

CNPLAW LLP'S PARTNER, MR BILL JAMIESON FEATURED IN IFR ASIA ARTICLE ON "SINGAPORE CHANGES RESTRUCTURING LAW"

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Singapore changes restructuring law

Singapore has made big changes to its restructuring regime, bringing it closer to the US system and making it more attractive as an international jurisdiction for corporate debt workouts.

On March 10, the government passed a Companies Act update, with several amendments related to the restructuring of entities. The provisions are expected to take effect in the current half.

The new framework gives struggling companies more protection from creditors and greater access to rescue financing, strengthening their chances of avoiding liquidation. It also aims to support Singapore's efforts to make locally agreed restructurings more internationally recognised.

"What Singapore is looking to do is obtain a more receptive hearing in foreign courts for people trying to enforce Singapore orders," said **Bill Jamieson, partner at CNPLaw, formally known as Colin Ng & Partners LLP.**

"There are moves towards judicial cooperation, designed to give Singapore courts more relevance when it comes to cross-border restructurings."

The amendments introduce to Asia a number of concepts from US bankruptcy laws. Among other changes, Singapore companies will benefit from an automatic moratorium, as the courts will be able to block creditors from taking action for 30 days as soon as any entity proposes a restructuring arrangement.

The amendments will also make it easier for stressed companies to obtain new "rescue financing" from a white knight, in allowing them to issue debt with priority over other creditors.

"This change allows the court to authorise a company to incur financing and also authorises the company to grant security over new financing, so that a new financier could get first-ranking security above other creditors, if the court decides it is in the best interests of the company," said Shaun Langhorne, head of South-East Asia restructuring at Hogan Lovells.

"That change has the ability to have a huge impact. It allows companies to have access to funding, and will most likely attract the alternative investment community and conventional lenders to come in and provide financing."

SUPER PRIORITY

That measure could help more companies survive, though some individual creditors could be worse off if it subsequently fails.

"This is expected to maximise value for all stakeholders as a company is worth more as a going concern than a gone concern (liquidation)," wrote Nick Wong, a credit analyst at OCBC.

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"However, super priority of rescue financing would subordinate the claims of existing creditors, which could impact their recoveries in the event that the company fails in its restructuring and is liquidated."

In another amendment, the court will be allowed to "cram down" large holders in a small creditor class if they block the path of the restructuring in the hope of winning better compensation, even if the company has not achieved the necessary quorum in all creditor classes.

"Even if the requirements in section 210 of the Companies Act are not met in respect of a particular class, the court has the power to permit a compromise to be imposed on that class," said Jamieson. "It prevents a particular class of creditors from holding out and preventing the restructuring going ahead."

Companies will also be able to dispense with scheme meetings if they already have informal agreements with creditors when they come to the court. If they can convince the court that all of the relevant creditors' interests have been looked after, companies will be allowed to move ahead with pre-packaged restructurings.

INTERNATIONAL STANDING

The provisions are new to Asia and will bolster Singapore's push to become an international hub for restructuring.

Originally, Singapore had planned to introduce a so-called "omnibus" insolvency bill, putting everything in one piece of legislation, but, instead, decided to pass some interim measures, while a broader bill is developed in the next year or two.

Some market watchers said the measures were ambitious and questioned if Singapore's courts would be able to wield the same clout overseas as those in the US, but the changes were seen as positive.

"Singapore courts don't have the same reach as the US, but US courts have had the benefit of their bankruptcy code for the past century," said Hogan Lovells' Langhorne.

The aim is to foster the same regard for the Singapore court. Singapore is becoming a hub for finance, shipping and arbitration, so lots of people have links to Singapore now. In time, if it is applied in the way it suggests, it may well be that a court order in Singapore is respected globally."

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