

Asian Bankers' Association

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All Member Banks
Asian Bankers' Association

Asian Bankers' Association Informal Workout Guidelines – Promoting Corporate Restructuring in Asia

Introduction

This document contains principles which should guide financial institutions as to how they should deal with customers in difficulties in circumstances where the customer, is dealing with multiple financial institutions as creditors (**Financial Institution Creditors**).

It is in the interests of all stakeholders that the business of a debtor in financial difficulty should survive as a going concern if it appears to be possible to resolve those financial difficulties and to achieve the long term viability of that debtor's business.

A coordinated response by Financial Institution Creditors to a customer's financial difficulty provides time to manage the impact of defaults by that customer and creates an opportunity to explore and evaluate the options for consensual agreement outside a formal process. Advantages of pursuing an informal workout (as opposed to a formal court process) in most cases include:

- cost savings;
- simplicity;
- certainty;
- efficiency;
- confidentiality ;
- flexibility; and
- a contractually based sustainable solution to a debtor's financial affairs.

In recognition of the advantages of informal workouts, the ABA has endorsed the principles below and encourages its members to apply them whenever and wherever they are seeking to resolve the financial difficulties of a customer with borrowings from multiple Financial Institution Creditors.

In addition to those principles, a Model Agreement to Promote Company Restructuring (the **Model Agreement**) is attached. The Model Agreement can be used to facilitate an informal workout and is capable of both adaptation and adoption by some or all members of the ABA, regionally or in a particular jurisdiction or on a case by case basis. The Model Agreement is annotated and can be tailored to fit particular circumstances. A diagram is also attached detailing how the Model Agreement operates in broad terms.

The Principles

Cooperation

Where a debtor is found to be in financial difficulties, all relevant Financial Institution Creditors (whether they are secured or unsecured creditors) should be prepared to cooperate with each other. The initial attitude of Financial Institution Creditors should be one of support.

Work-outs need cooperation. Whilst Financial Institutions are likely to be reluctant to permit an increase in their exposure to a customer so that other facilities of financial institutions can be salvaged, they should be aware that, if they fail to co-operate in a work-out, the same approach may be taken against them should roles be reversed.

Breathing Space for Debtor Required

Financial Institutions should not withdraw facilities or be hasty to put the debtor in a formal insolvency administration or issue Court proceedings.

Fully Informed Creditors

Decisions should only be made based on reliable information which is shared fully with all Financial Institution Creditors.

Involvement of all Financial Institution Creditors in Workout Process

All Financial Institution Creditors (other than those whose exposure is negligible) should be eligible to participate in an informal workout process. Other creditors – such as trade creditors, trade financiers, insurance institutions and bondholders may also participate in a work-out.

Implementation

Meeting of Financial Institution Creditors Desirable

Where it has become apparent that an informal workout process may be applicable to a debtor, Financial Institution Creditors should meet to consider whether or not to implement

an informal workout process. All Financial Institution Creditors (other than those whose exposure is negligible) should be invited to participate in such a meeting.

Standstill Prior to Meeting

Prior to the meeting of creditors, the status quo in relation to the debtor should be maintained. Financial Institution Creditors should not take any enforcement action, other action, or reduce their exposure to the debtor until a meeting is held.

Eligibility for Workout Process

An informal workout process should only apply to a debtor where it appears possible to resolve its financial difficulties and where its business is viable in the long term.

Experienced representatives required

Financial Institution Creditors participating in an informal workout should take an active role by appointing an experienced and competent representative. That representative should ensure appropriate levels of management within the creditor organization are informed of the progress of the workout at all important stages and that the prospective and likely outcome of the workout is expected to be acceptable to the decision makers within the creditor organization.

Appointment of Representative Committee

The interests of relevant creditors are best served by coordinating their response to a debtor in financial difficulty. Such coordination will be facilitated by the selection of one or more representative coordination committees and by the appointment of professional advisers to advise and assist such committees and, where appropriate, the relevant creditors participating in the process as a whole.

Creditors should agree to appoint one creditor (usually the creditor with the largest exposure to the debtor or with particular expertise in managing informal workout negotiations) or an independent party to chair the coordination committee, lead negotiations with the debtor and ensure the expeditious progress of the informal workout negotiations.

Standstill Period

If Financial Institution Creditors consider, at a meeting of such creditors, that it appears possible to resolve the financial difficulties of the debtor and to achieve long term viability of its business, all relevant creditors should be prepared to cooperate with each other to provide sufficient time (a '**Standstill Period**') to enable information about the debtor to be obtained and evaluated and for proposals for resolving the debtor's financial difficulties to be formulated and assessed, unless such a course of action is inappropriate.

During the Standstill Period, all relevant Financial Institution Creditors should agree to refrain from taking any steps to enforce their claims (otherwise than by disposal of their debt to a third party) or to reduce their exposure to the debtor, but are entitled to expect that during the Standstill Period their position relative to other creditors and each other will not be prejudiced.

The length of such a Standstill Period should be limited to the time that is reasonably required to fulfil the objective of restructuring the debtor's business if that is possible. The length of a Standstill may be difficult to estimate and in some circumstances may need to be extended.

During the Standstill Period, the debtor should not take any action which might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared with the position of those creditors at the commencement of the Standstill Period.

Assignment of debts

Care must be exercised when dealing with sales of debt, particularly to third parties, who have not previously been involved in the workout process. Bringing buyers up to speed and ensuring their commitment can impede progress. Sellers of debts should ensure that buyers are aware of the ABA Informal Workout Guidelines and that they would be expected to adhere to them.

Priority for funding during workout

If additional funding is provided during the Standstill Period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practicable, be accorded priority status as compared to other indebtedness or claims of relevant creditors.

Access to Information about Debtor

During the Standstill Period, the debtor should provide, and allow relevant creditors and/or their professional advisers reasonable and timely access to all relevant information relating to its assets, liabilities, business and prospects, to enable proper evaluation to be made of its financial position and any proposals to be made to relevant creditors.

Achievable Business Plan

A restructure should be based on an achievable business plan that addresses operational as well as financial issues. A business plan should contain forecasts, based on documented and reasonable assumptions as to future events, which evidence that the business of the debtor corporation can generate sufficient cash flow and profit to meet its obligations existing after the restructure.

The underlying objective of any work out should be to obtain for Financial Institution Creditors the best deal that can be achieved.

Costs

A careful watch must be kept on costs. Financial Institution Creditors should take care that costs are minimised and reasonable, given that otherwise the debtor's cash flow will be unnecessarily worsened. Likewise the demands on the borrower for information must be reasonable

The debtor should meet all reasonable costs of creditors in considering restructuring proposals. This would include the costs of professional advisers, and any costs necessarily incurred by the co-ordinating committee.

Restructuring Proposal

Proposals for resolving the financial difficulties of the debtor and, so far as practicable, arrangements between relevant creditors relating to any standstill should reflect applicable law and the relative positions of relevant creditors at the commencement of the Standstill Period.

The terms of any restructuring proposal must be manageable for the debtor.

Confidentiality

Information obtained for the purposes of the informal workout process concerning the assets, liabilities, business and prospects of the debtor and any proposals for resolving its difficulties, should be made available to all relevant creditors and should, unless such information already publicly available, be treated as confidential, and only be used by creditors for the purpose of determining and ascertaining an informal workout proposal.

Conflicts

Any conflicts of interest should be declared openly and promptly.

Dispute Resolution

In endeavouring to determine disputes between creditors or between a debtor and its creditors, regard should be given to the possibility of referring such disputes, with the consent of those involved, to mediation.