Insolvency Law
Bulletin

Singapore's new "supercharged" scheme of arrangement

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Introduction

While the Australian insolvency community grapples with the implementation of the Insolvency Law Reform Act 2016 (Cth), the Government of Singapore is engaged in a law reform project that is much more ambitious in scope.

Singapore is seeking to become an international debt restructuring hub, akin to London or New York, an aspiration unambiguously conveyed in the title of the *Report of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring*[1] released on 20 April 2016 (the 2016 Report). The 2016 Report recommended that this be achieved by:[2]

- enhancing Singapore's legal framework for restructuring;
- creating a restructuring-friendly ecosystem;[3] and
- addressing the "perception gap".[4]

A key aspect of these recommendations has now been implemented, with the Singapore Parliament passing the Companies (Amendment) Act 2017 (SG) (the Act) which amends Singapore's Companies Act (Cap 50) 2006 (Companies Act).[5] The Act introduces sweeping changes to Singapore's restructuring and insolvency framework, including significant amendments relating to schemes of arrangement, judicial management and cross-border insolvency.

Central to the reforms is the augmentation of the scheme of arrangement process with a number of new provisions, some of which were adopted from the US Bankruptcy Code (1978) (the Bankruptcy Code). This article focuses on this new "supercharged" scheme of arrangement procedure, and its potential use in cross-border restructurings.

Schemes of arrangement

Prior to these law reforms, Singapore schemes of arrangement were very similar to Australian schemes.[6] The Act introduces a number of measures to supercharge Singapore creditor schemes of arrangement including:[7]

- an expanded jurisdiction for foreign companies to access Singapore schemes;
- enhanced moratoriums (including a "world-wide" stay and extension of the moratorium to related companies);
- (cross-class) creditor cram downs;
- "pre-packaged" schemes that bypass the requirement for scheme meetings;
- priority rescue funding;
- a formal proof of debt regime; and
- various other creditor protections.

The Singapore scheme of arrangement regime has not been meaningfully updated since its introduction over 100 years ago.[8] These changes are therefore nothing short of revolutionary. Many of these new provisions are based on concepts found in Ch 11 of the Bankruptcy Code. By adopting these concepts, Singapore is seeking to create a new regime that incorporates the "best of both worlds" of the scheme of arrangement and Ch 11 procedures.[9]

Use of Singapore schemes in respect of foreign companies

Key to becoming an international debt restructuring hub is enabling foreign companies to avail themselves of Singapore's scheme of arrangement procedure.

A scheme of arrangement may be proposed in respect of any "company", which means in this context any corporation liable to be wound up under the Companies Act.[10] The Act has expanded this concept by specifically providing that a foreign company may (only) be wound up in Singapore if it has a "substantial connection" with Singapore.[11]

A court may rely on the presence of one or more of the following matters in determining that the company has a substantial connection with Singapore:[12]

- Singapore is the centre of main interests of the company;
- the company is carrying on business in Singapore or has a place of business in Singapore;
- the company is a foreign company that is registered under Div 2 of Pt XI of the Companies Act;
- the company has substantial assets in Singapore;

- the company has chosen Singapore governing law for a loan or other transaction (or for the resolution of a dispute arising out of a loan or other transaction); or
- the company has submitted to Singapore's jurisdiction for the resolution of a dispute relating to a loan or other transaction.

The substantial connection concept appears to be a development of the "sufficient connection" test applied by the English courts when determining if there is jurisdiction to wind up a foreign company in England, and which also forms the basis for jurisdiction in respect of schemes of arrangement.[13] The English courts have developed this test in the context of schemes of arrangements to facilitate the use of English schemes to restructure European and other foreign companies, relying on many of the sorts of matters contemplated above.[14]

Enhanced moratoriums[15]

The Act provides that where a company proposes, or intends to propose, a scheme of arrangement, the court may, on the application of the scheme company, grant a moratorium order.

The company must provide specific information in support of such application, including evidence of support from the company's creditors for the scheme of arrangement and an explanation of how such support would be important for the success of the scheme.[16]

The scope of the moratorium order is potentially very broad[17] — it may restrain:[18]

- winding up resolutions;
- appointment of receivers;
- legal proceedings against the company;
- execution, distress or other legal process against property of the company;
- any step to enforce any security over any property of the company, or to repossess any goods held under lease, hire-purchase or retention of title arrangements; and
- re-entry or forfeiture under any lease in respect of property occupied by the company.

The moratorium order may be expressed to apply to acts outside of Singapore (provided the relevant person is within the jurisdiction of the Singapore court).[19] This is similar in concept to the "world-wide" automatic stay,[20] provided for under Ch 11 of the Bankruptcy Code, which has extraterritorial reach through the personal jurisdiction of the US bankruptcy courts that can extend to acts outside of the US.

Moratorium orders may also be granted by the Singapore court with respect to a holding or subsidiary company of the scheme company, where:[21]

- the related company plays a necessary and integral role in the scheme;
- the scheme will be frustrated if a restrained action is taken against the related company; and
- the creditors of the related company will not be unfairly prejudiced by the order.

Remarkably, it appears the related company may be a foreign company without a substantial connection to Singapore.[22]

The most obvious use would be to obtain protection not only for a borrower, but also all of the guarantors of debt subject to the scheme. However, there may well be more creative applications of a "group moratorium" order. The moratorium could therefore be a powerful tool to assist with multi-national group restructurings (that goes even beyond what is normally available in Ch 11 of the Bankruptcy Code).

However, the Singapore courts will need to be vigilant that these moratoriums do not become too easily accessible or abused by debtors — merely intending to propose a scheme is a low bar, and there are no limits on the period for which the courts may grant moratorium orders.

The Act also introduces an automatic 30-day moratorium, in respect of the scheme company itself, which runs from the date that the application is made for a moratorium order.[23]

Cross-class creditor cram downs

The Act creates a mechanism to force one or more non-consenting classes of creditors to be bound by the scheme of arrangement, if:[24]

- the scheme is approved by a majority in number, representing at least 75% of the value, of those present and voting at the meeting of at least one class of creditors;
- the scheme is also approved by creditors comprising a majority in number, representing at least 75% of the value, of those present and voting at the meeting(s) of scheme creditors as a whole; and
- the scheme is "fair and equitable" to each dissenting class of creditors and does not "discriminate unfairly" between two or more classes of creditors.

The concept of "fair and equitable" has been adopted from the Bankruptcy Code,[25] and requires that:[26]

- no creditor in the dissenting class receive less under the scheme than it is estimated by the court to receive in the most likely scenario if the scheme is not passed;

- if the creditors in the dissenting class are secured, they must receive deferred cash payments totalling the amount secured (and security preserved until such time), be given a charge over the proceeds of their secured asset, or be entitled to realise the "indubitable equivalent" of the security; and
- if the creditors in the dissenting class are unsecured, they must either be paid out in full, or the scheme must not provide for any creditor or shareholder subordinate to the dissenting creditor to receive or retain any property.

In principle, this cross-class cram down mechanism addresses a key weakness of the scheme of arrangement procedure.[27] While the requisite majority of creditors can bind the minority within a class, if the rights of creditors are sufficiently dissimilar, they will need to form a separate class.[28] In practice, this can create a veto for junior classes of creditors, unless an alternative mechanism can be employed to "burn them off".[29]

However, the Singapore cram down mechanism may be difficult to utilise as drafted. The Act incorporates (as described in the last bullet above) what is known in the US as the "absolute priority rule".[30] This rule requires (among other things) that to cram down an unsecured creditor, existing shareholders may not retain any of their shares in the company (unless all unsecured creditors are paid in full). The rule effectively requires the shares of existing shareholders to be divested (subject to the availability of certain exceptions),[31] a power which is provided for in the Bankruptcy Code by way of a shareholder cram down power.[32] Unfortunately, no such general power to cram down shareholders (or otherwise divest their shareholding in the company) exists under the Act or existing Singapore law. Effectively, therefore, it appears the Singapore cram down may rely on shareholders agreeing to *voluntarily* divest their shares for no value (or the availability of enforcement mechanics to "burn off" shareholders).[33]

Pre-packaged schemes

The Act introduces the concept of "pre-packaged schemes". The court may, on the application of the company, make an order approving a creditor scheme of arrangement even though no meeting of creditors (or class thereof) has been ordered or held.[34]

Creditors intended to be bound by the scheme must be notified of the application, and provided a statement that contains:[35]

- information concerning the company's property and financial prospects;
- information on how the proposed scheme will affect the rights of those creditors; and
- such other information as is necessary to enable the creditor to make an informed decision whether to approve the proposed scheme.

The court may not approve the scheme unless it is satisfied that, had a meeting of the (relevant) creditors been summoned, creditors comprising a majority in number, representing at least 75% of the value, of those present and voting at the meeting of each relevant class, would have approved the scheme. The Act does not specify what evidence would be required to demonstrate to the court that the scheme would have been approved. However, it could be expected that scheme voting or lock-up agreements signed by the requisite majorities would be an appropriate basis to draw this conclusion.[36]

It should be noted that the pre-packaged scheme mechanic cannot be used in conjunction with the cross-class cram down provisions.[37]

This provision helps address a common criticism of schemes of arrangement; that they can be expensive and lengthy processes. The provision effectively allows a company to dispense with both the court hearing to convene a meeting of creditors, and the meeting itself, if it can be demonstrated that the outcome of the meeting is a forgone conclusion. This efficiency is to be welcomed.

Priority rescue funding

Another concept adopted from Ch 11 of the Bankruptcy Code is a regime for the company to access "debtor-in-possession" priority funding during the scheme process.[38]

Where a company has made an application to convene a scheme meeting of creditors or to obtain a moratorium order, the company may make a further application to the court to seek priority treatment of "rescue financing" obtained by the company.[39] The company must send a notice of the application to each creditor of the company.[40]

To qualify as rescue financing, the financing must be necessary:[41]

- for the survival of the company (or of the whole or any part of the undertaking of the company) as a going concern; or
- to achieve a more advantageous realisation of the assets of the company than on a winding up.

The court may grant orders bestowing a number of tiers of priority treatment in respect of debt arising from the rescue financing, as follows:[42]

- that the debt be treated as if it was part of the costs and expenses of the winding up;
- that the debt has priority over preferential debts. This order may only be granted if the company

would not have been able to obtain the rescue financing from any person without such security;

- that the debt be secured by a security interest on property of the company that is not otherwise subject to any security interest, or a subordinate security interest on property of the company that is subject to an existing security interest. This order may only be granted if the company would not have been able to obtain the rescue financing from any person without such security; and
- that the debt be secured by a security interest on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than the existing security interest. This order may only be granted if:
  - — the company would not have been able to obtain the rescue financing from any person without such security; and
  - — there is "adequate protection" for the interests of the holder of the existing security interest.

The last of these tiers effectively allows the granting of "super-priority" security over all existing creditors. This is subject to the requirement of adequate protection for existing security interests, which can be achieved by the court:

- ordering the company to make one or more cash payments to the security holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest;
- ordering the company to provide the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest; or
- granting any relief that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

It will remain to be seen how effective or necessary this regime is in practice. Unlike the court-supervised Ch 11 regime, there is no general requirement under Singapore (or Australian) law for a company that has proposed a scheme of arrangement to seek court approval to obtain finance or grant security. Therefore the main benefit of this provision will be to allow new finance to be afforded a priority that cannot be achieved consensually in the normal manner.

It is not clear how frequently such cases will actually arise. Where credit is being provided by a creditor with existing security over all assets of the company, or where there is no such security already in existence, the debt can be secured consensually. However, where rescue funding is proposed to be provided by a third party, and there is an existing creditor with security over all of the company's assets, the value of which is insufficient to meet its claim, it could be difficult to provide adequate protection to that existing creditor.[43] Conversely, if the lack of critical funding may result in a liquidation of the company, this could have a major detrimental impact on the value of an existing secured creditor's collateral.

The provision does not expressly address the effect of contractual restrictions on the company, or between creditors, restricting the incurrence of debt or granting of security by the company. Such provisions are common in finance documents (eg, negative pledge and debt incurrence covenants), security and intercreditor agreements. Arguably the new provision could be regarded as permitting the court to override such contractual restrictions, but it remains to be seen how the Singapore courts will approach this issue.[44]

A further complication arises where this mechanic is being used in cross-border restructurings. The Singapore court would be unable to grant priority status in respect of the enforcement of foreign security or in respect of foreign insolvency processes. This will reduce the utility of this provision where the scheme company has significant assets in other jurisdictions (either directly or through foreign subsidiaries).

Formal proof of debt regime

The Act sets out a detailed and formal proof of debt process for creditor schemes.[45] This new process appears focused on determining creditor claims for voting rather than dividend purposes.

Where a meeting of creditors is summoned, the Act requires that creditors are notified of the manner and period within which to file proofs of debt.[46] Failure to comply with these requirements will disallow a creditor from voting at the meeting.

Once a creditor has filed a proof of debt they are entitled to inspect another creditor's proof of debt, and to object to:

- the rejection of its proof of debt;
- the admission of another creditor's proof of debt; or
- a request by another creditor to inspect its proof of debt.

Every proof of debt is to be adjudicated by the court-appointed chairman of the meeting.[47] If there is any dispute in respect of the inspection, admission or rejection of any proof of debt, such dispute is to be determined by an "independent assessor".[48] If a party to the dispute disagrees with the determination of the

independent assessor, that person may file a "notice of disagreement" for the court to consider that dispute when the court hears the application for approval of the scheme.[49]

Previously there was no formal statutory process for determining creditor claims in schemes of arrangement. Where the issue arose in practice, it was typically dealt with in two stages:[50]

- the chairman of the creditors' meeting had the power to admit disputed or unliquidated claims for voting purposes at a value determined by the chairman; and
- the terms of the scheme itself could provide a mechanism for assessing the nature of claims with uncertain values (such as assessment by an adjudicator) for the purposes of dividends under the scheme.

In practice however, in the case of schemes that are restructuring financial debt, it is unusual for there to be any significant disagreement as to its quantum.

These provisions in the Act appear to be a response to the Singapore case of *Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) v TT International Ltd*[51] (*TT International*). In that case a creditor scheme was passed by a "razor thin margin" of creditors, and there were allegations that the scheme chairman (also the proposed scheme manager) had made inappropriate decisions to allow and disallow various creditor claims which influenced the outcome. While the Singapore Court of Appeal made a number of helpful statements in that case as to proper practice, the Insolvency Law Review Committee formed the view that there should nevertheless be a formal legislative framework for determining proofs of debt in schemes.[52]

Given the new provisions focus on the determination of proofs of debt for voting purposes, arguably it would still be permissible for the scheme documentation to provide for claim determination mechanics for dividend purposes.

There is a risk that this more formal proof of debt regime, including the ability of creditors to contest each other's claims, could in some cases protract the scheme timetable if it requires all proof of debt-related disputes to be determined by the independent assessor prior to the scheme meeting.[53]

Foreign recognition of Singapore schemes

A key aspect of whether these law reforms will be effective is whether a Singapore scheme of arrangement will be recognised and given effect to in those foreign jurisdictions where dissenting creditors might seek to enforce their debt or security claims subject to the scheme.

The rule in *Gibbs* (named after the eponymous 1890 case *Gibbs & Sons v La Societe Industrielle et Commerciale des Metaux*[54] (*Gibbs*)) may be a barrier to recognition.[55] *Gibbs* is an English Court of Appeal decision that held that a debt may only be discharged by the governing law of that debt. This is a significant barrier for the recognition in England of a Singapore scheme that seeks to compromise English law-governed loans or bonds. This is problematic given the prevalence of the use of English law in international finance. Furthermore, the *Gibbs* rule is also likely to apply in a number of other common law jurisdictions.[56]

Having said that, the rule in *Gibbs* has attracted criticism of late,[57] including in the recent Singapore case of *Pacific Andes Resources Development Ltd*.[58] It is therefore possible that common law jurisdictions may move towards a willingness to recognise a debt discharge in accordance with the law of the debtor's centre of main interests (even when the debt itself is not governed by that law).[59]

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (Model Law) is also an important consideration. The Model Law has been adopted in a number of key jurisdictions around the world, and allows courts in those jurisdictions to recognise a "foreign proceeding" and provide various forms of assistance (including recognising the effectiveness of a discharge of debt under that foreign proceeding).

However, it is not clear that a Singapore scheme of arrangement is a "foreign proceeding"[60] for these purposes because, among other things, it is arguably not an insolvency process. However, the position will depend on how the Model Law is implemented in each relevant country. The US has adopted a broad concept of a foreign proceeding in Ch 15 of the Bankruptcy Code (its implementation of the Model Law),[61] under which US courts have regularly been willing to recognise and give effect to English schemes of arrangement that compromise or discharge New York law-governed debt, where it can be demonstrated that the "centre of main interests" of the debtor company is in the UK.[62]

Singapore as a debt restructuring hub

Singapore has already been successful in establishing itself as an arbitration hub and now seeks to compete with London and New York as an international centre for debt restructuring.

There are a number of factors that act in Singapore's favour. The new "supercharged" Singapore scheme of arrangement procedure established by the Act introduces a lot of the powerful tools of the Ch 11 process (as outlined above), but still retains much of the relative flexibility, speed and cost efficiency of the scheme of

arrangement procedure that has made it such a popular tool for cross-border restructurings. While there remain some potential issues with the new legislation (some of which are noted above), Singapore has demonstrated an ability to quickly legislate where required. It can therefore be expected that should any significant problems emerge in practice with the new legislation, they will be resolved reasonably swiftly.

In addition, Singapore has already established itself as an important financial and professional services hub for Asia. Its proximity to and central role in the region makes it a natural venue for South East Asian restructurings. It also has the advantage of an English-derived common law legal system that is well-understood, and a well-regarded judiciary.

Whether it can become a true global player will, however, depend in part on the ability of Singapore to attract international restructuring professionals to the jurisdiction, and the development of a sophisticated "ecosystem". Also of critical importance will be the extent to which Singapore debt restructurings are accepted and recognised in other key jurisdictions.

Lessons for Australia

Singapore's reforms demonstrate how much potential there is for improvement of Australia's own restructuring and insolvency regime. Reform in Australia, by contrast to Singapore, has been both slow and relatively timid. We hope that Singapore's example may inspire the Australian Government to return to the question of restructuring law reform with renewed vigour.

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Footnotes

1. Committee to Strengthen Singapore as an International Centre for Debt Restructuring *Report of the Committee* Report Paper (20 April 2016) www.mlaw.gov.sg/content/dam/minlaw/corp/News/Report%20of%20the%20Committee.pdf.
2. Above n 1, p 6.
3. The 2016 Report uses this phrase to refer to increasing the availability of rescue financing in Singapore and strengthening the quality of insolvency professionals based in Singapore through further education and training. Above n 1, p 20.
4. The 2016 Report uses this phrase to refer to communicating the benefits of debt restructuring in Singapore to a wider audience and Singapore professionals, judges and academics increasing their involvement in international organisations, conferences and research. Above n 1, p 23.
5. Particularly striking is the speed with which Singapore has enacted these reforms. The period between the announcement of a public consultation on draft legislation and passing of the Act by parliament was less than 5 months. As of the date of writing this article the Act's commencement date has not been formally gazetted.
6. Companies Act (Cap 50) 2006 (SG), s 210; and Corporations Act 2001 (Cth), s 411. The regimes in the UK (see Companies Act 2006 (UK), ss 895–99) and Hong Kong (see Companies Ordinance (Cap 622) 2014 (HK), ss 668–77) are also similar.
7. It should be noted that these new provisions only apply in respect of a compromise or arrangement between a company and its *creditors* (or any class thereof). See Companies Act (Cap 50) 2006 (SG), above n 6, new s 211A.
8. The same can also be said for Australia and the UK.
9. See for example the comments of Judicial Commissioner Kannan Ramesh recorded in a recent roundtable hosted by Global Restructuring Review: K Karadelis "International debt restructuring: can other jurisdictions compete with London and New York?" (1 March 2017) http://globalrestructuringreview.com/article/1129318/international-debt-restructuring-can-other-jurisdictions-compete-with-london-and-new-york.
10. Companies Act (Cap 50) 2006 (SG), above n 6, s 210(11).
11. Companies Act (Cap 50) 2006 (SG), above n 6, new s 351(1)(d).
12. Companies Act (Cap 50) 2006 (SG), above n 6, new s 351(2A).
13. Companies Act 2006 (UK), s 895(2)(b); *Re Drax Holdings Ltd; Re InPower Ltd* [2004] 1 WLR 1049. This concept has also been accepted in Singapore, see *Re Griffin Securities Corp* [1999] 1 SLR(R) 219.
14. See for example *Re Metinvest BV* [2017] EWHC 178 (Ch) [21]–[22] (English law notes and "significant number" of English domiciled noteholders); *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 (Ch) (the company's centre of main interests was England, 97% of the noteholders (by value) submitted to the jurisdiction of the English court and the company was incorporated in England); *Re Magyar Telecom BV* [2013] EWHC 3800 (Ch) (company's centre of main interests was England); and *Re Vietnam Shipbuilding Industry Groups* [2013] EWHC 2476 (Ch) (loan agreement governed by English law which conferred non-exclusive jurisdiction on the English courts).
15. These moratoriums have been described as "enhanced" as there is an existing, fairly limited, ability under s 211(10) of the Companies Act to restrain further proceedings in any action or proceeding against the company except with the leave of the court. There is a similar provision in s 411(16) of the Corporations Act.

16. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211(B)(4). The company must also provide a list of every secured creditor and the 20 largest unsecured creditors of the company, and (if the scheme has not yet been proposed) a brief description of the intended scheme which is sufficient to enable the court to assess whether the intended scheme is feasible and merits consideration by the company's creditors.
17. Notwithstanding this, the Singapore Ministry of Law has indicated that the intention is that "a moratorium order should be scoped appropriately and it should not generally restrict creditors who are not subject to the proposed scheme": Singapore Ministry of Law "Ministry's response to feedback from public consultation on the Draft Companies (Amendment) Bill 2017 to Strengthen Singapore and an International Centre for Debt Restructuring" Response Paper (27 February 2017) [3.1.10] www.mlaw.gov.sg/content/dam/minlaw/corp/News/Annex%20A%20-%20Goverment%20Response%20to%20Public%20Consult%20Feedback%20for%20Companies%20Act%20Amendments.pdf.
18. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211B(1).
19. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211B(5)(b).
20. US Bankruptcy Code 1978 11 USC § 362(a).
21. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211C. This order may also be granted in respect of acts outside of Singapore. This order may not, however, apply to members of the corporate group that are not holding or subsidiary companies. See Response Paper, above n 17, at [4.1.3].
22. Response Paper, above n 17, at [4.1.4].
23. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211B(8) and (13). This interim moratorium is available to a company only once within any 12-month period, and applies only to acts within Singapore. The interim moratorium ceases 30 days after the application for court approval of a scheme of arrangement is made (or the date on which the application is decided on by the court, if this date is earlier than 30 days).
24. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211H(1)–(3).
25. Above n 20, § 1129.
26. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211H(4)(b)(i)–(ii).
27. See generally G O'Dea "Craving a cram-down: why English insolvency law needs reforming" (2009) 24(10) *Journal of International Banking and Financial Law* 583.
28. See *Re Hawk Insurance Co Ltd* [2001] EWCA Civ 241; and *Sovereign Life Assurance Co v Dodd* [1892] 2 QB 573.
29. One common mechanism adopted in European restructurings is the combination of an English pre-packaged administration "topco" sale to "burn off" junior creditors (utilising intercreditor release mechanics) and an English scheme of arrangement to bind senior creditors to a debt roll to the "newco" purchaser. This structure was examined by the English court in *Re Bluebrook Ltd* [2009] EWHC 2114 (Ch).
30. Above n 20, § 1129(b)(2)(B).
31. The US courts have developed the doctrines of "new value" and "gifting" which can allow a degree of circumvention of the absolute priority rule, although the scope and availability of these doctrines is subject to some debate.
32. Above n 20, § 1129. See also discussion in *Bank of America National Trust and Savings Association v 203 North LaSalle Street Partnership* 526 US 434 (1999).
33. This problem has increased relevance as the term "unsecured creditor" for the purposes of Companies Act (Cap 50) 2006 (SG), above n 6, new s 211H(4)(b)(ii) includes secured creditors to the extent of any shortfall claim that cannot be satisfied from their secured collateral.
34. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211I(1).
35. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211I(3).
36. Voting or lock-up agreements are a common mechanic used to ensure that there is sufficient creditor support to result in the scheme being passed before the company makes the formal application to convene meetings to vote on a scheme. The use of lock-up agreements has been considered by the English courts in cases such as *Primacom Holding GmbH v A Group of the Senior Leaders and Credit Agricole* [2011] EWHC 3746 (Ch); and *Re Seat Pagine Gialle Spa* [2012] EWHC 3686 (Ch).
37. Response Paper, above n 17, at [9.3.1].
38. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211E. This provision draws on concepts contained in s 364 of the Bankruptcy Code.
39. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211E(1).
40. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211E(2).
41. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211E(9).
42. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211E(1).
43. Such new first ranking debt is risks lowering the amount recoverable by the existing secured creditor from the secured assets. This is especially the case where the new debt is funding working capital requirements or trading losses, and therefore does not generate significant new tangible assets to expand the security pool (and thereby offset the new first ranking debt).
44. This issue was not addressed in the Response Paper.
45. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211F.
46. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211F(1) and 211F(3).
47. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211F(5).
48. The independent assessor is appointed either by agreement of all parties to the dispute, or by the court (upon application by any party to the dispute or the company). See Companies Act (Cap 50) 2006 (SG), above n 6, new s 211F(9)(b).
49. Companies Act (Cap 50) 2006 (SG), above n 6, new s 211F(10).
50. See for example the discussion in *Re British Aviation Insurance Co Ltd* [2005] EWHC 1621 (Ch).
51. *Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) v TT International Ltd* [2012] SGCA 9.
52. Singapore Insolvency Law Review Committee *Final Report* (2013) 144 www.mlaw.gov.sg/content/dam/minlaw/corp/News/Revised%20Report%20of%20the%20Insolvency%20Law%20Review%20Committee.pdf.
53. The concept of permitting creditors to inspect and contest each other's proofs of debt exists in Ch 11 of the Bankruptcy Code. However Ch 11 is a full and formal insolvency process which (typically) has longer time frames to address and adjudicate disputes prior to creditors voting on, and receiving dividends under, the plan.

54. *Gibbs & Sons v La Societe Industrielle et Commerciale des Metaux* (1890) 25 QBD 399.
55. The rule gets its name from one of the (though not the first) applications of the rule. See above n 54; and R Mokal "Shopping and scheming, and the rule in Gibbs" (2017) *South Square Digest* (March 2017) 58–63.
56. For example see *Hong Kong Institute of Education v Aoki Corp* [2004] 2 HKLRD 760. The position in Australia is less certain. See *Re Bulong Nickel Pty Ltd* (2002) 26 WAR 466; (2003) 21 ACLC 191; [2002] WASC 226; BC200205474; and *Re Glencore Nickel Pty Ltd* (2003) 44 ACSR 210; [2003] WASC 18; BC200300179. The US does not apply the rule in *Gibbs* (see *Oui Financing LLC v Deller and Oui Management SAS* 2013 WL 5568732 (SDNY 9 October 2013).
57. For example see *Global Distressed Alpha Fund 1 Ltd Partnership v PT Bakrie Investindo* [2011] EWHC 256 (Comm) at [28]; see also Judicial Commissioner K Ramesh (writing extra-judicially) "The Gibbs principle: a tether on the feet of good forum shopping" *Singapore Academy of Law Journal* (forthcoming); and Mokal, above n 55, at 58–63.
58. *Pacific Andes Resources Development Ltd* [2016] SGHC 210.
59. This may be appropriate, as the rule in *Gibbs* has been subject to strident criticism specifically in the context of the Model Law. See L Chan Ho *Cross Border Insolvency: Principles and Practice* Thomson Reuters, 2016 p 169: "Gibbs cannot survive the British Model Law because they are philosophically incompatible and practically irreconcilable."See also Mokal, above n 55, at 58–63.
60. The Model Law defines "foreign proceeding" as:

> … a collective or judicial proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.

UNCITRAL Model Law on Cross Border Insolvency, Art 2(a).
61. See the definition of "foreign proceeding" in Bankruptcy Code, above n 20 § 101(23), which includes a reference to a proceeding relating to "adjustment of debt".
62. For example, see *In re Castle Holdco 4 Ltd* No 09–11761 (REG) (Bankr SDNY 7 May 2009); and *In re Magyar Telecom BV,* No 13–13508 (SHL) (Bankr SDNY 11 December 2013).