CORPORATE FINANCING IN UGANDA AND COVID-19; A SOLUTION FOR STRUGGLING BUSINESSES

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1. Introduction

Corporate financing is the process by which a company capitalizes the business or seeks financial means aimed at facilitating the growth of the company. This is a trying time for most businesses in Uganda due to the covid-19 pandemic. It's evident and true that most businesses at this time are experiencing financial hardships due to the lockdown imposed by the State in a bid to curb the spread of the virus. Most businesses have closed shop and they are either working from home or not working at all. Companies routinely encounter difficult times and survive them by adopting certain forms of corporate financing and some of the most essential forms will be discussed in this article.

Corporate financing may have a number of benefits and these include; the preservation of a business that, in the longer term, is worth saving or is worth more as a going concern than If sold piecemeal; the protection of the jobs of a workforce; the avoidance of harms to suppliers, customers and state tax collectors; and the prevention of damage to the general economy or to business confidence in a given sector.

Corporate financing can be instituted internally or by external means as a way of raising capital to keep a company/business afloat. It's prudent to note that the different forms of corporate financing can as well apply to corporate rescue.

2. Internal forms of raising capital

a) Alterations in share capital

The legal regime in Uganda makes provision for alteration of the share capital as per Section 71 of the Companies Act, 2012 and this alteration could be by way of increase in the share capital by issuing new shares of such an amount that the company thinks expedient. The new shares could be put up for sale with an aim or with a main objective that the proceeds from the sale be used in financing of the company.

b) Making a call on unpaid up shares

Members with unpaid up shares owe an obligation to the company to pay for those shares. A call is in essence a demand from the company to a member to pay all or part of the money unpaid on his shares.

It's prudent to note that the obligation of a member of a company limited by shares, to pay for the shares arises either when the company calls upon the shareholder to make payment for the unpaid shares during its operation or when the company is being wound up as per The learned Judge, *Prof. Tibatemwa Ekirikubinza* in Matthew Rukikaire v Incafex Ltd SCCA No.3 of 2015 at page 20.

Therefore the company can proceed to make a call on those unpaid up shares as a way of raising capital to finance the company.

c) Capitalization of profits

The company uses the profits it has been able to generate to recapitalize the business as per Regulation 128 of Table A of the Companies Act

3. External forms of raising capital

a) Debt financing

A trading company has implied power to borrow. This express power is in the Articles and memorandum of the company and they may impose some limit on the company's borrowing by stating a fixed sum beyond which the company can't borrow. A power to borrow whether express or implied carries with it an implication of law to give security for the loan and to pay interest upon it as stated in the case of General Auction Estate & Monetory Company v Smith [1891] 3 CH 434

Debt finance comes from two main sources, bank lending (loan) and the capital markets (debenture), although only the very large companies will use the capital markets to finance their borrowings as per *Ben Pettet* in his book on *Company law, 2nd edition.* Bank lending usually takes the form of short-term overdraft facilities, or medium term loans where the borrowed sum and interest is repaid in installments throughout the term or by the supply of revolving credit facilities. The bank will often seek security according to Companies wishing to raise debt finance from the capital markets will usually do so by issuing bonds or other securities. Bonds (or debentures) are documents which acknowledge a debt (owed by the company to the lender).

A debenture is a document executed by a company as a deed in favour of a creditor, providing the creditor with security over the whole or substantially the whole of the company's assets and undertaking, normally creating a fixed charge over fixed assets such as land and buildings and a floating charge over the rest of the company's assets such as stock and giving the creditor power to appoint an administrative receiver with extensive authority to collect in the assets, run the company's business and dispose of the assets either one at a time or as part of a sale of the business as a going concern and this is according to the book of *Smith and Keenan's Company law*

b) Debt restructuring

The company/business can enter into an arrangement with the bank to restructure the loan repayment period. Both parties enter into a negotiation aimed at extending the period within which the borrower can pay back the said loan. This arrangement is clearly one which is befitting and most suitable for companies that have loans with banks in the current circumstances as it paves a way for the company to clear its debts and get back to its feet once the situation returns to normal.

Debt restructurings have seen a gradual but steady growth worldwide. Debt restructuring is a more efficient restructuring mechanism which facilitates out-of-court settlements and quickens the recovery process in a fast moving economic climate.

If the company's main problems relate to cash flows, short-term difficulties or under investment, steps can be taken to inject new funds into the company. Creditors in such circumstances will usually demand additional levels of security and may act to improve the overall security of their position: for example, by using floating charges over the corporate assets.

c) Equity financing

Equity financing is the process of sale of owner ship interest to various investors to raise funds for business objectives. One of the advantages of equity financing is that the money that has been raised from the market does not have to be repaid, unlike debt financing which has a definite repayment schedule. If equity financing is planned carefully, a company can guarantee the growth of its business without diluting much of its stake. This includes and is not limited to the following;

i. Investors (Angel & Venture)

Shares are sold to investors as a way to raise funds or in the alternative the investors invest in the fundraising activities of the company. Such investors may include venture capitalists who believe in active participation in the management of the companies in which they stay invested as it helps them maintain a strong watch on the day to day activities of the business and implement measures to maximize the return on their investment.

Angel investors may include family members or close friends of the business owners who extend financial funding for the business and such an investor will not get involved in the management of the company. Small and medium-sized companies may find angel investment useful, since it is generally less complex and does not consume a lot of time.

ii. Initial public offering (IPO)

This involves advertising shares to the public for the purpose of selling those listed shares to the public (Direct offers to the public).

d) Trade financing

This is an umbrella term which signifies financing for trade and involves the use of a variety of financial instruments which include letters of credit, guarantees or insurance among others. Such instruments can be used to finance trade flows and this helps support trade by providing the financial resources which are needed to facilitate the movement of goods. Banks and other financial institutions facilitate the transactions between an importer (buyer) and exporter (seller) by financing trade, allowing the trade to go on ahead even when a client hasn't access to cash funds to do the deal themselves.

e) Trade offs

By way of illustration, an entity has a loan with Bank A but would like to have better terms in regards to the loan. This entity can approach Bank B (which may have better lending or loan repayment terms) before the expiration of the loan repayment period with bank A and enter into an arrangement where Bank B on behalf of the entity finances the loan obtained from Bank A by the entity. At this point, a tradeoff has occurred and the entity is discharged of its liability with Bank A and has an obligation towards Bank B under new loan repayment terms that are favorable and these may include but are not limited to favorable interest rates and an extended period to repay the loan.

f) Tax waivers

On importation, the company obtains a tax waiver so as to sell its goods at a margin for purposes of profit realization. The profits realized can then be used to finance the activities of the company. However, for this to become possible; Uganda Revenue Authority together with the government have to make it possible for companies to obtain tax waivers. The timing is not ordinary and is one that

would require certain compromises to be made by the state so as to enable affected companies to recovery financially.

g) Ware house receipting

These are negotiable receipts which are eligible to be used as collateral for loans. Warehouse receipts guarantee existence and availability of a commodity and as thus are suitable to be used for collateral purposes. The holder of the receipt may pledge it to a lender (with the stored commodity being the collateral for a loan) or transfer it to a buyer (by way of sale).

h) Managerial and organizational reforms

On the organizational front, a variety of steps can be taken. The corporate governance structure of the company can be reformed so as to improve checks and balances, but the organization of operations can also be revised in ways that may improve performance. Once the future activities of the company are settled upon, it will be necessary to see that persons with the appropriate skills are employed and that those who will no longer contribute appropriately will part ways with the company. Replacements, recruitments, promotions and staff reductions may all have to be brought about and attempts made to reduce the attendant disruptions and confusions. This has to be done within the legal regime governing the employer employee relationship.

It's prudent to note that, making managerial and organizational reforms is likely to reduce on the cost of expenditure which is an advantage to the company. The money saved could be used to run the priorities of the company.

4. Other forms of external corporate financing include the following;

- Donations and grants
- Invoice discounting
- Amalgamations
- Takeovers and mergers (acquisitions)
- Asset reductions

5. Concluding remarks

it's prudent to note that when companies face cooperate troubles such as lack of cash available to pay bills when they are due, inadequate financing to mention but a few, they may operate through the different forms of corporate financing to recover financially. It's very evident that we are facing uncertain times globally and Uganda is no exception.

Businesses have to try and remain solvent during this pandemic and its therefore of utmost importance for companies to look into the different forms of corporate financing to find out which form is the most suitable in the current circumstances to avoid total closure or even winding up of the company.

For avoidance of doubt, it's very hard to predict when this pandemic will come to an end and even so the after effects of the lockdown will affect the cash flow of very many businesses.

Corporate financing is the step in the right direction, let's all embrace it in these times of financial hardship.

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