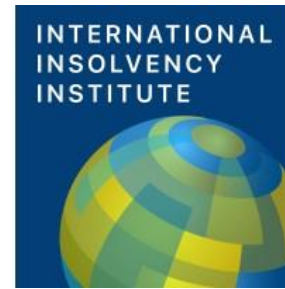




ASIAN BUSINESS LAW INSTITUTE



Press Release

Free guide for businesses to conduct cheaper, quicker debt management in Asia

A step-by-step guide to executing a successful out-of-court workout

SINGAPORE, 23 March 2023 — A free guide launched today can help businesses facing financial distress more effectively adopt a cheaper and quicker debt restructuring tool known as an out-of-court workout.

An out-of-court workout is a non-judicial arrangement based on a private contract between a debtor and its creditors. It is generally cheaper and quicker to execute than more formal rehabilitation efforts like liquidation or insolvency proceedings and judicial reorganisations.

Critically, it allows businesses to continue operating throughout the workout process, making it a valuable tool for companies suffering sometimes temporary financial difficulties.

The *Guide on Conducting an Out-of-Court Workout Guide in Asia* (“Workout Guide”) is jointly published by the Asian Business Law Institute (“ABLI”) and the International Insolvency Institute (“IIL”) and will guide businesses, their advisors and policymakers in 16 Asian jurisdictions, including Singapore, China and Japan, to conduct a successful out-of-court workout.

The Workout Guide spells out nine principles that underpin a successful out-of-court workout. It also provides 11 practical tips for completing a successful out-of-court workout. For example, its author proposes that when many creditors are involved, having a steering committee can be a more efficient way to aggregate creditor interests and facilitate negotiations between parties. In turn, all creditors are more likely to feel they are treated equally and fairly, key to a successful out-of-court workout.



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“We are delighted to publish the Workout Guide with the Asian Business Law Institute. The Workout Guide provides a comprehensive overview of 16 jurisdictions throughout Asia with guidance relating to the conduct of out-of-court workouts,” said Mr John Martin, President of the III. “The summary of principles and practice tips will hopefully guide law reform across Asia, and prompt discussion between professionals, academics and judges alike regarding this important area of practice.”

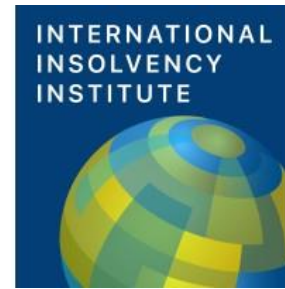
“Many Asian jurisdictions are not yet familiar with the concept of out-of-court workout, let alone how to conduct one,” said Mr Mark Fisher, Deputy Executive Director of ABLI. “The Workout Guide thus aims to strike the right balance between espousing general best practices in the form of principles and providing practical guidance in the form of tips, considering the lack of sufficient knowledge or even awareness of out-of-court workout in Asia.”

The Workout Guide is available for download [here](#). It was drafted by restructuring and insolvency expert Mr Ian Mann who has two decades of global experience, of which 15 years are in Asia, with valuable inputs and contributions from practitioners, academics and policymakers from around the world. Global organisations like INSOL International, the United Nations Commission on International Trade Law and the World Bank were also consulted during the year-long drafting process.

The Workout Guide is the latest collaboration between ABLI and III. It follows their 2020 title [*Corporate Restructuring and Insolvency in Asia*](#) and [*Guide on the Treatment of Insolvent Micro and Small Enterprises in Asia*](#), released two years later.



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Appendix:

Summary of Principles for Conducting an Out-of-court Workout in Asia

Principle 1

A critically important foundation for any workout is that the debtor has a viable underlying business that can be rescued, that the specific reasons for the debtor's financial distress are fully understood by all stakeholders, and that any elements that might render a workout unsuitable have been satisfactorily addressed

Principle 2

It is the responsibility of the debtor to alert creditors to its distressed position early. The debtor should provide to the creditors, in a timely manner, full, honest and accurate information concerning its affairs. This is usually a time-consuming and onerous process. The debtor should appoint its most senior persons to undertake workout tasks.

Principle 3

When it is apparent that a debtor may be experiencing financial distress, creditors' initial attitude should be one of support in order to avoid insolvency proceedings if rescue is viable. Such support at this early stage should include a non-contractual standstill, with a contractual standstill to follow.

Principle 4

Both the debtor and its creditors must have the joint objective of rescue in a workout. If the debtor is acting in bad faith manifesting itself, for example, by failing to disclose information, then the workout will fail.

Principle 5

In a workout, each creditor is entitled to exercise its own commercial judgment but must be realistic and pragmatic and recognise the impact of its decision on other creditors and the debtor (or debtor group). No one creditor should act unilaterally or gain an unfair advantage, in particular that the security position of creditors relative to one another is preserved, and that each creditor will not improve its position during a standstill.

Principle 6

A standstill should be agreed promptly on principal payment, and perhaps also on interest. Creditors should not withdraw facilities or hastily put the debtor into receivership, or initiate lawsuits demanding repayment. The purpose of the standstill is to allow the viability of rescue to be assessed. Realistically, however, although creditors will agree to a de facto standstill early on, they are unlikely to enter into a contractual standstill until the debtor proves its good faith by beginning to provide disclosure.



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Principle 7

The debtor must present a credible and viable business plan during a workout.

Principle 8

Any workout agreement must set out what are effectively “exit” strategies for stakeholders, intended to maximise their value in a workout. A variety of workout techniques are available and can be deployed in combination and applied to different classes of creditors.

Principle 9

In a multi-jurisdictional workout, organising a steering committee or appointing a lead creditor is of particular value. To the extent feasible, parties (or at least those with common representation) should appoint *common* teams of professionals and experts among them. Each team of advisors should be composed of professionals from *all* affected jurisdictions. Specifically for a legal team, even as it may comprise lawyers and firms from multiple jurisdictions, it is generally wise to ensure that, as between lawyers, there is a clear understanding of which firm is to take the lead.

Summary of Practice Tips for Conducting an Out-of-court Workout in Asia

Practice Tip 1

A debtor should aim to identify its financial distress early in a transparent and honest manner. A key step is for the debtor to instruct its own legal, accounting and financial advisors to conduct a thorough review of all its facilities and financing documents.

Practice Tip 2

Creditors will want to ensure that, whilst discussions are ongoing and eventually as part of the standstill and even the workout agreement, there should be some oversight or control of material disposals or transactions by the debtor. Creditors may look to examples of early warning signs described in this guide to identify a debtor’s financial difficulty.

Practice Tip 3

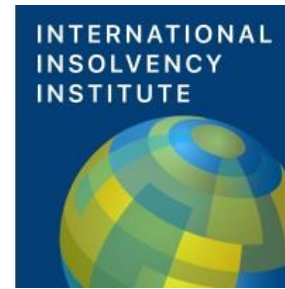
Both the debtor and its creditors should engage professional advisors to guide the workout process at an early stage. The level of advice sought and/or obtained and the types of professional advisors needed depend on the size of the debtor and what is being restructured.

Practice Tip 4

The debtor needs to ensure that the requisite information is made available to creditors to facilitate the conclusion of any standstill agreement or the extension of any facility in a workout. The mode by which such information is shared will vary depending on the circumstances, subject to appropriate confidentiality arrangements as some information may be commercially sensitive.



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Practice Tip 5

Valuations lie at the heart of the workout process, and valuation issues will continue to suffuse the entire workout process, even after the preparatory phase. It is generally sensible to obtain at least provisional valuations at an early stage of the workout process.

Practice Tip 6

Both the debtor and its creditors should ensure that they have a comprehensive list of relevant creditors, and that all creditors who are interested in a workout participate, and failing which, that they are, at minimum, party to an informal moratorium on any formal enforcement action.

Practice Tip 7

It is helpful at the outset to decide which creditors are likely to lead the workout process. Several factors will influence that decision, including, among others, the size, resources and experience of a creditor and the nature of the debts owed.

Practice Tip 8

In some cases, a steering committee can be a helpful means of aggregating creditor interests and facilitating negotiations. In other cases, having a *lead creditor* (or a lead group of creditors) to manage and effectively administer the overall workout process can be sufficient. What is essential is that creditors all feel they are treated equally and fairly.

Practice Tip 9

Short-term waivers of a pending financial covenant default are generally a sensible idea where a workout is being proposed to ease the immediate liquidity tightness and avert the immediate risk of default, benefitting the debtor and its creditors alike.

Practice Tip 10

As new money is almost inevitably afforded priority status, the quantum, timing, and rationale for extending new money are heavily scrutinised. The source of new money will vary depending on the nature of the workout. Granting security on the provision of any new money may be desirable but may not automatically follow.

Practice Tip 11

The main challenge of dealing with the proceeds of asset disposals in a workout is how such proceeds ought to be distributed. A useful starting point is to look at the Day 1 Position of each creditor.

As asset disposals may also take place *after* the workout agreement has been implemented (and potentially may not appear on the schedule of agreed disposals), it is prudent to ensure that the workout agreement itself contains a clear mechanism for calculating the entitlements of various creditors to the proceeds of any future asset disposal.



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About the International Insolvency Institute

The International Insolvency Institute (III) is a non-profit, limited-membership organisation dedicated to advancing and promoting insolvency as a respected discipline in the international field. Its primary objectives include improving international co-operation in the insolvency area and achieving greater co-ordination among nations in multinational business reorganisations and restructurings, with membership drawn from the most senior and respected insolvency practitioners, judges and academics in the world and it has valuable liaisons with many of the most senior regulatory and administrative professionals in the insolvency field. III, due to its exceptional membership, its international leadership, and its resources, plays a valuable and highly significant role in the international insolvency field. It has achieved a worldwide reputation and is developing into a catalyst for improvement and change in the international insolvency area that has few, if any, equals.

More information can be found at <https://www.iiiglobal.org/>.

About the Asian Business Law Institute

Launched in January 2016, the Asian Business Law Institute (ABLI), a subsidiary of the Singapore Academy of Law, is a permanent think tank based in Singapore that initiates, conducts and facilitates research with a view to providing practical guidance in the field of Asian legal development and promoting the convergence of Asian business laws. Its mission is to remove unnecessary or undesirable differences between Asian legal systems that pose obstacles to free and seamless trade. ABLI's long-term strategic direction in accordance with its aims is set by its Board of Governors chaired by The Honourable the Chief Justice Sundaresh Menon of the Supreme Court of Singapore. The Board comprises representatives from Australia, China, India and Singapore and other internationally renowned legal experts.

More information can be found at <https://abli.asia/>.