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INSOLVENCY UPDATE

A CONCISE GUIDE TO THE 2017 INSOLVENCY AND RESTRUCTURING AMENDMENTS TO THE SINGAPORE COMPANIES ACT

CONTENTS

INTRODUCTION

The 2017 amendments to the Singapore Companies Act ("**CA**") implement significant changes to Singapore's laws relating to schemes of arrangement, judicial management and cross-border insolvency.

The objective is clear: to position Singapore as an international centre for debt restructuring.

The scope of the existing insolvency and pre-insolvency processes have not only been widened and enhanced; useful features from leading insolvency regimes worldwide have also been adopted, modified and incorporated.

Most notable is the incorporation of many features from the United States ("**US**") Title 11 debtor-in-possession regime, offering distressed companies a wider range of rescue and/or restructuring options. Together with the more expansive approach towards assuming jurisdiction over foreign debtors, the intention is clearly to attract foreign debtors to restructure their debts in Singapore.

These changes bode well for the debt restructuring and insolvency community in Singapore. They will significantly improve the legal framework for undertaking major debt restructurings in Singapore and the ability of non-Singapore companies to access these improved Singapore procedures.

In order to seize the opportunities afforded, and to support the government's efforts to transform Singapore into Asia's debt restructuring hub, it is critical that all stakeholders are familiar with the changes, so as to raise general international awareness of Singapore's new restructuring capabilities.

With the above in mind, this Guide aims to provide a concise and useful summary of some of the key amendments to the CA.

1. Executive Summary

The amendments discussed in this guide represent a bold and visionary attempt to transform Singapore into a debt restructuring hub.[1] These amendments bring to mind Singapore's recent transformation into a leading centre for international arbitration and are the product of detailed planning, leveraging of Singapore's strengths.

In the same manner that the successful transformation of Singapore into a leading centre for international arbitration was due in no small part to the sustained support and involvement of all stakeholders, given the significance of these developments, all stakeholders in the debt restructuring and insolvency ecosystem will welcome the new regime and its features, as well as promote the various offerings to others. As the Committee to Strengthen Singapore as an International Centre for Debt Restructuring remarked in its Report, "*the benefits of conducting a debt restructuring in Singapore needs to be communicated to the wider international restructuring community*".

Accordingly, this guide seeks to discuss some of the key features of the amendments, so as to increase awareness of the benefits and options that will now be afforded to entities should they decide to conduct their restructurings in Singapore, or to use Singapore as a base from which to coordinate a multi-jurisdictional restructuring.

In particular, this guide will discuss the following new features introduced by the amendments:[2]

- Amendments to jurisdictional requirements to give foreign companies increased access to the debt restructuring regime in Singapore
- Enhanced moratoriums that will be granted by the Singapore Courts in support of restructurings, which can have *in personam* worldwide effect and be extended to related entities of a debtor company
- The improved features of the Schemes of Arrangement and Judicial Management regimes in Singapore
- The introduction of provisions to govern the granting of super-priority liens etc, which will create greater certainty surrounding the grant of priority to debtor-in-possession lenders who provide much needed financing during the restructuring process
- The adoption of the UNCITRAL Model Law on Cross- Border Insolvency

2. Increased Accessibility for Foreign Companies

The amendments will significantly improve the legal framework for undertaking major debt restructurings in Singapore, and the ease with which non-Singapore companies can access these improved Singapore procedures.

The Singapore Courts will assume jurisdiction over foreign companies so long as they show a "*substantial connection*" to Singapore.

While there was previously some uncertainty over what that entailed, the amendments to section 351 of the CA now make clear that a "*substantial connection*" is established if one or more of the following factors is demonstrated:

- The company's centre of main interests ("**COMI**") is in Singapore
- It conducts some business in Singapore
- It is registered in Singapore as a foreign company
- It has substantial assets in Singapore
- There is a Singapore law-governed loan (or other transaction)
- The company has otherwise submitted to the jurisdiction of the Singapore Courts to resolve a dispute

Further, pursuant to the amendments, foreign companies may now be placed in judicial management.

The increased accessibility afforded to foreign companies to avail themselves of the suite of debt restructuring options offered in Singapore is to be welcomed, and sets the groundwork for more regional/Asian restructurings to take place in Singapore, promoting the aim of making Singapore a debt restructuring hub.

3. Enhanced Moratoriums

This section highlights the main changes to the moratorium provisions in the 2017 amendments to the CA.

A moratorium essentially provides "*breathing space*" to a company undergoing an insolvency or restructuring process, by imposing a stay on proceedings being taken out by individual creditors (which might otherwise frustrate a *bona fide* restructuring process).

The 2017 amendments have enhanced the moratorium for both schemes of arrangement and judicial management, effectively broadening the scope of protection afforded to a distressed company.

Automatic scheme moratorium

Using section 362 of Title 11 of the US Bankruptcy Code stay as inspiration,

1 Please note that this guide only highlights certain areas of the Companies (Amendment) Act 2017, and is not intended to be a comprehensive summary of all the matters stated therein.

2 Please note that the amendments discussed in this guide came into operation on 23 May 2017 (see the Companies (Amendment) Act 2017 (Commencement) (No. 2) Notification 2017 made on 22 May 2017).

the amendments provide that an automatic 30-day moratorium arises ***upon the filing of an application for a moratorium*** under section 210(10) of the CA for schemes (new section 211B(8) read with section 211B(13)). This streamlines the position for both judicial management and schemes; for judicial management, an automatic moratorium arises upon the making of an application for judicial management (section 227C). That, however, was not the case for schemes.

As a safeguard, the company applying for the scheme moratorium has to furnish the requisite information showing evidence of support from creditors, as well as (at the very least) a brief description of the intended compromise or arrangement (new section 211B(4)), and undertake to the Singapore High Court (the "**Court**") to make the application for that scheme of arrangement /compromise *as soon as is practicable* (new section 211B(2)(*b*)).

To prevent abuse, a company is also precluded from applying for such an automatic moratorium more frequently than once every 12 months (new section 211B(9)).

Key elements

- An automatic 30-day moratorium now arises upon the filing of an application for a moratorium under section 210(10) of the CA for schemes of arrangement, streamlining the position in relation to moratoriums for both judicial management and schemes.
- The Court is now empowered to grant moratoriums for schemes of arrangement (but not for judicial management) on the application of a subject company's "related company" (i.e. the subject company's subsidiary, holding company, or ultimate holding company).
- Moratoriums for schemes of arrangement in relation to a subject company and/or its related companies may be ordered to apply to extraterritorial acts so long as the creditor is in Singapore or within the jurisdiction of the Court .

Creditor's right to apply to terminate moratorium

Notwithstanding the automatic moratorium, a creditor may apply to the Court to vary or terminate the moratorium, especially if the applicant had not filed the information required by section 211B(4) of the CA (as discussed above) (new section 211B(10) and (11)).

Moratorium to extend to related companies

Significantly, the Court is now empowered under new section 211C(1) to grant moratoriums for schemes of arrangement (but not for judicial management) on the application of a subject company's:

- Subsidiary;
- Holding company; or
- Ultimate holding company (in each case, called the "related company").

The related company may make the application for a moratorium only if (new section 211C(2)):

- The related company plays a *necessary and integral role* in the scheme;
- The scheme would be frustrated if an action is taken against the related company; and
- Creditors *of the related company* will not be unfairly prejudiced by the moratorium order.

Extraterritorial effect

Under the new section 211B(5), a moratorium under the new section 211B may be ordered to have extraterritorial effect – that is, the moratorium will apply to acts taking place in Singapore or elsewhere so long as the creditor is in Singapore or *within the jurisdiction* of the Court. This also applies to a moratorium in respect of a related company ordered under the new section 211C(1) (new section 211C(4)).

This amendment leverages upon Singapore's position as one of the key financial centres in Asia: as many banks and financial institutions have a presence or branch in Singapore, they will be subject to the *in personam* jurisdiction of the Court.

If, therefore, these banks and financial institutions (as creditors of the debtor company) act in breach of the moratorium by bringing action(s) or proceedings(s) against the debtor company overseas, they can be held in contempt of the Court. This is what gives the moratorium its extraterritorial effect.

4. Schemes of Arrangement

The bolting-on of new features to the schemes of arrangement regime, making it a more attractive option for distressed companies, is one of the key facets of the 2017 amendments to the CA.

More extensive cram-down provisions

The existing cram-down provisions in section 210(3AA) and (3AB) of the CA have been extended by the new section 211H, which allow the Court to cram down on one or more classes of dissenting creditors for the overall good of the majority of creditors if the conditions described below are satisfied.

New section 211H allows the scheme or compromise to be approved by the Court, ***notwithstanding that*** either or both of the conditions in section 210(3AB) ***are not satisfied*** at the relevant meeting in respect of at least one class of creditor (being the conditions that the scheme has been approved by (1) a majority in number of creditors or class of creditors; and (2) the majority in number representing three-fourths in value of the creditors or class of creditors).

In other words, the Court may sanction the scheme or compromise even if either one or both of the above conditions in section 210(3AB) ***are not satisfied*** at the relevant vote involving certain classes of creditors, provided that:

- A majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voted either in person or by proxy at the relevant meeting (the "**Majority**") have agreed to the compromise or arrangement (new section 211H(3)(*a*));
- The Majority represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting (new section 211H(3)(*b*)); and
- The Court is satisfied that the compromise ***does not discriminate unfairly*** between two or more classes of creditors, and ***is fair and equitable*** to each dissenting class (new section 211H(3)(c)). This requirement is modelled on section 1129(b)(1) of the US Bankruptcy Code.

A compromise or an arrangement is not "*fair and equitable to a dissenting class*" unless the conditions in new section 211H(4) are satisfied. The key condition is that, under the scheme or compromise, no creditor in the class that has dissented to the scheme should receive an amount that is lower than what such creditor is estimated by the Court to receive in the most likely scenario if the scheme or compromise does not pass (new section 211H(4)(*a*)).

Key elements

- Existing cram-down provisions have been extended to allow the Court to approve a compromise or arrangement even if one or both of the conditions of creditor approval are not satisfied, subject to certain safeguards and approvals.
- One of these safeguards includes the requirement that the compromise does not discriminate unfairly between two or more classes of creditors, and is fair and equitable to each dissenting class.
- A company which makes an application for a statutory moratorium under new section 211B will be ordered to furnish information in relation to its financial affairs to enable creditors to assess the feasibility of any intended or proposed compromise or arrangement.
- A Other procedural improvements have been introduced, including the power of the Court (subject to certain safeguards) to expedite proceedings by making an order approving the compromise or arrangement even though no meeting of the creditors or class of creditors had been held or ordered under section 210(1).

- New section 211H(5) allows the Court to appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating (as required under new section 211H(4)(*a*)) the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not pass. This incorporates the "appropriate comparator" test applied by the Court of Appeal in ***The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal*** **[2012] SGCA 9** at [40].
- Even if the requirements in new section 211H(4) are satisfied, the Court may still consider the compromise or arrangement not fair and equitable.

Moratorium to extend to related companies

As mentioned above (see Section 3), the Court is now empowered under new section 211C(1) to grant moratoriums for schemes of arrangement (but not for judicial management) on the application of a subject company's:

- Subsidiary;
- Holding company; or
- Ultimate holding company.

One useful consequence of this amendment is that it allows the moratorium to be used to obtain protection for guarantors of the debt, in addition to the scheme debtor. There is no requirement in the CA for the related company itself to have a substantial connection to Singapore.

Enhanced creditor protection

New section 211B(6) places the creditors in a better position to assess the feasibility of any intended or proposed compromise or arrangement by requiring the Court , when making an order for a statutory moratorium under new section 211B, to order the company to submit sufficient information relating to the company's financial affairs, including but not restricted to:

- Valuation reports on the company's significant assets
- Financial reports in relation to the company and its subsidiaries
- Forecasts of the profitability of the company and its subsidiaries
- Cash flow of the company and its subsidiaries

The provisions of new section 211D also enhance creditor protection by empowering the Court to make an order restraining the company from disposing of its property other than in good faith and in the ordinary course of business during the relevant moratorium period.

Procedural improvements

Subject to the safeguards contained therein, new section 211I gives the Court the power to expedite proceedings by allowing the Court to make an order approving the compromise or arrangement even though no meeting of the creditors or class of creditors had been held or ordered under section 210(1) (new section 211I(1)).

This mechanism should reduce the time and expense associated with approving a scheme in situations where the outcome is a foregone conclusion. Given the very real cost associated with business uncertainty during an ongoing restructuring, this 'short cut' will no doubt be very attractive to debtors and creditors seeking rapid implementation of a restructuring and a return to 'business as usual' operations.

- Under the new section 211G, the Court is expressly empowered to order the company to hold another meeting of the creditors or class of creditors for the purpose of putting the compromise or arrangement to a re-vote.
- The new section 211J applies to compromises or arrangements that have received Court approval under section 210(4) or new section 211I(1), and allows the company, scheme manager or creditors to apply to the Court to reverse or rectify an act, omission by or decision of the company or scheme manager that has resulted in a breach of any term of the compromise or arrangement (new section 211J(2)).
- New section 211F introduces new rules relating to the filing, inspection and adjudication of proofs of debt and allows the appointment of independent assessors to resolve disputes when proofs of debt are adjudicated.

5. Judicial Management

Consistent with the stated objective of making Singapore a debt restructuring hub, judicial management will now be available to foreign companies:

- The new section 227AA provides that ***foreign companies may now be placed under judicial management in Singapore***.

The 2017 amendments to the Companies Act also improve the judicial management process, and make it more accessible, by making the following key revisions:

- The threshold to be met for an application for judicial management is lower. While previously the Court would make a judicial management order in relation to the company only if it is satisfied that the company "*is or will be unable to pay its debts*" (section 227B(1)(*a*)), the new section 227B(1)(*a*) now allows the Court to make a judicial management order if it is satisfied that the company "*is or* ***is likely to become*** *unable to pay its debts*".
- The new section 227B(5) gives the Court discretion to make a judicial management order even if a person who is appointed or is entitled to appoint a receiver and manager under the terms of any debenture secured by a floating charge, or by a floating charge and one or more fixed charges, ***opposes*** the application.
- However, the Court must dismiss an application for a judicial management order if, in addition to the opposition of such person, the Court is satisfied that the prejudice that would be caused to such person if the order was made would be disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed.
- The Court has the power to order that rescue financing be given super priority in the event of a winding-up (new section 227HA). [See Section 6 below for further details.]
- Under the existing regime, there is already an automatic moratorium from the date of the application for judicial management to the making or dismissal of the application (section 227C). Following the amendments, the scope of the moratorium in a judicial management application is extended to include a provision that, while the moratorium is in force, no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the consent of the judicial manager or with the leave of the Court, notwithstanding sections 18 and 18A of the Conveyancing and Law of Property Act (new section 227D).
- The new procedures in relation to a compromise or arrangement between a company and its creditors or any class of those creditors (i.e. the new sections 211F, 211G, 211H, and 211I) apply to a company under judicial management where a compromise or an arrangement is proposed between the company under judicial management and its creditors or any class of its creditors (new section 227X).

Other revisions include:

- The removal of the obligation to publish notices in relation to the judicial management order in a Chinese-language local daily newspaper (new sections 227B(4)(*a*), 227K(1)(*b*), 227M(2)(*b*), 227N(4) and 227P(3)(*b*)).
- The new section 227B(7) empowers the Minister to prescribe by order in the Government Gazette any class of companies in relation to which the judicial management order cannot be made.

Key elements

- Foreign companies may now be placed under judicial management in Singapore.
- The threshold for judicial management applications is lowered to include situations where the company is "likely to become" unable to pay its debts.
- The Court may now grant an application for a judicial management order despite the opposition of a person who is appointed or is entitled to appoint a receiver and manager under the terms of any debenture, unless the prejudice that would be caused to such person if the order was made would be disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed.
- The scope of the moratorium in a judicial management application is extended to include a prohibition on enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company, except with the judicial manager's consent or leave of the Court.

6. Rescue Financing

This section outlines the main features of the rescue financing provisions introduced by the 2017 amendments to the Companies Act.

Rescue financing generally refers to financing to troubled companies to provide working capital for the purposes of restructuring. As lenders may be reluctant to provide rescue financing to companies in distress, the amendments are intended to facilitate the provision of such financing by, amongst other things, empowering the Court to order that rescue financing be given super priority over other secured and unsecured debts.

Anecdotally, while rescue financing is a relatively common feature of restructurings in other jurisdictions such as New York and London, it is still in its infancy in Singapore. One of the problems is the uncertainty surrounding the priority regime for lenders who provide rescue financing. These amendments seek to address that deficiency.

These amendments are adopted (with modification) from sections 361 and 364 of Title 11 of the US Bankruptcy Code, which provides for debtor-in-possession ("**DIP**") financing allowing debtors to obtain new credit or incur new debt to be granted priority over pre-petition unsecured and secured claims.

Like the US, which has a highly developed DIP financing market, the amendments may encourage the growth of debtor-in-possession corporate restructuring processes as well as a rescue finance market for banks, hedge funds, private equity funds and other distressed-debt investors in Singapore.

Definition of rescue financing

"*Rescue financing*" obtained by a company is defined in the CA as any financing that is either (i) necessary for the survival of the company as a going concern or (ii) necessary to achieve a more advantageous realisation of the assets of the company than on a winding-up of the company (new sections 211E(9) and 227HA(10)).

Levels of priority

The Court may, on an application by the company, grant one of four levels of priority for the rescue financing, i.e. for the rescue financing to be:

(i) treated as part of the costs and expenses of the winding up (new sections 211E(1)(*a*) and 227HA(1)(*a*));

(ii) have super-priority over preferential debts (new sections 211E(1)(*b*) and 227HA(1)(*b*));

(iii) secured by a security interest on property not otherwise subject to any security interest or that is subordinate to existing security (new sections 211E(1)(*c*) and 227HA(1)(*c*)); or

(iv) secured by a security interest, on property subject to an existing security interest, of the same or a higher priority than the existing security interest (new sections 211E(1)(*d*) and 227HA(1)(*d*)).

Key elements

- Rescue financing refers to financing that is either necessary for the survival of the company as a going concern or necessary to achieve a more advantageous realisation of the company's assets than on a winding-up of the company.
- To facilitate rescue financing, the Court will be empowered to grant rescue financing super priority over other secured and unsecured debts, provided that such pre-existing interests are adequately protected.
- A debtor company may apply for priority for rescue financing either before or after obtaining the rescue financing concerned depending on the type of priority sought.
- The amendments are adapted from provisions in the US Bankruptcy Code on DIP financing.

When can a company apply for priority for rescue financing?

A company may apply to the Court for an order for priority for rescue financing:

- Where the company has made a scheme application under section 210(1) or a moratorium application under the new section 211B(1), and:

  - Either before or after obtaining the rescue financing (for options (i) and (ii) of "Levels of priority" above);
  - Before obtaining the rescue financing (for options (iii) and (iv) of "Levels of priority" above); or

- At any time where there is a judicial management order in force.

Safeguards for creditors and lenders

The amendments also contain certain safeguards for both existing creditors (to ensure that existing property and security interests are not prejudiced), and new creditors in respect of rescue financing.

Safeguards for existing creditors

For existing creditors, the types of safeguards available depend on the type of priority that is granted to the rescue financing:

- For options (ii), (iii) and (iv) of "Levels of priority" above – the Court may only make the order if company would not have been able to obtain the rescue financing from any other person unless the debt arising from the rescue financing is accorded that level of priority or is secured in the manner concerned; and
- For option (iv) of "Levels of priority" above:
  - There must be "*adequate protection*" for the interests of the holder of the relevant existing security interest.
  - "*Adequate protection*" is defined non-exhaustively in the Act to include possible orders by the Court to provide existing secured creditors with additional or replacement security or other relief or compensation (new sections 211E(6) and 227HA(7)).

In addition, for a company under a judicial management order, any creditor may oppose an application for priority for rescue financing (new section 227HA(3)).

Safeguards for new creditors

For new creditors in respect of rescue financing under option (iii) or (iv) of "Levels of priority" above, the validity of any debt incurred or security interest granted as a result of the rescue financing will not be affected by any reversal or modification of the order on appeal, provided that the rescue financing was provided in good faith and unless the order was stayed pending the appeal before the rescue financing was provided (new sections 211E(5) and 227HA(6)). This is also in line with the position under section 364(e), Title 11 of the US Bankruptcy Code.

7. Adoption of the UNCITRAL Model Law on Cross-Border Insolvency

The UNCITRAL Model Law on Cross-Border Insolvency (the "**Model Law**") (with certain modifications to adapt it for application in Singapore) will have the force of law in Singapore (new section 354B(1)).

The adoption of the Model Law will facilitate the resolution of cross-border insolvencies by:

- Streamlining and clarifying the process for recognition in Singapore of foreign insolvency proceedings;
- Facilitating access by foreign insolvency representatives to the Singapore Court, as well as the granting of relief in Singapore to assist foreign proceedings; and
- Promoting cooperation and coordination between courts of different jurisdictions and insolvency administrators.

Currently, 42 States have adopted the Model Law by making it part of their domestic insolvency laws, including major common law jurisdictions such as the US, the UK, Australia, Canada and New Zealand. Singapore will become the third jurisdiction in Asia, after South Korea and Japan, to adopt the Model Law.

The Model Law reflects a universalist approach to insolvency and provides an established framework which will allow the Courts to recognise and assist foreign insolvency proceedings.

How will Singapore benefit?

The Model Law provides a well-established framework that will lead to increased certainty and cooperation in dealing with cross-border insolvencies. In turn, this will lead to more consistent processes and more predictable outcomes which may help reduce costs in insolvency administration and attract more foreign investment into Singapore.

Key features of the Model Law

Direct access to the Courts for foreign insolvency representatives and foreign creditors

Article 9 makes it clear that a foreign representative has a right of direct access to the Singapore courts, while Article 13(1) provides that foreign creditors have the *same rights* regarding the commencement of, and participation in, a proceeding under Singapore insolvency law *as creditors in Singapore*.

Clarifying the requirements for the recognition of foreign proceedings by the Courts

Article 15 sets out the supporting documents required for an application for recognition of foreign proceedings. As the requirements for the recognition of foreign proceedings were hitherto contained in common law case authorities, this is a welcome clarification.

Further, Article 17(3) expressly provides that an application for recognition of a foreign proceeding must be decided upon at the earliest possible time.

Recognition based on the concept of the COMI

Under Article 17(2)(*a*), the relevant foreign proceeding sought to be recognised will be recognised as a foreign *main* proceeding if it takes place in the State where the debtor has its *centre of main interests* ("**COMI**").

This represents a departure from the traditional common law approach of granting recognition only to a foreign liquidator appointed in the company's jurisdiction of incorporation. Under the Model Law, the broader concept of the COMI will now be applied in determining whether the relevant foreign proceeding sought to be recognised is recognised as a foreign *main* proceeding.

The relevant considerations for the determination of the COMI are the location of the debtor's headquarters, managers and officers, assets and creditors, and the jurisdiction whose law would apply to most of the debtor's disputes.

The significance of the recognition of a foreign proceeding as a foreign *main* proceeding – as opposed to a foreign *non-main* proceeding – may be seen in Article 20, which provides for the stay and suspension of certain actions and rights upon recognition of a foreign proceeding that is a foreign *main* proceeding. Simply put, the Model Law accords foreign *main* proceedings greater deference, as well as more immediate and automatic relief. For example, recognition of a foreign main proceeding triggers an *automatic* stay of individual creditor actions or executions concerning the assets of the debtor in Singapore (Article 20(1)), whereas for a foreign *non-main* proceeding, the foreign representative is required to apply to the Court for such a stay (Article 21(1)).

Entrusting the foreign representative with the assets of the debtor located in Singapore

Amongst the reliefs available under the Model Law is the entrustment to the foreign representative of the assets of the debtor that are located in Singapore, thereby giving the foreign representative the power to control the disposition of those assets (Article 21).

Entrustment relief under the Model Law therefore enables the foreign representative to orchestrate a coordinated sale of the debtor's assets where those assets are located across multiple jurisdictions. Article 21 also empowers the Courts to allow the foreign representative to distribute the sale proceeds in the foreign proceeding, provided the Court is satisfied that the interests of local creditors are adequately protected.

Obligation to cooperate and communicate

Article 25 of the Model Law provides that the Courts may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Singapore insolvency office-holder. In doing so, the Courts may communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Further, Article 26 of the Model Law obliges a Singapore insolvency office-holder, to the extent consistent with his/her other duties under the law of Singapore, to cooperate to the maximum extent possible with foreign courts and foreign representatives. Likewise, the Singapore insolvency office-holder is entitled to communicate directly with foreign courts or foreign representatives in the exercise of his/her functions.

Key elements

- The Model Law will streamline and clarify the process for recognition in Singapore of foreign insolvency proceedings by providing an established framework for recognition.
- The universalist approach embodied in the Model Law imposes obligations of cooperation and communication, amongst insolvency office-holders and courts, across jurisdictions. The aim is to facilitate cross-border insolvencies.
- A foreign proceeding will be recognised as a foreign *main* proceeding if it takes place in the debtor's COMI. The Model Law accords foreign *main* proceedings greater deference and more immediate automatic relief than foreign non-main proceedings.

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