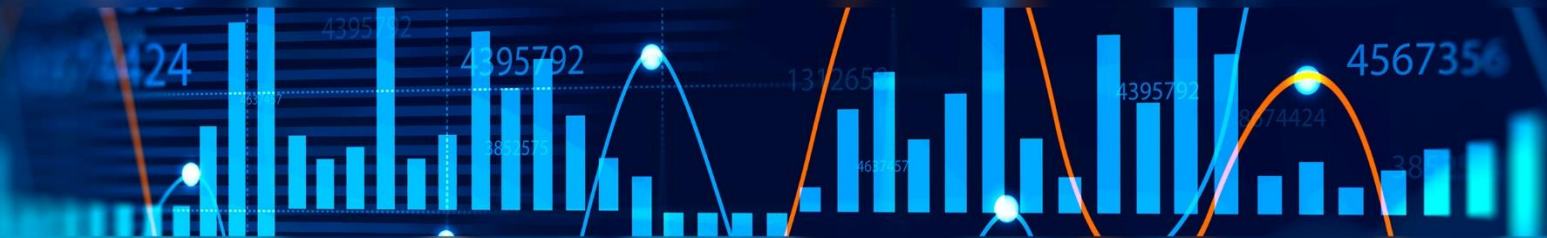


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FUNDAMENTALS OF FINANCIAL MARKETS
HONG KONG | FRIDAY, 6 SEPTEMBER 2024

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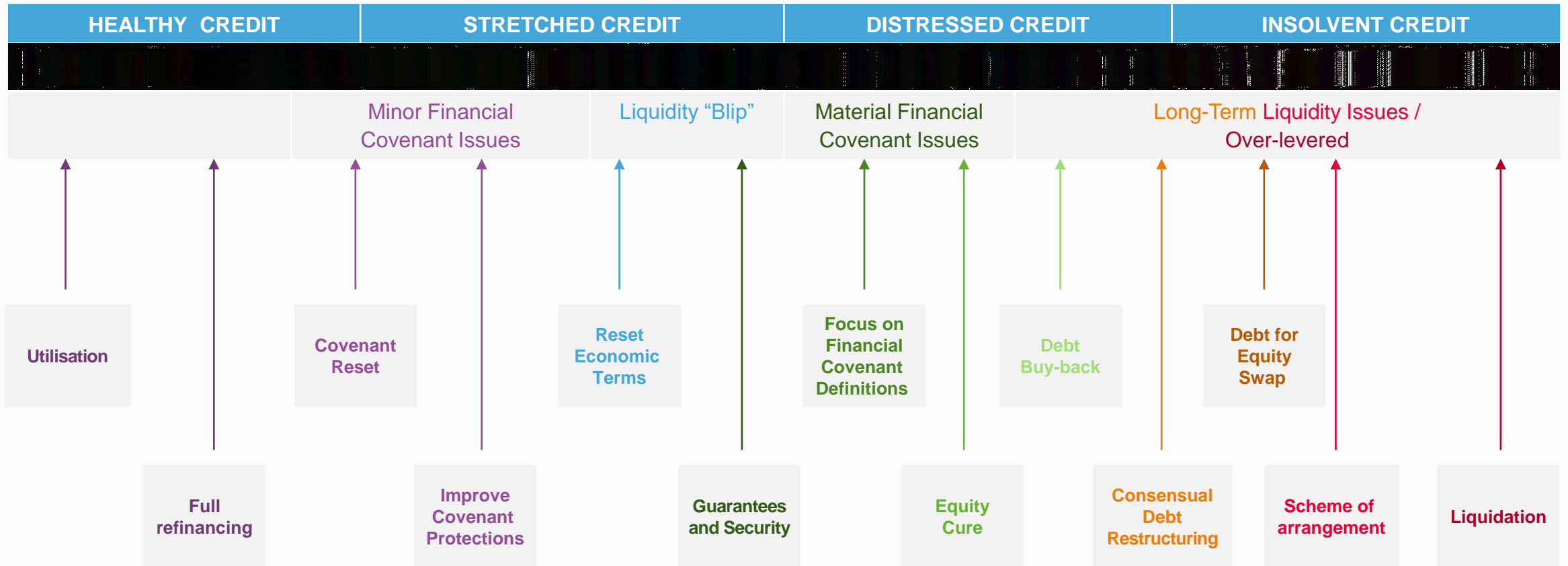


INTRODUCTION TO RESTRUCTURING AND INSOLVENCY

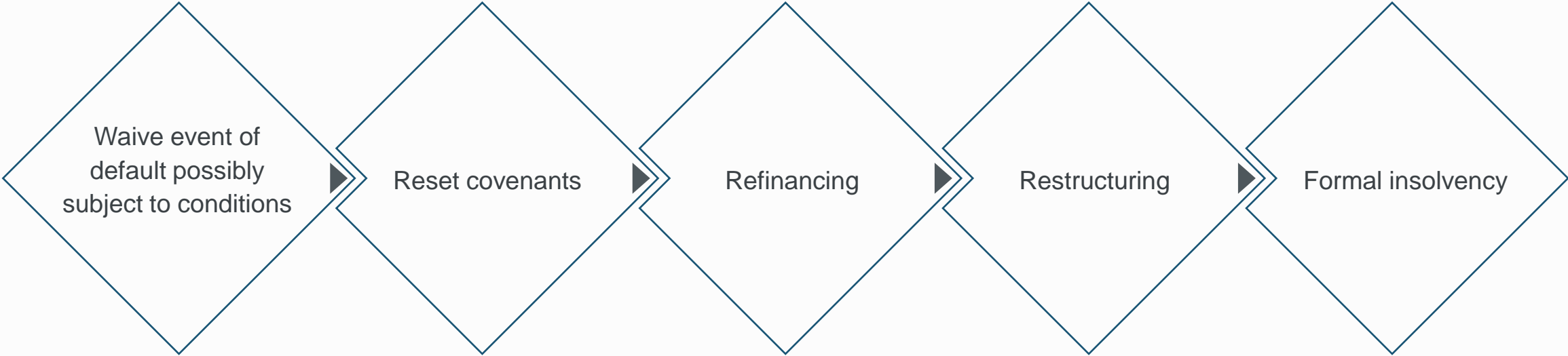
PHOEBE LO & JOE OSGERBY-LACEY

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THE CREDIT SPECTRUM



WHEN THINGS GO WRONG...



INFLUENCING FACTORS ON OUR RESPONSE



Materiality of the default



Future prospects of the group



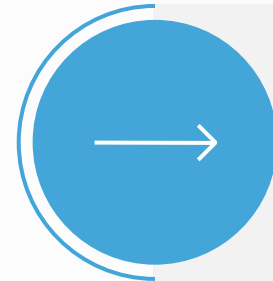
Owners and management
of the group



Other stakeholders



Our own business



Our ultimate exit:
how and when

WHEN THINGS GO WRONG

Increase in risks

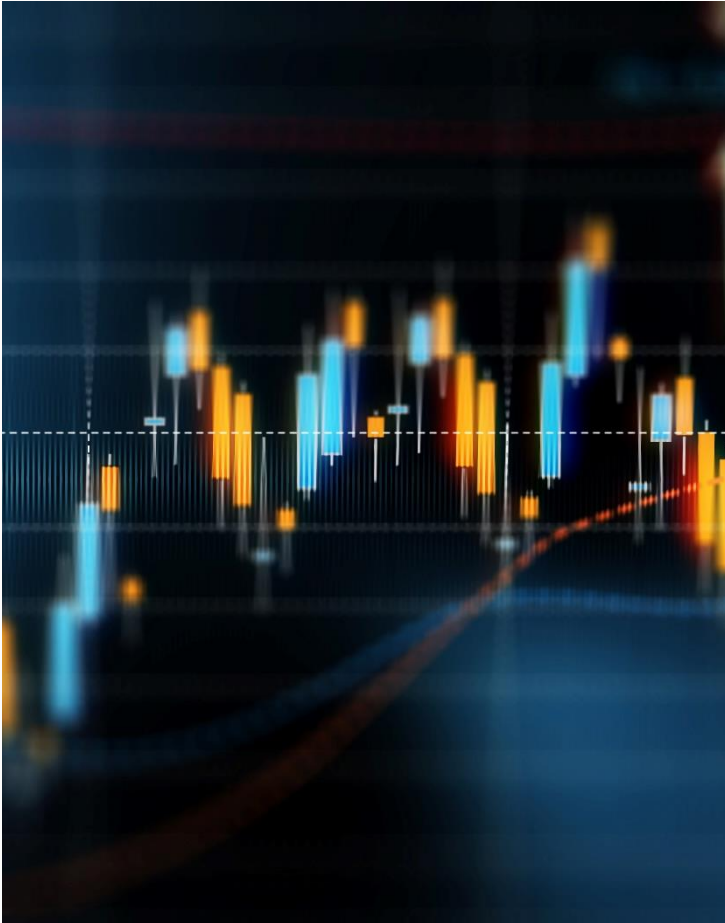
- Directors' liabilities
- Twilight zone
- Local law

Creditor co-ordination

- Communication lines between company and stakeholders
- Advisers
- Steering committee

Standstill

CONTINGENCY PLANNING



- Could the creditors realise more value from the borrower/group via a non-consensual route, i.e., security enforcement?
- Useful as a fallback position or as leverage in the negotiations.
- Security reviews and steps plans.
- Consider enforceability of security.
 - Unfair preferences
 - Transactions at an undervalue
 - Avoidance of floating charges
 - Non-registration.

CONSENSUAL RESTRUCTURING

REACHING AGREEMENT

Negotiations

- Bespoke
- Sufficient support?
- Risk of holdouts
- Difficulty if multiple creditor groups involved.

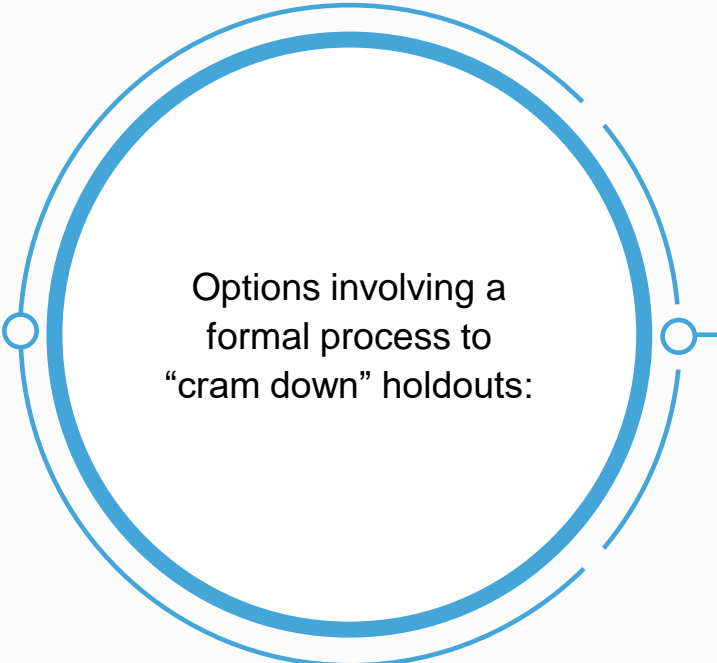
Implementation

- Fees
- Structural improvement
- Equity upside – but note not all creditors may be able to benefit.

RESTRUCTURING VS INSOLVENCY

- If a debtor knows it will not be able to meet its debt obligations, it will usually look to agree a restructuring with its creditors
- Restructurings do not necessarily mean a debtor is or will be insolvent. They can be triggered by other factors – e.g., going concern compliance, local legal regimes, lack of documentary flexibility, operational change and many other reasons
- However, insolvency proceedings will typically be the backdrop of all restructuring negotiations. **Usually operating on the basis that insolvency proceedings will be value destructive (and therefore should be avoided or controlled in some way)**
- In APAC, security enforcement can be unpredictable, costly and time consuming
- A restructuring will nearly always be beneficial for a debtor, its shareholders, creditors and other stakeholders relative to insolvency. Usually, all stakeholders have to share in the pain – a “successful” restructuring is one where everyone is unhappy.
- **Note:** Formal rescue processes vary widely from jurisdiction to jurisdiction. Hong Kong does not (yet) have a formal statutory rescue process. If a restructuring through a court process is required, this is usually implemented through a scheme of arrangement (as discussed in the later slides).
 - In contrast, in the US, the Chapter 11 (where the debtor retains control and DIP financing can be sought) and in the UK, administration (where an insolvency officeholder is appointed to displace management) processes are available.

WHAT IF NOT EVERYONE AGREES?



Options involving a formal process to “cram down” holdouts:

- Hong Kong – scheme of arrangement
- US – Chapter 11
- UK – scheme of arrangement, restructuring plan
- Cross-border recognition / parallel restructuring proceedings
 - Factors to be considered to determine appropriate jurisdiction(s)
 - Common law recognition
 - US Chapter 15 recognition
 - Mutual Cross-Border recognition between Mainland China and Hong Kong
 - Pilot areas are Shanghai, Shenzhen and Xiamen

SCHEME OF ARRANGEMENT



- Existing management remains in place
- Function: Statutory method of compromising claims in many common law countries including the UK, Singapore and Hong Kong
- Proposed scheme must be approved by 75% in value and more than 50% in number of creditors in each class must approve to bind all
- Court approval requires two hearings:
 - Convening hearing
 - Sanction hearing
- No statutory moratorium protection under Hong Kong law.

ENFORCEMENT ACTION



A secured creditor may appoint a receiver

- Right usually arises upon the occurrence of Event(s) of Default
- Security enforcement strategy to be considered
- Not insolvency officer
- No requirement for company to be insolvent
- Court appointed or private appointment under security documents

Formal insolvency process (compulsory liquidation)

- Insolvent company i.e., unable to pay debts as and when they fall due.
- Appointment of provisional liquidators as an option if assets in jeopardy.

WHEN CAN A COMPANY BE WOUND UP?



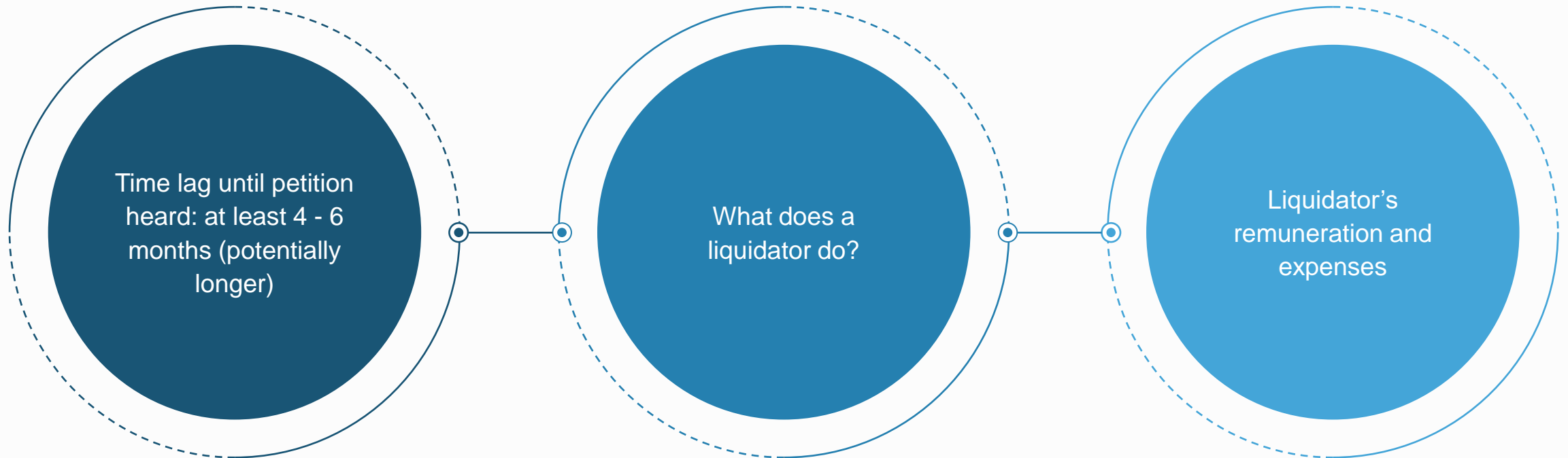
**Insolvency –
inability to pay debts
as and when they fall due**



Also ‘just and equitable’

- One of the grounds on which a company may be wound up by the court.
- Can be proved in Hong Kong in one of three ways
 1. Unpaid statutory demand for HK\$10,000 remains outstanding for three weeks
 2. Unsatisfied execution of court order
 3. Court is satisfied that company unable to pay debts (incl. contingent and prospective) as they fall due

COMPULSORY WINDING UP



- Collect in assets & distribute to creditors
- Antecedent transactions & director liability

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