

ATTA Newsletter

October 2013, Edition 3



Success in Singapore

ATTA successfully held its first Mid-Year Conference in Singapore on 14 June 2013. The event was attended by 22 members and interested parties and all of the sessions generated considerable discussion amongst delegates. The conference included sessions on Indonesia, Vietnam, Afghanistan and Myanmar, along with a panel discussion covering topics including the profile of a transformation and turnaround professional in Asia, the importance of reading an organisation's culture in order to execute strategic change management and the need to differentiate between distressed companies versus those at the growth capital phase. It was a packed agenda that sparked thought-provoking and informative discussions. For more information on the conference, including an overview of the agenda, see www.asiatta.com

Considerable interest in ATTA by external parties was generated following the press coverage of the Conference in the Singapore Business Times on 17th June 2013.

Many thanks to ATTA Board Director Salman Bokhari for organising the event, with administrative support provided by Nina Koh of FTI Consulting in Singapore.



Cocktails at The Tower Club

Ahead of the Conference, ATTA sponsor FTI Consulting held a Cocktail Party at The Tower Club. This event was very well attended and provided an excellent opportunity for delegates to network and to meet leading individuals from within the Transformation and Turnaround industry in Singapore.

With many thanks to FTI Consulting for their support at this event.

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Asia Transformation & Turnaround Association (ATTA) is the premier professional body in Asia that brings together leaders in the transformation and turnaround sector to share their executive experience and industry knowledge.

Over the past three years, ATTA has grown its membership base to over 80 members comprising internal turnaround executives, interim managers, attorneys, bankers, accountants, private equity professionals, lenders, public relations professionals as well as interested parties from other related fields.

Membership requires verifiable experience and includes a formal accreditation process. As such, membership is increasingly being recognized across industries as the sign of an experienced and qualified professional with significant value to bring to transformation and turnaround projects.

In addition to our members, we regularly connect with over 100 additional professionals with keen interests in the transformation & turnaround space. More information on ATTA and what we do can be found at www.asiatta.com.



Recent Events

We have held a number of events around the region that have been very well attended. Recent events include:

Hong Kong

On 14 May 2013 the Hong Kong Chapter was delighted to welcome ATTA Member, Advisor to the Board and Fellow of the Institute for Turnaround, **Ian Gray**. Ian is a highly experienced Transformation & Turnaround professional. He was previously a member of the Board of IFT so his insights to both the Board of ATTA and Hong Kong members were invaluable.

Ian talked about how the marketplace has evolved over time and provided key insights into how to approach raising awareness of ATTA and generating business for its members.

Beijing – AmCham Seminar Series

The Beijing Chapter has held three seminars in conjunction with AmCham as part of the **Restructuring, Transformation and Turnarounds series** to talk over issues relating to restructuring, turnarounds and transformations in China. These were very well attended and sparked considerable debate. The first on 16 April covered whether the services offered by transformation, turnaround and restructuring firms are needed in China, or if the problems requiring these services are not being acknowledged or are hidden. **Jim Dubow**, managing director and co-head of Asia Alvarez and Marsal, led the presentation and was joined by ATTA Beijing Chapter co-heads **Russell Brown**, managing partner of Lehman Brown International Accountants, discussing business transformation in China and **Bob Fonow** of RGI Ltd., who spoke on turnarounds and fixes in China.

The second was held on 6 June and ATTA Chairman, **Adam Salzer**, Managing Director of PwC Advisory Services Hong Kong provided his views on Managing Distressed Assets (and Companies): Tools, Techniques and Policies. Topics included an understanding of the dynamics of distressed company managements, tools used by turnaround and transformation managers in corporate renewal and an understanding of the challenges and realistic solutions concerning corporate turnaround and managing very rapid growth in China. Adam was joined by fellow ATTA Board Member, Bob Fonow, and the discussion was moderated by **Chris Murck**, President of AmCham China.

The third was held on 13 September and **Lesli Ligorner**, Partner, Simmons & Simmons, presented on "Turnaround and Transformation - the Human Resources Dimension". With HR issues in transformation and turnaround situations being the most sensitive and potentially disruptive issues faced by managers in China, Lesli provided insights into understanding the dynamics of distressed company management, the importance of HR in the success of restructuring, transformation and turnarounds and an understanding of legal and regulatory issues in China concerning corporate recovery and renewal.

Shanghai

Our Shanghai Chapter continues to grow and has held three successful events. On 19 March, a discussion was held on lessons learned from the Caterpillar write-off following a fraudulent M&A transaction in China. **Steve Hardacre**, Partner, GCP Asia Ltd led the discussion and was joined by ATTA Shanghai Chapter Heads **Lesli Ligorner**, Partner, Simmons & Simmons and **Bernd Stucken**, Partner, Pinsent Masons.

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OUR SPONSORS

We are very grateful for the support and sponsorship of the following organisations.

Pricewaterhouse Coopers



On 21 May, a Networking Breakfast was held at the offices of Pinsent Masons and **Joe Fan**, Senior Director, Corporate Finance / Restructuring and **Marcus Paciocco** of FTI Consulting, talked about their work in turnarounds in China over the past decade.

On 11 September, Newbridge Partners hosted a Networking Breakfast. **Francesco Masetti-Placci** of Newbridge Partners talked about "R&D in China: Transformation and Recent Trends". Following the presentation, a discussion was held on the expectations for ATTA in the next 12 months. This produced some excellent ideas which are now being considered and implemented.

Upcoming Events

ATTA Conference

Registration is now open for the 4th Annual Conference that will take place on **8/9 November 2013** in Hong Kong. Our AGM will be on Friday 8th November and will be followed by a number of sessions on how our members can utilise the assets of ATTA.

Sessions on Saturday include the Transformation of Asian Privately-Held Businesses and Family Firms, Fraud from the Front Line, Banks and Private Equity: Challenges in Managing Restructuring and Transformation Opportunities, Overcoming People and Cultural Issues and Maximising Stakeholder Value and Grooming Businesses for Exit.

For more information and to register, please contact conference@asiatta.com. We look forward to seeing many of you there.

ATTA Awards

The Annual ATTA Awards Dinner will be held on 8th November at Club Lusitano, Hong Kong. For more information on the Awards and the nomination process, please see www.asiatta.com or contact the Chair of the Awards Committee, Rupert Purser, at: rupert@turnaroundasia.com.

The Chief Restructuring Officer (CRO)

By Ian Gray, Baronsmead Consulting

The role of Chief Restructuring Officer first developed in the US in the 1990s. The heavy requirements placed on US companies seeking protection through the court-regulated Chapter 11 process meant the role of corporate rescuer had to be closely defined. Therefore the CRO emerged as a board-level appointee anchored in the management structure of the company but with clear responsibilities.

The appointment of CROs in the UK and Asia only started relatively recently, although it is now commonplace and there are organisations (IFT and ATTA) in each of these jurisdictions that accredit turnaround professionals. Having a more specific title is important as it makes a definite statement to all stakeholders: if a turnaround expert is brought in as merely an outside consultant or adviser, he or she may not have enough power to do the job.

The appointment of a CRO brings with it the individual's contacts, presence and track record that will, in part, appease the organisation's creditors.

But a CRO's actual duties may differ widely from firm to firm depending on the situation. (It is important that all parties are clear about the CRO's function as the title is sometimes given erroneously.) The remit can cover these core areas:

- Stabilisation and management of cash and working capital
- Responsibility for the Turnaround Plan
- Restructuring the balance sheet to handle the debt issues
- Operational restructuring and performance improvement
- Stakeholder management.

Banks often facilitate the appointment of a CRO to assist with the varying issues of running a stressed business. However the incumbent team is frequently in denial and will baulk at letting an 'outsider' near the organisation until other options have evaporated. But early intervention is essential to increase the options available to stakeholders. The CRO's experience and knowledge of

restructuring can mean the difference between bank support or default, recovery or failure. A successful outcome will mean the survival of the business and save jobs.

A good CRO will deploy both strength and diplomacy: they must be skilled negotiators while still being part of the team. But it remains a temporary role and they must never look to replace the CEO. By taking responsibility for the additional workload and the swift implementation of restructuring decisions, the CRO allows the board to continue to run the company. Having an expert on hand can be a huge comfort for the management team, however uncertain they may be initially.

Turnaround experts have assisted financially troubled companies in the reorganisation process for decades. Today, Chief Restructuring Officers work collaboratively with the whole management team. When a turnaround professional is employed as a CRO, there is an important perception that the person is in full

control of the reorganisation process, has a high level of independence, and displays an overriding duty of care to the company. By working collectively the long term results of restructuring, long after the CRO has departed, are

much more likely to be positive.

Ian is an Advisor to the Board of ATTA. He is also a Fellow of the Institute for Turnaround.

Transformation of Labour Dispatch Arrangements`

By Lesli Ligorner, Partner, Simmons & Simmons

Employment laws in China continue to evolve and provide greater protections to employees as the PRC economic model continues to evolve towards a market based economy.

The PRC Labour Contract Law (LCL), a key piece of legislation governing employment relationships in the PRC, has been amended for the first time since coming into force five years ago on 01 January 2008. The amendment to the LCL was passed by the Standing Committee of the PRC National People's Congress on 28 December 2012. The amendment focuses on labour dispatch arrangements and came into force on 01 July 2013.

Those operating in China and those undertaking transformation and turnaround projects in PRC should be aware of the implications of this legislation when reviewing companies they are working with to ensure they are not in breach of the law.

Labour dispatch arrangements and amendment to LCL

The amendment to the LCL focuses on labour dispatch arrangements. A labour dispatch arrangement is where a company (a labour dispatch agency) signs a labour contract with a worker, who is then assigned to work for a different entity. A labour dispatch agency is a company that engages in the business of employing workers and assigning them to work for other companies.

Amongst other clarifications, the recent amendment now provides that "labour dispatch arrangements may only be implemented in temporary, auxiliary or substitute positions" (emphasis added). Temporary, auxiliary and substitute positions are defined as follows:

Temporary position: a position that exists for not longer than six months.

Auxiliary position: a position that is not part of the employer's core business which supports the employer's core business.

Substitute position: a position that becomes vacant due to an employee taking study or other leave, and as a result a substitute worker is needed to fill in the position for a certain period of time.

Further, the amendments provide that the Ministry of Human Resources and Social Security has the power to set the maximum percentage of workers that an employer may hire using labour dispatch arrangements. It is expected that this may range between 10-30% of the entity's total population. In addition, the penalties for violation of the labour dispatch provisions of the LCL will increase.

Implications and recommendations

These amendments mean that employers will no longer be permitted to hire dispatched workers to work in long term positions to perform core business functions. Employers may, however, continue to hire dispatched workers in temporary, auxiliary or substitute positions. However, due to the requirement for a labour dispatch agency to sign a two year contract with a dispatched worker under the LCL, if an employer wishes to hire a dispatched worker in a temporary or substitute position for less than two years, it will likely need to pay a substantial premium to the labour dispatch agency to cover the employment cost for the entire two year period.

Given these new restrictions and limitations, employers who have dispatched workers in the PRC should audit their use and the percentage of dispatch workers in relation to each PRC company's total employee population and consider

whether to convert any portion of those secondees to direct hires. Importantly, labour dispatch agencies may continue to be used for payroll administration functions.

Exception

The above amendments do not affect representative offices. Representative offices in the PRC are only permitted to hire local Chinese employees through labour dispatch agencies. They may – and indeed, they must – continue to hire local Chinese employees in permanent and core positions using labour dispatch arrangements.

Conclusion

A key piece of legislation governing employment relationships in the PRC since its promulgation in 2007, the LCL has continued to generate considerable attention as it evolves through national implementing regulations, local implementing regulations and interpretations and the instant amendments. The restrictions implemented in the labour dispatch system, which started under the LCL, will continue to narrow, as the government continues to disfavour the use of labour dispatch outside of unavoidable or regulated circumstances. Employers in the PRC should evaluate their current labour dispatch practices now, before the restrictions on numbers of dispatch workers are issued, in order to ensure smooth personnel decisions.

More information

For more information on this, please contact ATTA Director and Simmons & Simmons Partner, Lesli Ligorner, at +86 21 6171 9328 or lesli.ligorner@simmons-simmons.com