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## THE ASIAN CURRENCY CRISIS – DEBT RESTRUCTURING

### QUESTIONS AND ANSWERS

#### Question – Tom Bostock (Mallesons Stephen Jaques, Melbourne):

I wonder if I may go back to the beginning of Philip Wood's dissertation where he draws attention to the importance of history of law in Thailand. Those of us who having seen *The King and I* when we were somewhat younger, will remember the curiosity and wonder the things Anna brought across in her baggage caused to the king. But it still omitted one thing that she almost certainly brought across, and that was a copy of the English Companies Act 1862. That was still the law in Thailand in the 1960s, with one difference – it was a minimum capital of so many, whether it was a thousand, a million or a billion baht, I do not remember – but it was a lasting legacy. It has been replaced, I think, only in relatively recent years.

#### Response – Philip Wood (Speaker):

So far as I can see, the Thai Code, they just sort of mixed and matched. They just took bits from all over the world. They took a bit of France, a bit of Germany, a bit of England – it is quite a mixture.

#### Comment – David Allan (Chairman):

I did do some research myself on that some years ago. What happened was, the King sent a delegation to England to study English law, and they came back and said yes, they thought English law was magnificent, and Thailand should adopt it. This was to encourage investment. And he said: "Let's see the law. Where is it?" And they said: "Well, it is in thousands of books." He said: "That is no good, we just want one book of codes, but let's have the best from every legal system." And I think what he took from England was the Statute of Frauds, the Hire Purchase System and the Parol Evidence rule.

#### Question – Stephen McKewen (Credit Suisse Financial Products, Sydney):

I have a couple of questions relating to Jeremy Pitts' presentation on the Japanese market. Just a couple of points – one relates to the SPC law and the possible advantages that it is perceived to be conferring on the business community and also the Japanese banking industry. Currently I understand that provided you can target the Caymans or another tax haven, you can set up SPCs there anyhow, and certainly there is active involvement in taking bad loans or distressed debt off your books in that way. That is the first point. And I suppose the second point just relates to other, probably regulatory capital driven means of taking assets, whether they are normal loans or distressed loans off your books, and a recent loss compromise that led to the Bankers' Association, I believe, issuing a 108% limit on over-collateralisation, depending on the nature of the underlying asset. Jeremy, do you have any thoughts on either of those two?

**Response – Jeremy Pitts (Speaker):**

With respect to the first one, there have been a number of deals done using SPCs. The problems with the current SPC structures and Japanese tax are really to be varied very much on the treaty country where the SPC is located. In some jurisdictions there are quite favourable treaties. Most of the investors at the moment are coming from the US and the US treaty is not particularly favourable for Japanese transactions. So I think the US side particularly will try to use this new law. The other advantage of the SPC law is that it will allow a much wider ownership of these sorts of structures, so I think you will see it being used more in securitisation transactions rather than transactions at the moment of a small number of syndicate members in the transaction.

Could you repeat your second question.

**Question – Stephen McKewen (Credit Suisse Financial Products, Sydney):**

The second question – we are still working with a number of clients at the moment that have come up with a restriction on moving assets off their balance sheet loans, whether they are distressed or otherwise, where the funding that they receive in on day 1, perhaps a \$100 portfolio, if they receive less than say \$92 in cash, that would breach an 8% restriction that had been imposed by way of compromise. I think the background to that compromise as recent as some time in May was used for all the main banks. They saw that assets were being taken off the books and then used this collateral to the extent of 130-140% which they said was just outrageous, I understand, and therefore they just imposed this figure of 108% and would not consider any regulatory capital release as far as the requirements go. Have you heard about that? I mean we have only just heard about it recently. It is in Japanese as well, by the way. Maybe that explains it.

**Response – Jeremy Pitts (Speaker):**

I am not sure of the exact law you are talking about, but the deals we are talking about here are absolute transfers, true sales of the assets rather than being collateralised transactions. There are currently transactions going on by the major banks in Tokyo, so certainly there is no restriction on the banks continuing to sell the loans that they are doing at the moment.

**Question – Alexander Currie (Allen Allen & Hemsley, Sydney):**

There are issues arising in your dissertation in the context of what Philip said. Could you tell me what is being done to recover from the defaulting debtors on the one hand and how the obviously distressed Japanese banks are being dealt with as well?

**Response – Jeremy Pitts (Speaker):**

The loans I have been talking about are basically loans that are in default and are probably beyond the types of work-out situations that Philip was talking about in his presentation. The actual procedures for recovery are really all either public auctions of the property or some kind of private sale of the property. There are not really work-outs of these loans.

[Further question from Mr Currie]

The banks themselves actually are not. They have problems, but it is obviously not that bad at the moment. They received a major injection of cash from the Japanese government to the tune of around about \$200 billion at the end of March and that is certainly going to keep them going for a while longer, as they sell off assets and as they start cleaning up their balance sheets. They have huge balance sheets – we are talking about \$250 billion of bad debts, but they also have a lot of performing assets and good assets as well.

There were a couple of smaller banks that failed. Crown Leasing failed last year. Yamitchi Securities closed down. So there have been some failures, but the prime city banks seem to be surviving at this stage.

**Response – Philip Wood (Speaker):**

I think that in a lot of states one of the problems has been that the governments used (and this is not really the case in Japan), but in a lot of countries they used the banking system in order to subsidise their economies. In other words, they were really treating the banks as a source of taxpayers' money without expressly imposing tax. And really that is one of the reasons why the banking community lost confidence, because they could see that was happening. That is what the societies were doing and of course that was a mistake.

