

SECTION G - ATTITUDES TOWARD FINANCIAL DIFFICULTY AND INSOLVENCY

[In this part we seek to discover underlying attitudes to debt; financial difficulty; and insolvency as it affects both corporate borrowers and lenders. The response to this section may, therefore, be expected to be founded on general impressions.]

G1. From the position of a corporate borrower

a) If a corporate debtor is in financial difficulty, is there an attitude of 'concealment' or 'denial' toward the admission or exposure of that financial difficulty?

This is generally true in the initial stages. There is a tendency to deny so that, perhaps, continued borrowing may occur and to "talk up the market" as far as possible for listed companies.

b) If so, is the reason for this based on cultural or other factors?

Apart from the short term benefits as listed above, the loss of face involved in admitting difficulties is also a factor.

c) Is it likely that a corporate debtor would:

(i) volunteer the fact of its financial difficulty to a lender or group of lenders; or

(ii) admit or concede it only if and when confronted by a lender or group of lenders?

This would depend on the situation, but if a certain level of impecuniosity was reached, a corporate debtor may volunteer the fact of its financial difficulty to a lender or group of lenders.

d) If a corporate debtor is in financial difficulty, is it likely that the corporate debtor would:

- (i) *do nothing;*
- (ii) *seek expert assistance and advice; or*
- (iii) *accept the appointment by a lender of an outside expert/advisor?*

If a corporate debtor is in financial difficulty, in descending level of likelihood, it would seek expert assistance and advice, accept the appointment by a lender of an outside expert/advisor, or do nothing. All three options occur.

- e) *If it was agreed between a lender and a corporate debtor that an expert/advisor would be appointed, is it likely that a corporate debtor would give the expert/advisor unrestricted access to all relevant financial and other information regarding the corporate debtor?*

The cultural tendency is to give/disclose only that required to be disclosed. Disclosure agreements may be worded widely, but it may be difficult for the expert to identify documents that are missing unless they are specifically referred to in other documents that are disclosed.

- f) *In that situation, is it likely that the financial and other information regarding the corporate borrower would be:*

- (i) *complete; and*
- (ii) *accurate (particularly regarding the valuation of assets and the assessment of liabilities)?*

It is unlikely that the financial and other information regarding the corporate borrower is complete and accurate (particularly regarding the valuation of assets and the assessment of liabilities), but the level of incompleteness and inaccuracy may not be too significant.

G2. From the position of lenders

- a) *Is it more common that the financial difficulty of a corporate*

borrower will be:

- (i) *volunteered by a corporate debtor; or*
- (i) *discovered by a lender (and, if so, how) such as Due Diligence.*

It is more likely to be volunteered by the corporate debtor, but later than ideal.

- b) If a lender becomes aware that a corporate debtor is in financial difficulty, is it likely that the lender would seek to investigate the financial crisis of the corporate debtor itself and employ an expert/advisor to investigate the financial position?*

If it is agreed between corporate debtor & creditor that creditor can investigate the financial crisis of the corporate debtor itself, then creditor will do so. Otherwise, the creditor may employ an outside expert. The former is more common initially.

- c) If so, is the expert/advisor likely to be:*

- (i) an independent professional; or
- (ii) an 'in-house' employee of the lender.

If a creditor does take the step of engaging an expert, it will usually be an independent, although most matters will be dealt with 'in-house'.

- d) Is it likely information regarding the financial position of a corporate borrower as discovered from the work of an expert/advisor would be:*

- (i) kept secret from other lender/s or creditors;
- (ii) disclosed to other/selected lenders.

This would depend upon the terms of engagement. If a full due diligence report was prepared, creditors may agree between themselves to share the costs. If not, it is unlikely that disclosure of the results

would proceed freely.

e) If there were 2 or more lenders (not in a syndicate) involved with the same corporate borrower, is it likely that they would:

(i) join together to share information and endeavour to work out a common approach to the financial problems of the corporate borrower; or

(ii) act secretly and independently of one another.

Cooperation would be more likely, but not in a truly concerted manner until insolvency was apparent.

f) If there was a group of lenders (whether in a syndicate or not) involved with the same corporate borrower, is it likely that one of them would offer or seek to be the leader on behalf of them all?

Impromptu creditors' committees tend to form, with a group of usually main lenders taking the lead on behalf of the lenders.

g) If so, is it likely that such a proposal would be agreed to by the other lenders?

Yes, although perhaps not without some rivalry and friction at times.

h) Is it likely that local lenders would have employees who are experienced in informal work outs?

Local lenders have employees who are now rapidly gaining experience in informal work outs.

i) If these was foreign bank lending involved, is it likely that domestic lenders would:

Foreign banks do combine with domestic lenders.

j) Is it likely that 'junior' or 'minor' lenders might seek to trade their debt?

The junior or minor lenders may seek to trade their debt.