

Cross-Border Restructuring and Insolvency in the SICC

Singapore has invested significant efforts in positioning itself as a regional restructuring hub in recent years, introducing substantial reforms and enhancements to improve the effectiveness of its debt restructuring regime. These reforms include enhanced moratorium protections, super-priority for rescue financing, “pre-packaged” schemes of arrangements, and restrictions on the operation of *ipso facto* clauses.

This has incentivised many Indonesian businesses to restructure their debts in Singapore, including the coal mining company PT Berau Coal Energy Tbk, garment manufacturers PT Pan Brothers Tbk and PT Sri Rejeki Isman Tbk, and real estate developer PT Modernland Realty Tbk. We traced the progressive reforms to Singapore’s restructuring landscape and discussed the significant positive developments in Singapore-Indonesia cross-border restructurings in our October 2021 Indonesia Update, accessible [here](#).

In yet another step to encourage foreign companies to restructure their debts in Singapore, the Singapore International Commercial Court (**SICC**) opened its doors to cross-border restructuring and insolvency matters in 2022. This was highlighted by The Honourable the Chief Justice Sundaresh Menon during his speech at the Opening of the Legal Year 2023. The Supreme Court of Judicature Act 1969 was amended in 2022 to clarify that the SICC has jurisdiction to hear cross-border restructuring and insolvency matters and rules were introduced for the conduct of such proceedings before the SICC.

This article discusses some of the features which make the SICC a desirable venue for cross-border debt restructurings.

The SICC

The SICC is a division of the General Division of the High Court of Singapore and part of the Supreme Court of Singapore. It was conceptualised as a neutral forum dedicated to handling cross-border, multi-jurisdictional commercial disputes, particularly to address the increasing demand for commercial dispute resolution arising from the exponential growth of cross-border trade and investment in Asia.

The SICC’s bench of renowned International Judges hailing from a wide variety of common law and civil law jurisdictions, for one, makes the SICC particularly suited to handle international commercial disputes. Currently, the SICC has 19 International Judges from jurisdictions such as Australia, Canada, France, Hong Kong, India, Japan, the People’s Republic of China, the United Kingdom, and the United States (**US**). Last year, the Honourable Justice Christopher S. Sontchi, the former Chief Judge of the US Bankruptcy Court for the District of Delaware and one of the world’s leading

Brief Overview

- Singapore has become a prime destination for restructuring debts of companies from Indonesia and the region.
- The SICC, an arm of the Singapore court system catering for cross-border legal disputes, has now opened its doors to international restructuring proceedings.
- The SICC offers many advantages that facilitate effective cross-border restructurings.
- Singapore restructurings have generally successfully obtained recognition in other jurisdictions.
- Singapore-seated restructuring can be coupled with Indonesian PKPU (Suspension of Debt Payment Obligation) proceedings to leverage the advantages of both restructuring regimes.

insolvency judges, was appointed as an International Judge of the SICC, bringing a wealth of experience in complex US Chapter 11 reorganisation proceedings to the SICC.

The diverse expertise of the SICC's bench enables it to effectively and adeptly resolve disputes involving a myriad of foreign law issues. As observed by the Minister for Culture, Community and Youth, and Second Minister for Law Edwin Tong SC in his keynote speech at the Singapore Insolvency Conference 2021, the SICC provides "*a conducive, if not, perhaps natural forum, for cross-border insolvency matters that have a significant foreign element*".

In proceedings before the SICC, foreign lawyers and foreign law experts may be permitted to represent parties and make submissions on foreign law issues in certain circumstances, thereby allowing them to more effectively and directly assist the court in the resolution of foreign law disputes. As such, we foresee greater opportunities to work with fellow foreign restructuring and insolvency lawyers and benefit from their experience and advocacy when dealing with foreign law issues which inevitably surface in such matters.

In the restructuring and insolvency context, the twin features mentioned above (a diverse bench of International Judges and representation by foreign lawyers) are especially beneficial as many corporations have businesses, operations, and contracts spanning the globe, predictably giving rise to disputes concerning the laws of various jurisdictions which have to be addressed in the course of a restructuring or insolvency proceeding. As we noted in the International Insolvency & Restructuring Report 2022/23 (see [here](#)), the SICC's unique capabilities reinforce Singapore's ability to serve as a nodal jurisdiction for the coordination of international restructurings and insolvencies.

From a commercial perspective, the SICC's framework allows parties involved in a restructuring or insolvency proceeding to enjoy the best of both worlds. Disputes arising from the restructuring or insolvency matter can be centralised and smoothly coordinated within a single forum, and the parties still have the prospect of selecting their preferred foreign lawyers to represent them for discrete matters arising in the course of the proceeding.

In addition, litigants in SICC proceedings can enter conditional fee agreements with their lawyers to uplift or reduce the fees payable depending on the outcome of the case, paving the way for bespoke fee arrangements that can better meet the commercial needs of companies attempting to restructure in Singapore. Such conditional fee agreements might be well suited to debtor companies with strong prospects for successful restructuring but which have to temporarily conserve cash resources primarily to continue their business and operations.

Advantages of Restructuring in Singapore

Apart from Singapore and Indonesia's geographical proximity and close cultural, trade and economic ties, there are other tangible factors which make Singapore a more attractive destination for restructuring compared to other international restructuring hubs.

There are numerous tools which have been introduced into Singapore's regime to facilitate successful restructurings.

These include:

- (a) A super-priority rescue financing regime to enable companies to raise funds necessary for the survival of the company or to facilitate the advantageous realisation of assets;
- (b) A stay on the exercise of *ipso facto* termination or acceleration clauses, which helps to preserve a company's valuable contracts;
- (c) An automatic interim stay of proceedings for 30 days when a company applies for a scheme moratorium;
- (d) Enhanced moratorium provisions enabling the court to grant moratorium protection for related entities, and extraterritorial moratorium orders over a company's creditors;
- (e) A cross-class "cram-down" mechanism allowing the court to sanction a scheme even if one or more of the classes of creditors votes against the scheme, provided certain safeguards are met; and
- (f) A process for implementing an expedited "pre-packaged" scheme of arrangement without convening a court-sanctioned creditors' meeting.

Singapore's restructuring framework does not automatically divest shareholders of their shares in a restructuring and shareholders can continue to retain their equity in the company. In practice, many successful restructurings in Singapore (e.g., the [restructuring of Pacific International Lines](#)) result in the shareholders retaining meaningful stakes in their companies, allowing them to benefit and participate in the recovery and rehabilitation of the business.

Where US-based creditors are involved in the restructuring plan, a restructuring seated in Singapore can also be recognised in the US under Chapter 15 of the US Bankruptcy Code to bind any US-based creditors to the plan. Singapore restructuring proceedings have generally received recognition by courts in other jurisdictions. The Singapore schemes of PT Modernland Realty Tbk and PT Pan Brothers Tbk were both recognised in the US under Chapter 15, giving them effect within the US for all intents and purposes. Similarly, in the restructuring of Oslo-listed Prosafe SE (an owner/operator of semi-submersible accommodation vessels), Prosafe successfully received recognition of its Singapore scheme proceedings in Brazil and the US.

A Singapore-seated restructuring can also be coupled with a restructuring under Indonesian PKPU (*Penundaan Kewajiban Pembayaran Utang* (Suspension of Debt Payment Obligation)) proceedings to leverage on the advantages of both restructuring regimes. This can be achieved in several ways. For example, a restructuring of offshore debt *via* a Singapore scheme can be implemented in conjunction with a restructuring of onshore debt *via* an Indonesian PKPU composition plan. Alternatively, both onshore and offshore debts can also be restructured through a parallel Singapore scheme and Indonesian PKPU composition plan with terms that mirror each other, which was a strategy used in the restructuring of Indonesian shipping company PT Berlian Laju Tanker Tbk. The combination of Singapore and Indonesian proceedings can give an Indonesian company the best of both worlds, and ensure greater jurisdictional coverage of creditors under the ambit of the restructuring proceedings.

Conclusion

These developments in the SICC build on the significant strides made in recent years to develop Singapore as a regional restructuring hub. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency and the Judicial Insolvency Network (**JIN**) Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters in 2017, followed by the adoption of the JIN Modalities of Court-to-Court Communication in 2020, have greatly enhanced the Singapore courts' ability to cooperate effectively with courts of other jurisdictions and, concomitantly, serve as a nodal jurisdiction in a restructuring.

With the SICC now expanding its jurisdiction to hear cross-border restructuring and insolvency proceedings, foreign companies would do well to pick Singapore as their preferred forum of choice for coordinating complex multi-jurisdictional restructurings.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following:



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