

Malaysia

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Following the 1997 Asian financial crisis, the Malaysian government instituted a national asset management company called Pengurusan Danaharta Nasional Berhad. The Pengurusan Danaharta Nasional Berhad Act 1998 sets out the legal framework for the formation of Danaharta. Under the act, Danaharta is empowered to:

- acquire non-performing loans through statutory vesting; and
- appoint special administrators to distressed companies carrying those loans.

Danaharta ceased operations in December 2005; its residual assets are now managed by a government-owned special purpose vehicle company.

The Companies Act 1965 is the main governing statute for restructuring and insolvency in Malaysia. The act prescribes laws relating to schemes of arrangement and capital reduction, receiverships and liquidations.

Schemes of arrangement and capital reductions are debtor-initiated restructuring processes. Both require approval from shareholders and, where relevant, creditors, and must be sanctioned by the court. The processes are viewed as cumbersome and expensive. Schemes of arrangements are a legal avenue available to companies to reach a debt compromise with their creditors.

Receivership is a popular recovery tool for banks: it allows them to seize control of their securities in a fairly short amount of time as it does not require court involvement.

Liquidation allows creditors to wind up a company for unpaid debts. There are three procedures for liquidation: members' voluntary liquidation, creditors' voluntary liquidation and compulsory winding-up by the court.

I. Legal framework and the effectiveness of court processes/legal remedies

I.1 Describe the nature and effectiveness of the following:

(a) Debt recovery remedies where the creditor has no security

Actions to collect unsecured debt are commenced in the magistrates' court, the sessions court or the High Court, depending on the amount of the debt. Debtors must enter an appearance to such proceedings; failure to do so results in a default judgment being entered. Debtors may face summary procedures to dispose of claims where they have no credible defence. If the debtor mounts a defence in the summary proceedings, the claim goes to a full trial. Once a creditor obtains judgment against a debtor, it can execute the judgment in a number of ways, including through:

- winding-up of the debtor;
- seizure and sale of its assets;
- garnishment of its bank balances; or

- a charging order over its land and shares.

The process leading up to a judgment can be time consuming. The enforcement procedure generally produces results, but is slow.

(b) The enforcement of security

A creditor holding a debenture over a debtor's assets can appoint a receiver/manager with minimal formality. Upon the appointment of the receiver/manager, the powers of the board of directors are superseded – at least with regards to assets under the debenture. The receiver/manager is normally empowered to run the debtor's business and realise its assets. However, challenges to the appointment and the conduct of the receiver/manager can hold up and impede the process.

A secured creditor can also apply to the High Court for the appointment of a receiver/manager, but to succeed the creditor must show that its security is in jeopardy.

Land ownership in the west of Malaysia is based on a system of land registration backed by a central register administered under the National Land Code 1965. Land can be charged under the code or be subject to a fixed or floating charge under a debenture.

If he holds a valid power of attorney, a receiver/manager appointed under a debenture and expressed to be an agent of the debtor can sell land belonging to the debtor by private contract, even if the land is charged under the code. This right of the receiver/manager ceases once a liquidator is appointed, as only the liquidator can then deal with land charged under the code. However, the debenture holder is not prevented from resorting to a judicial sale to recover its monies.

(c) Corporate bankruptcy/liquidation processes

The available liquidation procedures are members' voluntary liquidation, creditors' voluntary liquidation and compulsory winding-up by the court (see section 1.2). A number of factors will determine which of these procedures is most suited to the individual circumstances of each case. Principally, the choice will depend on whether the debtor is solvent. A members' voluntary liquidation can be converted into a creditors' voluntary liquidation if the company is or becomes insolvent.

(d) Formal corporate rescue processes

Two formal corporate rescue processes are available: schemes of arrangement under the Companies Act and special administration under the Danaharta Act.

Schemes of arrangement: A scheme of arrangement requires the approval of 75 per cent in value and a simple majority in number of each class of creditors. Creditor classifications are established by the debtor and are usually based on a commonality of interests. Creditors can challenge their classifications, although few do because of the delays in court processes. Once the creditors have approved the scheme, the court must sanction it before it can be implemented.

The debtor can apply for an order restraining all proceedings against it while it develops its scheme. This aspect of the scheme is unpopular with creditors. Repeated extension of restraining orders can prevent creditors from enforcing their rights. Another aspect of the scheme which is unpopular with creditors is that the incumbent management is allowed to remain pending the scheme's completion.

Special administration: Under the administration process, the discretion to appoint a special administrator rests with Danaharta. The appointment of a special administrator must serve the public interest, or one or more of the following purposes:

- The debtor is unable or likely to be unable to pay its debts, or is unable or likely to be unable to fulfil its obligations to creditors;
- The survival of the debtor and the whole or any part of its assets as a going concern may be achieved;
- A more advantageous realisation of the debtor's assets may be achieved than in a winding-up; or
- The appointment may achieve a more advantageous realisation or more expeditious settlement of a duty or liability owed by any person to Danaharta or any subsidiary of Danaharta, whether future, present, vested or contingent.

Special administrators have succeeded in completing a relatively high number of restructurings, thanks to the wide powers at their disposal and the requirement that only secured creditors need approve the workout plan.

(e) Informal corporate rescue processes

Private workouts are the only informal rescue process available. The process is used in circumstances where debtors negotiate agreements directly with creditors outside of a scheme of arrangement. Private workouts are generally not collectively binding on creditors and do not require court sanction.

1.2 What are the formal processes to effect a liquidation of the company's assets?

The Companies Act sets out three procedures for liquidation.

Members' voluntary liquidation: Members can voluntarily wind up their own company if the company is solvent. They can do so by getting the company directors to:

- declare that the company is solvent; and
- convene an extraordinary general meeting to pass a special resolution to wind up the company.

Members appoint a liquidator at the meeting. Once this occurs, the directors' powers cease and any transfer of shares or alteration in the status of members is void. Business also ceases, unless the liquidator is of the opinion that continuing will benefit the winding-up. If the liquidator subsequently discovers that the company is insolvent, the liquidator must convert the members' voluntary liquidation into a creditors' voluntary liquidation.

Creditors' voluntary liquidation: An insolvent company can voluntarily wind itself up without resorting to the court if the directors:

- make a statutory declaration in the prescribed form stating that the company is insolvent; and
- pass a resolution to appoint a provisional liquidator.

Once this has been done, an extraordinary general meeting of the members must be convened, followed by a special creditors' meeting to formalise the liquidation and the choice of liquidator. As in the case of members' voluntary liquidation, business ceases thereafter and any transfer of shares or alteration in the status of members is void. The directors' powers also cease.

Creditors' voluntary liquidation is a less complicated winding-up process than compulsory

liquidation. It is also less expensive. It is thus preferred to compulsory liquidation if sufficient assets exist to pay the liquidation fees and expenses.

Compulsory winding-up by the court: The court can wind up a company on a number of grounds under the Companies Act, the most common of which is inability to pay its debts. A creditor initiates the process by filing a winding-up petition in court. If a winding-up order is made, the court appoints a liquidator to oversee the liquidation process. Any disposition of property after commencement of a winding-up is void, unless the court orders otherwise.

1.3 What is the effect on debt collection and the enforcement of security of:**(a) An adjudication of corporate bankruptcy/liquidation?**

Once a resolution for creditors' voluntary liquidation or members' voluntary liquidation has been passed or a winding-up order has been granted, all legal proceedings against the company are stayed (unless leave of the court is obtained) and all dispositions of property are void. However, secured creditors remain outside of the liquidation and can therefore enforce their securities. Leave of the court is required if a secured creditor wishes to enforce a National Land Code charge, because under such a charge beneficial ownership of the land remains with the debtor. In such cases leave is normally granted.

(b) The commencement of a formal corporate rescue process?

In case of an ongoing unapproved scheme of arrangement, the creditors can still enforce their rights, unless restraining orders are in place. In some cases creditors voluntarily agree to a standstill, meaning that they will not enforce rights for a period of time in order to provide the company with an opportunity to develop the scheme without the distraction of legal actions.

(c) The initiation of an informal corporate rescue process?

Unless a standstill agreement is in place, creditors are not prevented from enforcing their rights in an informal rescue process.

(d) The initiation of an insolvency or insolvency-related process under any special legislation?

The appointment of a special administrator under the Danaharta Act over an affected person gives rise to a 12-month moratorium (subject to extension) during which, among other things, all proceedings against the debtor are effectively stayed, winding-up proceedings are dismissed and no debt set-offs are permitted.

1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?

Under the Reciprocal Enforcement of Judgments Act 1958, a judgment of the superior courts in the United Kingdom, Hong Kong, China, Singapore, New Zealand, Sri Lanka, India and Brunei Darussalam can be registered in the Malaysian High Court, provided registration is made within six years of the judgment. Upon registration, the judgment is deemed to be a judgment of the Malaysian High Court and can be executed in the same way as any other judgment of the Malaysian High Court. However, in order to be capable of registration, the judgment of the foreign court must be for a monetary sum. Due to this requirement, many different types of orders commonly made in insolvency proceedings are incapable of registration under this method.

Singapore is the only country with which Malaysia currently has reciprocal recognition arrangements, but these pertain only to personal bankruptcy and not to corporate insolvency. Administrating corporate liquidations and rescues where assets of a Malaysian company are located in other jurisdictions (and the reverse) presents significant legal and practical difficulties, both to Malaysian insolvency administrators in other jurisdictions and to foreign administrators in Malaysia. How Malaysian creditors stand to be treated in relation to the assets of a debtor in another jurisdiction *vis-à-vis* creditors in that jurisdiction (and the reverse) has yet to be examined or resolved. This – together with the absence of significant corporate failures with cross-border implications in Malaysia – has meant that, to date, little consideration has been given to cross-border arrangements on recognition and enforcement.

1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?

There are two principal statutes under which directors can be made liable for continuing to trade when a company is insolvent or near insolvency. First, under Section 303(3) of the Companies Act, a director can be found liable under the wrongful trading provisions of the act for knowingly incurring a debt when there was no reasonable or probable expectation, having regard to the company's overall liabilities and means, that the debt could be paid. Second, under Section 304(1) of the act, a director can be made liable under the fraudulent trading provisions of the act if it can be shown that the business of the company was carried on with the intent to defraud creditors or for any fraudulent purpose. The former appears to focus on the incurring of individual debts, while the latter focuses on a pattern or system of carrying on business. In the latter instance, a director can be made personally liable for the debts of the company without any limitation of liability.

2. What are the advantages and disadvantages of triggering a formal procedure?

The primary advantages of triggering a formal procedure are as follows:

- It stays all proceedings against the company in liquidation or special administration, thus allowing the process to continue without distractions. In the case of special administration, it also dismisses any winding-up petitions. The stay of proceedings or the dismissal of winding-up petitions does not apply to companies involved in schemes of arrangement without restraining orders;
- It prevents the company from creating new encumbrances on its assets; and
- With the exception of schemes of arrangement, it suspends the powers of directors and introduces independent professional administrators.

The main disadvantages are:

- limitations on or loss of control for the debtor in operating its business;
- the 'fishbowl effect' – by commencing a formal procedure, the debtor commits itself to extensive disclosure on how it operates its

business and with whom it does business. Although the information will usually be made available only to creditors' committee members, confidentiality cannot be guaranteed. While public companies may generally be accustomed to the wider disclosure requirements required by Bursa Malaysia (formerly the Kuala Lumpur Stock Exchange), privately held debtors may be daunted by the level of disclosure required by the creditors;

- decreased shareholder value, due to unfavourable perceptions arising from the commencement of an insolvency procedure. In addition, since insolvency procedures are generally viewed as corporate recovery processes for financially distressed companies, any sale of assets is viewed as a 'forced sale', thus driving down the value of the assets, which may otherwise have been fully valued. These perceptions and that of the company's impending demise, if left unattended, can be self-fulfilling;
- changes in senior management. One natural reaction is for creditors to blame the existing management for the distressed company's problems. They may therefore be unsympathetic to the debtor's need to retain key management. From the court's perspective, compensation for senior management members may seem astronomical, particularly in the face of potentially fulfilling only a fraction of the respective claims of unsecured creditors. Consequently, at a time when the debtor needs great stability, it may be exceedingly difficult to obtain the court's approval of a management compensation and retention programme; and
- the length of time involved. Court processes invariably take longer and, as a result, may prove to be more expensive.

However, the decision of whether to initiate a formal insolvency procedure or attempt an out-of-court settlement is usually driven not by the attendant advantages and disadvantages, but rather by certain issues such as:

- the nature of the problems confronting the company;
- the effectiveness of any proposed cure (additional equity infusion, borrowing, sale or restructuring);
- the impact of the cure on the company's ongoing business and operations;
- fiduciary duties to all interested parties, usually

including creditors, and any potential liability in connection with those duties;

- the ability to prosecute any claim for the debtor's benefit, including actions to void particular transactions as preferential or fraudulent transactions;
- the size and nature of the company, including whether it is public or private;
- the nature or type of the company's liabilities and indebtedness;
- the number of creditors – secured or unsecured and public or private; and
- the nature of management, including management's competence and the existence of mismanagement or irregularities.

Where it appears that the business can be rehabilitated, an out-of-court settlement should be considered as the initial option. Nevertheless, while out-of-court restructuring may be preferable, it is critical that the distressed debtor and its creditors and equity holders agree that the restructuring proposed will be a permanent solution and not simply a temporary fix.

3. What are the practical options for out-of-court restructuring?

In a private workout the debtor may negotiate an agreement with the creditors to extend the terms of payment (extension) or to pay a lesser amount than that which was originally owed (composition).

The main benefits of out-of-court restructuring are:

- flexibility, as the participants are not burdened by the rules and regulations of a formal insolvency procedure;
- cost savings, in terms of the resources they have to devote to it; and
- the avoidance of public scrutiny which may disrupt business and cause the loss of employees and morale that might occur during a formal procedure.

The cornerstone of out-of-court restructuring is consensus. No creditor may have its rights adversely affected unless it has specifically agreed to this. The inability of an informal scheme to bind dissenting creditors is its main practical disadvantage. Given the growing number of stakeholders involved in the restructuring process and their differing objectives, this has become an increasing problem.

One way of mitigating or reducing the number of dissenting creditors is for debtors to obtain the

cooperation of some of the largest creditors, and those with the most influence over other creditors, very early during the period when financial problems develop.

4. What is the effect on the management of a company of:

4.1 An adjudication of corporate bankruptcy/liquidation?

In bankruptcy/liquidation proceedings, the directors cease to have any powers once the liquidator is appointed.

4.2 The commencement of a formal corporate rescue process?

The commencement of a scheme of arrangement under the Companies Act has no effect on the management of the debtor.

4.3 The initiation of an informal corporate rescue process?

The commencement of an informal rescue process has no effect on the management of the debtor.

4.4 The initiation of an insolvency or insolvency-related process under any special legislation?

Once a special administrator is appointed, the powers of the directors are suspended and any receiver/manager or provisional liquidator must vacate his office.

5. Roles of key players involved in the restructuring and insolvency process

5.1 Who is responsible for the 'case management' control and administration of a corporate bankruptcy/liquidation, a formal rescue or an informal rescue?

Corporate bankruptcy/liquidation: In creditors' voluntary liquidation, the conduct of the liquidation is in the hands of the liquidator, subject to supervision by a committee of inspection if the creditors choose to form one, or by the creditors directly in the absence of a committee.

In a members' voluntary liquidation, the conduct of the liquidation is in the hands of the liquidator, subject to supervision by the company's members.

In a court-ordered winding-up, case management

rests with the court-appointed liquidator, subject to the supervision of the High Court and a committee of inspection, if the creditors choose to form one. Creditors and contributories are entitled to give the liquidator directions by way of resolutions passed at general meetings.

Formal rescue: In a scheme of arrangement, case management rests with the debtor, subject to sanction by the High Court. Occasionally, a scheme administrator is appointed to ensure adherence to the approved terms.

Informal rescue: In private workouts, case management rests with the debtor, although creditors play a major influencing role.

5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?

In a special administration, the special administrator is responsible for control and administration of the case.

5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?

In a scheme of arrangement or private workout, responsibility for preparing the restructuring plan rests with the debtor's management team. It is not unusual for the debtor to engage the services of financial and legal advisers for this purpose.

5.4 Who is responsible for preparing the restructuring plan in a case of corporate insolvency under any special legislation?

In a special administration, the special administrator is responsible for preparing a restructuring plan.

6. What financial information is available to creditors in a corporate bankruptcy/liquidation, a formal rescue and an informal rescue?

The main types of financial information available are as follows.

Statement of affairs: The debtor's directors are required to prepare statements of affairs (basically, a list of company assets and liabilities) in receivership or liquidation, but the compliance rate for this is low.

Accounts of receipts and payments: A receiver/manager and a liquidator must submit regular receipt and payment accounts. These accounts must be lodged with the registrar at six-monthly intervals during the course of the receivership or liquidation.

Audited accounts/annual reports: A company's audited accounts/annual reports as of the end of the financial year, and the results of the operations for the past year, are a rich source of financial and other information. However, the usefulness of this information may be limited if the nature of the company's business is going to change after the restructuring.

Information from the debtor: Creditors receive forward-looking profit and cash-flow projections, and sometimes business plans. Prospective financial information in the form of cash-flow projections and *pro forma* financial statements showing the impact of the proposed restructuring plan may provide creditors with a better basis from which to ascertain whether the debtor will be able to meet the required payments.

In addition, it is common practice for the debtor to provide its key lenders with detailed information on company performance on a periodic (often monthly) basis. If a lender has grave concerns about the debtor's performance, it may ask an independent party to provide a detailed monthly report on company performance as a condition of its continued support. These reports are usually provided to creditors' committees and generally include cash-flow reports (comparing actual with projected cash flows), key operating statistics and key operating statements.

Bursa Malaysia website: Companies listed on Bursa Malaysia are subject to fairly strict disclosure requirements. The information required includes quarterly financial results and performance indicators. Annual reports and quarterly financial results are posted on the Bursa Malaysia website.

Annual returns: All companies must lodge an annual return with the Companies Commission of Malaysia. Annual returns should be lodged within one month of each annual general meeting, and should be made up to the date of the annual general meeting or a date not later than the 14th day after the date of the annual general meeting. Once the annual return is lodged, it becomes a public document which may be inspected by anyone for a

prescribed fee. The information available for inspection includes the company's balance sheet and profit and loss accounts, and particulars of charges and shareholders. Company information can be obtained either by making an official search at the office of the Companies Commission or by written request.

7. Financial issues

7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?

Restructuring requires funding over the immediate, medium and longer term. In Malaysia, the source of funding is independent of whether the restructuring is formal or informal.

Immediate and short-term funding: In order to ensure that business operations continue, distressed companies often maximise their operational working capital. Trade creditors and friendly third parties are requested to extend further credit or accept deferred payment. Trade debt collection is more closely monitored. Such actions are often constrained as the distressed company's trade creditors and debtors may be in similar financial difficulties. In some instances, short-term bank borrowings may be arranged to ensure that working capital is maintained.

Medium and longer-term funding: Many corporations embark on a divestment programme, particularly regarding non-key assets. When refinancing bank borrowings, a number of corporations raise funds on the private debt securities market to take advantage of more competitive interest rates, as well as the ability to borrow long term on a fixed-rate basis.

One of the main obstacles that companies under restructuring face in raising funds from the private debt securities market is their inability to obtain investment-grade ratings from local credit rating agencies such as Ratings Agency Malaysia and the Malaysian Rating Corporation. Investors consisting mainly of financial institutions, such as banks, insurance and unit trust companies, have been risk adverse since the 1997 Asian financial crisis. Investors generally look for bonds with credit ratings of A or above, which are reserved for well-established companies with strong financial positions – a characteristic that companies undergoing restructuring do not possess.

The other main method of funding is through equity arrangements. Cash shortages and the need to bring gearing down to manageable levels mean that some creditors must convert their debt into equity. The recovery of the equity markets in early 2000 saw increased creditor willingness to accept equity as a credible means of repayment. However, in today's more uncertain climate, investors' waning appetite for equities is making the option of raising funds from the equity market less attractive to debtors.

7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?

Secured creditors are outside of the liquidation process; as such, realisation from the underlying secured assets is used to repay them.

In a winding-up, debts must be paid in the following order of priority:

- costs and expenses of the winding-up, including the liquidator's costs and remuneration;
- preferential debts, which include employee-related compensation such as wages and salaries, vacation pay and contributions to provident funds;
- federal taxes; and
- claims of unsecured creditors.

7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?

The Companies Act applies bankruptcy law regarding antecedent transactions to the winding-up of companies. All transfers of property, mortgages, deliveries of goods, executions and payments made by a company unable to pay its debts as and when they fall due in the six months prior to the commencement of winding-up are invalid. Such transactions are deemed fraudulent; no intention to prefer one creditor over another is required. The essential elements of transactions in this category are as follows:

- The transaction took place in the six months prior to the commencement of winding-up;
- It satisfies the description of one of the types of transaction mentioned in the Bankruptcy Act;
- It took place at a time when the company was insolvent;
- The party in whose favour the transaction was effected was a creditor of the company; and

- The effect of the transaction was to confer on that party a preference, priority or advantage over other creditors in the winding-up.

The Bankruptcy Act provides some relief for recipients of payments and parties to transactions that would otherwise be deemed invalid. All *bona fide* transactions, payments and dispositions for valuable consideration involving an insolvent company are protected, provided they took place before the date of the winding-up and the counterparty had no notice of:

- the presentation of a winding-up petition, in a compulsory winding-up; or
- the passing of a resolution to wind up the company voluntarily, in a voluntary liquidation.

The Companies Act provides that any disposition of the company's property after the commencement of winding-up is void, unless the court orders otherwise. Subject to the power of the court to validate an effected transaction, a liquidator may recover any property disposed of or payment made.

A special administrator is also empowered under the Danaharta Act to recover any asset or set aside any transaction that would be regarded under Malaysian bankruptcy law as void or voidable if effected by an individual. Any transaction occurring in the six months prior to the appointment of a special administrator is vulnerable to this measure.

7.4 What is the position of both unsecured and secured creditors that vote against, do not agree with or do not consent to either a formal or an informal rescue plan?

In a scheme of arrangement, if 75 per cent of creditors by class have approved the scheme and the court has sanctioned it, creditors that do not agree with or consent to it are still bound by its terms.

In a special administration, if secured creditors and Danaharta have approved a workout proposal, creditors that do not agree with the plan or do not consent to it are still bound by its terms.

In an informal rescue, the position of dissenting creditors is unaffected.

7.5 What actions can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?

In a creditors' voluntary liquidation, if creditors are not satisfied with the liquidator's conduct they can apply to the High Court to remove him. To succeed, they must show cause, which generally means showing some personal unfitness or that:

- the liquidator is not independent or impartial;
- his duty and interests conflict; or
- it is in the best interests of the creditors' voluntary liquidation that he be removed.

In members' voluntary liquidation, the company in liquidation can remove a liquidator by special resolution, unless a creditor or the liquidator has obtained a court order allowing the liquidator to remain.

In a compulsory liquidation, a creditor can apply to the High Court to remove a liquidator for cause.

In a scheme of arrangement under Section 176 of the Companies Act, creditors can vote against the scheme if they are dissatisfied with its terms.

In a special administration, only Danaharta can remove and/or replace a special administrator; the creditors have no powers in this respect.

8. General

8.1 Can the insolvency regime be described as systematic and efficient for:

(a) The liquidation of businesses incapable of being restructured?

(b) The restructuring of debt?

Liquidation: Although the court-supervised liquidation process is hampered by heavy caseloads, and the official receiver – who administers the vast majority of court-ordered liquidations – may lack adequate manpower and resources, court-ordered liquidation is largely a systematic and tolerably efficient procedure. Voluntary liquidations are generally efficient and systematic, as they are mainly administered by private insolvency practitioners.

Debt restructuring: The law on schemes of arrangement set out in the Companies Act is systematic and continues to be a widely used and accepted means for corporations to restructure their debts.

8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?

Liquidation: The biggest impediments within the court system are the lack of specialist judges and court officials with experience in administering liquidations, and a shortage of manpower and resources which hinders the efforts of the Office of the Official Receiver in handling case administration of the vast majority of court-ordered liquidations.

Debt restructuring: The court will normally sanction schemes of arrangement if 75 per cent in value and a simple majority in number of each class of creditors have approved the scheme. The scheme then becomes binding on all creditors. The biggest challenge is the classification of creditors by the debtor, which may lead to delays in completing the scheme of arrangement.

8.3 Has the insolvency regime been reformed in the last two years? If so:

(a) What are the reforms?

(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?

There have been no reforms to Malaysian insolvency law in the past two years.

8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?

A comprehensive review of Malaysian corporate and insolvency law is being undertaken by the Corporate Law Reform Committee of the Companies Commission of Malaysia.

8.5 Is statistical information on insolvency cases and corporate insolvency published? If so, how? Is it easily and freely accessible?

Statistical information is not easily available. Nevertheless, information on individual cases can be obtained through searches with the Companies Commission of Malaysia or of court filings. As regards cases under special administration, some details of non-performing loan resolution are available in Danaharta's annual report.

8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases (formal and informal)?

A specialised insolvency court staffed by judges who are experienced in insolvency law and who understand the commercial aspect of the law may well help to expedite the resolution of formal insolvency cases. As there is no legal framework governing informal rescues, these may initially use up less resources but may ultimately prove costlier if delays continue, which may eventually create a need for formal procedures.