

Corporate Rescue Mechanisms in Times of Crisis

Often, during times of crisis, viable businesses are plunged into extraordinary circumstances beyond their control, hindering their ability to carry on business as usual. These extraordinary circumstances have a direct impact on the cash flow of companies. Cash flow management has therefore come into focus during this ongoing fight against COVID-19, where the measures taken to curb its spread include nationwide “lockdowns” and closure of non-essential businesses over a period of time, severely reducing, even cutting off, sources of revenue. If these “lockdowns” are prolonged, what follows is the inability of companies, especially Small and Medium Enterprises (SMEs), to fulfil their debt obligations, threatening their business continuity.

In recognising the impact of the Movement Control Order (MCO) to SMEs in Malaysia, one of the major initiatives taken by the Government to ease the cash flow of companies is the 6 months’ moratorium on bank loans, supplemented by, among others, a Special Relief Facility by the Central Bank, further supported by the Government’s Wage Subsidy Program.

Challenging as the current economic climate may be, barring further extension of the MCO, it is hoped that companies will get back on their feet again in 6 months. Afterall, these are viable companies to begin with.

But what if it were not so?

The test comes when the MCO is finally lifted and companies resume their businesses again. Wages aside, companies will now be faced with the pressure of paying their creditors, many of whom are probably also faced with cash flow challenges themselves. The Companies Commission of Malaysia’s relaxation of the creditors winding-up petition rules is a much-needed respite for times like these, however, if revenue streams continue to be severely affected many months post-MCO, companies may still find themselves in a precarious financial position.

This is where Corporate Rescue Mechanisms come in.

Often, companies just need that extra bit of time. Corporate Rescue Mechanisms give viable companies an opportunity to restore their profitability and maximise returns to creditors. A win-win position.

Here we look at the different types of Corporate Rescue Mechanisms that companies may opt for.



Corporate Voluntary Arrangement

Corporate Voluntary Arrangements ("CVA") allow cash-strapped private companies, who have not created a charge over their properties or undertakings, an opportunity to work out an amicable arrangement with their creditors, including the rescheduling of debts, with minimal court intervention. Here, the directors of the company appoint a Nominee, who is a qualified insolvency practitioner, to supervise the implementation of the CVA proposal to be voted on by the creditors.

The effect of appointing a Nominee and filling the necessary documents in court and to the Companies Commissions Malaysia, is an immediate 28-day moratorium to protect the company from any proceedings or execution of legal processes against the company and its assets. It further restricts landlords from exercising forfeiture. The CVA proposal requires the approval of 75% of the total value of creditors present and voting at the meeting. Once approved, the CVA proposal binds all the creditors of the company.

This clean, simple, yet powerful, mechanism allow companies time to renegotiate with their creditors on the settlement of their debts, whilst still continuing their business operations.

An aerial photograph of a marina. In the foreground, a large body of water is visible. To the right, a long pier extends into the water, with numerous small, white and blue boats docked along its length. The background shows a green landscape with some trees and a few buildings. The overall scene is bright and clear.

Case Study - CVA

A well-known bakery outlet, “The Loaf”, owned by M&M Consolidated Resources Sdn Bhd, ran 10 outlets at strategic locations in Malaysia, including KLIA 2 Airport, Pavilion Mall and Sunway Pyramid Mall. Unfortunately, the Company was not able to keep up with the demands of the business, and the shareholders eventually opted for a Creditors’ Voluntary Winding Up exercise, whereby we were appointed as the Liquidators.

As Liquidators, we found that the assets of the Company were mainly high performing coffee machines, baking ovens, food processing equipment and furniture, with a low recovery value, especially when there was added pressure to sell off quickly due to the threat of eviction and asset-seizure by the landlords. We knew that this would not be the best way to optimise returns to the creditors.

The true value of the company, in fact, lay in the strategic locations of its outlets - that were not easy to secure - which we were in danger of losing.

Faced with this prospect, we applied for a Corporate Voluntary Arrangement (CVA) in our capacity as Liquidators of the Company and submitted our CVA proposal to Court. The 28-day moratorium that followed safeguarded the Company’s assets from being dissipated by the landlords, while we called for a creditors meeting.

Under the CVA, and with the moratorium in place, we successfully identified a white knight who acquired all assets of the Company, including the trademark name ‘Loaf’ and trade recipes, at an amount that enabled the Company to settle all debts and employees’ salaries in full. In short, the CVA allowed for a higher recovery to the creditors, as opposed to the assets of the company being sold at negligible prices through a fire sale. Additionally, the white knight was also able to negotiate with some of the landlords to continue doing business at locations that they had chosen, and that is why we still see “The Loaf” today.

The CVA exercise of M&M Consolidated Resources Sdn Bhd was not only the first in the Country, but also one that achieved a 100% recovery for its creditors.



Judicial Management

Judicial Management (“JM”) is a court-supervised corporate rescue mechanism for companies that are financially distressed, but has a reasonable chance to be rehabilitated. Here, an independent Judicial Manager is appointed to manage the Company’s affairs, businesses and properties, with a view towards rehabilitating it, or alternatively, to explore whether a more advantageous realisation can be achieved for all stakeholders as opposed to a winding up exercise.

The application for the Company to be placed under JM and the appointment of a Judicial Manager, can be made by either the Company, the Company’s directors or the Company’s creditor(s). Once the JM order has been made, it will be in force for a period of six (6) months and, with the approval of the court, may be extended for a further six (6) months. During this time, a moratorium will be in place to prevent legal actions from being initiated against the Company. Additionally, within 60 days from the JM order, the Judicial Manager must table his proposal before the creditors and obtain the approval of 75% of the total value of creditors present and voting at the meeting.

Similar to a CVA, a key benefit of a JM is the moratorium period that gives financially distressed companies a much-needed breathing room against actions and enforcements initiated by creditors, while it gets its affairs in order.

Case Study - JM

A private limited company incorporated in Malaysia owned a partially constructed 5-star boutique hotel with 33 floors and 279 rooms.

Unable to complete the construction of the hotel ("the Project"), the Company sought potential investors to acquire and complete the Project, which was charged to a financial institution and had loan repayments in arrears for more than six months. The Company managed to enter into a Sales and Purchase Agreement (SPA) for the disposal of the Project, however, the SPA contained certain conditions precedent that the Company was unable to meet, leaving it in a fix.

Mounting pressures from the creditors led to the application to place the Company under Judicial Management, in order to restrain creditors from taking any action against the Company for six months during the moratorium period.

As Judicial Managers, our primary objective was to formulate a Statement of Proposal ("SOP") to creditors. Upon assessing the feasibility of the financial resources of the company, we were of the view that the Company would be unable to fulfil the conditions precedent of the SPA and still remain financially viable

We proceeded to identify new potential investors to formulate a solution to resolve the debts owing to the financial institution. A white knight was finally identified and we called for a creditors' meeting to consider the SOP, and to disclaim and rescind the SPA.

Under the JM order, the Company, together with the white knight managed to successfully restructure of the debts owing to the financial institution and preserved the assets of the Company.

If the Company had not obtained a JM order, it would have been faced with multiple winding up actions, leaving the Project abandoned. Any proceeds from the forced sale of the Project would have likely only been sufficient to repay the financial institutions, leaving nothing for the unsecured creditors.

Now, via the JM and the successful implementation of the SOP, the company is given a new lease on life, and is able to seek opportunities to implement its business turnaround plans.



Scheme of Arrangement

A Scheme of Arrangement under Section 366 of the Companies Act 2016 (“SOA”) is essentially a court-approved mechanism whereby a compromise or arrangement is proposed between a company in distress and its creditors, to vary existing rights and obligations. An SOA application can be applied by either the Company, the members of the Company, the Company’s creditor(s), a liquidator or a Judicial Manager.

Under the SOA framework, Companies are allowed to apply for a restraining order to restrain legal proceedings against the Company. The restraining order protects the Company from creditors’ actions, to allow for a successful restructuring of the company’s debts.

For an SOA application to be successful, a preliminary compromise or arrangement plan is required to be submitted. The court will then grant Restraining Orders for an initial period of three (3) months, which may be renewed for a period of up to a further nine (9) months subject to the court’s discretion.

As opposed to the protection provided under Judicial Management (“JM”), which comes into effect immediately upon filing of the JM application, protection under an SOA is granted only upon obtainment of the Restraining Order.

Case Study – SOA: Debt Restructuring

We were appointed as Scheme Advisors for a public listed company involved in investment holding, provisions of management services and offshore oil and gas facilities fabrication, together with three (3) of its subsidiaries that are involved in oil and gas fabrication.

As a background, the Company had secured a contract for the engineering, procurement, construction, installation and commissioning, as well as, the leasing of a floating Production, Storage and Offloading vessel. The project involved converting the partly converted vessel from a crude oil vessel to gas vessel, which would then be leased for deployment at the gas and oilfield of Sarawak. Over the course of carrying out this contracted job, the Company, together with its subsidiaries, were suddenly faced with financial constraints due to the downturn in the oil and gas industry. As a result, the Company and its subsidiaries were served with several winding-up petitions to claim for amounts owing.

Our role as Scheme Advisors involved the preparation of a debt restructuring scheme with the objective of providing an acceptable debt settlement programme to address both the secured lenders' debts as well as the unsecured creditors. To achieve this, discussions were held with the management of the company and its subsidiaries; with the white knight to address the terms of their fund injection; with investment bankers as the proposed debt restructuring scheme forms part of the company's Regularisation Plan; with the appointed solicitors of the company.

Due to the winding-up petitions filed against the company and its subsidiaries for debts amounting to RM1.01billion, we obtained a Restraining Order to restrain further legal proceedings against the company, giving us time to formulate the debt restructuring scheme.

The winding-up petitions, if successful, would have caused the winding-up of the Company and its subsidiaries. However, with the debt restructuring scheme that was approved by 94% of its creditors, the Company is now able to continue on with its operations.

An aerial photograph of a river with dense, brownish vegetation on the banks. The river flows from the top left towards the bottom right. The image is used as a background for the text overlay.

Case Study – SOA: Revival of Abandoned Project

Pursuant to an Order of the High Court, we were appointed Liquidators of a Property Development Company, developing a mixed development, comprising a shopping mall, residential apartments, SOHU building and a 41-storey residential condominium. At the date of our appointment, the shopping mall, residential apartments and SOHU building were already completed, but the 41-storey residential condominium was abandoned at a progress completion stage of 80%.

As Liquidators, we conducted a feasibility study to determine the viability of reviving and rehabilitating the abandoned project, taking into consideration the receivables from the balance progress billing and the estimated balance cost to complete the project. We were able to formulate a Scheme of Arrangement pursuant to Section 366 of the Companies Act, where we required purchasers to make a top-up payment to fund a portion of the costs to complete the development of the project. This proposal saw 99% of purchasers voting in favour.

To date, the residential development is physically completed and the appointed architect has issued the Certificate of Practical Completion to our contractor. We are in the process of liaising with the relevant statutory authorities to obtain the Certificate of Fitness.

Soon, we will be able to deliver vacant possession to the purchasers, who would have otherwise been left with a debt to service and nothing to possess.

How we can assist

Our experience in corporate rescue mechanisms, enables us to render advice and provide our expertise to assist companies in rehabilitating or obtaining better realisation of their assets. Our diverse portfolio of investors will be invaluable to assist the companies in securing/identifying potential investors for the benefit of the company and stakeholders of the company. Do speak to us.



Patrick McPhee

Managing Partner
Insolvency, Forensic & Advisory
pmcphee@fhmh.com.my



Lim Litt

Director
Corporate Recovery & Restructuring
limlitt@fhmh.com.my



Pang Kim Yong

Director
Corporate Recovery & Restructuring
pangkimyong@fhmh.com.my



Kumar Jai

Director
Corporate Recovery & Restructuring
kumarjai@fhmh.com.my



Ashvin Mahendran

Director
Corporate Recovery & Restructuring
ashvin@fhmh.com.my



Anoopal Kaur

Director
Corporate Recovery & Restructuring
anoopalkaur@fhmh.com.my

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Our Offices

Kuala Lumpur Head Office

Baker Tilly Tower
Level 10 Tower 1 Avenue 5
Bangsar South City
59200 Kuala Lumpur
Federal Territory of Kuala Lumpur

T: +603 2297 1000
F: +603 2282 9980

Website: www.bakertilly.my

Penang

9-2, 9th Floor, Wisma Penang Garden
42, Jalan Sultan Ahmad Shah
10050 Georgetown
Penang

T: +60 4227 9258
F: +60 4227 5258

Johor Bahru

157-B, Jalan Sri Pelangi
Taman Pelangi
80400 Johor Bahru
Johor.

T: +60 7332 6925 / 6926
F: +60 7332 6988

Batu Pahat

33, Jalan Penjaja 3, Ground Floor
Kim's Park Business Centre
83000 Batu Pahat
Johor

T: +60 7431 5403
F: +60 7431 4840

Seremban

Level 2, Wisma Sim Du
37, Jalan Dato' Bandar Tunggal
70000 Seremban
Negeri Sembilan

T: +60 6762 2518 / 763 8936
F: +60 6763 6950

Labuan

1st Floor, U0509
Lazenda Commercial Centre
Phase 11, Jalan Tun Mustapha
87000 Labuan
Federal Territory of Labuan

T: +60 8744 0800

Kota Kinabalu

Suite No. 1-6-W2, 6th Floor
CPS Tower, Centre Point Sabah
No. 1, Jalan Centre Point
88000 Kota Kinabalu
Sabah

T: +60 8820 4941 / 943
F: +60 8820 4942

Tawau

No. 194, 2nd Floor, Block B
Wisma DS, Jalan Bakau
91000 Tawau
Sabah

T: +60 8977 1040
F: +60 8976 4131

Phnom Penh (Cambodia)

No. 87, Street 294
Sangkat Boueng Keng Kang I
Khan Chamkarmon, Phnom Penh
Cambodia

T: +855 2398 7100
F: +855 2398 7388
info@bakertilly.com.kh
www.bakertilly.com.kh

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