

SECTION G – ATTITUDES TOWARDS FINANCIAL DIFFICULTY AND INSOLVENCY

G1. From the position of a corporate debtor

- (a) Whilst it is dangerous to generalize, there is arguably more of a tendency to deny or to refuse to accept that the corporate entity is in financial difficulty than to admit and to come to terms with it.
- (b) The reason is probably grounded in human nature rather than any specific cultural or social reasons that are peculiar to Malaysia.
- (c) Corporate debtors fall into two broad categories, responsible ones and irresponsible and hardheaded ones:
 - i. Responsible corporate debtors are more likely to volunteer the fact of its financial difficulty to its lenders. Lenders may already be suspecting something is amiss if they have been regularly supplied with financial information pursuant to specific covenants in loan documentation and have been monitoring repayments.
 - ii. Irresponsible corporate debtors tend to conceal until confronted, and sometimes, although queried or confronted, they remain defiant or uncooperative.
- (d) Again, whilst generalizations may not be valid, the likely response of a corporate debtor in financial difficulty mirrors its perception of its responsibility for the situation:
 - i. Responsible corporate debtors who have acknowledged the fact will either seek expert assistance or submit to some extent to their lenders' wishes.
 - ii. Irresponsible, defiant corporate debtors are likely to do nothing, and allow the situation to get worse.
- (e) If it was agreed between a lender or lenders and a corporate debtor that an expert/advisor be appointed, it is generally the case that the expert/advisor would be allowed unrestricted access. However, where the underlying cause

- (d) In practice, it would be impossible by virtue of fear of breaching banking secrecy provisions in the Banking and Financial Institutions Act 1989, for one lender to share information relating to a customer's account, unless it were already in the public domain.
- (e) If there were two or more lenders not forming part of any syndicate involved with the same corporate borrower, they would each be bound by the banking secrecy provisions in the Banking and Financial Institutions Act 1989. Therefore, any co-operation may be limited to credit opinion, joint strategy and pooling of expertise or resources, rather than information per se. Even then, such cooperation is very much on a case by case basis and it is difficult to generalize.
- (f) If the lenders are part of a syndicate, it is common for the agent bank to take the lead or alternatively the bank with the largest exposure. If not in a syndicate, by virtue of the Banking and Financial Institutions Act 1989 provisions, it would be difficult in theory for one bank to take the lead. The borrower does on occasion give consent under the Act at the banks' request so as to dispense with the need to deal with many banks. Where this consent has been given it is common for one lender, usually the largest, to take the lead, on a non-binding basis so that no individual lender's rights are compromised. This would be the germ or prelude to an informal work out arrangement.
- (g) As mentioned, quite common in a syndicate but less so where there is no syndicate.
- (h) Only some of local financial institutions have employees who are experienced in informal work outs.
- (i) In most cases, unless the foreign lender is part of a syndicate, the domestic banks would tend to act independently.
- (j) It is possible that lenders with "junior" debt might want to sell the debt to debt traders.