
Restructuring & Insolvency

Applying for a Moratorium in Bankruptcy Proceedings: The Requirement of a Serious and Viable Proposal

Introduction

Under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), which deals with bankruptcy proceedings, an insolvent debtor intending to propose a voluntary arrangement may apply to Court for a moratorium restraining bankruptcy applications and other proceedings against the debtor so as give breathing room for consideration of the proposal. In *Re Sifan Triyono* [2021] SGHC 55, the Singapore High Court highlighted that, in considering applications for such a moratorium, it would filter out proposals which are not "serious and viable".

The debtor in this case had applied to Court for an interim moratorium under section 279(2) of the IRDA. The High Court dismissed the application, finding that the debtor had not shown the proposed voluntary arrangement to be serious or viable due to a lack of clarity and transparency over the alleged source of funds for repayment under the proposal.

In reaching its decision, the Court set out the relevant principles in considering the making of an interim order under section 279(2) of the IRDA. This Update provides a summary of the case and highlights the key points to be observed in a proposal for a voluntary arrangement.

Brief Facts

The Applicant, in anticipation of execution proceedings and bankruptcy proceedings against him, filed an application for an interim order under Part 14 of IRDA to allow for consideration of a proposal for voluntary arrangement ("**Proposal**"). Under the Proposal, payment to the Applicant's creditors would come from repayment of a debt allegedly owed to the Applicant by an Indonesian company ("**KTP**").

The Assistant Registrar ("**AR**") found that there were serious doubts about the viability of the Proposal and dismissed the application for the interim order. The reasons included the following:

- (a) It was unclear what the legal basis of KTP's payment to the Applicant's creditors was and how the creditors would enforce any failure to pay on the part of KTP.
- (b) There were doubts over KTP's ability to pay as it was in the red.

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- i. The Applicant had provided KTP's projected revenue and cash flow, but not its operating costs and expenses.
- ii. The Applicant set out projected revenue streams for KTP based on certain contracts KTP had allegedly entered into, but did not set out sufficient information on the terms of the contracts and how they translated into the proposed payment schedule in the Proposal.

The Applicant appealed against the decision of the AR.

Holding of the High Court

The High Court dismissed the appeal, upholding the decision of the AR.

In reaching its decision, the Court set out the relevant principles in considering the making of an interim order under section 279(2) of the IRDA:

- (a) The effect of an interim order is a serious incursion into the rights of creditors to proceed against a debtor.
- (b) In considering the making of an interim order, the Court will be conscious that one of the reasons for the discretion is to filter out proposals which are not serious and viable, so as to avoid the unnecessary and wasteful convening of creditors' meetings.
- (c) In order for the Court to decide whether a proposal is serious and viable, the debtor's plan must contain sufficient details at the outset.
- (d) If the judge concludes that the proposal is not one which can be described as serious and viable, such as where there is no apparent likelihood of benefit to the creditors, nor any real prospect of the proposal being productive, it would be expected that as a matter of discretion, the judge would refuse to make an interim order.

On the facts, the Court found that the Applicant had not shown that the Proposal was serious and viable. The Court observed that:

- (a) The dismal financial state of KTP called into question its ability to make future repayments.
- (b) The lack of clarity about the contracts that underpinned KTP's ability to make future payments, and the lack of transparency about how the financial and operational costs would affect future revenue, affected the viability of the proposed repayments.
- (c) There was uncertainty arising from enforcement against KTP as a foreign third party.

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Concluding Words

The Court's decision highlights that the grant of a moratorium pursuant to the voluntary arrangement process in bankruptcy is not an automatic matter of course. The applicant must demonstrate a serious and viable proposal in order to justify the incursion into the rights of the creditors to seek repayment from the applicant.

Applicants should thus ensure that the initial proposal presented to the Court contains sufficient detail from the outset to prove that the voluntary arrangement is in fact viable. The proposal should demonstrate benefit to the creditors and a real prospect of success, as well as contain information on how payment is to be made and enforced and the source of funds for such payment.

For further queries, please feel free to contact our team below.

Contacts



Chua Beng Chye
Deputy Head, Restructuring &
Insolvency

T +65 6232 0419

beng.chye.chua@rajahtann.com



Cherie Tan
Partner, Restructuring & Insolvency

T +65 6232 0428

cherie.tan@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

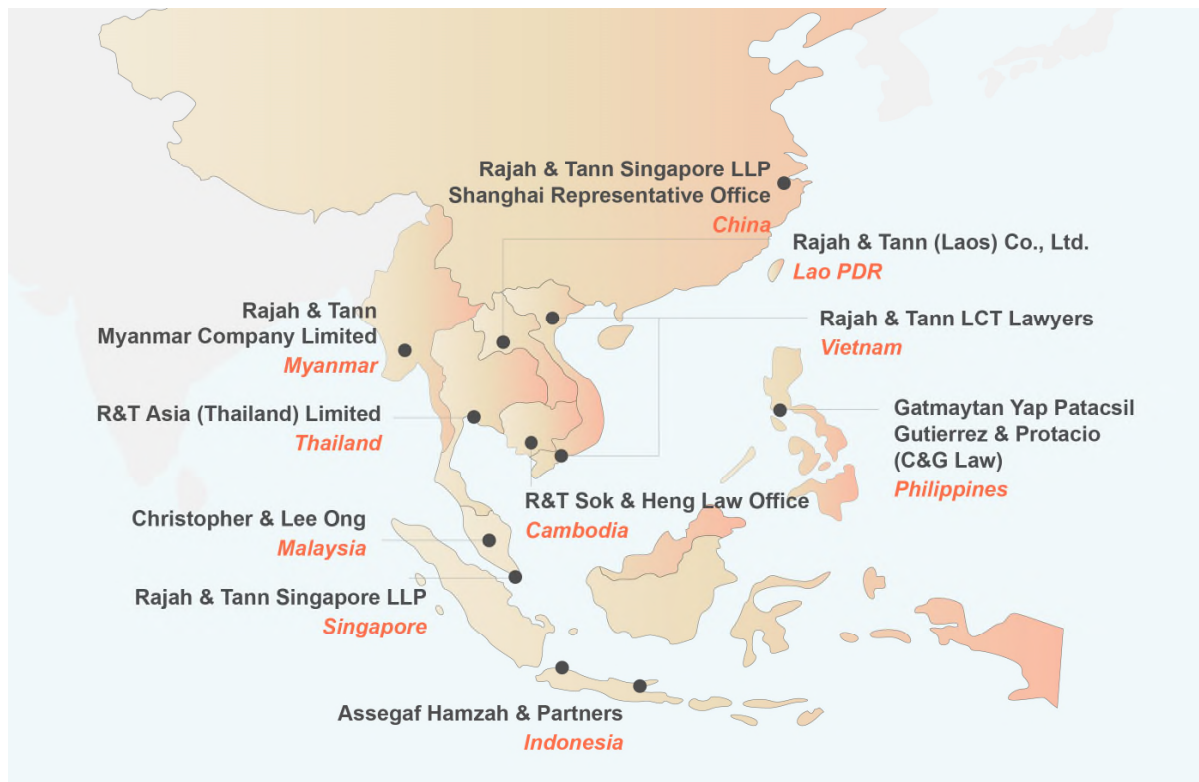
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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