# RESTRUCTURING PLANNING:
## INFORMATION GOVERNANCE TOP TEN LIST

**A COMPANY CONTEMPLATING** a restructuring must recognize that the process will move very fast with different stakeholders representing many interests making a variety of requests to provide information quickly. As with any business that anticipates receiving a flood of orders, it's wise to take stock, know what's in inventory, and be prepared for the rush. If your company has retained a strong restructuring advisor, that firm will guide most of the data identification and collection. If you are at an earlier stage or working with financial advisors that don't specialize in restructuring, you will need to deputize someone in your organization to think about all the data and documentation that lives at your company. Find that person, give them this list, and assure them they have full authority to proceed to get the job done. If you don't have the resources on board (internally or externally) to tackle these challenges, don't be afraid to get help.

Some of the suggestions that follow are proactive in nature—that is, anticipating requests that are likely to be made—and some are designed to ensure that your actions are in accordance with legal discovery requirements.

Here's our top ten list of information categories to consider when planning for restructuring:

1. **Make sure you understand the document retention setting for major financial and asset tracking systems**. Obviously, finances are going to be critical. Make sure that the systems storing those data don't have retention rules or automated deletion functions that are about to delete important information that you will need. Specifically, identify the financial systems used by entities that may be restructured or spun off. Include in this category financial systems for any related entities that have data systems with connections (or dependencies) with the primary systems, especially if those related entities will not be part of the restructuring. Identify the retention rules for the relevant components of each system (i.e., how long data is kept before being deleted or moved to an archive). Also, identify any systems that track assets and investigate and document the retention rules that apply to them. If you can't export data from financial systems to Excel easily, consider creating report scripts and templates now, so you are ready to generate reports in the future.

2. **Ensure a contracts database and other systems-of-record are up to date**. If you don't already have one, consider creating a database for your major contracts, including all amendments, exhibits, and addenda. The goal is to have a single source from which to retrieve the current terms of the organization's business arrangements so you can explain them in detail when needed. In the same vein, create, maintain, or update other systems to allow easy retrieval of the records critical to your company that may be requested in a restructuring. These records will vary by industry; examples might include:

   a. For a real estate company, its tenant leases, including an index that enables sorting by expiration date.
   b. For a retailer, its company-owned store leases and other contracts.
   c. For a consumer-products company, its copyrights, trademarks, and registered trade names.
   d. For a technology company, its patents, licenses of technology, and assignments of inventorship.

To help you identify relevant information and understand technologies that support different businesses that may be divested, obtain the company's inventory of technology assets, systems, and applications (if there is one). If your company stores information with cloud service providers (e.g., Microsoft's Azure or O365, Google, or Amazon Web Services), obtain the main service-level agreements to understand your rights and potential obligations in order to maintain access to the information.

3. **Check that corporate organization documents and board materials are complete**. Check to ensure that you have documentation confirming that all corporate formalities (and formalities of other business organization types) have been followed and are properly documented. This process will include gathering to a single, readily accessible location all the top-level company documents, including board minutes and meeting packages. If the company does not already use software to maintain and organize these materials (such as BoardDirect or Diligent), consider getting one. For all subsidiaries, ensure that articles of organization and certificates of incorporation, bylaws, consents, and minutes are retained, well-organized, and easily retrievable. Do the same for all partnerships and LLCs and, for any entities that are subject to annual meeting requirements, check that those requirements are satisfied and documented. Don't forget to include similar documentation for joint ventures and single-purpose entities.

4. **Collect and organize "histories" of recent transactions**. If a group of creditors or a trustee is likely to challenge one or more recent financial transactions as part of a bankruptcy, collect and organize the information that would enable the company to "tell its story" about the transaction(s). Check the retention rules on data or document repositories that contain relevant documents, such as email, data rooms, document management systems, SharePoint sites, or Microsoft Teams sites. Also, identify third parties (such as appraisers or financial advisors) that may have significant documents about the transaction(s), assess their retention of the information, and consider next steps. It's important to note that you should tread carefully here, and you may want to consult with counsel if there is any question of whether you have possession, custody, or control of data and documents that are in the possession of third parties.

5. **Assess the status of your organization charts**. Organization charts are often outdated or difficult to locate but may be among the first things that you need. Consider ensuring you have at least a tree describing the top tiers of management structure, including the names and contact points for individuals responsible for lines of business.

6. **Evaluate communications technologies used by senior personnel**. Get a handle on the tools senior management and board members use to communicate (e.g., email, text, IM, or ephemeral messaging tools such as Slack, Wickr, Telegram, WhatsApp, WeChat or Signal). Understand whether they are on personal or enterprise platforms, and how data from these applications may be retained if they need to be preserved. If the restructuring or prepackaged bankruptcy plan is unsuccessful and the company moves towards a contentious filing, there's a good chance these communications will be requested in adversary proceedings.

contentious filing, there's a good chance these communications will be requested in adversary proceedings. If executives or board members are using personal devices or app-based messaging tools, explain to them the issues and potential risks of continuing to do so, and offer alternative platforms.

7. **Gather information on business units that may be divested**. For assets or business units that have been fully integrated into the enterprise but may be candidates for disposition as part of the restructuring, identify and organize the significant records and other information associated with that asset or business that would have to be extracted from the enterprise. Evaluate the burdens required to separate such information if the asset or business is sold or spun off. Make sure counsel has a strong plan for allocating data rights as part of the transaction documents. Applicable clauses should also cover privilege if any of the transferred data relates to or reflects attorney work or advice.

8. **Organize compliance documents**. Identify the organization's compliance policies and procedures and those of its significant subsidiaries and affiliates. Ensure that those policies—and documents reflecting performances required under those policies—are organized and retrievable.

9. **Get a handle on Information Governance policies, procedures, and record retention schedules**. Some organizations have one information governance policy and set of retention schedules that apply enterprise-wide. Other organizations have separate policies and schedules for each business unit. In either case, depending on the extent of data that will have to be collected and reviewed, it may be important to collect and gather these policies to help guide the process, and to help understand what data may or may not be available. Don't overlook policies that may apply only to specific parts of the organization (e.g., tax-department retention policy or schedules), or policies that apply to specific information technologies (e.g., those for email retention, Microsoft Teams retention, mobile-device data retention). Also, be sure to gather any existing backup or retention policies for email, file servers, and major systems managed at the enterprise level.

10. **Assess management of internal and external website content**. Assess whether the organization uses a content-management system to capture the content of its internal and external websites, as well as any company-sponsored external-facing social media sites. Determine the retention rules for the content management system and evaluate whether to suspend those rules or collect portions of the content. If there is no current retention period applicable for these tools, at least identify topics likely to be a focus of the restructuring and consider collecting unique website content regarding those topics.

Lastly, depending on your timing and resources (for example, if you will have a data room), consider retaining the documents and other information identified during your inventorying process in "archival form"— that is, not subject to alteration, such as PDF, TIFF, or WORM.

For additional information on this topic or details on Redgrave LLP's services, please contact **Erica Zolner** at ezolner@redgravellp.com or 773.636.2456.

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