**Options for Debt Restructuring In Malaysia**

There are potentially five avenues for dealing with the debt of a troubled company other than voluntary negotiation.

1) Court Approved Schemes of Arrangement
2) Special Administration by Pengurusan Danaharta Nasional Berhad ("Danaharta")
3) Corporate Debt Restructuring Committee ("CDRC") Mediation
4) Appointment of Receivers
5) Liquidation of Corporate Entities

1) Court Approved Schemes of Arrangement (Resolution 176 of the Companies Act)

There is no concept of judicial management in Malaysia, nor any form of Chapter 11 Bankruptcy such as in the United States.

The only real court administered alternative is a scheme of arrangement that is proposed pursuant to section 176 of the Companies Act.

A scheme of arrangement requires the sanction of the High Court, and before such sanction is obtained, the scheme has to be approved of by three-quarters (75%) in value and 50% in number of each class of creditors present and voting, addressed in the scheme.

Under sub-section (10) of section 176, the troubled company can apply to the High Court to grant an order staying all proceedings against the company whilst the scheme is pending before the court. In order to do so, at least 50% of the creditors must approve the proposed scheme in principal. This stay applies to all forms of proceedings. Companies can submit to Section 176 without seeking a restraining order, if they so choose.

When sanctioned by the court, all creditors of the company covered by the Scheme are bound by this scheme and must comply with its terms. If a certain class of creditor is not addressed in the scheme (eg trade creditors), they are not bound by the terms of the scheme.

2) Special administration Under the Pengurusan Danaharta Nasional Berhad Act 1998

This Act was adopted to create a corporation that could acquire non-performing loans and the underlying security rights from banks and other financial institutions, as part of a wider plan to recapitalize banks and financial institutions.

Danaharta, through an "Oversight Committee" set up under the Act, may appoint a Special Administrator to administer the debtor's affairs. For the special administrative powers to be used by Danaharta, it must be determined that such action will serve the public interest and one or both of the following purposes:

(1) the survival of the corporate debtor and the whole or any parts of its assets as a going concern; or

(2) a more advantageous realization of the corporate debtor's assets would be achieved than on a winding up.

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Once the special administrator is appointed, a 12 month moratorium takes effect (subject to extension under section 41(3)). During the moratorium:

Any petition to wind up the corporate debtor must be dismissed.
There will be no voluntary or compulsory winding up.
No steps may be taken to realize collateral, execute a judgment or re-possess any asset or set-off any debt without the prior consent of Danaharta. .
No legal proceedings may be commenced or continued without the consent of Danaharta.
No proceedings and no execution or other legal process may be started against a guarantor of the troubled borrower's debt without the prior consent of Danaharta.
Any application for a scheme of arrangement under section 176 of the Companies Act must be immediately adjourned and any restraining order granted under section 176(10) discharged and set aside.

Danaharta may propose a restructuring scheme. In this case, only secured creditors vote to approve the scheme. Unsecured creditors are bound by the secured creditor vote. It is possible that a situation may arise in which Danaharta is the only secured creditor.

3) Corporate Debt Restructuring Committee (CDRC)

CDRC provides a mediation forum for debtors and creditors under the auspices of the Central Bank. . CDRC does not have the power to impose a solution on creditors and debtors, but can use moral suasion to help arrive at a solution. Restructurings under CDRC auspices can be either consenual or utilize Schemes of Arrangement under Resolution 176.

A well defined set of guidelines to be followed for cases under CDRC were established.

Officially, the CDRC ceased taking new cases on June 30, 2000. However, recently some new situations have been referred to CDRC for its involvement.

4) Appointment of Recievers

A secured creditor may appoint a receiver under the terms of a debenture.

The receiver takes possession of the assets subject to the crystallised charge in the debenture instrument, and may sell those assets by private treaty except for the special case of land. If there is a statutory charge on land, then notwithstanding that the land is subject to the fixed charge under the debenture, the receiver cannot use his power of sale. The secured party must initiate formal court based foreclosure proceedings.

Receivers are court appointed when there there is no express contractual power to appoint one, but assets of the debtor are in danger of being spirited away. The powers of a court appointed receiver are spelled out comprehensively in the order appointing him. Receivers can be privately appointed if allowed for in the loan documentation.

5) Liquidation

Creditors can initiate winding up proceedings by filing a winding up petition under sections 217 and 218 of the Companies Act. The grounds relied upon in these cases is the inability of the corporate debtor to pay its debts when due.

If a winding up order is made, the court will appoint a liquidator, who will oversee the liquidation process to ensure an orderly realisation of assets and repayment of creditors.

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