At the TMA Board of Directors meeting held June 3, 2005, International Task Force II was given the go-ahead to proceed with a remodeling of TMA’s international chapter structure.

After extremely careful and considered discussion, the Board agreed with the recommendations of Task Force II that TMA needed to find a way to accommodate the legal, economic, political and sociological nuances of its chapters outside North America.

Task Force II will now investigate the possibility of changing its current chapter setup to a licensing agreement structure with its affiliates outside the United States and Canada.

If approved, the change is expected to give prospective international chapters greater flexibility as they go through the start-up process and grow into vibrant and productive TMA organizations in their respective regions.

We expect that the Board of Directors will be asked at their October 2005 meeting to approve the new structure and that the dues for international affiliates/licensees will
be reduced from their current status. Certain services provided by TMA headquarters that are not found to be as valuable or practical outside of the United States and Canada will likely be reduced or eliminated.

Restructuring our chapter model will enhance TMA’s role as the voice of the turnaround industry worldwide.

The stated vision of the Turnaround Management Association is to be the pre-eminent voice of the turnaround industry worldwide. Restructuring the TMA chapter model will help us attain that goal.

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TMA’s chapters in France and Japan were granted full chapter status during the June Board of Directors meeting. We congratulate the hard-working members who have succeeded in establishing these chapters.

We continue to receive inquiries about forming TMA chapters from all parts of the world.

The International Committee has asked Howard Brownstein, CTP, to spearhead an effort to establish a chapter in Hong Kong. South Africa is also close to becoming a chapter in formation. Taiwan is experiencing growth in its membership. Continental Europe will likely see the formation of one or two more chapters in the next 12 months. And it goes on and on.

If you, as one of our international members, would like to become more involved in TMA’s International Committee, please drop me a line at wskelly@heenan.ca.

Bill Skelly is a Partner at the Canadian law firm of Heenan Blaikie LLP. He is a former President of the Northwest Chapter and an ardent supporter of TMA’s global expansion.
Panel discussion at TMA 2004 Annual Convention

Around the horn: Perspective on Latin American restructurings

Comprised of investment bankers, U.S. and Mexican counsel and distressed debt investing specialists, this panel met in a session at TMA's 2004 Annual Convention to provide a first-hand perspective on how to bring about a successful financial restructuring in a difficult environment—one that is often littered with failures. Panel members explored divergent views of creditor and debtor negotiating strategies and leverage points. They also debated dueling perspectives of borrowers and creditors of implementation options.

What follows are excerpts from that discussion.

**Moderator:** Neil Augustine  
**Panel:** Jason Cook, Richard J. Cooper, Fernando E. del Castillo

**Augustine:** Collectively, I think we on this panel believe there’s a recipe for a successful financial restructuring, which includes several ingredients.

One ingredient is knowing the process and what you need to have to be successful from a process perspective. You need a well-managed process, a transparent restructuring game plan in terms of how you’re going to deal with all the creditors. You need to make sure that your stakeholders are organized and have the appropriate professional advice. Some people might take a different perspective on whether or not it’s good to have them organized or not, whether or not you should pay for their professionals or not. Those will be some of the items we will highlight.

The other key component for a successful restructuring is the knowledge base. You need to understand the borrower extremely well. You need to understand its capabilities to service debt. You need to understand exactly why it got into trouble, and whether or not the current situation is a permanent or temporary impact from a cash flow perspective.

You need to understand what the value fundamentals of the business are in order to allocate it in a way to get buy-in from your creditor constituencies. You need to understand what the capital structure looks like and each of the debt securities within it.

You need to understand what the creditors’ position would be in various negotiations and whether they have certain leverage over other creditors, over the company. You also need to understand what their weaknesses are. You need to understand who exactly is going to form the basis of these different creditor constituencies that you’ll be negotiating with.

Later, Rich and Fernando will talk about the legal environment, whether you’re going to try to consummate this restructuring through
“Around the horn” panel discussion (continued from pg. 3)

In Mexican restructurings, knowing the shareholder and management objectives up front are really the keys to success.

not the case in Mexico. It will be interesting to debate that topic later in terms of who has more leverage. Does the borrower, who’s typically the management team and the shareholders, have more leverage over the creditors or vice versa?

You also need a good understanding of what the requirements will be for a successful structure. Is it just a leverage issue, or is there something fundamentally wrong with the business?

In developing the game plan, the first thing that needs to be done is to establish the company’s advisory team—forming the basis of this knowledge requirement, understanding the business and the cash flows, and how you’re going to recapitalize the company. The legal advisor team would include both local and foreign counsel. With a much more liquid marketplace for distressed securities, creditors of Mexican corporations could be in the U.S. or Europe, so you need to make sure you have the appropriate counsel to address those issues.

From a financial advisory perspective, you need turnaround consultants, crisis managers who would focus on assisting management in pulling together the business plan, and investment bankers who would assist in negotiations with creditors in structuring the transaction. You need to understand who your key constituencies are, who you’re going to be dealing and negotiating with. And they need to pull together their team of advisors, legal and financial.

One must have a road map—how you’re going to get from point A to point B in this process. And you need to make sure you have stakeholders who have bought into the process so you can have good faith negotiations.

I’d like to open it up to the panel to discuss the following: How transparent should a borrower be with its creditors, and should the company pay for creditors’ professionals? As we represent companies, the management team always asks, “Are we better off having them organized or not organized, represented or not represented?” Rich, maybe you can kick that one off with your perspective.

Cooper: I think there’s a trend in emerging markets, not just in Mexico, for certain standards of how to conduct the process. You see it in Argentina these days where there have been a number of restructurings, and in Mexico as well, where companies generally agree to pay for legal and financial advisors for creditors, particularly once they’ve become organized. I think the real question isn’t whether you should or shouldn’t, if you’re the borrower; the question is when you should or shouldn’t. My own experience has been the earlier the better, but the key issue will be whether the debtor itself is organized.

I remember working with a company that was literally running out of cash. They were talking to their operating company lenders to increase working capital and trying to get the cash to keep the business going. We missed a debt payment on the holding
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Company debt, and the question became: what should we do; how should we talk to holding company creditors?

At that time, we ourselves didn’t have a good enough handle on our own situation and what our objectives were. So we ended up going to a bondholder meeting relatively early in the process and saying “We’ve got operating company issues; we’ve got working capital problems. We need to sort that out first. Once we do that, we’re going to come back to you and start serious discussions about how to fix the holding company issues.”

We didn’t go back to the holding company creditors for some time because the operating company issues took so long to sort out. But when we did go back, we, in fact, helped organize those creditors who, at that point, were rather disparate, and we offered to pay for their advisors. I think the issue is not so much should you, but when—and that’s sort of a fact-specific decision.

Augustine: Jason, maybe you can touch this from a creditor’s perspective. What do you do when you’re a large bondholder in a situation where a company’s missed an interest payment, in default, has gone through the grace period, and the company in essence doesn’t want to talk to the creditors and won’t pay for professionals. How do you address that situation, and how do you deal with the company?

Cook: That’s a problematic situation that we run into every once in a while. I can think of one in particular. When they just won’t engage, it’s a problem—especially in Mexico where you just don’t have the same kind of legal remedies and rights as in the U.S. as a creditor. In the specific case of the company I mentioned earlier, we found another large bondholder to work with to share some of the expenses. We hired our own legal counsel and were paying it out of pocket. We began to take steps to try to put some pressure on the debtor to engage, including beginning litigation, which is a last resort for us, but was necessary in this case.

Augustine: Fernando, we mentioned that typically companies engage both U.S. and Mexican counsel for dealing with a Mexican corporation in a financial restructuring with U.S. creditors, and the creditors do the same. How critical do you see that to a successful restructuring—that you have both angles covered?

del Castillo: Particularly when it comes to Latin America, it’s critical that you have a local advisor involved right from the beginning of the case. You were mentioning a couple of elements when you were organizing your process. That one element, for example, is leverage that you get with your creditors. Latin American countries are somewhat formulistic when it comes to establishing securities, rights or remedies for creditors. When you try to litigate in Mexico—and it’s true everywhere in Latin America—you face a lot of formalities. So you need to involve your local advisor as soon as possible to understand where your remedies and leverage with creditors are.

For example, when it comes to paying advisors, you don’t have that requirement in Mexico. You normally don’t have that legal requirement anywhere in Latin America. So
when you try to build trust as a debtor with your creditors, that will be one of the things that you’ll want to agree upon right from the beginning. It’s very formal in Mexico, and you need to understand those formalities when it comes to your creditors’ securities and your own position in litigation, and how that is established.

Cooper: One of the issues that comes up repeatedly in the context of the question of helping organize and finance the activities of your creditors when you’re a debtor is, how are the creditors going use that information? So a couple of issues generally come up. One is confidentiality. Are the creditors willing to get restricted for some period of time—particularly distressed type funds who hold positions, but sometimes trade positions?

The company often asks when they are thinking of paying for creditor advisors, whether they should require some type of standstill arrangement with the creditors who are going to be part of the process. My own views on that are that asking for a standstill for a limited period of time may be OK. Anything longer than that is not really worth it, if you’re representing a debtor. At the end of the day, you’re either going to have a successful process or you’re not.

Often, litigation is an important part of creditor strategy. You have to acknowledge that as the debtor. One thing you don’t want to do is end up paying for someone to litigate against you. So there are different ways you can handle that so you can make sure that if you’re representing a debtor, you’re only funding those activities that are part of the consensual effort.

But those issues come up all the time. Sometimes they prevent parties from agreeing on your early process issue. You see creditors and debtors fail to make progress on issues like that, and it usually is unfortunate, because they really are manageable issues.

Cook: Just a couple of real quick comments on the importance of advisors from the creditor perspective: you often have very different creditor constituencies with different objectives. Having an advisor for the committee—or for us, from the creditor point of view—can often help resolve those differences among the creditor groups. If you have different creditors speak to each other face-to-face, it is often counterproductive because emotions become involved. It’s better to have the advisors handle those types of intra-creditor discussions.

Augustine: You’ve heard here that in most situations on both sides of the table, you have crisis managers, investment bankers, U.S. counsel, and Mexican counsel. I’d like to bring to the table the question of the integration of these teams. Is it always seamless from both perspectives?

You have people who are specialists in one jurisdiction, know something about the other jurisdiction, but clearly don’t have as much of an understanding of what it takes to get to the other side. Maybe there are hidden agendas, maybe not. If I do it in the United States, effectively I can run the bankruptcy process with my team of lawyers internally. Do people think it’s counterproductive to have these maybe hidden agendas, different perspectives; or is that what a borrower really needs to make the ultimate determination,
if seeking the solution in the U.S. court or a Mexican court is of ultimate benefit from having these various layers of professionals?  

**Cook:** We take a very hands-on approach as creditors in restructuring processes, and from the borrowers’ point of view, you have to actively manage your advisors. You want both local and U.S. counsel, because you do need the advice. But you have to be an intelligent consumer of that and not let those agendas, which can exist, override. You have to look critically at the advice and make sure that some other agenda is not driving it.  

**Augustine:** I’ve been involved in situations where everyone gets on the same track relatively quickly, and we get headed down a path where everyone has bought into what the solution is ultimately going to be. There are other situations where they’re going in different directions, and there are competing interests on the same team in terms of the strategy to ultimately implement the restructuring.  

We don’t want to lose sight of the company that is there and hopefully will be successfully restructured in order to repay debt and create value for the shareholders. So first and foremost, we talk about the need to focus on cash flow. Cash flow is ultimately what’s going to determine value, your debt capacity and how one can put into place an appropriate capital structure *pro forma* for the transaction.  

We start with the evaluation of the company financials and understand whether or not the company is currently in its predicament due to temporary or permanent issues. Is it a raw material or a commodity swing that’s putting pressure on margins that one believes is more short term? Or is it a fundamental change in the way the business and the industry is currently performing? You need to take that evaluation and construct a long-range business plan, which is really going to be the foundation of the financial restructuring in dealing internally on your side in setting strategy in discussions and negotiations with your creditors.  

One needs to take that long-range business plan and determine what the value of the company is from your traditional evaluation methodologies: comparable company, precedent M&A transactions, discounted cash flow analysis. If you’re a holding company creditor and this company liquidates, you’re probably in a situation where you have little or no recovery. Therefore, you want to make sure you do a liquidation analysis to use as leverage against your creditors to bring them to the table and to negotiate the right deal.  

Because most people are familiar with the U.S. system, I’d like to compare the U.S. system to the negotiations that typically occur for restructurings of Mexican corporations. I would like to raise the issue of whether or not buy-in is required on the business plan and whether it is required on the valuation. Something that is very traditional and typical in the United States in dealing with the creditors is that you must get buy-in on a business plan. You might not get people to ultimately agree on that valuation, but you can structure a deal around that valuation. Maybe, Jason, you can give your perspective as a creditor.  

**Cook:** My first comment will be that we tend to take a fairly jaded view of the business plans and projections that come out of companies in Mexico in restructurings.
They consistently show that this company will never ever make anywhere near as much money as it used to make. If results continue to be published during the negotiation period, they always look incredibly horrible. Then the first quarterly report right after restructuring, all of a sudden, is amazingly good.

So, no, you don’t have to get buy-in on the business plan, I think, for the most part, because the creditor groups dealing in Mexico in emerging markets generally do not expect to be provided a business plan that makes much sense. The other point on that is that I think that the way restructurings occur in Mexico or in emerging markets are so much different than in the U.S. Chapter 11 system, where equity will have some sort of recovery, and the shareholders will retain control of the company most of the time. But you just can’t force their hand as you can in Chapter 11. Any equity that you are granted as a creditor tends to be less in control, and we tend to look at that as an option value and not as our main source of recovery. We try to maximize that through a debt claim. So I think the legal strictures are so much different that it makes the valuation in the business plan a lot less of a critical feature.

**Cooper:** I would just underscore that with the last point you made. I think that the reason it’s an important issue in the U.S. context is that equity is on the table and has real value. That is not as much the case in the emerging market context. It is viewed generally as kind of an option value type when you get it. Therefore, what you’re really looking at is a business plan, if you’re a creditor, to see if the company coming out is going to be relatively overleveraged for cash flow and debt service capabilities, but not much else.

I think the market for distressed securities in emerging markets is really dominated by a handful of players at this point. There are five to ten very large funds that have an active portfolio, and their focus in recoveries is to get instruments with MPV that meets their needs and that they can exit out of within some short period of time. So they are not focused on long-term business plans.

**Cook:** I think part of that is—not to make it sound completely opportunistic—but the reality of the emerging markets is that it’s a very volatile marketplace. The underlying economics of these countries and companies are such that any projections you make that are longer than two years—maybe three in a more stable economy—are completely shots in the dark. You don’t know what’s going to happen in Brazil or in Mexico three years from now. Economic growth could be 12 percent, or it could be negative 12 percent. Projections that far out simply aren’t credible. That’s the other limiting factor.

**Augustine:** Jason, you brought up the interesting point that every business plan that you’ve seen from a Mexican borrower has been conservative. I don’t disagree with that, because you start with the foundation that shareholders aren’t going to do a deal unless they retain control of the company. So in essence, you know you’re going to have control. You also want to make sure it’s not just an option value, and you want to have financial flexibility, so you bring down the projections.

But here’s the question. Because you’re typically dealing with secured banks and unsecured bonds, there’s a point in time where being too conservative could cause you a problem in dealing with some of the...
Mexican banks. Maybe, Fernando, you can talk about this from a Mexican bank’s perspective. They have a secured debt instrument. They see projections from a company that had historically done $200 million EBITDA that now has a five-year business plan that says the highest they’re ever going to achieve is $50 million. They’re secured by the stock of all the operating companies and by all the assets. What is their response in terms of stretching out their claims?

del Castillo: Typically the banks, when they have all the security and assets of the company, tend to think that they are going to stick to security and really don’t pay much attention to the business plan that stretches that far away. They know that, in a volatile economy, no matter what business plan is presented, they’re eventually going to get back to the table and renegotiate and recut the deal. That is typical for Mexican banks in a scenario where they’re dealing with distressed companies. They know that the company is not going to make money like it used to, once there are problems. Typically, they simply go with the company and retain their security to negotiate a deal.

Augustine: Next we can chat about the different security features that exist in a lot of Mexican financial restructurings. We have inter-company claims versus third-party claims, claims of banks, bondholders, and promissory notes. We have structural and contractual subordination. You have collateral and liens, some better than others, that we could talk about, and benefits of stock versus hard assets in Mexico.

But I’d like to start the conversation around the different security features by posing the question to Fernando. Call it classification creativity—for those of you who know the U.S. system quite well, there are ways to use the code to cram down creditors that are not willing to come on board to a consensual deal. One way is to create different classes. Get an impaired class to accept the plan, and cram down upon the other class that is not accepting. What I’d like to pose to Fernando and Rich is how creative can one get in structuring those securities in regard to creditors that have the same rights?

del Castillo: Very little. You can’t be that creative when it comes to a concurso setting and classification of creditors. The law establishes a pretty straightforward classification of credits, and there’s not much room to move to classify creditors.

Basically, you have your super-privileged creditors, which are employees. They have the constitutional rights and always come first in any concurso setting. Then you have the expenses of the state, the managing of the expenses of the actual proceeding of the concurso. Then come your secure creditors who collect on their own security. Then you have privileged creditors, which for some reason hold the retention rights, like warehouses. Then you have your unsecured claims that are all the rest.

You cannot be creative when it comes to unsecured debt, which is eventually the one that is going to confirm your plan or not in a concurso setting. You cannot really classify them. They are all secured, and you need to deal with them. If you have enough support and enough percentage to confirm the plan with your secured creditors, that’s fine. Otherwise, you’ll have problems, and you cannot force them or cram down on the creditors using a classification that is virtually not foreseen in the concurso process.

Cooper: For those who have been involved in U.S. bankruptcies, one of the real crafts of the bankruptcy process is classifying claims in a way so as to facilitate restructuring, both for purposes of confirming a plan and of constructing the right balance sheet. As
Fernando mentioned, in Mexico, it’s less important, and you don’t have the ability to do what you could in the United States. For example, if you have secured claims in the U.S. and the value of the collateral is such that they are undersecured, you can use that to effectively carve out a different class of creditors and therefore potentially cram down classes that don’t approve.

The flip side of that is in the U.S., you have the absolute priority rule, and that protects junior classes from being crammed down. You don’t have that in Mexico; so you can, by a simple majority vote of your unsecured creditors, approve a plan. You can have 49% of the class disapprove the plan, but it will go through. You can do that and have the equity retain 100% of their position. You can’t do that in the United States.

Therefore, going back to the different agendas point, there’s always discussion when you’re advising Mexican companies with the ability to do a Chapter 11 plan whether they should go through a Chapter 11 process or a concurso process. Depending on what type of credit you have, secured debt, holding company debt, or different types of claims, there are pros and cons to each of those processes.

Augustine: Here in the U.S. Chapter 11 process, intercompany claims don’t have the ability to vote. They might be a class in a plan, or they’re effectively terminated as part of the plan. That is not the case in Mexico. Jason, do you think intercompany claims should have the ability to vote and participate in a concurso mercantil process?

Cook: No, absolutely not, especially because if you have intercompany claims, as you’re going through this negotiation process, things may not be particularly transparent. They may be running up those claims and increasing them artificially in order to be able to cram their creditors down. By creating the shareholders who control these companies, they may be setting themselves up so they can effectively become the majority creditors to the company. That makes the process illegitimate and problematic going forward.

One of the failings of concurso is that it does not allow for substantive consolidation. You cannot take the holding company and its operating companies and address them as if they are one. You have to file concurso on every one of those companies, which is effectively a sort of mutual assured destruction strategy. So, no, I don’t think they should be able to, from the point of view of what I think is appropriate. However—Fernando will correct me if I’m wrong—the law looks like it is allowed.

del Castillo: Yes, again, this concurso law is new. It was established in 2000 to replace the old bankruptcy and special payments law that dates back to 1943. Intentionally or not, there’s no provision, as it was in prior law, that intercompany debt can vote and can actually be used to confirm the plan. The law doesn’t say you can use your intercompany claims to confirm the plan, but still it doesn’t prohibit it. In the relatively short experience that Mexico has had with concurso, it’s been done. So the objective answer to that is that you can use your intercompany claims to confirm the plan.

Cooper: And it’s tremendous leverage at times. We were involved in a situation where we had holding company debt and operating company debt, and the operating company debt had holding company guarantees. We worked out a deal with our operating company creditors who had guarantees at the holding company. We told the holding company creditors that, based on the guarantee claims we had from our operating company lenders and our intercompany claims against the holding company, we could effectively
confirm a *concurso* at the holding company level.

So if you’re a holding company creditor, keep in mind that if you object to our plan, we think we have the ability to do a plan without all of your support. Who knows on the margin whether that affected anyone, but we certainly went through the process, and it was more than just conversation.

We actually had an agreement with our operating company creditors for what was then a prepackaged plan at the holding company level. It was based on the guarantee claims that the operating company creditors had against the holding company and a number of intercompany claims that the operating companies had against the holding company. So it was certainly useful leverage.

del Castillo: The fact that you can use intercompany claims to confirm the plan doesn’t mean that, at the end of the day, a company will have a big amount of debt against a holding company such that you can then use it to confirm a plan. That you can do it is one thing; the other thing is the legitimacy of those claims. You have to pay a lot of attention to that, and it comes back to the fact that you need to retain local advisors here so that when you do have intercompany claims, and you’re going to use them to confirm the plan, you know that those are legitimate claims that will eventually stand in a proceeding. Those are open to challenge, not in respect to the ability to vote, but in respect to the legitimacy of the claims and whether they are real or not.

Augustine: We talked about creativity and classification, and ultimately concluded that in a *concurso mercantil*, there’s not a lot to do. But I want to pose the question to Rich. In your view, if you have two unsecured creditors sitting up at a holding company, one with the benefit of the guarantees and the other without, is the guarantee ultimately really worth anything if you don’t have the ability to get creative in a *concurso* plan, and then you don’t have the ability to facilitate or implement this plan through a Chapter 11?

Cooper: Going back to something Fernando said, the law is relatively untested, certainly with big public companies. I think that although it would appear that you’re somewhat limited in how you can classify credit, if you see more of these cases, I think you’re likely to see the system become more sophisticated about these issues.

In Argentina, where you have a similar process and you can go through a prepackaged restructuring and get it done relatively quickly, you now see a number of large public companies going through these procedures. As you would expect, you see the law developing on how claims get treated and classified. So I suspect that, if this becomes a more user-friendly mechanism to resolve corporate financial issues, you’re going to see more developments in the law and perhaps people pushing the limits a little.

Augustine: I guess the other question, going from a guarantee, is really about the collateral. Fernando and Jason, if you’re a secured creditor and had a choice of either the stock of the operating company’s subsidiaries or...
the fixed assets of the subsidiaries, which one would you prefer and why?

**Cook:** I’d rather have the shares for a number of reasons. As we have discussed, shareholders have extraordinary power in emerging markets, certainly in Latin America, specifically to maintain their interests. If you have the shares as collateral, you’ve got them pretty well in hand. You can put fear into the shareholders at that point. It’s easy to exercise, you can get it, and nobody can argue that you’re disrupting the business by taking away critical assets.

It is a much cleaner, easier way to exert leverage over existing shareholders if you have the shares as collateral as opposed to a plant. I have no desire to go and rip a plant up or anything. I can take the shares, sit in New York and I now own a company. Or I can at least get the shareholders to cut a reasonable deal.

**del Castillo:** I would agree. From the creditor’s perspective, you want to have security over the shares and not the assets. We’ve been saying that the *concurso* law doesn’t really give creditors the power to eventually get a hold of the shares, so the shareholders can retain their interest and cut a deal. Many Mexican businesses—and this is normal in Mexico—are family businesses where they take the value and understand the shares as their own patrimony. So it creates leverage for creditors if they want the shares.

If you go for the assets, Mexican companies know that they’re going to keep you in litigation forever in Mexico prior to your actually accessing the assets. As Jason was mentioning, there are mechanisms whereby you can relatively easily get access to shares in proceedings more quickly than you would if you worked against the fixed assets. So as a creditor, you always want to have the shares placed as collateral rather than anything else.

**Augustine:** Let’s talk a little bit about the composition of the different creditor constituencies that we’re faced with. Typically, the local banks have long-standing relationships. As Fernando mentioned, most of these are businesses that have been in the family for many years and have strong relationships with their bankers.

The banks are typically secured or at the operating company level and have guarantees from the holding company.

Then you have traditional institutional investors, which would include high-yield and crossover investors, that typically don’t want to get involved in the workout. Their objective is, “Just make the problem go away. I don’t want to get involved in this process. I don’t want to deal with the uncertainty of a possible bankruptcy in Mexico.”

Then you have the more traditional emerging market investors, which can include mutual funds or hedge funds. They’re more trading oriented. They’re not necessarily workout players, either, and they’ll evaluate whether or not they’re going to sell into the market or actually ride through the process.

In a lot of the Mexican restructurings, the bond deals were sold into the retail marketplace. These investors lack information on the one hand. On the other hand, it’s very hard for the company that has a bond that’s been issued through a number of retail investors to get the process organized in a way to facilitate negotiations if it’s widely dispersed. Typically, we see these holders riding
through the restructuring and not necessarily participating.

Lastly, probably more important, are the distressed investors, the folks like Gramercy—where their approach is to get in to make money as quickly as possible, and it's all an IRR game. They're into market-to-market. They're not into the regulatory markdown at all. They take an opportunistic approach to the business. They will get their hands dirty. They will chair, lead and facilitate the organization of the bondholder committee. Their objective is to maximize the net present value of their investment relative to the buy-in price.

In this part of the panel, I'd like to discuss from everyone's perspective, who drives the process from the creditor's side, and in particular, from the bondholder's side?

**Cook:** It does tend to be funds more like Gramercy, the distressed investors, for a number of reasons that you've already touched upon, including the fact that these tend to be much larger parts of our portfolio than for your typical dedicated or cross-institutional investor who may have 2% of their portfolio, at most, in any one of these situations. We've run into situations where large institutions barely even knew they owned the thing before it went into default. So it tends to be worth more to us as a percentage of our portfolio.

By virtue of being willing to put in the time and effort, we also end up driving the process by default. The other part of it is that we have a better knowledge base. We spend time to learn the ins and outs of the laws and how to do this.

Having said that, if you have large holders who are par buyers, who are traditional institutional investors, who are banks, you have to respect their needs. Often, that's why we end up having a couple of options in restructurings where you can take this bond with the higher coupon and a big haircut and some equity kicker and something else, and then there might be a par bond with a low coupon and that sort of thing. That's why you often have a Chinese menu type of approach to the restructuring.

**Cooper:** Just an observation or two about that: One of the reasons these deals get done is the different objectives and the ability through a menu approach to address them. Sometimes the MPV differences between the par bond option and the discount bond option or the cash option are quite significant. That's used by the company and often by those who are driving the process, the distress players, to get a deal done.

In many places, for example Argentina, the MPV differences are quite significant. If you look at the world from an MPV perspective, I think that retail holders are subsidizing the restructuring. Because they're not as well organized, that's their lot; on the other hand, it's also consistent with their objective. So that's one of the reasons these processes are often successful.

Another reason is that often the dynamics of the process are such that positions change. Now, for example, you see a much more active secondary market for bank debt in Latin America. You see the distress type
“Around the horn” panel discussion (continued from pg. 13)

players holding secured bank paper or even sometimes trade claim type situations, where you never saw that three or four years ago. That’s going to affect the process quite a bit, because traditionally it was distressed players holding parent company unsecured debt. In that situation, they had some leverage. It’s a different dynamic when you have them holding loans that are secured, which are governed by loan agreements, as opposed to indentures. We’ll see where that drives a lot of these processes.

**Augustine:** Staying on the subject for a minute, would you rather be representing a company whose creditors are concentrated and organized and have the skill set and willingness to dig into the situation like a Gramercy? Or would you rather have a situation where you’re representing a company with a very dispersed group of creditors where no one has more than two or three percent of the issue? What would your preference be?

**del Castillo:** My preference would be the first, of course, when you have creditors organized, and you know what the game plan and the rules are. It’s a much better situation, particularly in the scenario where you’re using the *concurso* law to confirm the plan, because that makes the process swifter and better. One of the things that is always present in Mexican restructuring is the time it takes to get the deal done, either consensually out of court or consensually in court, where typically you would take a long time to cut a deal. So when you have a scenario with creditors that are organized and are in the process, it’s a much better situation.

**Augustine:** Let’s kick it over to the legal environment—the differences between Chapter 11 and *concurso mercantil*. Obviously, both alternatives are evaluated by most Mexican companies undergoing a financial restructuring.

Everyone spends a significant amount of time figuring out which alternative provides the highest certainty of successful implementation and which one has the most uncertainty. These companies are controlled and managed by families who typically are more comfortable in the home court than with the uncertainty of a Chapter 11 system.

First, talking about the confirmation vote, in Chapter 11, the secureds typically are not voting in the process; so you have an unsecured pool of claims, and you must achieve a 51% acceptance on that unsecured class.

Point number two is classification. Rich brought up the issue of absolute priority rule. This is the big difference between what typically happens in the United States and what happens in Mexico. Both restructurings start out with a significantly different thesis.

On the *concurso mercantil* side, or the Mexican restructurings, you start with the thesis that the family that is controlling the business before the restructuring is going to control the business after the restructuring. It’s typically why the families can’t get comfortable using the U.S. system, because of this control aspect. It’s very hard given the absolute priority rule to prove what you need to prove to implement most of these Mexican restructurings in a U.S. court system.
Secured creditors are typically in a concurso mercantil not subject to a concurso plan. They continue to get paid currently while the concurso is ongoing, but they’re really not part of the voting constituency or recognized creditors under a concurso. Obviously, in a bankruptcy in the United States, they carry a significant amount of weight and leverage through adequate protection orders, which allow them to get paid currently, typically for interest only. DIP financing is well-established in the United States, but not necessarily something that has even been considered in a concurso mercantil process.

Rich and Fernando, when you’re sitting down with your clients to discuss implementing a particular transaction that you’ve negotiated with your creditors, what thoughts and guidance do you give your clients about the certainty of being able to implement the transaction through one or the other?

Cooper: I have to start off with a couple of assumptions, one of which is that we’re talking about a consensual plan and that you’re a Mexican or emerging market company that can access U.S. courts to confirm a prepackaged Chapter 11 plan. How do you weigh the various options? I start out from the perspective of: can you get your creditors to support a concurso plan, particularly if there’s even a small chance of it being contested? That’s a difficult thing to get creditors to accept, for the simple fact that the law is untested. The process, if it’s in a contested proceeding, could go on for years. Their claims are immediately converted into non-interest-bearing claims once you’ve filed a concurso, and the dollar debt instruments are effectively converted to peso inflation-adjusted instruments.

So the starting point is that if there’s a probability or likelihood that what you think is a consensual plan, but there’s a possibility that it’s going to be contested, that’s going to be an issue for the creditors and therefore an issue for you as a debtor. Conversely, the U.S. process offers a lot more certainty. If you have the requisite votes to confirm a plan, you could be in and out of a bankruptcy court within 30 days. So there are some real advantages.

The disadvantages from a U.S. perspective are that the voting requirements are more difficult to meet, the confirmation requirements are more difficult and the process is more expensive. It allows for annoying discovery and related processes that sometimes family-run businesses in Mexico would rather avoid.

So there’s a whole series of pros and cons. Ultimately, it comes down to weighing each of those, understanding the credits that you’re dealing with—secured or unsecured, the possibility of substantive consolidation—all of those kinds of things. It’s a difficult analysis.

del Castillo: There are other issues when you’re dealing in a concurso setting. For example, I think that the concurso law is eventually going to work, but it’s going to work particularly for holding companies. When you’re dealing with operating companies, concurso is almost a killer. Because when you’re dealing with a variety of creditors and a lot of them, the process can very easily get out of control.

None of the operating companies that have filed for concurso have emerged from it with a consensual deal or a plan confirmed in a
disputed scenario. I think that's one of the big assumptions, because the *concurso* law says you have six months that can be extended two times up to one year to confirm a plan. If you don't confirm a plan within that year, then you are effectively and immediately into liquidation. So there is a sword hanging over the company's head, which is saying, “You either finish this *concurso* process within a year, or you're done.”

Again, you need to understand your creditors and have sufficient leverage, and most of it negotiated, if you're going to go to *concurso*. That's one of the things you should advise companies when you're dealing with this.

You can file for a holding company *concurso*, for example, but you don't immediately get protection for the subsidiaries. You have to put the subsidiaries, as well, in *concurso*. That's where the problem comes, because your suppliers and all the people they have relationships with on the operating level get scared. They believe they're not going to pay them. Immediately they come to cash terms. This is typical in Mexico when a company goes to *concurso*. Suppliers immediately want cash terms, and that creates problems.

You don't have the kind of protection that you have in the United States. Although at first sight, the requirements for confirming a plan might look like it's the better way to do it, or the ability to use the company claim is a better way, you have to be thinking whether your subsidiaries are open for challenge or attack from creditors. In that case, you might prefer a U.S. setting where you would get immediate protection for those companies and your own company. Those are the elements you need to play when you're advising a company whether to go to *concurso* or not.

**Augustine:** Why don't we talk a little bit about shareholder and management objectives, which is what ultimately drives this process in Mexico—unlike what you typically see in the United States. So first and foremost, you need to understand the motivations of management and the shareholders, who effectively in almost all circumstances are one and the same. There's always a tradeoff to make—financial flexibility versus equity ownership.

Clearly, what we've seen in most of the transactions that we've been involved in is that the 50.1% of the post-restructured equity is critical. Along with that, in order to get astute investors like Gramercy on board, you're going to have to notch up the amount of leverage that you're taking post-structuring.

Rich mentioned the difference between a tender offer at one price and the MPV of a package of restructured securities on another. Typically, these companies are cash-starved. Where do you get the cash?

One of the things we say is that management and shareholders need to redefine what core business means when you get into a financial restructuring. You might have to make the determination that something that you always considered to be core is now non-core in order to finance and fund that tender offer. The other thing is the comfort level of the management team and the shareholders in terms of the implementation tool.

**Shareholders have a lot more leverage in Mexican restructurings over their creditors than they would in the United States.**

Shareholders have a lot more leverage in Mexican restructurings over their creditors than they would in the same situation in the

*“Around the horn” panel discussion (continued from pg. 15)*
United States. I think everyone takes that for granted. Here’s the real question. Most of the transactions that we’ve dealt with and have recently closed or are in the midst of negotiating aren’t significant equitizations. They’re putting in place the maximum amount of debt that the company can service, maybe plus $50 or $100 million.

Jason, given your comment about the uncertainty of projections in the business plan, given the macro-economic events in a lot of these countries, are we setting up companies to default again with these types of capital structures?

**Cook:** We might be. But that’s the tradeoff for the shareholders. That’s the risk they have to assume and that we assume to some degree, because we can’t access the equity. There’s no other way to maximize our claim and get what we deserve other than to take a debt instrument.

Minority equity in Latin America, particularly in emerging markets, overall is undervalued. All you have to do is look at the relative performance of the debt indices versus market equity indices in emerging markets to realize that debt performs much better in emerging markets.

So, yes, we might be setting up companies to default again, but I’d like to point out that that’s a big criticism of the U.S. Chapter 11 process, as well—that companies tend to emerge overleveraged. The one comment I want to make is that the **concurso** law is a vast improvement over the old **dispensación de pagos** law. There’s a company in Mexico that’s been in **dispensación de pagos** since 1954 and has never emerged.

We believe that under **concurso**, as investors, it may take us two or three years because of various legal challenges that can be mounted, but we do believe that, at the end of the day, we can wipe out the shareholders’ value and take over the company. What will be left of the company at that time is an entirely different question. You can’t remove management under **concurso**. They’ll run it into the ground and strip assets. That’s our view. But it is a threat and a valid threat. I think that over time, as **concurso** becomes more tested, becomes less uncertain, you will probably see use of and the amount of equitization increase as a recovery mechanism in these negotiations.

**Augustine:** I guess, Rich and Fernando, typically, we’re representing companies that are setting up these capital structures that one might consider to be relatively tight. Should we be doing a job to get them to focus more on the dollar value of what they’re receiving in that controlling stake in the equity versus the equity ownership post-restructuring—the question of the dollar sign versus the percentage?

**Cooper:** There’s a very tight-knit community of large and powerful families that run businesses in Mexico. When we were trying to establish the mechanics for the post-restructured company to have a truly independent board, we looked around at every public company in Mexico, and guess what? There is no independent board in any Mexican public company, because, in fact, they are controlled either by large families or foreign strategic players.
Just the simple mechanic of having a shareholders meeting where you could have a true public vote of your shareholders is something that’s a little foreign.

In Argentina now, it is the case that you will see equity give-ups. That’s because they’ve done a number of restructurings in the last couple of years, and there’s a sensitivity to overleveraging companies going forward.

You need to try to align interests, and one of the ways is to give creditors equity and allowing the company to deleverage and to share distributions with creditors. The problem that some shareholders will have with that is that Jason’s going to be sitting across the table and, at least for the first few years, he’s not going to value that equity very highly. Until creditors value it more highly, it’s going to be less likely that shareholders are going to give it up.

**Cook:** One of the reasons we tend not to value equity highly in emerging markets is that the governance is so poor. The value in the company tends to be stripped away by the owner/managers through overhiring, perks, the corporate jet fleet (my particular favorite—$500 million revenue companies with two corporate jets), and 43rd cousins on the payroll who don’t really show up for work, and so forth. Until we can fix that problem, until we can have governance and real control to run the company in a professional manner, the equity hasn’t value.

**Augustine:** Do you think in the not-too-distant future there’s ever going to be a mechanism in place for creditors to unseat the family and change the management team?

**Cook:** I don’t believe so, because corporate Mexico is controlled by two dozen families. They also happen to be related to, or fund, the politicians, so they have absolutely no vested interest in allowing that to happen.

**Augustine:** We talked about the different creditors that are at the negotiating table and providing them with a package of securities in order to entice them to vote and accept a plan on a consensual basis. There’s been some reference to the banks’ receiving floating rate amortizing paper, which is typically the structure, the bonds getting a higher coupon fixed rate instrument with a bullet amortization and typically an equity kicker in order to get those two instruments equal on an MPV basis.

We talked a little bit about the tender offer being provided and that cash is being provided at a discount to the net present value of the securities that are being offered in a package.

In the U.S. system, there’s an easier way to give non-pro rata allocations of those securities. Fernando, maybe you can talk a little bit about the difficulty of providing that in a concurso mercantil.

**del Castillo:** The concurso law says that once you have 51% of your creditors confirming a plan, that becomes binding to every creditor, and you effectively cram them down. You have people who come and sign off the deal and those who won’t, either because they are against it or they don’t care. You need to enforce that part of the deal to those creditors.
To confirm and actually bind those creditors who did not sign the agreement, you need to give them equal treatment. You must keep in mind that whenever you’re going to do that, those dissenting creditors, as they’re called—though they may not be effectively against the plan—will receive the same treatment as the most preferred creditor in the plan. If a creditor who receives less value or receives the worst treatment signs off the deal, it’s fine. But the creditor who does not sign off the deal needs to receive treatment equal to the most preferred creditor in accordance with the terms of the plan.

**Cooper:** In Argentina, that issue has come up quite a bit, because typically there is a menu of choices. Creditors, when they’re negotiating these restructurings are focused on the discount bond, which has the highest MPV. In order to maximize the amount of discount bonds that they get, they will, when negotiating a plan, say, “For those holders who don’t show up and participate, we want to deem them to take the par option, or the cash option.” And so the plan will often provide for that.

There’s a similar kind of equal treatment concept in Argentina, and the issue that courts have looked at is, “Is that equal treatment?” If in fact you’re deeming them to take the par option or the like. Courts have come out and said no; you’ve got to go out and give them a choice.

After the plan has been confirmed, you’ve got to go back and effectively resolicit, not the entire thing, but just for those holders and offer them the same choice. That’s an example of an issue that, over time, you will see the Mexican courts address and deal with, where, in Argentina, now they have a year and a half or so of experience dealing with that.

**Neil Augustine** is a managing director with Rothschild Inc., an international investment banking firm in New York. With one of the leading restructuring groups on Wall Street, the firm has a high market share in representing companies in Latin America, particularly in Mexico.

**Richard J. Cooper** is a partner based in Cleary Gottlieb’s New York office. His practice focuses on domestic and international corporate restructurings and mergers and acquisitions. Cooper has represented debtors, creditors, buyers and sellers of distressed companies and securities, creditor committees, DIP lenders and other participants in out-of-court and in-court bankruptcy proceedings. In recent years, Cooper has worked on a number of complex and significant restructurings in Latin America, representing both debtors and creditors in Argentina, Columbia, Brazil, and Mexico.

**Fernando E. del Castillo** is a partner in the Mexico City office of Santamarina y Steta S.C. He joined the firm in 1993 and became a partner in January 2002. del Castillo focuses his practice on civil and commercial litigation, as well as commercial arbitration.

**Jason Cook** is with Gramercy Advisors, a hedge fund that invests in distressed debt in emerging markets. In Mexico, the firm has been involved in several high-profile restructurings, including a cellular phone company. Cook has been covering emerging markets since 1996, both as an investment manager and as an analyst at UBS publishing research.
Restructuring challenges in Russia

by Svetlana Parshina

Since the fall of the Soviet Union, Russian legislators have worked on creating an effective bankruptcy system. Though Russia is making significant progress developing a bankruptcy system, bankruptcy remains a foreign concept to many in Russia.

Creating an effective bankruptcy system takes more than just establishing laws and procedures. It takes time to test the laws and establish traditions. Within two decades, Russia is trying to accomplish what has taken the United States over 200 years.

The History

Russian legislators introduced the first bankruptcy-related regulations in late 1992; just months after the Soviet Union fell. According to the regulations, companies could easily avoid bankruptcy, no matter how insolvent they were.

For example, a company’s debts had to exceed the total book value of its assets to initiate bankruptcy proceedings. To avoid bankruptcy, management of the companies could simply issue worthless debt to their companies at a high face value, thus increasing the nominal asset value.

In August 1998, Russia suffered a financial crisis. Six of the top ten banks in the country went bankrupt. The ruble was devaluated. Just weeks before the banking crisis, Russian legislators enacted a revised bankruptcy law. According to the new law, judges had the discretion to appoint someone to prepare a first creditors meeting and to overrule creditors’ decision for liquidation if the debtor passed formal criteria of being “socially important.”

The number of bankruptcies went up dramatically. Some 11,000 companies went bankrupt in 1999, 10 times the number in 1995. Only a few out of thousands of bankrupt companies were actually restructured. Instead, bankruptcy became a favored takeover method. The 1998 bankruptcy law proved to be inefficient.

On December 2, 2002, the Russian Government enacted the new Federal Law “on Insolvency (Bankruptcy)” to accommodate the interests of insolvent debtors and prevent creditors from abusing their rights. The 2002 bankruptcy law is currently in effect. Though the new bankruptcy law has been well received both by Russia and the international business community, it seems that some revisions need to be made to make it work more effectively.

Inez M. Markovich, a Turnaround Management Association Philadelphia Chapter member and an attorney at Frey, Petrakis, Deeb, Bloom, Briggs & Mitts, P.C., specializes in commercial finance transactions with an emphasis on representing creditors in corporate Chapter 11 and Chapter 7 cases. She has advised Western lending institutions dealing with Russian companies on how to structure lending transactions to minimize the potential negative impact of the Russian economic and financial crises.
bankruptcy law on the lender’s ability to enforce its rights against the borrower in the event of a default.

Markovich believes that the main problem with bankruptcy and restructurings in Russia is the continuous failure of its bankruptcy system to protect creditors’ rights while providing for the equitable and reliable reorganization or liquidation of economically inefficient companies.

“Russia’s Law of Insolvency of 1998 was infamous as the legal backdrop for rampant hostile takeovers disguised as involuntary bankruptcies,” Markovich said. “Under the old law, one could easily manipulate the bankruptcy process by influencing biased and often corrupt bankruptcy administrators.

“The new bankruptcy law of 2002 sought to correct the existing problems by making involuntary bankruptcy filings more onerous, transferring some of the administrators’ powers to the arbitrazh courts and raising the requirements for administrators. However, the problems are too deeply ingrained in the environment to go away as a result of this enactment.”

She pointed to the 2004 example of the municipal court of the City of Dzerzhinsk convicting the former administrator of a bankrupt company for selling its stock valued at 300,000,000 roubles for a mere 50,000,000 roubles, thus causing damages to the company’s creditors in the amount of 250,000,000 roubles.

“How will the restructuring affect the company’s relationships with its creditors?”

Kapoustina points to a number of challenges that a company will face in such an uncertain legal environment:

• How will the restructuring affect the company’s relationships with its creditors?

Current challenges
It’s essential for specialists dealing with restructurings in any country to understand why companies start the restructuring process and the challenges they face in the turnaround process in order to be able to help these companies.

Elena Kapoustina is an associate in the Moscow office of Skadden, Arps, Slate, Meagher, & Flom, LLP. She commented on the main reasons for a company to start a restructuring process. “First, a company will think of restructuring in order to become more attractive to potential investors if it is planning to go public or organize a private sale of its shares.”

The company’s actions will include measures to improve its operations, its management and corporate structure, review (and possibly change) its contracts that may not work for a public company. This will require a lot of work and effort from both the company and its advisors.

“The second reason for restructuring,” she said, “is when a company faces financial difficulties and wants to prevent bankruptcy. Unfortunately, there are no developed laws in Russia that would establish restructuring procedures in cases other than bankruptcy.”
Restructuring challenges in Russia (continued from pg. 19)

• Will the restructuring trigger an event of default under any of its contracts?
• How can the company streamline its payroll and solve potential staff issues?

“A company will have to attract various advisors to solve these and other problems, which may become costly,” she added.

No matter what reasons lead to restructurings—and how, where and when restructurings occur—one important factor plays a crucial role in making it a civilized and more or less successful process in any country. This factor is government.

In Russia, government still has the ultimate power to create and change laws to fit its needs. Many Russian companies play games with the government making use of an undeveloped system of law. Some companies win, and some companies lose the game.

One of the best examples of such a costly game between the government and a company is the Yukos case. Once Russia’s richest man, Mikhail Khodorkovsky, owner of this oil giant, became heavily involved in politics, openly complaining about corruption and funding opposition parties. Despite Yukos being considered one of Russia’s best-managed companies, its owner was arrested for fraud and tax evasion and remains in prison today, having repeatedly been denied bail.

The government seized Yukos’ main production arm, Yugansk, and sold it to a state-run oil group, saying that Yukos owed $27 billion in back taxes. Yukos filed for Chapter 11 bankruptcy in the United States in December 2004. In February 2005, it sued four companies for their roles in last year’s forced sale of Yagansk.

Other companies about the same size as Yukos that may be not so high profile and are involved in less complex cases, face similar problems. It’s almost impossible for a business operating in Russia to make profits, if it pays all the taxes according to the current tax laws. Thus, many Russian companies play the “Catch me if you can” game.

While legislators are working to improve current laws, some businesses continue making profits only because their owners decide to stay away from politics and use creative accounting techniques.

According to Oleg I. Berger, a partner, and Egor B. Boyarkin, a senior associate at LeBoeuf, Lamb, Greene & MacRae, in Moscow: “Much has been said about the need for an overhaul of the system governing bankruptcies and restructuring in the Russian Federation. The shortcomings lie primarily in the existing legislative gaps that fail to deal adequately with the following abuses: fictitious bankruptcies and fraudulent conveyance.”

In the first instance, they said, interested parties drive an otherwise healthy company that may be suffering temporary financial difficulties into bankruptcy for the purpose of acquiring its assets at an undervalue. The law does not provide sufficient safeguards to enable the company to rehabilitate its financial condition.

In the case of fraudulent conveyance, it remains too easy for companies facing the prospect of bankruptcy to spin off its assets at well below market, hence depriving creditors of actual value.

“Until adequate legislative solutions are developed and implemented, creditors (under
the loan documentation) and shareholders (via e.g. shareholders agreements) should take particular caution in structuring their transactions,” Berger and Boyarkin warned. “They should ensure that sufficient contractual and security mechanisms are in place that will prevent companies and interested parties from artificially depleting value and diverting assets from its rightful owners and claimants.”

**Conclusion**

Though restructuring is a relatively new term in Russia, more restructurings are occurring each year. Some restructurings are caused by bankruptcy filings; others happen because the companies want to become more attractive to potential investors.

Although significant progress has been made in establishing a civilized law for the restructuring processes, specialists working in the restructuring industry in Russia still face many challenges. These challenges are mostly caused by underdeveloped laws and poor governance. A great deal still needs to be changed to make restructuring a civilized process. But, the first steps have been taken, and Russia is making progress.

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**TMA International News**

**Guidelines for article submission**

TMA encourages its members to contribute feature articles to *TMA International News* on topics of interest to corporate renewal professionals outside the United States. Potential contributors should provide an article proposal that will be evaluated by the *News’s* Editorial Advisory Board.

By submitting an article to the *News*, the author certifies that it is original, or if previously published, it is properly credited. Articles must be non-promotional.

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To submit article proposals, please contact: *TMA International News*, Donna Steigerwald, Managing Editor, 100 South Wacker Dr., Suite 850, Chicago, IL 60606.

**E-mail:** dsteigerwald@turnaround.org **Phone:** (312)242-6040.
At its meeting in Chicago on June 3, the TMA Board of Directors unanimously voted to elevate the TMA Japan Chapter from provisional to regular chapter status. Now 110 members strong, the TMA Chapter in Japan is the second largest outside North America.

The history of the TMA Japan Chapter is a story of close collaboration between leaders in the Japanese corporate renewal community and TMA members and staff. From the beginning, the Chapter’s purpose has been to help the Japanese in their efforts to revitalize their economy’s institutions and create a strong capability for corporate renewal.

During the TMA Annual Convention in Colorado Springs in 2002, a subcommittee was formed to promote the formation of a TMA Chapter in Japan. The group was headed by Howard Brod Brownstein, CTP, a Principal of NachmanHaysBrownstein, Inc. in Philadelphia.

In May 2003, an official delegation of the Japanese Ministry of Economy, Trade & Industry (METI) visited TMA headquarters in Chicago. Leaders of Chicago’s corporate renewal community, along with TMA staff and leadership met with the delegation during their two-day visit.

The Japanese group then visited Boston and New York where its members met with...
corporate renewal industry leaders Wilbur Ross, Holly Etlin, Professor Harlan Platt of Northeastern University, Professor Paul Marshall of Harvard Business School, Fleet Bank Workout EVP Paul Kennedy, and many others.

Later that year, more than 25 delegates from Japan attended the 2003 TMA Annual Convention in San Francisco. They were treated to a special session on corporate renewal in the United States and Japan hosted by Howard Brownstein and TMA Chairman John Rizzardi. The entire session was simultaneously translated into Japanese—a service that was provided for the Japanese delegation throughout the convention and a first for TMA.

After months of planning by a core group of corporate renewal professionals in Japan led by Shogo Tachikawa, a leading turnaround professional in Japan, and Eiten Inamura, Managing Partner of ASG/Grant Thornton in Japan, a formational meeting of the Japan Chapter of TMA was held in Tokyo on April 5, 2004.

Approximately 500 members of the Japanese corporate renewal community, including turnaround professionals, accountants, attorneys, government officials, lenders and others attended the meeting. The half-day event featured programs on turnaround management and the Japanese economy, as well as the formal signing of articles of incorporation for the TMA Japan Chapter.

The then-provisional Japan Chapter boasted prominent members of the academic and business community among its officers and directors, including Professor Kazuo Noda, President Emeritus of Tama University, who served as the first President and Chairman of the TMA Japan Chapter, and Professor Yoshinobu Konomi of Keio University Graduate School of Business Administration, Professor Minoru Ochiai of Meiji University Graduate School of Global Business, and Hon. Tsutomu Shiozaki, Professor of Law at Hosei University and former Judge of the Tokyo High Court, serving as Directors.

Shunichi Maeda of Lehman Brothers in Japan served as an important advisor to the Chapter. The April 2004 event in Tokyo featured a keynote address by Kaoru Yosano, a member of Japan’s House of Representatives and a former Minister of Economy, Trade and Industry. Another segment of the event was a discussion of professional responsibilities by a panel of Japanese turnaround specialists.

Howard Brownstein also delivered a keynote address at the April meeting on “Corporate Renewal in the USA.” Drawing contrasts and comparisons between Japan and the United States, he noted that corporate renewal was crucial for Japan to successfully recover from a decade of adverse effects from the “bubble economy.”

Since its inception as a provisional chapter of TMA in June 2004, the TMA Japan Chapter has held meetings not only in Tokyo, but also in other large Japanese cities where corporate renewal has not been as well developed.
4 — United Kingdom – Leeds – Chapter meeting – “Business Turnaround: The Credit Insurers Perspective” – Irwin Mitchell Solicitors, 21 Queen Street – 5:45PM Leeds@tma-uk.org

5 — Canada – Vancouver – “TMA Vancouver Kick-Off to Summer,” Members only – Joe Fortes Rooftop Patio, 777 Thurlow Street, Vancouver – 4:00PM

13 — United Kingdom – London – Chapter meeting – “Receivables Management: from generating cash in a crisis to implementing sustainable process improvements” – PricewaterhouseCoopers, 1 Embankment Place – 6:00PM London@tma-uk.org

13 — Australia – Sydney – July Networking Evening – Guest speaker: Ross Griffiths, General Manager, Credit Management, Commonwealth Bank of Australia – 6:00–8:00PM, Ferrier Hodgson, Allianz Building, Level 17, 2 Market Street. For more information, contact: Christine Kinsela, TMA Aust. Administration, 0438 653 179, tma_aust@bigpond.net.au

15 — United Kingdom – London – 2nd Joint Conference of R3 and INSOL Europe – “Current Trends in European Rescue and the Impact of the European Insolvency Regulation” 9:00AM-5:00PM, Copthorne Tara Hotel

20 — United Kingdom – South Hampton – Chapter meeting – For more information, contact: Kat Cooke, TMA UK Southampton Co-ordinator, southampton@tma-uk.org

1–30 — Canada – Toronto – Education Program. For more information, contact: Sue Anderson, Chapter Administrator, 416/867-2300, tmatoronto@baystco.com

5 — United Kingdom – Leeds – Chapter meeting – 5:45PM Leeds@tma-uk.org

13 — United Kingdom – Midlands – Chapter meeting – 6:00PM Midlands@tma-uk.org

To place information on the calendar regarding events in your area, please contact Donna Steigerwald at dsteigerwald@turnaround.org.