

Restructuring & Insolvency

Insolvency, Restructuring and Dissolution Act to Come into Operation on 30 July 2020

Introduction

Since the Insolvency, Restructuring and Dissolution Bill was passed in Parliament in October 2018, there has been keen anticipation of when the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") would take effect. On 23 July 2020, it was announced that the IRDA, together with 48 pieces of subsidiary legislation, will come into operation on **30 July 2020**.

The IRDA is a significant piece of legislation and its implementation is set to effect major changes in the restructuring and insolvency regime in Singapore. Among other changes, the IRDA:

- (a) Consolidates all personal and corporate insolvency and debt restructuring laws under one statute;
- (b) Introduces new features to update and enhance the operation of the insolvency and restructuring framework; and
- (c) Establishes a licensing and regulatory regime for insolvency practitioners.

With the IRDA about to come into force, businesses and insolvency practitioners should be aware of the impending changes and the potential impact on the industry. It should also be noted that the COVID-19 pandemic has resulted in certain temporary measures which affect the operation of the insolvency framework.

This Update highlights the key elements of the IRDA, as well as the COVID-19 related measures which relate to personal and corporate insolvency.

Background

The IRDA coming into force marks the final stage of the reform of Singapore's insolvency and restructuring regime which began in 2013 with the Insolvency Law Review Committee's recommendation for a holistic update, followed by further recommendations from the Committee to Strengthen Singapore as an International Centre for Debt Restructuring in 2015.

A phased approach was taken in implementing this reform. In 2015, the Bankruptcy Act was amended to update the personal insolvency regime. In 2017, the Companies Act was amended to update certain aspects of the corporate insolvency framework.

Restructuring & Insolvency

The IRDA thus serves as the culmination of these reforms, consolidating the updates and amendments. On 23 July 2020, the Insolvency, Restructuring and Dissolution Act 2018 (Commencement) Notification 2020 was published in the Government Gazette, stating that the IRDA will come into operation on 30 July 2020. The Ministry of Law also announced the commencement in a [press release](#).

Key Features

Consolidation

The personal insolvency/bankruptcy regime is currently governed by the Bankruptcy Act, while the corporate insolvency regime falls under the Companies Act. The IRDA consolidates these regimes by creating a single omnibus Act which governs personal and corporate insolvency laws, as well as the laws relating to debt restructuring by individuals and companies.

With the personal and corporate insolvency regimes being closely intertwined, the consolidation provides a logical and functional coherence in the legislation.

Ipsa facto clauses

Regarding the corporate insolvency and restructuring regime, one of the notable changes in the IRDA is the introduction of a restriction on the operation of *ipsa facto* clauses.

Ipsa facto clauses allow a contractual party to terminate or modify a contract upon the occurrence of certain trigger events, such as the insolvency or restructuring of the counterparty. This may hinder the restructuring of the company, particularly if key contracts being relied on for the company's business are terminated.

To avoid this, the IRDA limits the exercise of *ipsa facto* clauses which are triggered by the insolvency of a company or the commencement of related proceedings. However, certain types of contracts are excluded from this restriction, including the commercial charter of a ship and eligible financial contracts as prescribed under the Insolvency, Restructuring and Dissolution (Prescribed Contracts under section 440) Regulations 2020.

For other contracts, *ipsa facto* clauses that purport to trigger the right of termination upon insolvency or the commencement of a debt restructuring process may not be enforceable.

Restructuring & Insolvency

Funding of officeholder avoidance actions

Liquidators and judicial managers are empowered to bring an action in Court against the company's officeholders to unwind prejudicial transactions and avoid acts detrimental to creditors. However, these actions are often not pursued due to a lack of financial resources.

The IRDA introduces provisions allowing for proceeds of such actions to be assigned to third parties in exchange for funding of the action. This new avenue of funding may enable more of such actions to be pursued, which may benefit stakeholders if the action is successful.

The power of liquidators and judicial managers to engage in such third-party funding is currently not specifically contained in statute. The specific inclusion of these provisions in the IRDA thus provide greater clarity for liquidators and judicial managers seeking to explore third-party funding.

Summary dissolution

The IRDA introduces a summary procedure for the dissolution of a company. In order to qualify for early dissolution, there must be reasonable cause to believe that the company's assets are insufficient to cover the winding up expenses, and that the affairs of the company do not require further investigation.

The summary procedure serves to streamline the use of resources in administering cases where the company does not have sufficient assets to fund even the administration of the liquidation.

Companies seeking to wind up operations should thus consider whether they are eligible for summary dissolution so as to avoid unnecessary expenses and costs.

Regulation of insolvency practitioners

The IRDA establishes a new regulatory regime for insolvency practitioners acting as officeholders in insolvency and restructuring proceedings. The regime:

- (a) Sets out the requirements, conditions and minimum qualifications for the grant and renewal of licences for insolvency practitioners, imposing minimum qualifications and conditions for the grant and renewal of licences; and
- (b) Establishes a disciplinary framework for officeholders who fail to meet the required standards of professional conduct.

The new regime requires an individual to hold a valid insolvency practitioner's licence in order to undertake insolvency officeholder appointments in winding up, judicial management, receivership, bankruptcy and voluntary arrangement cases **commenced on or after 30 July 2020**. Some key points regarding licensing under the new regime include:

Restructuring & Insolvency

- (a) A six-month transitional period (from 30 July 2020 to 30 January 2021) will be provided to allow the insolvency practitioner to perform insolvency or debt restructuring work while applying for a licence.
- (b) While the insolvency practitioner may continue to undertake appointments during the transitional period, they should submit their application early to account for the time required for the Licensing Officer to consider the application.
- (c) If the application for a licence is not successful, any appointments undertaken during this period will have to cease.

Insolvency practitioners should familiarise themselves with the licensing requirements, and should ensure that they heed the timeline for applying for a licence.

Personal insolvency

The personal insolvency regime remains largely unchanged from the Bankruptcy Act.

One notable amendment involves the debt repayment scheme, which is provided for under the current Bankruptcy Act. A debt repayment scheme is a pre-bankruptcy scheme which allows a debtor to commit to the repayment of their debts over a period of not more than five years. However, the debtor must have unsecured debts not exceeding S\$100,000.

Under the IRDA, the debt repayment scheme has been retained. However, the limit of unsecured debts has been raised from S\$100,000 to S\$150,000.

Relief Measures

In the wake of the COVID-19 outbreak, the Government has introduced a slew of measures to help alleviate the financial impact on businesses and individuals. This includes increasing the monetary threshold for insolvency (albeit on a temporary basis).

This is provided for under the COVID-19 (Temporary Measures) Act:

- (a) The debt threshold for personal bankruptcy is increased from S\$15,000 to S\$60,000; and
- (b) The debt threshold for corporate insolvency is increased from S\$10,000 to S\$100,000.

The temporary increase is in place from 20 April 2020 to 19 October 2020, and may be subject to further extension. Once the relevant provisions in the COVID-19 (Temporary Measures) Act are no longer in effect, the debt thresholds should return to those stated in the IRDA.

Restructuring & Insolvency

In addition, the Ministry of Law has stated that it is considering further temporary measures to assist micro and small companies which, as a result of the COVID-19 pandemic, may require support for restructuring or winding up. The relevant businesses and creditors should thus keep updated regarding any such further measures.

Concluding Words

The implementation of the IRDA marks a significant milestone in the development of Singapore's insolvency and restructuring regime. The new framework marks the culmination of years of assessment, recommendation and reform efforts.

The IRDA introduces a number of changes from the current insolvency and restructuring law. Industry players would be well served to familiarise themselves with these changes, and to take the necessary steps in their business and operations to accommodate the new state of affairs. In particular, insolvency practitioners should take note of the specific requirements and processes under the new licensing and regulatory regime.

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

Contacts



Sim Kwan Kiat
Head, Restructuring &
Insolvency

T +65 6232 0436

kwan.kiat.sim@rajahtann.com



Mark Cheng
Deputy Head
Restructuring & Insolvency

T +65 6232 0446

mark.cheng@rajahtann.com



Chua Beng Chye
Deputy Head, Restructuring &
Insolvency

T +65 6232 0419

beng.chye.chua@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

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

Rajah & Tann Asia is a network of legal practices based in South-East Asia. Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.

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 Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at eOASIS@rajahtann.com.