

Singapore

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Singapore has a well-established, comprehensive corporate bankruptcy and insolvency statutory framework, which is largely set forth in the Companies Act. The corporate bankruptcy and insolvency laws primarily stem from English and Australian sources, and remain similar in many respects to the legislation of those jurisdictions. The Singapore laws have been progressively developed over the years to keep pace with developments in other jurisdictions with sophisticated legal systems. In practice, the Singapore courts have applied the laws effectively.

The legislation balances the need to protect creditors and hold management accountable with the practical need to try to preserve businesses that are inherently sound but are suffering unanticipated financial crises. Anecdotal evidence suggests that the Singapore courts have been willing to afford breathing space to distressed public listed companies considering the multiple interests involved, including those of the investing public.

I. Legal framework and the effectiveness of court processes/legal remedies

1.1 Describe the nature and effectiveness of the following:

(a) Debt recovery remedies where the creditor has no security

Enforcement of a civil unsecured debt begins by filing a writ of summons in the subordinate courts for amounts below S\$250,000 and in the Supreme Court for amounts of S\$250,000 and above. The court may enter a default judgment where the debtor fails to enter an appearance to the suit by filing a memorandum of appearance (ie, a notice of intention to defend), or enters appearance to the suit but fails to file and serve a defence within the requisite timeframe.

Except where a default judgment is entered, the matter typically proceeds to trial in the subordinate courts or the High Court (as appropriate). In clear cases, summary judgment can be obtained. In certain limited circumstances, decisions of the subordinate courts can be appealed to the High Court and High Court decisions can be appealed to the Court of Appeal.

This multi-tiered system of appeals is particularly speedy thanks to landmark judicial reforms in the 1990s. General judicial policy and case law rules discourage stays of execution on judgments pending appeal, and act as a deterrent against abuse of the appeal procedures by recalcitrant debtors attempting to delay enforcement of a judgment.

Judgment creditors have five ways to enforce a judgment:

- In garnishee proceedings, the judgment creditor seeks to recover the sum owed to it by a judgment debtor from a third party (the garnishee) which is indebted to the judgment debtor. This remedy is especially effective for garnishing monies in the judgment debtor's bank account and involves a relatively quick timeframe of about one month.

- A writ of seizure and sale for the judgment debtor's property (movable or immovable) is effective against unencumbered property. For suits filed in the Supreme Court, a seizure of property can take up to 10 days and the auction will take place within the following two weeks. The speed of this remedy makes it a popular choice for judgment creditors.
- Winding-up proceedings are commonly used because of their drastic effect. Some company directors negotiate a settlement with creditors in order to forestall this process. Bankruptcy proceedings in Singapore are analogous to winding-up proceedings, except that they operate *vis-à-vis* individuals. Winding-up and bankruptcy petitions are usually heard about one month after the filing of the petition.
- Judgment debtors can be examined so that information can be obtained for the purpose of confirming and supplementing existing information known to the judgment creditor, which helps to identify suitable modes of enforcement. In the case of a corporate judgment debtor, an officer of the company can be summoned to produce documents and attend court for examination under oath by the judgment creditor's solicitors. This process takes about two weeks in the High Court.
- Committal proceedings against directors of corporate debtors are commenced to compel compliance with a judgment. Penalties involve fines or imprisonment.

(b) The enforcement of security

Security documents usually confer three principal remedies:

- power to sell assets;
- power to take possession of assets; and
- right of foreclosure.

As the first two remedies generally do not involve court proceedings, the secured creditor can readily exercise these powers, save in judicial management situations (see section 1.1(d)) where the exercise of such powers may be curtailed by the court to allow the debtor time to come up with an appropriate rescue plan. In practice, the remedy of foreclosure is rarely used, as it is commercially viable only if the assets increase in value.

In the banking sector, creditors commonly have the following remedies available to them:

- enforcement of a covenant to pay on demand in bank security documents – this involves a legal

suit as outlined in section 1.1(a);

- claims on third-party guarantees or charges given by the debtor's directors – this also involves a legal suit;
- fixed charges over company assets created by appropriate banking documents – assets charged cannot be disposed without the consent of the debenture holder; and
- floating charges over company assets also created by appropriate banking documents (these are generally vulnerable to subsequent fixed charges, liens and execution creditors).

(c) Corporate bankruptcy/liquidation processes

There are two types of voluntary liquidation processes:

- Members' voluntary winding-up – voluntary winding-up of a company by its members commences when the directors make a declaration of solvency in accordance with the Companies Act. (Under Singapore law, the members of a company are those persons that either subscribe to the company's memorandum of association or agree to become a member and appear on the company's register of members. A person that purchases shares without becoming a registered holder is a shareholder, but not a member.)
- Creditors' voluntary winding-up – if the company is insolvent the directors may resolve to wind up the company because of its inability to continue to trade due to its debts, and appoint a provisional liquidator. Creditors may appoint their own liquidator in preference to the provisional liquidator nominated by the directors. Any liquidator appointed by the shareholders at the extraordinary meeting convened after the appointment of the provisional liquidator will likewise be displaced in favour of the creditors' choice.

Creditors can petition for winding-up on the grounds of the debtor's inability to pay its debts as outlined in section 1.1(a).

(d) Formal corporate rescue processes

Two formal corporate rescue processes are available under the Companies Act: scheme of arrangement and judicial management. Both envisage scenarios in which a debt restructuring plan is approved at a creditors' meeting.

Where a scheme of arrangement or compromise is proposed between a debtor and its creditors, the court may order the convening of a meeting of creditors, or any class thereof, upon the application of the debtor, a member, a creditor or a liquidator. If the court sanctions a compromise or arrangement agreed to by a majority in number of creditors (representing three-quarters in value of the creditors or class of creditors at the meeting), it becomes binding on all creditors. Detailed statutory provisions specify the information that must be circulated to creditors in the notice summoning the meeting.

Typical schemes of arrangement for insolvent companies involve debt-for-equity swaps, moratoriums and extended repayment schedules. Another method is securing the subscription of new shares in the debtor by the largest shareholders or trade investors.

Judicial management will be ordered only in the following circumstances:

- where a more advantageous realisation of the debtor's assets could be effected than in a winding-up;
- to enable the debtor or the whole or part of the undertaking to survive as a going concern; or
- to enable a scheme of compromise or arrangement to be considered and, if thought fit, approved.

While a judicial management order is in force, the court may approve a scheme of compromise or arrangement if three-quarters in value of creditors (or class of creditors) at the meeting vote in its favour. Upon approval, the scheme becomes binding on all creditors and on the judicial manager.

See section 2 for an outline of the advantages of schemes of arrangement over judicial management.

(e) Informal corporate rescue processes

Informal corporate rescue processes, such as direct negotiations, voluntary arrangements and standstill agreements, tend to be ineffective where the threat of litigation from different creditors brings pressure to bear on the negotiations. However, when key creditors cooperate, consensual restructuring has proven to be effective on account of the following:

- privacy (in contrast, scheme documents become a matter of court and public record and companies undergoing such schemes attract media publicity); and
- flexibility (whereas amendments to private scheme documents are a matter of contract,

amending approved scheme documents to change the general principles of the scheme requires additional court approval).

1.2 What are the formal processes to effect a liquidation of the company's assets?

Voluntary winding-up: A company may effect liquidation of its assets if prescribed by the memorandum or articles, or if a special resolution to this effect is passed (whether a creditors' or members' voluntary winding-up). Only private liquidators are appointed, without any involvement of lawyers or the official receiver (the default provisional liquidator if an approved liquidator is not appointed).

The procedure for voluntary winding-up is relatively simple, as briefly explained in section 1.1(c). For a members' voluntary liquidation, the directors must make a declaration of solvency, stating that they have conducted an inquiry into the company's affairs and concluded that the company will be able to pay its debts in full within 12 months of commencement of the winding-up. This declaration must be made no earlier than five weeks before the passing of the company resolution lodged with the registrar before the notices for the meeting called to pass the resolution for winding-up are sent out.

A creditors' voluntary liquidation will take place if the company cannot continue its business because of its liabilities. The directors will make a statutory declaration to this effect and lodge it with the official receiver and the Accounting and Corporate Regulatory Authority, and will appoint a provisional liquidator. Alternatively, a company can opt for voluntary winding-up by special resolution (unless the time fixed for the duration of the company has expired, in which case an ordinary resolution is sufficient).

The appointment of a provisional liquidator continues for one month from the date of such appointment (or such extended period as allowed by the official receiver), or until the appointment of a liquidator, whichever occurs first.

Practically, a meeting of the company is called within one month of the appointment of the provisional liquidator. At the meeting, the resolution for voluntary winding-up is passed and a qualified person is nominated as liquidator.

The creditors' meeting is held on the same day as, or the day after, the members' meeting. It must be convened at a time and place convenient to the majority in value of the creditors, and at least seven

days' notice must be given to the creditors. At the meeting, the creditors may nominate a different person as liquidator; their choice trumps the company's.

A company cannot pass a resolution for voluntary winding-up if a petition for the appointment of a judicial manager is pending or a judicial management order is in force.

Compulsory winding-up: Under the Companies Act, a company may be wound up by a court order relating to a winding-up petition presented by the company itself or any creditor (including contingent or prospective creditors), any contributory, the liquidator, the minister of finance or a judicial manager.

The court will make such an order if one or more of the grounds set out in the Companies Act exist, including just and equitable grounds – for example, oppression of minority shareholders. The most common ground is commercial insolvency (ie, inability to pay debts as they fall due).

To avoid the creditor having to prove insolvency in every instance, the Companies Act provides for a rebuttable presumption of insolvency in certain circumstances. This occurs, for example, where a company has been served with a statutory demand for a claim exceeding S\$10,000 and fails to pay, secure or compound the sum within three weeks, or where an execution or other process issued on a judgment, decree or order is returned unsatisfied in whole or in part.

The petitioning creditor must prove to the court's satisfaction that the company is unable to pay its debts. In determining whether a company is unable to pay its debts, the court shall take into account its contingent and prospective liabilities.

The following is a short summary of the process according to the Companies (Winding-up) Rules:

- The winding-up petition must be served at the company's registered business address and state the grounds for winding-up. An affidavit verifying the petition must also be affirmed within four days, with leave to extend this period.
- A registrar's memo must be obtained to confirm that the procedure has been complied with.
- A winding-up deposit of S\$4,000 must be paid to the official receiver to cover expenses.
- The liquidator's consent to act must be obtained.
- At the hearing, the court will decide whether to grant or dismiss the petition. The court also has discretion to adjourn the proceedings and make

interim orders. If the court grants the petition, a winding-up order will be made.

Winding-up is deemed to have commenced:

- at the time the directors' statutory declaration of the company's inability to continue business because of its liabilities is lodged with the Accounting and Corporate Regulatory Authority and businesses and a provisional liquidator is appointed; or
- at the time the resolution for winding-up is passed.

A recent High Court decision held that winding-up had commenced where the directors had appointed a provisional liquidator, notwithstanding that the resolution for winding-up was ultimately not passed.

In any other case, winding-up is deemed to have commenced at the time of presentation of the winding-up petition (not at the time the winding-up order is made).

The court may wind up a company even if it is already in voluntary liquidation if the winding-up petition is presented by someone with *locus standi* to do so. However, a winding-up order will not be made unless the court is satisfied that the voluntary winding-up cannot continue without due regard to the interests of the creditors or contributories.

Realisation of assets: The official receiver or liquidator is charged with realisation of the company's assets in a liquidation. Before carrying out these duties, the official receiver or liquidator will require that a statement of affairs on the assets, liabilities, creditors and securities of the company, and any further information, be filed within 14 days of the winding-up order or such other period as allowed. In a creditors' voluntary winding-up, the directors must ensure that a full statement of affairs is presented to the creditors' meeting at which the liquidator is appointed. If the company has assets, the official receiver or liquidator may sell these by public auction, public tender or private contract. All acts and execution on a sale are done in the name and on behalf of the company.

I.3 What is the effect on debt collection and the enforcement of security of:

(a) An adjudication of corporate bankruptcy/liquidation?

After the commencement of a winding-up (ie, the

date on which the winding-up petition is presented), many significant enforcement proceedings against a company are void. Generally, a winding-up order stays all actions against the company indefinitely.

The power of secured creditors to appoint a receiver can still be exercised after the company has gone into liquidation. Secured creditors may also realise their security and obtain full satisfaction without filing a proof of debt in respect of their claim in the corporate liquidation.

(b) The commencement of a formal corporate rescue process?

A petition for judicial management operates as an automatic moratorium on all legal proceedings. Secured creditors may not enforce their security against the company unless the judicial manager or the court consents.

In a scheme of arrangement, court applications must be made to stay each pending suit against the company. This is one of the inherent weaknesses of a court-sanctioned scheme of arrangement, as separate court applications, which can prove costly and time consuming, are required to halt legal proceedings against the company.

(c) The initiation of an informal corporate rescue process?

The impact of an informal corporate rescue process on debt collection and the enforcement of security is a matter of contract between the company and its creditors. In the absence of such agreement, creditors are free to pursue formal remedies with impunity.

(d) The initiation of an insolvency or insolvency-related process under any special legislation?

The appointment of a receiver/manager affects neither assets that are the subject of a separate security nor debt enforcement.

1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?

In Singapore, the law of the state of incorporation of the company governs its status from creation to dissolution, irrespective of the fact that the company may operate principally or exclusively

from another jurisdiction. Singapore is the appropriate legal forum for controlling the insolvency of a Singapore incorporated company. As such, foreign insolvency procedures are regarded as ancillary to any principal insolvency proceedings that take place in Singapore.

There is no precedent for a Singapore court to recognise a foreign liquidation of a Singapore incorporated company, unless liquidation in Singapore is improbable or impossible – for example, because the company has been dissolved or is a ‘brass-plate’ company.

On other hand, the Singapore courts have jurisdiction to wind up a foreign company as long as there is a nexus to Singapore (eg, assets within Singapore). The courts have granted winding-up orders in relation to foreign companies notwithstanding that such companies have been wound up in their own jurisdictions.

1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?

Under the Companies Act, continuing to trade is deemed fraudulent if, prior to the winding-up, any business of the company was carried out with the intent to defraud creditors or for any fraudulent purpose. The liquidator, a creditor or a contributory of the company may apply to the court to have directors or officers who are responsible for the fraudulent offence, or who were knowingly party to it, held personally liable for the company’s liabilities without limitation. Persons involved may be found criminally liable and, upon conviction, face fines of up to S\$15,000 or up to seven years’ imprisonment or both.

In addition, under the act it is an offence for an officer to authorise the contracting of a debt where he had no reasonable or probable expectation that the debt would be repaid. If an officer is convicted of this offence, the liquidator may apply to have him held personally liable for the debt.

In case of fraudulent trading, however, a conviction is not a prerequisite for a court order holding the officer liable for the company’s debts.

In practice, such provisions have been regularly enforced and there are reported decisions on these matters.

2. What are the advantages and disadvantages of triggering a formal procedure?

Of the various insolvency procedures, it is only in liquidation that the company's assets are realised and the proceeds distributed to the general body of unsecured creditors. In a liquidation, the *pari passu* principle applies, subject to exceptions such as secured or preferential debts.

One major disadvantage of triggering a formal procedure is that, if the company could still be nursed back to health, triggering a formal procedure will destroy any reasonable chance of saving the company as a going concern.

In terms of formal corporate rescue procedures, judicial management, although initially popular following its introduction in 1987, is not the automatic first choice for beleaguered companies. The alternative, the scheme of arrangement, presents two practical advantages:

- There is less stigma attached to a company undergoing a scheme of arrangement as opposed to judicial management; and
- The directors retain their powers in a scheme of arrangement, unlike under judicial management.

For these reasons, the commercial sector generally favours the use of schemes of arrangement.

3. What are the practical options for out-of-court restructuring?

Organisation and reorganisation: The restructuring process may be initiated by either the company or its creditors. If a large number of creditors are involved, a steering committee may be established. Typically, bank creditors set up a steering committee to negotiate their position; but there is definitely merit in having a representative steering committee for all creditors. In practice, such a representative committee is likely to materialise only at the insistence of the company or its advisers. In the case of larger companies, it is usual to engage advisers who are experienced in corporate debt restructuring. These advisers may be merchant bankers and/or insolvency practitioners.

Standstill and interim financing: The standstill agreement is subject to the agreement of all parties.

Company and interim financing: Such a proposal is usually worked out between the company and its financial consultants, and put to the creditors or the

steering committee.

Committee's advisory report: The creditors or steering committee normally engage legal advisers to comment on the legal aspects of the proposal. The creditors themselves will evaluate the other aspects of the proposal (including the viability of the enterprise, group or business). The creditors or steering committee should ideally retain a financial adviser to comment on the proposal. However, some – including the company – may view this as a waste of resources because the opinion of the company's own financial consultant who worked on the proposal should be acceptable to both the company and its creditors, given that he is expected to exercise a degree of independence in drawing up and making the proposal with almost full transparency.

4. What is the effect on the management of a company of:

4.1 An adjudication of corporate bankruptcy/liquidation?

In a winding-up, the powers and functions of the board of directors are transferred to the liquidator.

4.2 The commencement of a formal corporate rescue process?

A scheme of arrangement does not necessarily affect the management of the company. Usually, financial advisers are appointed to advise on the proposed scheme. The powers of a scheme manager are spelled out in the scheme documents. In an insolvency restructuring, the steering committee of participating creditors commonly makes major decisions involving high-value transactions or sales of assets.

When a judicial management order is issued, the powers and functions of the board of directors are transferred to the judicial manager. The directors retain only certain residual powers to call meetings. The ceding of the board's powers and functions to the judicial manager renders judicial management less attractive to the commercial sector than schemes of arrangement.

4.3 The initiation of an informal corporate rescue process?

The management is unaffected by the initiation of informal corporate rescue processes.

4.4 The initiation of an insolvency or insolvency-related process under any special legislation?

Only the powers of the company and its directors to deal with assets subject to receivership are affected. Where substantial assets are in the receiver's hands or a receiver/manager is appointed, the directors' powers are effectively suspended until the receiver hands back the company to the directors.

5. Roles of key players involved in the restructuring and insolvency process

5.1 Who is responsible for the 'case management' control and administration of a corporate bankruptcy/liquidation, a formal rescue or an informal rescue?

Corporate bankruptcy/liquidation: Up until the liquidation order is issued, the responsibilities of the players are as follows:

- The members of the company manage the members' voluntary liquidation process.
- Creditors are involved in the management process in a creditors' voluntary liquidation (although it is initiated by directors).
- In compulsory liquidations, the petitioning creditor manages the process.

Once the company is in liquidation, a liquidator manages the administration of the liquidation (both compulsory and voluntary).

Formal rescue: The company and (often) the steering committee are responsible for managing a formal rescue by way of a scheme of arrangement. A scheme manager generally manages the administration of a scheme of arrangement itself.

The company or a creditor is responsible for managing a formal rescue by way of judicial management. Either the company or its directors may resolve to present a petition for judicial management. Once the judicial manager's proposals for rescue have been approved by a majority (in number and value) of creditors in the creditors' meeting and reported to the court, the judicial manager must manage the company in accordance with these proposals. The creditors, after approving the proposals (with or without modifications), may appoint a committee to oversee the implementation of the proposals.

Informal rescue: The company and its major creditors manage the informal rescue process.

5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?

The decision to place a company, or any of its assets, under receivership is made by a debenture holder. Exceptionally, a shareholder can apply to the court for the appointment of a receiver/manager in case of serious disputes among shareholders and a deadlock in the management of the company.

5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?

Formal rescue: In a scheme of arrangement, the scheme documents incorporating the rescue plan are prepared by financial advisers, vetted by legal advisers and implemented by the scheme manager.

A judicial manager must send a statement of proposals for achieving the purposes for which the judicial management order was made to the Accounting and Corporate Regulatory Authority and businesses, the members and the creditors. This must be done within 60 days of his appointment (or such longer period as the court may allow).

Informal rescue: The company, together with its major creditors, generally prepares an informal rescue plan.

5.4 Who is responsible for preparing the restructuring plan in a case of corporate insolvency under any special legislation?

In a receivership, when the debenture holder has a fixed and floating charge on the assets of the company, the ultimate aim is to pay off the creditors on whose behalf the receiver/manager was appointed. The receiver/manager is responsible for determining the best course of action to achieve this aim.

6. What financial information is available to creditors in a corporate banking/liquidation, a formal rescue and an informal rescue?

Liquidation: Creditors involved in an insolvent liquidation are entitled to view the statement of affairs submitted to the liquidator by the company, setting out the following financial information:

- the particulars of the company's assets, debts and liabilities;

- names and addresses of the company's creditors;
- securities held by the creditors;
- dates on which the securities were given;
- reasons for the insolvency; and
- such further information as is required by the official receiver or liquidator.

After a creditor receives the statement of affairs, it will also have access to the preliminary report or any further reports by the liquidator required for submission to the court or the official receiver (if the official receiver is not also the liquidator) under the Companies Act.

Formal rescue: Where a judicial manager is appointed, he has 60 days (or such longer period as the court may allow) to formulate and present to the creditors, at a meeting called for this purpose, a statement of his proposals for achieving the purposes for which the order was made. In practice, extensions of time are usually granted by the court.

Informal rescue: In respect of an informal rescue where, in most cases, only major creditors are involved, relevant financial information relating to the rescue plan will be provided to the participating creditors so that they can make informed decisions in relation to the rescue plan.

7. Financial issues

7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?

Formal restructuring: Funding from the existing shareholders and/or new investors in the form of equity and/or loans is used for the following purposes:

- settlement of liabilities either wholly or partially according to the scheme proposals; and
- working capital requirements.

Informal restructuring: Funding from the existing shareholders and/or new investors in the form of equity and/or loans is utilised as follows:

- partial or full settlement of amounts due to participating creditors only; and
- working capital requirements.

7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?

The following claims (in order of priority) will be paid in priority to all other debts (other than secured debts):

- costs and expenses of winding-up;
- wages and salaries of employees;
- retrenchment benefits (only if embodied in the employment contract);
- workmen's compensation (ie, compensation paid to workers as a result of injury);
- contributions to provident funds;
- remuneration in respect of vacation leave; and
- taxes.

However, wages, salaries and retrenchment benefits are subject to an upper limit of S\$7,500 per employee or five months' salary, whichever is the lower.

Unsecured creditors rank *pari passu* among themselves.

7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?

Corporate bankruptcy/liquidation: Antecedent transactions can be set aside by virtue of Section 329 of the Companies Act, read together with Sections 99 and 103 of the Bankruptcy Act. The prohibition is against the transfer of property to creditors, sureties or guarantors of an insolvent company's debts (if made in the six months prior to the date of commencement of the winding-up), which, upon the winding-up of the transferor, puts the transferee in a better position than it would otherwise have been in. In the case of unfair preferences to an 'associate' (a broadly defined term), such transactions are voidable if made in the two years prior to the date of commencement of the winding-up.

Transactions at an undervalue can be voided if made in the five years prior to the date of commencement of the winding-up, by virtue of Section 100(1)(a) of the Bankruptcy Act.

Where a company goes into liquidation within six months of the date of creation of a floating charge, Section 330 of the Companies Act invalidates the charge, except to cover the amount of cash advanced to the company together with interest at five per cent per annum. There are no specific legal provisions invalidating the realisation

of a mortgaged property or a secured property.

Formal rescue: The above provisions in relation to the disposal of assets by a company in liquidation apply equally to a company placed under judicial management, in which case the date on which the petition for judicial management is made corresponds to the date of commencement of the winding-up.

The catalogue of transactions voidable as unfair preferences in a judicial management includes:

- settlements;
- conveyances or transfers of property;
- charges on property;
- payments made; and
- obligations incurred.

No similar provisions apply to companies bound by a scheme of arrangement.

The law on unfair preferences applies to secured property transactions of companies in judicial management, but not to similar transactions of companies bound by a scheme of arrangement.

Corporate insolvency under any special legislation:

There are no statutory provisions regarding voidable transactions in relation to a company in receivership.

A company has no power to enter into contracts in relation to the business or to sell, pledge or otherwise dispose of property which is in the receiver's possession. That aside, there are no specific legal provisions invalidating the realisation of security in a receivership.

7.4 What is the position of both unsecured and secured creditors that vote against, do not agree with or do not consent to either a formal or an informal rescue plan?

Formal rescue: Creditors (or a class of creditors) that disagree with a proposed scheme of arrangement may vote against it at the court-convened meeting. A majority in number representing 75 per cent in value of creditors present and voting is required to approve a scheme. Dissenting creditors can appear in court to object to the proposed scheme on the following grounds (among others):

- The class of creditors was not properly constituted;
- The scheme is unfair or unreasonable; or
- The scheme has been put forward in bad faith.

If the High Court overrules the objections of

dissenting creditors, the scheme of arrangement becomes valid and binding on the class of creditors concerned.

Unlike in a scheme of arrangement, a debenture holder may effectively veto the making of a judicial management order. However, once a judicial management order has been made, a secured creditor cannot vote if the security covers all debts owed to that creditor, unless the security is surrendered. If a majority in number and value of creditors present and voting, whether in person or by proxy, approves the proposals at the creditors' meeting, these will be carried through. If the creditors do not approve the proposals, the court may order that the judicial management order be discharged. The statutory safeguards regulating judicial management are an attractive feature to banking creditors, as they provide certainty and built-in timelines for the judicial manager to accomplish the restructuring objectives.

Informal rescue: Creditors that disagree with an informal rescue plan can scupper the rescue by actively pursuing enforcement proceedings against the company.

Corporate insolvency under any special legislation:

If a receiver's appointment is valid, no objections to the receivership are usually made. However, a court-appointed receiver/manager can be discharged if it can be demonstrated that the company's assets are not in jeopardy.

7.5 What actions can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?

In a liquidation, dissatisfied creditors can apply to the court to remove the liquidator. In a formal rescue, creditors which are dissatisfied or which feel that their interests have been unfairly prejudiced can vote against the scheme of arrangement proposed by the company and seek other remedies available to creditors. Where the company has been placed under judicial management, creditors can vote against the judicial manager's proposals or apply to court for an order to:

- regulate future management of the company by the judicial manager;
- require the judicial manager to refrain from doing or continuing the act complained of;
- require the convening of a creditors' meeting;
- remove the judicial manager; or
- discharge the judicial management order.

8. General

8.1 Can the insolvency regime be described as systematic and efficient for:

(a) The liquidation of businesses incapable of being restructured?

(b) The restructuring of debt?

Yes, the insolvency regime can generally be described as systematic and efficient.

8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?

In terms of legal impediments to the systematic and efficient liquidation of businesses, a recent landmark High Court decision recognised the transformation of a creditors voluntary liquidation into a compulsory winding-up. While under certain circumstances this transformation may better protect the interests of independent creditors, there is also a risk of abuse where dissenting majority creditors hijack a voluntary liquidation process and incur unnecessary costs through compulsory winding-up proceedings.

The main non-legal impediment to systematic and efficient debt restructuring is winning over secured creditors so that they do not derail an intended rehabilitation plan via enforcement remedies, both in terms of security and/or by way of litigation.

8.3 Has the insolvency regime has been reformed in the last two years? If so:

(a) What are the reforms?

(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?

The insolvency regime has not been reformed in the last two years. However, there are widely publicised plans to overhaul the insolvency regime in the future and omnibus insolvency legislation *à la* the UK Insolvency Act 1986 is under consideration.

8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?

The Companies Act was amended in 2004 to allow for one-member companies. A consequential amendment, also in 2004, changed one of the grounds for winding-up from that of being reduced to below two members to having no members at all.

Separately, a High Court decision on liquidators' remuneration sets out more stringent requirements to be satisfied by liquidators (including the value brought by the insolvency practitioner to the liquidation). As such, it is likely that the courts will scrutinise applications filed by insolvency practitioners for approval of remuneration to a greater degree than before.

8.5 Is statistical information on insolvency cases and corporate insolvency published? If so, how? Is it easily and freely accessible?

Statistical information on insolvency is published online by the Insolvency and Public Trustee's Office. The information, in the case of corporate insolvency, is presented graphically and includes the number of petitions filed and the number of companies wound up. It is easily and freely accessible.

8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases (formal and informal)?

Generally, the handling of corporate insolvency is systematic and efficient, and not in need of urgent reform. However, with growing globalisation, reform will be required in the medium term. In particular, the way of dealing with multi-jurisdictional insolvencies could be improved. An increasing number of companies listed in Singapore are incorporated offshore and have significant assets offshore. In addition, Singapore companies have also made significant investments in assets offshore. Hence, the need to move towards recognising the insolvency order of another competent jurisdiction should be dealt with to increase efficiency.