Newsflash
April 2017

PROVIDENCELAW
ASIA

Recent Significant Changes to the Corporate Regulatory and Restructuring Regime in Singapore

Companies (Amendment) Act 2017

Abraham VERGIS, Nawaz KAMIL & Niki CHEN

In an effort to ensure Singapore's corporate regulatory regime continues to stay robust and to strengthen Singapore's status as a leading global financial hub, the Companies (Amendment) Act 2017 ("**CAA 2017**") was passed by Parliament on 10 March 2017, and has come into effect on 31 March 2017. The CAA 2017 introduced amendments that aim to:

a. Improve the transparency of ownership and control of companies in line with more stringent international standards for combating money laundering and terrorism financing; and

b. Enhance debt restructuring framework by giving business entities in financial difficulties greater flexibility to restructure and survive.

A brief overview of the key changes are highlighted below:

I. Improving the transparency of ownership and control of companies in line with international norms

a. *Locally incorporated companies and foreign companies registered in Singapore are required to maintain a register of controllers*

In order to make the ownership and control of corporate entities more transparent, thereby reducing opportunities for the misuse of corporate entities for illicit purposes, the CAA 2017 requires locally incorporated companies and foreign companies registered in Singapore to maintain registers of their controllers at prescribed places. A "*controller*" is defined as any person or corporate entity with "*significant control*" and / or "*significant interest*", in particular, where such person or entity:

(1) Holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters; or

(2) Holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members equivalent persons of the company, or

(3) Has the right to exercise, or actually exercises, significant influence or control over the company; or

(4) Holds, directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company.

The register of controller will be kept only by the company and will not be made available to the public. It is subject only to inspection by ACRA and other public agencies upon request.

b. *Foreign companies registered in Singapore are required to maintain public registers of their members*

This amendment aligns the requirement for foreign companies with the current requirement applicable to locally incorporated public companies.

c. *Locally incorporated companies are required to maintain a register of nominee directors*

In order to mitigate the risks of money laundering and terrorist financing being done through nominees, this amendment requires nominee directors (i.e. a director who is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person) to disclose their nominee status and the particulars of their nominators to their companies. The register of nominee directors will be kept only by the company and will not be made available to the public. It is subject only to inspection by ACRA and other public agencies upon request.

d. *Records of wound up companies are required to be retained for five years instead of two years*

In order to prevent companies that conduct illicit transactions from destroying documents before the end of the required retention period, records of companies wound up by its members or creditors must (i) retain its records for at least five years, and (ii) cannot destroy its records before the end of such retention period. Furthermore, former officers of a struck-off company are required to ensure that all books and papers of the company are retained for at least five years.

II. Enacting Singapore's debt restructuring and corporate rescue framework

The amendments in CAA 2017 also relate to scheme of arrangements, judicial managements, and cross-border insolvencies. The amendments involving scheme of arrangements have adapted parts of the Chapter Eleven United States Bankruptcy Code.

a. SCHEME OF ARRANGEMENT

- ***Enhanced moratorium against creditors*** to confer greater protection on a debtor during a restructuring. Automatic moratoriums for up to 30 days and moratoriums with *in personam* worldwide effect are provided for. Such moratoriums may also be extended to related entities of the company. This provides additional time for the troubled company to come up with an effective restructuring proposal.

- ***Rescue financing provisions*** to enable the Court to grant new financing priority over other creditor claims. The granting of super priority over existing security will be subject to safeguards to ensure that existing secured creditors are not unfairly prejudiced.

- ***Enhanced cram down provisions*** to allow a scheme to be approved even if a class of creditors oppose the scheme, if such creditors will not be unfairly prejudiced by the scheme. This is in contrast to the previous regime whereby the Court can only sanction a scheme if the requisite majority approval has been obtained from all classes of creditors.

- ***Enhanced creditor protection*** by requiring debtors to disclose relevant information to allow the creditors to make informed decisions in the restructuring and by introducing provisions to prevent debtors from dissipating assets while it benefits from the protection of the moratorium.

- ***Pre-packaged provisions*** which will fast-track pre-negotiated schemes between a company and its key creditors, by dispensing with scheme meeting.

b. JUDICIAL MANAGEMENT

- ***Judicial Management for companies which are almost insolvent*** may be allowed with the new amendments. The Court will be able to make a judicial management order when a company is "likely to be unable to pay its debts" as opposed to the previous requirement of "is or will be unable to pay its debts".

- A more balanced approach by the Court when considering the interests of a creditor who may or has appointed a receiver in deciding whether to grant a judicial management order. With the new amendments, the Court must dismiss an application for a judicial management order if the prejudice which would be caused to as such a creditor is disproportionately greater than the prejudice that would be caused to the unsecured creditors of the company if the application is dismissed. The previous position did not require the Court to balance the prejudice caused to the both sides and a judicial management application may be dismissed as long as there was some prejudice to the secured creditor.

c. CROSS-BORDER INSOLVENCY

- ***Guidelines are provided for the Court*** to consider when deciding on whether a foreign company has substantial connection with Singapore, such that it may be wound up and/or file an application for a scheme of arrangement and/or be placed in judicial management.
- ***The UNCITRAL Model Law on Cross-Border Insolvency*** has been adopted as part of Singapore law.

- ***"Ring fencing" of Singapore assets by liquidators of foreign companies*** is abolished, subject to carve outs for certain regulated financial entities.

Given the continuing downturn in key sectors in Singapore, such as the offshore and marine sector and the increase in cross-border restructurings, the reforms relating to the restructuring regime in Singapore are welcome. Such measures can go a long way towards increasing the rehabilitation prospects of troubled companies through court-based restructuring for both domestic and cross-border insolvencies.

If you would like information on this area of law, please contact:

Abraham VERGIS
Managing Director
+65 6438 1969
abraham@providencelawasia.com

Nawaz KAMIL
Counsel
+65 6438 1969
nawaz@providencelawasia.com