

Malaysia has a legal system based on the common law, and common law and equitable concepts have long been received and applied. English and other Commonwealth precedents are still persuasive in the Malaysian courts, and are consequently cited and relied upon frequently. The core of Malaysia's current company and corporate insolvency law is contained in the Companies Act 1965, which was derived from Australian state legislation of the 1960s. A new formal insolvency process, namely Special Administration under the Danaharta legislation of 1998 (Pengurusan Danaharta Nasional-Berhad Act - "the Danaharta Act"), was introduced to supplement the older insolvency and restructuring laws, in response to problems in the Malaysian banking sector in the wake of the Asian Financial Crisis of 1997. The creation of the Corporate Debt Restructuring Committee under the auspices of Malaysia's central bank provided a much needed informal restructuring process. Recent amendments to the Companies Act enabled some of the older insolvency processes, such as schemes of arrangements, to keep pace with developments elsewhere in the Commonwealth. However, notwithstanding the amendments, as the bulk of the formal insolvency processes operate through the Malaysian courts, judicial officers inexperienced in insolvency processes and delays have combined to affect the speedy application of insolvency processes. The scheme of arrangement process in particular has been slow and costly. Special Administration under the Danaharta legislation is not court based, and it has been largely successful, given that the Danaharta legislation provided special administrators with wide powers and prescribed procedures for expeditiously securing the passage of an approved restructuring plan without being subject to delays in the court system.

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

a) Civil unsecured debt collection remedies.

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 judgment in default being entered. Debtors could face a summary procedure to dispose of claims where there is no credible defense fit to go to trial. If the debtor defends the summary proceedings, the claim goes for a full trial. Winding-up, seizure and sale of assets, garnishment of bank balances or charging order over land and shares are different methods of enforcing judgments. The process leading to judgment can be time consuming, and bad decisions by inexperienced judicial officers are not unusual. The enforcement procedure generally produces results, but it is slow.

b) Secured property enforcement remedies.

Land ownership in West Malaysia is based on a system of land registration backed by a central register administered under the National Land Code 1965 ("NLC"). Land can be charged under the NLC or be subject to a fixed or floating charge under a debenture. Where land is concurrently charged under the NLC and secured by a debenture, a receiver appointed by the debenture holder may not sell the land by private sale. Instead, the debenture holder must take judicial enforcement proceedings under the NLC. However, a receiver can sell land that is subject to a debenture but not to an NLC charge. Rights over land, pending issuance of title, can be assigned to the creditor, leaving the land to be sold by judicial sale. The whole process is subject to delays within the court system, and challenges to the right to sell, or to the mode of sale, can take a long time to resolve, reducing the efficacy of the process.

The holder of a debenture over the assets of a corporation can appoint a receiver and manager with minimal formality. The receiver and manager is normally empowered to run the business of the debtor, and to realize its assets. Again, challenges to the appointment and the conduct of receivers can hold up and impede the receiver-ship because of delays within the court system.

Security can be obtained over shares by way of a legal or equitable charge, which can be privately force-sold. Where the shares deposited are shares in a licensed insurance company or a licensed bank, regulatory body approval is required prior to creation and enforcement.

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

There are no special remedies available to banking sector creditors.

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

Creditors of corporations can initiate winding-up proceedings by filing a winding-up petition under sections 217 and 218 of the Companies Act for inability to pay debts as and when they fall due. If the winding-up order is made, the court will appoint a liquidator, who will oversee the liquidation process to ensure an orderly realization of assets and repayment of creditors and members.

Corporate debtors can initiate voluntary liquidation proceedings by passing a resolution by the statutorily prescribed majority of 75 percent at a general meeting, provided the directors are in a position to declare that the company is solvent, known as members' voluntary winding-up. If the directors are unable to declare that the company is solvent, the creditors can resolve to carry on with the voluntary winding-up in a creditors' voluntary winding-up.

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

The only formal rescue process is the scheme of arrangement pursuant to section 176 of the Companies Act, which can be initiated by the members of a corporation or its creditors. The scheme requires the approval of 75 percent in value and a simple majority in number of each class of creditors present and voting, creditors being divided into classes according to their communality of interests. The debtor decides on how creditors are to be classified, and though creditors can challenge the classification, few do because of the delays in getting a court decision. The scheme must then be sanctioned by the High Court. Pending such sanction, the applicant can apply to the High Court to grant an order staying all proceedings against the company. The procedure is cumbersome and is subject to delays within the court system. Creditors are kept from enforcing security for unduly long periods by the use of temporary restraining orders, which do not rest on sound conceptual ground or precedent.

f) Informal corporate rescue processes.

Informal corporate rescue processes comprise workouts under the Corporate Debt Restructuring Committee ("CDRC") framework, and other private workouts. CDRC only accepts applicants that meet certain eligibility criteria, such as having a potentially viable business and having more than RM50 million worth of debt. CDRC has a secretariat at Bank Negara Malaysia, the Central Bank, which facilitates negotiations between the creditor banks and the debtor, formation of creditors' committees, selection of a lead creditor and the terms of a standstill. During the standstill, consultants may be appointed to study and propose workout proposals.

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

In 1998, the Malaysian Parliament passed the Danaharta Act. This Act provided for the formation of an asset management company known as the Danaharta Corporation, which would acquire non-performing loans and the underlying security rights from financial institutions. A "Special Administrator" may be appointed by Danaharta, either at its discretion or at the request of the corporate debtor, which becomes

known as an “affected person” for the purposes of the Act. The appointment of a Special Administrator must serve the public interest, and one or both of the following purposes: i) the survival of the corporate debtor as a going concern, and ii) a more advantageous realization of its assets than on a winding-up. The breadth of the powers conferred on Special Administrators, and the Parliament’s choice of allowing only secured creditors to approve the Special Administrators’ plan (to the exclusion of all classes of creditors) has enabled a relatively high number of rescues to be implemented quicker than in a court based rescue. A solitary challenge in the Malaysian courts to the appointment of a special administrator did not succeed, and in any event, an amendment to the legislation, to all intents and purposes, put an end to such challenges.

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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?

Once a resolution for creditors’ or members’ voluntary liquidation is passed, or an order of court for the winding-up of a debtor is granted, all legal proceedings against a corporate debtor will be stayed, unless leave of court to continue is granted. All dispositions of property of the company are void. However, secured creditors stand outside the liquidation, and may enforce their securities. Leave of court is required if a secured creditor wishes to enforce a National Land Code charge, because under such a charge the beneficial ownership of the land remains with the debtor. Leave is normally granted.

b) The commencement of a formal rescue process?

The scheme of arrangement procedure under section 176 of the Companies Act 1965 does not have any legal effect on debt or secured property enforcement. However, debtor companies usually seek a restraining order for three months against the continuation or commencement of all forms of enforcement proceedings. These orders can be renewed every three months thereafter until the scheme has been sanctioned by the High Court. Extensions of restraining orders are frequently given, though not normally more than once or twice. There have been exceptional situations where orders have been extended many times.

c) The initiation of an informal rescue process?

The CDRC -based informal rescue process only involves bank creditors, and does not result in the interruption of debt or secured property enforcement, unless a standstill has been agreed to.

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

The appointment of a special administrator gives rise to a moratorium of 12 months duration (subject to extension), during which *inter alia* all proceedings against the company are effectively stayed, winding-up proceedings are dismissed, and no set-off of debts is permitted.

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

a) An adjudication of corporate bankruptcy/liquidation?

Directors cease to have any powers once a liquidator is appointed by the High Court upon the making of a winding-up order by court or once a liquidator is appointed in a voluntary liquidation.

b) The commencement of a formal corporate rescue process?

The commencement of a formal rescue process has no effect on the management of a corporation.

c) The initiation of an informal corporate rescue process?

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

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

As long as the appointment of Special Administrators subsists, all powers of directors of the “affected person” are suspended.

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4 Who is responsible for “case management” control and administration:

a) A corporate bankruptcy/liquidation?

In a court-ordered winding-up, the court appointed liquidator conducts the liquidation, subject to the supervision of the High Court and the committee of inspection. Creditors and contributories are entitled to give the liquidator directions by way of resolutions passed at the general meetings.

In a voluntary winding-up, the conduct of the liquidation is in the hands of the liquidator, subject to supervision by the committee of inspection, or the creditors (in the absence of a committee).

b) A formal rescue?

From the inception through to implementation of a scheme of arrangement, management would have primary conduct of the process, subject to supervision by the High Court. Occasionally, a “scheme administrator” is appointed under the terms of an approved scheme to oversee it.

c) An informal rescue?

The “Creditors’ Committee” formed under the auspices of CDRC would have general control and administration of an informal rescue.

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

In a “Special Administration” under the Danaharta Act, the Special Administrator appointed by the Danaharta Corporation would have control and administration of the process.

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

a) A formal rescue?

It will usually be the management, aided by financial and legal advisers, that formulates a scheme of arrangement in the case of a formal rescue under section 176 of the Companies Act 1965.

b) An informal rescue?

In the case of an informal rescue under the auspices of the CDRC, the creditors’ committee will usually appoint consultants to formulate a plan of rescue.

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

It is the duty of a Special Administrator appointed over an “affected person” to prepare and submit to the Danaharta Corporation, as soon as reasonably practicable from the date of his appointment, a proposal setting out a plan for the “affected person”. The Danaharta Corporation and an “Independent Advisor” will usually review the plan.

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

a) A corporate bankruptcy/liquidation?

Secured creditors stand outside the winding-up, and may resort to the assets that form part of their security. Holders of rights over property (such as suppliers with the benefit of a reservation of title clause, leasing companies, etc.) may also exercise their rights. The Companies Act 1965 prescribes the order of preferential debts.

b) A formal rescue?

The terms of schemes of arrangements generally provide that secured creditors will receive the highest consideration (whether in the form of cash, or equity as a result of debt to equity conversions, or financial instruments), while other creditors receive much lower levels.

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c) An informal rescue?

Informal rescues under the auspices of CDRC mainly deal with restructuring of the bank debt, as opposed to other categories of debt.

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

Proposals in the course of Special Administration are only voted on by secured creditors, who receive first priority. The Act does not take cognizance of claims by unsecured creditors or preferential creditors, who are bound by the decision of secured creditors on the proposal.

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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?

In the case of a scheme of arrangement, if 75 percent of the various classes of creditors have approved the scheme, then once the High Court sanctions or confirms the scheme, it binds all creditors.

b) An informal rescue?

Under the CDRC framework, at the standstill stage, the majority of the creditors must agree on whether or not to accept the workout proposal. The institutions in the minority would be bound by contract to go along with the proposal.

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

Once the proposal is approved with the requisite majority in value of debt by a meeting of secured creditors specially convened for that purpose, it becomes binding on all other creditors, and on the "affected person" and its members.

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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?

While the scheme is pending creditor approval, it is difficult to get urgent capital funding because creditors are reluctant to advance monies when acceptance of the scheme is uncertain. If the scheme was rejected, and the company wound-up, any security for interim new money funding would be vulnerable to being set aside under the Companies Act 1965.

b) An informal rescue?

Reluctance of existing lenders to allow a new lender to inject new monies on an elevated priority are among the difficulties faced by debtors that have opted for the CDRC framework.

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

A Special Administrator has an express power to borrow money and give security over assets of an "affected person". Any security taken would have the benefit of exemption from the general application of the laws on undue preference under the Danaharta Act.

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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?

Any payment or conveyance of property by an insolvency debtor within six months of commencement of winding-up (i.e. the date of presentation of the winding-up petition or the date the resolution for voluntary winding-up was passed) would be deemed fraudulent and void. There is protection of *bona fide* transactions without notice of commencement of winding-up. Floating charges created within the same period are also invalid unless it can be shown that the debtor was solvent at the time the charge was created.

b) A formal rescue?

This issue does not generally arise in the context of a scheme of arrangement, where a rescue has been facilitated and a winding-up staved off.

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

The Danaharta Act empowers the Special Administrator to avoid any transfer, mortgage, delivery of goods, payment made or done by or against an “affected person” which would have been void in the liquidation of a company.

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

a) A corporate bankruptcy/liquidation?

Section 293 of the Companies Act avoids transactions within six months of the commencement of winding-up, and section 294 invalidates floating charges created within six months of commencement of winding-up, unless the company was solvent at creation.

b) A formal rescue?

This issue does not generally arise in the context of a scheme of arrangement, where a rescue has been facilitated and a winding-up staved off.

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

Section 42 of the Danaharta Act empowers the Special Administrator to avoid any transfer, mortgage, delivery of goods, payment or other act relating to any asset made or done by or against an “affected person” which would have been void in the liquidation of a company.

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.

Singapore is the only country with which Malaysia currently has reciprocal recognition arrangements, but those arrangements only pertain to personal bankruptcy and not corporate insolvency. Administering corporate liquidations and rescues where assets of a Malaysian company are located in other jurisdictions (or the reverse) will, in either case, pose significant legal and practical difficulties, both to Malaysian insolvency administrators in other jurisdictions and foreign administrators in Malaysia. How Malaysian creditors stand to be treated in relation to 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 and the absence of significant corporate failures with cross-border implications in Malaysia have meant that, to date, little consideration has been given to cross-border arrangements on recognition and enforcement.

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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 Malaysian insolvency and restructuring framework pre-1998 is contained in the following statutes and supplemented by common laws:

- ▲ Companies Act 1965.
- ▲ Companies (Winding Up) Rules 1972.

Recognizing the severity of the crisis that started in mid-1997, the Malaysian Government swiftly implemented several new measures to address the challenges. Selective capital controls, which included an exchange rate peg to the US Dollar, were introduced to shield Malaysian companies from the destabilizing effects of exchange rate fluctuations.

In mid-1998 the government initiated the establishment of a new restructuring infrastructure comprising three agencies, namely Pengurusan Danaharta Nasional Berhad (“Danaharta”) (an asset management company), Danamodal Berhad (“Danamodal”) (a bank recapitalization agency) and the Corporate Debt Restructuring Committee (“CDRC”) to accelerate restructuring of the banking and corporate sectors.

Danaharta was set up by way of legislation to remove non-performing loans (“NPL”) from the banking sector. CDRC was established to restructure, in a less formal environment, the debts of corporate borrowers in excess of RM50 million. Danamodal, a special purpose company, was set up to recapitalize the banks. The establishment of these three agencies expanded the avenues for debt resolution for distressed companies: restructuring could now be carried out with or without formal legal sanctions.

Formal restructuring is effected through the following:

- ▲ The company under Part VII of the Companies Act 1965 (commonly referred to as Section 176).
- ▲ The Special Administrators under Part VI of the Pengurusan Danaharta Nasional Berhad Act 1998 (“Danaharta Act”).
- ▲ Receivers and managers under common law.
- ▲ Liquidators under Part VII and/or Part X of the Companies Act 1965.

The restructuring without formal legal sanctions is effected through (i) the company voluntarily undertaking private negotiations, and (ii) the company voluntarily seeking CDRC’s assistance.

### **Section 176 of the Companies Act 1965**

Section 176 allows a restructuring to proceed under the court’s supervision, where the decisions of the majority creditors are binding on the minority creditors. It also gives some assurances against the destruction of viable businesses by unreasonable creditors. In instances where restructuring is not the desired objective, creditors can choose to wind-up distressed companies under Part X of the Companies Act 1965.

Some 40 companies applied for Section 176 in the period up to December 1998. As the court protection under Section 176 allowed the company a moratorium period, many criticisms of the process surfaced, mostly surrounding the ease with which a restraining order (“RO”) can be secured by the company against its creditors. The main weaknesses were as follows:

- ▲ Lack of transparency.
- ▲ Loss of confidence/distrust of current management.
- ▲ Doubts as to the credibility and/or viability of any scheme put forward by the company.
- ▲ Only a conceptual scheme was in place before RO was granted.
- ▲ Creditors were not consulted on the scheme before they were served with the RO.
- ▲ Secured creditors’ rights and security were prejudiced, as companies could dispose of assets during the period of RO.

These weaknesses, and the government's subsequent decision to amend certain provisions, show that the previous Section 176 process was open to wide interpretation and not well understood. Section 176 was amended in November 1998 and the process to secure a RO is now more transparent. It now requires that the following be put in place:

- ▲ The proposal be supported by at least 50 percent of creditors.
- ▲ A Statement of Affairs made up to a date not more than three days before application for RO.
- ▲ The appointment of a director nominated by a majority of the creditors.

Since the amendments, the popularity of the Section 176 route decreased considerably.

#### **Danaharta**

The main objectives of Danaharta are to assist the financial institutions in the asset management and disposition of NPLs, including loan and asset management and restructuring. Danaharta was equipped with a host of legislative powers to expedite its restructuring process – including the power to buy assets through statutory vesting and to appoint special administrators under Part VI of the Danaharta Act .

The Danaharta Act was amended in July 2000 and as at 30 June 2000, Danaharta's results were impressive, having acquired and managed NPLs with loan rights amounting to RM46.7 billion at gross value – RM38.2 billion from the banking system. RM11.1 billion nominal value zero-coupon bonds have been issued up to March 2000 as consideration for the loan acquisitions. To date, Danaharta has appointed Special Administrators to manage some 75 companies, with five of these culminating in successful restructurings so far. To date, Danaharta has appointed Special Administrators to manage some 75 companies. So far, the services of the Special Administrator to five of these companies have been terminated upon the companies' successful restructuring.

Danaharta is well into the asset management and disposal phase of its operations. As at 30 June 2000, Danaharta had restructured and disposed NPLs with a total gross value of RM32.15 billion, surpassing the initial target of RM30 billion. On the asset management front, Danaharta has conducted its third open tender exercise involving foreclosed properties. As at 30 June 2000, the recovery rate for the foreclosure was 48 percent. Danaharta's second year results indicate that there has been widespread acceptance by financial institutions and borrowers alike of its mode of restructuring.

#### **Receivership and liquidation**

The possibility of restructuring companies that are in receivership or liquidation is under-recognized. The common perception is that a company in receivership or in liquidation is beyond salvation. There are, however, exceptions where prompt action was taken on companies that had core viable businesses (Socoil Corporation Berhad and Radio & General Sdn Bhd).

#### **Private workouts**

A private workout refers to a negotiated agreement between the debtors and its creditors outside of the formal restructuring process. Only a few large companies have embarked on restructuring voluntarily without formal legal sanction. Without a formal process, the schemes may not be collectively binding on creditors.

#### **CDRC**

The CDRC, a steering committee established to assist in the restructuring of large corporate debts in excess of RM50 million, emulates the "London Approach" model used in the United Kingdom. All applications to the CDRC are made on a voluntary basis. This approach relies on the use of moral suasion to encourage creditors and borrowers to reach mutual agreement. CDRC works within the auspices of Bank Negara Malaysia.

Restructuring efforts under CDRC have succeeded where creditors were willing to abstain from exercising their legal rights to enforce securities over troubled loans. This allowed all parties concerned to work out mutually beneficial solutions. Apart from corporate restructuring, CDRC is also actively looking into the restructuring of transportation, telecommunications and steel industries to ensure that the restructured companies remain viable. With improved conditions in the corporate sector, there has been a reduction in new applications submitted to CDRC since late 1999.

#### **Conclusion**

In the application and enforcement of insolvency/restructuring legislation, the key factors are as follows:

- ▲ Trust between the company and its creditors.
- ▲ Understanding of the impact of the legislation on the proposed restructuring plans.
- ▲ A moratorium period pending the approval of a scheme (to ensure no affected party is preferred over another).
- ▲ A mechanism to bind affected parties to the restructuring plan.

Based on the results thus far, it would appear that Malaysia's restructuring framework and legislation (old and new) is generally understood and enjoys wide application.

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2 Broadly speaking, in practice, does the restructuring/insolvency 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?

The current insolvency/restructuring framework, except for restructuring under the Danaharta Act, requires the debtor company to initiate the process. However, it is apparent that most debtor companies would attempt to solve the problem first. When they eventually seek professional advice, the financial situation will typically have deteriorated, reducing viable restructuring opportunities. The secured creditors (generally the financial institutions) may be able to pressure the debtor company to recognize its financial difficulties.

The longer-term solution to early recognition does not lie in existing insolvency/restructuring legislation, but in measures initiated to prevent the financial distress from happening or to provide early warning signals. The new Malaysian Code on Corporate Governance promotes the need for more disclosure concerning the financial health of public listed companies.

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3 What are the main practical difficulties being encountered in:

- a) The preparation of restructuring plans?  
b) The implementation of restructuring plans?

Some of the more common difficulties encountered in the formulation and implementation of restructuring plans are as follows:

#### ***Underlying business of the company not viable***

In Malaysia, corporate distress did not become systemic. The sectors that were severely hit were finance, property and infrastructure. Therefore, establishing the underlying viability of the businesses in these sectors presented the most immediate challenges.

#### ***Owner-managers in denial***

From the outset, the owner-managers of a number of troubled companies appeared to be in denial. Only the more acute cases initiated action by seeking a RO under Section 176 of the Companies Act 1965. While under court protection, some companies continued to fund cash flow shortages with inter-company advances, or by extending their working capital cycle.

***Difficulties in obtaining funding and support for the company in the short and medium-term***

Companies under restructuring found it difficult to obtain funding and support in the short and medium-term. This is because existing creditors, whose earlier debts had not been settled, were unwilling to extend “new money”. New creditors were similarly unwilling to extend fresh credit.

The lenders sometimes extended a mix of cash and non-cash facilities to the company debtor. This allowed the debtor company to enjoy uninterrupted operations while it restructured.

***Lenders acting too fast or too slow***

The lenders’ interpretation of the continued value of the loan dictated the speed of their reaction and the options available. The practical difficulties in initiating and formulating restructuring plans arose because of a gap between estimations of the recoverability of the loan values between the lenders and debtors.

***Diverse and conflicting agendas***

Conflicts arose from the need to balance the requirement for funds/financial trading instruments from financial institutions and continued supplies of raw materials/goods from operational trade creditors.

The number of creditors involved in some restructuring plans also contributed to the protracted time line for completion of negotiations. Occasional diverse and conflicting agendas sent confusing signals during negotiations. This problem was addressed in a number of cases by the setting up of creditors’ committees with representation from relevant creditor parties/groups.

Debtors and creditors could also have conflicting agendas. While both sides are interested in preserving the underlying business value and agree that restructuring is the option, expectation gaps occur in negotiating the terms of final settlement.

The appointment of independent professional business advisors facilitates the development of restructuring solutions that recognize all the relevant stakeholders’ interests.

***No perception of “haircut”***

Prior to the recovery, creditors were more prepared to accept a “haircut”, since liquidation would be the worse of two options in terms of debt recovery. With rising asset prices and improved business prospects, however, creditors are expecting full repayment, alongside an opportunity to participate in the company’s upside potential.

There is a perception that large corporations, particularly public listed companies, have not suffered equitable “haircuts”. In reality, there have been a lot of capital reduction exercises that adversely impact shareholders.

***Insufficient appreciation of what works on the ground***

Given the magnitude of the debt problems, there was sometimes an insufficient appreciation of what works on the ground. This was partly because the newly-established restructuring framework was untested in 1998.

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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?

There are mixed views over the effectiveness of corporate Malaysia’s restructuring program, now into its third year. Although the Bank Negara Malaysia has forecasted a growth of 7 percent for 2001, certain areas still require attention before corporate Malaysia can become more resilient. To enhance the values of restructured Malaysian companies, there must be a real focus on corporate governance and sound management.

5 What are the main areas from which funding is generally being utilized by companies which undertake 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 business operations continue, distressed companies often maximize their operational working capital cycle. 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 companies' trade creditors and debtors are in similar financial difficulties.

**Medium and longer-term funding**

A number of corporations refinanced their bank borrowings by raising funds in the private debt securities ("PDS") market, taking advantage of the more competitive interest rates, as well as the ability to borrow long-term on a fixed-rate basis. In 1999, the size of the Ringgit bond market grew by 28.1 percent, driven mainly by the higher issuance of PDS for corporate debt restructuring schemes. Post crisis, the Malaysian Government implemented various initiatives to further deepen the bond market. The recent guidelines issued by the Securities Commission ("SC") to liberalize the PDS market include:

- ▲ The merit-based approval process was abolished in favor of a disclosure-based regime, providing issuers with greater flexibility and speed, while allowing investors greater access to a diversified range of securities.
- ▲ Limited companies can now issue PDS regardless of their credit rating.
- ▲ Anyone may enter into repurchase agreement ("repos") transactions in PDS instruments, whether or not the person is a licensed institution under the Banking and Financial Institutions Act.
- ▲ Shelf registration of PDS will be permitted. Once companies have obtained shelf registration approval from the SC they are given two years to issue PDS into the market.

The development of the PDS market should reduce over-dependence on the Malaysian banking system (particularly for long-term financing).

The other main means of funding was by equity. Shortage of cash and the need to bring gearing down to manageable levels meant that some creditors were faced with converting their debt into equity. The creditors were offered equity in the restructured NewCo, or direct equity in the distressed company's cash generating operations. With the recovery of the equity markets in early 2000, more creditors were willing to accept equity as a credible means of repayment.

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