

Managing Insolvency in Malaysia

Corporate Rescue Schemes, Liquidation
and Receiverships

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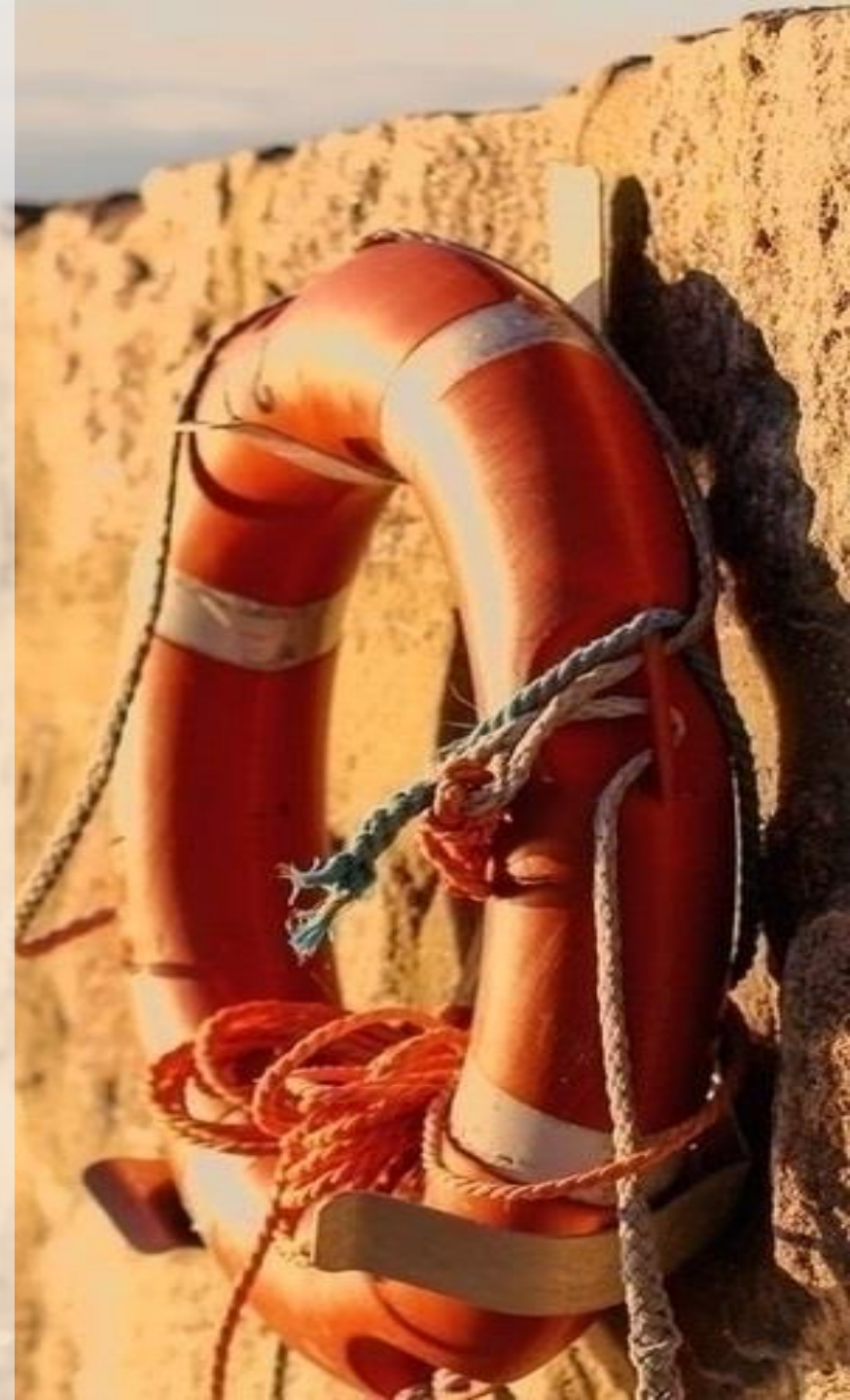
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1. Introduction

Adapting to an ever-changing business environment is a process every successful business has to go through. This is more so during challenging times when there are significant headwinds in the economy, for example the unprecedented impact of Covid-19 on businesses, people and governments.

Failure to adapt and respond effectively to the challenges can result in sometimes fatal consequences to the business. A business may then go into a downward spin, and find it difficult to get out of the slippery slope. By that time, rescue may be difficult and painful for all concerned. In the worst case scenario, liquidation may be the only option.

Agile management should therefore think forward, plan ahead and execute well. Success belongs to the brave and tenacious, but failure comes due to lack of attention or sometimes, misfortune. In the event that business distress is due to short term issues such as cash flows constraints, lack of demand, supply shortages and etc., a rescue and resuscitation of the business to good health is still possible. Much then depends on the support of every stakeholder, including creditors, bankers, shareholders and sometimes even employees. Their cooperation will then be necessary to work out a solution that is acceptable to all.

In this publication, we are honored to share our knowledge on strategic restructuring and insolvency in Malaysia and how businesses in distress can extract maximum value for creditors and stakeholders alike.

If you are contemplating a restructuring exercise or liquidation scheme, please feel free to contact us for a chat. We will be glad to take you through this challenging journey and ultimately create the opportunity for new beginnings.

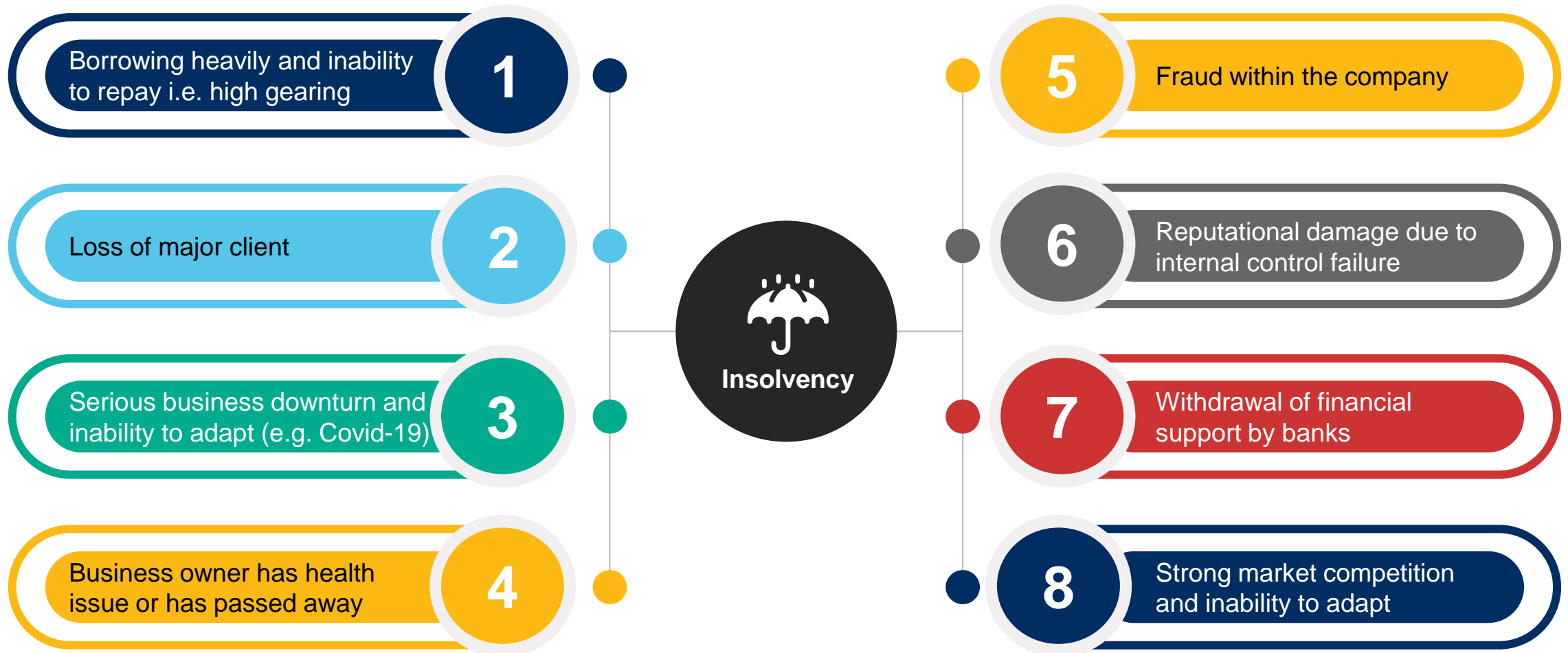
Like the quote says “When one door closes, another one opens.” Let us help you open the door to a fresh new start!



Onn Kien Hoe
Partner, Corporate Advisory

1.1 Reasons why businesses face insolvency situations

Businesses can end up with financial distress due to many reasons. Some are business related whilst others are not. Some are self-inflicted whilst others are due to changes in technology, business environment or regulations. Some of the common reasons are as follows:-



2. Informal Rescue Measures



2. Informal Rescue Measures

Companies that are looking to resolve their financial health issues will usually resort to informal measures as the preferred alternative. Only in circumstances beyond their control will they turn to formal business rescue schemes which are expensive and can involve long and complicated legal procedures.

In fact, informal restructuring options can be significantly advantageous in helping businesses recover if conducted at an early stage and before the financial distress becomes too severe. One such advantage is that it allows the company to retain its reputation and preserve its market value since informal restructuring methods are often conducted confidentially.

2.1 Common informal measures for distressed companies include:-



Negotiating with creditors i.e. landlords, suppliers, etc.



Focusing on profitable operations



Sale of surplus or unused assets



Cutting costs e.g. reduce headcount, cutback in overheads, etc.



Disposal of loss making operations



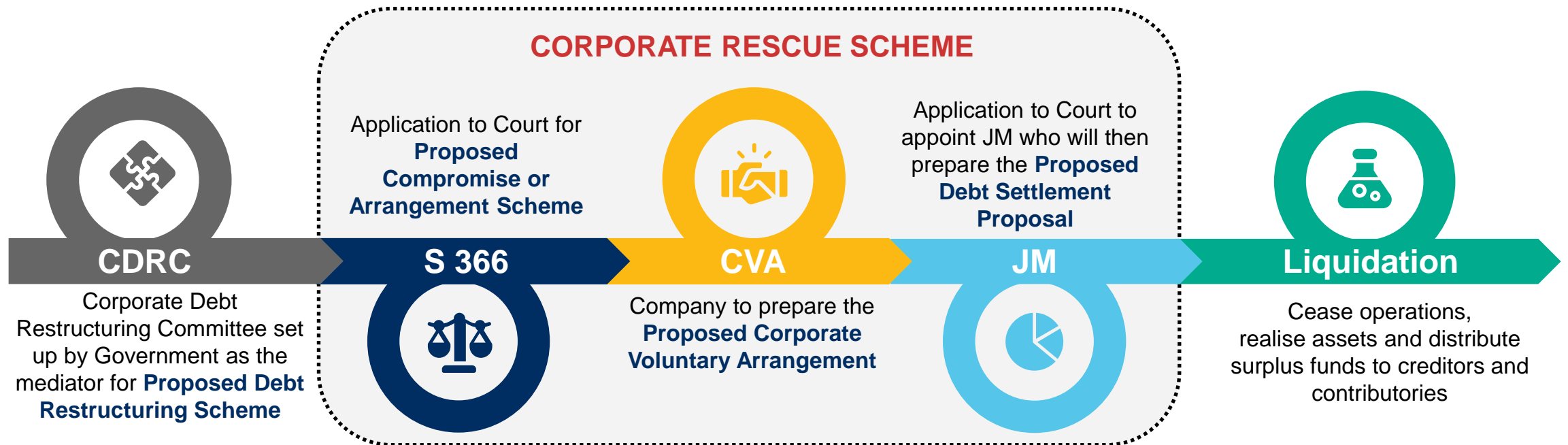
Change of key management personnel

3. Formal Rescue Measures



3. Formal Rescue Measures

With strategic implementation, a good corporate rescue plan can greatly maximize a business' chances of continuity on a solvent basis. In fact, a solid corporate rescue plan should yield better returns for the company's creditors or shareholders, as compared to an immediate liquidation of the business. The following is a summary of formal measures laid out in various pieces of legislation by the government.



Companies (Exemption) Order 2020 applicable for the Covid-19 period during which legal action may not be taken against debtors

- ✓ Applicable to debts which are not able to be paid from RM10,000 to RM50,000
- ✓ Settlement period for payment of debt is increased from **21 days** to **6 months** after the notice of demand is being served

This Order is valid for the period from 23.04.2020 to 31.12.2020 during which creditors are restrained from legal action against debtors

3.1 Corporate Debt Restructuring Committee (CDRC)

The Corporate Debt Restructuring Committee (CDRC) set up by Government acts as the mediator for creditors which have borrowings from banks. The CDRC carries with it the authority of the government as well as Bank Negara to assist borrowers and bankers in finding an amicable settlement between all parties concerned.

WHO



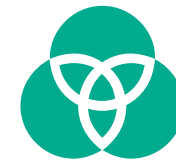
- Aggregate indebtedness of RM10 million or more;
- Owes at least 2 financial institutions
- Not in receivership or liquidation
- Experiencing difficulties in servicing their debt obligations
- PN17 or GN3 company listed on Main and Ace Market respectively

HOW



- Appointment of Financial Advisor and/or Legal Advisor
- Submit application together with the preliminary proposed debt restructuring scheme to CDRC

WHAT



- Must have viable business post-restructuring
- Able to negotiate with financial institutions and unsecured creditors
- Subject to CDRC accepting the application




3.2 Corporate Rescue Schemes

A summary of the various Corporate Rescue Schemes available under the Companies Act 2016 and their major differences is set out below.

Questions	Scheme of Arrangement	Corporate Voluntary Arrangement	Judicial Management
Scheme initiated by?	Company * / Creditors	Company *	Company / Creditors
Scheme in charge by?	Directors	Directors	Judicial Manager
Court involvement?	Court convened Meeting	Minimal Court Involvement	Judicial Manager appointed by Court
Approval From?	75% in value of Creditors /Members OR class of Creditors/Class of Members	75% in value of Creditors and 50% of Members	75% in value of Creditors without classes unless at a Scheme of Arrangement

* Company includes a Liquidator if the company is under liquidation, and a Judicial Manager if the company is under Judicial Management

3.2 Corporate Rescue Schemes (cont.)

Questions	Scheme of Arrangement	Corporate Voluntary Arrangement	Judicial Management
Restriction?	Any Company can apply	<ul style="list-style-type: none"> ✗ Public Company ✗ Co. regulated by BNM ✗ Co. subject to CMSA ✗ Co. with secured creditors 	<ul style="list-style-type: none"> ✗ Co. regulated by BNM ✗ Co. subject to CMSA
Moratorium?	<ul style="list-style-type: none"> ■ Can apply for restraining order for 3 months ■ Extendable to a maximum of 9 months 	<ul style="list-style-type: none"> ■ Immediate moratorium of 28 days ■ Extendable to a maximum of 60 days 	<ul style="list-style-type: none"> ■ Moratorium of 6 months ■ Extendable by another 6 months
Under what circumstances?	Able to negotiate with creditors and able to obtain approval from classes of creditors	Able to negotiate with creditors and with restructuring plan ready	When creditors do not have trust in Management but company has viable business
Costs & Timing?	 Moderate	 Low	 High

3.3 General Road Map for a Corporate Rescue Scheme

The diagram below sets out the steps necessary in the implementation of a corporate rescue scheme. It will start with the appointment of advisers and end with the successful implementation of the scheme.

Step 1

Appoint:

- Financial Advisor
- Legal Advisor

Step 2

Prepare:

- Scheme / Proposals
- Court paper

Step 3

Finalise the Scheme / Proposals
for Meeting of Creditors

Step 4

Creditors' Meeting

Step 5

Formalise Results of Meeting either
by an Agreement / Filing with Court
and Companies Commission of
Malaysia (SSM)

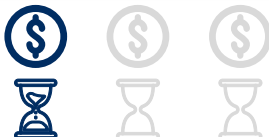




4. Liquidation Options



4. Liquidation Options

Liquidation of companies can be carried out in several ways. The options available under the Companies Act 2016 and their differences are:

Questions	Members' Voluntary Liquidation	Creditors' Voluntary Liquidation	Court Liquidation
Initiated By?	Members	Members	Usually Creditor via Court
Approval From?	Members	Members However, Creditors can nominate their preferred Liquidator	Court
Under What Circumstances?	Members wish to wind up Solvent Company	Members wish to wind up Insolvent Company	Company usually unable to pay its debts
Approval From?	75% of Members	75% of Members	Court winding up Order
Costs & Timing?	 Low	 Moderate	 High

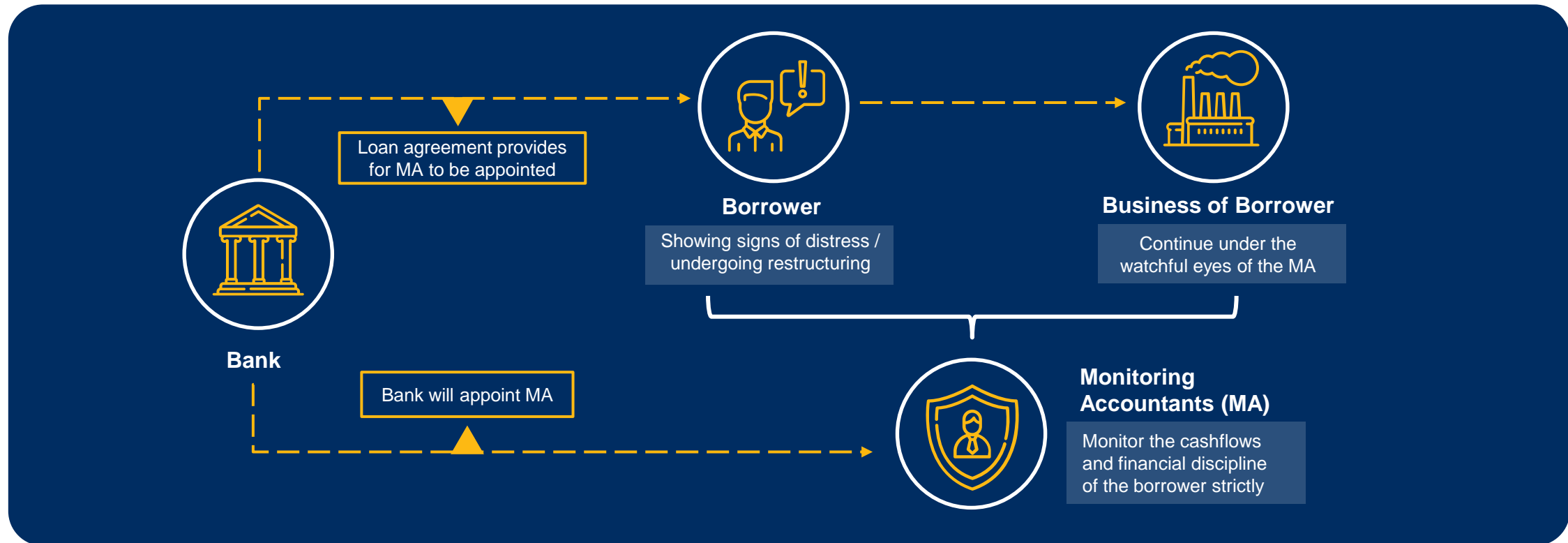
5. Monitoring Accountants and Receivers & Managers



5.1 Monitoring Accountants

Monitoring Accountants (MA) are required by a lending bank when a borrower shows signs of distress or is undergoing a financial or debt restructuring exercise. Under such circumstances, the bank is entitled under its banking facility agreement to appoint a professional to be the MA to monitor the cashflows and financial performance of the borrower. Through this method, the MA will help to instill financial discipline on the borrower, and allow a timely update to be provided to the bank.

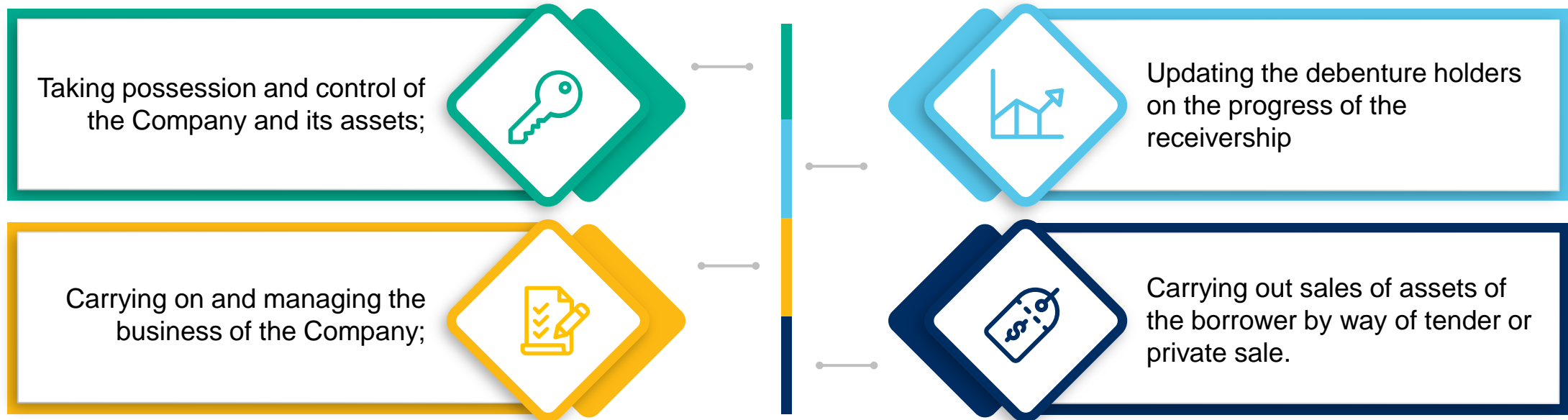
The MA can assist the bank to meticulously oversee the cashflow of the borrower, ensure that the borrower has complied with the terms and conditions of the bank and to monitor the financial performance of the borrower.



5.2 Receivers and Managers

Receivers and managers (R&M) are generally appointed by a debenture holder who is entitled under the debenture (a charge over assets) to take possession and control of the charged assets of the borrower when the borrower is unable to repay its borrowings. The R&M may either continue with the operations or dispose of the charged assets in order to maximise the repayment of the debts owing to the lender. Prior to this, the R&M will assess and advise the debenture holder on the plan of action.

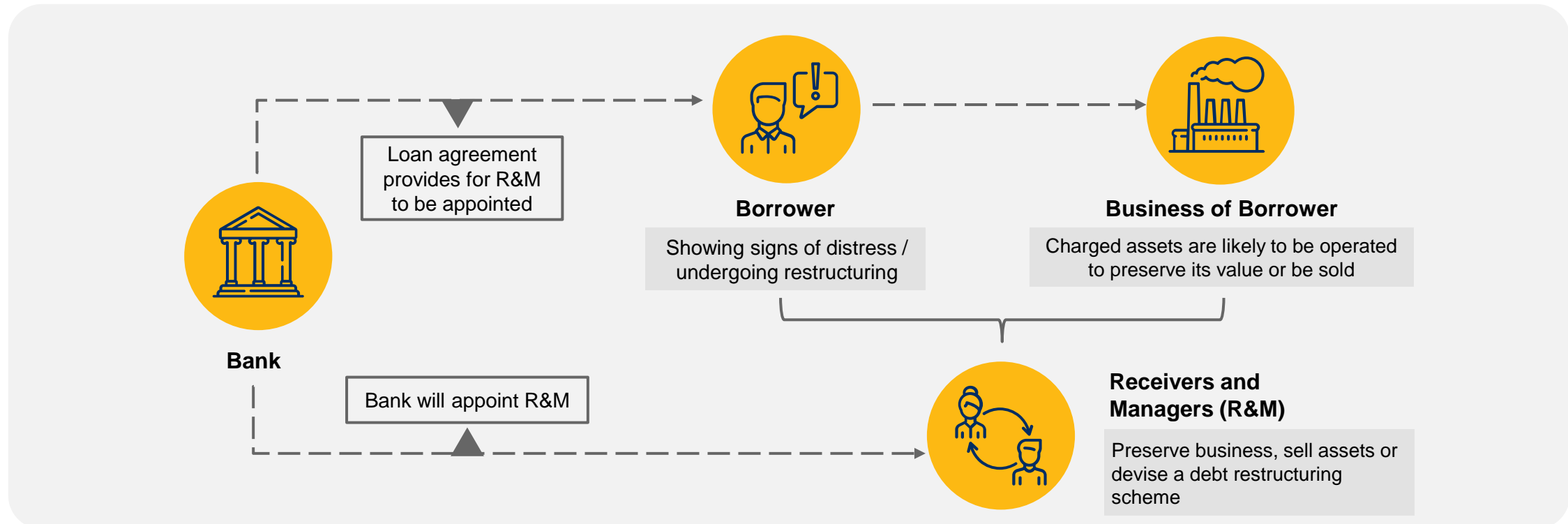
The primary roles of the R&M include inter-alia:



5.2 Receivers and Managers (cont.)

Whilst the R&M has the power to continue the business, in reality and in practice, it is common that the primary role of a R&M will be to dispose of the charged assets as quickly as possible. The reason is that, in most cases of financial distress, it may not be viable for the borrower to continue with the operations.

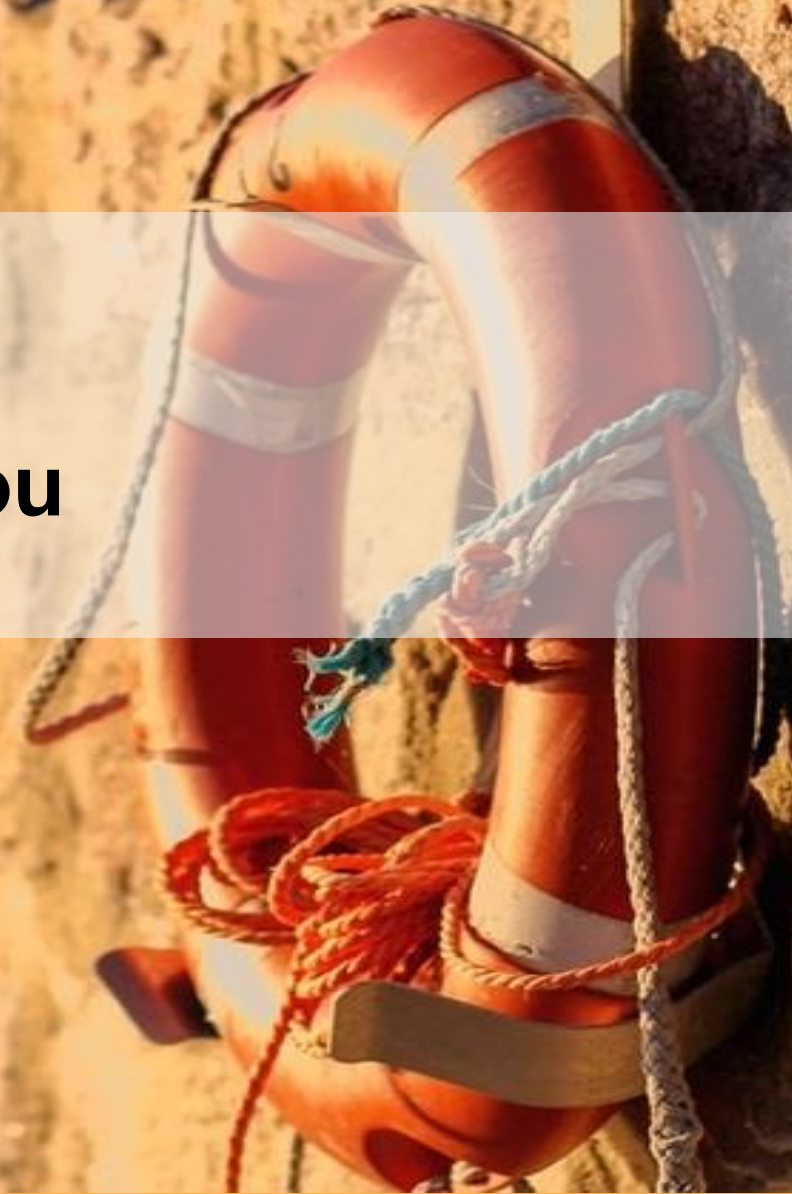
Moreover, to maintain plant and machinery in working order would require funds which the borrower may not have. Hence, the value of the charged assets can see a rapid deterioration if they are left idle for too long without proper maintenance. It is therefore critical for an expedient disposal of the charged assets in order to obtain their optimum value for the lender.





6. Our Services

How Crowe Malaysia can help you



6. How Crowe Malaysia can help you

In the event of a Corporate Recovery or Insolvency Exercise, Crowe Malaysia is able to assist you with the following:

a) Informal Measures

We are able to carry out a business review to swiftly identify underlying problems and under-performing business segments. We can then offer advice on the options available to the business owner.

We also have the capability to help business owners restructure their loans with creditors and/or financial institutions, assist in the negotiation and preparation of scheme that is personalized to each business' needs.

b) Corporate Rescue Measures

A company may face temporary financial difficulties resulting in the inability to fulfill its debt obligations despite the business being viable.

We are able to assist a financially distressed company to undergo either a Scheme of Arrangement, Corporate Voluntary Arrangement or Judicial Management, depending on the company's debt structure and financial position.

c) Liquidation

After exhausting all informal measures and corporate rescue measures, the company can be wound up voluntarily by members or creditors, or compulsorily through a court order.

In all winding up procedures, a liquidator has to be appointed, whether it is a private liquidator or the government liquidator, i.e. the Official Receiver.

d) Monitoring Accountants and Receivers & Managers

For a company that has completed a debt restructuring exercise, we can assist the lenders by monitoring the cashflow of the restructured company and ensuring that the business complies with the terms and conditions of the restructuring exercise.

When a borrower has defaulted under a debenture, the debenture holder can appoint a receiver and manager to take possession and control of the charged assets of the borrower.

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