By Steven W. Golden[1]

The Delaware of Asia

Singapore Establishes Itself as a New Restructuring Center

In May 2015, the government of Singapore — a sovereign city-state at the tip of Peninsular Malaysia — formed the "Committee to Strengthen Singapore as an International Centre for Debt Restructuring," which is tasked with recommending reforms in order to cement Singapore as a hub for international debt restructuring. This committee's work culminated in early 2017, with Singapore's adoption of the Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (hereinafter the "Guidelines") on Feb. 1 and the passage of the Companies (Amendment) Bill 2017 (hereinafter the "Amendment"),[2] which amended the Companies Act (hereinafter the "Act"), on March 29. This article explains the most impactful portions of the Guidelines and Amendment.

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The Guidelines

In late 2016, insolvency jurists from 10 different countries met in Singapore to discuss cooperation in cross-border insolvency cases.[3] This group, the Judicial Insolvency Network, adopted the Guidelines, which set out features to be reflected in cross-border protocols. The Guidelines aim "to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction."[4] Among other things, the Guidelines promote communication among courts,[5] permit a party to be heard by a foreign court[6] and facilitate the recognition of foreign court orders.[7] Complementing its adoption of the Guidelines, Singapore also adopted the UNCITRAL Model Law on Cross-Border Insolvency as part of the Amendment.[8] Thus, almost overnight, Singapore joined numerous other jurisdictions in adopting laws and guidelines that will facilitate cross-border insolvency proceedings.

The Amendment

The two key mechanisms for restructurings in Singapore are the schemes of arrangement and judicial management. In a scheme of arrangement, the debtor company generally remains in charge of its affairs, with the end goal of developing a plan to compromise or otherwise restructure corporate debt with creditors. In a judicial management, existing management is displaced in favor of an independent auditor, who takes control of the business in an attempt to bring it back to profitability.

> **With the adoption of the Amendment and Guidelines, Singapore has throttled itself to the forefront of judicial restructuring proceedings in Asia, implementing laws and procedures strikingly similar to those found in chapter 11 of the U.S. Bankruptcy Code.**

Through the Amendment, Singapore has clarified and expanded its existing financial restructuring system and adopted additional provisions akin to those in chapter 11 of the U.S. Bankruptcy Code. First, Singapore has increased foreign companies' access to judicial management by providing that a foreign company is permitted to apply for judicial management where such company is a "corporation liable to be wound up under" Singapore law, the same standard as previously required for a company to apply for a scheme of arrangement.[9] Moreover, access to judicial management has been expanded in general, lowering the threshold for such a restructuring of a company from "is or will be" unable to pay its debts to "is or is likely to become" unable to pay its debts.[10]

Second, prior to the passage of the Amendment, a debtor company was granted

1 The author thanks Ambassador David Adelman of Reed Smith LLP and Debra Grassgreen of Pachulski Stang Ziehl & Jones LLP for their guidance with this article.
2 The Amendment is *available at* acra.gov.sg/uploadedFiles/Content/Legislation/Companies%20(Amendment)%20Act%202017%20gazette.pdf (unless otherwise indicated, all links in this article were last visited July 6, 2017).
3 *See* "Judicial Insolvency Network Discusses Guidelines for Cross-Border Insolvency Matters," Supreme Court Singapore, *available at* supremecourt.gov.sg/news/media-releases/judicial-insolvency-network-discusses-guidelines-for-cross-border-insolvency-matters.
4 Introduction to Guidelines, ¶ A.
5 Guidelines 7-9.
6 Guidelines 10-11.
7 Guidelines 12-13.
8 Act § 354A-C; Tenth Schedule to the Act.
9 Act § 227AA.
10 Act § 227B(1)(a).

an automatic moratorium (akin to the automatic stay in chapter 11) if it applied for judicial management, but no such moratorium applied in schemes of arrangement. The Amendment now provides that a debtor undergoing a scheme of arrangement may apply to the court for *moratoria* where the company has or intends to propose an arrangement among the company and its creditors.[11] Moreover, upon such an application, an automatic 30-day moratorium will be imposed, giving the debtor company the "breathing space" that is necessary while the court decides whether to grant the application for a lengthier moratorium.[12] If the court grants the company's application for a moratorium, it can also extend such a moratorium to proceedings against the company's non-debtor affiliates.[13]

Next, the Amendment now provides for a process in schemes of arrangement that is strikingly similar to "cramdowns" in chapter 11. The Act now provides that where there are multiple classes of creditors, the court can approve a scheme of arrangement where a class opposes the arrangement so long as a majority of creditors present and voting approve of the arrangement, and those creditors represent at least 75 percent of the value to be bound by the arrangement.[14] The court can only effectuate this cramdown if the "[c]ourt is satisfied that the compromise or arrangement does not discriminate unfairly between [two] or more classes of creditors, and is fair and equitable to each dissenting class."[15] Adopting another important provision from chapter 11, the Amendment also allows a debtor company — whether in a scheme of arrangement or under judicial management — to receive rescue financing. Through these provisions, lenders can provide rescue financing (comparable to debtor-in-possession financing in chapter 11) and receive superpriority status with court approval.[16] In addition, the Amendment provides for a pre-packaged scheme of arrangement, allowing the court to approve such a compromise on an expedited schedule.[17]

Conclusion

With the adoption of the Amendment and Guidelines, Singapore has throttled itself to the forefront of judicial restructuring proceedings in Asia, implementing laws and procedures strikingly similar to those found in chapter 11 of the U.S. Bankruptcy Code. Whether this translates to a marked increase in restructuring proceedings filed in Singapore remains to be seen; however, Singapore looks poised to become the restructuring hub of Asia. abi

11 Act § 211B(1).
12 Act § 211B(8) and (13).
13 Act § 211C.
14 Act § 211H.
15 Act § 211H(3)(c). *See also* Act § 211H(4) (providing for definition of "fair and equitable").
16 Act §§ 211E and 227HA.
17 Act § 221I.