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Negotiating with lenders can be difficult in current environment

BUILDING BUSINESS
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Many businesses are dealing with existing financing and banks in an environment that is uncharted and confusing.

What has been for so many years a fairly fluid system has become instantly complex and rigid. Loans that could be easily refinanced or extended in recent times are now subject to tremendous scrutiny. Lenders are battling issues that threaten the very viability of our banking system and institutions. One of the greatest challenges facing borrowers and their advisers is navigating this complex environment and achieving mutually beneficial outcomes for the banks and themselves. The way that borrowers approach lenders can make the difference between success and failure.

The typical approach is for borrowers to determine what they "need" or "want" or "can do" and present that to the lenders as the necessary options. The banks' representatives do the same. This typically results in impasse, and little mutual value is created. In dealing with problem financings with lenders, consider this five-step approach to achieving a mutually valuable outcome through alignment-based negotiations.

Step 1: Research. The first thing that borrowers and their advisers should do before negotiating with lenders is to conduct their own research on all aspects of the financing, including the lender's financial condition, the borrowers' and guarantors' financial conditions, project or industry economics, and the regulatory, economic and political environment. It is important to understand the current condition of the lender and its propensities under similar circumstances with other borrowers. It is also critical to have a clear understanding of the borrowers' (and guarantors') financial conditions. No matter how difficult to predict in this environment, have a realistic sense of asset values, cash flow and debt and equity positions and a deep understanding of the economic drivers affecting the financing.

Step 2: Align. Once research is gathered, the next step is to align internal interests. Whatever the business structure, management must seek an aligned view of all stakeholders before commencing negotiations. Identify a range of acceptable agreement, or RAA, inside of which the negotiators can complete a deal. Also identify an alternative to an acceptable agreement, if an agreement cannot be achieved within the RAA. In other words, confront the possibility of a "Plan B." What are we prepared to do if we cannot get a deal within our RAA? In dealing with this issue, you will notice an inverse relationship between the RAA and the viability of Plan B. The process of confronting these alternatives requires transparency with all of the important parties, including investors and management.

Step 3: Design. Grounded in research and with an RAA and a Plan B in place, the next step is to design the interactions with the lender representatives. Preparation is imperative. Who should participate? Should advisers be included? When should the discussions take place? Where? Who will participate for the bank? What do we know about their negotiating styles? Are they position-driven negotiators (I win-you lose), affinity-driven (win-win) or facts-driven?

Step 4: Confer. To engage in mutually valuable negotiations, the conversation must start with where the parties agree and move from there. The conversation should be conducted in the context of three important considerations: The facts, the lender's view and the borrower's view. Facts are those things that the lender and borrower agree on. View consists of purposes and concerns. Purposes are those things that people are "for," and concerns are those things that people are "against." In negotiating with lenders, borrowers must consider the lender's purposes and concerns and vice versa. What would be a good outcome for the bank, and how can we help achieve that outcome within our RAA? In the end, the possibility of a mutually valuable outcome lies only at the intersection of the facts and the lender's and borrower's respective purposes and concerns.

Step 5: Close. The final step is to close the deal. Too often, people leave the table without a clear understanding of the outcome. Write it down and codify the agreements in real time. With today's technology, it is realistic to think that a term sheet or memorandum of understanding, with all of the appropriate disclaimers, can be prepared on e-mail and acknowledged.

By following these steps, borrowers stand a greater chance of achieving desired outcomes. Be methodical, but not slow. Move from research, through alignment to design and get to your seat at the table. Conduct your negotiations in the context of the facts and consideration for the purposes and concerns of the lender. Therein lies the possibility of realizing mutual value.

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