

Key to Reviving a Distressed Business: Timely Action Taken by the Board

拯救受財困影響的企業

董事會及時行動至為重要

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Listing status is valuable in Hong Kong, with the city's strong access to the international capital markets and capability to facilitate inbound and outbound investments between China and the rest of the world. A listed entity is also viewed by some investors and lenders as being more credible. However, running a listed company is not without challenge.

In recent years, global economic growth have been slowing and market conditions persistently volatile, business in many sectors are experiencing strong headwinds, with some faring better than others. According to our clients, especially small and medium enterprises, a market turn or technological development going against their strategy can get them in deep trouble quickly. Listed companies, subject to more stringent business sustainability requirements, face much higher pressure than private companies in buying time for redefining strategy and reviving their business.

During the past decade, not less than 20 listed companies in Hong Kong were placed into liquidation or provisional liquidation because of their distressed financial position. Out of these companies, at least 10 were rescued through different forms of debts restructuring and revived.

Globally, listed companies are much more receptive to the idea of restructuring than in the past. The process is increasingly used as a risk management best practice to help companies ride out market turbulence and take control in the early stage of a potential business distress. In Hong Kong, this is also fueled by the supportive investment community, particularly those Chinese corporate and institutional investors who are willing to pay a premium to acquire shares of a distressed company who possesses good potential to come around and thrive again.

First Step: Bringing in an Independent Financial Advisor

When the board first sense that a company is encountering liquidity issues and financial difficulties, the first thing they do is appointing an independent financial advisor as soon as feasible to act as a buffer and trusted advisor between the company and its lenders and creditors. After assessing the financial position of the company, the independent advisor will assist the companies in putting forward viable debts restructuring proposals for the lenders and creditors to consider and buy time for the company's restructuring, for example entering into standstill agreements.

In the event that no debts restructuring

agreements can be reached between a proceedings, including winding-up petition filed by any lenders and creditors. As a result, the company's operations would be adversely affected, or even halted. The Stock Exchange of Hong Kong may request for trading suspension of the company's shares, which will not be lifted until the company can fulfill the resumption conditions imposed by the Stock Exchange.

A distressed business is facing steepening risk to liquidation day by day in both cases. An independent financial advisor is always racing with time. Leveraging its deep experience and network of corporate and institutional investors, the advisor has to provide viable options for the company to restructure its business, notably the identification and selection of white knight – an experienced and friendly investor that acquires a corporation at a fair consideration with the support from the corporation's board of directors and management.

Helping Find an Ideal White Knight for Restructuring

Finding an ideal white knight is the first step in addressing the resumption conditions. Preferably in the same industry as the distressed company, the select white knight will provide not only financial support but also deep

experience and knowledge in the sector to come up with a viable resumption proposal and help revive the company. Many successful business restructuring cases were achieved through the building of upstream or downstream businesses, thus expanding the underlying business operations of a distressed company with the working capital and new thinking injected by the white knight. For example, Tack Fat Group's business was successfully turned around in 2011. With the resources and expertise of the white knight, the Group has since rebuilt its apparel retail business by establishing a new distribution network, specialising in certain marketable products and introducing a new marketing campaign.

Only Consider Reverse Takeover If Restructuring Not Viable

Note, however, a listed company only holding cash or financial assets will not be regarded as suitable for listing. Therefore, a resumption proposal that is "passive" in nature, for example predominantly holding property investments or based on collection of rental income, will unlikely meet the business sustainability test imposed by the Stock Exchange. The objective of this is to prevent any backdoor listings of unqualified businesses through large-scale fundraisings.

Certainly, a distressed company left with light operations and assets may consider making acquisitions to improve its scale and financial positions after securing financial support. However, any acquisition of a "new" line of business could be deemed as a reverse takeover by the Stock Exchange. If this is the case, the relisting process will follow the procedures of an IPO application, which is a much more costly, meticulous and prolonged process than a restructuring.

Liquidation is the final resort when a company has exhausted all means to rescue its business. It is the worst case scenarios for all internal and external stakeholders. Not a single party will benefit in a liquidation, not shareholders, creditors,

customers nor employees, if the business can actually be revived with due efforts made by the board. **40**

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香

港一向與國際資本市場接軌，更是中國與世界各地進行境內外投資的一大橋樑，因此於香港上市的地位具有相當的

價值，不少投資者和債權人更認為上市公司的信譽更佳。然而，經營一家上市公司絕非易事。

近年全球經濟增長放緩，市場環境持續波動，許多行業都面對艱難的營商環境，當中企業的應變能力各有不同。從客戶中，特別是中小企業，我們了解到上市公司脆弱的一面，一旦市場走勢或科技發展與企業的核心發展策略背道而馳，可能足以令他們迅速陷入財困。相比私人公司，上市公司的業務可持續發展性受制於更嚴謹的監管要求，在爭取時間以重訂發展策略及重整業務方面，面對更大的壓力。

過去十年，不少於20家香港上市公司因財政困難而被清盤或進入臨時清盤程序。其中，最少有10家透過各式各樣的債務重整方案成功重整業務，得以繼續重生。

環球各地的上市公司均較過去更為接受企業重整的概念。越來越多上市公司將此視為風險管理的最佳常規之一，以助企業度過市況震盪，並在潛在財政危機的發展初期主動取得控制。香港的情況更受惠於蓬勃的投資業界，尤其是來自中國的企業和機構投資者，其往往樂意支付溢價買入具潛力及翻身有望的財困企業之股份。

首要行動：聘用獨立的財務顧問

當董事局發現企業遇到周轉問題和財務困難時，首要行動是盡快聘用獨立的財務顧問，以作為企業與貸款人和債權人間的緩衝，並擔當獲各方信任的中介人。獨立顧問評估企業的財務狀況後，會代表面對財困的公司向貸款人和債權人提供可行的債務重整方案以供考慮，並為企業爭取重整業務的時間，例如訂立暫緩協議 (standstill agreements)。

若企業與貸款人和債權人未能達成任何債務重整協議，企業則可能面對即時而

來的法律訴訟，包括由任何一方貸款人或債權人提出的清盤呈請。這將對企業營運構成不良影響，甚至導致營運癱瘓。香港聯合交易所(聯交所)可能禁止有關上公司的股票買賣，而待公司滿足了其復牌要求後才會解除有關禁令。

上述兩種情況下，財困企業的清盤風險都與日俱增。獨立財務顧問必須與時間競賽，發揮其豐富經驗和龐大的企業和機構投資者網絡，為受財困影響的企業提供可行的方案以重整業務，特別是識別和選擇白武士——在董事局和管理層的支持下以合理條件收購受財困影響的企業的有經驗和友善投資者。

企業重整 有賴覓得理想白武士

物色到理想的白武士是滿足復牌條件的第一步。白武士最好與受財困影響的企業來自同一行業，因為白武士不單只在財力上須提供支持，其更要幫助受財困影響的企業重回正軌，上市公司的復牌計劃正是有賴白武士於行業內的深厚經驗和專業知識。很多成功的企業重整個案都包含擴建上游或下游業務，透過白武士帶來的新資本和新思維拓展現有業務。德發集團國際有限公司於2011年的業務重整正是一個良好示範，公司借助白武士引入資源和技術，讓業務得以復蘇。其成功重建公司的服飾零售業務，建立了新的銷售網絡，集中銷售特定的熱門商品，並推出新的市場營銷計劃。

重整不通 方考慮反收購方案

有一點必須注意的是，只持現金或金融資產的企業將不會被視為適合上市。因此「被動性」較強的復牌方案，例如主要依賴持有物業投資或收取租金的方案，將難以通過可聯交所的業務持續性準則。這項規訂是為了防止未能達標的企業以大規模集資的手段借殼上市。

誠然，一家受財困影響的企業的業務和資產所剩無幾，於集得資金後或會考慮以收購行動來改善其業務規模和財務狀況。但任何對「新業務範圍」的收購行動，都有機會被聯交所視為「反收購」。一旦被視為「反收購」，復牌申請則須遵照首次公開招股 (IPO) 的程序處理，衍生的費用、繁複的手續和消耗的時間將遠超企

業重整。

清盤是一家上市公司嘗盡所有辦法脫離財困不果的最終選擇，對內外所有持份者均是最壞情況。沒有任何一方，不管是股東、債權人、客戶和僱員，可從清盤中得益，若公司業務仍屬董事局能力範圍內可盡力挽救的。☞

霍義禹 (Vincent Fok) 為富事高諮詢 (FTI Consulting) 的資深常務董事，於企業資產返還、企業重整，以及交易諮詢等方面，具有逾20載的深厚市場經驗。其曾參與協助多家受財困影響的香港上市公司重穩業務、助其成功重回正軌，以及在過程中與各方持分者尤其債權人維持良好溝通。霍先生是香港董事學會會員。

周偉成 (Daniel Chow) 為富事高諮詢 (FTI Consulting) 的資深常務董事，於財務匯報、企業重整，以及企業資產返還等方面，具有逾20載的深厚市場經驗，包括公司清盤、破產管理、財務評估及個人破產。其曾成功幫助不少企業及上市公司脫離財困，亦協助處理有關股東及家族成員糾紛的個案。周先生是香港董事學會會員。

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