

Commercial Sensitive

Note to Minister of Finance - 15 April, 2003

Potential Options for Government to Deal with Major Corporate Distress

Background

This note outlines the options likely to be available should a company which provides essential services or in which the Crown has a specific, public policy interest, go into distress.

Where the Crown's inherent interest is strong and well established/known, should distress look imminent, it is almost certain that such a company would approach the Government before ceasing significant services, since the Crown is a likely source of finance.

Irrespective of how the issue finally comes to fruition, there are a number of available options all of which can be implemented quite quickly.

Options

Interim Loan (Potentially leading to recapitalisation)

In the event that the company is unable to meet its payments, and essential services are threatened, one option is for the Crown to provide a targeted loan. Interim finance could be provided so that payments are able to be met and the services can be continued. The terms and conditions of the loan would be determined in accordance with the size and nature of the problem being dealt with. This was the first step in the Air New Zealand refinancing.

We do not envisage a Cabinet decision would be necessary under an emergency situation - you may conclude a discussion with your colleagues is sufficient. Appropriations could be met by way of supplementary estimates and Imprest Supply.

We would anticipate this option could be arranged in a day. An interim loan would buy time while further decisions are made.

There would be scope for loans to be converted to equity giving the Crown an ownership stake if that were considered appropriate. Some weeks would be needed to negotiate the level of equity provided and the price of shares issued. Shareholder approval for any new equity would be required.

Statutory Management

Statutory Management has the advantage of enabling the business to be carried on. It doesn't however give the Crown the capacity to determine the final outcome. A Statutory Manager has control of the company and can

exercise all the powers of the board without disruption caused by the exercise of rights by creditors etc.

Statutory Management can be imposed if keeping the company, or an important service operational is required in the national interest.

Execution of Statutory Management would take a couple of days. It would require the Securities Commission to make a recommendation to its responsible Minister who would advise the Governor General to make the necessary Order in Council.

Overnight Legislation

If a more tailored legislative approach were required, provided the house is sitting, legislation specific to the company could be drafted and passed within 36 hours. Approval for this would be needed from the Leader of the House.

This is the most extreme of the three options. The nature of the legislation would be drafted to suit the specific issue being addressed. There are a number of outcomes the legislation could be expected to achieve.

Response to Receivership

In the unlikely event that the company doesn't approach the Crown and a creditor puts it into receivership, the receiver's interest will be to repay debt from the sale of assets or the business. It is likely that the Crown, as a logical buyer of certain assets in which it might have a public policy interest, would be the first party approached. Under this scenario, the Crown has the same set of options, including Statutory Management.

Risk of Takeover Bid

Financially weak companies facing distress are not attractive takeover targets. Furthermore, the threat of receivership, Statutory Management and overnight legislation are likely to be significant enough threats to discourage a third party from making a speculative bid for such a company without first approaching the Crown.