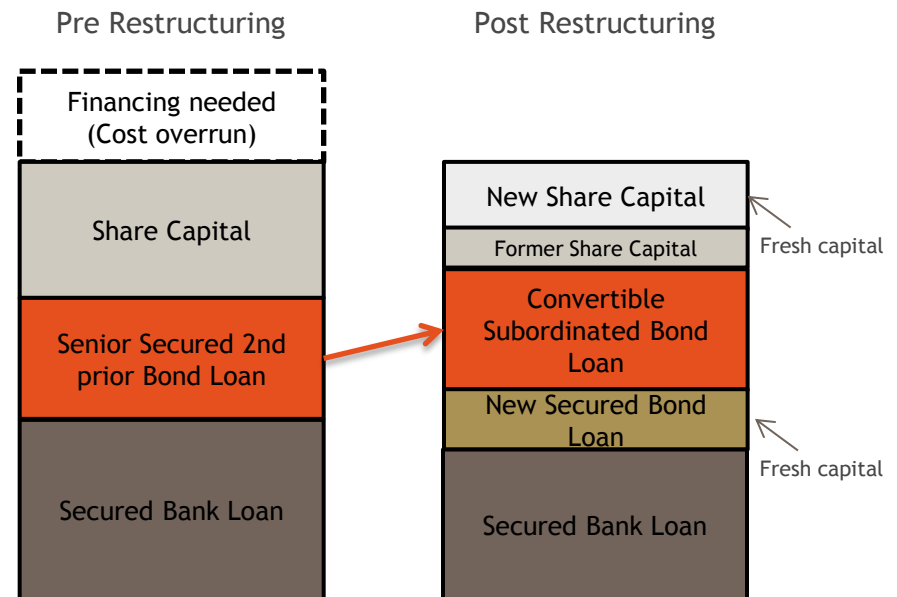
# Enhanced restructuring

## Implementation

### Variety of solutions

- May involve both operational and financial measures
- Extension of maturity or interest
- Debt to equity conversions
- Consider other financial instruments e.g. New share capital, options etc.
- Liquidity financing
- Additional security
- Change in financial structure, reporting and organization
- Optimizing sources of credit
- Prohibition intra-group loans and cross subsidies to non-profitable business and hive downs
- Enforcement of security
- Partial or full liquidation of debtor
- Planned reduction of debt level over time

### Exempla Restructuring simplified



Consider the financial instruments

# Bond restructuring

---

## Normally out-of-court

---

### Some Norwegian liquidation processes in last recession

- Petromena and Petrojack
- Thule drilling
- Northland

### Out-of-court preferable route based on recovery

- Average recovery rates - Bankruptcy 36%/Restructuring 59% makes restructuring the preferable route

### Voluntary voting and implementation

- Bond Agreement will establish the legal contractual basis among bondholders for voting and implementation on a voluntary basis
- 2/3 voting requirement
- Not similar limitations as the U.S. Trust Indenture Act

---

## The biggest challenges

---



OR

