

# THE TRIPLE TRI-ANGULAR PERSPECTIVE (3TAP): A FRAMEWORK FOR THE MANAGEMENT OF A TURNAROUND

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## The world of turnarounds

Turnaround practitioners advise on, and typically execute, the changes necessary for a struggling company to optimize its profit and performance. A corporate turnaround requires a well-constructed strategy and near-flawless execution, always taking into account stakeholder<sup>1</sup> demands. A business turnaround's success is due in largest part to: (1) the turnaround consultant's outside perspective from that of existing management, (2) the consultant's lack of personal investment in the past, and (3) the variety of tools in the consultant's toolbox.

This article is not a "how-to" for lawyers on dealing solely with legal issues but, rather, a "how-to" for lawyers who wish to truly be *counselors* to their business clients. Effective business attorneys must understand the fundamentals of how every business operates; they must be able to think and speak holistically to business' management. Additionally, since law firms are themselves businesses, law firms can also benefit from the perspective provided in this article.

## A business and its management

**A business is a unique entity with personality, character, and responsibilities.** A company's existence, unlike humans, is totally utilitarian. It must have purpose, and it must fulfill that purpose. A company makes commitments to its stakeholders, and these stakeholders make up its being and character. Management is responsible for ensuring that the company's purpose is responsibly fulfilled and obligations met so the business remains healthy. Management must also help it grow and mature, while protecting it from abuse by its stakeholders or, more often, by management itself. The heart of a turnaround deals with management's failure to marshal all its stakeholders and resources to meet the company's obligations.



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**Management is generally the problem.** A company is six times more likely to fail because of internal forces (management and controls) than external ones.<sup>2</sup> Management, however, tends to blame external forces (e.g., the economy) for its failures. These economic times and external forces are now the norm, and the business community is undergoing extreme stress by changes in every realm of the business world (e.g., global markets and competition, technology, regulation, etc.). Management must see the company as living within an ongoing turnaround, remaking itself for the unavoidable new and different tomorrow. Every company is either in some stage of change or some stage of failure.

**Self-diagnosis is the common problem.** Those who generally attempt to diagnose a company's woes (e.g., management, accountants, attorneys, etc.) rarely deal with the real root causes. Why? Because as humans, we tend to attack symptoms. Further, we do so with our limited tool sets: accountants tend to attack a problem with historic numbers; lawyers tend to attack a problem with the law; and managers/owners tend to attack a problem from within the biased box of their own construction, likely based on past performance but, blinded to the future and the true situation at hand. Additionally, and fundamentally, it is human nature to become defensive, justify ourselves, and lay blame on other people or forces. Management's failure to deal with root causes, and the blinding bias we all have as humans, are the reasons why most companies fail.

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**Management must have a contrite heart with eyes that see and ears that hear.** Generally, management's perception of its work, priorities, and image is incredibly flawed. Employees tend to know far more about the many failings and idiosyncrasies of management than does management itself. In theology, "turnaround" means "repent." Likewise in the context of a corporate turnaround: management must see the truth, recognize its failures, accept responsibility, and then change course. In a turnaround's execution, the true acceptance of blame by managers, and the resulting humility, can be extremely motivating. Management's failure to accept responsibility is a common denominator in almost every failure. The corporate attorney should examine how to keep communication open for owners and company directors to question the company's management team. Such a big-picture vantage looks beyond narrow legal questions and, instead, fuels the soul-searching needed for a successful restructuring.

**Management, alone, should not define the issues or solution or execute the turnaround plan.** A competent physician would never allow a patient to diagnose and treat himself because, as patients, we don't know what we don't know, and what we do know is only part of the problem. Instead, the physician takes a patient history and then uses that information along with her training and experience to determine a diagnosis and treatment. The same goes for a corporate turnaround. The overwhelming majority of managers or leaders know but a portion of what is really happening within their company, the industry in which it operates, and the overall economy upon which the company depends. Furthermore, the skill sets necessary for a turnaround are different than those of routine management. Consider a typical fact pattern: The company is se-

verely struggling with cash flow and has negative or low stockholder equity. Morale is low, key employees are leaving or have left, and stakeholders are questioning management's character and competency. Sales are critically low, suppliers have the company on COD or priced noncompetitively, and competition is usurping what remains of the company's market share. The company is in default on credit agreements, legal costs have skyrocketed, and credit sources have dried up.

And what is the typical response? Resize the balance sheet and let management continue in a Chapter 11 bankruptcy proceeding, declaring symptoms as the root cause and forcing a cram down<sup>3</sup> plan on the creditors without making any substantive changes to the organization or its strategy. With facts like this, it is no wonder the vast majority (upwards of 90%) of Chapter 11 debtors never successfully emerge from bankruptcy.<sup>4</sup>

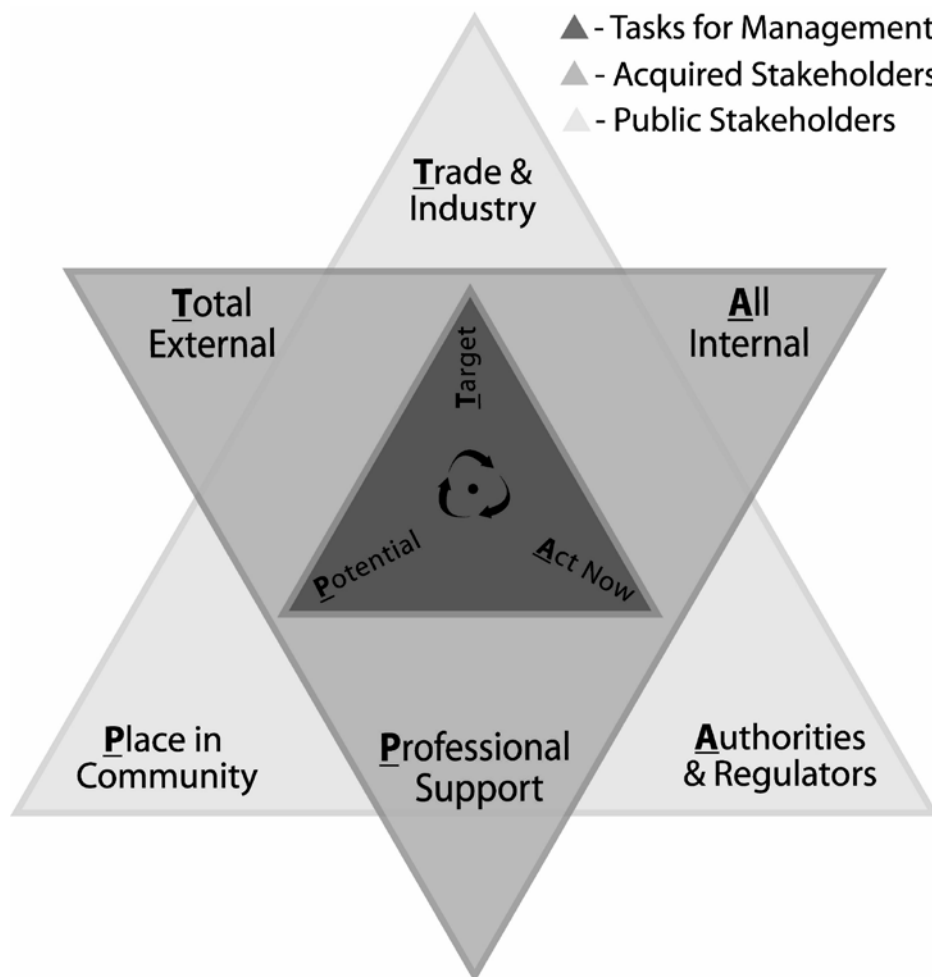
**Management is the cardinal asset of a company.** It goes without saying that a turnaround is doomed without effective management. Management is in the best position to truly embrace the perspective of a company's obligations to *all* its stakeholders. In an attempt to communicate this view to management, we use a framework we call the Triple Tri-Angular Perspective Method ("3TAP Method"). As counselors, you may find the 3TAP Method helpful in sharpening your critical eye to offer your clients a more objective and sobering perspective during tough times.

### Triple Tri-Angular Perspective Method (3TAP Method)

Managing a business or turnaround is not a smooth or linear process. Management must have acute multitasking capabilities to service concurrent stakeholder demands that all look to the same resources for satisfaction. A company's stakeholder obligations are never naturally aligned but must be managed, particularly as stakeholders and their demands change. The 3TAP Method described below is the method, albeit highly simplified, that can be used to train management as well as drive a turnaround.

#### Triangle 1: Tasks for management

Management must always be mindful of the concurrent duties that a company has to its stakeholders. A simple tool that can tap into the core issues for assessing management is the center piece of the 3TAP Method: the Task Triangle. Imagine this triangle as a pinwheel, constantly rotating and directing all three of its points to each of the six stakeholder



groups. Management must continually review, develop, and adjust the specific stakeholders in each group as well as the overall relationships of all groups. The three points of the Task Triangle are:

**Target.** Management must see the clear target of the company's obligations to its stakeholders and must employ metrics to track fulfillment of the company's responsibilities. Efforts to satisfy the target for each stakeholder must be balanced with those of all other stakeholders. Each commitment is uniquely different per stakeholder; therefore, management must actively understand and manage those specific targets and commitments.

**Act Now.** There is a constant need for up-to-date action items to rectify problems as they occur. These action items are reviewed to evaluate management's understanding of its purpose and to assess its foresight. Understanding how management got into dire straits speaks volumes about existing management.

**Potential.** Every stakeholder group has the potential to be more committed to the company, to present more resources,

and to be further developed to assist the company in fulfilling its purpose and obligations. If the company is stagnant, it is on borrowed time. The company must continually learn, grow, and change, and the only way to do so is to develop its potential.

Management rarely attempts to identify all of its stakeholders and commitments. Instead, management generally deals with stakeholder issues independent of the others. Moreover, management typically fails to proactively address foreseeable issues with the stakeholders or to cultivate the potential power in each stakeholder or group. Every company will fail if management neglects its stakeholders; thus, the other two triangles of the 3TAP Method are comprised of the stakeholders to which the Task Triangle is always directed. The stakeholders of a company are sorted into two triangles: (1) the Acquired Stakeholders (company-specific), and (2) the Public Stakeholders (universal to all companies based on law, industry, and society).

## Triangle 2: Acquired stakeholders

Acquired Stakeholders make companies unique. Different companies may have common components and stakeholders, but the *combination* itself is unique to each company. A company's identity lies in its Acquired Stakeholders, its relationships with them, and how it leverages and improves those relationships. The three points of the Acquired Stakeholders Triangle are:

**T**otally External. These stakeholders are the company's most fragile relationships. For communicating the overall framework, external stakeholders can be generally categorized as follows:

**C**ustomers. A key element to a successful business is how it attracts, services, and retains customers compared to its competitors. A company must be customer-centric as this is the most delicate of all stakeholders.

**C**reditors. This group includes lenders, vendors, and landlords.

**C**ritical Relationships. This group includes special relationships specific to a given company such as franchisors and license holders.

**A**ll Internal. Effectively balancing all internal stakeholders is rare among management teams. Most managers focus on the squeaky wheel, resulting in misvaluation of resources, inefficient structure, and abuse by, or of the, owners. Internal stakeholders can be generally categorized as follows:

**O**perating Resources. This group includes employees, equipment, processes, facilities, technologies, and cash.

**O**perating Structure. This group includes organizational structure, management, paper flow, communication channels, performance metrics, and resource employment strategy.

**O**wners. Owners are to be rewarded only after all other stakeholder commitments are fulfilled. Therefore, it behooves owners to have responsible and capable management.

**P**rofessionals. This stakeholder group comprises perhaps the least fragile of the acquired stakeholders as they are paid for specific functions or purposes. Professional stakeholders can be generally categorized as follows:

**T**ax & Accounting. Credibility on numbers, tax returns, and implications is a key element in all turnarounds (and all businesses). Frequently, CPAs are not fully utilized by management, despite CPAs having perhaps the best overall reputation

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among professional groups. A good CPA is also a powerful weapon in negotiations.

**L**egal. Management must actively engage counsel for the company's organizational structure and general operations. However, management typically fails to engage good counsel from the outset (often due to cost), but then pays a price in the long run for its short-sighted savings. In a turnaround, a skilled and reputable corporate attorney is critical, often supplemented by skilled bankruptcy counsel. A creditor-specific attorney is also helpful to assist the team with stakeholder understanding and negotiations.

**T**ask-Specific Functions. This group includes skill sets specific to a given company such as lean engineers,<sup>5</sup> turnaround practitioners, advertising consultants, and IT professionals.

## Triangle 3: Public stakeholders

All companies have responsibilities to Public (or non-acquired) Stakeholders. The three points of the Public Stakeholders Triangle are:

**T**rade & Industry. Failure to maintain proactive involvement with one's trade associations results in erosion of the company's core competencies and inhibits its ability to learn, grow, and change. This is a common error of management. Trade associations can be great sources of assistance, networking, resources, and understanding of the current state of the industry.

**A**uthorities & Regulators. Federal, state, and local authorities and regulators can not only negatively affect a business by way of sanctions, but they can also be a tremendous ally and leveraged in a way to help a company better fulfill its obligations to all stakeholders. Tremendous advantages can be harvested from the EPA, IRS, and other like agencies traditionally feared by companies.

**P**lace in Community. A company's community is perhaps the most unrecognized and abused Public Stakeholder, yet it is a potentially enormous value-add.

Untold benefits often result when management seeks to align the company's values with that of its community. The community provides a wealth of employees, professionals, vendors, customers, and literally every local resource a company needs; its image and network in the community can bring far-reaching value to the company.

## How this relates to you as an attorney

Although attorneys alone cannot make a turnaround, they can certainly break one. The traditional legal mindset – the adversarial “us against them” approach – can doom the company at breakneck speed. The law is a necessary element for any turnaround, but it does not comprise the entire framework. Too often, we have seen attorneys attempt to justify their existence by starting fires only to show off their firefighting prowess, and that, it seems, is very short-sighted. The best thing you, as an attorney and counselor, can do for your client, is to look beyond the client's diagnosis with an eye toward the simple truth that the client's diagnosis is only part of the story. Consider discussing with the client the issues presented here, encourage the client to retain a qualified turnaround practitioner, and then jump on board for the myriad of legal work to be done during the turnaround process. As part of the turnaround team, you become more involved in the company's lifecycle, and you play an instrumental role as your client grows and succeeds.

Additionally, law firms are not immune from the perils of mismanagement, so consider applying the 3TAP Method to your own practice and managing your firm according to the framework discussed here.

## Conclusion

Management is the key element in a successful business or turnaround. We successfully retain management in the vast majority of turnarounds, but they must wrestle with the issues revealed by the 3TAP Method. The knowledge gath-

ered from employing the 3TAP Method drives the turnaround strategy and business plan, all in conformance with a Chapter 11 reorganization plan if the need arises. Moreover, the 3TAP Method creates a communication channel between all stakeholders, with trust and cooperation being gained throughout the process because someone with credibility (an outside professional) is proactively and openly communicating with them, as existing management is always suspect in the eyes of injured stakeholders.

The 3TAP Method unites the stakeholders for success of the firm for their greatest payback, and there is a greater willingness on the part of the stakeholders to bear some of the pain when they see the holistic picture and a viable future.

The 3TAP Method trains management in their stewardship responsibilities going forward. Management, if retained, always ends up with a changed perspective and better insight into its various roles. Employing the 3TAP Method results in stronger internal and external relationships that are then further developed into more and better resources, greater performance, a brighter future, and thus more value to all.

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### About the Authors

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### Endnotes

<sup>1</sup> A "stakeholder" refers to all parties to which a business enterprise owes a responsibility. Stakeholders include customers or clients, owners, employees, suppliers, creditors, professionals, regulators, etc.

<sup>2</sup> Hass, William and Lagrange, Patrick. "What every investor should know about lenders and the turnaround process." Turnaround Management, January 7, 2003.

<sup>3</sup> A Chapter 11 "cram down" is when a bankruptcy court imposes a reorganization plan upon the creditors despite one or more objections by the creditors. See, generally, <http://www.investopedia.com/terms/c/cramdown.asp>.

<sup>4</sup> See, generally, <http://www.onemint.com/2008/11/11/what-is-chapter-11-bankruptcy>, 11 Nov. 2008; and <http://www.articlesbase.com/finance-articles/understanding-chapter-7-bankruptcy-chapter-13-bankruptcy-chapter-11-bankruptcy-218914.html>, 22 Sep. 2007.

<sup>5</sup> "Lean engineers" generally refers to those skilled in the area of efficiency whose main goal is to target and eliminate waste. See, generally, [http://en.wikipedia.org/wiki/Lean\\_manufacturing](http://en.wikipedia.org/wiki/Lean_manufacturing).

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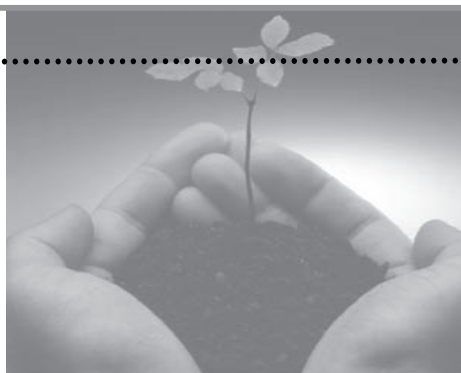
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*Like Susan and her daughter.*

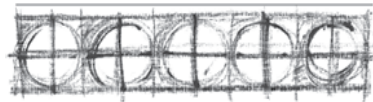
Idaho Volunteer Lawyers Program helped recruit and prepare a volunteer attorney to represent Susan's daughter who was suffering from abuse at the hands of a family member. Susan obtained a permanent protection order to stop visitation from the abusive family member when her daughter was present. Thanks, in part, to an IOLTA grant IVLP is able to **provide legal aid to the poor** and Susan was able to ensure the safety of her child. Where attorneys place IOLTA funds impacts how much the IOLTA grant program offers. Banks that partner with ILF to pay competitive interest rates on IOLTA accounts determine whether the Foundation is able to help people like Susan and her daughter.

To find out more about IOLTA banks, visit [www.idaholawfoundation.org](http://www.idaholawfoundation.org) or contact Carey Shoufler, ILF Development Director, at (208) 334-4500.



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