Coronavirus (COVID-19) Singapore insolvency reforms COVID-19 (Temporary Measures) Bill

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Restructuring & Insolvency analysis: On 7 April 2020, the Singapore Government passed under a Certificate of Urgency the coronavirus (COVID-19) (Temporary Measures) Bill (Bill) in Parliament, in an effort to offer temporary relief to businesses and individuals who are unable to fulfil their contractual obligations due to coronavirus (COVID-19). The temporary relief granted is in five areas—(1) inability to perform contracts (2) financially distressed individuals, firms and businesses (3) conduct of meetings (4) court proceedings, and (5) remission of property tax. Written by Catherine Shen of the Asian Business Law Institute (ABLI).

The Bill will become law after it receives presidential assent. The period for which relief will be given is for six months in the first instance, and may be extended for up to a year from the date of commencement of the Bill.

The following relief measures are specifically related to bankruptcy and insolvency:

Raising the threshold for bankruptcy and insolvency

The monetary threshold for insolvency for companies and partnerships will be raised from SGD 10,000 to SGD 100,000, a ten-fold jump. For a natural person, the monetary threshold for bankruptcy will be increased from SGD 15,000 to SGD 60,000.

Extending the response period to demands

The period for a debtor to respond to a creditor's statutory demand will be extended to six months from 21 days (in the case of individuals) and three weeks (in the case of businesses).

Prohibiting certain legal actions against non-performing parties

The Bill prohibits a contracting party from initiating the following legal actions against a non-performing party—(1) filing court and insolvency proceedings, including, among others, those for schemes of arrangement, judicial management and winding-up (2) enforcing security over immovable property as well as movable property used for the purposes of business or trade (3) calling on a performance bond given under a construction contract, and (4) terminating the leases of non-residential premises.

Suspending insolvent trading

Under section 339(3) of Singapore's Companies Act (Cap. 50), a director of an insolvent company faces liability for insolvent trading if he/she allows the company to carry on its business when the director was knowingly a party to the company contracting a debt and†had, at that time, no reasonable or probable ground to expect that the company would be able to repay the debt. Insolvent trading carries criminal liabilities.

The Bill provides a temporary defence to directors against insolvent trading. The defence is that the debt is incurred in a company's ordinary course of business, during the relief period, and before the appointment of a judicial manager or liquidator.

Similar relief has been granted to officers of limited liability partnerships and officers of trustee-managers.

A director remains criminally liable for fraudulent trading under Cap. 50 s 40 if he or she was knowingly a party to the continuation of the company's business and†did so with the intention to defraud creditors or for any other fraudulent purposes.

Uniquely Singapore—Insolvency, Restructuring and Dissolution Act 2018

The Insolvency, Restructuring and Dissolution Act 2018 (IRDA), Singapore's omnibus insolvency law, was passed in Parliament on 1 October 2018, but has not yet become operational.

The IRDA replaces insolvent trading under the Companies Act with a new wrongful trading regime (s 239 of the IRDA). Any person, not just directors, who knew or should have known that the company was trading wrongfully, in other words, incurring debts without any reasonable prospect of satisfying them in full when the company is insolvent or becoming insolvent as a result of contracting these debts, can be caught under this section and criminal liability is no longer a prerequisite for civil liability.

The Bill has made it clear that the temporary relief granted to the existing personal bankruptcy and corporate insolvency regimes will also apply to the corresponding sections under the IRDA, including its wrongful trading provisions. It is unclear, though, whether the current coronavirus (Covid-19) outbreak will further stretch the timeline for IRDA to become operational given the expected rise in personal bankruptcies and business failures.

Asian Business Law Institute (ABLI) is a permanent institute based in Singapore that initiates, conducts and facilitates research with a view to providing practical guidance in the field of Asian legal development and promoting the convergence of Asian business laws. Its latest publication *Corporate Restructuring and Insolvency in Asia 2020* (Compendium) is the phase-1 output of its Asian Principles of Business Restructuring project jointly with the International Insolvency Institute. This fully-sourced Compendium maps the existing business reorganisation regimes (both in-court and out-of-court) in all ten ASEAN member states, Australia, China, Hong Kong SAR, India, Japan and South Korea, offering a bird's-eye view of the corporate restructuring landscape in the region. The Compendium is available at https://ebooks.abli.asia/insolvency/.

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