

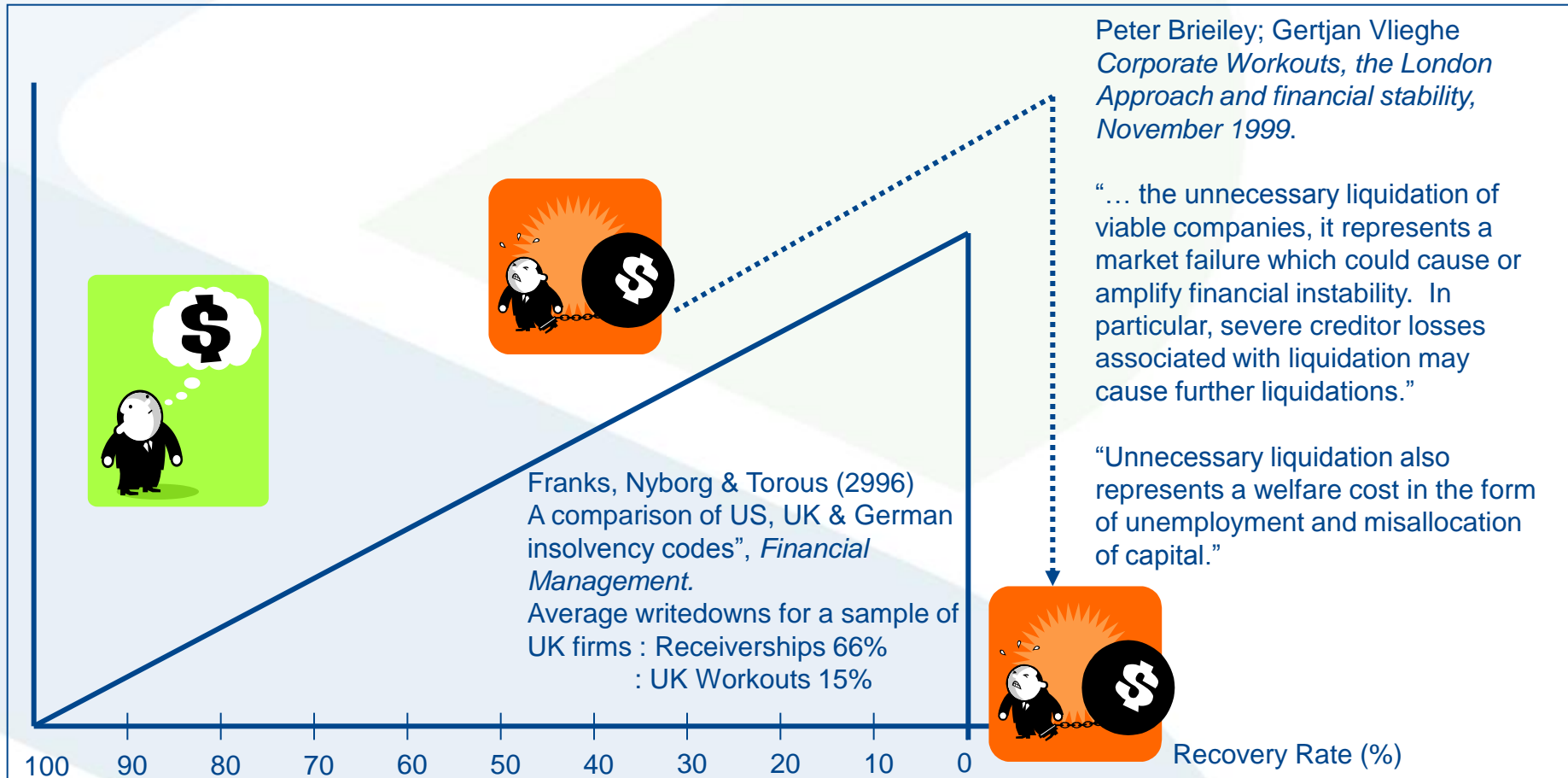
*6th Forum on Asian Insolvency Reform
(FAIR)*

*“Asian Insolvency Reforms following the
Global Financial Crisis: Policy
Responses & Opportunities”*

Out of Court Restructuring (OOCR)

*18 July 2009
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Why Out of Court Restructuring (OOCR) ?



- OOCR generally achieves a higher recovery for creditors as a whole.
- OOCR has some key advantages but also a number of challenges which have increased since 1997 Asia crisis.

Mr. Dongsoo Kang, “Corporate Workouts in Korea”, presentation to 2002 FAIR.
“The expected recovery rate is 50 to 70%, which is higher than the formal court advised restructuring. If liquidation had been forced on many insolvent and unviable firms at the very beginning of the crisis, the expected recovery rate would have below 20% out of nominal debt amounts.”

Dynamics in a Distressed Situation

COURT

- Insolvency Laws
 - ❖ Loss of control
 - ❖ Cram down

REGULATORS & BANKERS ASSOCIATIONS

- Formal protocols & frameworks
- “Policing”

PRESSURES

DEBTOR

- Viability of business
- Financial incentives

KEY FINANCIAL CREDITORS

- Financial impact
- Reputational risks

THREATS

PRESSURES

THREATS

TRADE EMPLOYEE

- Lack of liquidity
- Disruption to normal business operations

OFF-SHORE & NON-BANK FINANCIAL CREDITORS

- Protectionism
- Non-jurisdictional oversight

Principles Guiding an OOCR



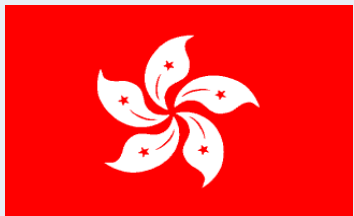
August 1990

August 1990 saw the Bank of England circulate a letter outlining a framework to help banks deal with companies in financial difficulty. It became known as the London Approach .



August 1995

Signing of the Framework for Corporate Debt Restructuring in Thailand. The framework was non-binding and non-statutory but a statement of the approach that is expected to be adopted in corporate workouts involving multiple creditors.



November 1999

Hong Kong Monetary Authority and the Hong Kong Association of Banks release the Hong Kong Approach to Corporate Difficulties.



October 2000

2000 – INSOL International publishes Global Principles for Multi-Creditor Workouts

Key Principles of OOCR (continued)

Support & Co-operation

- When financial difficulties are made known relevant creditors' attitude should be one of support.
- Co-operation by all parties.
- Time to assess a solution – standstill.

Restraint

- Refrain from taking steps to enforce claims.
- Not withdraw facilities.
- Debtor should not take action that may adversely affect creditors' returns.
- Lenders' positions at start of process are respected – no preferring of positions.

Disclosure

- Acknowledgement that the company has financial difficulties.
- Debtor should be co-operative and make available all relevant information.

Validation

- Verification of information by independent accountant or other experts.

Active Involvement

- Debtors or creditors require active senior management involvement.
- Actions need to be done in a timely manner.
- Where necessary a lead bank and / or Steering Committee need to be appointed.

Liquidity

- All parties need to recognise a potential for additional funding, ideally on a priority basis.

Integrity

- Confidentiality should be respected.
- Observance of applicable law and regulations.
- Lenders avoid improper use of information.

Each lender can exercise its own judgement, but they should recognise the impact of their decisions on fellow creditors.

Overriding all of these principles is the critical premise that there is a viable business that can be preserved.

The Process of OOCR

Initial stage / Stabilise situation

- Key considerations
 - ❖ Are all relevant creditors abiding by the standstill?
 - ❖ Immediate cash needs?
- Creditors Meeting
 - ❖ Appointment of Lead Bank
 - ❖ Selection of Steering Committee – representative group

Develop and validate the business plan

- Independent financial accountant engaged
- Full information disclosure
- Key considerations
 - ❖ In the business viable?
 - ❖ How much new money might be needed?
 - ❖ How good and how committed are the management team?

Establish the drivers of value

- Key considerations
 - ❖ Who are the key stakeholders?
 - ❖ What are drivers of future value?

OOCR or not

Consensual
OCCR

Non-Consensual
process

- Key considerations
 - ❖ What additional contributions are the stakeholders prepared to bring to the table?
 - ❖ What are the barriers?

Implement the solution

- Key considerations
 - ❖ What impact does the restructuring have on the business?
 - ❖ Impact on non-participatory stakeholders e.g. trade creditors and regulators
- Ongoing monitoring

Advantages of OOCR

Recovery

- Statistics indicate that recovery rates for financial creditors are higher in OOCR's than formal court processes.
- Other non-participatory stakeholders, particularly trade and employees can expect ongoing full recovery.
- Time frame for realising funds from an OOCR is shortened compared with court processes.

Cost

- Experience confirms the cost of undertaking an OOCR will be less than court process.
- Limited number of advisers whose work will be predominantly non-litigious.

Time

- While some aspects of the court / formal workout processes will have defined time schedules, generally OOCR can be completed in a shorter time frame. Time will have close correlation to cost and recovery.
- Debtors are more co-operative.

Social Impact

- OOCR has a more limited impact on other stakeholders, avoiding the consequences of potential unnecessary liquidations.
- More discrete processes will maintain the confidence of the debtors trade and other stakeholders.
- Preservation of jobs.
- Productive capacity maintained in the economy.

Challenges

Inter-creditor Issues

- Conflict over collateral rights.
- Disagreement over cash flow entitlements.
- Multiple lender classes.
- Adequacy of experienced restructuring staff.

Disparate Lender Group

- Opportunistic debt holders looking to take ownership or exploit situations.
- Bondholders / trustees.
- Creditors with CDS protection.
- Distressed debt holders.
- Disintermediation – CDO / Syndications.

Valuation Debates

- Management / stockholders desire to retain as much equity value versus creditors desire to correct the balance sheet.
- Lenders pain threshold in terms of provisioning.
- Injection of “new money”.

Issues

- Protracted process leading to value diminution or possibly liquidation.
- Financial problems become more public leading to a further loss in confidence.
- Creation of “zombie” companies that require further restructuring or lack competitiveness.
- Inability to bring in all key financial creditors leading to either a sub-optimal restructuring or court process. Re-scheduling versus real restructuring.
- Costs of doing restructuring increases materially.
- Breakdown in trust leading to possible liquidation.

Challenges

Issues

Complex Organisational and Capital Structure

- Restructuring needs to deal with the tension between respecting creditors legal positions at the start of the OOCR and pragmatism to deal with complexity of inter-connected group or multi-jurisdictional situation.
- Derivative and complex instruments have “moving” valuations.
- Conflicts of interest within financial institutions.
 - ❖ Advisory
 - ❖ Government owned institutions implementing social policy

Enormous Forecasting Uncertainty

- Desire of debtors to minimise cost and need for independent review.
- Exchange rate volatility.
- Do you reward fraud?

External Influences

- Stakeholders activism including employees and regulators.
- Impact of country specific restructuring frameworks, e.g. Fast Track Program in Korea.
- Disclosure requirements and market rumours.
- Information flow and publicity e.g. Debtwire.
- Trading whilst insolvent.

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Advantages of OOCR

Recovery

Cost

Time

Social Impact



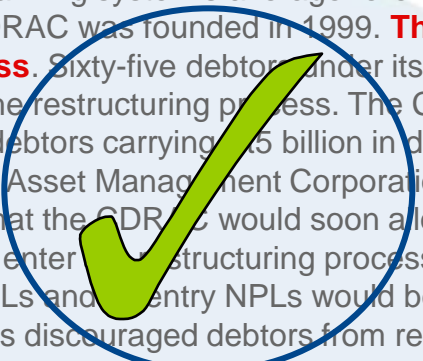
The Nation

Finance

CDRAC gets passing grade

Published on December 19, 2001

Bt1.3 trillion in restructured problem loans - or 76 per cent of those under its supervision - has not returned to non-performing status, the Corporate Debt Restructuring Advisory Committee (CDRAC) said yesterday. **Thamnong Dasri, a director of the Bank of Thailand's Corporate Debt Restructuring Group**, noted that the figure involved 10,103 mostly large debtors who had suspended debt repayments for a long time. **"We passed an examination and got a B-plus grade,"** he said, adding that re-entry of non-performing loans (NPLs) under the CDRAC programme was only 3.5 per cent of the total debt value, or Bt40.46 billion. This was much lower than the banking system's average re-entry of NPLs, at 18.93 per cent, or Bt2.37 trillion. It represents a moderate performance since CDRAC was founded in 1999. **Thamnong credited CDRAC's strict restructuring schedules for its recent success.** Sixty-five debtors under its supervision were classified NPL re-entry, compared with 10,103 debtors participating in the restructuring process. The CDRAC targeted 14,850 debtors owing Bt2.6 trillion to join the programme. So far, two large debtors carrying Bt5 billion in debts have been forced out of the CDRAC process and will soon be transferred to the Thai Asset Management Corporation (TAMC). Pisit Samahito, another director of the Corporate Debt Restructuring Group, said that the CDRAC would soon allow corporate debtors with more than two creditors and more than Bt50 million in debts to enter restructuring process. The body had postponed acceptance of cases since June. Thamnong said both new NPLs and re-entry NPLs would be allowed to participate in the process because the country's continuing economic slowdown has discouraged debtors from repaying their debts. The CDRAC also said it would speed up the debt-restructuring process and reduce unnecessary procedures, Pisit said. Anoma Srisukkasem THE NATION





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Q&A

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