

## Centro Properties Group Reorganizes: One Small Step for Man, One Giant Leap for Australian Restructurings

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After four long years, Australia-based Centro Properties Group (“CNP”) has consummated a global restructuring that combines a debt-for-equity swap with an aggregation of its assets into a new real estate investment trust, Centro Retail Australia (“CRF”). Bracewell & Giuliani was first engaged by Centro’s private placement noteholders in December 2007. As the restructuring progressed Bracewell’s role expanded to becoming lead counsel for CNP’s entire international lending syndicate consisting of more than 90 distressed debt investors, institutional investors and commercial banks (the “Senior Lenders”).

Today is the effective date of the aggregation and CRF, which holds more than \$4.4 billion of quality Australian retail properties, interests in various real estate investment syndicates and an internal property management business, will begin trading on the ASX. The last step in the restructuring process will take place early next week with the conversion of the Senior Lenders’ \$3 billion of senior debt into the majority of the equity of CRF. Widely described in the press as one of the most complex and innovative restructurings in Australia, the CNP restructuring is a hard fought victory for all involved, demonstrating the viability of debt-for-equity transactions in Australia, the willingness of Australian courts to consider novel schemes of arrangement and the ability of the Australian restructuring regime to accommodate pre-packaged restructuring transactions.

### **The Stabilization Period**

CNP’s restructuring saga began in 2007 when its original financial creditors – eight international commercial banks and ten U.S.-based institutional investors – faced a harsh combination of defaults and plummeting commercial real estate values. The primary default arose from the misclassification of a short term \$2 billion guarantee liability. This misclassification prompted shareholder litigation against CNP, its majority-owned subsidiary Centro Retail Trust (“CER”), and CNP’s auditors (PricewaterhouseCoopers).

After entering into a series of short-term forbearance agreements, the original financial creditors agreed to a three year stabilization period in January 2009 to permit exploration of more permanent and comprehensive restructuring options. By December 2010, many of the original financial creditors had sold their debt, and the separate commercial bank and institutional creditor groups evolved into a combined group of Senior Lenders that were instrumental in negotiating and consummating the final restructuring transaction.

### **The Aggregation Plan**

CNP's corporate structure—reflected in a 100 plus page organizational chart—presented an enormous challenge to the restructuring efforts. CNP, as the ultimate parent entity, owned, directly and indirectly, a majority interest in the key property owning entities, but no one Centro entity owned 100% of any one property. Additionally, two intermediary property owning entities that were partially owned by Centro also had external public shareholders.

Despite these challenges, in February 2011, the Senior Lenders, CNP, CER and other Centro entities agreed to a framework for a restructuring, which included four key components: (1) the sale of CNP's U.S. assets, (2) aggregation of the Australian assets into a simplified real estate investment trust ("REIT"), (3) a debt-for-equity exchange by Senior Lenders, whereby Senior Lenders would cancel their senior debt in exchange for CNP's equity interests in the new aggregated REIT, and (4) a A\$100 million consent fee, which Senior Lenders agreed to make available for CNP junior stakeholders if the transaction was consensually and solvently executed.

CNP completed the sale of its U.S. assets in June 2011 for a purchase price of more than \$9 billion. The proceeds of the sale were applied as a pay down of senior debt, and also used to fund the A\$100 million consent fee, Centro's wind-down budget and other accrued liabilities. In August 2011, Senior Lenders holding approximately 83% of the senior debt, CNP, CER and other Centro entities finalized an implementation agreement that charted out the complex mechanics of the restructuring.

### **Consensual Implementation and the Fallback Plan**

Certain aspects of the restructuring plan required the consent of various stakeholders, including CER shareholders, CNP shareholders, holders of CNP secured hybrid bonds and holders of CNP unsecured convertible bonds. In order to obtain the necessary consents, interconditional schemes of arrangement and corporate and trust resolutions were proposed. An Australian scheme of arrangement can bind an

entire class of creditors if more than 75% in amount and 50% in number of those creditors voting vote in favor of the scheme. Unlike a single chapter 11 plan that would cover all classes of creditors and shareholders, separate schemes of arrangement were required for each class of CNP creditors, as well as separate corporate resolutions for CNP and CER Shareholders.

Given Centro's financial situation, all parties junior to the Senior Lenders (the hybrid bondholders, convertible bondholders, contingent creditors and CNP shareholders) were out of the money and would not have received a recovery in a liquidation. However, as part of the February agreement, the Senior Lenders had agreed with the Company to pursue a solvent restructuring and, accordingly, made A\$100 million of the U.S. sale proceeds (which would otherwise have been used to pay down senior debt) available to such stakeholders. In order to receive their share of the consent fee hybrid bondholders, convertible bondholders, and CNP shareholders all had to approve their respective schemes or corporate resolutions and aggregation had to be implemented successfully. In the event that any of the junior stakeholder constituencies did not approve the plan, no portion of the consent fee would be paid.

Given that there was no assurance that the junior stakeholders would approve the restructuring proposal, even though they were clearly better off economically if they did so, the Senior Lender adviser team developed a plan to implement the restructuring transaction on a non-consensual basis if required. This "fallback" plan was integrated into all of the aggregation transaction documents and contemplated that the Senior Lenders would appoint a receiver over the pledged assets of Centro which included all of CNP's equity interests in its property owning subsidiaries. Because secured creditors are not bound by the automatic stay in Australia, receivers appointed by the Senior Lenders would have been able to step into CNP's shoes to consummate aggregation and the debt-for-equity transaction without the consent of the junior stakeholders. The fallback plan, which was often referred to as the "pre-pack plan" because it offered many of the same benefits of a U.S. pre-packaged chapter 11 plan, reduced execution risk and provided a degree of certainty in the outcome not typically present in restructurings.

### **Approval of the Restructuring Proposal**

On November 22, Senior Lenders and all junior creditor and securityholder constituencies voted in favor of their respective schemes of arrangement and resolutions in a marathon day-long voting session. With such overwhelming support from the affected constituencies, the parties proceeded to court on November 24 for final approval. PwC (CNP's auditor) appeared in court as the sole objector to the Senior Lender scheme of arrangement. Specifically, PwC argued that the proposed consent fee

allocation set by CNP which reserved A\$10 million for contingent creditors and allocated approximately A\$49 million to CNP shareholders was inconsistent with statutory priorities that would apply if Centro pursued an insolvent restructuring, and was in contravention of Australian corporations law and public policy.

Following a two day hearing, the Supreme Court of New South Wales approved the schemes of arrangement. In its decision, the court noted that Centro's unsecured creditors were out of the money. As a result, PwC and the class action litigants would be better off under the schemes, which reserved A\$10 million for contingent creditors, than they would be in a liquidation. The court approval was the final step in the lengthy and complex restructuring.

### **Centro as a Restructuring Model**

Centro's consensual, solvent restructuring involved a series of creative solutions in order to deliver value in a liquid form to Senior Lenders while obtaining the consent of more junior stakeholders. The Senior Lender adviser team's fallback plan was a key component of the aggregation solution which integrated the U.S. pre-pack plan concept into the existing Australian restructuring regime. Over the years, many assumed that Centro was "unfixable" and that liquidation was the only option given the incredibly complex structure and the sheer number of empowered constituencies. Aggregation and the debt-for-equity transaction mark the end of Centro's restructuring, the return of value to Senior Lenders, and the beginning of a new era for CRF as one of Australia's largest retail property owners and managers.

Joining Bracewell & Giuliani on the Senior Lender adviser team were Australian law firms Allens Arthur Robinson and Arnold Bloch Leibler; Australian financial adviser firms Flagstaff Partners and McGrathNicol; and U.S. financial adviser firm Houlihan Lokey.

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