

SECTION H – WORK OUTS

(a) The feedback from lenders in Malaysia indicates that there is no real uniformity in what motivates lenders to move towards an informal work out as opposed to resorting to insolvency proceedings or enforcing security rights. Be that as it may, subject to that caveat, the following elements may be said to be appropriate and relevant to Malaysia:

- The fact that there is a significant size of debt owed to a number of different bank and other financial institution creditors and the debtor is unable to service that debt.
- The attitude that it may be preferable to negotiate an arrangement both between the debtor and the financiers and between the financiers themselves; however, it has been said that this only applies if the corporate borrower has had a good relationship with its financiers and is perceived to be responsible.
- The sanction that if the negotiation process cannot be started or breaks down there can be relatively swift and effective resort to the application of an insolvency law.

(b) From the feedback from the lenders, the following elements seem to be either absent or of little consequence:

- The availability of relatively sophisticated refinancing, security and other commercial techniques that might be employed to alter, re-arrange or re-structure debts of the corporate borrower or the corporate borrower itself.
- The prospect that there may be a greater benefit for all through the negotiation process than by direct and immediate resort to insolvency law.

(c) The prospect that there may be a greater benefit for all through the negotiation process than by direct and immediate resort to insolvency law may be said to be the least persuasive if a work out was contemplated. On the other hand, the Corporate Debt Restructuring Committee (“CDRC”) initiative announced on 28.10.98 [as to which see Section Q of this Paper] emphasizes the common greater benefit notion

