

'We want DIP' say Euro-hedgies (but the banks aren't so interested)

Over 180 private equity and hedge fund investors who attended Latham & Watkins' annual restructuring seminar in London in June were quizzed on the state of the market – and 94 per cent said they would be interested in providing DIP finance, if English laws were changed to allow it.

The British Government recently announced a consultation process on changes to the insolvency regime, and one of the key ideas was to allow for the first time super-priority lending into distressed situations, or American-style DIP funding.

The DIP lending business in the US is highly lucrative. But it is also dominated by hedge funds, says John Houghton, the London Latham partner that hosted the seminar, not the big commercial banks. The banks in the UK continue to be sceptical about the merits of DIP lending, Houghton admitted.

"If we are going to introduce DIP lending, we have to get it right," says Houghton. The consultative proposals only allow for super-priority lending into administrations and

company voluntary arrangements (CVAs), yet the bulk of big restructurings at the moment are being handled using Schemes of Arrangement. "We need court-sanctioned DIP early on in Schemes to make this work," says Houghton.

One big advantage of Schemes is that they fall under the Companies Act rather than the Insolvency Act, and they do not require the supervision of licensed insolvency practitioners.

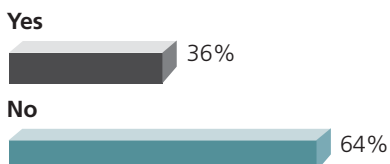
Houghton says that, despite there being a perceived lack of liquidity for distressed situations in Europe, a surprising number of attendees at the seminar did have new money available to put to work.

The delegates at the Latham seminar were polled about a range of market questions:

Question: If DIP financing was available in the UK, as per the reform in the latest budget, would you be interested in that business?

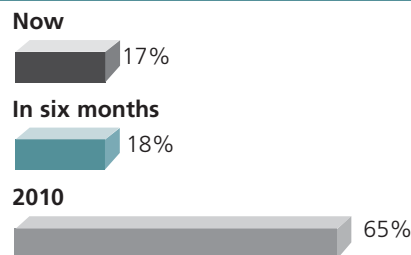


Question: Do you see more European situations being restructured through US Chapter 11, where possible?



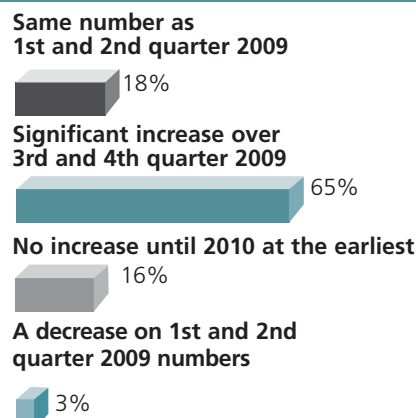
This question was prompted by the recent Chapter 11 of LyondellBasell, one of the most talked about restructurings recently because the American bankruptcy scheme was used to cram down major European stakeholders. Some stakeholders were also concerned by the way some lenders were able to 'bootstrap' their existing loans into new, super-priority DIP lending. Perhaps not surprisingly, Latham's predominantly US-orientated audience was not too worried about aspects of Chapter 11 creeping into Europe.

Question: When do you see the credit markets opening back up?



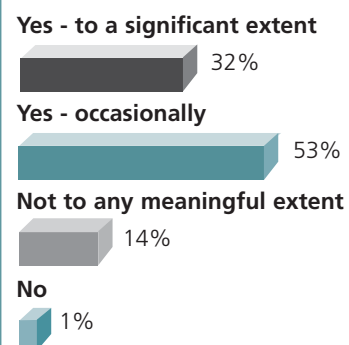
Despite efforts by Governments around the world, the delegates felt a recovery in the credit markets still looks a long way off. Houghton says in hindsight they should have asked about years after 2010.

Question: Do you foresee the number of restructurings in 2009/10 to be:



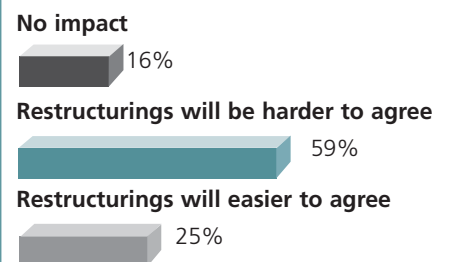
Houghton says he was surprised not more delegates voted for the second half of 2010.

Question: Despite issuers of privately placed notes tending to be investment grade, do you expect many issuers to be involved in restructurings and workouts over the next 12 months?



Houghton says privately placed notes are sometimes the only source of finance, and are sometimes in a better position in the capital structure than the senior banks. But no-one is immune from the current downturn, even if they are holding investment grade notes in bilateral credits.

Question: What will be the impact of Government intervention in banks (bank bailouts) on restructurings?



The intervention of governments adds another layer of consent that banks need to obtain in order to agree a restructuring deal, says Houghton.

A big concern for the audience was banks that have got credit default swap cover, and who might decide they are better off pushing a distressed business into insolvency and letting the loss fall on a Government-sponsored asset protection scheme. Houghton says this fear reflects a lot of distrust and tension felt between private equity and hedge funds on the one hand and the banks on the other.