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Singapore: Debt Restructuring Hub Ready For Business

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After months of public consultations and revision, the Singapore parliament passed the Companies (Amendment) Bill (the "**Bill**") on 10 March 2017 amending the Singapore Companies Act (the "**Companies Act**"). The Bill contains, among others, significant and novel changes to Singapore's insolvency laws. This is no doubt a giant step towards positioning Singapore as Asia Pacific's Debt Restructuring Hub with cross-border restructuring capabilities.

Introduction - The Bill

The Bill – a culmination of the recommendations of the Insolvency Law Review Committee and the reforms suggested by the Committee to Strengthen Singapore as an International Debt Restructuring Centre – introduces reforms to enhance the effectiveness and efficiency of the tools available for debt restructuring in Singapore. The Bill also draws on the experience of the insolvency regime in the United Kingdom and has adapted parts of the Chapter 11 of the United States Bankruptcy Code ("**Chapter 11**"). It is anticipated that the Bill's debt restructuring amendments to the Companies Act will create a conducive environment that encourages corporate rescue and rehabilitation. From a global perspective, the legislative changes seek to attract and improve the administration of cross-border insolvency cases and further enhance Singapore's position as a leading trade and investment hub. Apart from reforms relating to debt restructuring, the Bill also introduces amendments to reduce the regulatory burden of doing business in Singapore as well as providing a mechanism for foreign corporate entities to transfer their registration to Singapore.

This alert summaries the key debt restructuring amendment of the Bill with a special focus on the introduction of rescue financing in Singapore – the first of its kind in the region.

Key Amendments

(A) Rescue financing

The rescue financing provisions are applicable to both scheme of arrangement and judicial management. Subject to certain conditions being met, the court can make an order that any rescue funding obtained by a company will:

1. enjoy same top priority as if it were part of costs and expenses of winding up;
2. enjoy priority over all preferential debts as legislated in the Companies Act;

3. be secured by either a security interest on property[1] of the company that is not subject to any security interest or a subordinate security interest on property of the company subject to existing security interest; or

4. be secured by a security interest on property of the company subject to existing security interest that enjoys the same or higher priority than the existing security interest.

(B) Scheme of arrangement

The Bill makes organic developments to the current legislative framework for schemes of arrangement enhancing its capabilities as a debt restructuring device. Key changes include:

1. Moratorium

   A company may apply for a moratorium where it has proposed a compromise or arrangement with its creditors and either (i) it has made or undertook to make an application as soon as practicable for a court order to summon a meeting of its creditors in relation to a compromise or arrangement; or (ii) it has made or undertook to make an application as soon as practicable for court approval of a compromise or arrangement without a creditors' meeting (see section on "Pre-packs" below).

   An automatic world-wide moratorium (of no more than 30 days) will arise once the company has made the application. However, to prevent abuse, an automatic moratorium cannot arise more than once for a company in any given 12 month period. Furthermore, the company, a creditor or a receiver of the company can make an application to court to vary or discharge a moratorium or to terminate an automatic moratorium. A moratorium can also be extended to cover certain 'related companies[2]' if certain conditions are fulfilled.

2. Cram down

   Provided certain conditions are met, the court is empowered to 'cram down' a dissenting class of creditors who oppose a compromise or arrangement. This means the compromise or arrangement will become binding on all creditors despite such opposition.

3. Pre-packs

   The court is given the power to approve the proposed compromise or arrangement which has been pre-negotiated and put forward by the company without a meeting of creditors being ordered. As the same time, the Bill also introduces safeguards to protect the interests of creditors who will be bound by the proposed compromise or arrangement.

4. Creditors protection

   Creditors will have access to more information which will allow them to assess the feasibility of the proposed compromise or arrangement and also the ability to apply to the court to vary or terminate the moratorium. Further, creditors can apply to the court to restrain the company from dissipating its assets.

(C) Judicial management

Key amendments to the judicial management regime include:

1. Lowering the threshold of 'the likelihood of insolvency' which is required before a court can make a judicial management order, thereby making it easier for a company seeking to obtain such an order.

2. Giving the court power in certain circumstances to make a judicial management order, despite opposition from a person who has appointed or who is entitled to appoint a receiver or manager.

(D) Liquidation

The Bill generally abolishes the "ring-fencing" of a foreign company's assets that are located in Singapore on the winding-up of that company. If the company is a "relevant company[3]", the company's liquidator must first settle any debts incurred in Singapore, before paying the proceeds back to company's place of incorporation.

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1 property" is defined very broadly to capture all assets (tangible or intangible) the company has.

2 related company" includes a subsidiary, holding company or an ultimate holding company.

3 "relevant company" is defined to mean a foreign company falling within one of the listed types of companies set out in the Bill.

If the company doesn't fall within the definition of “relevant company”, then the company’s liquidator is instead under an obligation to recover and realise the assets in Singapore and pay the net proceeds back to the liquidator in the company’s place of incorporation. The latter is subject to the liquidator in Singapore being satisfied that the interests of creditors in Singapore are adequately protected before amounts are transferred to the company’s place of incorporation.

(E) Cross-border

The Bill introduces conditions that will make it easier for a foreign company to avail itself to the winding up, judicial management and scheme of arrangement regime in Singapore. This ties in nicely with the adoption of the UNCITRAL Model Law on Cross-Border insolvency (with various amendments) which allows insolvencies abroad to be recognised in Singapore in a more straightforward manner.

Rescue Financing and its Commercial Impact

Rescue financing consists of the provision to a distressed company of much needed funds for it to be able to restructure, as lenders are weary of lending to a company already in jeopardy. The conceptual basis of the rescue finance provisions as proposed by the Bill is similar to that of debtor-in-possession financing under Chapter 11. With the Bill coming into effect, Singapore pioneers the statutory recognition of rescue financing in debt restructuring in the Asia Pacific region. Further, by affording priority status to rescue financing, which is available to both local and foreign companies, it provides greater incentive for foreign companies to restructure their debts in Singapore. In time to come, once Singapore establishes itself as the regional centre for restructuring, it is likely to create an active market for the provision of rescue financing in Singapore, thereby generating more loan opportunities to lenders in Singapore.

Conclusion

The central tenet of the Bill is to enhance Singapore’s capabilities as a business centre with multi-faceted capabilities. The introduction of debt restructuring amendments to the Companies Act not only seeks to attract restructuring work into Singapore but, as discussed above, incidentally creates other business opportunities.

Over the past few years, Singapore introduced many initiatives in order to establish itself as the leading financial centre of the Asia-Pacific region. The introduction of the Singapore International Commercial Court and the Singapore International Arbitration Centre has strengthened Singapore’s capabilities in commercial dispute resolution. Together with the other amendments set out in the Bill, Singapore is positioning itself to be the leading business hub for all commercial activities in the region.

As at the date of this alert, we do not have any indication of when debt restructuring amendments in the Bill will come into effect.

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