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"The Use of Pre-Packed Parallel Schemes: Case Study of Century Sunshine"

The BlackOak team advised Century Sunshine Holdings Group Ltd (the "**Company**") on the Singapore law aspects of its recent successful cross-border debt restructuring. The cross-border restructuring was implemented by way of a parallel Hong Kong scheme of arrangement and a Singapore pre-packed scheme of arrangement under Section 71 of the Insolvency Restructuring Dissolution Act 2018 ("**IRDA**").

Background of Company

The Company is incorporated in the Cayman Islands and is listed on the Hong Kong Stock Exchange. It has a number of subsidiaries which are incorporated in, among others, Bermuda, the British Virgin Islands and Hong Kong (together with the Company, the "**Group**"). The Group's key operations were in the fertiliser business, metallurgical flux business, and magnesium products business and its operations were carried on mainly in Mainland China.

Debt Problems

Due to the COVID-19 Pandemic, the Group, though balance sheet solvent, suffered from an inability to pay its debt as and when they fell and due and as such became cash-flow insolvent. In particular, the Group had to redeem the S$101,750,000 7% fixed rate notes issued under the Company's Multicurrency Medium Term Note Programme listed on the Singapore Stock Exchange (the "**Singapore Bonds**") which was maturing in July 2020.

Broadly, the Company's debt profile consists of (i) bank and other borrowings, (ii) unsecured and unlisted bonds issued by the Company to institutional investor and private investors in Hong Kong, (iii) the Singapore Bonds, and (iv) intra Group debts.

Restructuring Efforts

The Group undertook a series of actions to restructure its debts which included (i) the appointment of soft-touch provisional liquidators over the Company by the Cayman Courts, (ii) recognition in both Singapore and Hong Kong of the provisional liquidators appointed over the Company, and (iii) finally the parallel scheme of arrangements in Singapore and Hong Kong.

Parallel Schemes

A foreign restructuring order is given effect to in Singapore either by way of (i) an application for and implementation of a parallel scheme of arrangement by the debtor in Singapore, or (ii) an application for recognition of the restructuring orders through the UNCITRAL Model Law on Cross Border Insolvency ("**Model Law**").[1]

Although an application for recognition under the Model Law has its advantages, one of which being obviating the need for parallel proceedings, it is not without its problems.

The Model Law envisages a single restructuring taking place at the Centre of Main Interest ("**COMI**") of the debtor company. On a recent open letter to UNCITRAL Working Group V,[2] Anthony Casey, Aurelio Gurrea-Martinez and Robert Rasmussen (together with the support of other academics and practitioners) urged for the removal of COMI as a standard for recognition of foreign main proceedings. Instead, the writers urged for either the replacement of COMI with either (i) a jurisdiction dictated by the constitution of the debtor, or alternatively (ii) a jurisdiction chosen by the debtor which can be shown that it is for the benefit of the creditors. Chief amongst the criticisms levelled are the potential absence of suitable restructuring procedures in a debtor's COMI and the difficulty in identifying a

[1] See for example, *Re Rams Challenge Shipping Pte Ltd* [2022] SGHC 220 where recognition of the restructuring orders was granted under Article 21(1)(g) of the Model Law.
[2] Casey, Anthony J. Gurrea-Martinez, Aurelio. & Rasmussen, Robert K. (14 September 2023). *An Open Letter to the Secretariat of UNCITRAL Working Group V (Insolvency)*. SMU Centre for Commercial Law in Asia. Retrieved from https://ccla.smu.edu.sg/sgri/blog/2023/09/15/towards-new-approach-choice-insolvency-forum.

debtor's COMI in this current fluid global business environment. In addition, recognition under the Model Law may be difficult in respect of debtors incorporated in letterbox jurisdictions.[3] This showcases some of the problems with the use of the Model Law as a tool to effect cross border restructuring.

In comparison, an application for a parallel scheme of arrangement in Singapore can be readily commenced so long as a foreign debtor can show a substantial connection with Singapore. In the case of the Company, this was established by the fact of the Singapore Bonds listed on the Singapore Stock.[4] The ease of implementing a parallel scheme of arrangement in Singapore is further enhanced by the pre-packed scheme provisions in the IRDA and the Singapore Court's willingness to accept the votes for the foreign scheme of arrangement as evidence of support for the Singapore pre-packed scheme.

Compared to traditional parallel schemes, where leave to convene scheme meetings have to be sought in both jurisdictions, the use of the Singapore pre-packed scheme allows for a single application to approve the prepacked scheme of arrangement based on the evidence of the scheme creditors' support from the creditors' meeting held in respect of the foreign scheme of arrangement. In the case of the Company, the scheme creditors' support for the Hong Kong scheme of arrangement was used as evidence of support in the application for the Singapore pre-packed scheme.

The parallel pre-pack scheme mechanism allows for quick implementation without having to grapple with concepts of COMI and the difficulties with considering whether the debtor's COMI has suitable restructuring procedures, which are issues to be considered if recognition under the Model Law is sought instead of a parallel scheme of arrangement. In the case of the Company, issues pertaining to COMI would also have been thorny as the Singapore Court had already found that the Company's COMI was the Cayman Islands (during the course of the prior recognition proceedings of the soft touch provisional liquidators) and an argument would need to be made that the Company's COMI had shifted to Hong Kong (where the main scheme of arrangement was promulgated) during the course of the provisional liquidation.[5]

Closing Thoughts

The use of the pre-packed scheme of arrangement in Singapore showcases one of the many tools to implement corporate restructuring in Singapore, and in an appropriate case this helps to effect a cross-border restructuring in Singapore with speed and reduced costs after the parallel restructuring process has been approved in another jurisdiction.

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[3] For example, in the US Bankruptcy Court decision of *In re Shimmin*, No. 22-10039, 2022 LEXIS 2932 (Bankr. W.D. Okla. Oct. 14, 2022) refused recognition under Chapter 15 of the US Bankruptcy Code as the debtor neither had its COMI or an establishment where the foreign insolvency proceeding was commenced (which was the debtors place of incorporation).

[4] As stated *in Re PT MNC Investama TBK* [2020] SGHC 149 at [14], "*the fact of the Applicant's securities being traded on the Singapore exchange would, in and of itself, suffice to establish a substantial connection with Singapore…*".

[5] Such an argument is possible – for example, in the recognition of CW Group Holdings.