

Informal Work Outs

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Cooperation

Issues to cover during session

- ▶ Review of informal workout principles
- ▶ Review issues for consideration highlighted in the Issues Paper
- ▶ Consideration of practical issues associated with informal workouts
- ▶ Consideration of the issues associated with regional co-operation in informal workouts

Cooperation

Review of principles of informal workouts

- ▶ Stand still
 - ▶ Creditors do not enforce claims
 - ▶ Debtors agree not to deal in assets other than in ordinary course
- ▶ Co-ordination of creditors
 - ▶ Creditor committees
- ▶ Provisions for working capital support
 - ▶ Should have “super-priority”?
- ▶ Provision of financial information by debtor
 - ▶ Timely, relevant and complete
- ▶ Results in proposal to resolve financial difficulties
 - ▶ Should be sustainable on reasonable assumptions
 - ▶ Should be better outcome for creditors than liquidation

Cooperation

Systemic problem or banking ‘culture’?

- ▶ To what extent is it necessary to distinguish between informal processes for systemic problems in the banking sector and informal processes that are established as part of the banking ‘culture’?
- ▶ If so, what key issues should be considered in developing processes suitable to ‘normal’ times?
- ▶ Is there a continuing role for central authorities beyond the setting of guidelines?

Encouragement or threats

- ▶ Are influences (i.e. central bank pressure or ‘credible threats’) necessary or desirable to promote an informal workout process?
 - ▶ Should creditors be encouraged or even required to invoke an informal process where significant debtors are in financial difficulties?
 - ▶ What forms should such encouragement take?

Encouragement or threats

- ▶ Should the appropriate authorities involve major non-bank creditors and international institutions?
 - ▶ Can the involvement of debtors be secured without the threat of formal insolvency processes?

Rules v principles

- ▶ Is it desirable to develop mandatory ‘rules’ to govern the commencement of a process?

Rules v principles

- ▶ Can such ‘rules’ be universally applied or is each case different?
- ▶ How is compliance secured?
 - ▶ For creditors, particularly major non-bank creditor groups?
 - ▶ For the debtor?
- ▶ Carrot or stick? (or both?)

Competing creditor interests

- ▶ How are issues between ‘breakaway’ members of a banking syndicate, bondholders and debt traders best addressed in an informal process?
 - ▶ Are special principles required?
 - ▶ Can differing requirements of various creditor groups be accommodated?

Resolution of deadlocks

- ▶ Is it necessary or desirable to provide for ‘mediation’ as part of the informal process?
 - ▶ Should this be mandatory for deadlocks?
 - ▶ Should there be guidelines for selection of the ‘mediator’?
 - ▶ Should a ‘mediator’ be able to make binding decisions or is a final deadlock best resolved by formal processes?

Cooperation

Conversion to formal reorganisation

- ▶ Would a ‘domestic’ work out process benefit from a ‘fast track’ mechanism to a formal reorganisation?
- ▶ Are the UNCITRAL guidelines an appropriate starting point?
- ▶ practical considerations?
 - ▶ How fast can ‘fast track’ really be?

Regional co-operation

- ▶ What requirements support a regional or global approach to informal workouts?
 - ▶ At what levels within the selected countries is such an approach best driven?
 - ▶ Are sovereignty and reciprocity as important in an informal work out?
 - ▶ What are the key steps to advance this issue?

Cooperation

Conversion to formal reorganisation in a cross-border case

- ▶ Is it possible to provide for ‘fast track’ conversion in a cross-border case?
- ▶ Can sovereignty and reciprocity be dealt with within a ‘fast track’ approach?