Restructuring & Insolvency

Singapore Court Grants Sanction of Scheme of Arrangement Between a Crypto Company and its Users, the First Ever in the Crypto Space to Take Effect in Singapore

Introduction

Section 210 of the Companies Act 1967 ("**Companies Act**") provides a flexible tool for companies seeking to restructure their debts in Singapore by way of a scheme of arrangement, which is a Court-approved agreement between a company and its stakeholders in relation to the former's debt obligations. The provision has seen much use by companies in distress over the years to varying degrees of success, but the case of *Defi Payments Pte Ltd* (HC/OA 378/2023) is the first of its kind between a cryptocurrency company and its users.

In April 2023, the applicant company, Defi Payments Pte Ltd, obtained leave of the Singapore Court to convene a meeting of creditors for the purposes of presenting a scheme of arrangement for voting by its creditors ("**Scheme**"). The vote for the Scheme received strong creditor approval of more than 90% by number and in value (present and voting) from each of the two classes of creditors and across the board, far exceeding the statutory threshold set out in section 210(3AB) of the Companies Act. Following the vote, the Court granted the sanction of a cryptocurrency scheme of arrangement on 10 August 2023, and the Scheme has since taken effect.

The applicant company was represented by Rajah & Tann Singapore LLP's Sheila Ng, Deputy Head of Restructuring & Insolvency, together with Benedict Tedjopranoto and Naomi Lim. Hoon Chi Tern, Cynthia Wu and Melvin Chua from Rajah & Tann Singapore LLP's transactional team also advised the applicant company in the restructuring process.

Brief Facts

The applicant company ("**Company**") is part of a global group of companies which provides online services over its website and its mobile application relating to cryptocurrencies, including the lending, staking and trading of cryptocurrencies. At the time the Company began exploring its restructuring options in Singapore, it had approximately 150,000 account holders and managed cryptocurrency assets valued in the region of US$300 million.

In mid-2022, often referred to as the peak of the "crypto winter", the Company, like many other cryptocurrency exchanges, faced financial and liquidity pressures due to a number of factors, including

the downturn of the cryptocurrency market and its subsequent knock-on effects on cryptocurrency prices and other cryptocurrency exchanges as well as increased withdrawal requests.

The first helping hand extended by Singapore's restructuring regime to the Company was the moratorium under section 64 of the Insolvency, Restructuring and Dissolution Act 2018[1] ("**IRDA**"), Singapore's omnibus legislation on insolvency laws, which the Company sought and obtained in July 2022. The moratorium (and the subsequent extensions) granted by the Singapore Court afforded the Company the time and breathing space it needed to work together with its financial advisors to propose a scheme of arrangement to be placed before its creditors for a vote.

In April 2023, the Company successfully obtained leave of the Singapore Court to convene a meeting with its creditors to present the scheme of arrangement and place it before the creditors for a vote. The scheme of arrangement had unique features, including dual recovery tracks which creditors could elect to participate in, an opportunity to select which cryptocurrency they would prefer to receive distributions under the Scheme in, the nomination of a creditor onto the Company's board of directors as well as the opportunity to bid for an early exit via a Reverse Dutch Auction mechanism.

Key Takeaways

The restructuring of a cryptocurrency company presents many different and unique challenges from the restructuring of a company hailing from a conventional industry. Some of the more pertinent challenges are explored below.

(i) Creditor management

There are numerous challenges in managing the creditor base of a cryptocurrency company, which is vastly different than that of a company in a conventional industry. The (often unrepresented) creditor base may potentially run up to the hundreds of thousands located across the globe. The interest level of creditors also varies; on one end of the spectrum, there may be many creditors with negligible to low claims and may not be particularly invested in the process. On the other end of the spectrum, there may be numerous creditors who are highly influential and able to corral the support of fellow creditors to back their position. It is therefore imperative to ensure that there is an appropriate avenue for creditors to have their concerns, queries and feedback heard and addressed.

A key aspect of creditor management is constant and effective communication and disclosure of information. In such restructuring undertakings, the Honourable Justice Aedit Abdullah once made the observation in another cryptocurrency company restructuring that the debtor company "*should ensure proper communication and engagement*" with its creditors.[2] In the present case, the Company and its financial advisors employed various strategies to meet its desired goals – for example, updates on key developments, court hearings or key restructuring documents would be circulated by way of email, via

[1] Previously section 211B of the Companies Act
[2] *Re Zipmex Co Ltd and others* [2022] SGHC 196

its website as well as its official Telegram group. Furthermore, informal polls were used to get a sense of where creditor sentiment may lie with respect to a particular matter. Where there was a need for live, direct engagement and a question-and-answer segment, such as to share a major update, the Company would conduct online live-streamed townhalls (and subsequently upload a recording of the same) and allow creditors an opportunity to submit questions prior to and during the townhall's "Ask Me Anything" segment.

The centralisation and aggregation of information was also a useful strategy which the Company employed given the sheer volume of creditors. It was inevitable that there would be a multitude of repeat queries, and the Company and its financial advisors used centralised platforms such as a dedicated website and FAQ page to answer commonly held queries and concerns. Subsequently, when the scheme process was underway, the Company engaged the services of third-party professionals to design a bespoke, access-restricted website for participation in the scheme process, such as uploading documents, presenting key timelines, and voting for the scheme.

Another aspect of creditor management is managing the expectations of various creditors. The demographics of cryptocurrency creditors make up an extensive range, from passive creditors holding only a few dollars in claim value, to concerned creditors who may not understand the industry particularly well, and to impassioned advocates who hold strong opinions on the restructuring. Oftentimes, simple misunderstandings may lead to further confusion. It is important for the scheme company to sufficiently engage and address specific concerns that each demographic of creditors may have, and the company's hands are usually full in ensuring the constant flow of accurate information and managing potentially hostile creditor activism.

(ii) Formation of an informal committee of creditors

In a debtor-in-possession restructuring, it is also generally helpful to constantly get a view of creditors' sentiments and feedback which would ultimately shape the direction of the restructuring plan. A method that was suggested by the Singapore Court in the present matter was the formation of an informal committee of creditors ("**COC**"), which is essentially a body of creditors that serves as a sounding board to the Company and its advisors.

Two takeaways from setting up and interacting with a COC are set out below.

First, it is important to set expectations clearly. It was communicated to the COC members and the rest of the creditors, even before the formation of the COC, that the COC was constituted for consultative purposes, and did not make any decisions on behalf of the general body of creditors, nor bind the Company or the creditors to any particular course of action. Notwithstanding the limited purpose of the COC as a consultative body, it was beneficial to the Company to be able to exchange ideas with the COC members and obtain a sense of what creditors would generally want under a potential restructuring plan.

Second, it is important to have diverse representation within the COC. The COC's makeup broadly followed the overall demographic of the general body of creditors, and it allowed for a multitude of views, feedback and ideas to be discussed at the various regular COC meetings for the Company's consideration.

(iii) Conduct of the scheme meeting and overall scheme process

Another key tool that is available in the Singapore restructuring framework is that of section 68(14) of the IRDA,[3] which is a provision that essentially gives the Singapore Court a wide discretion in approving the manner in which the scheme process is to be conducted.

Under the existing framework, the scheme process (which includes the scheme meeting) is not prescribed a certain format, but certain steps in relation to the filing, inspection and adjudication of proofs of debt must be complied with. For example, each creditor to the proposed scheme must file a proof of debt with the scheme company and the scheme company must adjudicate these proofs of debt within a certain period of time, creditors have the right to inspect and dispute the adjudicated claims of other creditors, and the scheme company must provide a physical copy of the list of creditors before the scheme meeting.[4]

When these steps were enacted in legislation, it was evident that it was contemplated that these steps were to be conducted in the context of a traditional scheme meeting, i.e. a face-to-face meeting held at a physical venue with the scheme company and its creditors present to discuss and vote on the proposed scheme. While the COVID-19 pandemic might have accelerated the transition to electronic meetings, the prescribed regulations are still not feasible in a cryptocurrency scheme. For example, it would not be practical for every single one of the Company's approximately 150,000 creditors to file a proof of debt or to engage their own independent assessor to resolve any adjudication or inspection disputes, given that many may not have the benefit of receiving legal advice and representation in Singapore. Precluding such creditors from voting in the scheme process simply on the basis that they had not filed a proof of debt might also lead to an unjust outcome.

Hence, the Company explored different methods of varying the scheme process to tailor an efficient and practical scheme process which would not fetter the rights that the creditors already had if a scheme followed the prescribed regulations. A few of the key variations proposed by the Company and accepted by the Court pursuant to the Court's power enshrined in section 68(14) of the IRDA were as follows:

- In lieu of creditors each filing an individual proof of debt, the Company deems that a proof of debt has been filed with reference to the account balances of each creditor, i.e. a creditor is already taken to have filed a proof of debt to the amount of their account balances.

[3] Previously under section 211F of the Companies Act
[4] The regulations may be found at section 68 of the IRDA read with the Insolvency, Restructuring and Dissolution (Proofs of Debt in Schemes of Arrangement) Regulations 2020 (previously the Companies (Proofs of Debt in Schemes of Arrangement) Regulations 2017)

- A single independent assessor would be appointed to adjudicate all disputes relating to the adjudication and inspection of proofs of debt.

- The scheme meeting was to be held by way of two distinct stages: (i) an online meeting stage where the Company and its advisors presented the key terms of the Scheme and fielded questions relating to the Scheme and the Scheme process; and (ii) a voting stage, where creditors were given a period of time to submit a vote electronically.

- The votes on the Scheme were to be cast via an online voting system, and the total valid votes cast would form the total universe of creditors "*present and voting*".

Cryptocurrency companies, or any company with a similar creditor demographic that is looking to restructure, would do well to consider how section 68(14) of the IRDA may be used to ensure that a fair, efficient and robust scheme process can be carried out, especially given the prevalence of the internet and video-communication platforms. Of course, as a word of advice, technology is an effective yet fickle servant; scheme companies would thus need to ensure avenues and alternatives to troubleshoot and address technological issues.

(iv) Obtaining the Court's sanction

Finally, in determining whether the Scheme should be sanctioned, the Court applied the well-established principles laid down by our Court of Appeal,[5] in that (i) the applicable statutory provisions must be complied with; (ii) those who attended the creditor's meeting were fairly representative of the class of creditors and that there was no coercion of the minority; and (iii) the scheme is one which an intelligent and honest man of business would reasonably approve.

In this regard, the Court made some useful remarks. As mentioned above, given the sheer number of creditors, which would likely include a large number of passive or less-interested creditors, the total number of creditors who voted might only make up a small percentage of the total number of creditors, even if this minority held the bulk of the debt, as in the present case. Nonetheless, the Court observed:[6]

> "*…legislature did not impose such a [minimum quorum] requirement, and none need be found by the court as a matter of implication, principle or necessity. A creditor may choose not to participate for various reasons; what is essential is that information is disseminated and the opportunity to vote given.*"

Furthermore, in relation to the point made above on creditor activism and voices of objection, as observed by the Court:[7]

[5] *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121
[6] The Court issued brief remarks in lieu of a written judgment.
[7] See footnote 6 above.

> "*…there may be strong views on opposing sides of the debate whether the proposal makes sense: some may see it as reasonable and viable; some may be less sanguine but feel that they may have little choice; and others may feel that it will fail and that some other option should be pursued. Once a proposal is put forward, they all have an opportunity to consider, and especially where voting takes place over time, as was the case here, consult together, and vote according to their own judgment. But unless there is something unfair about the process, or that the scheme does not meet a very low bar of reasonable commerciality, the matter is left to the determination of the special majority of these creditors. There is a vote and the vote is binding on all*."

Hence, despite certain challenges such as creditor opposition to the Scheme, the Court held that on balance, the statutory requirements were met and the Scheme was generally commercially reasonable and, on the basis of strong creditor approval, gave its sanction of the Scheme.

Concluding Words

A scheme of arrangement offers a flexible solution for most companies' restructuring needs. The time-honoured principles relating to the scheme of arrangement are clearly wide enough to apply to both conventional and unconventional industries. This most certainly will not be the last scheme of arrangement in relation to a cryptocurrency company and it remains to be seen as to whether any restructuring tools and processes need to be refreshed to keep up with the changing business landscape, particularly in the crypto space.

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

Restructuring & Insolvency

Contacts

Sheila Ng
Deputy Head, Restructuring & Insolvency
Commercial Litigation

T +65 6232 0590

sheila.ng@rajahtann.com

Benedict Tedjopranoto
Associate, Restructuring & Insolvency

T +65 6232 0574

benedict.tedjopranoto@rajahtann.com

Naomi Lim
Associate, Restructuring & Insolvency

T +65 6232 0936

naomi.lim@rajahtann.com

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

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.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 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

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 | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.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

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

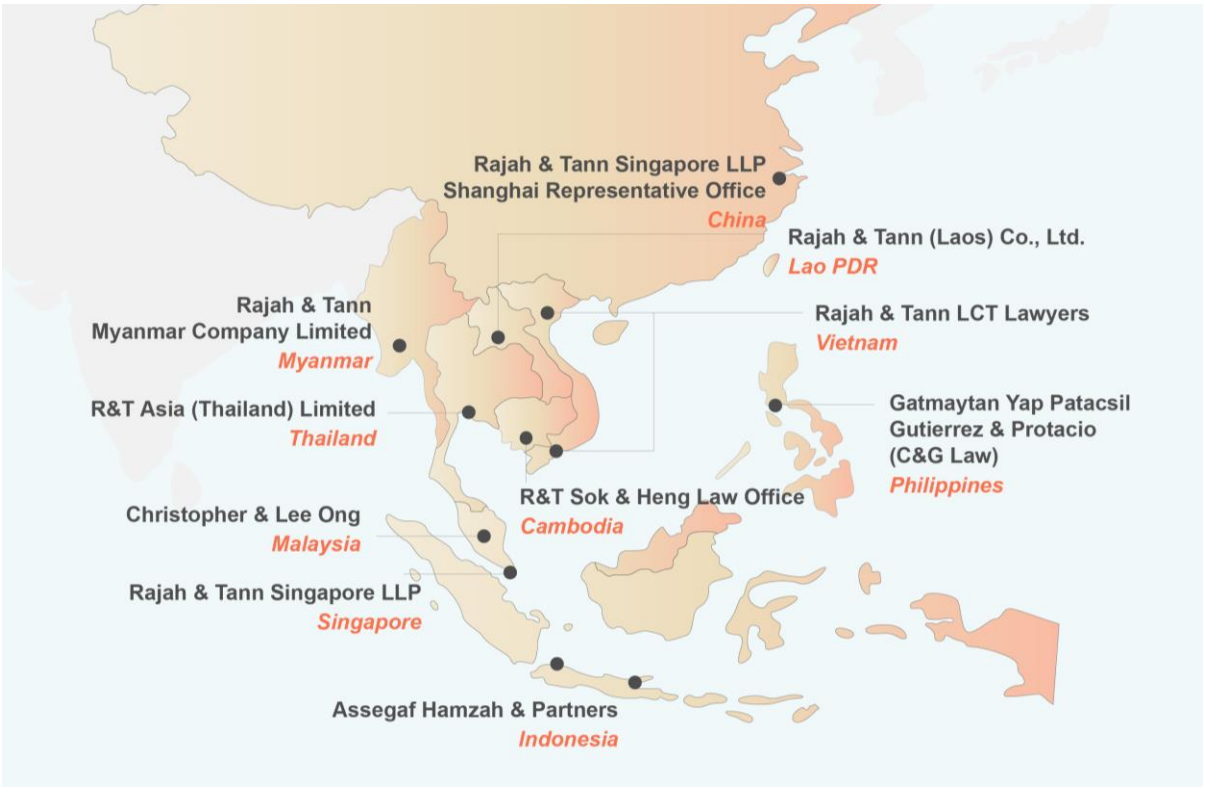
RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

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

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

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.