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Maritime and offshore restructuring in Singapore: A safe harbour?

The new laws have made Singapore more attractive for companies looking to restructure, but will it become the jurisdiction of choice for Asian debt restructurings?

Maritime and offshore restructuring in Singapore: A safe harbour?

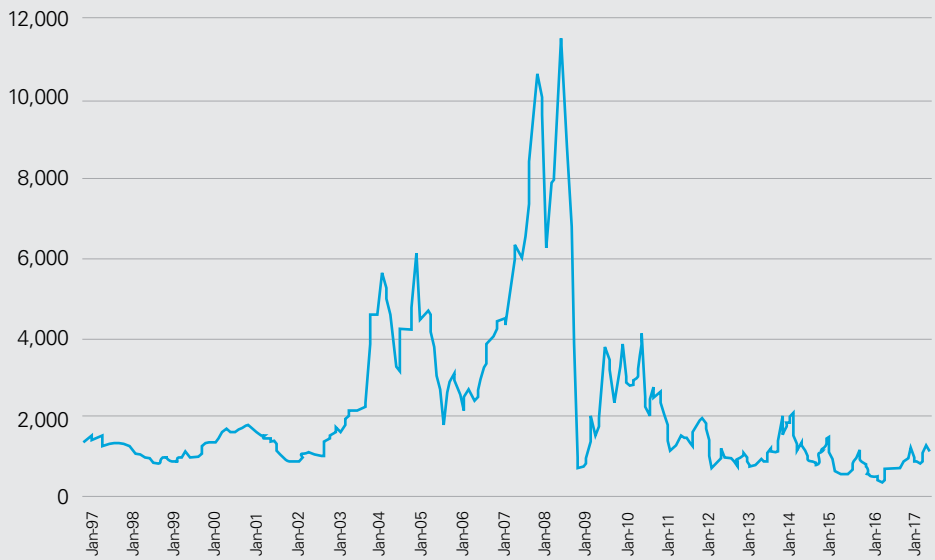
A raft of new regulations in Singapore has created fertile ground for the country to grow as a maritime and offshore restructuring hub. But can it compete with established jurisdictions such as England and the US? **Guan Feng Chen, Simon Collins, Christopher Frampton, Scott Greissman, Jonathan Olier, Ian Wallace** and **Alexander Hunt** of global law firm White & Case explore the market nuances.

The maritime and offshore (M&O) sector has endured almost a decade of distress since the global financial crisis. Overzealous ordering of newbuild vessels during the boom years, made available by cheap credit and the lure of increasing global demand, has left many sectors of the maritime industry oversaturated.

Perhaps the most striking example is the demise of Hanjin Shipping in 2016, saddled with a large debt stack amid an oversupply of container capacity and uncertain market conditions. The company's failure added further pressure to the container market, bringing the Baltic Dry Index crashing below 1,000 and depressing charter rates and vessel values. Similar issues have pervaded the currently ailing offshore market, which has seen capex plans curtailed rapidly. Following a study of 44 offshore supply vessel companies, global consulting firm AlixPartners has predicted a number of insolvencies in Southeast Asia in the next 12 to 18 months and highlighted the fact that the current vessel scrap rate is only around 13 percent of what is required to combat the vessel glut.

Events in 2016 and 2017 have resulted in looming debt stacks in the face of dwindling cash flow across the sector, particularly in Singapore and Asia-Pacific in general, where the key M&O players have—for the most part—yet to face immediate refinancing pressure. In fact, *Marine Money* magazine has suggested that between six and eight M&O businesses based or headquartered in Singapore will be seeking a restructuring solution in the near future.

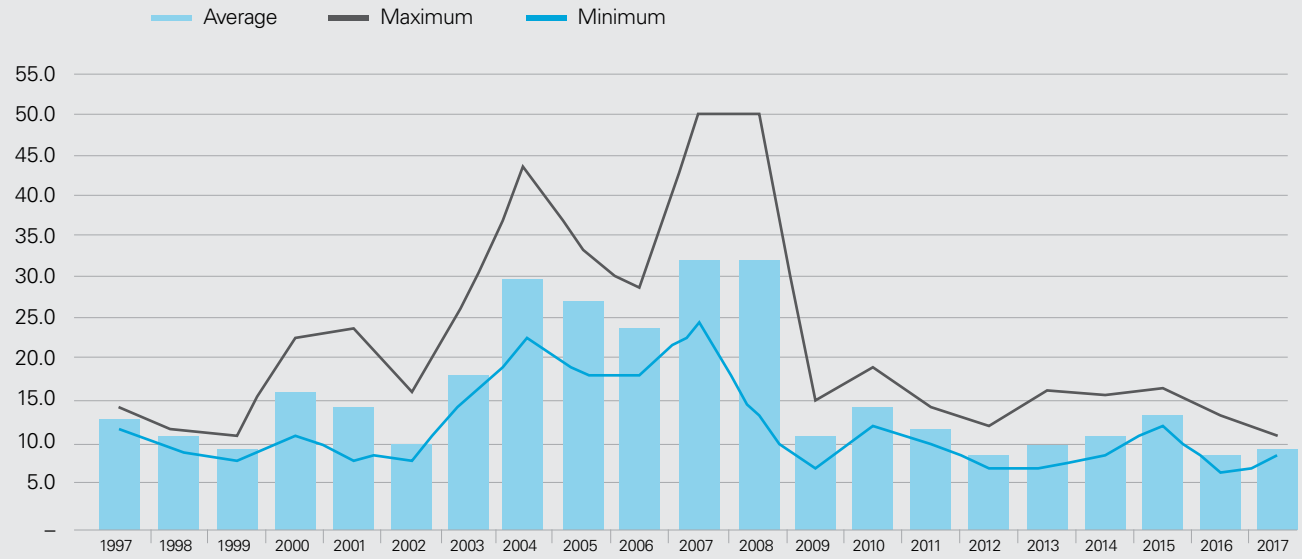
Baltic Dry Index (1997 – 2017)



Source: *Bloomberg*: BDIY:IND. Value as of first business day of the month

With market recovery still uncertain, debtors in the region may soon have to look to new and existing sources of finance for continued liquidity. The traditional shipping banks and lenders have been gradually reducing their M&O exposure, which may exacerbate liquidity issues for debtors. To a certain extent, alternative sources such as direct lending, funds seeking exposure to M&O debt, and equity have been able to meet the shortfall, as have banks and fund managers that were not historically active in the sector. These sources have aided a number of proactive debtors and may be able

ClarkSea Index (1997 – 2017)



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Average	13,424	11,336	9,840	16,848	15,431	10,626	18,953	30,753	27,785	24,661	32,969	32,954	11,711	15,721	12,947	9,586	10,442	11,793	14,164	9,441	10,040
Minimum	11,980	9,850	8,650	11,340	8,920	8,870	15,690	23,420	19,230	18,860	25,280	13,740	7,730	13,060	10,980	7,523	7,574	9,175	12,364	7,073	8,465
Maximum	15,907	12,250	11,148	23,161	24,343	16,719	28,382	44,132	33,901	29,319	50,702	50,682	15,784	20,172	14,993	12,485	17,141	16,684	17,524	13,876	11,842

Source: Clarksons Research

to do the same for others facing a refinancing in the short to medium term. There has been some criticism that restructurings in the sector are only 'sticking plasters' for the problem rather than wholesale solutions. This is primarily due to the composition of the sector's principal creditors, who have been reluctant to crystallise their position in a depressed market. As a result, a number of restructurings designed to provide additional liquidity and a runway for a company attempting to survive any downturn in fortunes have relied on a recovery in the M&O market—a recovery which has yet to manifest itself.

> **The new laws have made Singapore more attractive for restructurings**

Over the next 12 months, M&O players around the globe will be attempting to shore up their balance sheets and emerge from the downturn by taking advantage of developing opportunities. Singapore's newly implemented restructuring regime could prove popular as it creates a viable means to achieve these goals and, under the right circumstances, it may even prove preferable to the well-established M&O restructuring frameworks of the US' chapter 11 and the English scheme of arrangement.

Reworked Singaporean regime

Singapore's restructuring and insolvency laws saw several changes as a result of the Companies (Amendment) Bill, amending the Singapore Companies Act, which came into effect on 23 May 2017. In particular, the law seeks to

Deal examples: Funds buying into M&O

Oaktree:
US$750 million and US$380 million shipping loans from Lloyds and Commerzbank respectively.

Davidson Kempner:
US$500 million shipping loans from Lloyds.

Brookfield:
Acquisition of 60 percent of Teekay Offshore Partners for US$750 million.

Oak Hill and Breakwater:
Acquisition of 50 percent of Odfjell SE.

Upcoming Singapore M&O bond and loan maturities

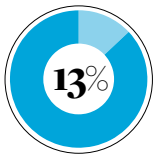
Maturity date	Number of issues	Principal amount (SGD million)
2017	5	1,442
2018	7	1,351
2019	9	1,573
2020	13	3,066
2021	4	726
2022	4	1,049
Industry total	**42**	**9,207**

Source: *Thomson ONE*

transpose some of the more powerful tools from chapter 11 into Singaporean law, as well as easing access for foreign companies to the country's restructuring processes (the Judicial Commissioner of Singapore has referred to the 'cherry-picking' of restructuring tools in order to produce a hybrid system). These restructuring tools include rescue financing and an improved framework for schemes of arrangement.

Rescue financing

The new rescue financing provisions are similar to the US' post-petition financing model, thus enabling Singaporean courts to rank creditors contributing to the restructuring process ahead of other parties attempting to recover debt from the relevant company. This financing can be secured against both previously secured and unsecured assets, and on a subordinated, pari passu or senior basis.



Current OSV scrap rate is 13 percent of what is required to combat vessel oversupply.

Source: AlixPartners

Improved schemes of arrangement

The legislative framework for schemes of arrangement has been modified to increase its utility as an international restructuring tool.

Moratorium

Singaporean courts are now empowered to grant a moratorium during a company's restructuring negotiations and implementation process, which includes an automatic global moratorium of up to 30 days, as soon as the application is received. The temporary suspension can be extended to related companies such as subsidiaries, and also direct and indirect holdings.

Cram-down

Furthermore, in certain circumstances, the court can 'cram down' creditors that oppose an arrangement or compromise and bind them to accept an outcome—a hybrid of equivalent powers in English and US chapter 11.

Pre-packs

In cases where there are pre-negotiated compromises, the courts may be able to approve these without requiring a meeting of creditors (i.e., as a 'pre-pack' solution), although safeguards have also been put in place to protect the creditors' rights.

In particular, the new regulations increase the transparency of information about a proposed compromise or arrangement, thus enabling creditors to assess the situation more easily. These parties have been given the right to apply to the court to vary or terminate the moratorium and to prevent the company from dissipating its assets.

Cross-border complexity

M&O restructurings are often complicated due to the intricacy of the businesses and capital structures for many companies in the sector—and the inherently international nature of the assets. Not only are M&O businesses almost invariably categorised by extremely complex corporate and capital structures covering multiple jurisdictions, in addition, many such structures have been rendered even more challenging by previous restructurings.

Cross-border issues often present complications for both creditors and debtors, and it is worth remembering that participants in the M&O sector are highly dependent upon the uninterrupted continuity of their business. This means that restructuring solutions must protect these companies from value-destructive scenarios such as vessel arrests or termination of charters and key contracts.

In addition, the interaction between cross-border insolvency law and maritime law is rarely straightforward and is often complicated by varying requirements of different jurisdictions where a vessel might be flagged or located, the domicile of the business, the governing law of the relevant documents and the jurisdiction where a restructuring solution is ultimately sought.

Examples of dedicated M&O funds raised since 2012

MC-Seamax
US$200 million

CarVal
US$252 million

KKR
US$580 million

JPM Global Alternatives
US$300 million

Navigare Capital
US$300 million

Fleetscape Capital
US$400 million

Lessons learned

Multiple M&O restructurings in the wake of the global financial crisis have identified some of the less obvious factors to be considered when an M&O business finds itself in distress and is seeking a restructuring solution.

Changes to lender composition

One of these is the shake-up of the lending landscape. A number of the traditional shipping banks (including, for example, Commerzbank and HSH Nordbank) have been attempting to divest themselves of their M&O positions over the last few years. While certain institutions, such as the Nordic banks, are maintaining their positions, non-traditional financing parties such as funds (including specialised shipping funds) and US banks (such as Bank of America Merrill Lynch, Wells Fargo and Citi) are increasingly taking over M&O positions. This has provided vital liquidity to the sector and can prove more flexible in terms of financing, but often at the cost of increased pricing, more restrictive covenants and potentially more aggressive strategies.

Role of ECAs

Another factor to consider is the role of export credit agencies (ECAs). ECAs, which have traditionally been less familiar with restructurings—although this is rapidly changing—are not commercial lenders and thus operate with different incentives. In addition, it is worth remembering that their actions and decisions may be bound by law, regulation or policy.

Beyond the balance sheet

Many restructurings are spurred on by a wish to address an unfavourable maturity profile and stave off defaulting on financial obligations. However, it is increasingly clear that many M&O businesses will only be able to achieve a comprehensive solution if they undertake more wide-ranging operational measures.

> **Singapore's newly implemented restructuring regime could prove preferable to the well-established frameworks of the US and England**

Consensus in chapter 11

In the context of chapter 11, a meaningful level of consensus among the various stakeholders is also important, or at least among the secured creditor class, as it is rare that a workable chapter 11 solution is found in an M&O restructuring without it. In fact, since 2011, all M&O chapter 11 cases filed without meaningful creditor support have failed. Although the legislation does allow cramming down of dissenting creditors, achieving this requires strict conditions to be met (such as the eventual full repayment of crammed down creditors and the requirement of an impaired accepting class).

Sector differences

Finally, recognising the numerous sector differences is key.

There are several distinctions between shipping companies and vessel owners on the one hand, and offshore drillers and service providers on the other. As a result, the stakeholders and objectives for the two sectors will vary significantly.

The offshore market tends to be more inflexible than shipping (which is a highly commoditised sphere), and also tends to require significantly higher capex investment.

These differences highlight the need to distinguish further between box carriers and bulkers, ship owners and liners, drillers and subsea developers, with each group requiring its own tailored approach to any restructuring.

Market acceptance for Singapore

In theory, the new Singapore restructuring tools are an excellent fit for M&O restructurings, but it remains to be seen whether they will be embraced in practice by the key players. Rescue financing depends upon the availability of a market willing to provide the credit rapidly and on a flexible basis. Despite the new statutory protections, debtors in the Singapore market may not find adequate rescue financing if the market does not develop quickly enough to compete with the highly developed US market for 'post-petition' financing.

The chapter 11 worldwide stay is 'automatic' only as a matter of US law and could thus, in theory, be ignored outside of the jurisdiction of the US courts, but the majority of international investors are kept at bay by the risk of being found in contempt of court in the

Banks selling out M&O exposure (approximate total exposure; US$)

HSH Nordbank
US$17 billion

NordLB
US$16.7 billion

Commerzbank
US$4.8 billion

KfW IPEX
US$6.6 billion

Lloyds Banking Group
US$2.6 billion

Roadmap for maritime and offshore restructurings

Situational assessment

- Who are the stakeholders and what is the nature of the creditor composition?
- Where are the assets/where are the vessels flagged? What laws govern finance documents?
- Assessment of pertinent structural and jurisdictional issues
- How much existing runway does the company have?
- What type of solution is required? Cash flow management, operational and/or balance sheet restructuring?
- Analysis of key contracts and continuity of business/ commercial backlog
- Directors' duties/insolvency law considerations
- Consider worst case outcomes/ delayed recovery—optimise structure for any future restructuring?

Restructuring options analysis

Maintain stability/Short-term measures

Waivers	Distressed M&A	Bridging loans	Lock-up agreement
Cast reductions	Sale and leaseback	Standstill agreement	Scheme of arrangement

Seek new money

Equity injection	Rights issue	Super-senior debt	Second-lien debt
High yield	Direct lending	Funds	State support

Debt amendments

Repricing	Covenant amendments	Upside exposure	New collateral
Maturity extension	Board representation	LTV reset	GoodCo/BadCo

Restructuring tools

Moratorium available?	Rescue financing available?	Ability to cram down?	Can process be pre-packaged?
Consensual solution	US chapter 11	Schemes of arrangement (UK/ SG/HK/offshore)	Singapore restructuring regime?

Key outcomes

- Achieve sustainable structure
- Avoid crystallisation of value in uncertain market
- Participation in upside on recovery/encourage new money investment
- Maintain business continuity
- Minimise execution risk
- Ensure control over processes
- Equal and fair treatment of creditors
- Consensual solution if possible
- Minimise time and cost

Source: White & Case

US, as they will almost certainly have some degree of US interests. While many creditors of M&O businesses are likely to have some presence in Singapore—in particular those active in the lending market in the region—they are unlikely to reach the ubiquity of creditors with US interests.

Along with New York law, English law continues to be the dominant governing law of finance documents and commercial contracts in the M&O world and it is, as yet, uncertain how the courts in these jurisdictions will react to restructurings implemented through the Singaporean courts. Even if Singapore was to allow a compromise of foreign law obligations, there is no guarantee that the ruling would be recognised in England (under the '*Gibbs* principle'), and accordingly,

> **Along with New York law, English law continues to be the dominant governing law of finance documents and commercial contracts in the M&O world**

the risk of new proceedings in the English courts in respect of charter and finance documents would remain.

The extensive jurisprudence and relative certainty surrounding the English scheme and chapter 11 make these frameworks attractive to both creditors and debtors. The sanctioning of the TORM scheme by the English courts in 2014, and approval by the US federal bankruptcy court of a chapter 11 reorganisation plan relating to the indebtedness of EMAS Chiyoda Offshore earlier this year have cemented the impression that these jurisdictions facilitate the proper implementation of even high-pressure, time-sensitive restructurings, with minimal business interruption.

A number of M&O schemes of arrangement have taken place

> **To compete effectively with established M&O restructuring hubs, Singapore will have to gain the confidence of the sector**

outside England in other common law jurisdictions including Bermuda (Seadrill), the Cayman Islands (Ocean Rig) and indeed Singapore (Berlian Laju Tanker). The fact that schemes in these jurisdictions are able to make use of English jurisprudence grants stakeholders comfort that there will be some certainty to the process.

To compete effectively with established M&O restructuring hubs, Singapore will have to gain the confidence of the sectors' businesses, banks, funds and ECAs—and the advisors who will ultimately steer them towards a solution. These stakeholders will require convincing that a restructuring in Singapore would produce a superior outcome compared to chapter 11 or an alternative process. Despite these challenges, there is already evidence emerging from cases such as EMAS Offshore and Nam Cheong that regional players are keen to make use of this new, local regime.

Looking ahead

The new Singapore regime is a welcome addition to the restructuring toolbox for the Asia-Pacific M&O sector and beyond.

Adopting many of the most useful elements of the US and English systems has resulted in—on paper—a robust restructuring regime, with the added benefit of removing one more element of cross-border uncertainty for local debtors and creditors.

It remains to be seen, however, whether Singapore will become the jurisdiction of choice for the Asia-Pacific M&O restructurings in the short term, or whether the market will need more time to mature and develop before large-scale cross-border restructurings become the norm ahead of chapter 11 or a solution in England. The deciding factor will be whether market participants believe Singapore's regime is capable of dealing with the very complex nuances of M&O restructurings.

US chapter 11 and M&O restructurings

In cases where a formal reorganisation process has been required, chapter 11 of the US Bankruptcy Code has been the most widely used procedure in M&O restructurings, as many of the tools available to a debtor are eminently suited to these scenarios. In general, this is an extremely flexible procedure, allowing for a variety of bespoke outcomes dependent upon the circumstances of the case.

The debtor-in-possession structure preserves business continuity by allowing existing management to continue running the business while the restructuring is ongoing. It can also protect assets from value destruction by aggressive creditors and—in certain circumstances—'cram down' dissenting creditors and force them to accept a solution, thus reducing the risk of holdout creditors.

Financing for entities in chapter 11 (known as 'DIP financing') is readily available and comes with a number of protections including super-senior ranking or priming of existing security, if needed.

Creditors across the globe are likely to adhere to the automatic, worldwide stay on the business and its assets as soon as the filing is made, as most commercial entities will not be willing to act in contempt of a US court.

Chapter 11 will not always be the ideal solution, particularly as the process can be expensive and time-consuming.

As a formal insolvency proceeding, it may trigger insolvency defaults in finance documents and commercial agreements.

Each case will require a robust analysis to determine whether and how chapter 11 can be used to effect an M&O restructuring, and if there are other local or international processes that would better achieve the outcomes sought by all stakeholders.

Source: White & Case

Selected M&O chapter 11 cases

Eagle Bulk Shipping 2014

Excel Maritime Carriers 2014

Genco 2014

Overseas Shipholding Group 2014

Nautilus Holdings 2015

Windland Ocean Shipping 2015

Ezra Holdings 2017

EMAS Chiyoda Subsea 2017

Seadrill 2017

SGD38bn

Total aggregate principal amount of bonds issued by Singaporean companies, maturing by 2020.

Source: *Bloomberg*

Selected M&O schemes of arrangement

Berlian Laju Tanker 2015

TORM 2015

Ocean Rig 2017

Seadrill 2017

WHITE & CASE

Guan Feng Chen
Partner, Singapore
T +65 6347 1327
E gchen@whitecase.com

Simon Collins
Partner, Tokyo
T +81 3 6384 3242
E scollins@whitecase.com

Christopher Frampton
Partner, New York
T +1 212 819 8426
E cframpton@whitecase.com

Scott Greissman
Partner, New York
T +1 212 819 8567
E sgreissman@whitecase.com

Jonathan Olier
Partner, Singapore
T +65 6347 1317
E jolier@whitecase.com

Ian Wallace
Partner, London
T +44 20 7532 2283
E ian.wallace@whitecase.com

Alexander Hunt
Associate, London
T +44 20 7532 1853
E alexander.hunt@whitecase.com

whitecase.com