

Banking Crisis Sparks Need for Corporate Welfare Check

Troutman Pepper advises portfolio companies to review legal and financial obligations



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For many private equity firms, the recent bank failures served as a wake-up call to review their portfolio companies' corporate documents, the legal status of their entities, and credit and banking arrangements to ensure everything is in order.

If firms don't act now, they may open themselves up to costly yet entirely avoidable pitfalls. Portfolio companies should stand ready to quickly engage in any type of refinancing, fundraising or sale transaction.

National law firms like Troutman Pepper can help portfolio companies stay up to date on key documents and obligations and to strategize in navigating this uncertain market.

Troutman Pepper has developed a unique approach to client service. Troutman Pepper Plus, the firm's client feedback and value program, provides clients with a suite of tools to help them keep track of contracts and other critical documents.

"We are advising our clients to conduct an inventory of their books and records and make sure they have a good handle on their credit and banking arrangements and contractual obligations," says Thao Le, a Troutman Pepper partner who specializes in private equity and M&A issues. "We ask our clients, 'Do you have a good sense of your contractual obligations and rights relative to your investors, financing sources and key commercial parties? Do you have a central repository of your material documents?'"

What to Track

Le says portfolio firms should focus on three key areas: legal status of their entities, credit and banking arrangements, and contractual obligations to their investors and key commercial parties.

For legal entities, portfolio companies should ensure all

the entities in their organization are in good standing at the state level and current on their franchise taxes. They should also ensure their stock ledgers and capitalization tables are up to date to accurately account for all outstanding equity issuances. Companies should have an appreciation of their equity and debt constituents and of their obligations to notify such constituents of material developments.

They should also understand all the accounts through which they have access to funds. Some of those funds may be deposited in restricted accounts—whether for security deposits and/or escrows for M&A transactions. Funds in restricted accounts should not be included as a source of liquidity for companies or within the purview of collateral packages for secured lenders.

Le has advised portfolio companies to review their loan agreements and banking arrangements and understand the terms and conditions, particularly how interest is calculated on their loans and how much can be withdrawn daily.

Furthermore, businesses should review their key contractual arrangements, including leases, to understand their default and change of control provisions. In this market, portfolio companies may be required to quickly participate in a debt or equity financing or potential sale. A company's understanding of these arrangements goes a long way to planning for this uncertain market, Le says.

What Portfolio Firms Can Do Now

To ensure that all legal and financial arrangements are in good order and they have a good understanding of those arrangements, portfolio companies should work closely with their legal counsel, both internally and externally, Le says.

By offering technology tools and platforms such as Troutman Pepper Plus, Troutman Pepper makes it easy for clients to manage their legal affairs. Troutman Pepper's technology offerings include a portal for storing documents and tracking progress, as well as reminders to help clients manage their projects more effectively.

"We recognize some portfolio firms and clients have limited resources," Le says. "They can leverage a law firm such as Troutman Pepper to stay on top of this type of corporate maintenance." //