

David Bryan is a Founding Partner of Bryan, Mansell & Tilley LLP.

Bryan, Mansell & Tilley LLP is a turnaround boutique which doesn't undertake formal insolvency work.

"Free of any conflicts we have been undertaking cross-border turnarounds on a pan-European and transatlantic basis since 1997," said Mr Bryan. "All our people are ex C-suite execs rather than from an advisory background and most speak another language. We operate in the mid-market with clients revenues between €10m and €1.5bn."

According to Mr Bryan, corporate insolvencies remain subdued in the UK, with interest rates low and banks not triggering insolvency events. He stated that this is partly because banks have their own balance sheet issues and also because they realise that insolvency is value destructive and a last resort these days.

"Many companies are still under extreme pressure but the statistics for Zombie companies seem to vary," he observed. "Measurement is difficult. Many struggle on with little or no investment and management becoming increasingly fatigued. When the recovery kicks in some will simply not make it either through loss of competitiveness or the inability to fund increased working capital requirements and increased interest rates."

When structuring a turnaround solution, Bryan, Mansell & Tilley LLP starts from the point of view that a live company is worth more than a dead one.

Tony Wayne is the President of IronHorse LLC.

IronHorse LLC provides complex restructuring/turnaround consulting, forensic and valuation services, litigation support, CFO Services, and due diligence to lower middle-market, small market clients as well as law firms, commercial lenders, and private equity firms. The firm's work centres around a six-state region: Nebraska, Iowa, Kansas, Missouri, Oklahoma and Arkansas.

"The IronHorse advantage is speed/responsiveness, highly personalised service to entrepreneurial business owners, and a highly focused industry concentration," said Mr Wayne. "Our organisation is lean, highly credentialed, and highly flexible."

Mr Wayne stated that the rate of corporate insolvency in the firm's geographical focus has slowed considerable in the past 12 months; however he noted that the firm continues to have a decent volume of smaller receiverships. He added that Chapter 11 filings are extremely soft, and most banks appear to have worked-out, rewritten troubled credits.

"\$1.6 trillion in CRE debt is timed to come due over the next 12-15 months, and we expect an increase in restructuring volume as a result," he commented. "Also, many commercial credits are highly vulnerable to a slowdown, and a rise in interest rates."

"We have no incentive to see a business go into insolvency and will leave no stone unturned in seeking a solution that delivers value for all stakeholders and a better result than insolvency," elaborated Mr Bryan. "We also roll our sleeves up and help implement the solution. Not all businesses can be turned round but we have had many successes where others thought the situation beyond salvation and have won two awards in recent years, details of which are on our website."

Mr Bryan concluded with his predictions for 2013/14:

"Recovery will be slow and we expect the market to remain broadly subdued. There will likely be picks ups in some jurisdictions and business sectors."



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Discussing the firm's approach to structuring a turnaround solution, Mr Wayne stated that it demands a "perfect storm" of a viable core business, a cooperative lender and a receptive client.

"We can then get the business refocused, restructured and rationalised around a profitable core," he explained. "The key is cooperation, transparency and communication."

In Mr Wayne's experience, the most common reasons for dispute when creating turnaround solutions and going through insolvency proceedings are: unreasonable, unrealistic demands from the lender; mistrust; poor communication; and lack of transparency. The firm has some experience in mediation to resolve these disputes; however Mr Wayne stated that it is usually not very effective.

In conclusion, Mr Wayne predicts continued slow conditions, a very competitive environment and pressure on fees for 2013/14.



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## Litigation in Brazil – The Difficulties & Alternatives

Octávio Aronis is the Senior Partner at Aronis Advogados.

As an attorney with a law firm in São Paulo, Brazil, simply speaking, navigating the Brazilian legal process can be difficult and time-consuming. I always carefully explain to all of my clients that due to the costly bureaucratic legal process, commercial litigation should only be pursued when all other alternatives have failed. For example, obtaining a judgment through a lawsuit can generally take between five to ten years.

That said, Brazil has established an excellent regulatory and monitoring agency called the Conselho Nacional de Justiça. This agency has been effective in prosecuting unethical and corrupt judges, and has worked to monitor court procedures to ensure that litigation processes are not unduly delayed, including reducing the number of cases eligible for presentment to the Supreme Court.

However, there is still a considerable problem in using conciliation, mediation, arbitration and other methods to expedite the resolution of many cases. There is also a lack of control in the number of frivolous lawsuits filed, with approximately 63.5 million pending lawsuits awaiting judgment. Furthermore, there is a lack of regulation over which trial judgments can be appealed, which has led to excessive appellate filings.

Another important element to be considered before entering into litigation is the costs. Due to the length of time, there are usually costs incurred during several steps, and since there is no guarantee of monies being ultimately collected, litigation is generally not recommended on commercial claims less than USD \$50,000.

In addition to legal fees, there are general costs that must be considered, particularly with foreign claimants, whereby all pertinent documents must be translated into Portuguese by an official translator, and subsequently certified by the local Brazilian Consulate.

Further contributing to the inherent difficulties in pursuing litigation in Brazil, Brazilian law states that foreign claimants must provide a legal bond, between 10 – 20% of the claim value, prior to the commencement of a lawsuit. This bond must be available for execution in the event that the plaintiff does not prevail in the lawsuit and is found liable for the defendant's legal fees.

I often receive inquiries from overseas companies that are already involved in litigation in Brazil and suddenly realize they have paid fees equivalent to almost 50% (or more) of the original claim value. As the slow bureaucratic process requires significant legal work, a rigorous investigation should be performed of a defendant's assets, operational status, as well as the long-term financial viability to pay a claim, prior to commencing with a lawsuit.

Generally speaking, it is considered reasonable to pay legal fees either completely on a contingency basis or as a combination of a handling fee and a success fee based upon the amount collected. Including a contingent fee element motivates Brazilian attorneys to resolve legal matters swiftly and encourages the avoidance of an unnecessary or lengthy legal process.



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