

A photograph of a diverse group of business professionals sitting around a table in a meeting. They are looking at documents and laptops, engaged in a discussion. The background is a rustic stone wall.

INFORMATION AGENT

Demystifying the restructuring process for creditors

By Arunima Misra and Natasha Chan, GLAS

Imagine you are a creditor of a distressed company that has learned that it is about to undergo a restructuring process.

What should you expect?

How will you know what the next steps will be?

Where will you get up-to-date information throughout the restructuring process?

Enter the Information Agent.

Restructurings represent some of the most complicated processes in all of corporate finance. Lawyers, bankers and their corporate counterparts work around the clock to bring these complex situations across the finish line. Little known, however, is the role that the Information Agent plays in these proceedings – particularly in its primary function as a conduit for information flow between debtors (and their legal counsel) and investors.

Until about 10 years ago, debtors and their legal counsel typically performed this function, a time-consuming process for all involved. By hiring third parties to manage the agency role, companies and their advisors freed up more time for themselves to focus on the strategic and tactical work required to bring their restructuring over the finish line.

Over time, this role became more difficult for traditional agents at banks and large financial institutions to perform. The often- contentious nature of some restructuring and bankruptcy proceedings forced many agents to resign from these positions due to conflicts of interest within other parts of their business. Without a strong, savvy, experienced and independent Information Agent, many deal parties could find it arduous to close their restructurings. In this whitepaper, we explore this crucial function and the many roles it plays for the benefit of creditors as well as debtors.

Authors



Arunima Misra
Legal Counsel
arunima.misra@glas.agency



Natasha Chan
Senior Legal Counsel
natasha.chan@glas.agency

Information Agent: The central nervous system for any complex debt transaction

Like much of the work in the middle and back-office, the hallmark of a quality Information Agent is one of seamlessness: deal parties do not realise the agent is there until they are not. To borrow the words of rock icon Joni Mitchell in her hit song Big Yellow Taxi, “You don’t know what you got till it’s gone.”

The Information Agent functions as the transaction’s central nervous system, relaying crucial updates and information between deal parties, and serving as a vital knowledge source which the debtor’s counsel can draw on to make important decisions about the structuring of their transaction.

The best Information Agents provide assistance to creditors at every stage of the restructuring, providing 24/7 service to answer their queries. Most questions revolve around the nature of the restructuring and what is taking place, but sometimes the queries can be as technical as how to complete account holder letters and proxy forms.

An Information Agent will also ensure that creditors complete all the required documents and receive all information distributed in connection with the restructuring. In most cases, these documents – specifically explanatory statements and account holder letters – are lengthy and extremely detailed, so the best Information Agents try to make their explanations and responses to queries as user-friendly as possible.

In most distressed debt restructurings, the Information Agent serves several functions – especially if there is a related lock-up process.

The Information Agent:

- ensures that information disseminated by the debtor in relation to the restructuring reaches the largest number of creditors possible;
- collects and tabulates creditor responses to the company’s restructuring;
- calculates any entitlements which may be due to creditors as a result of the restructuring, for example, PIK notes, shares or new notes; and
- in a Scheme or Restructuring Plan, provides evidence to the court, including appropriate witness statements about how it disseminated information in its agency role.

What to expect when a debtor is preparing to launch a restructuring process

Bondholder identification

At the beginning of a restructuring engagement, the debtor can ask its Information Agent to launch what is called a bondholder identification process. Through this process, companies try to gauge who their holders are, in what jurisdictions they are located, the amount of their holdings and what classification of notes they hold (e.g. Reg S or 144A). This is incredibly helpful for a debtor as it can get familiar with the

breadth and number of investors it is dealing with – most companies can have hundreds and sometimes thousands of bondholders.

If a bondholder identification process has been initiated, a creditor will receive notification via its custodian through the clearing systems that the debtor has launched that process, which serves as a good indication that a restructuring may be in motion.

With the bondholder identification process and throughout the restructuring, Information Agents will usually liaise directly with the clearing systems – without the aid of external legal and financial advisors – to make decisions on the

way the process is run operationally. Depending on the nature of the transaction, an Information Agent must work with clearing systems based in different jurisdictions that have very different rules. The best agents are confident enough and have strong enough relationships with the clearing systems in cross-border deals to ensure deal parties do not face any delays.

The lock-up process

The purpose of a lock-up agreement is to enable a debtor to launch its restructuring with a level of certainty as to the amount of support it will receive from its creditors (and shareholders, if applicable).

Unless the creditor is already in an ad hoc group and has legal advisors (which have been negotiating a lock-up agreement with the company on its behalf) it will be notified by the company through the usual channels (either via the clearing systems if it is a bondholder, or via its facility agent if it is a lender under a facility) that the company has launched a lock-up agreement for the restructuring.

Creditors will be invited to “lock-up” to support the restructuring. In the case of a complex debt restructuring, that process is usually coordinated by an agent like GLAS and run outside of the clearing systems.

Creditors will return their accession deeds to the lock-up agreement to the Information Agent and provide evidence of its debt holdings to prove that it is indeed a creditor of the company. If the Information Agent has technology capabilities, like our team at GLAS does, this process can all be done electronically.

At GLAS, we set up a password protected website, known in the market as the “GLAS Portal”, which allows creditors to access and download documents at their convenience and return signature pages. For the debtor’s and creditors’ legal teams, our GLAS Dashboard also enables counsel to access the status of lock-up agreements, giving them real-time data on whether certain thresholds have been reached.

In some situations, creditors may be entitled to a lock-up fee if they “lock up” to the restructuring and at the conclusion of the restructuring, the Information Agent will also manage payment of the fee to creditors.

Launching the restructuring itself

Most companies aim to complete a restructuring under the terms of its debt documents if possible. If the company holds debt in the form of notes, it will likely conduct a consent solicitation through the clearing systems to complete its restructuring according to the terms

of its debt. In this scenario, the Information Agent must serve as consent solicitation agent and help the debtor, its counsel and creditors to navigate that process.

However, because the thresholds for amending money terms are often high (90% in the case of most high yield bond indentures), debtors and their counsel should be prepared to carry out their restructuring in an alternative way if they think the consent solicitation may not receive enough support (for example, if fewer creditors than expected accede to the lock-up agreement). In that case, they may consider using an English law scheme or a restructuring plan to “cram down” non-consenting creditors.

What to expect once the restructuring process launches

Restructuring documents and website launch When a company is ready to launch its restructuring, it will issue its key documents for example, a practice statement letter in the instance of a scheme of arrangement) which give creditors more information about the restructuring, including the expected court and creditor meeting dates. As Information Agent, GLAS will set up a dedicated GLAS Portal (see above) for the restructuring to which creditors can register for access.

All communications from the debtor to its creditors will be available on this website. The Information Agent will also disseminate this information through its regular channels, including Debtdomain and the clearing systems, who will then notify creditors via their custodians. This enables creditors to receive real-time updates on a restructuring situation and access all relevant documents at any time.

Voting

Creditors are entitled to vote on a consent solicitation, scheme or a restructuring plan via the clearing systems and, in some restructurings, by returning an account holder letter. Information Agents may offer creditors the ability to complete their account holder letter electronically. When playing this role, our team at GLAS provides company counsel access to the GLAS Dashboard to view the voting results in real time.

Creditors meetings

On schemes and restructuring plans, the court convenes meetings of creditors to vote on the restructuring. If required, the Information Agent will run the creditors’ meetings, which are largely happening remotely via videoconferencing due to the pandemic. Creditors typically vote by proxy (by nominating the Chairperson as their proxy via the account holder letters returned in the preceding step above) and do not attend the meetings, but some creditors may prefer to attend and vote at the meeting themselves.

Implementing the restructuring

Once the restructuring terms have been approved, the Information Agent still plays an important role in ensuring that all creditors are kept updated on the status of the restructuring, including distributing any notices required under the documentation and crucially, calculating any restructuring entitlements which creditors may be due to receive.

Playing the role of Information Agent represents some of the most interesting work GLAS can do in the restructuring space.

We have been appointed Information Agent in several high-profile recent schemes, plans, consent solicitations and tender offers:

Ferroglobe: In July 2021, we acted on Ferroglobe PLC’s exchange offer which saw its existing US\$350m 9% Senior Notes due 2022 refinanced.

HEMA: HEMA Group engaged GLAS to work on its complex debt restructuring in 2020, in which its debt was more than halved and its liquidity position greatly improved with an additional bond financing of €42m made available to the company.

Codere: After restructuring in 2020 under a Scheme of Arrangement and with an injection of new financing totalling €250m, Codere undertook a further restructuring in 2021 involving bridge notes financing, a new money injection, and a debt-for-equity swap which saw its business transferred to Codere New Topco SA, a holding company in which the bondholders have a 95% stake.

Pizza Express: Pizza Express successfully completed its comprehensive debt restructuring in November 2020, with the group’s external debt more than halved as a result of the restructuring.

Gategroup: In February 2021, Gategroup proposed a restructuring plan which was approved by the requisite majority of its creditors and sanctioned by the court.

Yell: Yell Bondco plc engaged GLAS to work on their debt restructuring which involved a reduction of the total principal outstanding on the notes which was implemented by a debt-for-equity swap, and an extension of the maturity and amendment of terms of the remaining notes.

Mulhacen: Mulhacen Pte Ltd, the parent company of Spanish bank WiZink, launched an exchange offer and consent solicitation in March 2022 to effect its restructuring. The restructuring involved a €280m new capital injection from existing stakeholders and the sponsor together with a debt-for-equity swap.

On many of these transactions, GLAS is also involved in other parts of the company’s capital structure, for example as facility agent, paying agent, trustee, security agent or equity agent.

Untangling the complex web of agency and trustee roles in restructuring and post-restructuring situations

Due to the highly complex nature of company capital structures and restructuring proceedings generally, parties playing the role of Information Agent are often asked to play additional roles both during and after the completion of the process. Below we provide some examples of common situations that arise during restructurings and the role an agent can play to help navigate these challenges.

- **Holding Period Trustee:** In some restructurings, the debtor must distribute cash or non-cash entitlements to its creditors (e.g. Pizza Express in 2020, when the company issued new notes and shares to its creditors). GLAS can hold on trust such entitlements for a fixed period of time (usually 12 months but can be longer or shorter) for creditors to come forward to claim after the completion of the restructuring, or sell such entitlements on creditor instruction.

This need often arises where not all the creditors vote (and therefore do not make themselves known) as part of the restructuring. Creditors may also not be able to take non-cash entitlements and may need time to make arrangements for someone else to take them or decide to sell them.

- **Equity Agent:** Particularly where there are debt and equity which are stapled (i.e. need to be transferred together), or where there is likely to be numerous transfers of shares, we can play the role of equity agent and provide the company and shareholders or creditors with a single point of contact for any transfers: this means that the company does not have to be involved in the day to day practicalities of these transfers, and the creditors are able to liaise with an agent that has an in-depth knowledge of the transfer mechanics under the documents, making the process smoother on all ends.
- **Restructuring Agent:** Where there is a complicated, multi-layered capital structure, and there are different facility agents and/or trustees involved, GLAS can be appointed as restructuring agent to be the focal point of contact for other creditor representatives and help coordinate and push forward the restructuring.
- **Escrow Agent:** Where cash needs to be transferred on the day of completion, it can give parties comfort if an escrow agent is appointed, who will hold the cash pre-implementation and transfer this upon instruction to the relevant parties.

Restructuring and Insolvency
Trustee
Direct Lending
Escrow Services
High Yield
Loan Closing
Loan Administration
Leveraged Finance
Structured Finance

