

BANKRUPTCY & RESTRUCTURING 2017 EXPERT GUIDE

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BANKRUPTCY



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Be Prepared: structured information as basis for a preventive plan

By Michelle Barclay

Peruvian economy has been quiet stable for more than 10 years. We have overcome those critical times around 1998 when almost every industrial sector faced serious financial problems.

Factors that lead companies into crisis, at that time, were both internal and external. Internal factors were related to lack of management skills to keep a company growing and stable at the same time. On the other hand, external factors were related to climate change disasters (*Fenomeno del Niño*), the Asian and Russian crisis, drop of export prices, a weak financial system, lack of banking facilities for the private sector, among others. During this period, the government issued several amendments to our bankruptcy regulation and adopted other important actions in order to facilitate the turnaround of distressed companies.

Peruvian companies learned from the 1998 crisis and managed to keep stable during the 2008 international crisis. Today our country and our businesses are strong. Our system has sophisticated financial entities, as well as companies with far more experienced management teams.

However, today those managers have new challenges. Our country is facing several external risks (local and international). Climate change had recently caused devastating floods in several Peruvian provinces which require an expedite reaction from our central, regional and local government authorities. Those provinces need a short term reconstruction process.

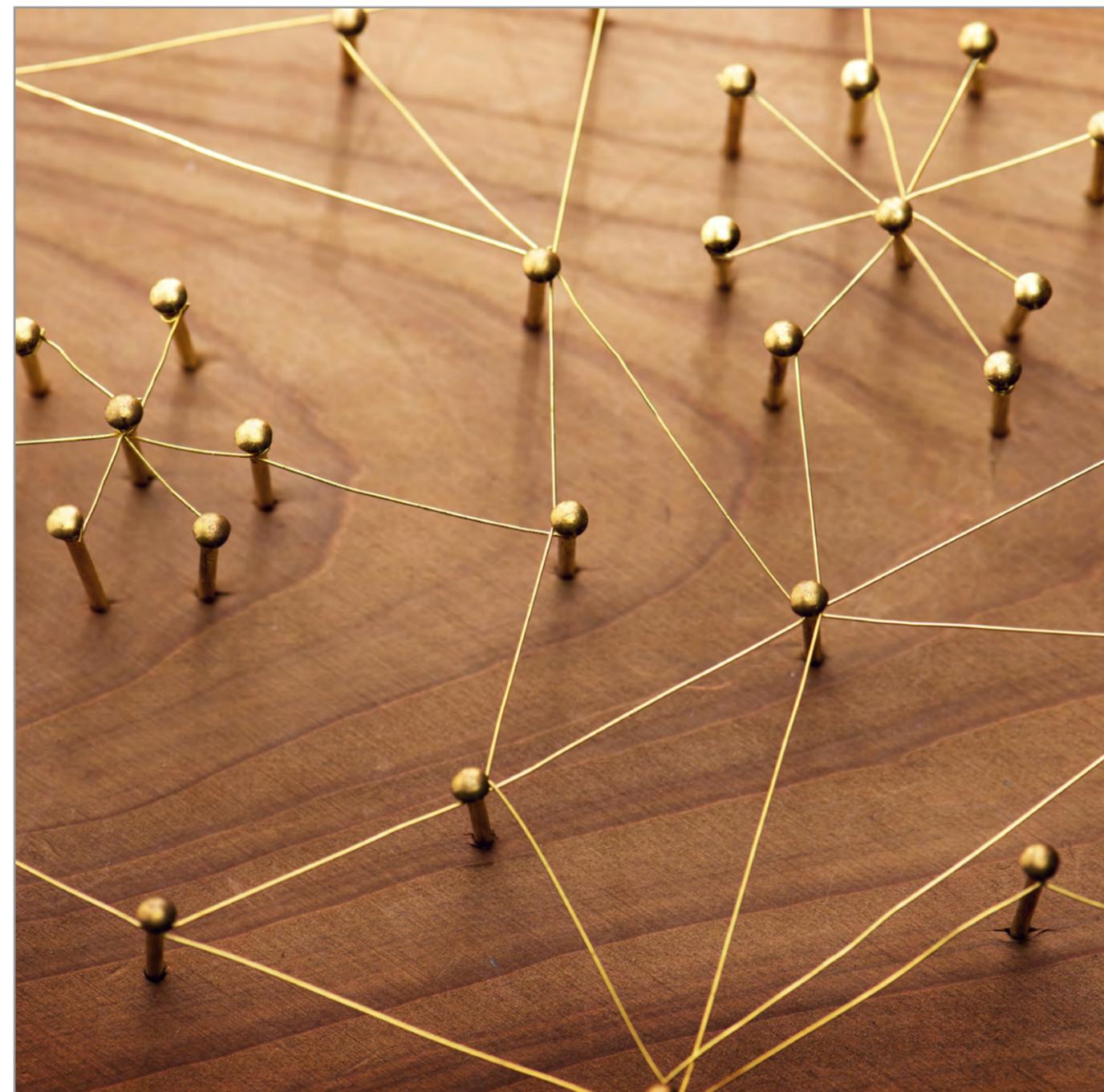
Moreover, corruption evidence and criminal investigations against important Brazilian construction companies and its officers have been a significant factor for interim paralysation of public infrastructure projects.

Internationally, tensions between the US, Russia, Iran, North Korea and Syria, the UK and the uncertain future of the European Community, are other external risks, which together with local ones, could have an impact on Peruvian companies' stability.

For any company in Peru or elsewhere, those external risks can affect growth, reduce the market, and lower prices of products and services. External risks are uncontrollable and could trigger a crisis if companies are not well prepared. In this context, management plays a fundamental role.

Management has to immediately adopt internal measures in order to keep the company strong and prevent a business failure. An immediate preventive action plan needs to be implemented and time for its development is a scarce resource. From our several years of experience advising Peruvian and international companies in financial distress, we have constantly found that only few management teams are well prepared to quickly develop a preventive action plan when facing external risks.

A basic and necessary element is frequently missing: Structured Information. By this we mean having accurate and updated information with a high degree of organisation in order to be rapidly pulled from a da-



tabase. Structured information is key for developing a preventive action plan.

Usually, companies which have annual financial statements as compliance of regulatory requirements can quickly provide a list of creditors and handout a list of their most important litigation cases. Evidently, public companies have constant opportunities to organise financial information and can easily provide updated financial information.

However, when external risks threaten the business, certain information that is not normally reviewed needs to be disclosed.

For example, organised reports informing how internal and external factors (local and international) have impacted on the company's financial and economic situation in the past. This is always a good start in order to analyse potential impacts of external risks.

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An analysis of the marketplace is essential, including a detailed list of the company’s competitors and customers. Any misjudgment in reading the marketplace could lead to poor decisions and failure of any preventive action plan.

Management needs to be able to clearly and rapidly identify cash requirements and cash resources, as well as potential lenders. In addition, a list of friendly and non-friendly creditors will disclose possibilities of support or potential contingencies. This detail needs to state the amount of each creditor’s claim and collateral, payment terms, and relevant default provisions.

Structured information includes a report and analysis of material litigation proceedings and any contingency that could have an impact on the company (injunctions or other actions that could affect the company’s assets or value).

Depending on each business, key employee information, including detail of their compensation plans, inter-company loans, and shareholders loans could be relevant information in order to organise a preventive action plan.

This is not an exhaustive list but an illustrative one. Each management team according to its business and industry will need to determine if additional information is required for developing its preventive action plan. This is a case-by-case analysis.

Structured information can be internally prepared

by the company: however, we always suggest engaging competent external professionals familiar with the business who will later support and provide credibility to the preventive action plan.

We have showed above several external risks that Peruvian companies are facing now and we have explained the importance for management of having structured information before preparing a preventive action plan. Our country has been our example to explain basic concepts that are applicable to any management team worldwide. Even though risks, and particularly local ones, will be different in each country, having structured information is the starting point for succeeding in a preventive action plan. Let’s be prepared.

Michelle Barclay is partner at CMS Grau (Peruvian office of international law firm CMS), a full service firm with more than 80 years of experience providing comprehensive local legal knowledge with a global approach to local and international clients.

Michelle is head of the Bankruptcy and Restructuring team. With an international career experience and a multi-disciplinary specialisation, Michelle provides expert advice in bankruptcy and corporate restructuring matters and has been actively involved in important bankruptcy cases in Peru and abroad. Michelle worked as a permanent associate at Skadden, Arps, Slate, Meagher and Flom’s Corporate Restructuring Practice group in New York. Michelle holds a Master’s Degree (LL.M.) from New York University and is admitted to practice in New York and Perú.

