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Distressed investors mull challenges posed by Chinese law

By Simon Osborne | 24 November 2009

Alternative fund managers chew over some legal niceties in Tokyo, with a focus on opportunities in China.

Fund managers at the AsianInvestor/FinanceAsia Distressed and Troubled Asset Investing Summit held in Tokyo last week were thinking about their rights. More specifically, had their legal trading rights improved in Asia during the past 10 years, and what can they do about it? Their interrogator was FinanceAsia editor Lara Wozniak, and her subjects' attention alighted primarily on China. The panel discussed what might emerge in the way of distress from the Rmb10 trillion (\$1.5 trillion) of recent fresh lending in the country.

"If it develops in the same way as the policy-driven lending of the 1990s, then 25% of that went non-performing," said Benjamin Fanger, co-founder of Shoreline Capital Management. "I estimate that 10% of this current lending might ultimately fail to perform. That equals roughly \$150 billion."

In terms of legal robustness, Fanger does not seek jurisdictions with superior legal systems, but ones where legal uncertainty is reflected in the price of assets.

"There is still no bankruptcy court in China," said Phil Groves, managing director at DAC Management. "You have to read where the Chinese government falls on any legal position. You have courts issuing rulings that are so bizarre that nobody understands what they mean."

Panellists felt that, in China, private offshore loans and convertibles now offer opportunities, providing the systemic risk can be navigated.

"Every province in China has different legal systems," observed George Long, chief investment officer at Lim Advisors in Hong Kong. "It hasn't been transparent, but in the course of this crisis there has been distress in China's private loan market for hedge funds."

One panellist pointed out that it has been a good year to sell distressed debt, given the stimulus packages. Indeed, earlier in the conference, Professor Ed Altman had pointed out that

the spread of 2,046 basis points between high-yield bonds and US Treasuries in December 2008 had fallen to 646bp by the end of October.

The crux of it for distressed funds today is that they want prices to widen again so they can fill their boots.

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