9-2019

International recognition of Singapore´s new restructuring framework

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24 September 2019

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In the past years, Singapore has modernized its insolvency framework with the purpose of becoming an international hub for debt restructuring. One of the most significant reforms has affected the Singapore Scheme of Arrangement (SSoA). Under the new SSoA, debtors are allowed to remain in possession leading the restructuring process while enjoying the protection of an automatic moratorium with worldwide effects as well as a variety of tools imported from the US Chapter 11, including the availability of DIP financing, the restriction of ipso facto clauses, and a cross-class cramdown. Therefore, the new SSoA differs significantly from the typical scheme of arrangement existing in most Commonwealth jurisdictions.

However, while the new restructuring framework and the level of sophistication and legal certainty provided by Singapore courts make the country an efficient and reliable forum for a financial restructuring, the attractiveness of the SSoA for foreign companies, and therefore the success of Singapore´s strategy to become an international hub for debt restructuring, will mainly depend on the ability of the SSoA to be recognized by third countries.

In a landmark decision, H & CS Holdings Pte Ltd v Glencore International AG, the High Court of England and Wales tested the international effectiveness of the SSoA. And while the recognition of this procedure by any third country would have been sufficient to prove the international robustness of Singapore´s new restructuring framework, the fact that the SSoA was tested in the United Kingdom makes this decision more meaningful as a result of several factors. First, unlike the SSoA, the English Scheme of Arrangement (ESoA) is not formally considered an insolvency proceeding – that is why it is not reported as such in the Annex to the European Insolvency Regulation. Therefore, UK courts may be more reluctant to recognize a foreign scheme of arrangement as an insolvency proceeding. Second, while the United Kingdom has adopted the UNCITRAL Model Law on Cross-Border Insolvency which embraces the idea of modified universalism, the resistance of UK courts to formally abolish the rule in Gibbs raises some concerns about the attitude of the United Kingdom in cross-border insolvencies involving creditors subject to UK law. Third, since a tough regulatory competition and the level of uncertainty brought by Brexit may undermine the leadership of the City of London as a restructuring hub, UK courts may become more reluctant to recognize foreign insolvency proceedings.

Therefore, if the international effectiveness of the SSoA needed to be tested, the United Kingdom was probably the toughest place to do so. Despite this factor, the High Court of England and Wales recognized the SSoA as a foreign main proceeding. Therefore, it settles any prior uncertainty about the international robustness of Singapore´s new restructuring framework.

This decision may have several implications for the international insolvency community. First, by recognizing the SSoA, it seems to show the commitment of UK courts to keep embracing the idea of modified universalism notwithstanding the concerns brought by Brexit, the rule in Gibbs, and a tough regulatory competition in the restructuring space. Second, the fact that the decision indirectly recognizes the differences between the ESoA and the SSoA, classifying the latter as an insolvency proceeding even if the former is not, strengthens the understanding of insolvency proceedings from a functional approach –that is, taking into account the function and particular features of a procedure regardless of its name. Finally, by confirming the international effectiveness of the SSoA, foreign companies may find more attractive using the new restructuring framework implemented in Singapore. Therefore, this decision may represent a significant development for the positioning of Singapore as an international hub for debt restructuring.

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