

# LEGISLATION UPDATE

7 June 2017

## RECENT LEGISLATIVE AMENDMENTS IN SINGAPORE CONCERNING DEBT RESTRUCTURING

### INTRODUCTION

On 23 May 2017, Singapore's Companies (Amendment) Bill 2017 (**Amendments**) came into effect. Among other things, the Amendments enhance Singapore's corporate debt restructuring regime and seek to establish Singapore as an international centre for debt restructuring.

The Amendments include major changes to broaden the rules governing schemes of arrangement, judicial management and in relation to cross border insolvencies with the objective of increasing the availability and flexibility of these restructuring tools. This objective is achieved by adopting key features of chapter 11 of the U.S. Bankruptcy Code, including super-priority rescue financing, cram-down powers and prepackaged restructuring plans.

With the Amendments in place, there is now greater certainty that a cross border restructuring may be successfully implemented in Singapore where (a) a debtor and (b) at least one creditor class is supportive of the restructuring.

### KEY FEATURES OF THE AMENDMENTS

#### Clear and broad factors allowing the Singapore court to take jurisdiction

The Amendments make it easier for non-Singapore debtors to satisfy the jurisdictional tests so that a scheme of arrangement may be proposed in Singapore. Factors which will establish jurisdiction include the following: (a) where the debtor's centre of main interests or COMI is in Singapore; (b) where the debtor carries on business or has a place of business in Singapore; (c) where the debtor has a Singapore choice of law provision or forum selection clause in a loan agreement or contract and (d) where the debtor has substantial assets in Singapore.

#### DIP Financing

Similar to DIP financing under section 364 of the U.S. Bankruptcy Code, the Amendments introduce rescue financing to enable a debtor to continue as a going concern. The court may, under certain conditions, including the unavailability of credit on less favourable terms and adequate protection of the interests of existing secured creditors, allow the debtor to incur priority unsecured, secured or super-priority secured financing.

#### Worldwide Stay

On the filing of an application for a moratorium order, an automatic 30-day stay comes into effect. The automatic moratorium is available only once in a 12-month period to prevent abuse through repeated filings. In addition, relevant parties may apply to vary the scope of a moratorium order instead of simply applying for its discharge.

The Amendments also allow the moratorium to have worldwide or extraterritorial effect, if creditors are subject to the jurisdiction of the Singapore court. The moratorium may be extended to include a debtor's domestic and foreign subsidiaries as well as holding companies if they play a "necessary and integral role" in the debtor's scheme of arrangement.

### **Cross-class cram downs**

The Amendments allow the court to approve a scheme of arrangement over the objection of a class of dissenting creditors, provided: (a) creditors representing a majority in number and holding at least 75% in value of the claims in a class (who are present and voting) are in favour of a proposed scheme; (b) creditors representing a majority in number and holding at least 75% in value of the total claims against the debtor (who are present and voting) are in favour of a proposed scheme; and (c) the court is satisfied that the scheme is “fair and equitable” to dissenting creditors and does not “discriminate unfairly” between two or more classes of creditors.

The concepts of “fair and equitable” and unfair discrimination are based on the cram-down provisions in section 1129(b) of the U.S. Bankruptcy Code. The Singapore courts are therefore likely to rely on U.S. jurisprudence in interpreting these provisions.

### **Pre-packed Schemes**

The Amendments include procedures to govern prepackaged schemes of arrangement. The court may approve a scheme of arrangement without any meeting of creditors if, among other things, (a) the debtor has provided creditors with a statement, accompanied by adequate information, explaining the effects of the scheme, the impact of the scheme on any material interest of the directors or indenture trustees and the effect of the scheme on such interests; (b) adequate notice of the application for a prepackaged scheme has been properly published; and (c) the court is satisfied that had a meeting of creditors been convened, the scheme would have been approved by the requisite majorities at the meeting.

### **Claims Resolution Procedures**

The Amendments include a number of protections for creditors such as the right to demand a re-vote on a scheme of arrangement and permitting judicial review of acts, omissions and decisions in respect of the scheme, after the scheme has been approved.

Amendments have also been made to broaden the restructuring rules concerning companies in judicial management, ie companies over which

judicial managers have been appointed by the court.

### **Lower Threshold for Judicial Managers to be appointed**

Previously, judicial managers could be appointed over insolvent Singapore companies only. In addition, the appointment of judicial managers could have been blocked by a party with the ability to appoint a receiver.

The Amendments now provide that judicial managers may be appointed over any company (other than certain excluded entities, such as banks) which is subject to the jurisdiction of the Singapore court. Further, judicial managers may be appointed where a company “is or is likely to become” unable to pay its debts. Finally, a party with the ability to appoint a receiver no longer has an absolute right to block the appointment of judicial managers but must demonstrate that the appointment of judicial managers would cause disproportionately greater prejudice than the prejudice to unsecured creditors if judicial management were denied.

### **Rescue Financing**

Similar to DIP financing, the Amendments also allow the court to grant super-priority status and priming liens to rescue financing, subject to adequate protection in the case of a company in judicial management.

### **CROSS BORDER RESTRUCTURING**

Modelled after chapter 15 of the U.S. Bankruptcy Code, and the UK Cross-Border Insolvency Regulations, Singapore has also adopted the UNCITRAL Model Law on Cross-Border Insolvency to allow foreign insolvencies to be more easily recognised in Singapore.

### **JUDICIAL INSOLVENCY NETWORK GUIDELINES**

The Judicial Insolvency Network (**JIN**) Guidelines cover communication between courts appearance in court and joint hearings. In addition to Singapore, the JIN Guidelines have been adopted by the Bankruptcy courts of Delaware and the Southern District of New York, England and

Wales, Bermuda and the British Virgin Islands.

It is hoped that the Amendments will increase Singapore's competitiveness as a forum for cross border insolvency and restructuring.

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