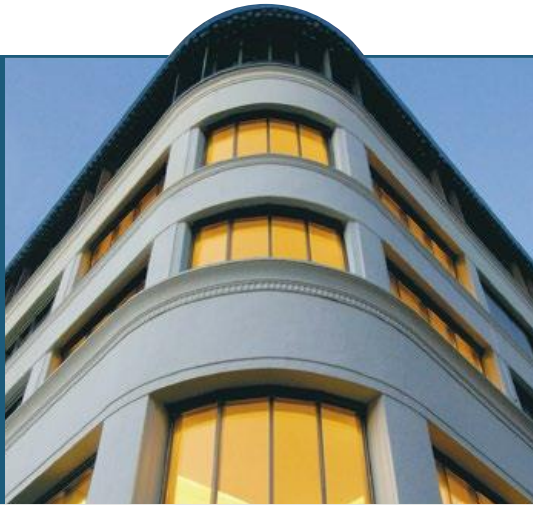


LALIVE



The Impact of Insolvency of a Contracting Party: What Can You Do Under Your Agreement?

Upstream Oil & Gas Legal Forum – C5

Noradèle Radjai

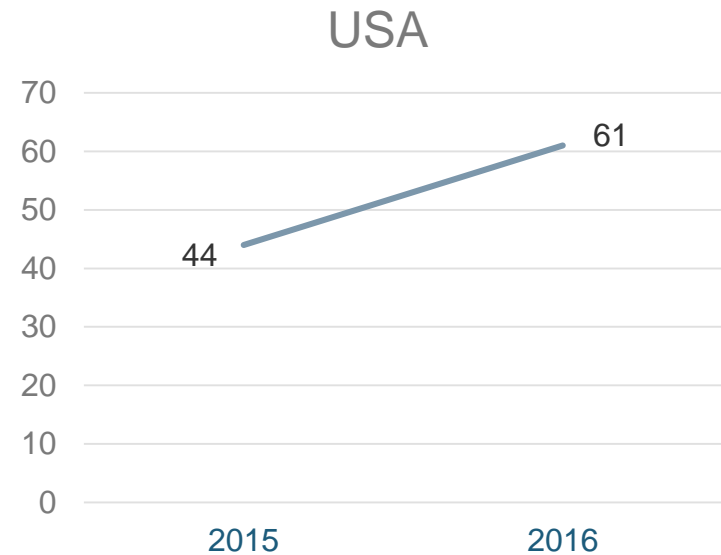
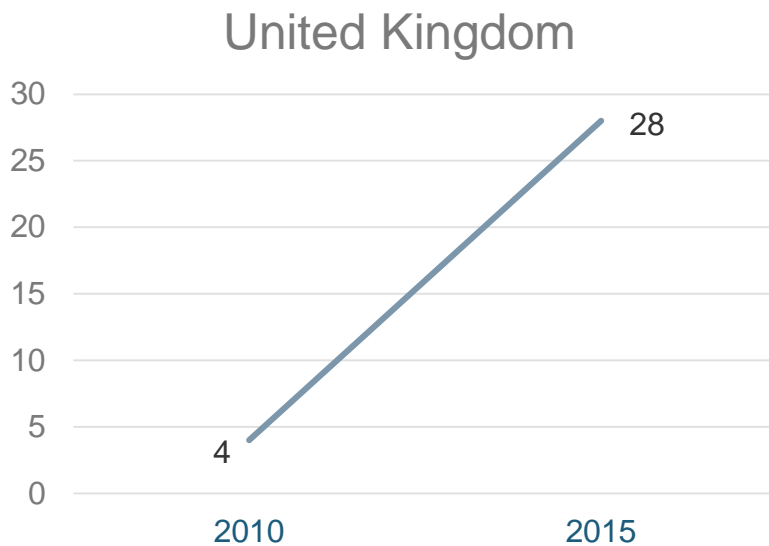
London, 24 January 2017

Oil prices stabilizing at around USD 50

Pressure on working capital in the industry is becoming increasingly acute:

- Price reductions demanded by powerful oil companies
- Companies struggling to service loans
- Burdensome expenditure levels for operations

Companies filing for insolvency/bankruptcy



Different perspectives

**Client suspects a
counterparty to be in
financial distress**



**Client is the party in
financial distress**



If a counterparty is suspected to be in financial distress

WATCH

CHECK

ASSESS

PLAN

ACT

REACT

WATCH: Early warning signs

- ⚠ Requests for changes in trading terms
- ⚠ Difficulty contacting key personnel
- ⚠ High staff turnover
- ⚠ Breach of performance obligations
- ⚠ Contractors and sub-contractors not being paid on time (or at all)
- ⚠ Changes in accounting reference dates or late filing of accounts
- ⚠ Rumours in the market place

CHECK: Follow up on any suspicions

- ✓ Check online sources regularly and make searches at the relevant court
- ✓ Ask for information from your counterpart
- ✓ Consult your company's external legal and financial advisers

ASSESS: What are the strengths and weaknesses of your own position?

- Check your contracts
- Consider termination rights
- Confirm outstanding monies your company owes and/or is owed – any right of set-off?
- Consider the impact your business would suffer if the counterparty fails to perform
- If the counterparty is a co-venturer, consider the contractual default provisions and regulatory regime

PLAN: Make a contingency plan

- Identify alternative arrangements your company would need to make
- Ascertain timeline to put such arrangements in place
- Consider a default protocol
- Timing

ACT: Seek extra protection and limit your exposure

- Put pressure on the counterparty to pay
- Get collateral
- Performance bonds and letters of credit
- Parent company guarantees
- Introduce step-in rights
- Asset tracing
- Seek legal and financial advice

REACT: Be proactive when party goes into insolvency

- Make immediate contact with the insolvency practitioner (IP) who has been (or will be) appointed
- Ensure the IP is informed of assets your company is claiming ownership over
- Check deadlines: once a company has been declared bankrupt, the deadlines in proceedings for debt recovery are often short/not extendable
- Appoint a focal point in your company to communicate with the IP

The distressed company's perspective

First aid

- Cash is paramount
- Credibility is key
- Offer solutions
- Seek advice

Restructuring strategies

- Often the **most valuable asset** is the licence to extract the hydrocarbon
- A **key strategy** will be how to maximise returns from the licence

3 possible approaches:

- 1) Warehouse the asset
- 2) Obtain new funding
- 3) Dispose of the licence (in part or in full)
 - a) Sale of the licence (licence assignment) or
 - b) Sale of shares in the company holding the licence (change of control)

Specific considerations for joint operating agreements (JOAs)

- In case of default: ultimate sanction is forfeiture
- Many JOAs include a buy-out alternative
- Pre-emption rights
- Government consent

In summary:

- Stay vigilant
- Assess all options
- Regularly re-assess your options
- Protect your rights

Thank you

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