
Restructuring & Insolvency

Guide to Conducting Applications for Moratoria Pursuant to Schemes of Arrangement

Introduction

The Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") allows a company proposing or intending to propose a scheme of arrangement to its creditors to apply to the Singapore High Court ("**Court**") for a moratorium restraining proceedings against the company. The Court may also extend the moratorium on application to cover a subsidiary or holding company. This is to allow the company some breathing room to conduct its restructuring efforts.

The Supreme Court of Singapore has issued a Guide for the Conduct of Applications for Moratoria under Sections 64 and 65 of the IRDA ("**Guide**"), setting out the case management features and specialist practices for such applications. The Guide came into effect on 15 February 2021.

The Guide provides a helpful roadmap to the various steps in making an application for a moratorium pursuant to scheme of arrangement. This includes:

- (a) The filing of an application;
- (b) Pre-trial conferences;
- (c) Hearing of the application;
- (d) Making an appeal; and
- (e) Applying for an extension of the moratorium.

This Update summarises and highlights the key features of the Guide.

Moratoria for Schemes of Arrangement

Under section 64 of the IRDA, a company proposing or intending to propose an arrangement or compromise between the company and its creditors ("**Subject Company**") may apply to Court for, among others, an order restraining:

- (a) The passing of a resolution for the winding up of the Subject Company;
- (b) The commencement or continuation of any proceedings against the Subject Company; and
- (c) The enforcement of any security over any property of the Subject Company.

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Under section 65 of the IRDA, where an order has been made under section 64, a subsidiary or holding company ("**Related Company**") of the Subject Company may apply for such a moratorium as well.

Key Features of the Guide

Application for moratorium

An application for a moratorium by a Subject Company or Related Company is to be filed by way of an *ex parte* originating summons together with a supporting affidavit. The Related Company's application should be filed concurrently with the Subject Company's application. Each company must ensure that all applicable conditions and requirements in the respective IRDA provisions are satisfied.

Upon the filing of an application, the company:

- (a) must send a notification of the application to each creditor meant to be bound by the intended arrangement (for the Subject Company) or each creditor who will be affected by the moratorium (for a Related Company); and
- (b) should send a notification of the application to all other creditors of the company.

Pre-trial conference

The first pre-trial conference ("**PTC**") will usually be conducted within one week of the filing of the application for moratorium. Subsequent PTCs may be fixed as may be necessary. Notice of each PTC should be given by the company to all its creditors.

The following matters will usually be dealt with at the first PTC:

- (a) **Statutory requirements** – The company must prepare and tender to Court either a Subject Company's Memorandum or Related Company's Memorandum (as the case may be) showing that the relevant statutory requirements are fulfilled.
- (b) **Notice requirements** – The company must confirm that all notice requirements have been complied with.
- (c) **Related matters** – Parties should inform the PTC Registrar of any related matters / applications.
- (d) **Interlocutory applications** - Parties should update the Court as to any potential interlocutory applications that they intend to file.

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- (e) **Hearing dates** – In general, a Subject Company's application will be fixed for hearing within 30 days after the filing of that application. A Related Company's application will be fixed for hearing together with the Subject Company's application.

Hearing of application

As applications under sections 64 and 65 are *ex parte*, full and frank disclosure of all material facts must be made at the hearing of the application, whether or not the application is attended or opposed by creditors.

At the hearing of a Subject Company's application under section 64 of the IRDA, parties should be prepared to address the Judge on the following matters:

- (a) **Undertaking** – One of the conditions to be satisfied in respect of an application under section 64 of the IRDA is that the Subject Company must undertake to make, as soon as practicable, an application under section 210(1) of the Companies Act to summon a meeting of creditors in relation to the proposed scheme of arrangement, or an application under section 71(1) of the IRDA for the Court's approval of a proposed scheme of arrangement. This undertaking is to be set out in the Subject Company's supporting affidavit and the Subject Company should be prepared to give an indication of when such an application will be filed.
- (b) **Moratorium** – The Subject Company's supporting affidavit should address specifically the period of the moratorium and justify that with evidence, and should be prepared to justify every element of the order sought. The company should also address the orders that the Court should make under section 64(6) of the IRDA for the production of sufficient information relating to the company's financial affairs to enable the creditors to assess the feasibility of the intended compromise or arrangement.

Extension of moratorium

All applications for an extension of a moratorium should be filed no later than two weeks before the expiry of the moratorium.

Concluding Words

Parties intending to make an application for a moratorium under section 64 or 65 of the IRDA should take note of the directions provided by the Guide. This will help to ensure that applicants are prepared with the necessary information and are able to comply with the applicable requirements. The Guide also assists parties in understanding the approximate timeline(s) of the application process.

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

Contacts



Sheila Ng
Partner, Restructuring &
Insolvency; Commercial Litigation

T +65 6232 0590
sheila.ng@rajahtann.com



Raelene Pereira
Partner, Restructuring & Insolvency

T +65 6232 0401
raelene.pereira@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

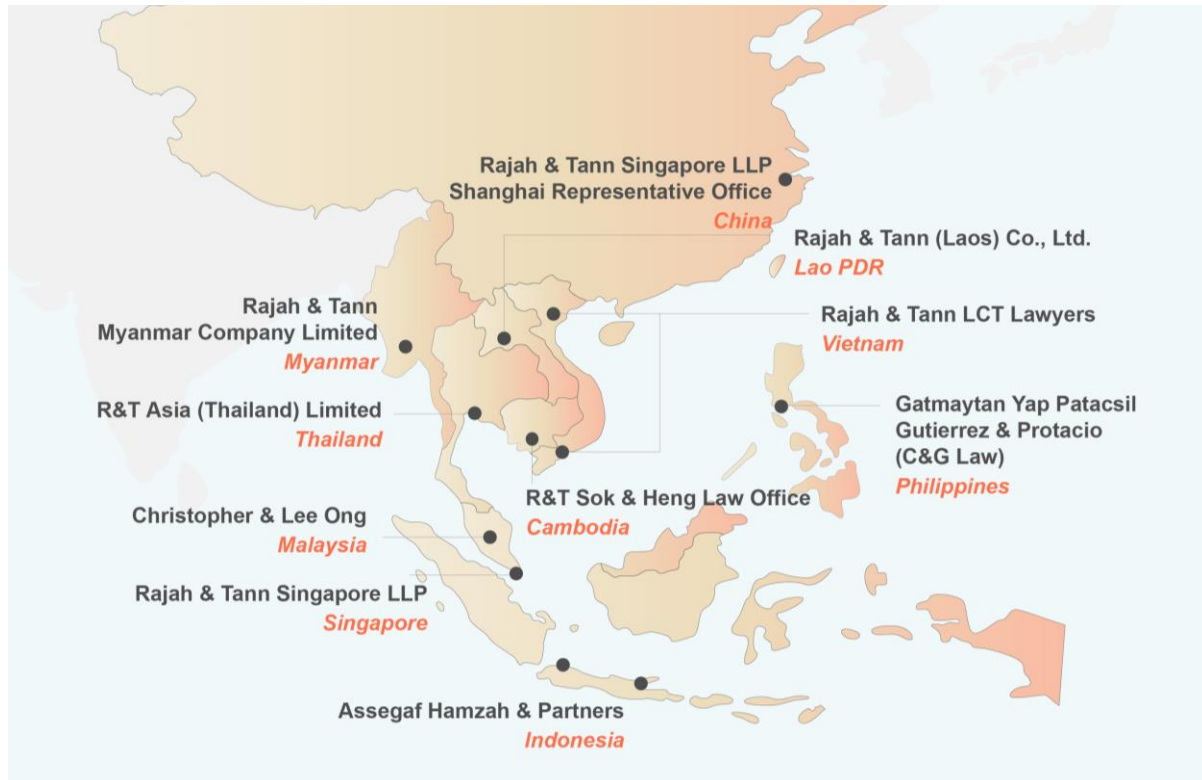
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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