

Restructuring & Insolvency

# Receivership vs Judicial Management – Court Considers Interplay of Regimes in Insolvent Company

## Introduction

When a company enters financial trouble, the Singapore restructuring and insolvency framework provides a number of avenues through which the rights of the company's creditors may be addressed. Amongst these avenues, receivers may be appointed pursuant to an instrument to enforce a secured creditor's rights. Judicial managers may also be appointed by the Court to manage the business and assets of the company.

In *Yap Sze Kam v Yang Kee Logistics Pte Ltd* [2023] SGHC 43, the Singapore High Court was faced with a scenario where it had to consider the interplay between the judicial management regime and the receivership regime. The case involved bondholders, with a debt of about S\$110 million, who had appointed receivers over the majority of the shares of the relevant companies, thus achieving effective control of the companies. However, a creditor and a founder of the companies sought to appoint judicial managers over the companies instead.

The Court declined to appoint judicial managers in the circumstances, finding that it would not achieve the statutory purposes of judicial management, and would not be in the best interests of the creditors as a whole.

The purpose of the purported appointment of judicial managers was to block the acceptance of an offer for the purchase of the charged shares of the companies in favour of a more "holistic" solution. However, the Court was of the opinion that there was insufficient evidence that judicial managers could reach such a solution, and that in any event, the proposed sale of the shares was in the interests of the companies' creditors as a whole. The Court further dismissed the complaint that the receivers were accountable to the bondholders rather than the creditors generally, as this was a feature of the security arrangements for the bonds.

Jansen Chow of Rajah & Tann Singapore LLP successfully represented one of the largest bondholders in this matter.

## Brief Facts

The dispute involved the Yang Kee Group, which provided integrated logistics services, and was founded by one Mr Koh and his father. YK HoldCo was the parent holding company. YK LogCo, the



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logistics business arm, was a wholly owned subsidiary. YK HoldCo held a 50.99% interest in the property holding arm, YK PropCo, with the remaining interest held by an investment vehicle owned by a company known as LOGOS. The Yang Kee Group was insolvent.

YK HoldCo had issued various bonds secured by a charge over the Koh Family's shareholding in YK HoldCo and YK PropCo ("**Charged Shares**"). However, YK HoldCo defaulted on its payment obligations. The security trustee for the bondholders then exercised its power to appoint receivers and managers ("**Receivers**") over the Charged Shares. By virtue of controlling a majority stake in both YK HoldCo and YK PropCo, the Receivers had effective management control over YK HoldCo, YK PropCo, and YK LogCo.

The Receivers sought to sell the Charged Shares and elicited two binding offers, one from LOGOS, and another from a company known as GDPS. After evaluating these offers, the Receivers decided to move forward with LOGOS' offer.

The Receivers' decision prompted two judicial management applications. Mr Yap, a creditor of YK HoldCo, applied for the appointment of judicial managers over YK HoldCo, and Mr Koh (in his capacity as creditor) applied for the appointment of judicial managers over YK LogCo. Mr Yap and Mr Koh submitted that there was a real prospect that judicial managers would be able to reach a "holistic" deal with GDPS (or possibly others), and that proceeding with the LOGOS deal would entail the end of the founders' vision of an integrated end-to-end logistics solutions provider. The applications were opposed by YK HoldCo and YK LogCo.

### Holding of the High Court

The Court declined to exercise its discretion to order the appointment of judicial managers.

As the companies were insolvent, the main issue was whether judicial management would fulfil one or more of the statutory purposes in sections 89 and 91 of the Insolvency, Restructuring and Dissolution Act:

- Their survival, in whole or in part, as going concerns; or
- A more advantageous realisation of their assets than on a winding up.

The thrust of Mr Yap's and Mr Koh's submission was that a "holistic" deal, as opposed to the LOGOS deal, would be better for the creditors as a whole, and would maintain the vision of an integrated end-to-end logistics solutions provider.

However, the Court found that the evidence did not demonstrate any real prospect for a "holistic" deal. There was insufficient evidence that GDPS was seriously interested in reaching a workable deal. Further, there was nothing to suggest that judicial managers would be able to achieve a "holistic" deal when the YK Group's founders had failed to do so.

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The Court rejected the principal advocated advantage of making the judicial management orders, which was that judicial managers would be independent of the bondholders and would more objectively evaluate the LOGOS deal.

- The evidence suggested that the Receivers had in fact been objective and professional, as well as diligent in their efforts.
- Although the Receivers were accountable to the bondholders (rather than the creditors generally), this feature was built into the security arrangements for the bonds, which the founders had agreed to. This was in fact the intent of the security arrangements.
- In any event, regarding the interests of the companies' creditors, the bondholders were the largest creditors of YK HoldCo, and the LOGOS deal would bring benefit to the creditors of YK LogCo generally.

The Court concluded that the appointment of judicial managers would not achieve any of the statutory purposes and would not be in the best interests of the creditors as a whole. The Court thus declined to grant the judicial management orders.

## Concluding Words

This matter highlights the interplay between judicial management and receivership in an insolvent company. It demonstrates the areas where conflict may arise between the two regimes, and how the Court may resolve such tensions by addressing the interests of the various groups of creditors, as well as their interests as a whole.

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

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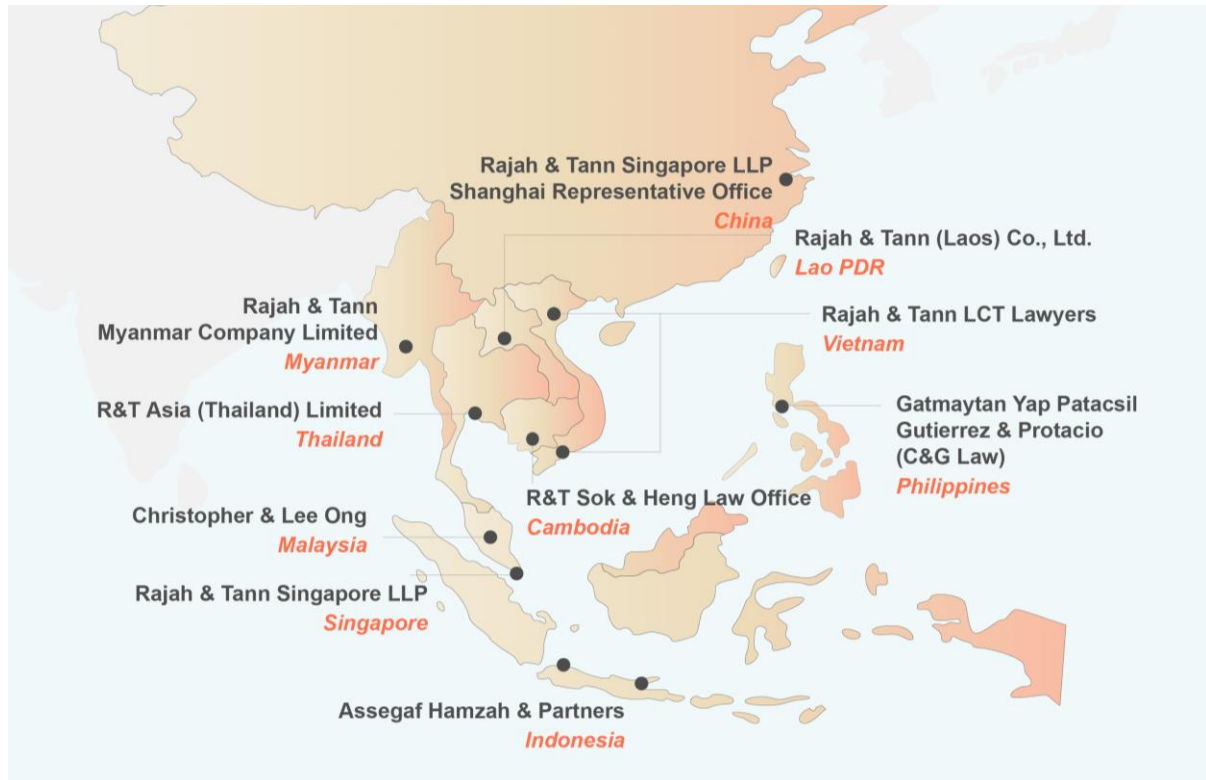
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