Amendments to the Companies Act: Debt restructuring and Judicial Management rules[1]

I. Introduction

1. Following several proposals made by the Committee to Strengthen Singapore as an International Centre for Debt Restructuring ("**the Committee**"),[2] the Ministry of Law introduced new provisions to the Companies Act[3] ("**CA**"). These changes improve the legal framework for undertaking major debt restructurings in Singapore and make it easier for foreign companies to access the procedures for debt restructuring.[4]

II. Schemes of Arrangement

A. Enhanced moratorium provisions

2. The changes draw inspiration from several parts of Chapter 11 of the US Bankruptcy Code.[5] The court now has the power to make an order for a moratorium where the company has made or intends to make an application to the court to call a meeting of its creditors.[6] In addition, there is the introduction of an automatic 30-day interim moratorium that applies while the abovementioned moratorium application is being processed. World-wide moratorium orders are also now available, which apply to any person within the jurisdiction of the court (whether the act takes place in Singapore or elsewhere).[7] Further, moratorium orders may now be made for subsidiary companies.[8]

---

[1] Lim Yinhui, 2nd Year J.D. Student, Singapore Management University's School of Law

[2] Ministry of Law, "Public Consultation on Proposed Amendments to the Companies Act to Strengthen Singapore as an International Centre for Debt Restructuring" <https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-proposed-amendments-to-the-companies-act-.html> ("**MinLaw Public Consultation")** (accessed 1 September 2017).

[3] Companies Act (Cap 50, 2006 Rev Ed) ("**CA**").

[4] *Singapore Parliamentary Debates*, *Official Report* (10 March 2017) vol 94 at 12.04pm, <https://sprs.parl.gov.sg/search/report.jsp?currentPubID=00011050-WA> (Indranee Rajah, Senior Minister of State for Finance).

[5] Committee to Strengthen Singapore as an International Centre for Debt Restructuring, "Report of the Committee" at para 3.7. <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Report%20of%20the%20Committee.pdf> (accessed 1 September 2017).

[6] Companies (Amendment) Bill 2017 (Bill 13 of 2017) ("**CA Amendment Bill**") cl 22.

[7] *Ibid*.

[8] *Ibid*.

B. Rescue finance provisions introduced

3. Companies are now permitted to obtain additional funding for the purposes of enabling the company to continue functioning, subject to a court order classifying the priority of credit incurred.[9] This is to give rescue financiers the peace of mind that their security has priority over others, adequately reflecting the risk they undertake. The court can grant different levels, from lowest to highest priority:
    a. to be treated as administrative expense for winding-up;
    b. having super-priority over preferential debts;
    c. secured by a security interest subordinate to existing security; or
    d. secured by a super-priority security interest.[10]

4. The power to grant super-priority status protects financiers who provide funding in such risky circumstances.[11] Without this statutory authority, existing secured creditors may be unwilling to surrender their priority.

C. Cram-down provisions

5. The new provisions grant the court the power to approve of a scheme of arrangement even if a class of creditors opposes the scheme, provided that this scheme is fair and equitable to the dissenting class(es) of creditors, and does not discriminate unfairly between two or more classes of creditors.[12]

D. Pre-packaged scheme voting

6. The court can now approve a scheme of arrangement without any meeting of creditors being ordered or held, subject to a number of requirements being satisfied.[13]

---

[9] *Ibid*.
[10] *Ibid*.
[11] *Supra* n 4.
[12] *Supra* n 6.
[13] *Ibid*.

E. Greater creditor protection and procedural changes

7. The changes spell greater protection for creditors. They include:
   a. disclosure requirements for the company to provide financial information to enable creditors to assess the feasibility of a proposed scheme of arrangement;
   b. allowing creditors to apply to the court during the moratorium period to restrain the company from any disposition of company property or any act of exercise of power of the company that materially prejudices the creditors of the company or significantly diminishes the property of the company;
   c. providing a regime for the submission, adjudication and objection to creditor claims;
   d. granting the court the power to order a creditor re-vote regarding a proposed scheme of arrangement; and
   e. permitting the court to review acts or omissions taken pursuant to the scheme of arrangement after the scheme has been approved.[14]

III. Judicial Management

A. Easier access to judicial management

8. The threshold for companies to apply for judicial management is lowered from "is or will be unable to pay its debts" to "is or is likely to become unable to pay its debts".[15] Further, the rule allowing automatic barring of judicial management if the person who is entitled to appoint a receiver objects has been lifted.[16] Instead, the person has to show that judicial management would cause greater prejudice to himself than the unsecured creditors if the order for judicial management were to be dismissed.[17]

---

[14] *Ibid*.
[15] CA Amendment Bill, *supra* n 6, at cl 25.
[16] *Ibid*.
[17] *Ibid*.

B. Rescue funding for judicial management introduced

9. Court-appointed judicial managers are granted authority to seek additional credit security, which will be placed in order of priority, similar to the rescue funding allowed for schemes of arrangement explained above.[18] This is in addition to the rescue funding sought under a scheme of arrangement.

IV. Cross-Border Insolvency

A. Foreign companies now eligible for judicial management

10. The changes broaden the definition of company to "any corporation liable to be wound up under this Act",[19] hence making foreign companies eligible to apply. This definition is also consonant with what is already used in the CA to determine if a foreign company can be subject to a Singapore scheme of arrangement or winding up.

B. "Substantial connection" test for foreign companies seeking Singapore judicial management, or a Singapore scheme of arrangement

11. The substantial connection test takes into account one or more of the following factors:
    a. Singapore is the centre of main interests of the company;
    b. the company is carrying on business in Singapore or has a place of business there;
    c. the company is a foreign company that is registered under Division 5 of the CA;
    d. the company has substantial assets in Singapore;
    e. the company has chosen Singapore law as the law governing a loan or other transaction (or the resolution of disputes thereunder); or
    f. the company has submitted to the jurisdiction of Singapore courts for the resolution of disputes relating to a loan or other transaction.[20]

[18] CA Amendment Bill, *supra* n 6, at cl 28.
[19] *Id*, at cl 24.
[20] *Id*, at cl 40.

C. Ratification of the UNCITRAL Model Law on Cross-Border Insolvency

12. This allows foreign companies and restructuring proceedings to gain assistance in Singapore courts easily.[21]

D. Abolition of ring-fence rule for foreign companies in winding up

13. With this change, foreign creditors are not unfairly prejudiced in winding-up procedures.

14. The implications of these changes are manifold, and they see Singapore taking a more pro-debtor stance in the turbulent economic climate, with rising levels of insolvencies and restructurings.[22] The changes also make it easier for foreign companies to access court procedures for their restructuring needs. These are welcome changes as they demonstrate that Singapore is poised to become an international centre for debt restructuring.

[21] CA Amendment Bill, *supra* n 6, at cl 41.
[22] Minlaw Public Consultation, *supra* n 2, at para 2.1.