

Debt Restructuring - Shift In Attitude Needed

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One year ago, groundbreaking amendments were made to the Singapore Companies Act (Cap 50) that significantly enhanced the legal framework governing debt restructuring in Singapore. The primary objective behind these reforms was to enable a more constructive and efficient restructuring solution to business rescue.

Singapore now has the legal tools in place to compete effectively with other restructuring hubs. Since the new amendments came into effect, at least 15 applications for formal debt restructuring proceedings have been made, demonstrating a promising early trajectory. However, for Singapore to truly become the destination of choice in the region for debt restructuring, an attitudinal shift is needed to remove the stigma still attached to the process and to recognise that restructuring strategies can be a highly effective means of preserving shareholder value.

Getting past denial

Many companies undergoing debt restructuring will have seen early signs of financial weakness years earlier, yet only act once it has become too late to preserve value. This has led to a reputation among the public that debt restructuring is a prelude to corporate failure and liquidation.

On the contrary, by acting early, debt restructuring can offer the liquidity and create the runway needed to survive a period of financial weakness or an industry downturn. For management, acting early can also serve to build trust among the company's financial stakeholders, a key commodity during a debt restructuring exercise.

Creditors also have an important role to play in helping companies move past the denial stage and seek a restructuring solution. A short-term forbearance of financial weakness will address the symptom but not the underlying cause, and lenders should thus start having honest conversations with borrowers earlier rather than later.

Addressing the value destruction myth

There is a common misunderstanding that the appointment of an independent financial adviser, judicial manager or scheme manager will drive share prices downwards.

Eleven SGX-listed companies applied to be placed under judicial management in the last three years with the share prices of all having been declining for months, or even years, before the announcement of an application was made.



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The key contributing factor in the declining share prices of all of these companies was the announcement of weak financial performance. It was the long lead time between these announcements and the application of judicial management that allowed investor confidence to drain away, not the filing of the application itself. The same can also be said for the 10 SGX-listed companies that underwent a scheme of arrangement to restructure their debts during the same period.

Improved restructuring options

The 2017 amendments to the Singapore Companies Act sought to improve the legal frameworks governing schemes of arrangement and judicial management, the two formal debt restructuring options available to companies in financial distress.

Features of Chapter 11 of the US Bankruptcy Code were adapted and added to the existing scheme of arrangement mechanism in Singapore. Importantly, the amendments introduced a new mechanism known as a “pre-packaged” scheme of arrangement which significantly shortened the normally lengthy process. The “pre-packaged” scheme offers significant cost and time savings for the company involved, while also minimising damage to public image and loss of goodwill.

The judicial management system has also seen notable improvements. First, the insolvency threshold for a judicial management application has been lowered from a company being “unable to pay its debts” to being “likely to become unable to pay its debts”. This is designed to encourage companies to apply at an early stage, such that intervention is much more likely to result in the successful rehabilitation of the company and the preservation of shareholder value.

The 2017 amendments also now allow foreign companies to use our country’s judicial management regime, an important factor in Singapore establishing itself as a restructuring hub. In April 2018, a Bermuda-incorporated SGX-listed company became the first foreign company to be placed under interim judicial management in Singapore. These improvements together serve to make Singapore’s restructuring process simpler, more accessible and more efficient.

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Going forward

Despite the improvements made, perceptions persist that continue to damage the reputation of debt restructuring as a solution to corporate distress - for example, the feeling among small and medium-sized enterprises that debt restructuring is only for large corporates with deep pockets. Or that insolvency practitioners are either on the “company’s side” or “creditor’s side”, when in fact a successful rehabilitation is a win for all.



Changing the legal framework is only the first step and must be followed by efforts to shift the public’s perception of debt restructuring and remove the stigma attached to it as a prelude to liquidation.



To address these reputational challenges, financial and legal clinics should be developed to assist companies in initiating a debt restructuring process in a discreet way. At the same time, success stories should be shared in Singapore and beyond to encourage companies facing financial difficulties to consider using the tools under the Companies Act.

The amendments to the Companies Act implemented one year ago mark an important first step towards Singapore becoming a major hub for debt restructuring. However, changing the legal framework is only the first step and must be followed by efforts to shift the public’s perception of debt restructuring and remove the stigma attached to it as a prelude to liquidation.

Debtors, creditors, banks, credit agencies, investors and restructuring advisers can all play a role in facilitating this shift by demonstrating the effectiveness of the process as a means of rehabilitating companies in distress, preserving shareholder value and, most importantly, the jobs and livelihoods of Singaporeans.

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