

Restructuring & Insolvency

SICC's Jurisdiction over Cross-Border Restructuring and Insolvency Matters

Introduction

Businesses are increasingly spreading their footprint across jurisdictions, be it through the diversified locations of their assets or operations. What this means is that, if and when the need to resolve financial distress arises, such businesses may need to select a forum that will serve as an effective base for the management of the cross-border legal issues.

Singapore has been strengthening its position as a key nodal jurisdiction for cross-border restructuring and insolvency. In 2015, the Singapore International Commercial Court ("**SICC**") was established specifically to handle international commercial disputes. Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency as part of the extensive changes to its debt restructuring regime in 2017. In 2018, the Insolvency, Restructuring and Dissolution Act ("**IRDA**") was introduced to consolidate and further augment Singapore's restructuring and insolvency framework. The IRDA came into effect in 2020 alongside certain further refinements to the legislation.

This process continues with amendments to the laws to provide that the SICC has jurisdiction over international restructuring and insolvency matters. These amendments come into effect on 1 October 2022.

This development is expected to further enhance Singapore's capabilities and attractiveness as a forum of choice for cross-border insolvency. As an institution geared towards managing international disputes and questions of foreign law, the SICC is well placed to handle such cases.

In this Update, we highlight the key amendments, and how they will affect the framework for cross-border restructuring and insolvency in Singapore.

The SICC and Cross-Border Capabilities

The SICC functions as a division of the General Division of the Singapore High Court and is designed to deal with transnational commercial disputes. To facilitate the hearing of such disputes, which now include cross-border insolvency and restructuring matters, the SICC has the following features:

International Judges – The SICC has a panel of Singapore Judges and International Judges. The International Judges are experienced and eminent members of the judiciary of their respective jurisdictions. The panel also includes Judges with experience and specialist knowledge in insolvency law.



Client Update: Singapore

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Foreign law – Cross-border insolvency and restructuring matters typically involve questions of foreign law. The SICC is well equipped to determine foreign law issues on the basis of submissions rather than requiring expert evidence. Further, foreign lawyers are able to directly make submissions on areas of foreign law.

Joinder of third parties – The SICC has the power to join third parties to an action, even if they are not part of an SICC jurisdiction agreement. This is of particular importance in the context of international restructuring and insolvency, which tends to involve different parties such as debtors, creditors, and asset owners.

Enforceability – Another important factor in the choice of forum is whether its judgment or order will be enforceable in other jurisdictions. SICC judgments are judgments of the General Division of the High Court of Singapore, and there is increasing recognition of Singapore court judgments and orders by foreign courts.

Insolvency Proceedings in the SICC

Jurisdiction – The SICC will have jurisdiction to hear any proceedings relating to corporate insolvency, restructuring or dissolution under the IRDA (or under the Companies Act before the IRDA came into effect).

Such proceedings must be international and commercial in nature. The amendments also introduce a new Order 23A to the Rules of Court dealing with corporate insolvency, restructuring or dissolution. Order 23A explains what is "commercial" and "international":

- **Commercial** – Insolvency proceedings are commercial if the subject of those proceedings and any affected person have a relationship of a commercial nature, whether contractual or not.
- **International** – Insolvency proceedings are international if:
 - Commenced under Part 11 of the IRDA (which deals with cross-border insolvency) and the Third Schedule to the IRDA (which sets out the UNCITRAL Model Law on Cross-Border Insolvency); or
 - The subject is a company or a foreign company that has a substantial connection with Singapore, and at least one of the prescribed factors applies to the subject. The factors include the place of business, assets, liabilities, creditors, or contractual obligations being in a foreign country.

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Foreign lawyers – Foreign lawyers are allowed to appear in relevant proceedings before the SICC to make direct submissions on permitted matters of foreign law, provided they are duly registered under section 36P of the Legal Profession Act. However, such foreign lawyers may not:

- make submissions on matters of Singapore law; and
- plead any matter without the permission of the SICC. In considering whether to grant such permission, the SICC may take into account any relevant factor, including the prescribed factors (which include the nature of the factual and legal issues, the role of the solicitor in the proceedings, and the extent of the international elements involved).

This would allow foreign lawyers to make submissions before the SICC on matters of foreign law and certain factual matters relating to the restructuring proceedings in the foreign jurisdiction. However, submissions on the IRDA and Singapore law issues would require the involvement of local counsel.

Procedure – The new Order 23A of the Rules of Court will provide rules for multi-party international restructuring and insolvency proceedings. Under Order 23A, the IRDA and the Insolvency, Restructuring and Dissolution (Corporate Restructuring and Insolvency) Rules will apply to all insolvency proceedings in the SICC. Such proceedings must be decided by the statements adjudication track, subject to any modifications and unless otherwise ordered.

Conditional fee arrangements – Lawyers representing clients in certain insolvency cases before the SICC will be able to enter into conditional fee agreements with their clients for proceedings commenced in the SICC. This will provide an additional funding option to allow greater access to justice.

Concluding Words

Singapore has established itself as a regional hub for the management of cross-border restructuring and insolvency, and can be seen to be making effort to further strengthen its position. The SICC, being the division of the Singapore Courts that handles transnational commercial disputes, can play a bigger role in such insolvency proceedings, facilitating the effective resolution of the issues and disputes.

The amendments relating to the SICC's jurisdiction over cross-border insolvency matters is a welcome development, and significantly strengthen Singapore's position as a nodal jurisdiction for cross-border restructuring and insolvency.

For further queries, please feel free to contact our team below.

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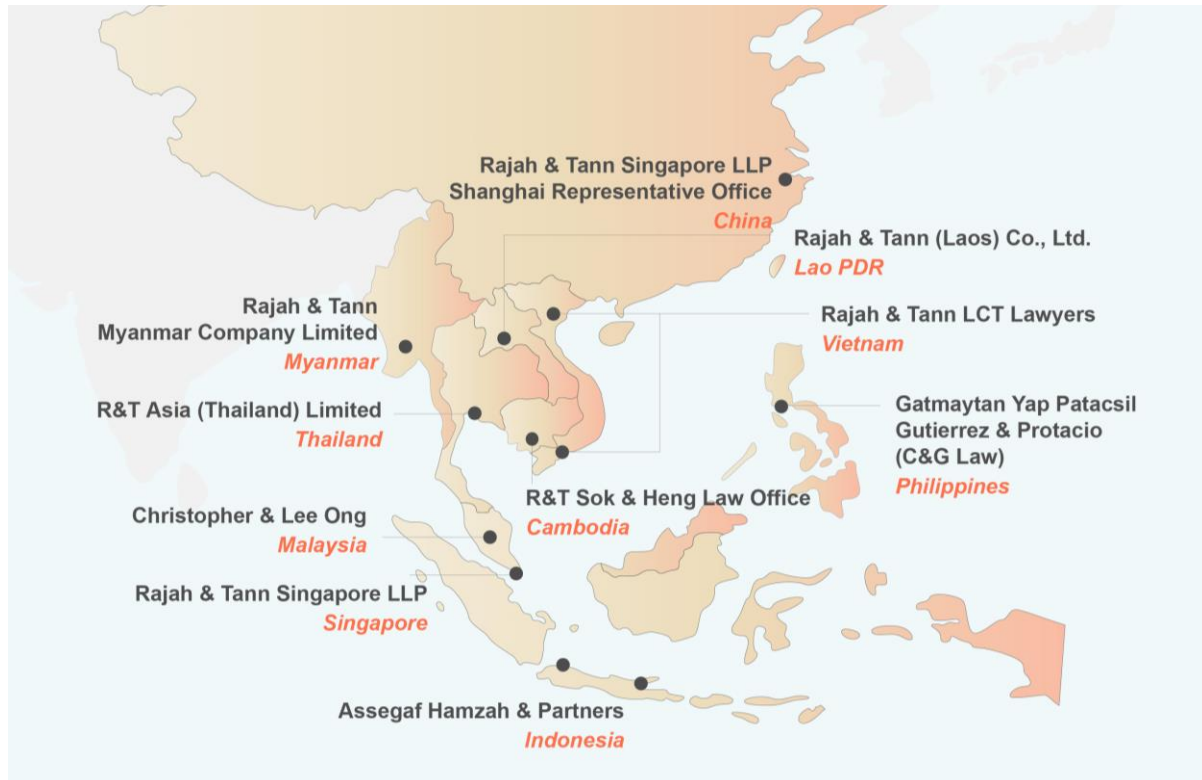
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