Insolvency Tools to Change Course on Difficult Seas:

Navigating Mining Companies in Volatile Times

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When the collapse of commodity prices and global credit crisis first took hold of the international economy in 2008, financial and legal experts recognized that these difficult market conditions would lead to a challenging era for many mining companies. Five years later, those predictions have been proven.

According to Bloomberg, the global debt levels of major mining companies rose by 42 per cent (from US$65.7 billion to US$93.4 billion) from September 2012 to September 2013. The dramatic increase in debt can be attributed to an inability to raise capital from equity markets and a struggle to generate cash. As for Canadian mining companies, an analysis by Bloomberg found that 49 per cent of the 1,300 Canadian mining companies analyzed had less than three months of cash available on hand.

Despite these challenging times, mining companies with cash flow issues can use insolvency tools to preserve value and come back stronger once conditions improve. At the same time, better capitalized companies or private equity investors can consider mergers, acquisitions and other transactions, to benefit from struggling but undervalued companies holding high quality assets.

Early measures

In anticipation of a liquidity crisis, it is prudent for mining companies to recognize the advantage of obtaining professional guidance. In those circumstances, management should reduce the company's spending to ensure there are sufficient funds to put its mineral assets in care and maintenance until economic conditions improve. However, if those measures are insufficient, management may need to engage insolvency lawyers and other professionals to implement solutions.

In some cases, management may be reluctant to involve experts before it is too late and fear that engaging these professionals could create a negative perception of the company's viability. In other cases, the management team members themselves may be shareholders and reluctant to consider any insolvency proceedings which might jeopardize their interests.

Crisis control

It remains important to remember that the upside of early professional insolvency intervention can outweigh or even negate these potential concerns. For example, rather than a negative impression of the company's viability, an orderly restructuring under provincial or federal corporate legislation or the federal *Companies' Creditors Arrangement Act* can provide the company with breathing room from creditors while communicating to employees, suppliers and other stakeholders that the company is on its way to restructuring and recovery. As these types of restructurings leave management in control and possession of its assets, efforts can be focused on maintaining the company.

Unfortunately, in cases where the struggling company waits too long, it may be left with fewer, if any, restructuring options. With limited capital on hand, operating and professional costs are hard to bear. At the same time, creditors experience greater creditor fatigue, making them more resistant to efforts by the company to restructure in a cooperative manner, thus preferring liquidation.

Righting the ship or adding to the fleet

When implemented at the right time, a successful restructuring can enable a struggling mining company with quality assets to emerge with a strengthened balance sheet, which is more attractive to investors, purchasers or potential partners. Through a court-driven restructuring process, however, claims against the company may be compromised where a plan is accepted by creditors and capital can be raised once the balance sheet is straightened.

It is imperative for the company to retain insolvency lawyers and other professionals who are not only familiar with the mining sector, but who also possess the restructuring knowledge and experience to effectively negotiate with creditors and other stakeholders in a fast-paced and high stakes environment.

Although some players in the mining industry are struggling, there remain mining companies, private equity investors and state-owned enterprises with access to funds. Restructured companies present an opportunity for investment in assets which have been cleansed of various liabilities through the insolvency and restructuring process. Those who wish to take advantage of distressed mergers and acquisitions, and other restructuring opportunities, would also benefit from the advice and guidance of experienced players who can assist in negotiating the terms of sale or other transactions and manoeuver through the court-driven restructuring process.

With the right insolvency team in place to guide the company through its restructuring, a struggling mining company with strong assets and proactive management can weather the storm and emerge as a stronger business. At the same time, the right insolvency team can also assist those on the other side of the table by facilitating a transaction which cleanses otherwise viable assets of various liabilities so that new assets can be added to the fleet. M

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