A BRIDGE OVER TROUBLED WATER: SINGAPORE'S NEW RESTRUCTURING & INSOLVENCY FRAMEWORK IS BEING INTRODUCED WHEN IT IS MOST NEEDED

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Restructuring & Insolvency Alert

By: Christopher Tan, Jason Opperman

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Further to K&L Gates' Singapore Restructuring and Insolvency Alert dated 5 December 2016,[1] Singapore's revised restructuring and insolvency legislation has come into effect. The amendments to the Companies Act, summarised in the aforementioned Alert, were passed by Parliament in March and came into operation on 23 May 2017.[2]

It comes at an opportune time. A number of industries which are key to Singapore's economy – the oil and gas, shipping and offshore marine sectors – have felt the pressure of the oversupply of oil and resulting low oil prices. Swiber Holdings, Ezra Holdings and Marco Polo Marine are three high profile Singapore companies that have fallen victim to the pressure created by the current economic climate. As a result of insolvencies and restructurings, Singapore has experienced the highest number of layoffs since the global financial crisis in 2009.[3] The Singapore lawmakers have recognised the need for distressed companies to seek protection locally.

It is envisaged that the implementation of a well-rounded debt restructuring regime will allow distressed companies to seek sufficient protection while they attempt to implement an organised restructuring of their affairs. The new scheme of arrangement mechanism (modelled in part on the US bankruptcy legislation) will hopefully see debtors and creditors working together to preserve the value of businesses in financial difficulty. For larger restructurings, the lowering of the threshold requirements upon which companies can obtain a judicial management order (from “is or will be” to “is or is likely to become” unable to pay debts) will likely see companies opting for this course at an earlier stage.

Not only will the changes hopefully see debtors more willing to consider a restructuring, it is envisaged that the introduction of the concept of "super-priority" rescue financing will attract distressed investors to inject fresh money into distressed companies. In what is a familiar scenario in US Chapter 11 proceedings, under the new laws, white knight investors will be able to apply to Court in Singapore to seek priority for new capital over existing debts of the distressed company. In addition, the UNCITRAL Model Law on Cross-Border Insolvency has also

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now come into effect in Singapore by virtue of the new Section 354A, which should help facilitate cross-border insolvencies.

With the expectation that this week's OPEC meeting will see a nine-month extension of the existing oil production cuts, it is anticipated that the oil prices will remain at a similar level through to the first quarter of 2018. This could mean more troubled waters ahead for the sectors mentioned above. Singapore's new restructuring and insolvency regime should provide the necessary legal avenues for struggling businesses to navigate towards survival and avoid liquidation. Similarly, investors with an eye towards distressed opportunities should keep a watchful eye on Singapore as opportunities arise to take advantage of this positive step forward for Singapore's restructuring industry.

Notes:

[1] http://klgates.com/singapores-restructuring-focus-singapore---the-new-hub-of-asia-pacific-restructuring-12-06-2016/.

[2] COMPANIES (AMENDMENT) ACT 2017 (ACT 15 OF 2017), COMPANIES (AMENDMENT) ACT 2017 (COMMENCEMENT) (NO. 2) NOTIFICATION 2017, available at http://www.egazette.com.sg/gazetteViewDetail.aspx?ct=sls&subscriber=0.

[3] Layoffs hit 7-year high as restructuring takes its toll, 27 January 2017, The Straits Times, available at http://www.straitstimes.com/singapore/manpower/layoffs-hit-7-year-high-as-restructuring-takes-its-toll.

KEY CONTACTS

CHRISTOPHER TAN
PARTNER AND DIRECTOR OF K&L GATES STRAITS LAW LLC
K&L GATES STRAITS LAW LLC
SINGAPORE
+65.6507.8110
CHRISTOPHER.TAN@KLGATES.COM

JASON OPPERMAN
MANAGING PARTNER, AUSTRALIA

SYDNEY
+61.2.9513.2435
JASON.OPPERMAN@KLGATES.COM

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