Client Alert | Financial Restructuring and Insolvency

Singapore: Asia Pacific's Debt Restructuring Hub?

September 2016

Authors: **Damien Whitehead**, **Guan Feng Chen**, **Wei Bin Quek**, **Leona Lam**

Earlier this year the Committee to Strengthen Singapore as an International Centre for Debt Restructuring (the "**Committee**") published, and the Singapore Ministry of Law accepted, recommendations aimed at enhancing Singapore's position as a 'lead centre' for international debt restructuring. Is Singapore now well-positioned to become Asia Pacific's debt restructuring hub?

Background

In 2010, the Insolvency Law Review Committee (the "**ILRC**") was formed to review Singapore's corporate insolvency and restructuring laws and to provide recommendations for the Omnibus Insolvency Bill, intended to implement a comprehensive framework for corporate insolvency and restructuring in Singapore. A few years after the ILRC published its report, the Committee was formed to promote Singapore as a lead centre for international debt restructuring. The Committee has made a number of recommendations to the Ministry of Law for reform of Singapore's laws, derived mainly from its consideration of the ILRC report and of the UK and US regimes, with particular attention given to Chapter 11 of the US Bankruptcy Code.

This alert provides a comparative analysis of those recommendations against Hong Kong's current corporate insolvency and restructuring regime, comprising the *Companies Ordinance* (Cap. 622) ("**CO**"), the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap 32) ("**CWMPO**") and the reform proffered by the *Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance* 2016 ("**Amendment Ordinance**"), to help gauge how well Singapore will be positioned to become Asia Pacific's debt restructuring hub.

Comparison of Singapore and Hong Kong

Key provisions	Singapore Committee Recommendation	Analysis of the Committee's Recommendation	Hong Kong Position
Laws			
Insolvency and restructuring laws	Expanding the ability of the Singapore courts to accept jurisdiction by prescribing a list of non-exhaustive factors and by explicitly recognising the discretion of the courts to invoke its jurisdiction should the situation not satisfy any of the prescribed factors.	This approach would provide clarity as to whether pursuing restructuring in Singapore is a viable option.	The current regime does not provide wide-ranging powers for Hong Kong courts to accept jurisdiction. The current regime empowers Hong Kong courts to wind up statute corporations not registered under the CO (such as foreign incorporated companies) if there is sufficient connection with

Insolvency and restructuring laws (cont.)			Hong Kong. The Amendment Ordinance does not expand the current jurisdiction of the Hong Kong courts.
	Adoption of the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") so that restructurings performed in Singapore can be more easily recognised and enforced overseas.	Formal adoption of the Model Law would help avoid further confusion stemming from differing common law principles established by case law in different jurisdictions, and harmonise Singapore's system with those of, for example, the UK and the US.	The current regime does not adopt the Model Law. The Amendment Ordinance does not change the current position.
Automatic Moratorium	Moratorium should arise upon application for a scheme of arrangement.	Earlier moratorium in Singapore would provide the valuable 'breathing space' afforded under the US and UK regimes for a debtor to formulate a rescue plan and solicit creditor support. This is compared with a later moratorium, in which a debtor must juggle running its business, defending claims, and formulating a rescue plan all at once.	Currently, the initiation of a scheme of arrangement under the CO does not trigger a moratorium on creditor actions. This position is not changed under the Amendment Ordinance.
Disclosure	Requiring different levels of information disclosure at each stage of the restructuring process.	This provides creditors with sufficient currency to be at ease with the restructuring process. Increased disclosure means increased transparency and, therefore, a greater likelihood of gaining necessary creditor support (and court sanction) earlier, or indeed at all.	Under the CWMPO, debtors are required to provide explanatory statements to be made available to creditors. The Amendment Ordinance enhances the requirement to provide information to creditors in a creditors' voluntary winding up. However, it does not address the disclosure requirements for restructuring.
'Pre-pack' restructurings	Recognition of negotiated and agreed restructurings prior to commencing formal court restructuring proceedings.	Currently, a debtor is subjected to a more drawn-out process, which can take around a year or more to complete as compared to US 'pre-packs', which can be executed in as little as 30 to 45 days. Enabling 'pre-packs' would increase efficiency, especially where the debtor knows it will likely gain the requisite creditor consent for a quicker restructuring and thereby minimise the time during which the debtor is subjected to business-	The current legislative regime and the Amendment Ordinance do not have the concept of "pre-pack" restructurings.

		damaging delay.	
Framework / Infrastructure			
Specialist judge & judge-led approach	Restructuring cases should be handled by a dedicated bench of specialist judges.	Clear and predictable outcomes enable better planning of strategies and sooner enable debtors (and their creditors) to continue 'business as usual'.	There are no specialist insolvency judges under the current legislative regime. The Amendment Ordinance does not address this issue.
Case management	Judges should have the ability to group related cases together and to refer cases to alternative forms of dispute resolution.	These powers would assist the above recommendation by enabling judges to proactively hear and progress related cases together, independently of the motion of the parties. Similarly, where it appears appropriate to a judge that a case or aspect of a case might be more expeditiously dealt with in an alternative forum, the power to make an order to that effect will go towards achieving overall regime efficiency.	The CO and CWMPO do not expressly contain provisions catering to case management in the Hong Kong courts. However, these powers are already contained in Hong Kong's civil procedure rules, which allow the Hong Kong court to consolidate proceedings where the rights of relief claimed arise from the same series of transactions[1] and also to refer cases to ADR.[2]
SIAC/SICC	Alternative dispute resolution ("**ADR**") institutions must be expanded and experienced members sought out in order to bolster the case-handling capacity and capabilities of Singapore ADR.	The Singapore International Arbitration Centre ("**SIAC**") is an arbitral court comprised of 18 practitioners from across the globe. The number of cases handled by the institution has consistently increased, particularly since 2008, to have reached the highest level yet in 2015, with 271 cases handled. Therefore, bolstering the ranks and capabilities of the SIAC is necessary to handle the increasing arbitration caseload in Singapore.	The Hong Kong International Arbitration Centre ("**HKIAC**") is also experiencing rapid growth. Last year, it has the highest number of new cases since 2010, with 520 cases handled of which 79% involved at least 1 non-Hong Kong party. A majority of the cases handled by HKIAC are domain name disputes. It would be useful to expand the capability and experience of the HKIAC to include insolvency matters.

Conclusion

The above comparison shows that the changes proposed by the Committee are certainly more progressive and would bring the Singapore regime more in line with the US and UK regimes than those proposed by the Amendment Ordinance. They may well improve Singapore's competitiveness as a forum for cross border insolvency and restructuring, perhaps at the expense of Hong Kong. As referred to in our previous client alert June 2016, we believe the Amendment Ordinance to be a lost opportunity for bringing the Hong Kong regime similarly in line.

However, although Singapore's Ministry of Law has broadly accepted the Committee's recommendations, practically speaking it remains to been seen as to when these recommendations will be given legal effect, how they will then be applied, what their impact will then be and, accordingly, whether Singapore will indeed become Asia Pacific's restructuring hub as a result.

1 Order 4, rule 9 of The Rules of the High Court (Cap 4A).

2 As above, Order 1A, rule 4(2)(b).

White & Case Pte. Ltd.
8 Marina View #27-01
Asia Square Tower 1
Singapore 018960

T +65 6225 6000

White & Case
9th Floor Central Tower
27 Queen's Road Central
Hong Kong

T +852 2822 8700