

DEBT RESTRUCTURING

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'Nothing is done but restructuring bad debts'. That is what has happened during the economic crisis in Indonesia, beginning in 1997 and continuing unabated to date. This is the second era of mega loan restructuring within just over a decade. The first followed the devaluation of the Rupiah against the US \$ in 1986, paralyzing borrowers who were then afraid to repay their US \$ loans. Thereafter, only seven years after restructuring their loans the first time, came the much much larger, wilder storm: the economic crisis of '97! And, once again, borrowers have to beg to their creditors to agree to restructure their loans.

Although a creditor may terminate a credit agreement based on its default clauses and enforce its security documents, or it may sue the debtor before the district court or bring an action for bankruptcy before the commercial court, a debtor's only recourse in these situations is to restructure its debts. Debtors that are given the opportunity to follow a restructuring plan should be *bona fide* and have prospective business. It is hoped, that by being afforded such opportunity, the debtor will be able to pay its debts (after being restructured), its company to continue its business and its workers to retain their jobs.

When bad debts are caused by the borrowers' inability to repay in the currency that was contracted for following the devaluation of the Rupiah, the remedy is to restructure by converting the loan from a single currency (US \$) loan to a multi-currency loan. The scheme would enable the borrower to repay its debts in another currency which may not have appreciated, with respect to the currency of the debtor's revenue, as greatly as has the original contracted currency. We have seen many US \$ loans converted into Swiss Franc loans.

The above scheme of restructuring is only one of many various concessions that are afforded to borrowers whose financial conditions are such that they cannot be expected to repay their loans. Other concessions include: (i) decrease of interest rate, either on interest basis or cost (of fund) basis; (ii) waiver of default interest, penalty, or *riba ad afan mudhoafa* (compounded default interest); (iii) waiver of outstanding unpaid interest; (iv) waiver of future interest; (v) waiver of a portion of loan principal (commonly as known as a 'hair cut') and (vi) rescheduling of the outstanding loans, by extending the grace period and/or the period of repayment installments.

Sometimes those concessions cannot be given by the creditors due to international money market disaster, such as one triggered by the Gulf-War. Nonetheless, most creditors will consider *bona fide* borrowers too valuable to be allowed to go under. In this case refinancing of these bad debts by new creditors after the disaster has passed may be an alternative concession.

In other situations, due to the complexity of the current economic crisis, borrowers may be completely unable to repay their bad debts because they have no liquid assets, while on the other hand their creditors see no point to enforce the security because there is no market: no one will buy - there are no new investors willing to take that risk. But for the sake of the country and the business of both creditors and debtors, these bad debts still must be restructured. In this situation, the problem is not money vs. money, but money vs. assets or equity. And for such restructurings there are other structures to be applied, such as: (i) Debt to Assets Swap; (ii) Debt to Equity Swap; or (iii) Debt to Quasi-Equity Swap.

In a Debt to Assets Swap the borrower's meets its repayment obligations by surrendering its own assets, or assets belonging to its subsidiaries or affiliates, to the creditor(s). In a Debt to Equity Swap the borrower meets its repayment obligations by allowing the creditor to take up new shares of the borrower, so the creditor will become a shareholder of the borrower. In a Debt to Quasi-Equity Swap the borrower meets its repayment obligations by issuing tradable Convertible Bonds or Exchangeable Bonds. Creditors holding Convertible Bonds will eventually be issued with shares in the borrower company, and creditors holding Exchangeable Bonds will eventually be issued with shares in the borrower's guarantor company (see Government Regulation No. 15 year 1999).

A debt restructuring scheme normally contains a condition that in the event that the debtor fails once again to fulfil its obligations (*wanprestasi*), all terms and conditions of the original credit agreement will come into effect again, as if the concessions been given in the Debt Restructuring Agreement had never been granted. This condition is covered in a "*Recapture Clause*".

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