

Restructuring & Insolvency

Reiterating the Procedural and Substantive Requirements for a Moratorium for Schemes of Arrangement

Introduction

The Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("**IRDA**") allows companies intending to propose a scheme of arrangement to apply to court for a moratorium, during which proceedings against the company would be restrained so as to allow breathing room for its restructuring efforts. To balance this with the safeguarding of creditors' interests, there are certain requirements for an application for a moratorium.

In *Re All Measure Technology (S) Pte Ltd (RHB Bank Bhd, non-party)* [2023] SGHC 148, the Singapore High Court set out the applicable principles regarding the granting of a moratorium under the IRDA, including the procedural and substantive requirements. The applicant company in this case sought a moratorium under section 64 of the IRDA to propose a scheme of arrangement. The application was opposed by several creditors, including RHB Bank Berhad.

The Court dismissed the application, finding that the applicant had not complied with both the procedural and substantive requirements. Procedurally, the applicant had failed to provide the necessary information, show evidence of creditor support, or publish a notice of the application. Substantively, the Court found that the application was not made in good faith, and that there was no real evidence of support from the general run of creditors.

This case highlights again that moratorium relief is discretionary, and that the Court will be vigilant to ensure that applications are properly brought.

Sim Kwan Kiat, Walter Yeo and Timothy Ang from Rajah & Tann Singapore LLP represented two of the opposing creditors in this application. Walter Yeo successfully argued the case for RHB Bank Berhad, the main opposing creditor.

Brief Facts

The applicant company had entered financial distress, and had earlier obtained a three-month moratorium under section 64 of the IRDA which expired on 21 February 2023.

In this application of 6 April 2023, the applicant sought a second moratorium to propose a restructuring plan to its creditors. The plan would involve one Mr Soon (a creditor of the applicant) waiving his claim



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for repayment in exchange for the applicant's shares. The remaining creditors would be paid from the proceeds of sale, balance inventory, and a purported injection of "up to" S\$250,000.

The application was opposed by a number of the applicant's creditors.

Holding of the High Court

The Court dismissed the application, finding that the applicant did not comply with the procedural and substantive requirements of an application for a moratorium.

Moratorium requirements

There are certain procedural requirements that must be met under section 64 of the IRDA before a moratorium can be granted. These requirements serve to further the court's ability to assess the substantive requirements. While an applicant's failure to comply with some of these requirements may be cured, others are meant to be mandatory and failure to comply with these requirements may result in the dismissal of an application. For the purposes of this decision, the mandatory procedural requirements include the following:

- **List of creditors** – The company must file a list of every secured creditor of the company, as well as a list of all unsecured creditors who are not related to the company (or, if there are more than 20 of such creditors, a list of the 20 largest unsecured creditors).
- **Creditor support** – The company must show evidence of creditor support for the compromise or arrangement, together with an explanation of how such support would be important for the success of the compromise or arrangement.
- **Notice of application** – When applying for a moratorium, the company must publish a notice of the application in the Government Gazette and in at least one English local daily newspaper. The Court here was of the view that a seven-day notice period should apply.

As for the substantive requirements, the test for granting a moratorium is whether there is a reasonable prospect of the compromise or arrangement working and being acceptable to the general run of creditors. To make this assessment, the court will look to the following factors:

- **Whether the moratorium application is made in good faith** – The court will look at whether the proposal is sufficiently particularised, since the lack of particularisation may show the absence of serious intent and thought.

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- **Whether the company has furnished evidence of creditor support**
 - When a company has proposed a compromise or arrangement, evidence of creditor support must relate to support for the compromise or arrangement itself and an explanation of the importance of that support.
 - When a company has not proposed a compromise or arrangement, it must provide evidence of creditor support for the moratorium, as well as a brief description of the intended compromise or arrangement.
 - If significant or crucial creditors are supportive, that would be a material consideration. However, the court will refrain from taking a vote count, but will make a broad assessment as to the acceptability of the scheme to the creditors.

Application

On the facts, the Court found that the applicant had not complied with the procedural requirements in the IRDA.

- **List of creditors** – The Court had doubts as to the accuracy of the list of secured and unsecured creditors provided by the applicant.
- **Creditor support** – Apart from the support from Mr Soon, there was no evidence of any creditor engagement (let alone creditor support) over the past six months.
- **Notice of application** – The applicant only published notice of the application in the Business Times two days before the hearing of the application, and in the Government Gazette on the day of the application. The Court highlighted that this was insufficient time for creditors to be notified of the application and to respond meaningfully should they wish to do so.

The Court also found that the applicant had not complied with the substantive requirements for a moratorium.

- **Good faith** – The Court found that the application was not made in good faith as it was not put forward with serious intent and thought. The applicant did not particularise the details of the intended scheme, which included contradictory particulars, discrepancies and a lack of supporting evidence. Further, when the lack of particulars was brought to the applicant's attention by RHB Bank Berhad, the applicant failed to respond satisfactorily.
- **Creditor support** – There was no real evidence of support from the general run of creditors apart from Mr Soon and two other individual creditors. In particular, the Court noted that the weight attributed to Mr Soon's support should be minimal as he would eventually become the

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owner of the company. In any event, the Court emphasised that support from a large creditor by itself is not sufficient to push a moratorium application through.

Concluding Words

The Court's decision highlights that it will not allow applicants for a moratorium to game the system by seeking the benefit of restraint orders without putting forward a serious proposal. Importantly, applicants must follow the procedural and substantive requirements for a moratorium application, which are designed to facilitate the Court's assessment of the application. This includes giving sufficient notice to creditors so as to allow them to make any objections, providing sufficient particularisation of the proposed compromise or arrangement, and evidence of creditor support.

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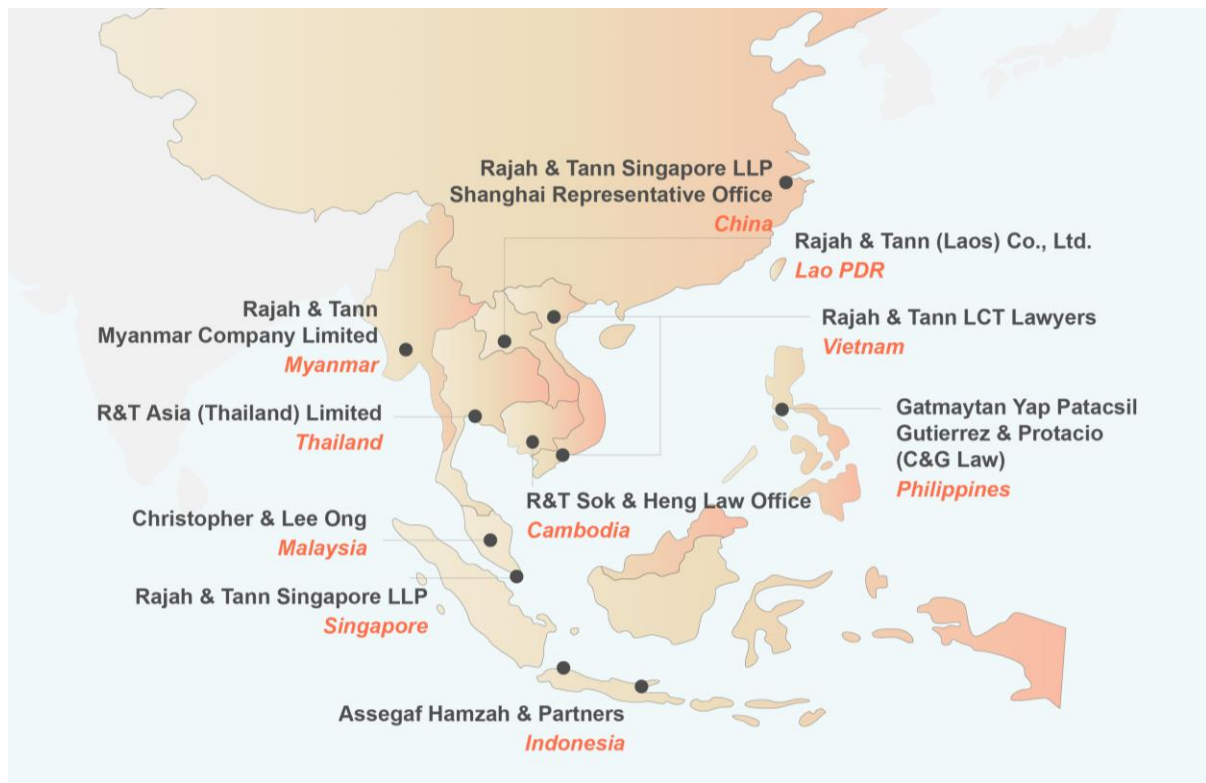
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