

C L I F F O R D
C H A N C E



FUNDAMENTALS OF FINANCIAL MARKETS
SINGAPORE | TUESDAY, 3 SEPTEMBER 2024

C L I F F O R D
C H A N C E

INTRODUCTION TO RESTRUCTURING & INSOLVENCY

SHAUN LANGHORNE AND MARK HANGCHI

SINGAPORE | TUESDAY, 3 SEPTEMBER 2024

INTRODUCTION TO RESTRUCTURING & INSOLVENCY



SHAUN LANGHORNE
PARTNER

T +65 6506 1971

E shaun.langhorne
@cliffordchance.com

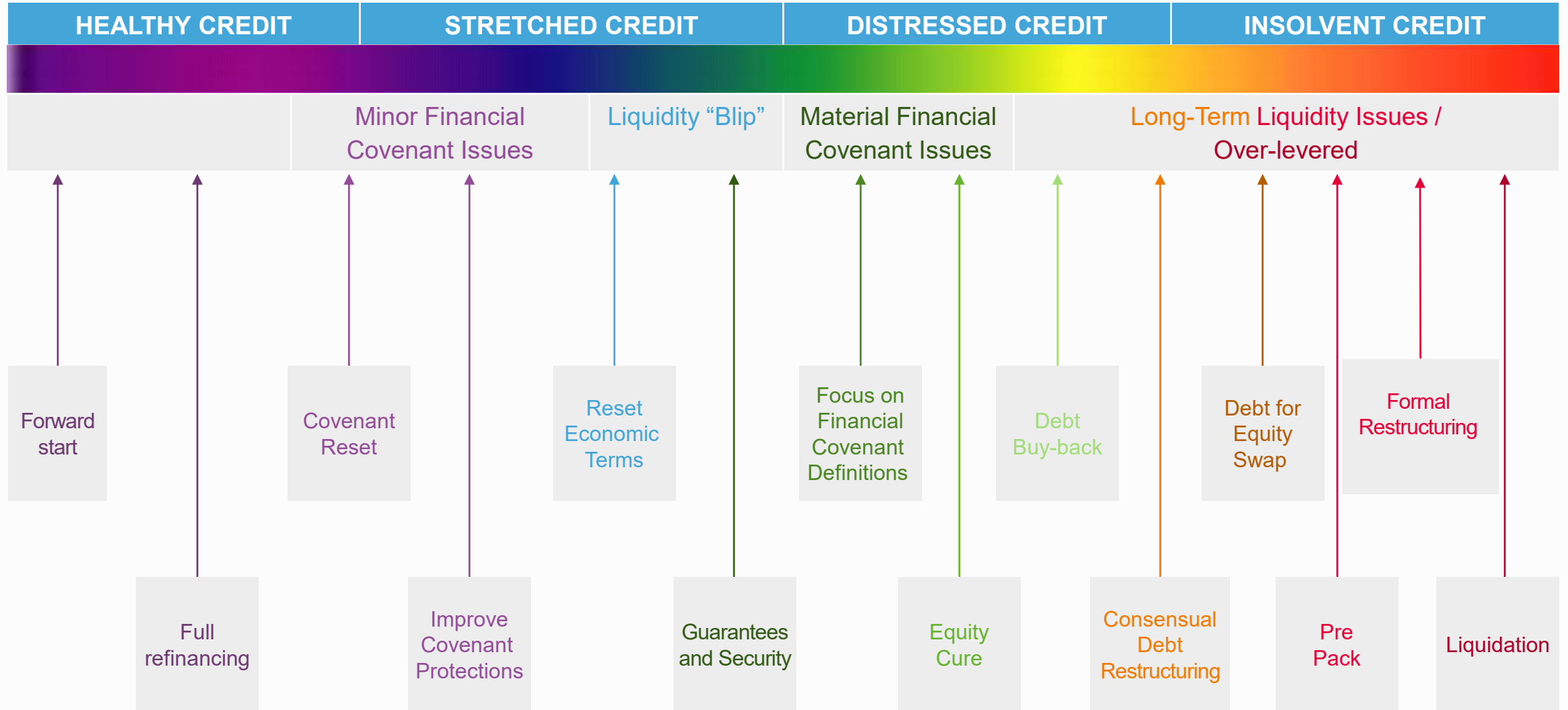


MARK HANGCHI
ASSOCIATE

T +65 6661 2043

E mark.hangchi
@cliffordchance.com

THE CREDIT SPECTRUM



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 stakeholders are 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 difficult, costly and time consuming

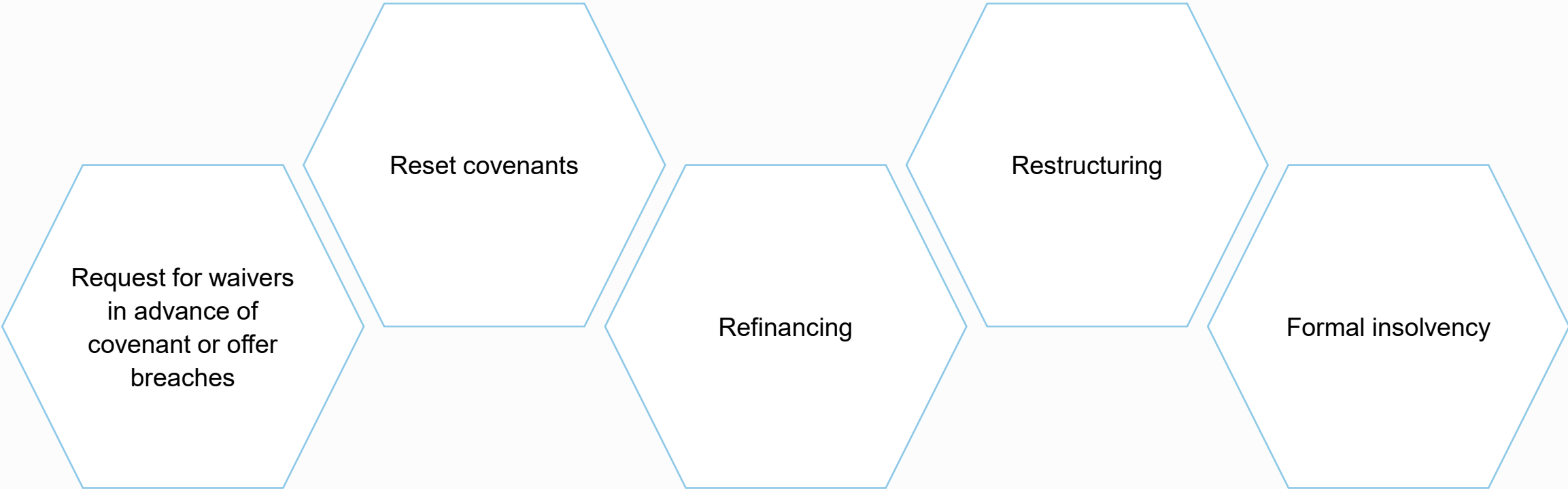
A restructuring will nearly always be beneficial for a debtor, its shareholders, creditors and other stakeholders relative to insolvency. Usually, all stakeholders have to share in the pain – a “successful” restructuring is one where everyone is unhappy



WARNING

Formal rescue processes vary widely from jurisdiction to jurisdiction. In Singapore, there is a scheme of arrangement process pursuant to which the debtor can remain in control, moratorium protection is available and DIP financing can be sought. Singapore also has judicial management. Australia has voluntary administration. Hong Kong does not (yet) have a statutory rescue process. In the US, 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) and other processes are available.

WHEN THINGS GO WRONG...



INFLUENCING FACTORS



Materiality of the default



Other stakeholders



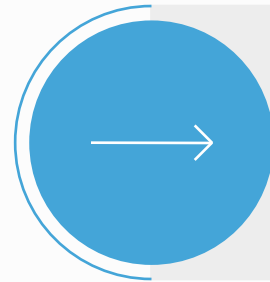
Future prospects of the group



Objectives



Owners and management
of the group



Exit options: how and when

WHEN THINGS GO WRONG

Identification of Risks

Increase in risks

Company

- Directors' duties
- Twilight zone of insolvency
- Risk of creditor enforcement
- Funding needs
- Managing supplies and counter parties

Creditors

- Other creditors
- What does an enforcement look like
- Recoveries in a distressed situation
- Local law issues

Interim measures

Communication, disclosure
and co-ordination

- Open communication lines between company and stakeholders
- Appoint advisers
- Steering committee of creditors if appropriate
- Disclosure of key financial information
- Dialogue as to potential options
- Negotiation of a term sheet or similar

Stable platform to allow a restructuring

Standstill / Forbearance

- Agreement between company and creditors to “stand still” for a period of time to negotiate and implement a restructuring
- Creditors will require conditions e.g. long stop date
- Stable platform to negotiate a restructure

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
 - Legal and practical
- Any possible defects or claw back risk?
 - Unfair preferences
 - Transactions at an undervalue
 - Avoidance of floating charges
 - Non-registration

ENFORCEMENT ACTION



A secured creditor may appoint a receiver

- Security enforcement strategy
- Not an insolvency officer
- No requirement for company to be insolvent
- Court appointed or, most typically, a private appointment under security documents

Formal insolvency process (compulsory liquidation)

- Insolvent company i.e., unable to pay debts
- Singapore and non-Singapore companies
- Appointment of provisional liquidators if assets in jeopardy

CONSENSUAL RESTRUCTURING

REACHING AGREEMENT

Entirely consensual possible?

- Bespoke
- Quicker
- Cheaper
- Private
- 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

WHAT IF NOT EVERYONE AGREES?



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

- Singapore – scheme of arrangement, judicial management
- Hong Kong – scheme of arrangement
- England and Wales – scheme of arrangement, restructuring plan

Things to consider:

- Availability of cross class cram down
 - Priority financing (DIP financing)
 - Liens border recognition issues
 - Moratorium apply?
- US – chapter 11

SCHEMES OF ARRANGEMENT

Directors and management remain in control – only the Company can propose a compromise via a scheme to its creditors

Function: Statutory method of compromising claims in many common law countries including England and Wales, Singapore and Hong Kong

Proposed scheme must be approved by 75% in value and 50% in number of creditors in each class must approve to bind all

Court approval requires two hearings:

- Convening hearing
 - Sanction hearing
-

Pre-pack schemes (only one hearing required) are available in Singapore

Cross-class cram down available in Singapore and English restructuring plan

Automatic moratorium protection?

- In Singapore under the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”), an automatic moratorium kicks in upon application (until 30 days later, or date application is heard, whichever is earlier). The moratorium prevents any proceedings being commenced or continued against the company.
- There is no equivalent statutory moratorium in:
 - Hong Kong, so a scheme is often used in conjunction with the moratorium afforded by the appointment of PLs; and
 - England and Wales – the usual practice is to agree a stand still.

JUDICIAL MANAGEMENT

- Creditor led process where creditors can apply for the appointment of an independent insolvency practitioner. Identities of the directors are suspended.
- Function: To give viable companies which are in financial distress a better chance at rehabilitation and rescue.
- The judicial manager must perform its functions to achieve one or more of the following purposes:
 - survival of the company as a going concern;
 - approval of a scheme of arrangement; and/or
 - a more advantageous realisation of a company's assets or property than on a winding up.
- Appointment of the judicial manager results in a moratorium: no proceedings can be commenced or continued against the company.
- Judicial manager is to present a statement of proposals to the creditors within 60 days of making of the JM order. Proposal will then be considered by and voted on creditors at a creditors' meeting. Majority in number and value in order to pass proposal.
- Upon approval of the proposal, judicial manager has a duty to manage company's affairs in accordance with approved proposals.
- Judicial management order remains in force for 180 days and may be extended.

WHEN CAN A COMPANY BE WOUND UP?



Insolvency – inability to pay debts

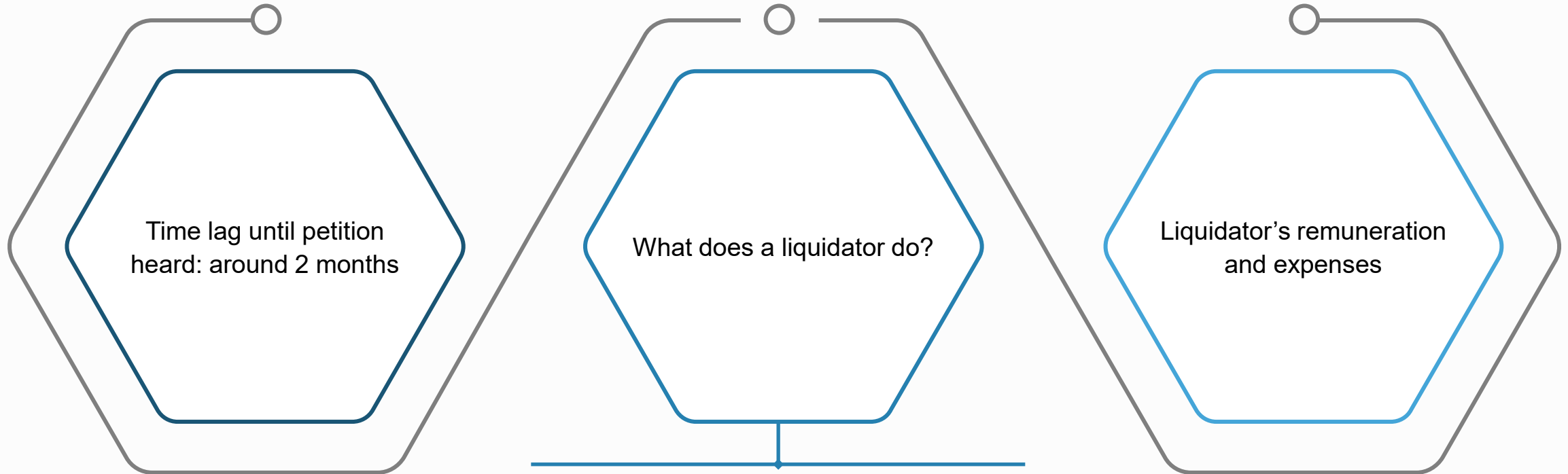


- Insolvency is one of the grounds on which a company may be wound up by the court.
- The most common basis to establish insolvency in Singapore is via an unpaid statutory demand for SGD 15k or more which remains outstanding for three weeks.

Also ‘just and equitable’

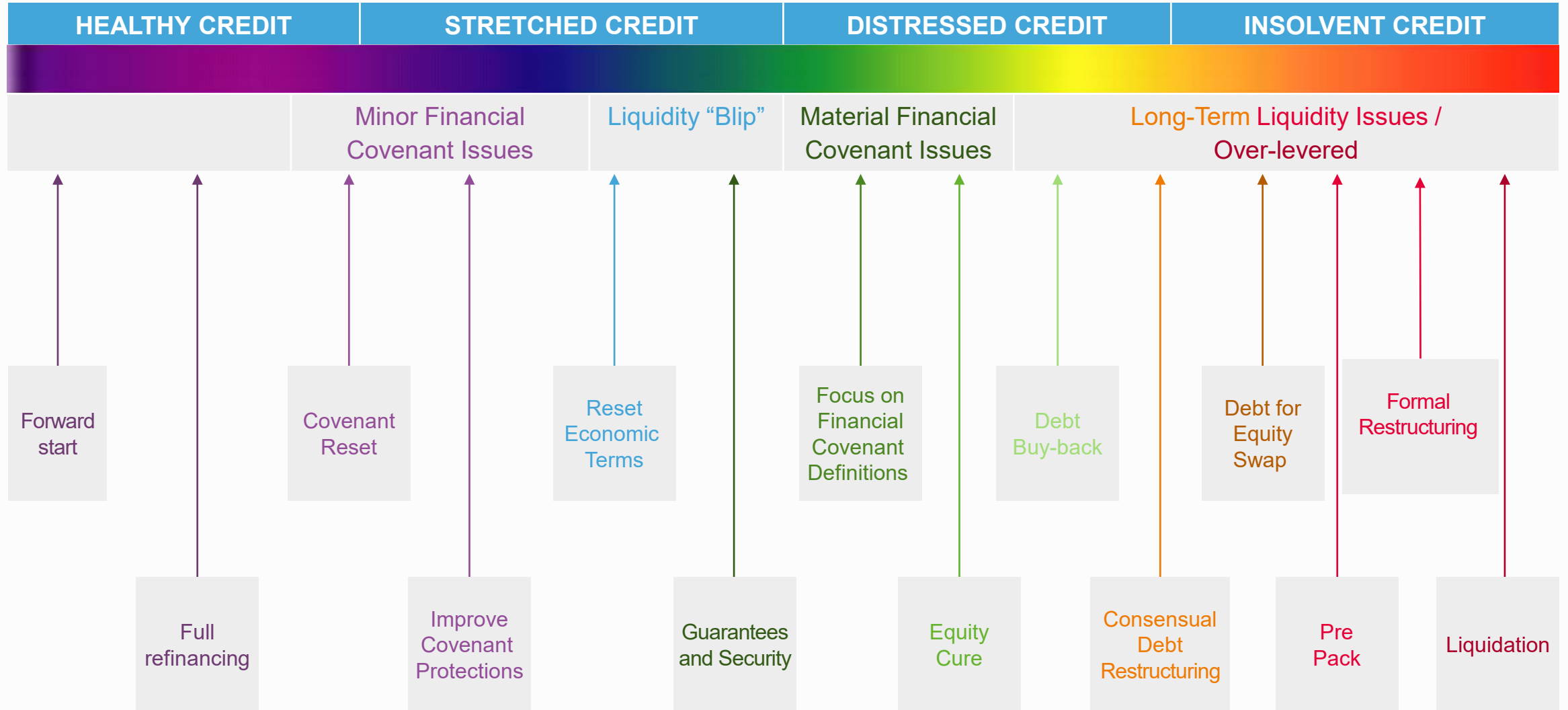


COMPULSORY WINDING UP



- Protect and preserve
- Collect in assets & distribute
- Antecedent transactions & director liability

THE CREDIT SPECTRUM



PLEASE GET IN TOUCH AND CONTINUE THE CONVERSATION

Feedback Survey



Client Portal Subscription





C L I F F O R D
C H A N C E

Clifford Chance Pte Ltd, 12 Marina Boulevard, 25th Floor Tower 3,
Marina Bay Financial Centre, Singapore 018982
© Clifford Chance 2024
Clifford Chance Pte Ltd

WWW.CLIFFORDCHANCE.COM