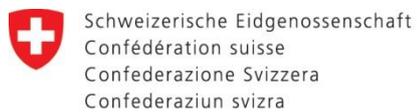


Amman Principles for Out-of-Court Debt Workout

Investment Climate Advisory Services | World Bank Group



In cooperation with



Federal Department of Economic Affairs FDEA
State Secretariat for Economic Affairs SECO

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Introduction

The view of the signatory banks on this document converged as they agreed that the Amman principles for out-of-court debt workout constitute crucial starting points, as well as rules to be relied on when regulating the relationship between creditors, and between creditors and debtors, who have faced difficulties in settling their debts (whether debtors are natural persons or legal entities), in such a way to reach acceptable and fair arrangements, enabling said debtors to settle their debts, without having creditors to resort to courts or to take legal action for execution against the debtors' properties.

While the principles contained in this document, are not mandatory in the legal sense, this does not diminish their importance as guidelines to creditors as well as to debtors. Adhering to such principles and to their application would reduce the numerous adverse economic and social effects of liquidation, insolvency or market exit. Out-of-court workouts provide debtors who are unable to settle their debts with the opportunity to continue to work as long as possible, and preserve the jobs and rights of their employees.

These workouts ease the burden on courts and execution bureaus, and may even be in the interests of creditors themselves, as they shorten the length of judicial proceedings, and preserve the value of guarantees and other assets. It has often been proven by practical experience that a creditor was able to recover higher percentages of his rights by resorting to out-of-court workout, compared to judicial proceedings.

Principles and Relevant Clarifications

PRINCIPLE I: WORKOUTS ARE A CONCESSION AND NOT A RIGHT

An out-of-court workout should only be commenced if the circumstance of a financially troubled debtor¹ appears to offer the possibility to resolve the financial difficulties and achieve long-term viability. In any case, and despite the non-mandatory nature of these principles, debtors should be encouraged to approach their creditors to discuss options for the settlement of their debts.

CLARIFICATION:

Out-of-Court workouts are an approach to dealing with a debtor who is, for whatever reason, unable to meet his contractual obligations. These workouts are means to avoid judicial insolvency proceedings. It is necessary that all parties negotiate a fair settlement. It is crucial not to consider the restructuring of the debtor's debts towards his main creditors,

¹ This is only a debtor who is not the subject of insolvency proceedings

including his bank, as a right. Creditors should not consider that they are entitled to force debtors to negotiate; therefore, both parties may invoke their contractual obligations. This includes the creditors' right of execution against the debtor and against any security (mortgage) they possess, as well as the debtor's right to start voluntary liquidation procedures.

Without prejudice to the contractual rights, both parties should be encouraged to enter in good faith into negotiations, which would enable the debtor to continue its business activities and settle to the creditors the largest possible portion of his debts.

PRINCIPLE II: GOOD FAITH

All negotiations between the debtor and the relevant creditors² on one hand, and between the creditors themselves on the other hand, take place in good faith with the objective of finding a constructive solution.

CLARIFICATION:

It is crucial for the negotiations between the debtor and the relevant creditors to be conducted in good faith, transparency and honesty. The aim of out-of-court workout is to achieve mutual concession. If one of the parties loses confidence in the other parties' good faith, negotiations often fail; and should this be the case, creditors will resort back to legal proceedings and start execution measures.

It is also crucial that the relationship among creditors involved in the restructuring be characterized by good faith towards each others.

PRINCIPLE III: CONFIDENTIALITY OF INFORMATION

Information relating to the assets, liabilities, business and capacities of the debtor and any proposals for resolving his difficulties should be made available to all relevant creditors or their representatives and should, unless already publicly available, be treated as confidential.

CLARIFICATION:

The relevant creditors receive, during rescue procedures, important information concerning the debtors' assets, liabilities, business and prospects. Said information may be regarded as commercially sensitive. Where the relevant creditors are only the debtor's banks, they will certainly treat the debtor's information with utmost confidentiality. However, when the relevant creditors include parties other than the debtor's banks, they must be prepared to treat the important information they receive with utter confidentiality. Likewise, the approach and exposure of individual creditors should be treated as confidential.

² Relevant creditors are those whose rights are being affected by the proposed restructuring

In all cases, creditors are not entitled to use any information obtained concerning the debtor's assets, liabilities, business activities and prospects for purposes other than these negotiations if this information is not available to the public. The provisions of banking secrecy regarding any information relating to the debtors' accounts, liabilities and dealings with banks, and said information or any part thereof, may only be disclosed with the debtor's written approval or in the cases specified in the law.

Debtors' commitments

These commitments are the principle matters that the debtor must bear in mind when seeking an OCW with the relevant creditors. They also inform creditors of the relative responsibilities between the parties.

PRINCIPLE IV: DEBTOR'S UNDERTAKING TO THE CREDITORS DURING STANDSTILL

During the Standstill Period, the debtor and his guarantors undertake in writing not to take any action that might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared to their positions at the Standstill Date.

CLARIFICATION:

The standstill period is the period provided by the creditors to the debtor so as to allow him the time to prepare the restructuring plan and conduct business with reassurance. It is necessary that the debtor undertake during the standstill period, not to take any action that might adversely affect the prospective return to relevant creditors either collectively or individually. Debtors are also required not to give a priority to a given creditor over other relevant creditors.

PRINCIPLE V: FULL DISCLOSURE BY THE DEBTOR DURING THE STANDSTILL

During the Standstill Period, the debtor should provide relevant creditors and their professional advisers and representatives full access to all relevant information relating to his assets, liabilities, business and prospects.

CLARIFICATION:

The debtor must be fully committed to disclose all information relating to him regardless of whether the workout involves bilateral negotiations between the debtor and his bank or involves several creditors, and whether negotiations are with all creditors, or with a main creditor, or with a representative or a professional adviser appointed by the creditors' committee. The debtor must be particularly prepared to allow access to all relevant information required by creditors to conduct an accurate assessment of his proposals. This information should include at least the particulars concerning the debtor's assets and liabilities as well as his future business plans. The debtor may need to be able to provide this information, to prepare the projections and forecasts with further details than usually required, this should be considered reasonable for creditors to agree to the standstill.

If the debtor, for any reason whatsoever, is unable or unwilling to provide this information to creditors, he should not expect the creditors to take any action in his favor, unless it serves their best interest.

Aforementioned principle of good faith also governs all disclosures provided by the debtor.

PRINCIPLE VI: RESTRUCTURING PLAN

The debtor and his advisors must prepare a restructuring proposal based on a business plan that addresses operational and financial issues. The business plan should be supported by reasonable and achievable forecasts which evidence the ability of the debtor to generate the cash flow required, according to the restructuring plan. The aim should not be simply delaying insolvency.

CLARIFICATION:

The standstill's purpose is to give the debtor time to prepare a restructuring plan, to implement the out-of-court workout. The plan must show that the debtor is able to work and make profits, to the extent of settling his liabilities to the relevant creditors. The relevant creditors may assist the debtor with the preparation of the plan.

The plan may include, for instance: disposing of some assets, changes in management or ownership, modification of the debt maturity dates, exemption from parts of the debt, giving guarantees, raising capital, and debt capitalization.

Although there is no statutory minimum to the content of the restructuring plan, it is unlikely that the creditors would agree to a plan that does not show the following:

- The projected profits and losses for each year for the period over which payments are proposed to be made.
- The cash flow forecast showing the payments to the creditors during the same period.
- The required additional working capital, and how any operational and financial needs are to be funded,
- The expected change in the relevant creditors' rights in terms of deferment, change, or exemption from parts of the debt.
- Any material changes in the debtor's business over the relevant period.
- The key assumptions on which the above forecasts are based.

If the debtor is unable to prove to relevant creditors that there is a reasonable possibility that his business be viable in the foreseeable future, it is unlikely that creditors would approve the decision to defer the settlement or exempt the debtor from the settlement of part of his debt.

PRINCIPLE VII: Proposals must be in line with the legal rights

Proposals for resolving the debtor's financial difficulties should take into account the legal rights of each creditor, separately, and the creditors' legal positions at the Standstill Date.

CLARIFICATION:

It is important that the restructuring plan reflects the priorities that the creditors would receive in the event of the debtor's insolvency. It will be generally regarded as unacceptable if deferred creditors or shareholders benefit to any extent while secured and non-secured creditors are not being paid in full. Similarly, the debtor may not expect secured creditors to see their position deteriorating vis-à-vis non-secured creditors.

Creditors usually agree that it is necessary for minor trade creditors to be paid in the ordinary course of events to enable business to continue, when it is in their interest to allow such payments in order to ensure that their security is not reduced in value as a result of the collapse of the debtor's business.

Creditors' commitments

These principles are those to which the creditors must be prepared to adhere during an OCW. They also inform the debtor of the probable approach of the creditors to an OCW.

PRINCIPLE VIII: Standstill period

All relevant creditors should be prepared to co-operate with the debtor and each other to give sufficient (though limited) time for the debtor to prepare proposals for resolving its financial difficulties (a "Standstill Period"). Such a Standstill is a concession and not a right. The commencement is referred to as the Standstill Date. The Standstill should be limited to the time required to produce the plan referred to in Principle 6 or to establish that such a plan cannot be produced within an acceptable time.

CLARIFICATION:

When there are a number of relevant creditors negotiating with the debtor, the creditors should choose the standstill commencement date, the date on which the creditors were notified by the debtor of his financial position. This date is very important, because the creditors agree from this date that their relative positions will remain unchanged.

The duration of the standstill period should be agreed upon. Usually, this period does not exceed a few weeks or a few months initially, although this will vary from case to case depending on the complexity of the information to be collected, and the nature of the debtor's proposals.

PRINCIPLE IX: Creditors refrain from action during Standstill

During the Standstill Period, all the relevant creditors refrain from taking any legal measures to enforce their claims against the debtor or to reduce their exposure to the debtor.

CLARIFICATION:

The relevant creditors' approval of a standstill, provides reassurance to the debtor that he has time to prepare a restructuring plan, and that the relevant creditors will not take any legal action during this period to recover their debts. Said agreements will normally include undertakings by the relevant creditors:

- Not to press the debtor for settlement of the debt,
- Not to institute insolvency and enforcement proceedings against the debtor,
- Not to try to improve their individual positions relative to other creditors by obtaining or enforcing security or seeking preferential treatment,
- To allow the use of existing credit lines and facilities during the standstill.

The relevant creditors agree, in the period between the standstill and the agreement of the restructuring plan, that their positions vis-à-vis one another remains unchanged. The debtor must be prepared to give undertakings in respect to principles 4 and 5 in any standstill agreement, and in any proposal under principle 6 to the relevant creditors.

PRINCIPLE X: COORDINATED APPROACH

The interests of all parties are best served by adopting a coordinated approach. The creditors may facilitate coordination by selecting a coordination committee. The appointment of professional advisers to advise and assist the committee and the relevant creditors should be considered for more complex cases.

CLARIFICATION:

The number of relevant creditors is usually relatively small so that they are able to meet and agree to adopt a coordinated approach towards the debtor. The debtor may also negotiate with each of the relevant creditors separately once a standstill has been agreed. However, creditors will typically seek the assurance that they shall not be treated unfairly compared to other creditors of a similar ranking in case there are several relevant creditors. To assist with a coordinated approach, the creditors may appoint a Coordination Committee to negotiate with the debtor to evaluate the debtor's proposals and agree the terms of the final settlement. The members of the Coordination Committee may be selected according to the value of their claims against the debtor or by agreement.

If there are several relevant creditors, or if the creditors have significantly different rights or debt entitlements, it may be appropriate to have more than one commission.

PRINCIPLE XI: LEADING NEGOTIATIONS WITH THE DEBTOR

Creditors should appoint one person (usually the creditor with the greatest exposure; or one with experience in managing workout negotiations or an independent person) to lead negotiations with the debtor and ensure that the relevant creditors receive the debtor's information. Regard should be given to the timely use of mediation to resolve disputes.

CLARIFICATION:

The relevant creditors or the Coordination Committee as appropriate may nominate a creditor to deal with the debtor on behalf of the Committee. The appointed creditor is usually the largest creditor, or the debtor's main bank.

At times, different creditor groups may appoint different coordinators to represent them in negotiations with the debtor; it is worth mentioning that it is important that such groups coordinate their negotiations.

Coordinators do not usually have the capacity to commit the relevant creditors to any particular course of action; they work best in the capacity of facilitators of the negotiation process, making sure that all the relevant creditors or members of the Coordination Committee receive the information that they need.

The coordinators may be authorized to appoint external professionals such as accountants, lawyers and valuers to advise the relevant creditors, thereby sharing costs. The selection of these professionals should be discussed and approved by the relevant creditors, as it is important that said professionals provide impartial advice to all the creditors.

Ultimately, it will be the choice of each of the relevant creditors to make his own assessment and take his own decision regarding any proposal he receives from the debtor.

If the parties reach a stalemate in their negotiations but there remains a commitment on both sides to seek a compromise, the parties may wish to consider to resort to mediation.

PRINCIPLE XII: PRIORITY OF FRESH FUND

If additional funding is provided during the Standstill Period or under any rescue or restructuring proposals, the settlement of such additional funding should be accorded priority in accordance with a written agreement among the creditors.

CLARIFICATION:

During the Standstill period or as part of the restructuring plan, additional funding may be required. The debtor's proposals must specify the source of the funds— it may be, for

example, from the sale of a surplus of assets, from creditors or from the introduction of new equity by the shareholders.

Priority of repayment should be given to any additional funding provided by the creditors in accordance with a written agreement. The most effective way of ensuring priority is by the provision of fresh security to the parties advancing the funding. Care must be taken to ensure that any such security will be considered valid in the event of the failure of the debtor.

The debtor must appreciate that in the absence of assets that may be offered as security for additional funding, the creditors are unlikely to grant additional funding. In these circumstances, it may be necessary for the shareholder debtors to introduce additional equity, provide personal guarantees or any other guarantees agreed on by the creditors

GENERAL FINAL PRINCIPLES:

Nothing in the principles contained in this document would preclude the creditors among themselves, or with their debtors, from signing minutes of the meetings, or memoranda of understanding, contracts, statements, or pledges, or authenticating any agreements by official bodies, so that they become binding upon them, as provided in their terms, provisions and details.

If the nature of the work or the governing regulations of one or more creditors disallow charging interest during the grace periods (such as Islamic banks), other creditors are to take that into account, as much as possible, in any agreement made among themselves and with the debtors.
