

## **SECTION Q – NEW DEVELOPMENTS**

### **Q1. Recent Developments**

- (a) Three recent developments have taken place within the framework of Malaysian insolvency law as a whole. These are:

The enactment of the Pengurusan Danaharta Nasional Berhad Act 1998 to acquire and manage assets and liabilities of financially distressed companies in Malaysia. This statute came into force on 1.9.98. Its provisions, including the introduction for the first time in Malaysia of the concept of special administration, have already been discussed in various sections of this paper. It will not therefore be mentioned here.

An amendment to the Companies Act 1965 in the form of the Companies (Amendment) (No.2) Act 1998 (Amending Act No. A1043 of 1998) that came into force on 1.11.98 that introduced new provisions to protect creditors during the period the scheme is pending before the courts.

The introduction of a framework and guidelines for the newly established *Corporate Debt Restructuring Committee* issued on 28.10.98.

#### ***Section 14 of the Companies (Amendment) (No.2) Act 1998***

- ◆ This provision introduced a new sub-section (10A) into section 176 of the Companies Act 1965. It is apparently intended to protect creditors during the period in which a restraining order under section 176(10) of the Companies Act 1965 operates. Formerly the old section 176(10) did not specify any particular period for which a restraining order was to operate. When the Asian economic crisis began affecting Malaysian institutions, many public listed companies sought restraining orders pending the formulation of a concrete scheme of arrangement. Courts in Malaysia were granting restraining orders of an average period of 9 months duration, sometimes longer or shorter, much to the chagrin of financial institutions.



- The corporate debtor must not be in receivership or liquidation.
- The corporate debtor's total aggregate bank borrowings should be approximately RM50 Million or more.
- The corporate debtor should have borrowings from more than one bank.
- Corporate debtors that have already obtained restraining orders under section 176 of the Companies Act 1965 may also apply provided the restraining order is withdrawn once a standstill agreement has been reached.

#### *The Constituent Organs*

The structure and organs within the CDRC framework are:

- A steering committee;
- A secretariat to co-ordinate and administer the initiative;
- The respective positions and roles of debtors and financial institutions, which are the only "creditors" that the CDRC takes cognisance of;
- A Creditors' Committee;
- A Lead Creditor; and
- Consultants.

#### *The Steering Committee*

The steering committee's role is pivotal. It will, or is intended to:

- Convene meetings of the corporate debtor and financial institutions;

- Ensure that deadlines are adhered to;
- Mediate in disputes between financial institutions *inter se* or between financial institutions and the corporate debtor;
- Assist in disputes with foreign banks;
- Assist in expediting approvals or waivers, as the case may be, from regulatory bodies, where possible;
- Assist in the appointment of a lead creditor; and
- Assist in the selection of consultants.

#### *A Brief Summary of the Work Out Regime*

Corporate debtors are required to provide information to the creditors and to undertake to operate the business only in the normal course of business, with transactions not falling with the ordinary course of business having to be subjected to creditor approval beforehand. Provision is made for observers to be present at board meetings of the corporate debtor, on behalf of the financial institutions.

The security rights of financial institutions remain unaffected. New monies however will take priority over old. Debt trading is allowed but on condition that the re-structuring is not affected. Creditors will be expected to agree to a standstill for a reasonable period of time, and during that time, to form a creditors' committee. Each creditor is expected to act in the best interests of the body of creditors as a whole. The creditors' committee should reflect the broad spectrum of creditors, and financial institutions with the largest exposure in each class of debt should be nominated as constituent members. A lead creditor is expected to be appointed and to manage and co-ordinate the work out with defined objectives in mind.