

**NO VA LAND'S PRE-PACK SCHEME: THE SINGAPORE INTERNATIONAL COMMERCIAL COURT'S FIRST CROSS-BORDER PRE-PACK SCHEME**

As part of Singapore's efforts to position herself as a restructuring hub, the Supreme Court of Judicature Act 1969 was amended in 2022 to clarify that the Singapore International Commercial Court (the "**SICC**") has the jurisdiction to hear cross-border restructuring and insolvency matters. By doing so, the SICC has opened its doors to for cross-border restructuring and insolvency matters to be heard by a bench of experience international judges, including judges experienced in handling complex US Chapter 11 reorganization proceedings (from which Singapore had adopted numerous tools into our Insolvency, Restructuring and Dissolution Act 2018 (the "**IRDA**")).

In this regard, the restructuring of No Va Land Investment Group Corporation ("**NVL**") is a significant milestone for the SICC, being the first restructuring plan approved by the SICC (reported in *Re No Va Land Investment Group Corp* [2024] SGHC(I) 17). Not only did this restructuring involve a foreign debtor, but it also was implemented through a pre-packaged scheme of arrangement pursuant to Section 71 of the IRDA – an expedited form of a scheme of arrangement that does not require first seeking leave from the Singapore Courts to convene a creditors' meeting, and actually convening such a creditors' meeting, to vote on the plan (the "**Pre-pack Scheme**"), which is one of the new tools available to distressed companies.

This case also highlights the efficient and expeditious process facilitated by the SICC where the total elapsed time from case commencement to the approval of the Pre-pack Scheme was just 15 days.

**Background**

No Va Land Investment Group Corporation ("**NVL**") is a real estate investment holding company incorporated in and doing business in Vietnam. NVL, together with 93 other corporate affiliates, forms the No Va Land Group, which is one of Vietnam's largest mid-market residential real estate developers.

In 2022, Vietnam's real estate sector entered a cycle of distress. The challenging business environment negatively impacted NVL's performance and profitability, eventually leading to liquidity constraints and, amongst other things, a default by NVL on 16 July 2023 with respect to scheduled debt service obligations under their US\$300m convertible bonds listed on the SGX (the "**Bonds**").

Following the default, NVL started discussions with certain holders of the Bonds on possible restructuring options in connection with the Bonds. Eventually, a decision was made to implement the restructuring plan through a scheme of arrangement (*i.e.*, the Pre-pack Scheme). NVL conducted a voting solicitation process in relation to the proposed scheme of arrangement and received an overwhelming support for the scheme of arrangement – all of the bondholders entitled to vote under the scheme of arrangement, who had submitted votes, had voted in favour of the scheme of arrangement, and these bondholders represented approximately 95% in value of the outstanding principal amount of the Bonds (and 100% in value of all voting bondholders voted in favour of the scheme of arrangement).

An application was subsequently filed by NVL with the SICC on 11 April 2024, for approval of the Pre-pack Scheme under Section 71 of the IRDA.

## **The SICC's Decision**

The application was heard before the Honourable Justice James Michael Peck ("**Justice Peck**"), a former US Bankruptcy Judge for the Southern District of New York where he presided over numerous major US Chapter 11 and Chapter 15 cases, and NVL obtained an order from the SICC approving the Pre-pack Scheme on 26 April 2024, just 15 days after the application was made.

In his written grounds of decision in *Re No Va Land Investment Group Corp* [2024] SGHC(I) 17 published on 7 June 2024, Justice Peck stated that *"the Court's description of its experience with the Application constitutes useful precedent for the management and prosecution of similar restructurings that may arise in the future. These grounds include an analysis of disclosure obligations in relation to pre-packs that the Court hopes will be considered useful in future pre-pack restructurings"*.

In this regard, Justice Peck addressed, amongst other things, the following key issues:

- (a) Whether NVL had standing to seek relief under Part 5 of the IRDA (in this case, an application for the approval of the Pre-pack Scheme);
- (b) Whether the SICC had the jurisdiction to hear NVL's application for the approval of the Pre-pack Scheme; and
- (c) Whether NVL had met the requirements under Section 71(3) of the IRDA for the SICC to approve the Pre-pack Scheme, in particular, the requisite standard of disclosure.

### **NVL had standing to seek the SICC's approval of the Pre-pack Scheme**

Justice Peck found that NVL, notwithstanding that it was a foreign unregistered company, had standing to seek relief under Part 5 of the IRDA (which included the provisions on pre-packaged schemes of arrangement). NVL established that it was a company liable to be wound up under the IRDA due to its substantial connection with Singapore, based on the following factors:

- the Bonds were listed on the main board of the Singapore Exchange Securities Trading Limited;
- disputes arising out of the Bonds and the indenture governing the Bonds were to be resolved in a Singapore-seated arbitration; and
- the proposed scheme of arrangement unequivocally contemplated voluntary submission to the SICC's jurisdiction by the applicant and the participating bondholders.

### **The SICC had jurisdiction to hear NVL's application for approval of the Pre-pack Scheme**

Further, the SICC was satisfied that it had jurisdiction to hear the proceedings as the proceedings were international and commercial in nature, pursuant to the requirement under Section 18D(2)(c) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed). The SICC held that the commercial character of the scheme was *"indisputable based on the underlying subject matter – the restructuring of an outstanding financing transaction by agreement of the issuer of corporate obligations and the company's bondholders"*. The matter was also clearly of an international nature as NVL was a company incorporated outside of Singapore.

### **NVL had met all the requirements under Section 71(3) of the IRDA for the approval of the Pre-pack Scheme**

Justice Peck found that NVL had satisfied the requirements set out in Section 71(3) of the IRDA for a pre-packaged scheme of arrangement to be sanctioned, being:

- the company must provide each creditor meant to be bound by the compromise or arrangement with a statement containing the information as required under Sections 71(3)(a) and 71(6) of the IRDA (the “**Disclosure Requirement**”);
- the company must publish a notice of the application in the Government Gazette and in at least one English local daily newspaper, and send a copy of the notice published in the Government Gazette to ACRA;
- the company must send a notice and a copy of the application to each creditor meant to be bound by the compromise or arrangement; and
- the Court must be satisfied that if a meeting of the company’s creditors or class of creditors had been summoned, the conditions in Sections 210(3AB)(a) and 210(3AB)(b) of the Companies Act 1967 (2020 Rev Ed) would have been satisfied (*i.e.*, that a majority in number of, and such majority representing three-fourths in value of, creditors or class of creditors present and voting either in person or by proxy at the meeting agrees to the compromise or arrangement).

Justice Peck also found that NVL had met the standard applicable in approving a pre-packaged scheme of arrangement – that there was “*a clear case of agreement to the scheme*” and “*a clear case that there has been proper disclosure, as well as fulfilment of the voting requirements, which in turn entails proper classification of creditors*”.

Further, with respect to the Disclosure Requirement, Justice Peck provided a detailed commentary on the requisite standard to meet. In this regard, he recognised that the list of information to be provided to creditors as set out in Section 71(3)(a) of the IRDA “*includes broad descriptions of what needs to be disclosed but leaves room for interpretation and does not offer specific guidelines for the Court or the parties regarding the nature and content of the required disclosure*”. As such, Justice Peck noted that it would be “*impractical to treat the Disclosure Requirement as a fixed checklist*”, and “*what constitutes proper disclosure will depend on the particulars of each case*”.

Ultimately, in determining whether there was adequate disclosure, Justice Peck stated that a pragmatic approach would be for the courts to look at the relevant market practices for consensual out-of-court restructurings, as well as the level of creditor support for the pre-packaged scheme of arrangement, which serve as helpful benchmarks for measuring the adequacy of disclosure.

In this regard, Justice Peck commented that “*the near perfect percentage indicated a most effective job had been done in managing the flow of information and soliciting support*” and that the overwhelming support for the Pre-pack Scheme “*was also indicative of diligent and effective communication and execution*”. The methods of communication that NVL and its advisors had employed included transmitting to creditors “*descriptive materials and copies of implementing documentation*” through “*communication channels approved by the Court*” and providing creditors with “*relevant information in sufficient details to enable to understand and properly evaluate the benefits of the Scheme in comparison with foreseeable detriments to be suffered in a potential liquidation*”.

On this note, Justice Peck remarked that “*the solicitation of support within the constituency of affected stakeholders in the present case demonstrated a very high level of creditor “buy in”*” and “[t]hat, in turn, made it easier for the Court to find that disclosure in this instance had been proper”.

### **Concluding Thoughts**

The Pre-pack Scheme was described by the SICC as “*prototypical of what could be accomplished rapidly in a pre-pack and pointed to the utility of following expedited restructuring procedures in a cross-border context*”. This case study showcases the speed and efficiency of pre-pack scheme process under the IRDA, which is an extremely useful restructuring tool available to distressed companies.

Further, particular focus was placed on the adequacy of disclosure as required under Section 71 of the IRDA. In this regard, the efforts of NVL and its advisors with respect to engagement with creditors and financial disclosure, which was described by Justice Peck as “*robust*”, “*extremely clear, detailed, and well-coordinated*” and “*accomplished with evident care and attention to detail*” may serve as a useful precedent for meeting the standard of disclosure required for future pre-packaged schemes of arrangement.

Justice Peck’s written grounds of decision also serve as a useful reference point for distressed companies seeking similar relief in the future.

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