REPORT OF THE COMMITTEE

To Enhance Singapore's Corporate Restructuring and Insolvency Regime

2025

Committee

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Introduction

1. Singapore's debt restructuring and insolvency ecosystem has grown significantly in the last decade, strengthening its position as a regional and international centre for corporate debt restructuring and insolvency ("**R&I**"). Developments have included:

   a. Modernising Singapore's R&I laws to support and contribute to its position as an international financial, business and legal centre; and

   b. Enhancing Singapore's corporate rescue and restructuring processes, thereby preserving and maximising the value of a financially distressed debtor's assets, for the benefit of debtors, creditors, employees, investors and other interested stakeholders as a whole.

2. In particular, steps were taken to:

   a. Introduce relevant features of Chapter 11 of the US Bankruptcy Code into Singapore's restructuring frameworks and enact legislation based on the UNCITRAL Model Law on Cross-Border Insolvency;[1]

   b. Implement a new omnibus Act that consolidated the personal and corporate R&I laws, previously found in separate statutes, into a single piece of legislation that also introduced enhancements to the corporate insolvency regime.[2]

   c. Clarify the Singapore International Commercial Court's ("**SICC**") jurisdiction to hear corporate cross-border R&I matters and the participation of foreign lawyers in such proceedings before the SICC.[3]

3. With the first of the abovementioned changes having taken effect several years back in 2017 and there having been considerable usage and industry feedback of the R&I framework, it is timely to take stock of the developments and consider steps to further strengthen Singapore's corporate R&I regime. The Committee to Enhance Singapore's Corporate Restructuring and Insolvency Regime ("**Committee**") was accordingly convened by the Ministry of Law ("**MinLaw**") and tasked with providing views and recommendations to further enhance Singapore's R&I proceedings, and to attract users to utilise Singapore's R&I procedures.[4]

[1] See the *Companies (Amendment) Act 2017*.

[2] See the *Insolvency, Restructuring and Dissolution Act 2018*.

[3] See Section 56 of the *Courts (Civil and Criminal Justice) Reform Act 2021* and section 2 of the *Legal Profession (Amendment) Act 2022*.

[4] The review of simplified insolvency processes for micro and small companies, other technical amendments to Singapore's insolvency legislation, and other issues relating to capacity-building were outside the scope of this Committee's Terms of Reference.

The Committee's Work

4. The Committee comprises members across key stakeholder groups of the corporate R&I ecosystem. This includes R&I professionals in the turnaround, legal, banking and finance industries with domestic and international practices, as well as academia, and members of the Government. The Committee carried out its work from October 2023 to October 2024.

5. The Committee considered that its recommendations should build on the existing framework and further improve the existing R&I regime. In particular, the Committee recognised the paramount need to uphold what has been working well, with a view to providing greater certainty in the practical interpretation and application of Singapore's legislation. Such certainty would in turn provide invaluable insights on likely case outcomes in the Singapore courts, which is critical to advisors, creditors, and debtors using or contemplating the use of the R&I framework.

Executive Summary of Recommendations

7. The Committee has made a total of 9 recommendations, which are grouped into four broad categories:

STRENGTHENING THE JUDICIAL MANAGEMENT REGIME

a. ***Recommendation 1.1***: The Judicial Management ("**JM**") regime to be reconceptualised to emphasise the restructuring and turnaround functions.

b. ***Recommendation 1.2***: Both creditors and the debtor are to have standing to apply to the Court to place the debtor in JM, so that the debtor has the added option to seek to restructure or turnaround its business via the reconceptualised JM regime, in addition to the scheme of arrangement regime.

c. ***Recommendation 1.3***: The remuneration of the judicial manager to be based on a model that allows flexibility to better align the judicial manager's remuneration with successful outcomes in JM proceedings. In particular, to encourage the structuring of the judicial manager's fees to include a "success fee" component.

d. ***Recommendation 1.4***: The judicial manager to continue to have the ability to pursue Clawback Actions in the reconceptualised JM regime, in order to allow the judicial manager to recover assets of the debtor.

CROSS-CLASS CRAMDOWN IN SCHEMES OF ARRANGEMENT

e. ***Recommendation 2.1***: The cross-class cramdown threshold requirements to be refined to remove conditions requiring a majority in number of creditors representing three-fourths in value of creditors meant to be bound by the proposed scheme to vote in favour of the restructuring plan.

f. ***Recommendation 2.2***: The scope of the cross-class cramdown provisions to be expanded to encompass shareholders in appropriate circumstances, reflecting the economic reality of the debtor's capital structure in a financially distressed situation.

REFINING THE FRAMEWORK AND TOOLS FOR EFFICIENT DEBT RESTRUCTURINGS

g. ***Recommendation 3.1***: The process for disposing the company's undertaking or property, and issuing new shares, to be streamlined in a JM or scheme of arrangement.

h. ***Recommendation 3.2***: The Court to be provided with the discretion to assess and appoint a neutral third-party individual as a "Restructuring Officer" to assist with a restructuring under a scheme of arrangement.

ADOPTING THE UNCITRAL MODEL LAWS RELATING TO INSOLVENCY

i. ***Recommendation 4.1***: The UNCITRAL Model Law on Enterprise Group Insolvency and the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments to be adopted. This will further strengthen Singapore's ability to deal with international, cross-border R&I matters, complementing Singapore's earlier adoption of the UNCITRAL Model Law on Cross-Border Insolvency in 2017.

The Commitee's Recommendations

1. Strengthening the JM Regime

Recommendation 1.1: The Judicial Management ("JM") regime to be reconceptualised to emphasise the restructuring and turnaround functions

Brief History of the JM regime

1.1 The JM regime was introduced in Singapore in 1987 to provide a framework that would "*enable the rescue of a potentially viable business and thus prevent a premature liquidation*".[5] The JM regime was modelled on the administration regime in the UK. In the JM regime, a judicial manager is appointed by the Court to take possession of and administer a debtor's operations and assets in place of its management. During the course of the JM, a moratorium is in place while the judicial manager devises a proposal to achieve one of the statutory objectives of JM, for the creditors' approval. The debtor exits the JM regime where (a) the approved proposal is achieved; or (b) the statutory objectives of JM can no longer be achieved.

1.2 The objectives of JM are for achieving any one of three outcomes:

a. the survival of the company, or the whole or part of its undertaking, as a going concern (the "turnaround function");

b. the approval of a scheme of arrangement (the "restructuring function"); or

c. a more advantageous realisation of the company's assets or property than on a winding up (the "recovery function").[6]

1.3 In 2013, the Insolvency Law Review Committee ("**ILRC**") observed that "*since its introduction in 1987, the judicial management regime has not secured a very successful track record in relation to the rehabilitation of financially troubled companies*". In 2024, despite the implementation of some amendments in the intervening years, the track record of the JM regime does not seem to have significantly improved.

Current perception of the JM regime

1.4 The Committee noted that the market did not perceive the JM regime favourably:

a. Although some creditors elected to place a debtor in JM only in situations where there was a chance for the company's turnaround, the reality is that most debtors in JM thereafter ended up in winding up;

b. Some creditors experienced a lack of control, oversight, and disclosure in the course of JM proceedings; and

c. JM is considered as a last resort to be used only where there are no other available options.

[5] Second Reading of the Companies Bill 1986.

[6] Section 89 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**").

1.5 The Committee noted, based on a review conducted by the Secretariat, that:

a. Between the period of 23 May 2017 to 31 December 2021[7], 117 applications were made under Part VIIIA of the Companies Act 1967 or Part 7 of the Insolvency, Restructuring and Dissolution Act 2018. Of the 99 cases reviewed[8], slightly less than half (43 cases) were treated as successful.[9] Of the remaining cases, about 45% (25 cases) were treated as unsuccessful, while about 33% (23 cases) were dismissed or withdrawn.[10]

b. JM applications filed by creditors were more likely to be granted by the Court (80%), compared to applications filed by the debtor itself (54%).

c. There was a higher rate of debtors achieving one of the purposes of JM where the application was filed by a creditor.

d. Where the judicial manager was nominated by a creditor, the debtor was more likely to meet one of the purposes of JM.[11]

1.6 The Committee viewed that it was necessary to reimagine the role of JM, taking into consideration the evolution of the overall insolvency legislation and the scheme of arrangement framework, which has seen increasing use for the restructuring and turnaround of companies. The Committee identified that the key value proposition of JM is that it provides both creditors and the debtor with an opportunity to change management, obtain information and assess the situation of the debtor, to resolve the debtor's immediate financial distress.

1.7 The aforesaid value proposition of JM's restructuring and turnaround functions are only realised where (a) the JM is conducted expeditiously and the debtor exits the JM proceedings to effect a turnaround or restructuring; and (b) the JM produces a better outcome, as compared to the scenario where the debtor is placed in winding up immediately. Notably, the Committee considered that this improved outcome must be appreciable and not be *de minimis* e.g. outweighed by the costs of the JM proceedings. It was also identified that, amongst others, one cause of the erosion of that value proposition of JM is the divergent purposes of the JM regime (i.e. having both restructuring/turnaround and recovery functions).

1.8 Against this backdrop, the Committee agreed that it was timely to reconceptualise the JM regime to align it with the developments in the overall restructuring and insolvency legislative architecture and market practices. While introduced as a useful multi-purpose tool in 1987, the divergent purposes contribute to a lack of clarity in the intended outcome of any given case, which in turn negatively impacts creditor support for the use of a JM proceeding. Whilst the Committee recognised that there have been some cases where the JM's recovery function (*i.e.* better realisation as compared to winding up) might have been achieved, on balance, it was viewed that reconceptualising the JM regime to only retain the restructuring and turnaround functions would likely facilitate more positive outcomes.

[7] For figures on earlier periods, please see the Insolvency Law Review Committee Report (4 Oct 2013) at pgs 82-83.

[8] The remaining 18 cases were excluded from the review due to various reasons, such as misfiled applications.

[9] Cases were treated as successful or unsuccessful based on whether they achieved one of the purposes of JM, or by proxy, the proposal approved by the creditors. cf. the Insolvency Law Reform Committee Report (4 Oct 2013) at pgs 82-83.

[10] 8 cases had insufficient information to make a determination and/or were still ongoing at the time of the review.

[11] 40% of cases were successfully discharged where the judicial manager was nominated by the creditor, as compared to 15% of cases successfully discharged where the judicial manager was nominated by the debtor.

The Committee noted that, as a result of this reconceptualisation, parties would have to rely on other existing processes to recover and realise value, such as through receivership or winding up (with the liquidator continuing business operations for a limited period in a winding up).

1.9 After careful consideration, the Committee recommends that the JM regime should be reconceptualised to retain only its restructuring and turnaround functions.

Recommendation 1.2: Both creditors and the debtor are to have standing to apply to the Court to place the debtor in JM, so that the debtor has the added option to seek to restructure or turnaround its business via the reconceptualised JM regime, in addition to the scheme of arrangement regime.

1.10 The Committee considered whether only creditors should have standing to place a debtor into JM. The observations at para 1.5 above indicated that JM is more successful where the creditor is the applicant. If this position is implemented, the debtor would, consequently, only be able to restructure its debts via a scheme of arrangement.

1.11 However, the Committee did not recommend this, for the following reasons:

a. The JM is a neutral officer-led proceeding (with the judicial manager being an officer of the Court) which should operate in the same manner regardless of the identity of the applicant for JM.

b. The value proposition and features of the JM regime differ from the scheme of arrangement regime. It was envisaged that debtors will continue to benefit from having an added option to place the debtor into JM in appropriate circumstances, for example, where a change in management is envisaged.

1.12 Therefore, the Committee recommends that both creditors and debtors should continue to have standing to apply to the Court to place the debtor in JM.[12]

Recommendation 1.3: The remuneration of the judicial manager to be based on a model that allows flexibility to better align the judicial manager's remuneration with successful outcomes in JM proceedings. In particular, to encourage the structuring of the judicial manager's fees to include a "success fee" component.

1.13 The Committee had identified that a key element of the value proposition of JM is the envisioned expeditious nature of the proceeding. It was also noted that JM proceedings that take place over a lengthier period of time often do not achieve higher returns to stakeholders because the ongoing costs of the JM process affects the residual value in the debtor.

[12] Section 94 of the IRDA enables a company to be placed under judicial management by resolution of creditors.

1.14 The Committee viewed it as critical for the reconceptualised JM regime to align the incentives of stakeholders with the successful outcomes of JM proceedings. In this regard, one view put forward was that "success fees" would be a suitable model for remuneration because it aligns the monetary interests of the judicial manager with the stakeholders; another view was that taxation of costs should be more stringent where the JM period is longer.

Overview of the different remuneration models

1.15 The issue of remuneration is not a new one.[13] The Committee was of the view that different remuneration methods have different strengths and weaknesses, and are thus suitable for different scenarios. For instance, time costing may be more suitable where there is a high-level of uncertainty, whereas remuneration based on meeting certain pre-agreed milestones or criteria is likely to better align the stakeholders and the judicial manager on the mutually-agreed intended outcome of the JM proceeding (i.e., conditional or 'success' fees).

Stakeholders' considerations and actual practice

1.16 JM proceedings necessitate a fair remuneration to the judicial manager, for work done and the risks taken on by the judicial manager in the course of the JM proceeding. It was recognised that when judicial managers first take on their appointments, the judicial managers will have to spend time and resources to get up on the matter, and to meet their legal obligations.

1.17 It was also recognised that in an insolvency situation, the body of creditors should have the right to elect to continue JM proceedings for the prospect of higher recovery. On the flipside, the body of creditors risks lower recovery if the proposed restructuring is not successful. Different creditors will possess different appetites for risk.

1.18 While costs and remunerations are commercial decisions, the Committee also recognised that an insolvency proceeding is unlike the usual bilateral commercial and legal relationship. This entails a need to ensure that there is a fair and clear process to protect creditors' interests.

1.19 The Committee considered further the following:

a. The average time taken for a JM proceeding to conclude;

b. The differing risk appetite of stakeholders;

c. Overall costs efficiency if a debtor is placed into winding up after a JM process;

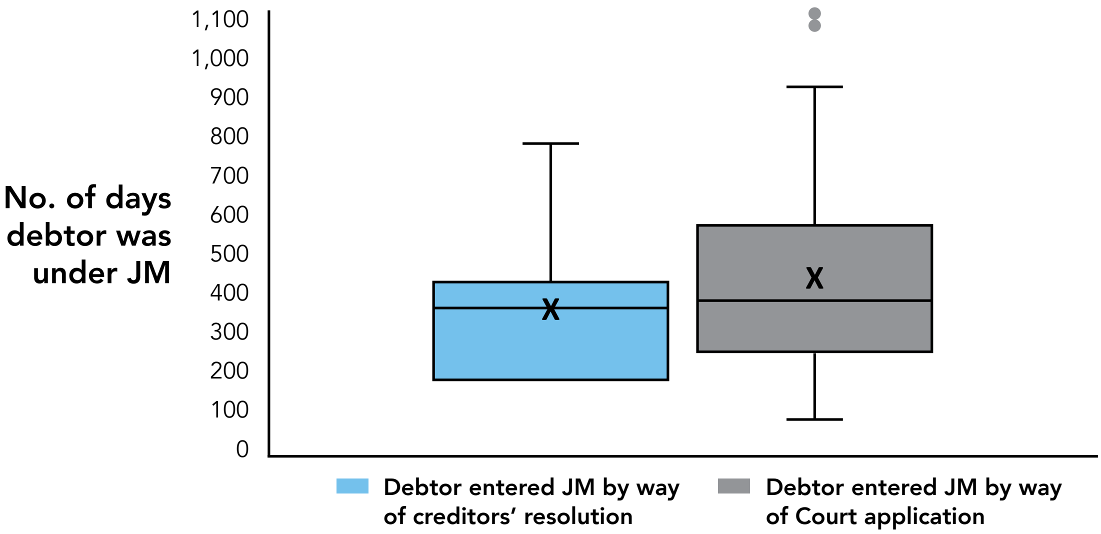
d. Overall costs efficiency if the dispute shifts to the percentage amounts that the calculation of success fees should be based on and how "success" should be defined; and

e. The economic risks borne by the insolvency practitioners ("**IPs**") in the course of the JM.

[13] In 2005, the Law Reform Committee of the Singapore Academy of Law considered this issue of remuneration of corporate insolvency practitioners in the wake of *Re Econ Corp Ltd (in provisional liquidation) (No. 2)* [2004] 2 SLR 264; and "Principles Governing the Fixing of Insolvency Practitioners' Remuneration" by Wee Meng Seng and Yan Yu Kiu (2020).

1.20 In respect of sub-para (a) above, the Committee noted that based on the review conducted by the Secretariat (see para 1.5 above), a significant majority of cases in JM were concluded around the one-year mark:

No. of days Debtor in Judicial management	JM (by way of creditors' resolution)	JM (by way of Court application)
Min	180	78
25th Percentile	190	247
Mean	354	436
Median	361	379
75th Percentile	425	569
Max	777	1,085



1.21 In particular, further to sub-para (c) above, the Committee also considered and rejected a proposal to prohibit judicial managers from transitioning to the role of liquidator of the debtor. The proposal sought to discourage judicial managers from unreasonably prolonging the JM and delaying the commencement of winding up as a way of accruing fees during the JM. It was also considered that this proposal may increase *ex post* scrutiny of the JM proceedings by the liquidator or the Court, particularly in cases where it was clear to the judicial manager that the JM was no longer viable and should not have been prolonged. However, the Committee did not accept this proposal because (a) few IPs would want to take on a fresh role as liquidator where there are no remaining assets; (b) there are cost efficiencies arising from the same IP(s) transitioning from judicial manager to liquidator instead of a new IP taking on the role; and (c) this addresses a downstream issue – instead efforts and resources should be dedicated to addressing the upstream issue of the reconceptualisation of the JM regime.

Foreign Legislation

1.22 The Committee also reviewed the approach to fee structures overseas:

a. In the UK, no particular fee basis is mandated and the fee basis chosen by the insolvency practitioners may be influenced by their own business model, subject to the key principle that the work for which payment is sought "must be necessarily and properly undertaken in the context of an insolvency appointment".[14]

b. Under the US Chapter 11 regime, there are two modes of conditional fees used in practice. The first is a bonus fee, which rewards the professional in addition to the usual time costs. The second mode is that of contingent fees, where the professional places his or her "usual" time costs at risk – in the event the agreed outcome is not achieved, the professional receives less remuneration; if the agreed outcome is achieved or exceeded, the professional receives a higher remuneration (on terms that were agreed upon). In particular, in bankruptcies under Chapter 11 of the US Bankruptcy Code, the U.S. Trustee Program has issued guidelines on the remuneration of insolvency professionals (including lawyers). The fee review process provides a mechanism for the review of fees which must be reasonable and necessary[15] based on client-driven market forces.

Recommendation

1.23 After careful deliberation, the Committee suggests that a multi-stage remuneration model incorporating "success fees" would best serve the interests of parties and facilitate faster resolution of JM cases, while also maintaining the integrity of the JM process as whole.

1.24 The Committee recommends that the Ministry consider a cost-effective manner to implement a multi-stage remuneration model that can be utilised as a standard template for a judicial manager's remuneration in JMs proceedings. This recognises that there could be differing considerations at different stages of the JM process. One option could be to allow for remuneration on a time costs basis during an initial period for a judicial manager to get up on a case, and to thereafter link the judicial manager's remuneration to the achievement of his/her proposals and objectives of the JM. The latter could be achieved by incorporating the judicial manager's remuneration as part of the Statement of Proposals under section 107 of the Insolvency, Restructuring and Dissolution Act ("**IRDA**"). The Committee underscored that it would *not* be commercially desirable to prescribe a specific renumeration (whether it is a figure, percentage or formula), and that the conditions of "success" for the conditional payment must be mutually agreed between the judicial manager and the creditors.

[14] Statement of Insolvency Practice 9 England and Wales.
[15] See § 328(a) and § 330 of the US Bankruptcy Code.

<u>Recommendation 1.4</u>: The judicial manager to continue the ability to pursue Clawback Actions in the reconceptualised JM regime, in order to allow the judicial manager to recover assets of the debtor company.

1.25 If Recommendation 1.1 above is given effect, the Committee considered whether judicial managers in the reconceptualised JM regime should continue to have the power to apply to Court to adjust prior transactions. At present, when a debtor is in JM, the judicial manager is empowered by legislation to commence actions to retrospectively impugn certain transactions.[16] If such an action is successful, the effect of any value improperly lost by the debtor, or any advantage improperly conferred on a third party as a result of the transaction, can be reversed or otherwise remedied by the Court. These are commonly known as "Clawback Actions".

1.26 The Committee agreed that it would be beneficial to retain the judicial manager's ability to pursue Clawback Actions in the reconceptualised JM regime:

a. In contrast to the situation in schemes of arrangement, which is a debtor-in-possession restructuring tool, Clawback Actions are relevant in the JM context. In a JM proceeding, existing management is displaced in favour of a judicial manager, possibly due to allegations of malfeasance. In this context, removing the right of judicial managers to pursue Clawback Actions would:

   i. unduly constrain judicial managers in the full performance of their functions; and

   ii. mean that Clawback Actions can only be undertaken by a liquidator, in the terminal process of winding up. To require this, when the debtor has a chance of effecting a successful turnaround, would unnecessarily destroy value.

b. The potential pursuit of Clawback Actions could be a useful lever to incentivise and gain support from the different creditors who have an interest in the restructuring plan. For example, creditors may vote in favour of a restructuring plan if there is a good chance of a successful Clawback Action that would swell the assets of the company.

1.27 The Committee recognised the concern that allowing Clawback Actions to be pursued within JM could delay proceedings and the debtor's eventual discharge from JM. However, the Committee noted that:

a. The creditors hold the power to decide the judicial manager's restructuring proposals, including whether to commence Clawback Actions.

b. The Clawback Action must support the restructuring or turnaround of the debtor i.e. the purpose of the reconceptualised JM. Hence, it would not be possible for the judicial manager to propose and pursue a Clawback Action for an indefinite period, without a broader restructuring plan.[17]

[16] See Part 9, Division 3 of IRDA.

[17] The Committee considered a potential scenario where restructuring is concluded and the sole outstanding issue is the completion of the Clawback Action. In such a scenario, the Committee considered that there are various options that might be considered. For example, if the company in JM transfers its assets to a new company, the original company could be retained in JM to pursue the Clawback Action; or the company could potentially be discharged from JM for all matters, except for the Clawback Action.

1.28 To avoid doubt, the Committee noted that a judicial manager seeking to pursue a Clawback Action under the reconceptualised JM regime must still establish, where required by the legislative provisions, that the debtor was factually insolvent at the time of the transaction or as a result of the transaction.

1.29 After its deliberations, the Committee agreed that it was important for judicial managers to retain the power to pursue Clawback Actions. Therefore, the Committee recommends that the ability to pursue Clawback Actions should be retained in the reconceptualised JM regime.

Consequential Changes

1.30 Following from Recommendation 1.1, Committee considered the following other consequential changes to further enhance its value proposition:

a. First, the Committee agreed that for flexibility and cost-efficiency, subject to the control of the Court, a judicial manager should be permitted in certain circumstances to make distributions.[18] This was in response to feedback that judicial managers have faced constraints by the lack of power to make distributions.

b. Second, schemes of arrangement, which includes fast-tracked, pre-packaged schemes of arrangement,[19] should be retained as the process for a debtor in JM to implement its restructuring plan. The Committee agreed that there were no compelling reasons to introduce new mechanisms for the implementation of a restructuring in JM.

c. Third, the Committee also views that it would be advantageous to require that an applicant show that there is a benefit for the debtor to be placed in JM above and beyond what would be realised in comparison to the scenario where the debtor is placed into winding-up immediately. This may deter attempts by some users who consider JM a last resort to "buy time" for distressed companies where it is clear that there is no prospect that the debtor can continue on a going concern basis or have its debts restructured.

[18] The Committee separately noted where judicial managers restructure the company through the scheme of arrangement process, the proposed scheme should propose a transfer of control plan so the creditors vote on the post-restructuring management of the company. Where the judicial manager transitions to scheme manager, any further actions and powers will be in the scope of the scheme manager.

[19] Under section 71 of the IRDA.

2. Cross-Class Cramdown in Schemes of Arrangement

Recommendation 2.1: The cross-class cramdown threshold requirements to be refined to remove conditions requiring a majority in number of creditors representing three-fourths in value of creditors meant to be bound by the proposed scheme to vote in favour of the restructuring plan.

2.1 Section 70 of the IRDA provides a cross-class cramdown mechanism in order to prevent a minority of creditors in a dissenting class from vetoing a scheme simply because they belong in a separate class, provided such creditors are treated fairly under the proposed scheme. Otherwise, a single dissenting class may hold the entire scheme ransom to the prejudice of the vast majority of creditors who support the scheme. Additionally, the cross-class cramdown sought to eliminate technical gamesmanship and minimise disputes in relation to creditor classification.

2.2 Specifically, the Court has the power to approve a compromise or arrangement despite a dissenting class, and order the compromise or arrangement to be binding on the debtor and all classes of creditors provided the following three conditions are satisfied:

a. A majority in number of creditors meant to be bound by the compromise or arrangement, who were present and voting at the relevant meeting, have agreed to the compromise or arrangement;

b. The majority in number of creditors mentioned in para (a) above represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting at the relevant meeting; and

(Sub-para (a) and (b) are collectively referred to as the "**Overall Numerosity and Value Cramdown Conditions**".)

c. The Court is satisfied that the arrangement does not discriminate unfairly between 2 or more classes of creditors and is fair and equitable to each dissenting class.[20]

2.3 When the ILRC deliberated the introduction of cross-class cramdowns, some concerns were that there was a lack of developed methodologies for valuation and that Singapore's economy was smaller and may not provide for comparative analysis to be made. At that time, the ILRC recommended that the Court should impose a high threshold of proof, and that the cramdown provision should be subject to the requirement of a requisite majority in number and value of creditors (overall across all classes).

2.4 The Committee noted the quantum of claims and number of creditors that could be subject to cross-class cramdown is limited. The Overall Numerosity and Value Cramdown Conditions jointly constitute a high threshold, which deters the putting together of a plan that involves a cross-class cramdown. The Committee agreed that the tool in its present form could be refined to make it more functional, and that it would be appropriate to consider foreign cramdown provisions.

[20] Section 70(3) IRDA.

<u>Recommendation 2.2</u>: The scope of the cross-class cramdown provisions to be expanded to encompass shareholders in appropriate circumstances, reflecting the economic reality of the debtor's capital structure in a financially distressed situation.

2.5 The lack of provision for shareholder cramdowns was also raised. With the increasing maturity of Singapore's insolvency legislation and ecosystem, it was timely to assess the necessity of a cramdown on shareholders.

2.6 The Committee considered the purpose of the cramdown provisions and the mischief it sought to address. The Committee agreed that as a matter of principle, creditors and shareholders with no economic interest in the debtor should not have the power to "hold out". The economic reality of the debtor's capital structure in a distress situation should be reflected in the cramdown provisions.

2.7 It was noted that Singapore's conditions for invoking the use of the cross-class cramdown provisions were more restrictive, compared to other leading restructuring jurisdictions.

Foreign Legislation

2.8 The Committee noted the positions on cross-class cramdown in the US, UK, and the Netherlands, which differs in several aspects, and in particular:

a. The application of the absolute priority rule;

b. The requisite majority in favour of the plan; and

c. Court's discretion to refuse sanction of the plan, if the plan is discriminatory, unfair and inequitable.

The United Kingdom

2.9 Under Part 26A of the UK Companies Act 2006 ("**Part 26A**"), the court may sanction a cross-class cramdown provided that:

a. None of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative. The "relevant alternative" is the scenario the court considers would be most likely to occur in relation to the debtor if the plan were not sanctioned (commonly referred to as the 'no worse-off test'); and

b. The compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or members present and voting at the relevant meeting, who would receive a payment, or have a genuine economic interest in the debtor, in the event of the relevant alternative.[21]

The court nevertheless retains overriding discretion to determine whether to sanction a plan.[22]

[21] Section 901G, UK Companies Act 2006.

[22] The Committee noted that in the UK, the UK Court of Appeal had set aside a restructuring plan because amongst others, it diverged from *pari passu* treatment of creditors without justification, in *Strategic Value Capital Solutions Master Fund LP and ors v AGPS Bonco PLC* [2024] EWCA Civ 24 (Adler).

2.10 In this regard, recalling paras 2.2 and 2.3, the Committee considered the concerns that the UK approach in Part 26A (which would reduce the threshold) could increase what is known as 'creditor-on-creditor' violence. In turn, this could reduce creditor support for a restructuring to take place in Singapore and lower the attractiveness of Singapore as an investment venue. Instead, the Committee viewed that any changes should encompass structured safeguards, such as those provided under the United States Bankruptcy Code 11 USC (US) (1978) (the "**US Bankruptcy Code**"). This approach would likely provide parties, including creditors who would be bound by the scheme, greater confidence in the process.

The United States

2.11 The Committee noted that in a proceeding under Chapter 11 of the US Bankruptcy Code:

a. A plan can be sanctioned even if one or more classes dissents to the plan, provided that at least one class of impaired creditors votes to accept the plan.

b. The conditions are that the plan does not "unfairly discriminate" and is "fair and reasonable". These terms have been interpreted through a body of case law.

c. While not explicit, the absolute priority rule applies through the "fair and reasonable" criteria.

d. In particular, to cramdown on a secured creditor class, the "indubitable equivalent" of their claims must be offered.[23]

The Netherlands

2.12 The Netherlands, which introduced a new restructuring plan in 2021, provides for a similar cramdown mechanism to the UK Part 26A Restructuring Plan. On 1 January 2021, the Court Approved Restructuring Plan Act, also known as the *wet homologatie onderhands akkoord* (the "**WHOA**" or "Dutch Scheme"), was enacted. Essentially, under the WHOA, a restructuring plan may be proposed by a debtor who is reasonably unlikely to be able to continue paying his liabilities. The debtor is free to choose which claims to include and which ones not to.

2.13 The requisite majority under the WHOA is two-thirds majority in value of outstanding claims for a class of creditors. If at least one class of creditors has voted in favour of the restructuring plan, and that class is in-the-money i.e. would receive a cash distribution in the event of winding up, the debtor can then request the court to confirm that plan in a hearing. The absolute priority rule under Dutch Law may be deviated from in certain circumstances provided that: (a) the plan is fair and reasonable and not detrimental to the rejecting class, and (b) if the rejecting class which would have been in-the-money in a winding up has been offered a cash out option.

[23] See § 1120 of the US Bankruptcy Code.

Recommendation

2.14 Taking into consideration the various perspectives and after careful deliberation, the Committee recommends:

a. Lowering the threshold requirements – specifically in relation to the Overall Numerosity and Value Cramdown Conditions; and

b. Expanding the scope of cross-class cramdown to include shareholders. However, shareholders should be given an opportunity to retain an interest in the debtor if they contribute "new value" to the debtor as this could incentivise them to continue their initial support for the debtor.

2.15 The Committee observed that the Ministry may wish to consider the appropriate implementation of the proposed recommendations, whilst balancing that against the principle that the proposed scheme of arrangement does not discriminate unfairly between two or more classes of creditors, and is fair and equitable to each dissenting class.[24]

2.16 The Committee also suggested that the Ministry may wish to further consider whether any other adaptations from the US Bankruptcy Code might be appropriate approaches to be adopted. For example, in the US, to balance parties' interests, fairness and expediency, meetings for creditors and shareholders whose claims or interests do not entitle them to receive or retain any property under the plan, may be dispensed with and they are deemed to reject the plan.[25]

[24] See section 70(3)(c) IRDA.
[25] See § 1126(g) of the US Bankruptcy Code.

3. Refining the framework and tools for efficient debt restructurings

Recommendation 3.1: The process for disposing the company's undertaking or property, and issuing new shares, to be streamlined in a JM or scheme of arrangement.

3.1 Where a company seeks to dispose of the whole or substantially the whole of its undertaking or property, or issue new shares in connection with a restructuring, approval of the company in general meeting is required under the Companies Act 1967.[26] This may create uncertainty on a restructuring plan that has been agreed with the company's creditors, and provide shareholders with a *de facto* veto power even though where a company nears insolvency, the creditors' interests come to the fore. It was observed that the requirements under sections 160 and 161 of the Companies Act 1967 were, in several instances, an impediment to a quick and successful conclusion of restructuring proceedings.

3.2 In considering whether those provisions of the Companies Act 1967 should be amended, the Committee recalled the history of the sections. These provisions appear to be concerned with addressing the company's business and shareholding in a general business scenario and not an insolvency scenario:

a. The wording of section 160(1) of the Companies Act 1967 was adapted from the UK Companies Bill 1973 (which was not enacted), and aimed to give effect to a recommendation of the Jenkins Committee on Company Law (formed in 1959 and reported in 1962). The recommendation appears to address the principle put forward by the Institute of Chartered Accountants in England and Wales that "*the function of the directors is to manage the shareholders' business, not to dispose of it*." In short, the mischief that section 160 seeks to prevent is the "*improper alienation of the company's property*", to address the concern of a "*fundamental change to the company's business*".[27]

b. The wording of section 161(1) of the Companies Act 1967 was, like section 160(1), adapted from the UK Companies Bill 1973 as well. The protection it offers is to the shareholders "*so that directors cannot act to their detriment without their knowledge and prior consent*."

Foreign Legislation

3.3 In the United Kingdom, section 190 of the Companies Act 2006 (UK) requires approval by a resolution of members of the company for arrangements under which:

a. A director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset; or

b. The company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected.

[26] See sections 160 and 161 of the Companies Act 1967. In respect of listed companies, there is also a requirement of shareholders' resolution for the issuance of new shares under Chapter 8 of the Listing Rules, which deals with changes in capital.

[27] [2604] - [2650] of Woon's Corporations Law (published by LexisNexis Singapore), updated as at December 2022.

3.4 Whilst there is an exception for winding up and administration[28], no such exception applies for a debt restructuring via a scheme of arrangement or under Part 26A. In other words, in a debt restructuring, shareholders' approvals are required for the disposal or acquisition of substantial property in those circumstances.

3.5 In the UK framework, generally, the directors of a company are not permitted to exercise the power of the company to allot shares in the company (or grant rights to subscribe for, or to convert any security into, shares in the company).[29] By way of a carve-out, authorisation by the shareholders for the allotment of shares, etc., is not required for "*anything done for the purposes of a compromise or arrangement sanctioned in accordance with Part 26A (arrangements and reconstructions: companies in financial difficulty).*"[30]

3.6 Taking into account the historical context of the Companies Act 1967 provisions and the position in the UK, the Committee views that it is useful to consider streamlining the approvals required by the company in general meeting for certain actions to be undertaken in relation to a restructuring plan. In this instance, the shareholders are frequently, in an insolvent situation, "out-of-the-money". Therefore, the Committee views that shareholders should not retain a greater bargaining power that outweighs the state of their economic interest with respect to the debtor in an insolvency scenario, especially where the rights of the shareholders have been crammed down by the Court (further to Recommendation 2.2 above). Such streamlining would accurately reflect the rights of the various stakeholders with respect to a financially distressed debtor and prevent the possible frustration of restructuring plans negotiated between the company and its creditors, by the company's shareholders.

Recommendation

3.7 The Committee recommends relooking at the requirements in the Companies Act 1967 for (1) approval of the company in general meeting in order to dispose of the whole, or substantially the whole, of the company's undertaking or property, and (2) for the company to issue new shares. The said requirements should be streamlined to ensure greater facilitation for debtor companies to carry out their restructuring plans in a judicial management or scheme of arrangement.

[28] Section 193 of the Companies Act 2006 (UK).

[29] Sections 549, 550 and 551 of the Companies Act 2006 (UK).

[30] Section 549(3) Companies Act 2006 (UK).

<u>Recommendation 3.2</u>: The Court to be provided with the discretion to assess and appoint a neutral third-party individual as a "Restructuring Officer" to assist with a restructuring under a scheme of arrangement.

Scheme of Arrangement

3.8 In the Singapore restructuring regime, while the moratorium is in force, there is no statutory provision for independent external scrutiny of the debtor's conduct of its business or dealing with its assets, nor is the debtor subject to any restriction in those matters, though the court may impose terms in a court-ordered moratorium.

Neutral Third-Party Court Officer

3.9 The Committee noted that currently, the Court has the power to appoint a neutral third-party individual (referred to in this report as a "**Restructuring Officer**") to provide assistance with the scheme of arrangement, such as to provide greater oversight or assist with the implementation of the scheme of arrangement. As an example, a Chief Restructuring Officer was appointed by the Singapore High Court in a scheme of arrangement relating to Antanium Resources Pte Ltd. Extensive powers were granted to the Chief Restructuring Officer in that case, with a view to progressing Antanium's restructuring and promoting transparency with creditors. Based on experiences in foreign jurisdictions such as the US, UK and Europe, it has been noted that having a Chief Restructuring Officer can "*promote transparency and re-balance stakeholder dynamics*" and "*can bring a distinctive benefit through more consensual negotiations and disclosures of information that tend to be crucial in debtor-in-possession processes*".[31]

3.10 The Committee considered that foreign jurisdictions have a concept of an independent professional / neutral observer to supervise the restructuring and report to the Court. The roles in the UK and Canadian models are termed "monitor". The Committee agreed that the concept for such a role (regardless of its nomenclature) would be a valuable option in the context of certain restructuring cases. Amongst others, the value proposition of such a role of a Restructuring Officer was that it could:

a. update or report to the Court as an independent party; and

b. provide creditors with oversight which would go towards alleviating the concern of some creditors that they lack information and are not meaningfully engaged.

3.11 On the other hand, the Committee also noted that the appointment of such an additional role of a Restructuring Officer would add costs and potentially create delays to the proceedings. In effect, where the additional appointment would be paid from the estate in priority over general unsecured claims, it would be the creditors who are paying for the appointment of the neutral third-party individual.

[31] Article titled "Unprecedented order for the compulsory appointment of a CRO in Singapore restructuring proceedings" reproduced at the SGRI's Blog on 15 Feb 2023 (https://ccla.smu.edu.sg/sgri/blog/2023/02/15/unprecedented-order-compulsory-appointment-cro-singapore-restructuring).

3.12 The Committee agreed that the concept of a Restructuring Officer or a neutral third-party individual, who could perform a range of roles, would be a useful option. While noting it is currently possible to appoint such a neutral third-party without a Court order, the Committee views that the Court's discretion to make an assessment of the merits of such an appointment based on the facts of each case, and the confirmation of such appointment of a neutral third party, would provide more certainty to the parties and minimise potential disputes.

3.13 In the context of a restructuring, the Committee considers that flexibility is preferred and envisaged that the role of such an individual could potentially include:

a. investigating and reporting on alleged acts of misfeasance when a debtor seeks to restructure its debts, and to report to the Court on the progress of the case (similar to the concept of an "examiner" in US Chapter 11 proceedings);

b. advising on the operational aspects of the proposed restructuring, where the individual is an industry expert consultant; and

c. assisting with overseeing and implementing the restructuring of the debtor.

Judicial Management

3.14 The option to appoint a Restructuring Officer was further considered in the context of judicial management, arising from views that in the current landscape, judicial managers may, in certain situations, lack the necessary industry-specific expertise and knowledge. Additionally, against the need for such a role in JM, the Committee expressed that judicial managers already do provide business expertise, and most judicial managers would have generally been nominated because they possess the necessary business expertise in the first place. Additionally, it was recognised that a judicial manager is already presently able to engage a third-party expert to provide such business expertise (in practice, it was observed that judicial managers have done so even though there is no explicit statutory basis for doing so). There were views that if a statutory power for the appointment of a Restructuring Officer were introduced, there could be a risk of abuse as there could be applications made by parties for the extraneous purpose of gaining some form of leverage over the judicial manager.

3.15 The Committee further considered that as a judicial manager is an officer of the Court, a mandated option for the appointment of a Restructuring Officer was not critical in the context of JMs. In fact, appointing a Restructuring Officer in a JM could cause conflict with the statutory powers of a judicial manager.

Foreign Legislation

3.16 In Chapter 11 of the US Bankruptcy Code, there are various measures to protect creditors against potential abuse of the wide moratorium by the debtor. These include the ability of unsecured creditors to form an official committee which is entitled to appoint lawyers and other advisers funded by the estate and to submit a competing plan after the expiry of the exclusivity period, and the monitoring of the progress of cases by the US Trustee. It was noted that creditor committees can be costly and time-consuming.

3.17 In Chapter 11 of the US Bankruptcy Code, there is also a concept of an examiner, which is broadly similar to a monitor in the UK's Part 26A and a monitor in Canada's Companies' Creditors Arrangement Act.

3.18 The Committee considered further the appointment of an examiner under Chapter 11 of the US Bankruptcy Code:

a. The examiner does not oversee the whole process from beginning to end, but may be appointed by the court to address certain points or investigate specific issues.

b. The Committee noted that the role of an examiner is usually more limited than that of a Chapter 11 case trustee, and performs an investigatory function by investigating the acts, conduct, assets, liabilities, business operations, and financial condition of the debtor.

c. The scope of the examiner is flexible - it can be limited and distinct, or wide and comprehensive, depending on the direction of the bankruptcy court.

d. The benefits of the role of examiner are that it promotes efficiency by reducing the need for early and duplicative discovery efforts by separate creditors or committees,[32] and can also create monetary benefits such as helping the debtor realise claims against the management or avoiding illegitimate pre-bankruptcy transfers or preferences, hence enriching the estate and the payments to the creditors.[33]

3.19 It was noted that examiners are not used very often. Examiners were requested in less than 9% of the cases of 1225 bankruptcies under Chapter 11 of the US Bankruptcy Code from 1991-2010.[34] It was noted that "*Judges are often reluctant to appoint an examiner if there is no apparent benefit to the estate or if a party requests one for transparently strategic reasons*"[35] despite the mandatory nature of the statute. The finding of the study was that examiners were appointed in fewer than half of the cases in which they were requested.

[32] *ABI Commission to study the reform of Chapter 11 2012-2014 Final Report and Recommendation*.

[33] Stefan Korch, 'Chapter 11, Corporate Governance and the Role of Examiners' (2018) 34(2) *Emory Bankruptcy Developments Journal* 411, 440–1.

[34] Jonathan C. Lipson & Christopher Fiore Marotta, 'Examining Success' (2016) 90(1) *The American Bankruptcy Law Journal* 1, 1.

[35] Jonathan C. Lipson, 'Understanding Failure: Examiners and the Bankruptcy Reorganization of Large Public Companies' (2010) 84(1) *The American Bankruptcy Law Journal* 1, 3.

Recommendation

3.20 Thus, the Committee recommends that:

a. the Court be provided with the discretion to assess and appoint a Restructuring Officer as an officer of the Court, who may take on a wide range of roles, to assist with a restructuring under a scheme of arrangement;

b. the appointment of such a role should not be mandatory in all cases but is targeted at cases where the assistance of a Restructuring Officer would be useful or appropriate; and

c. the specific role should offer flexibility for the Court to limit or designate the functions that the role would perform e.g. to act as a monitor, to provide business expertise, to take on the function typically performed by that neutral individual.

3.21 Following from the deliberation at paras 3.14 and 3.15 above, the Committee did not view that it was necessary to include the same power for the Court to appoint a Restructuring Officer in the context of the JM regime.

4. Adopting the UNCITRAL Model Laws relating to insolvency

Recommendation 4.1: The UNCITRAL Model Law on Enterprise Group Insolvency and the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments to be adopted. This will further strengthen Singapore's ability to deal with international, cross-border R&I matters, complementing Singapore's earlier adoption of the UNCITRAL Model Law on Cross-Border Insolvency in 2017.

4.1 The Committee recommends that the following two Model Laws promulgated by the United Nations Commission on International Trade Law ("**UNCITRAL**") should be implemented in Singapore:

a. The Model Law on Enterprise Group Insolvency ("**MLEGI**"); and

b. The Model Law on Recognition and Enforcement of Insolvency-Related Judgments ("**MLRIJ**").

4.2 This will complement the UNCITRAL Model Law on Cross-Border Insolvency, which Singapore implemented in 2017, and strengthen Singapore's international and cross-border insolvency regime. If enacted, Singapore will be one of the first States to implement the two Model Laws, demonstrating its commitment to mutual cooperation and international best practices in the area of international insolvency.

UNCITRAL Model Law on Enterprise Group Insolvency

4.3 The MLEGI aims to facilitate the restructuring of the whole of the business enterprise with multinational holdings (or some of the members within the group) or sale of the business as a going concern. This will be achieved through "group insolvency solutions", which are proposals that seek to enhance the overall combined value of two or more group members through a restructuring, a sale of business or a liquidation. Whilst the MLEGI may only be able to function as intended once a sufficient number of states adopt it,[36] the Committee is of the view that this should neither preclude, nor deter, Singapore from adopting this instrument. Specifically, the Committee recommends that Singapore enact the MLEGI in its entirety, including the supplemental provisions that would allow Singapore to support "synthetic proceedings".[37]

[36] Given that any restructuring of an enterprise group will cut across various jurisdictions, the development of "group insolvency solutions" via a "planning proceeding" (as envisaged under the MLEGI) is likely to require the co-operation and recognition of such proceedings across the various relevant jurisdictions.

[37] A "synthetic proceeding" permits a jurisdiction to resolve foreign creditor claims in a manner similar to the foreign insolvency proceeding, in lieu of actually commencing the foreign insolvency proceeding. For example, a synthetic proceeding in Singapore would allow a restructuring of debts owed to Indonesian creditors in Singapore (under the rules of restructuring in Indonesia), in lieu of commencing the restructuring proceeding in Indonesia.

4.4 The MLEGI will support restructuring of enterprise groups. This provides an opportunity for Singapore to coordinate enterprise group insolvencies, particularly for proceedings heard in the Singapore International Commercial Court ("**SICC**"). The SICC is an optimal forum for cases involving multiple governing laws given that:

a. The SICC's bench comprises eminent and experienced local and international judges; and

b. The SICC enables the efficient collaboration between local and foreign counsel in their representation of parties in appropriate cases.

4.5 The adoption of the MLEGI will not substantially affect or undermine existing provisions and proceedings under domestic law, particularly, in the IRDA. Instead, the MLEGI provides additional options to support enterprise group insolvency proceedings.

<u>UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments</u>

4.6 The MLRIJ aims to provide a framework for the recognition and enforcement of foreign insolvency-related judgments. The main global instrument for cross-border insolvency has been the UNCITRAL Model Law on Cross-Border Insolvency ("**MLCBI**"). However, certain judgments from certain jurisdictions have raised uncertainty regarding the MLCBI's application to the enforcement of insolvency judgments. At the same time, insolvency, including the enforcement of insolvency judgments, is typically excluded from general private international instruments for commercial matters.

4.7 Whilst Singapore courts have enforced insolvency judgments under the MLCBI, it is nevertheless proposed that Singapore enact the MLRIJ in its entirety, for the following reasons:

a. The MLRIJ provides a bespoke and tailored regime for the recognition of foreign insolvency-related judgments, providing clear guidance and certainty to foreign users seeking to enforce such judgments in Singapore.

b. This will facilitate cooperation and harmonisation of cross-border insolvency by contributing to its wide adoption. It has been noted that enactment of the MLRIJ by countries generally and especially by major economies with more experience with cross-border insolvency cases and the application of the MLCBI would send a signal about the importance of the regime, serving as a nudge and inducing participation by other countries, which would promote uniformity and consistency.[38]

[38] See Irit Mevorach, 'Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism' (2021), European Business Organization Law Review, 22:283-315

Annex A: Secretariat

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2. Mrs Jasmine Chin-Sabado (from August 2023 to December 2024)
3. Mr Harold Foo
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