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EDITORIAL

Singapore: International Debt Restructuring Hub or More To Do?

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Synopsis

As the world's economy continues to recover post-pandemic against the challenging economic climate of rising inflation and interest rates, a robust insolvency regime will be critical to ensure Singapore's economy remains healthy and thriving. The Insolvency Restructuring and Dissolution Act 2018 (IRDA) came into force on 30 July 2020. It is therefore a timely occasion to review how far Singapore has come in its goal of establishing itself as an international hub for debt restructuring.

This article examines the impact of the IRDA and other complementary initiatives in establishing Singapore as a key nodal jurisdiction for cross-border restructuring and insolvency and considers possible areas of growth moving forward.

The Insolvency Restructuring and Dissolution Act 2018 (IRDA)

The IRDA was a landmark omnibus legislation which serves two key purposes.

First, it consolidated all of Singapore's insolvency regimes into a single, consolidated legislation, where it was previously dispersed across a number of statutes, including the Bankruptcy Act and the Companies Act.

Second, the IRDA sought to introduce key provisions to bring Singapore's insolvency regime in line with those of other more established jurisdictions and to pivot Singapore towards a more conducive regime for corporate rescue and debt restructuring. Some of the most notable of these would be the incorporation of Chapter 11-type tools for corporate rescue and the UNCITRAL Model Law on Cross-Border Insolvency (the 'Model Law') into Singapore law. The Singapore courts have also supported this effort with an increasing number of decisions issued in recent years to build Singapore's growing volume of case law in this area.

Enhanced jurisdiction of the Singapore International Commercial Court

Another key development in the effort to anchor Singapore as a restructuring and insolvency hub are the recent changes to the Singapore International Commercial Court Rules 2021 to allow restructuring and insolvency proceedings to be heard before the Singapore International Commercial Court ('SICC') where the proceedings are (i) international; and (ii) commercial in nature. Existing corporate restructuring and insolvency proceedings already commenced in the General Division of the Singapore High Court may also be transferred to the SICC, if these jurisdictional requirements are satisfied.

The SICC has the following key competitive advantages as a forum:

1. Ability to deal with foreign law issues

Economic globalisation has caused modern restructurings to grow more complex and multi-jurisdictional, as debtors often maintain assets, business relations and connections in a number of jurisdictions, often with differing laws and legal systems.

The SICC is well-equipped to handle the complexities arising from such conflicts of laws, having been initially established to deal exclusively with transnational commercial disputes and complex cross-border matters. Due to its offering of a panel of specialist commercial Judges from Singapore and international Judges from both civil and common law traditions, the SICC is well-placed to handle any question of foreign law. This panel includes leading judges such as former Chief Judge of the US Bankruptcy Court for the District of Delaware, Judge Christopher Sontchi.

2. Availability of foreign lawyers

Another feature available in the SICC is the possibility of foreign legal representation. A foreign lawyer may after obtaining permission from the court, make submissions on matters of foreign law and factual matters relating to the proceedings. This removes the need for the foreign lawyer to go through the process of proving the foreign law as an issue of fact (such as by adducing evidence on foreign law by way of an expert opinion).

3. Conditional fee agreements

Singapore lawyers will be able to enter into conditional fee agreements with clients for insolvency cases

commenced in the SICC. This will provide an additional funding option for debtors and provide Singapore firms the ability to compete with foreign counterparts by offering such flexible fee arrangements.

Overall, the introduction of the SICC as a potential forum for restructuring and insolvency proceedings gives multinational corporations and their stakeholders another viable and attractive option, and reinforces Singapore's ability to serve as a nodal jurisdiction for international restructurings and insolvencies.

Continued developments to the IRDA

Despite the IRDA's relative nascency, key amendments continue to be introduced, demonstrating Singapore's commitment to fine tuning its insolvency regime and ensuring it remains up to date in light of the ever-changing economic outlook. In this regard, one great example is the recent extension of the Simplified Insolvency Programme ('SIP') until 28 January 2026 by way of the Insolvency, Restructuring and Dissolution (Amendment) Act 2023, which came into force on 1 November 2023.

The SIP was initially introduced for a period of 6 months during the height of the pandemic to protect micro and small companies ('MSCs') which had been severely impacted by COVID-19.[1] The SIP provides eligible companies with a faster and lower-cost restructuring and insolvency process. The SIP comprises two separate programmes:

a) the Simplified Debt Restructuring Programme – which targets the restructuring of debts and potential rehabilitation of viable businesses; and

b) the Simplified Winding Up Programme – which targets the orderly winding up of non-viable MSCs.

Applications under the SIP have on average been completed within 9 months,[2] a significantly shorter life cycle when compared to the typical restructuring or liquidation process, which could take years.

To be eligible, the MSC must have an annual sales turnover not exceeding S$10 million, no more than 50 creditors, no more than 30 employees, and liabilities not exceeding S$2 million.[3]

Since its introduction, the SIP has been extended on several occasions. The Ministry of Law explained that the latest extension, which would put the SIP in place for 5 years by the time it expires, is to provide continued support for MSCs in the face of operational challenges caused by rising inflation and interest rates in the current economic environment. Singapore is also looking at making certain features of the SIP permanent.[4] The Ministry's concerns align with worldwide reports that businesses are generally struggling in the harsh economic environment (with smaller businesses facing a higher risk of insolvency),[5] and aptly reflects Singapore's adaptability and determination to ensure its insolvency regime is well-placed to handle any period of economic distress and is available to both large companies and MSCs.

The way forward

Recent feedback obtained by insolvency practitioners in Singapore have provided favourable reviews of the new restructuring regime created by the IRDA.[6] There is a high level of confidence in Singapore's insolvency regime, and key strengths cited include Singapore's transparent and effective system and a quality judiciary.[7]

At the same time, the consensus was nevertheless that there remains some way to go before the overarching goal of transforming Singapore into an international debt restructuring hub is achieved. Reasons cited include the fact that Singapore did not have the benefit of having an economic 'hinterland' unlike jurisdictions such as Hong Kong or London (though Singapore could arguably develop one in South-East Asia), the lack of familiarity with Singapore's regime and the limited pool of insolvency practitioners able to handle large, complex restructurings in Singapore.

It is therefore clear that Singapore must continue to innovate to develop its own competitive advantage amidst global competition. In this regard, we highlight a few areas which may provide opportunities for growth.

Notes

1 https://www.mlaw.gov.sg/news/press-releases/simplified-insolvency-programme-commences/
2 https://www.businesstimes.com.sg/singapore/smes/minlaw-looking-making-simplified-insolvency-programme-micro-small-firms-permanent
3 https://io.mlaw.gov.sg/corporate-insolvency/sip-faq/
4 See [53] to [54] of Second Reading Speech by Second Minister for Law Edwin Tong on Insolvency, Restructuring and Dissolution (Amendment) Bill (https://www.mlaw.gov.sg/news/parliamentary-speeches/2023-01-09-2r-speech-ird-bill-by-2m-edwin-tong/)
5 https://www.ft.com/content/4fcf174e-deb6-48b0-aff7-f155a0aeb385;https://asia.nikkei.com/Business/Business-trends/Signs-point-to-surge-in-bankruptcies-for-Japan-s-small-businesses;https://www.afr.com/companies/financial-services/the-worrying-rise-in-corporate-busts-20231017-p5ecx0; https://www.businessinsider.com/bankruptcy-economy-recession-federal-reserve-war-on-inflation-interest-rates-2023-9
6 https://www.businesstimes.com.sg/opinion-features/final-score-singapores-restructuring-and-insolvency-regime-has-yet-be-written; https://www.ashurst.com/en/insights/singapores-insolvency-and-restructuring-regime-in-the-eyes-of-practitioners-opinion/
7 https://www.ashurst.com/en/insights/singapores-insolvency-and-restructuring-regime-in-the-eyes-of-practitioners-opinion/

Review of judicial management regime

In late 2022, Minister Edwin Tong announced that Singapore will be undertaking a 'root-and-branch study' to strengthen the judicial management regime in Singapore as a corporate rescue tool.

The judicial management regime seeks to provide an alternative to liquidation in situations where one of the three following statutory purposes may be achieved:[8]

1) the survival of the company, or the whole or part of its undertaking, as a going concern;
2) the approval of a scheme; or
3) a more advantageous realisation of the company's assets or property than on a winding up.

However, the regime has had a less than stellar track record, with the Insolvency Law Review Committee observing in 2013 that it was commonly seen as an inevitable precursor to winding up.[9]

Singapore will therefore examine the type of debtors which would be more suitable for judicial management and consider how to tailor the judicial manager's expertise and knowledge to the specific debtor, particularly where the debtor operates a specialised business or operates in a highly specialised industry. All this will be done with a view to ensure that the regime is able to achieve its *raison d'etre* of achieving rehabilitation via one of its three statutory purposes.[10]

Reciprocal enforcement

Located at the heart of South-East Asia, Singapore is well-positioned to establish itself as a regional hub for debt restructuring. However, a key obstacle remains the fact that the bulk of Singapore's immediate neighbours have yet to incorporate the Model Law into their insolvency regimes. Without the procedural mechanisms to facilitate the conduct of cross-border insolvencies afforded by the Model Law, it is uncertain whether the orders made in Singapore restructuring proceedings will have a real impact in these other jurisdictions, and consequently, for Singapore to effectively market itself as a regional hub for debt restructuring.

The Singapore court is actively taking steps to enhance its bilateral relations with neighbouring judiciaries to enhance judicial cooperation. For example, on 7 November 2023, the Supreme Court of Singapore and the Supreme Court of Indonesia signed a Memorandum of Understanding for judicial cooperation, targeting specific areas for collaboration, including cross-border commercial law and international commercial dispute resolution.[11] Memoranda of Understanding were also signed on 7 September 2023 with the Indian judiciary. Whilst the scope of collaboration of these memoranda do not yet cover cross-border insolvency, continued efforts to push for greater judicial cooperation would certainly bear fruit in this regard.

Mediation

Mediation in the insolvency context is gaining popularity as an attractive option to achieve win-win solutions that give distressed businesses a chance to recover financially, while giving creditors more flexibility and options in recovering debts that may otherwise be unrecoverable under formal court proceedings.

Where a multi-national debtor is subject to different insolvency regimes and jurisdictions, not all of which recognise the Model Law, mediation can potentially be a helpful process to obtain creditor approval for rehabilitation, as opposed to having to commence and maintain multiple insolvency proceedings across multiple competing jurisdictions, which may be time-consuming and expensive.

Further, mediation has certain collaborative benefits as opposed to an adversarial process. For instance, the Singapore court in *Re IM Skaugen SE and other matters* [2018] SGHC 259 at [94], noted that a skilled insolvency mediator may help in:

> 'building consensus between the debtor and the creditors in the development of the restructuring plan, and … assist to iron out many of the wrinkles and creases that frequently erupt in a restructuring and which perhaps are not best resolved in the adversarial cauldron of the court … While there is always a place for the jousting that is typical of an adversarial process, a more considered, constructive and measured approach in restructuring can often lead to better outcomes for all parties involved'.

Foreign insolvency practitioners

Following the adoption of the Model Law in Singapore, foreign representatives of foreign insolvency proceedings which have been granted recognition in Singapore are able to obtain relief from the Singapore Court. The relief which such foreign representatives can obtain is extensive and includes entrusting the administration

Notes

8 https://www.mlaw.gov.sg/news/speeches/opening-remarks-by-second-minister-for-law-edwin-tong-at-sicc-insol-seminar/
9 https://www.mlaw.gov.sg/files/news/announcements/2013/10/ReportoftheInsolvencyLawReviewCommittee.pdf
10 https://www.mlaw.gov.sg/news/speeches/opening-remarks-by-second-minister-for-law-edwin-tong-at-sicc-insol-seminar/
11 https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-singapore-and-indonesia-further-enhance-bilateral-judicial-relations-with-signing-of-memorandum-of-understanding

or realization of the debtor's property and any relief available to a Singapore insolvency officeholder.

Additionally, the Ministry of Law has confirmed that possible refinements to the licensing regime for insolvency practitioners under the IRDA are also presently being considered.[12] Such refinements may allow parties to appoint foreign insolvency practitioners with the necessary requisite qualifications, experience and professional standing to advise and work on cases with significant foreign elements that are heard in the SICC.

Notes

12 See [51] of Opening Remarks by Second Minister for Law Edwin Tong SC, at SICC INSOL seminar (https://www.mlaw.gov.sg/news/speeches/opening-remarks-by-second-minister-for-law-edwin-tong-at-sicc-insol-seminar/)

International Corporate Rescue

International Corporate Rescue addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialised enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

Alongside its regular features – Editorial, US Corner, Economists' Outlook and Case Review Section – each issue of *International Corporate Rescue* brings superbly authoritative articles on the most pertinent international business issues written by the leading experts in the field.

International Corporate Rescue has been relied on by practitioners and lawyers throughout the world and is designed to help:

- Better understanding of the practical implications of insolvency and business failure – and the risk of operating in certain markets.
- Keeping the reader up to date with relevant developments in international business and trade, legislation, regulation and litigation.
- Identify and assess potential problems and avoid costly mistakes.

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