

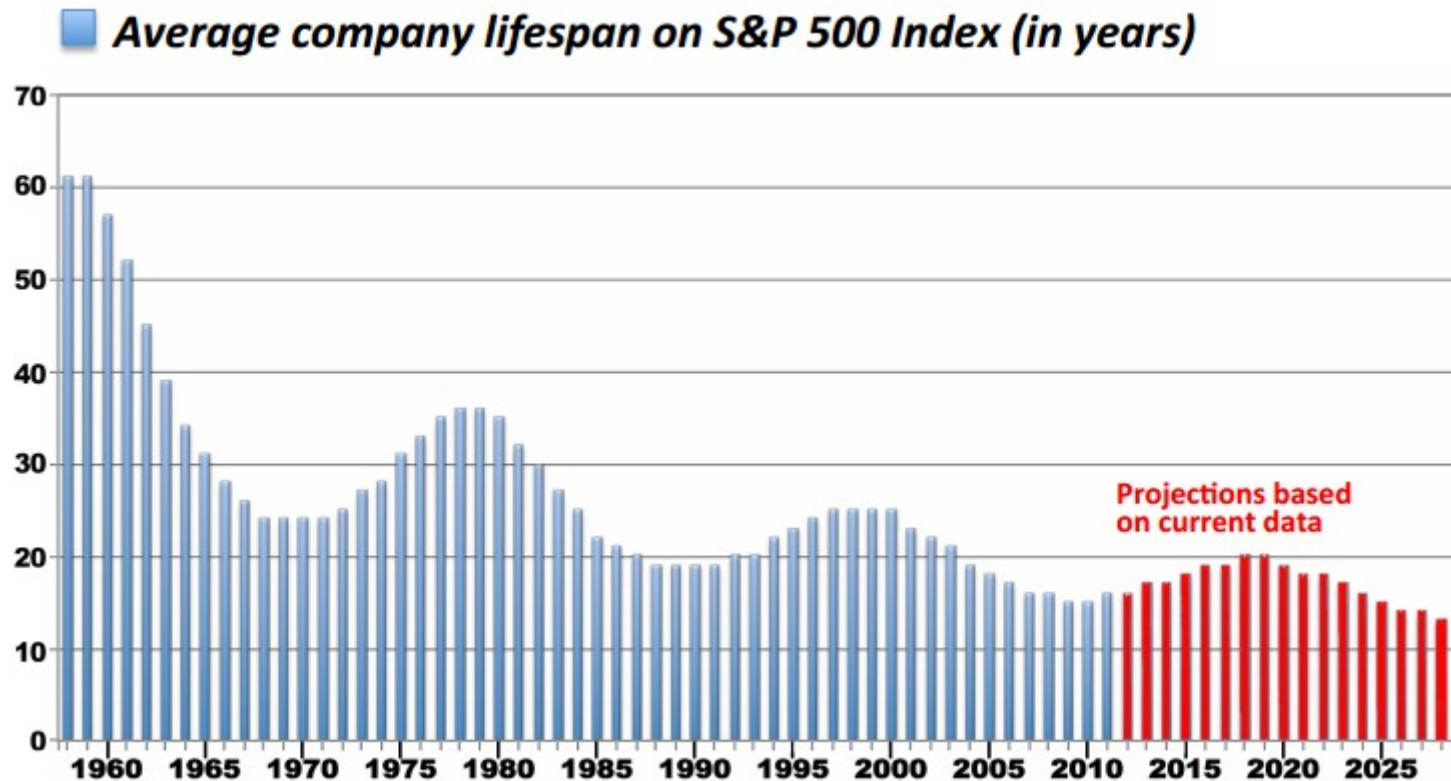
SUSTAINING CORPORATE ENTITIES THROUGH DEBT RESTRUCTURING

Presented by, Sajeve Deora
Director, Integrated Capital Services Ltd., India

Presented at, ICAN Conference on –
Insolvency Best Practices “A Case for Nigeria”

Conducted by
The Institute of Chartered Accountants of Nigeria
Lagos, February 18-19, 2016

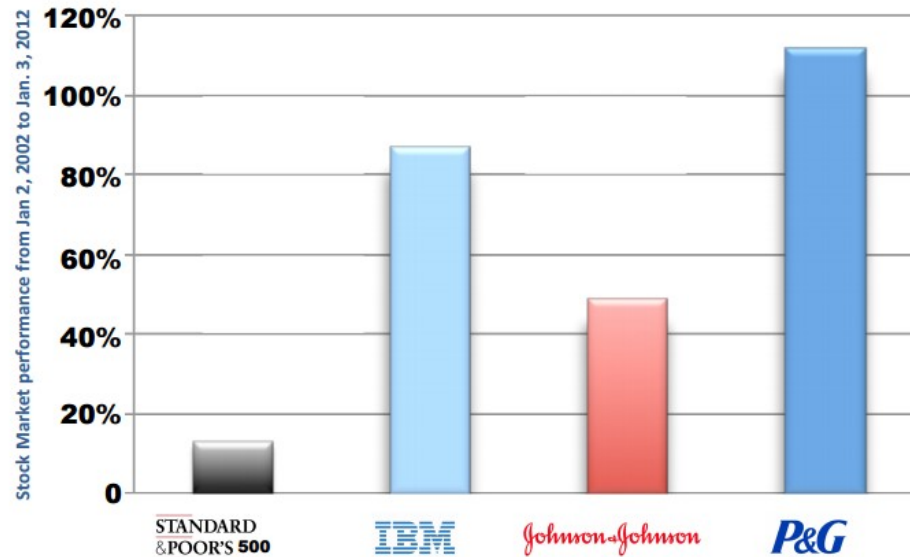
AVERAGE LIFE (S&P 500)



Source: www.innosight.com

It is estimated that by 2027, 75% of the companies in the S&P 500 shall be replaced by other companies

CREATE, OPERATE & TRADE

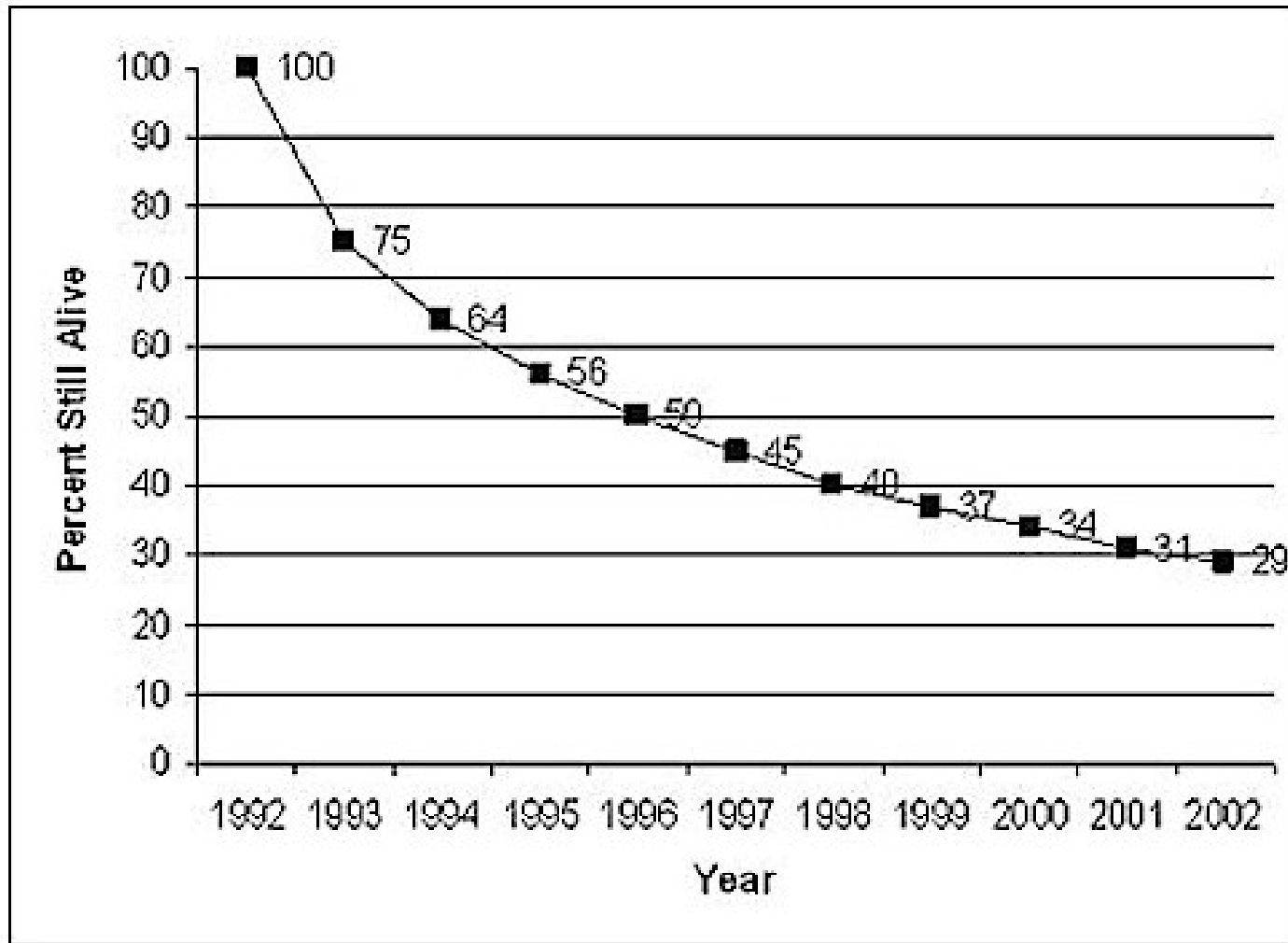


Source: www.innosight.com

Since 2002, Companies embracing model of “Create, Operate & Trade Without Loosing Control” have survived and outpaced S&P 500 Index by wide margin

Takeaway – Apply Market Principles to Yourself

STARTUP SURVIVAL RATES



Scott Shane: Startup Failure Rates — The Real Numbers

al Advisory

S&P 500 ENTRIES AND EXITS

S&P 500 Churn Over the Past Decade

Sample companies that have entered and exited the index since 2002

Entered the index:



Exited the index:



Source: www.innosight.com

SUSTAINABLE RESTRUCTURING

DEBT RESTRUCTURING

A mechanism by which companies alter the terms of outstanding debt obligations, by way of agreement, in order to achieve an advantage

SUSTAINABLE ENTITIES

An entity which can be deemed to be both technically and financially viable in the long run

PRESSURE POINTS

- Disruptive Technology
- Geopolitical Developments
- Commodity Prices
- New Materials/ New Processes
- Credit Contraction Cycle
- Distortions in International Trade
- Currency Fluctuations
- Environmental Costs
- Living Will
- TLAC Funding

*Accept volatility as normal
Computer Code to Genetic Code*

DEBT RESTRUCTURING, OBJECTIVES

- Preservation of Capital – A Scarce Resource
- Revival of Industrial Units
- Minimising Value Erosion for Stakeholders
- Employee and Exchequer Payouts
- Separation of Good Assets and Bad Assets
- Sacrifice of Stakeholders, Commensurate to Stake
- Acting in a Timely Manner
- Approvals – Both Statutory and Contractual

Industry of the future

JURISDICTION AND FORUM

- Examination of Contracts and Agreements
- UNCITRAL Model Law on Cross Border Situations
- Centre of Main Interest
- Modified Universalism
- Determining Applicable Law and Authority(ies)
- Bilateral Investment Protection Protocols
- Experts Assist Judiciary

COMI, London approach
Territorial nexus, US Chapter 11
Recognition of foreign main proceedings

SEPARATING WHEAT FROM CHAFF

- Stakeholders look-up to Management
- Business Restructuring leads Debt Restructuring
- Alignment of Business Risks with Business Lines
- Monetising Assets of Value
- Creating Bankable Entities
- Leverage Value Creation by Performance
- Isolation of Cross Collaterals / Guarantees

*Pre-packs remain order of the day
Institutional mediation, the new way*

ACTIONS FOR SUSTAINABILITY

- Acting Early and in a Timely Manner
- Taking Lenders and Stakeholders in Confidence
- Dilemma between Selling Good or Bad Assets
- Forgiveness, Long Dated Instruments
- Segregation of Manufacturing, Brands and Logistics
- Align Cash Outflows with Cash Inflows
- Pressure on Dissenting Minority

Repeat Restructuring Exercises
Everyone cannot be kept happy at the same time

DEBT ANALYSED

- Option for Equity Swap
- Security Cover
- Assessment of Litigation
- Currency Swap under Natural Hedge
- Refinancing
- Debt Assignment/ Restructuring Specialists
- Provisioning by Lenders – Protection from Provisioning

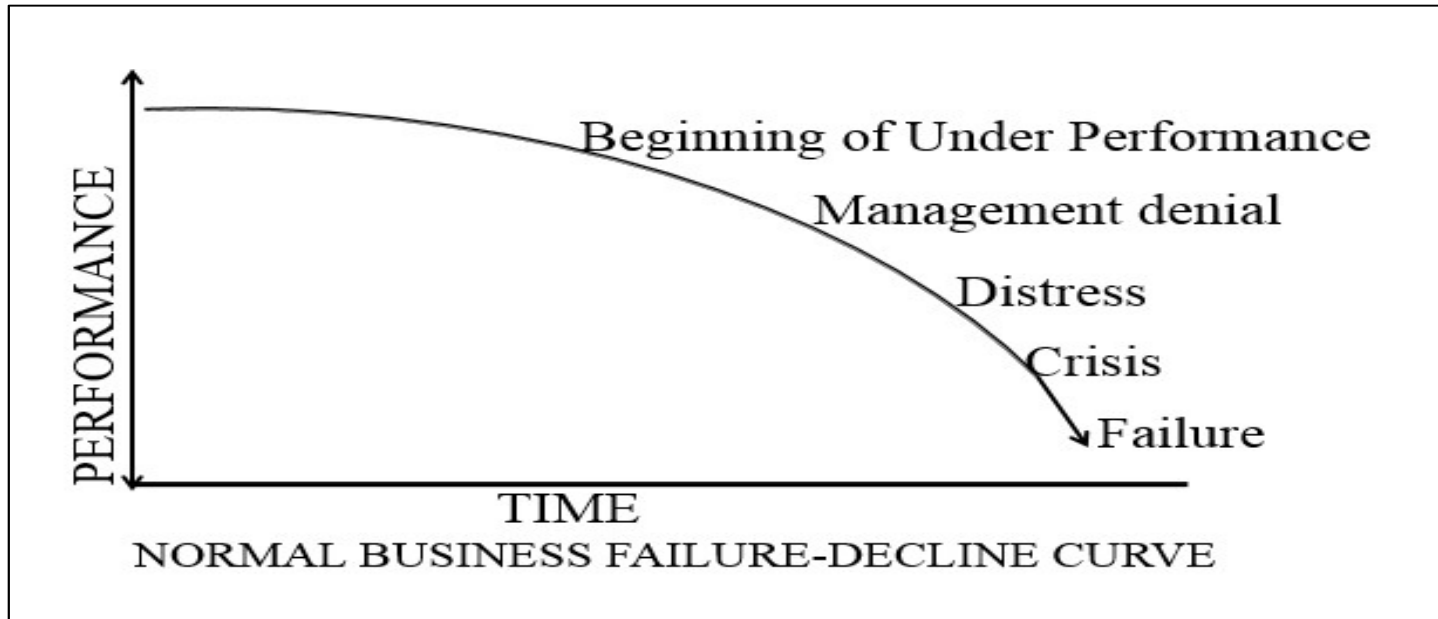
Bad Bank
Bankruptcy Law
Lenders Supervision, External Collateral Manager

RESTRUCTURING KIT

- Holding-On Operations
- Trust Retention Mechanisms
- Funding in Distress
- Ballooned Back Loading
- Refinancing in Terminal Year
- Debt Equity Swap
- Security Sharing
- Waterfall Mechanism for Cash Flow Operations
- Cash Flow Monitoring & Management
- Company within a Company
- Assets Available for Disposal

Credit Guarantee Enterprises

WHEN TO ACT



Fresh Start

Do not delay, else others will do it for you
Should you wait for the troubles to bottom out
Remedial plan changes as intensity of problem alters

EVENTS OF LAST GLOBAL ROUND

Cause

Housing
Bubble
Locked
Derivatives

Actions

Quantitative
Easing
Troubled
Asset Relief
Program

Results

Institutions
Saved

Fallout

Deflationary Fears
Real Estate < 2008 Rates
Emerging Markets Gains

Lessons Learnt

Leaner Organisations
Technological Upgradation

SUSTAINING LAST GLOBAL ROUND

- Downgraded Bonds
- Proliferation of e-Businesses and Business Models
- Vulnerability of Certain Economies
- Negative Rate of Interest
- Fitness for Sustainability, Across Industries & Geographies

Changed times lead to new challenges

No one-size-fits-all solution, restructuring principles same

Governments

Providing healthy environment

Sharing efficiencies

Enterprises

Maintaining bankability

Dispute resolution, Mediation

Institutionalized mechanism

LENDERS RIGHTS

- Assess Clean Hands of Controlling Management
- Option Review, Precursor to Restructuring
- Possess Security, Realise, Lease, Sub-Contract
- Change of Management
- Refinance Debt, Existing /Alternate Currency
- Senior Money
- Distress Asset Investors
- Sell / Assign to Asset Restructuring Enterprises

Missing assets & people

Money trail & people tracing

Restitution & indemnification

Name & shame defaulters, Statutory bans

Listing of defaulters, persons acting in concert

NIGERIAN INSOLVENCY – ISSUES, SUGGESTIONS, 1

Issues

Deficiency in law with regard to business turnaround restructuring insolvency

Lack of efficient means by which debtors can rearrange their affairs and preserve a potentially viable entity

Suggestions

Development of robust and sound mechanism for restructuring and turnaround and informal workouts

Deployment of alternative dispute resolution (ADR) procedures and recognition of informal workouts in existing insolvency systems

NIGERIAN INSOLVENCY – ISSUES, SUGGESTIONS, 2

Issues

Collective procedures available under the general insolvency law are not business rescue oriented

From creditors' point of view: No credible legal threat to recalcitrant debtors

Suggestions

Business reviews and Creditors committees can lead the way

Legislative reform

NIGERIAN INSOLVENCY – ISSUES, SUGGESTIONS, 3

Issues

Suggestions

No provisions for insolvency practitioners to be qualified, regulated

Regulation of Insolvency practitioner

Lack of statutory provisions on Cross Border Insolvency

Multilateral effort of both the government and private sector in legal reforms

Significant Role of Courts in driving insolvency procedures

NIGERIAN INSOLVENCY – RESOLUTIONS

- Informal Workouts
- Legislative Reform
- Harmonisation of Laws
- Fast Track Insolvency Procedures
- Regulation of Insolvency Practitioner(s)
- Role of Courts in Driving Insolvency Procedures
- Sound Mechanism for Restructuring & Turnaround
- Deployment of Alternative Dispute Resolution Procedures
- Multilateral Effort – Government & Private Legal Reforms

*Changes ahead of time
Change the only constant*

LIVE LONGEST

- Religious Establishments
- Clubs and Co-operatives
- Places for Social Interactions
- Charitable and Not For Profit Organisations
- Tourist Attractions and Locations of Interest

Keep generating cash
Spend within budgets
Stakeholders continue interacting
Strong and accepted succession plan

OLDEST FAMILY COMPANIES

Kongo Gumi	578 A.D.	Osaka, Japan	Construction
Hoshi Ryokan	718	Ishikawa, Japan	Hotel
Chateau de Goulaine	1000	Nantes, France	Winery
Fonderia Pontificia Marinelli	1000	Agnone, Italy	Bell Foundry
Barone Ricasoli	1141	Chianti, Italy	Winery
Barovier & Toso	1295	Murano, Italy	Glass Products
Hotel Pilgrim Haus	1304	Soest, Germany	Hotel
Richard de Bas	1326	Ambert, France	Paper Mill
Torrinni Firenze	1369	Florence, Italy	Jewellery
Antinori	1385	Florence, Italy	Winery
Cam uffo	1438	Portogruaro, Italy	Shipbuilding
Baronnie de Coussergues	1495	Montblanc, France	Winery
Grazia Deruta	1500	Turin, Italy	Ceramics
Fabbrica D'Armi Pietro Beretta	1526	Gardone, Italy	Firearms
William Prym	1530	Stolberg, Germany	Hab

Source: familybusinessmagazine.com

CREATIVE DESTRUCTION

S&P turns over 5% of its companies in a given year

A corporation should

Add 5% to its sales from new businesses

Shed 5% of its current sales through divestiture

Lifespan determined by balancing 3 management imperatives

Running Operations Effectively

Shedding Business – One Time Core

– Short of growth, return

Creating new businesses which meet customer needs

--- Foster

RECIPE FOR LONG LIFE – THE ART OF ENDURANCE, SHINISES

- Beware the Dogma of Founders
- Cultivate Wasted Time
- Talk to Your Customers
- Don't Just Build Competencies, Build Dynamic Capabilities

***Key to Sustain Competitive Advantage:
Buy Competencies, Develop Capabilities***

- Japan – People live longest & home to oldest companies
- More than 20,000 companies are more than 100 years old
- A handful of these are more than 1,000 years old

FAMILIES SEEN 47 RECESSIONS, TERCENTENARIAN CLUB

- Barely a dozen members
- No annual fee
- Meets just once a year

Club Collection

- Wine Merchant
- Butcher
- Hat Maker
- Builder
- Boatyard Owner
- Candlestick Seller

Tercentenarian Survived

- Clutch of Banking Crises
- Stock Market Crashes
- Start of Industrial Revolution
- End of Horsepower
- Two World Wars
- Defeat of Napoleon
- Rise of the Internet

THANK YOU

Does not deal with:

- Governmental owned or controlled enterprises
- Banks, Financial Companies and Financial Product providers