SINGAPORE'S RESTRUCTURING FOCUS SINGAPORE - THE NEW HUB OF ASIA PACIFIC RESTRUCTURING

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Restructuring and InsolvencyAlert

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In October 2016, Singapore's Ministry of Law ("**MOL**") launched a public consultation to gather public feedback on proposed amendments to the Companies Act for debt restructuring.[1]

The move continues Singapore's push towards becoming the restructuring hub of Asia Pacific. With Singapore having successfully established itself as a global commerce, finance and transport hub, one imagines that the Lion City will similarly succeed in attracting distressed debt financiers and specialists to look towards Singapore, particularly as an expected debt-at-risk increase affects economies in China, India and Indonesia.[2]

The consultation period ends on 2 December 2016, and it is planned by MOL and Singapore's Ministry of Finance ("**MOF**") that the amendments will be introduced as a bill and come into force in 2017. The initial amendments to Singapore's insolvency and bankruptcy laws form the first part of a phased approach to implementing recommendations that initially came from an Insolvency Law Review Committee ("**ILRC**"). ILRC's recommendations were then tweaked by the Committee to Strengthen Singapore as an International Centre for Debt Restructuring ("**Restructuring Committee**"), which in turn made recommendations to MOL "aimed at enhancing Singapore's effectiveness in facilitating international debt restructuring"[3]. The Restructuring Committee consisted of lawyers, insolvency and other financial professionals, and Monetary Authority of Singapore officials.

It is expected that new legislation, in the form of a Companies (Amendment) Bill, will be presented to Parliament in early 2017. The key changes contemplated by the proposed amendments to the Companies Act consist of:[4]

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1. Schemes of arrangement: The introduction of a new set of provisions to specifically support creditor schemes of arrangements that implement debt restructuring proposals, comprising:

> a. **Enhanced moratoriums** against creditor action with a view to providing greater protection to a debtor during a restructuring. b. **Rescue finance provisions**, enabling the Court to afford priority in certain

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> circumstances to parties who provide fresh financing to assist the restructuring over other creditor claims. c. **Cram-down provisions**, to allow, in certain circumstances, a scheme of arrangement to be approved even if a class of creditors opposes the scheme. d. **Enhanced creditor protection,** by including debtor disclosure requirements and introducing provisions to safeguard against debtors dissipating assets during a moratorium. e. **Pre-packaged provisions**, which will fast-track pre-negotiated schemes of arrangements between debtors and their major creditors, without any meeting of creditors being held. f. **Procedural enhancements,** which help to facilitate the adjudication of proofs of debt and monitor the operation of a scheme of arrangement.

The proposed amendments to the scheme of arrangement process signal a move by Singapore lawmakers towards a more US-style restructuring regime. The provisions expand on the existing scheme of arrangement legislation, such that the amendments might be seen to implement a procedure more analogous to the US Chapter 11 process. Indeed, some of the changes proposed are based on similar provisions in the US Bankruptcy Code ("**Code**"), in particular the rescue finance provisions which are similar to section 364 of the Code, and the cram-down provisions which largely mirror section 1129 of the Code.

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2. Judicial management: Amendments will be made to:

> a. enable companies to apply for a judicial management order more easily by lowering the threshold under which companies can apply for a judicial management order. b. introduce provisions for super-priority for rescue financing in judicial management, similar to those outlined in paragraph b) above.

Similar to the proposed amendments to the scheme of arrangement process, the rescue finance provisions in a judicial management context reflect existing provisions under the Code.

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3. Cross-border insolvency: Various reforms will also be enacted to facilitate the resolution of cross-border insolvencies:

> a. Schemes of arrangement and judicial management will be made available to foreign companies by implementing specific criteria to guide the Court on when it may exercise discretion to take jurisdiction over foreign debtors. b. Adopting the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**"). c. Abolishing the general ring-fencing rule in the winding up of foreign companies. Ring-fencing however will be retained for specific financial institutions, such as banks and insurance companies.

The adoption of the Model Law follows the adoption of the Model Law in jurisdictions such as the US, UK, Japan and Australia. Although recent Singapore High Court decisions indicate that Singapore Courts are now more

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willing to adopt the Model Law to recognise foreign insolvency proceedings[5], a formal adoption of the Model Law should help facilitate cross-border restructurings.

Given that the proposed amendments represent only the first phase of MOL and MOF's planned amendments to Singapore's restructuring regime, it is worth monitoring what the further amendments will be, and how they gel with other insolvency regimes across the globe. Nevertheless, the move by MOL signals a significant step by Singapore towards a restructuring regime which caters to a global market.

Notes:

[1] *Public Consultation Open for Feedback on Proposed Changes to Singapore's Debt Restructuring Framework*, MAS.GOV.SG, 21 October 2016, available at https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/public-consultation-open-for-feedback-on-proposed-changes-to-sin.html.

[2] International Monetary Fund Global Financial Stability Report, October 2016, available at https://www.imf.org/external/pubs/ft/gfsr/2016/02/index.htm, at pages 31-33.

[3] *Recommendations Released on Strengthening Singapore as an International Centre for Debt Restructuring*, MAS.GOV.SG, 20 April 2016, available at https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/recommendations-released-on-strengthening-singapore-as-an-intern.html.

[4] *Public Consultation on Proposed Amendments to the Companies Act to Strengthen Singapore as an International Centre for Debt Restructuring*, MAS.GOV.SG, 21 October 2016, available at https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-proposed-amendments-to-the-companies-act-.html, and *Proposed Companies (Amendment) Bill*, available at https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/CAB.pdf.

5] See, for example, *Re Opti-Medix Ltd (In Liquidation)* [2016] SGHC 108.

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