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"Facilitating Corporate Restructuring: The Securities Commission's Perspective"

by
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Firstly, my appreciation and many thanks to the MACPA Insolvency Committee for inviting me to deliver an inaugural talk to all of you this evening.

Secondly, I am very happy to have the opportunity to meet and renew acquaintances and once again be in the familiar company of insolvency practitioners.

Thirdly, by virtue of the experience that I have gone through over the past two and a half years in my present position with the SC, I very much look forward to imparting the SC's perspective and expectation with regard to the subject matter of corporate restructuring, which I know is very dear to the heart of all of us here.

2. Recent liberalisation in SC's corporate restructuring requirements

2.1 The prerequisites and salient requirements which need to be satisfied by listed companies which propose to undergo through a restructuring scheme are dealt with in the SC's "Policies and Guidelines on Issue/Offer of Securities", or popularly known to all of us as the Issues Guidelines. To facilitate fund-raising and restructuring proposals by listed companies, the SC periodically reviews and, where necessary, liberalise the requirements specified under the Issues Guidelines, including the requirements relating to restructuring proposals.

2.2 Here, I would like to highlight a summary of several recent major liberalisations introduced by the SC for restructuring proposals.

(i) Firstly, in respect of fund-raising and restructuring proposals by listed companies, the SC has now extended the flexibilities previously granted to only rescue cases, as defined under the Issues Guidelines, such as a less stringent profit requirement for assets to be injected, to all distressed listed companies.

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With this liberalisation, it is expected that the pool of viable assets which could be injected into distressed listed companies would be widened.

- (ii) Secondly, the requirement for post-restructuring net tangible asset position for distressed listed companies has been reduced from at least 50% of the par value of their ordinary shares to 33%. With this liberalisation, it is expected that the formulation and finalisation of restructuring schemes would be facilitated and wider alternatives would be available on the type of securities instruments to be issued under restructuring proposals.
- (iii) Thirdly, all distressed listed companies, and not just those under the purview of Danaharta Nasional Berhad and the Corporate Debt Restructuring Committee, are now allowed to issue convertible securities with nominal values below RM1.00, subject to certain conditions. With this liberalisation, it is expected to increase the success of fund-raising exercises by distressed listed companies, given that such instruments, which require lower initial cash outlay, would be less costly upfront and, hence, would increase the likelihood of being subscribed by investors.
- (iv) Lastly, fund-raising in the form of rights issue is now allowed to be undertaken on a minimum subscription basis instead of the previous requirement for full irrevocable undertakings by the substantial shareholders or full underwriting by pre-identified firm of underwriters. This is expected to facilitate and enhance the ability of listed companies, including distressed companies, in undertaking their fund-raising proposals.

2.3 I wish to assure all of you that the SC continuously undertakes a review of the approach and thrust of its policies and requirements, as specified in the Issues Guidelines, and remains committed to further liberalise the requirements relating to corporate proposals by listed companies, including, if need be, further liberalising the requirements for restructuring proposals. With regard to this, I wish to inform you that, arising from a proposal received from market participants during the recent SC's annual dialogue with the industry, the SC is studying the possibility of allowing listed companies to undertake share splits of their existing securities to facilitate restructuring exercises.

3. SC's philosophies and principles for corporate restructuring proposals

3.1 I wish to emphasise that the SC, as the statutory authority entrusted with the function of, among others, regulating and overseeing the Malaysian securities market, adopts a facilitative approach in considering restructuring proposals from listed companies. Generally, a well-formulated restructuring proposal which could

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resuscitate a distressed listed company, resolve its financial predicaments and enable it to emerge on a stronger footing, would be favourably considered by the SC.

3.2 In considering restructuring proposals submitted by listed companies, the SC would, in addition to assessing compliance with the relevant requirements specified under the Issues Guidelines, place importance also to adherence to certain philosophies and principles. I also wish to emphasise that it is very important for all of you, in undertaking engagements for restructuring proposals, to accord priority and undertake effort to ensure that the scheme being formulated by you fully meet these principles. Otherwise, the SC should not be blamed for not approving those restructuring proposals formulated by you which are found to be wanting!

3.3 I would like to share with you these philosophies and principles, which are summarised as follows:-

(i) The restructuring proposal must demonstrate to the SC's satisfaction that the proposal is comprehensive and capable of resolving all the financial problems faced by the listed company.

- This is to ensure that the restructuring proposal addresses the encompassing problems faced by the distressed listed company, including income and cashflow generation and restructuring of all liabilities, rather than one which provides only a piecemeal solution.
- The restructuring proposal also must not merely represent a short-term measure or one where the listed company is likely to need a subsequent rescue or blood transfusion in the immediate future.

(ii) Where assets are to be injected as part of the restructuring proposal, these assets must be of a reasonable quality and able to provide immediate and sustainable contributions to the listed company's profit and cashflow.

- This is to ensure that post-restructuring, the listed company will have a viable business which could generate certain form of returns to the shareholders.
- The SC must also be satisfied that the restructuring proposal is capable of generating positive cashflows over a sustainable period in the future.

(iii) The promoters, including the white knights, where applicable, must have a proven track record of good corporate governance.

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- A very important overriding criteria, this seeks to ensure that our listed companies are managed under the stewardship of senior management who possess high standards of corporate governance.
 - Our listed companies can only become truly world class and attract international investors attention when the controlling shareholders and senior management practices high standards of corporate conduct and act in the best interest of all shareholders of the company.
- (iv) The SC must be satisfied that the restructuring proposal is fair to all parties concerned and does not unduly compromise or adversely affect the interests of shareholders, particularly minority shareholders with lesser bargaining power.
- For example, where a restructuring proposal involves a substantial capital reduction, you may wish to consider some sort of share offering to the minority shareholders of the listed company, for the purpose of enabling them to participate in the proposal and, at the same, partly restore their equity position in the restructured company.
- (v) The substantial shareholders or those deemed to be responsible for the downfall of the listed company must not benefit in an unfair manner as a result of the restructuring proposal.
- Here, all of you can play a role by ensuring that, where possible, such irresponsible parties do not continue to play a prominent role in restructuring proposal and, hence, in the restructured listed company in the future.
 - I would like to stress that the SC will not hesitate to take stern action against those parties, which are found to have breached the rules and regulations within the SC's purview, and have not acted in the best interest of all the shareholders and the investing public.
- (vi) There must be demonstrable broader benefits resulting from the implementation of the restructuring proposal, especially for the shareholders, employees and other stakeholders.
- (vii) The SC must be satisfied that the restructuring proposal does not have an adverse impact on the capital market in general, either immediately or over the longer term.
- For example, proposals to issue large quantity of warrants for the purpose of sweetening restructuring proposals may be viewed with certain

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concern by the SC, given the potential dilutive effect of such instruments on the underlying securities and the overall need to prevent our capital market from being awash with warrants.

- Particular attention should be given to the valuation of property assets or businesses which are proposed to be injected as part of the restructuring proposal, given that an over-valuation of such acquired assets/businesses would be detrimental to the interest of the existing minority shareholders of the listed company. This, in turn, would delay the SC's final decision on the restructuring proposal, given the need by the listed company to revise the proposed valuation figures downward to a level which is acceptable to the SC.

- The pricing for the issuance of securities under a restructuring proposal should also fully comply with the relevant requirements specified by the Issues Guidelines, given that the specified requirements provide clear and transparent parameters for the issuance of securities by listed companies. Similarly, any deviation from the specified requirements would delay the SC's final decision on the restructuring proposal, given the need by the listed company to revise the originally submitted proposal in order to meet SC's requirements.

4. SC's experience in considering restructuring proposals

- 4.1 In terms of the statistics of corporate proposals for restructuring and reorganizations considered by the SC in the past, it is noted that from the 38 proposals considered by the SC for the year 2000, 32 proposals were approved, 2 rejected and 4 deferred. For the first nine months, January to September, of 2001, the SC had considered 19 such proposals, with 15 approved, 2 rejected and 2 deferred.
- 4.2 I would like to take this opportunity to inform you that the principal reasons which led to the SC not granting an outright approval for some of these restructuring proposals are due to either the proposals not fully complying with the relevant requirements specified by the Issues Guidelines and/or not adhering to the broad philosophies and principles which I had outlined earlier. Even for several of the approved restructuring proposals, an unnecessary amount of precious time had been wasted owing to the need to re-work on the original proposals submitted to the SC due to certain weaknesses found by the SC.
- 4.3 Therefore, the lesson for insolvency practitioners is clear - there is no substitute for a good, well thought out restructuring proposal which addresses all the salient areas of concern relating to the proposal in question.

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4.4 As a matter of interest, it is noted that, from the list of listed companies which are classified by KLSE as being affected companies, which stood at 95 companies as at 30 September 2001, only 22 had received the SC's approval for their respective restructuring proposals. The rest of the 73 affected companies either have yet to announce their detailed restructuring plans (42), announced but have yet to submit their restructuring proposals for the SC's consideration (15), or presently waiting the SC's decision on their restructuring proposals (16). Therefore, it is clear that there is still much work which need to be done by all of you on the restructuring of listed companies.

5. Conclusion

5.1 I hope that I have managed to shed some light and enlighten you on the SC's perspectives and expectations in respect of corporate restructuring proposals to be undertaken by listed companies. Taking into consideration the still large number of distressed listed companies which have yet to announce their restructuring proposals, I sincerely hope and pray that what I have imparted today would be kept at the back of your minds when formulating restructuring proposals for submission to the SC for these companies.

5.2 All of you have an important role to play in ensuring that the restructuring proposals for listed companies under your care are soundly formulated, with full adherence to the specified requirements and broader principles which I have enumerated earlier.

5.3 Let us all work diligently with our best endeavour for the speedy resolution of the problems which are presently afflicting our capital market and listed companies.

Thank you.

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