

# Legal issues: Singapore

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Singapore has a well-established, comprehensive corporate bankruptcy and insolvency statutory framework. Largely set forth in the Singapore Companies Act, its corporate bankruptcy and insolvency laws primarily stem from English and Australian sources and remain similar in many respects to the laws of those jurisdictions. These laws have been progressively developed over the years to keep pace with developments in other jurisdictions having sophisticated legal systems, such as the introduction of judicial management close to the time of the introduction of judicial administration in the United Kingdom. In practice, the Singapore courts have effectively applied these laws. In relation to insolvency situations, the legislation balances the need to protect creditors and to hold management accountable with the practical need to try to preserve businesses that are inherently sound but are suffering unanticipated financial crises.

## 1 Describe the nature and the effectiveness of the following processes:

### a) Civil unsecured debt collection remedies.

Enforcement of a civil unsecured debt begins by filing a Writ of Summons in the Subordinate Courts or Supreme Court for amounts below S\$250,000 and amounts of S\$250,000 and above, respectively. Creditors may enter default judgment when a debtor fails to enter an appearance to the suit by filing a “Memorandum of Appearance”, or when a debtor enters appearance to the suit but fails to file and serve a defense to the claim within the requisite time period.

Except for situations in which a default judgment is entered, the matter typically proceeds to trial in the Subordinate Courts or the High Court (as the case may be) for adjudication. In certain limited circumstances, decisions of the Subordinate Courts can be appealed to the High Court and decisions of the High Court can be appealed to the Court of Appeal.

This multi-tiered system of appeals, although speedy on account of landmark judicial reforms in the 1990s, does increase the legal costs. The costs factor combined with the general judicial policy and case law rules discouraging stays of execution on a judgment pending appeal act as a deterrent to the abuse of appeal procedures by recalcitrant debtors in attempting to delay enforcement of judgment.

Judgment creditors have five ways of enforcing a judgment:

- ▲ In garnishee proceedings a judgment creditor seeks to recover the sum owed to it by a judgment debtor from a third party (the garnishee) who is indebted to the judgment debtor. This remedy is especially effective to “garnish” monies in the judgment debtor’s bank account and involves a relatively quick time frame of about one month to complete.
- ▲ A writ of seizure and sale of the judgment debtor’s property (movable or immovable) is effective against unencumbered property. For suits filed in the Supreme Court, a seizure of property could take up to 10 days and the auction date fixed within a time period of about two weeks thereafter. The speed of this remedy makes it a popular choice for judgment creditors.
- ▲ Winding-up proceedings are commonly used because of their drastic effect. Some company directors negotiate a settlement with creditors in order to forestall that process. Bankruptcy proceedings in Singapore are analogous to winding-up proceedings except that they operate *vis-a-vis* individuals. Winding-up and bankruptcy petitions are conventionally heard about a month after the filing date of the petitions.
- ▲ Judgment debtors can be examined so that information as to their means can be obtained for the purpose of confirming and supplementing existing information known to the judgment creditor to help in identifying suitable modes of enforcing judgments. In the case of a corporate judgment debtor, an officer of the company can be summoned to attend court to be examined on oath by solicitors for the judgment creditors and produce documents. This process takes about two weeks in the High Court.
- ▲ Committal proceedings against directors of corporate debtors are taken out to compel compliance with a judgment. Sanctions involve fines or imprisonment.

**b) Secured property enforcement remedies.**

Security documents usually confer four principal remedies:

- ▲ Power of sale of assets.
- ▲ Power to appoint a receiver over assets charged.
- ▲ Right to take possession of assets.
- ▲ Right of foreclosure.

As the first two remedies generally do not involve court proceedings, the secured creditor can readily exercise such powers. In practice, the last remedy is rarely used, as it is only commercially viable if the assets increase in value.

**c) Special debt collection or secured property remedies that are available to banking sector creditors.**

Banking sector creditors commonly have the following remedies:

- ▲ Enforcement of covenant to pay “on demand” in bank security documents that involves a legal suit as outlined in Section 1a above.
- ▲ Claims on third-party guarantees or charges given by the corporate debtor’s directors that also involve a legal suit.
- ▲ Fixed charges over company assets created by appropriate banking documents – assets charged cannot be disposed of without the consent of the debentureholder.
- ▲ Floating charges over company assets also created by appropriate banking documents (these are generally vulnerable to subsequent fixed charges, liens and execution creditors).

**d) Corporate bankruptcy/liquidation processes that are available to corporate debtors and creditors.**

There are two types of voluntary liquidation processes:

- ▲ Members’ voluntary winding-up activated when the directors make a declaration of solvency in accordance with the Companies Act. (Under Singapore law, the members of a company are those persons that either subscribe to the company’s Memorandum of Association or agree to become a member and appear on the company’s register of members. A person may purchase shares without becoming their registered holder and thus would be a shareholder, but not a member, in this situation.)
- ▲ Creditors’ voluntary winding-up in a situation of insolvency. Creditors may appoint their own liquidator in preference to the company’s nominated liquidator.

Creditors can petition for the winding-up of a company on the grounds of the corporate debtor’s inability to pay its debts as outlined in Section 1a above.

**e) Formal corporate rescue processes that are available to corporate debtors and creditors.**

There are two regimes available under the Companies Act: (i) a scheme of arrangement and (ii) a judicial management. Both regimes envisage scenarios in which a debt-restructuring plan is approved at a creditors’ meeting.

Where a scheme of arrangement or compromise is proposed between a company and its creditors, the court may order the convening of a creditors’ meeting, or any class of them, on the application of the company, a member, a creditor or a liquidator. If the court sanctions a compromise or arrangement agreed to by a majority in number representing three fourths in value of the creditors or class of creditors at the meeting, it is binding on all creditors. There are detailed statutory provisions about the information that must be circulated to creditors in the notice summoning the meeting.

Typical schemes of arrangement of insolvent companies involve debt for equity conversions, moratoriums and extended repayment schedules. Another method is procuring that the largest shareholders or trade investors subscribe for new shares in the company.

Judicial management will only be ordered in the following circumstances:

- ▲ Where a more advantageous realization of the company's assets could be effected than on a winding-up.
- ▲ To enable the company or the whole or part of the undertaking to survive as a going concern.
- ▲ To enable a scheme of compromise or arrangement to be approved.

Judicial management, though popular after it was first introduced in 1987, is not presently an automatic first choice for financially beleaguered companies. The alternative regime of schemes of arrangement presents three practical advantages as follows:

- ▲ There is less stigma attached to a company undergoing a scheme of arrangement as opposed to a judicial management.
- ▲ The directors continue to retain their powers in a scheme of arrangement unlike judicial management as elaborated in Section 3b below.
- ▲ There is no need to attempt to forecast a company's future financial health that would otherwise be required in relation to a judicial management.

For these reasons, the commercial sector is generally inclined to favor the use of schemes of arrangement.

**f) Informal corporate rescue processes.**

Informal corporate rescue processes such as direct negotiations, voluntary arrangements or "standstill" agreements tend to be ineffective where threats of litigation by different creditors bring pressure to bear on the negotiation. However, in cases where key creditors cooperate, consensual restructuring has proven to be effective on account of the following:

- ▲ Its privacy (whereas, in contrast, scheme documents become a matter of court and public record and companies undergoing such schemes attract media publicity).
- ▲ Its flexibility (whereas amendments to private scheme documents are a matter of contract, amending approved scheme documents to change the general principles of the scheme requires additional court approval).

**g) Any other corporate insolvency, or insolvency-related, processes available under any special legislation.**

Banks, as debentureholders (the holders of security over all or part of the assets of a company) or trustees for debentureholders, can apply to court to appoint receivers. A court may appoint a receiver even if the security has not yet become enforceable if there is a danger of the assets covered by a debentureholders' charge being dissipated. Such danger has been held to exist where the company ceases to carry on its business and is insolvent or where there are threats of action against the company by other creditors.

If it is necessary to realize the business as a going concern, a receiver and manager may be appointed where there is a charge over the business or undertaking (not merely a specific asset) of the company.

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**2 What is the effect upon debt enforcement and secured property enforcement processes of:**

**a) An adjudication of corporate bankruptcy/liquidation?**

After the commencement of a winding-up (which is the date the winding-up petition is presented), many significant enforcement proceedings against a company are void. Generally, a winding-up order stays all actions against the company indefinitely.

The power of a secured creditor to appoint a receiver can be exercised after the company has gone into liquidation. Secured creditors may also realize their security and obtain full satisfaction without filing a proof of debt in respect of their claim in the corporate liquidation.

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

A petition for judicial management operates as an automatic moratorium on all legal proceedings. Secured creditors may not enforce their security against the company unless the judicial manager or the court allows it.

In the case of a scheme of arrangement, court applications have to be made to stay each pending suit against the company. This is one of the inherent weaknesses of a court-sanctioned scheme of arrangement, as separate court applications that can prove costly and time-consuming are required to restrain legal proceedings against the company.

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

The impact of informal debt and secured property enforcement processes on a company are a matter of contract between the company and its creditors. Absent such agreement, creditors are free to pursue their formal remedies with impunity.

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

An appointment of a receiver and manager neither affects assets that are the subject of a separate security nor debt enforcement.

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**3 What is the effect on the management of a corporation of:**

**a) An adjudication of corporate bankruptcy/liquidation?**

The powers of the board of directors cease in a winding-up. Instead, the power to manage the company vests in the liquidator.

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

A scheme of arrangement does not necessarily impact on the management of the company. Usually, financial advisors are appointed to advise on the proposed scheme. The powers of a scheme manager are spelled out in scheme documents. In an insolvency restructuring, a committee of participating creditors commonly makes major decisions involving large-sum transactions or sale of assets.

When a judicial management order is issued, the powers and functions of the board of directors are transferred to the judicial manager. The directors only retain certain residual powers to call meetings. The ceding of powers and functions of the board to the judicial manager renders judicial management less attractive to the commercial sector than schemes of arrangement.

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

The management of a company is unaffected by the initiation of informal corporate rescue processes.

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

Only the powers of the company and the directors to deal with assets subject to receivership are affected. Where substantial assets are in the receiver's hands or where a receiver and manager is appointed, the directors' powers are effectively suspended until the receiver hands back the company.

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**4 Who is responsible for "case management" control and administration of:**

**a) A corporate bankruptcy/liquidation?**

Up to the point of the liquidation order, responsibilities are as follows:

- ▲ The members of the company manage the members' voluntary liquidation process.
- ▲ Creditors' voluntary liquidation processes (although initiated by directors) involve creditors in its management process.
- ▲ The petitioning creditor manages compulsory liquidation processes.

As from the point of the liquidation order, a liquidator manages the administration processes of liquidation (both compulsory and voluntary).

**b) A formal rescue?**

The responsibility for managing a formal rescue by way of a scheme of arrangement is on the company and (often) a steering committee of banking creditors. A scheme manager generally manages the administration of a scheme of arrangement itself.

The responsibility for managing a formal rescue by way of a judicial management is on the company itself or a creditor. Either the directors or company may resolve that the company present a petition for judicial management. Where the judicial manager's proposals for rescue have been approved by a majority of creditors in number and value in the creditors' meeting and by the court, the judicial manager must manage the company in accordance with these proposals. The creditors may appoint a committee to supervise the judicial manager.

**c) An informal rescue?**

The company and its major creditors manage the process of informal rescue.

**d) A case of corporate insolvency under any special legislation?**

The decision to place a company, or any of its assets, under receivership is made by a debentureholder. Exceptionally, a shareholder could apply to court for the appointment of a receiver and manager in cases of serious disputes among shareholders and a deadlock in the management of the company.

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**5 Who has the responsibility for the preparation of the plan of rescue under:**

**a) A formal rescue?**

In a scheme of arrangement, the scheme documents incorporating the rescue plan are prepared by financial advisors, vetted by legal advisers, and later implemented by the scheme manager.

A judicial manager must send to the Registrar of Companies, the members and the creditors of the company, a statement of proposals for the achievement of the purposes for which the judicial management order was made. This must be done within 60 days of the judicial manager's appointment (or such longer period as the court may allow).

**b) An informal rescue?**

The company together with its major (usually banking) creditors generally prepares an informal rescue plan.

**c) A case of corporate insolvency under any special legislation?**

In a receivership, the ultimate aim is not to effect a plan of rescue but to pay off the creditors on whose behalf the appointment of the receiver or receiver and manager was made.

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**6 How are the different classes of creditors treated in relation to:**

**a) A corporate bankruptcy/liquidation?**

The following claims (in order of priority) will be paid in priority to all debts (other than secured debts):

- ▲ Costs and expenses of winding-up.
- ▲ Wages and salaries of employees.
- ▲ Retrenchment benefits and *ex-gratia* payments.
- ▲ Workmen's compensation.
- ▲ Contributions to provident fund.
- ▲ Remuneration in respect of vacation leave.
- ▲ Taxes.

Unsecured creditors rank *pari passu* amongst themselves.

**b) A formal rescue?**

There is no legislation under the Companies Act enumerating the priorities of different classes of creditors in relation to a scheme of arrangement and judicial management. However, an insolvent company is likely to be unsuccessful to the extent that it attempts to vary the priorities of classes of creditors in insolvency law as the Singapore High Court has held this to be against public policy.

**c) An informal rescue?**

This is a matter of contract between the company and its creditors.

**d) A case of corporate insolvency under any special legislation?**

When a receiver is appointed on behalf of a debentureholder secured by a floating charge, debts which would be preferred in a winding-up (excepting taxes) will receive priority to the claims of the debentureholder. However, it is only where the uncharged assets are insufficient to meet the preferred debts that assets covered by the floating charge would be taken.

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**7 What is the position of both unsecured and secured creditors who vote against, do not agree with, or do not consent to, a plan of rescue in relation to:**

**a) A formal rescue?**

Creditors (or a class of creditors) that disagree with a proposed scheme of arrangement may vote against it at the court-convened meeting. If their collective votes are more than 25 percent of the valid votes cast at the meeting, the proposed scheme would not be passed. A majority in number representing 75 percent in value of the creditors is required to approve a scheme. Dissenting creditors can appear in court to object to the proposed scheme on the following grounds (among others):

- ▲ The class of creditors is not properly constituted.
- ▲ The scheme is unfair or unreasonable.
- ▲ The scheme is being put forward in bad faith.

If the objections of dissenting creditors are overridden by the High Court, the scheme of arrangement becomes valid and binding on the class of creditors concerned.

Unlike the case of a scheme of arrangement, a debentureholder may effectively veto the making of a judicial management order. However, once a judicial management order is made, a secured creditor is not allowed to vote if the security covers all the debts owed to that creditor, unless the security is surrendered. If the requisite majority of creditors approve the proposals at the creditors' meeting, they will be carried through. If the creditors do not approve the proposals, the court may order that the judicial management order be discharged. The statutory safeguards regulating judicial management are an attractive feature to banking creditors, as they provide certainty and in-built timelines for the judicial manager to accomplish the objectives.

**b) An informal rescue?**

Creditors who disagree with an informal plan of rescue could scupper the rescue by actively pursuing enforcement proceedings against the company.

**c) A case of corporate insolvency under any special legislation?**

If a receiver's appointment is valid, in practice, no objections are usually made to the receivership. However, a court-appointed receiver and manager can be discharged if it can be demonstrated that the company's assets were not in jeopardy.

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8 In relation to the need for an insolvent corporation to have urgent working capital funding, what difficulties are encountered in the provision of such funding in relation to:

a) A formal rescue?

Banks lend at their own risk and should negotiate fresh security or procure a subordinated debt arrangement. Working capital funding could be built into the proposal (in judicial management or a scheme of arrangement). However, there are no statutory safeguards to assist banks in providing these new emergency lendings.

b) An informal rescue?

There is no legislation providing superpriority for working capital funding hence there are always difficult negotiations between existing creditors who are not providing working capital funding and those that are. Furthermore, there is the issue of existing banking creditors being unwilling to write off outstandings (including interest), thus continuing the company's debt load.

c) A case of corporate insolvency under any special legislation?

A company in receivership faces the practical difficulties described in Section 8a above.

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9 Briefly describe the relevant provisions relating to the setting aside of antecedent and fraudulent transactions in relation to:

a) A corporate bankruptcy/liquidation?

Antecedent transactions can be set aside by virtue of Section 329 of the Companies Act read together with Sections 99 and 103 of the Bankruptcy Act. The prohibition is against the transfer of property to creditors, sureties or guarantors of an insolvent company's debts (if made within six months before the date of commencement of the winding-up) which, upon the winding-up of the transferor, puts the transferee in a better position than what would otherwise have been. In the case of unfair preferences to an "associate" (a broadly defined term), such transactions are voidable if made within two years from the date of the commencement of winding-up.

Transactions at an undervalue can be avoided if made within five years from the date of commencement of winding-up by virtue of Section 100(1)(a) of the Bankruptcy Act.

b) A formal rescue?

The catalogue of transactions voidable as unfair preferences in a judicial management includes:

- ▲ Settlements.
- ▲ Conveyances or transfers of property.
- ▲ Charges on property.
- ▲ Payments made.
- ▲ Obligations incurred.

No similar provisions apply to companies bound by a scheme of arrangement.

c) A case of corporate insolvency under any special legislation?

There are no statutory provisions in relation to a company in receivership.

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10 Are there any provisions of law that might operate to invalidate a secured property transaction in relation to:

a) A corporate bankruptcy/liquidation?

Apart from unfair preferences and transactions at an undervalue, where a company has gone into liquidation within six months from the date of creation of a floating charge, Section 330 of the Companies Act invalidates the charge, except to cover the amount of the cash advanced to the company together with interest at 5 percent per annum.

There are no specific legal provisions invalidating the realization of a mortgaged property or a secured property under insolvency law.

**b) A formal rescue?**

The law on unfair preferences applies to secured property transactions of companies in judicial management, but not to similar transactions in relation to a company bound by a scheme of arrangement.

**c) A case of corporate insolvency under any special legislation?**

The company has no power to enter into contracts in relation to the business or to sell, pledge or otherwise dispose of the property in the possession of the receiver. Apart from this, there are no specific legal provisions invalidating the realization of security in a receivership.

**11 Describe the difficulties that are encountered in endeavoring to administer cases of corporate bankruptcy/liquidation and formal corporate rescue that involve property and business interests located in more than one jurisdiction.**

Under Singapore law, the regimes of winding-up and schemes of arrangement may extend to foreign companies, if there is a sufficient connection between the foreign company and Singapore. Dispositions of property of a company (even if situated overseas) are prohibited, subject to the laws and judgments of the courts where the property is located. There are practical difficulties in administering property and business interests located in other jurisdictions. For instance, judgments made by a Singapore court in respect of debts owing by a foreign company are enforceable only in certain Commonwealth countries by virtue of laws governing reciprocal enforcement of foreign judgments. In cases of non-compliance with such judgments, this invariably leads to additional legal proceedings in those countries with attendant costs and expenses.

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1 Is the restructuring/ insolvency legislation generally:

- a) Understood?
- b) Being followed and/or available opportunities being taken up?
- c) Being enforced by relevant authorities?

The Singapore legislation governing the insolvency and restructuring of companies is set out in The Companies Act, Chapter 50, and The Winding-Up Rules. In addition to relatively standard provisions on voluntary and compulsory liquidation and receivership, the legislation provides two other forms of insolvency/restructuring regimes known as Judicial Management and Scheme of Arrangement.

### **Judicial Management**

The Judicial Management provisions of The Companies Act specify that the court may grant a Judicial Management order for the purposes of achieving one or more of the following:

- ▲ The survival of a company, in whole or in part, as a going concern.
- ▲ The approval of a Scheme of Arrangement between the company and its creditors wherein a compromise is reached between the same in relation to the company's debt obligations.
- ▲ A more advantageous realization of the company's assets than would be effected in a liquidation.

Effectively, Judicial Management provides protection from creditors and a moratorium period in which the Judicial Manager explores the options available to restructure the business and/or debt obligations.

### **Scheme of Arrangement**

Scheme of Arrangement is a voluntary arrangement whereby a financial scheme is structured and proposed to the creditors and/or members of a company for acceptance. If approved by a majority in number representing three fourths in value of the creditors or members voting at a meeting called to consider the proposed scheme, it will be binding on all the creditors or members upon endorsement by the court. There is no restriction on the scope or format of a scheme that may be proposed to creditors or members. Accordingly, there is significant flexibility within which proposals can be formulated.

The insolvency and restructuring legislation is generally well understood, applied and closely followed. For example, Vikay Industrial Ltd, a listed company that produces liquid crystals display, sought court protection from creditors and was successfully placed under Judicial Management. Successful voluntary debt workouts involving listed companies include IPC (a computer, telecommunication and electronic equipment manufacturer) and Goldtron Ltd (an electronic and telecommunication product manufacturer and distributor), both of which obtained majority creditor support and court endorsement of their debt restructuring schemes. In the process, the authorities have rendered support and gave due weight to the legislation.

Insolvency and restructuring legislation is being used widely when directors and/or creditors recognize an entity's precarious financial position. When utilized, insolvency and restructuring legislation is strictly enforced by the relevant authorities.

2 Broadly speaking, in practice, does the insolvency/restructuring legislation tend to lead to

- a) Early recognition and action on financial difficulties experienced by a corporation?
- b) Restructuring alternatives as opposed to liquidation, and if not, why not?

A company generally does not need to rely on the insolvency/restructuring legislation to recognize its financial difficulties. Directors who are aware of their company's poor financial health will frequently attempt to resolve identified problems internally. Professional help is generally shunned, unless as a last resort. Frequently, professional help is only engaged after extensive pressure from creditor banks and often due to an

impasse in negotiations between the company and banks. A professional is often engaged to undertake an independent assessment of the company's financial health in order to identify the options available to the company and the creditor banks.

Although the legislation imposes penalties on directors of companies for wrongful and fraudulent trading, (a situation where a liability is incurred with no reasonable expectation of it being paid), this has not been a positive catalyst for seeking immediate help and protection under the insolvency legislation. Seeking help under insolvency legislation is considered an admittance of incompetence by the directors, which can be perceived as discrediting the social standing of the directors and the company in the industry. Losing effective management control to professionals or public knowledge of such help in dealing with a company's debt obligations is often seen as a "loss of face".

For companies on the verge of insolvency due to a liquidity crisis, the restructuring legislation provides a soft landing for those companies with viable businesses. The legislation can provide assistance in enabling the restructuring of debts.

Notwithstanding the protection that can be afforded to companies in financial difficulty through the legislation, restructuring is often undertaken outside the provisions of legislation and has become a function of professional management. This was frequently the case in the recent Asian financial crisis during which companies carried out voluntary restructuring exercises with the assistance of professionals.

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3 What are the main practical difficulties being encountered in:

a) The preparation of restructuring plans?

The main difficulties encountered in the preparation of restructuring plans are as follows:

***Lack of viable standalone business***

The lack of a viable standalone business to guarantee the survival of a company is often a main difficulty in preparing a restructuring plan that is acceptable to the creditors. It is common that a company may have several lines of business which, although generating a contribution margin, do not have sufficient earning capacity to stand alone once other poorer performing lines of business are disposed. The non-core businesses commonly lack focus and unnecessarily utilize scarce resources.

***Unrealistic forecasts***

Eager to portray a viable business, management is inclined to set rosy, but unrealistic, forecasts. Failure to achieve ambitious plans may undermine the objective of a restructure plan, as creditors may lose faith in the company through non-performance of plans.

***Lack of support***

Workable restructuring plans require support from parties both within the company (management and staff) and externally (creditors, suppliers and customers).

A perceived loss in credibility through having to undertake a restructuring can result in key staff leaving and both suppliers and customers adopting a conservative position. Suppliers may refuse to extend further credit and customers may seek alternative supply channels.

***Unreasonable creditors' expectation***

It is almost certain that there will be creditors who are a stumbling block in the process of obtaining support for any restructuring plan. The unreasonable expectations of such creditors sometimes make a restructuring almost impossible. To make matters worse, the company may be forced to make unrealistic revisions to forecasts in order to gain acceptance from creditors, only to be faced with not achieving these forecasts at a later date.

b) The implementation of restructuring plans?

On the implementation aspect, the main practical difficulties are as follows:

**Failing to achieve key performance forecasts**

Prior to the implementation of a formal restructuring plan, a company may have been operating under intensive scrutiny of its major creditors, including its bankers. If during this period forecasts have been optimistically set and not achieved, the creditability of the management is often damaged to such an extent that restructuring plan forecasts are not taken seriously.

**Lack of support from creditors and banks**

A financially bruised company often meets difficulties with getting financial support from its suppliers and bankers. Financiers are wary of such doubtful accounts and would limit their support thereby stifling the corporation's implementation of the restructuring plans.

**Lack of internal support**

A company undergoing restructuring is generally not well perceived in the eyes of staff or potential employees. Frequently, staff with low morale leave to find more stable jobs with financially sound corporations. Job-seekers would shy away from employment with a corporation that has an uncertain future. As a result, the company often faces staff shortage to help it implement its restructuring plan.

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4 To what extent are companies that are going through any formal or informal restructuring merely adjusting their debt/equity structure, rather than genuinely restructuring their business operations?

In almost all instances of insolvency restructuring, the debt/equity structure will be adjusted. Even though a company may dispose of non-core assets, if any, to raise funds to repay liabilities, this is often insufficient and creditors are inevitably asked to accept a "haircut" or take equity in the company in substitution for their debts. This could be in the form of a convertible bond that converts the debt into a long-term debt with an option to convert into equity at maturity. Another possible option could be to pay a small sum up front to the creditors and to convert the balance debt to a medium-term debt with intermittent repayment over several years, or any mixture of cash, bonds and shares.

Rationalization of business operations is likely to be a function of professional management. A company with a professional management team is commonly perceived to be better able to streamline operations and businesses than previous management.

Creditors in Singapore are reasonably well informed of insolvency legislation and their rights. Creditors in Singapore are unlikely to accept the mere adjusting of a company's debt/equity structure without an attempt to genuinely restructure the business to reduce the likelihood of the previous failings being repeated.

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5 What are the main areas from which funding is generally being utilized by companies which undertake either formal or informal restructuring?

The main areas of fund raising in a restructuring exercise are as follows:

**Tighter working capital cycle**

This internal source of funds is derived from primarily cost cutting, maximizing credit and increasing receivable realizations.

**Client and creditor support**

Supportive clients and creditors are another source of funds. The company's fund position is boosted when clients continue to give business and make early payments for services rendered, and when creditors continue to extend credit and/or agree to a moratorium on past debts, thereby freeing up resources to build up the financial health of a company.

**Capital injection**

With creditors' support in a restructuring exercise, it is not uncommon for shareholders to show commitment and confidence by injecting more capital funds to the corporation. Externally, venture capitalists are another potential source of funding since it would be timely for them to take a stake in the company when investment terms are favorable.

**Banks**

Banks continue to be the primary source of financing. It is common for companies to convert existing short-term loans to longer-term loans with repayment over an extended period, and to obtain a new line of facility. However, this is only when the banks are supportive, which happens if there has been a good, long banking relationship. A frequent condition associated with such an arrangement is for a professional advisor to closely monitor the cash flow.

**Bonds**

To raise funds to finance its restructuring exercise, a company could issue unsecured bonds with attractive coupon payments or embedded options to convert into equity on maturity.

**Summary**

Provided there is an underlying viable business, there is generally a favorable attitude towards supporting a company in financial difficulty, as long as the restructuring proposals are credible and within a reasonable risk profile.

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