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Building a Restructuring Hub: Lessons from Singapore

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Abstract

This article analyses the legal, market and institutional features needed to become an international hub for debt restructuring. For that purpose, it explores the strategy adopted in Singapore, as well as the market and institutional factors generally found in other leading legal and financial centres. It will be argued that, in jurisdictions traditionally having creditor-oriented insolvency systems, such as the United Kingdom, Hong Kong and Singapore, one of the primary challenges for the improvement of the restructuring framework for debtors consists of making sure that the insolvency system remains protective of the interests of the creditors. If an insolvency reform makes creditors worse off, lenders may respond with an increase in the cost of debt, ultimately harming firms' access to finance and the promotion of economic growth. Moreover, an undesirable reform for creditors can also undermine the leadership of a jurisdiction as a legal and financial centre. As a result, an insolvency reform seeking to support the real economy may end up doing more harm than good. Relying on a novel index measuring the attractiveness of reorganisation procedures from the perspective of debtors, secured creditors and general unsecured creditors, this article shows how the United States managed to design a pro-debtor and pro-creditor insolvency system, and how Singapore and the United Kingdom have significantly enhanced their restructuring framework while continuing to be attractive jurisdictions for lenders. Moreover, it will be argued that enhancing the insolvency framework is just the first step to become a restructuring hub. The sophistication of the judiciary, the development of the restructuring ecosystem, and other external factors mainly related to the international recognition of reorganisation procedures will also play an essential role in the success of a jurisdiction seeking to become an international hub for debt restructuring.

1. Introduction

Insolvency law plays an essential role in the real economy.[1] *Ex ante*, an attractive insolvency framework for debtors can serve as a valuable tool to promote entrepreneurship, innovation and responsible risk-taking.[2] *Ex post*, an attractive restructuring framework can facilitate the reorganisation of viable companies facing financial trouble.[3] Therefore, it can become a powerful mechanism to preserve jobs and viable businesses that would otherwise be destroyed.[4] From the perspective of the creditors, an attractive insolvency framework can help them maximise their recoveries if their debtors eventually become insolvent.[5] Thus, from an *ex ante* perspective, insolvency law can encourage lenders to extend credit, facilitating firms' access to finance and promoting economic growth.[6]

Additionally, adopting an attractive insolvency framework for debtors and creditors can bring many other benefits for a local economy. For instance, a jurisdiction with an attractive

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[1] See, e.g., Joseph E Stiglitz, 'Bankruptcy Laws: Basic Economic Principles' in Stijn Claessens, Simeon Djankov and Ashoka Mody (eds), *Resolution of Financial Distress: An International Perspective on the Design of Bankruptcy Laws* (World Bank Publications 2001); Vaughn H Armstrong and Leigh A Riddick, 'Bankruptcy Law Differences Across Countries, Managerial Incentives and Firm Value' (2003) Working Paper <https://ssrn.com/abstract=420560> accessed 17 May 2020; Philippe Aghion, Oliver Hart and John Moore, 'The Economics of Bankruptcy Reform', in Olivier Blanchard, Kenneth Froot and Jeffrey Sachs (eds), *The Transition in Eastern Europe* (Chicago University Press 2004) 215–244; Jeremy Berkowitz and Michelle J White, 'Bankruptcy and Small Firms' Access to Credit' (2004) 35 The Rand Journal of Economics 69; Kenneth Ayotte, 'Bankruptcy and Entrepreneurship: The Value of a Fresh Start' (2007) 23 Journal of Law, Economics and Organization 161; John Armour and Douglas Cumming, 'Bankruptcy Law and Entrepreneurship' (2008) 10 American Law and Economic Review 303; Sergei A Davydenko and Julian R Franks, 'Do Bankruptcy Codes Matter? A Study of Default in France, Germany and the UK' (2008) 53 The Journal of Finance 565; Simeon Djankov, Oliver Hart, Caralee McLiesh and Andrei Shleifer, 'Debt enforcement around the world' (2008) 116(6) Journal of Political Economy 1105; Viral V Acharya, Yakov Amihud and Lubomir Litov, 'Creditor Rights and Corporate Risk-taking' (2009) NBER Working Paper Series 15569; Viral V Acharya and Krishnamurthy Subramanian, 'Bankruptcy Codes and Innovation' (2009) 22 Review of Financial Studies 4949; John Armour, Antonia P Menezes, Mahesh Uttamchandani and Kristin van Zwieten, 'How do creditor rights matter for debt finance? A review of empirical evidence' in Frederique Dahan (ed), *Research Handbook on Secured Financing of Commercial transactions* (Edward Elgar 2015) 3-25. Summarising the importance and functions of insolvency law in the real economy, see Aurelio Gurrea-Martinez, 'The Role of Corporate Insolvency Law in the Promotion of Economic Growth' (*Singapore Global Restructuring Initiative Blog*, 1 July 2020) <https://ccla.smu.edu.sg/sgri/blog/2020/07/01/role-corporate-insolvency-law-promotion-economic-growth> accessed 1 July 2021.

[2] The treatment of debtors in insolvency may affect the behaviour of entrepreneurs when deciding to set up a company. It may also affect the level of risk-taking and innovation in a company, as well as the willingness of talented people to serve on corporate boards. See Gurrea-Martinez (n 1).

[3] *Ibid*

[4] *Ibid*

[5] Insolvency law maximises the returns to creditors through different mechanisms. For example, it has been mentioned that insolvency law provides a collective debt collection mechanism that reduces coordination problems and enforcement costs, facilitating a more efficient allocation of the debtor's assets. See Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press, 1986) 1-19. Likewise, in countries with rescue financing provisions, insolvency law can also maximise the returns to creditors by reducing the destruction of value potentially generated by the inability of insolvent firms to obtain new finance. See Kenneth Ayotte and David Skeel A. Jr., 'Bankruptcy Law as a Liquidity Provider' (2013) 80 University of Chicago Law Review 1557. For an overview of the role of insolvency law from an economic perspective, see Aurelio Gurrea-Martinez, 'Insolvency in Emerging Markets' (2020) Ibero-American Institute for Law and Finance, Working Paper 3/2020, <https://ssrn.com/abstract=3606395> accessed 1 July 2021. For a summary, see Gurrea-Martinez (n 1).

[6] Analysing the relationship between creditor protection and firms' access to debt finance, see Armour, Menezes, Uttamchandani and van Zwieten (n 1). See also Djankov, Hart, McLiesh and Shleifer (n 1).

insolvency framework for creditors will make it a more attractive forum for lenders and financial services. Similarly, an attractive insolvency framework for debtors may strengthen the position of a jurisdiction as a restructuring hub. In both cases, jurisdictions can benefit from the job opportunities created in the legal and financial industries, as well as other sources of income generated by increased levels of trade, foreign investments, consumption, and tax revenues.[7]

In jurisdictions traditionally having creditor-oriented insolvency systems, such as the United Kingdom, Hong Kong and Singapore, one of the primary challenges faced when improving the restructuring framework for debtors consists of making sure that the insolvency system remains protective of the interests of the creditors. If an insolvency reform makes creditors worse off, lenders may respond with an increase in the cost of debt, harming firms' access to finance and thereby the ability of companies to pursue value-creating investment projects that can ultimately generate jobs, wealth and growth.[8] Moreover, in the context of global financial centres, such as the United Kingdom, Hong Kong and Singapore, an undesirable reform for creditors can also undermine the leadership of these jurisdictions as international hubs for legal and financial services.

Using a novel index measuring the attractiveness of reorganisation procedures from the perspective of debtors, secured creditors and general unsecured creditors, this article shows that the fact that an insolvency jurisdiction is pro-debtor or pro-creditor does not necessarily mean that it has to be anti-creditor or anti-debtor, respectively. Namely, it will show that countries like the United States have managed to design an insolvency system that is both pro-debtor and pro-creditor, and the recent insolvency reforms adopted in Singapore and the United Kingdom have significantly improved the attractiveness of their restructuring framework for debtors while continuing to be attractive jurisdictions for lenders. Therefore, these reforms can provide valuable lessons for jurisdictions interested in becoming a restructuring hub, and more generally for countries seeking to enhance the attractiveness of their restructuring frameworks without undermining the position of creditors.[9]

Section 2 starts by analysing the legal, market and institutional factors needed to build a restructuring hub. Section 3 analyses the strategy followed by Singapore to strengthen its

[7] For instance, more than half of the US listed companies (including more than 65% of Fortune 500 companies) are incorporated in Delaware. The incorporation process and the annual franchise taxes that these companies need to pay generate significant revenues for tax authorities in this jurisdiction. Additionally, any litigation taking place in Delaware also leads to a variety of expenses, such as hotels and restaurants, that contribute to the local economy. In Singapore, the 2019 Fintech Festival gathered more than 60,000 people from 140 countries. Apart from the importance of this event for the development of the fintech ecosystem in Singapore and beyond, the ability of Singapore to gather some of the world's leading actors in the fintech industry can serve as an important source of income for other industries (e.g., hotels, airlines, restaurants, event agencies, etc.).

[8] Frédéric Closseta, Christoph Großmanna, Christoph Kaserera, Daniel Urban, 'Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms' (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3768436> accessed 6 September 2021. See also Davydenko and Franks (n 1); Armour, Menezes, Uttamchandani and van Zwieten (n 1).

[9] From an economic perspective, an insolvency reform improving the position of all (or some) stakeholders without making anybody worse off would be Pareto efficient. In practice, however, achieving a Pareto improvement is not always feasible. For that reason, regulators and policymakers should instead focus on implementing reforms that increase the overall welfare of society even if some stakeholders are worse off. Under this concept of efficiency, generally known as 'Kaldor-Hicks' efficiency, the gains for the winners generated by the reform will exceed the potential losses borne by the losers and may even allow the former to compensate the latter. Hence, these reforms will increase the aggregate welfare of society, and therefore they should be implemented. Analysing why the concept of Kaldor-Hicks efficiency is more commonly used in legal analyses than the concept of Pareto efficiency, see Richard Posner, *Economic Analysis of Law* (Wolters Kluwer 2011, 8th Edition) 17-20; Rizwaan J. Mokal, 'On Fairness and Efficiency' (2003) 66 (3) Modern Law Review 452, 454-156.

position as an international hub for debt restructuring. Section 4 assesses the attractiveness of reorganisation procedures in some of the world's leading centres for legal and financial services: the United States, the United Kingdom, Hong Kong and Singapore. This comparative assessment will show how the United States managed to design a pro-debtor and pro-creditor insolvency system, and how Singapore and more recently the United Kingdom have significantly enhanced their restructuring frameworks while remaining attractive jurisdictions for lenders. Section 5 analyses various challenges faced by jurisdictions interested in becoming a restructuring hub. Section 6 concludes.

2. Concept and features of restructuring hubs

In the absence of any universal definition of 'restructuring hub', this article uses this expression to refer to jurisdictions providing debtors with an attractive forum for debt restructuring.[10] In many cases, this attractive forum can be found overseas.[11] In other situations, however, this attractive venue for debt restructuring can be found in other cities or states within a country, as it occurs in the United States.[12] While this article will mainly focus on international hubs for debt restructuring,[13] and therefore on jurisdictions attracting foreign companies interested in conducting a debt restructuring, most local and international hubs for debt restructuring share some common features.

First, most restructuring hubs, such as the United States (especially Delaware and Southern District of New York), the United Kingdom, Singapore, have an attractive business and institutional environment, including the existence of an efficient, predictable and sophisticated judiciary.[14] Second, they have a developed restructuring ecosystem comprising highly

[10] For an overview of the discussion on restructuring hubs and regulatory competition on corporate insolvency law, see Anthony J. Casey and Joshua Macey, 'Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars' (Forthcoming, 2021) Emory Bankruptcy Developments Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789994> accessed 1 July 2021. For an analysis of the primary factors needed to build a restructuring hub, see Sundaresh Menon, 'The Future of Cross-Border Insolvency: Some Thoughts on a Framework for a Flattening World' (2018) 21-24 <https://www.supremecourt.gov.sg/Data/Editor/Documents/(III%20Conference%202018)%20Keynote%20address%20by%20Sundaresh%20Menon%20CJ.pdf>.

[11] These foreign venues have traditionally include the United States, United Kingdom, and, to a lesser extent, Singapore and Hong Kong.

[12] In the United States, Delaware and the Southern District of New York have traditionally been the most attractive restructuring venues. More recently, the Southern District of Texas has also begun to attract many bankruptcy cases. See Casey and Macey (n 10)

[13] International centres for debt restructuring facilitating the resolution of a situation of cross-border insolvency have also been named 'nodal jurisdictions'. See Menon (n 10). See also Kannan Ramesh, 'Party Autonomy and the Search for Nodal Jurisdictions in Cross-Border Insolvency' (Forthcoming, 2021) Texas International Law Journal Symposium <https://static1.squarespace.com/static/571cb81f86db43188990d82a/t/602cebf8688a4a6f750ac18b/1613556730419/Justice+Kannan+Ramesh_Party+Autonomy+and+the+Search+for+Nodal+Jurisdictions+TILJ.pdf> accessed 1 July 2021 (arguing that jurisdictions serving as 'nodal jurisdictions' offer a common basic architecture, including a robust legal system, a strong rule of law and cost-competitive infrastructure).

[14] See Jared A. Ellias, 'What Drives Bankruptcy Forum Shopping? Evidence from Market Data' (2018) 47 Journal of Legal Studies 119, 145–147 (showing greater predictability in the outcome of procedures in Delaware and the Southern District of New York); Kenneth Ayotte and David A. Skeel Jr., 'An Efficiency-Based Explanation for Current Corporate Reorganisation Practice (reviewing Courting Failure by Lynn M. LoPucki)' (2006) 73 University of Chicago Law Review 425 (showing that debtors that choose Delaware appear to be drawn by the Delaware court's experience in handling large Chapter 11 cases); Ramesh (n 13) (arguing that 'nodal jurisdictions' offer a common basic architecture, including a robust legal system, a strong rule of law and cost-competitive infrastructure); Menon (n 10) (arguing that one of the primary pillars of a nodal jurisdiction is the presence of an independent judiciary experienced in the fundamental precepts of insolvency law and capable of rendering commercially

sophisticated actors, including lawyers, accountants, insolvency practitioners, investment bankers and activist investors.[15] Third, they are also respected jurisdictions with a strong commitment to the rule of law.[16] Fourth, a restructuring hub needs to provide debtors with an attractive forum for debt restructuring, at least in comparative terms.

Indeed, in some restructuring hubs, such as the United States, the insolvency framework is very attractive for debtors, as it will be shown in section 4.[17] In other legal and financial centres, however, including the United Kingdom and, to a lesser extent, Singapore and Hong Kong, the success to attract foreign companies to restructure their debts has been mainly due to the superiority of their restructuring frameworks compared to those existing in neighbouring jurisdictions. For example, as a result of the flexibility provided by the UK scheme of arrangement,[18] as well as the unattractive reorganisation procedures traditionally existing in many European countries, several companies from Spain, France, Germany and other European countries have restructured their debts in the United Kingdom.[19] Likewise, the lack of an attractive legal and institutional environment in their home jurisdictions has encouraged many Asian companies to conduct a debt restructuring in Singapore and Hong Kong – when not in the United Kingdom and the United States.

3. Building a Restructuring Hub: The Singapore Strategy

3.1. First Pillar: Building an Attractive Business and Institutional Environment

From its colonial origins, Singapore's strategic location made the country a hub for international trade and shipping activities.[20] Singapore's economic prosperity, however, was achieved after the country's independence in 1965, once the new nation underwent a

sound decisions) The value of predictability and the importance of having experienced courts were also emphasised in the 2nd SMU-Cambridge Roundtable on Corporate Insolvency Law organised by the Singapore Management University's Centre for Commercial Law in Asia and the University of Cambridge's Centre for Corporate and Commercial Law, focused on analysing the features and optimal designed of a restructuring hub. See Felix Steffek and Aurelio Gurrea-Martinez, 2nd SMU-3CL Cambridge Roundtable on Corporate Insolvency Law (*Oxford Business Law Blog*, 4 September 2019) <https://www.law.ox.ac.uk/business-law-blog/blog/2019/09/2nd-smu-3cl-cambridge-roundtable-corporate-insolvency-law> accessed 1 July 2021.

[15] See Jared Ellias, 'The Law and Economics of Investing in Bankruptcy in the United States' (2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3578170> accessed 1 July 2021. See also Steffek and Gurrea-Martinez (n 14).

[16] Steffek and Gurrea-Martinez (n 14).

[17] Also, the fact that many jurisdictions around the world are adopting many provisions of the US Bankruptcy Code seems to reflect the attractiveness of the insolvency framework in the United States. For the influence of the US Bankruptcy Code in other insolvency reforms around the world, see Aurelio Gurrea-Martinez, 'The Future of Reorganisation Procedures in the Era of Pre-Insolvency Law' (2020) 21(4) European Business Organization Law Review 829.

[18] For the success of the scheme of arrangement in Singapore and the United Kingdom, see Wai Yee Wan, Casey Watters and Gerard McCormack, 'Schemes of Arrangement in Singapore: Empirical and Comparative Analyses' (2020) 94(3) American Bankruptcy Law Journal 463. For a deeper analysis of the nature and features of the scheme of arrangement, see Jennifer Payne, *Schemes of Arrangement: Theory, Practice and Operation* (CUP 2014).

[19] Examples of European companies choosing the United Kingdom for a debt restructuring include the German manufacter *Rodenstock*, the Italian *SEAT Pagine Gialle*, and various Spanish companies such as *La Seda de Barcelona, Metrovacesa*, *Cortefiel* and *Codere*.

[20] Woo Jun Jie, 'Singapore's Transformation into a Global Financial Hub' (2017) <https://lkyspp.nus.edu.sg/docs/default-source/case-studies/entry-1516-singapores_transformation_into_a_global_financial_hub.pdf?sfvrsn=a8c9960b_2> accessed 1 July 2021.

significant transformation of its legal, economic and institutional environment.[21] Modern Singapore was built on the basis that growth and prosperity rely on the existence of strong institutions.[22] Namely, it was thought that the existence of sophisticated institutions and a strong commitment to the rule of law would provide investors with predictability and legal certainty.[23] Thus, the country would be able to attract foreign investment.[24]

The desire to build strong institutions can be observed in many instances, including the promotion of meritocracy, intolerance of corruption, and the creation of a sophisticated judiciary committed to protect the rule of law.[25] Moreover, the strategic location of Singapore, as well as its lack of natural resources, encouraged the country to adopt a free trade and market-oriented economic policy that has been translated into a business-friendly regulatory environment.[26] The creation of this attractive business and institutional framework contributed to Singapore's transformation from a small island with high levels of unemployment and a GDP per capita of US$500[27] into one of the richest nations in the world.[28] Moreover, the economy was profoundly transformed into an industrial-based economy in the 70's and more recently, one of the world's leading centres for legal and financial services.[29]

This regulatory agenda has been accompanied by significant investments in human capital and the development of industries which provide goods and services that can be exported to the rest of the world.[30] One of them is the legal industry. Taking advantage of Singapore's attractive business and institutional framework, the Government decided to strengthen Singapore as an international hub for legal services, and more recently for legal disputes. To

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[21] Gundy Cahyadi, Barbara Kursten, Dr. Marc Weiss, and Guang Yang, 'Singapore's Economic Transformation' (*Global Urban*, 2004), 5, 8 and 11 <https://globalurban.org/GUD%20Singapore%20MES%20Report.pdf> accessed 1 July 2021. See also Lindya Y.C. Lim, *Singapore's Economic Development: Retrospection and Reflections* (World Scientific 1998), 67.

[22] Broadly understood, institutions include all the rules of the game in society. Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990), p. 3.

[23] Emphasizing the importance of the rule of law in Singapore, see K. Shanmugam, 'The rule of law in Singapore' (2012) Singapore Journal of Legal Studies 357.

[24] *Ibid*.

[25] *Ibid*.

[26] According to the World Economic Forum, Singapore is the world's most open economy. See World Economic Forum, *The Global Competitiveness Report* (2019) <http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf> accessed 1 July 2021. Additionally, Singapore has been ranked 2nd in the world for ease of doing business. See 'Singapore' (*Doing Business*) <https://www.doingbusiness.org/en/data/exploreeconomies/singapore> accessed 1 July 2021. See also 'Singapore' (*World Bank*) <https://www.worldbank.org/en/country/singapore/overview> accessed 1 July 2021.

[27] Ravi Menon, '"An economic history of Singapore: 1965-2065*" – Keynote Address by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at the Singapore Economic Review Conference 2015 on 5 August 2015' (*Monetary Authority of Singapore*, 5 August 2015) <https://www.mas.gov.sg/news/speeches/2015/an-economic-history-of-singapore> accessed 1 July 2021.

[28] In 2020, Singapore was ranked 8th richest country in the world in terms of GDP per capita. See Statistics Times, 'Projected GDP per capita Ranking' (Statistics Times, 3 June 2021) <https://statisticstimes.com/economy/projected-world-gdp-capita-ranking.php> accessed 1 July 2021.

[29] For the economic history of Singapore, see Ravi Menon (n 27). In 2019, Singapore has also been ranked as the 4th major financial centres in the world. See Z/Yen, *Global Financial Centres Index* (2019) 4 <https://www.zyen.com/media/documents/GFCI_25_Report.pdf> accessed 1 July 2021. Singapore has also been identified as a legal hub for Southeast Asia. See The Legal 500, 'Singapore' (The Legal 500) <https://www.legal500.com/c/singapore/> accessed 1 July 2021.

[30] Singapore has been ranked 9th in world talent rankings. See <https://www.straitstimes.com/singapore/jobs/singapore-moves-up-a-notch-to-rank-9th-in-world-talent-ranking> accessed 16 July 2021.

pursue this goal, various strategies were adopted, including the promotion of awareness, education and research in mediation, arbitration and dispute resolution,[31] as well as the creation of various institutions to handle local and international disputes.[32] Based on a recent study, it seems that this strategy has paid off, since Singapore has been chosen, along with London, as the world's top seat for arbitration.[33]

In the past years, in addition to continuing to promote the use of mediation,[34] Singapore has taken significant steps to strengthen its position as an international hub for debt restructuring. After all, given the sophistication of the Singapore judiciary, as well as the existence of a strong legal and financial industry, Singapore has a privileged infrastructure to become a leading hub for insolvency-related disputes. To that end, it was felt that Singapore only needed to modernise its insolvency and restructuring laws and keep developing its restructuring ecosystem. Then, even though the market will ultimately decide whether Singapore's success in arbitration will be replicated in restructuring and insolvency, the country will be in a better position to achieve this goal.

3.2. Second Pillar: Modernising Singapore's insolvency and restructuring laws

3.2.1. Background

In 2010, the Singapore Government decided to modernise the country's insolvency and debt restructuring laws while strengthening Singapore's position as an international hub for debt restructuring. For that purpose, it created two committees – one of them in 2010 and another one in 2015 – to put together a variety of recommendations for the improvement of the insolvency and restructuring framework in Singapore. These committees published two important reports in 2013[35] and 2016,[36] respectively, that significantly influenced the insolvency reforms that took place in 2017 and 2018.

Since the insolvency and restructuring framework in Singapore was inspired by the UK insolvency system, it has traditionally been very protective of the interests of the creditors but it has not been very attractive to debtors seeking to achieve a debt restructuring. Therefore, one of the challenges of the reform consisted of improving the restructuring framework for debtors without harming the interests of the creditors.

3.2.2. The 2017 insolvency reforms

3.2.2.1. Increasing the attractiveness of reorganisation procedures

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[31] Institutions promoting these activities include the Singapore International Dispute Resolution Academy and the Singapore International Mediation Institute.

[32] These institutions include the Singapore International Commercial Court, Singapore International Arbitration Centre, Singapore International Mediation Centre, and Singapore Mediation Centre.

[33] White & Case, 'International arbitration: Current choices and future adaptations' (2021) International Arbitration Survey <https://www.whitecase.com/sites/default/files/2021-05/quml-international-arbitration-survey-2021-international-arbitration-v2.pdf> accessed 1 July 2021.

[34] Singapore's commitment to promote mediation has been shown, among other aspects, by the country's leadership in promoting a new convention on mediation. In 2019, Singapore hosted the signing ceremony where 46 countries signed the Singapore Convention on Mediation, with more coming on board after. See <https://www.singaporeconvention.org/> accessed 1 July 2021.

[35] Insolvency Law Review Committee, *Final Report* (2013) <https://www.mlaw.gov.sg/files/news/announcements/2013/10/ReportoftheInsolvencyLawReviewCommittee.pdf> accessed 1 July 2021.

[36] Committee to Strengthen Singapore as an International Centre for Debt Restructuring, *Report* (2016) <https://www.mlaw.gov.sg/files/news/press-releases/2016/04/Final%20DR%20Report.pdf> accessed 1 July 2021.

Most of the reforms adopted in 2017 were focused on enhancing the attractiveness of Singapore's reorganisation procedures.[37] Among other aspects, this reform improved the attractiveness of Singapore's restructuring framework by equipping the scheme of arrangement with several features of the US Chapter 11 reorganisation procedure, including: (i) a more powerful moratorium;[38] (ii) a cross-class cramdown; (iii) a new pre-packaged ("pre-pack") scheme; and (iv) the possibility of obtaining rescue financing.[39] Additionally, Singapore decided to preserve the typical governance model that exists in a scheme of arrangement: a debtor in possession.[40] Thus, the debtor would remain in control during the restructuring process.

While many of the features of the new restructuring framework in Singapore resemble the US Chapter 11 reorganisation procedure, there are several differences. First, in the United States, the automatic moratorium initially obtained by the debtor lasts until the end of the restructuring process. In Singapore, the automatic moratorium only lasts 30 days. However, the moratorium can be extended if the debtor is expected to conclude a reorganisation plan and the court finds that the extension is needed for a successful reorganisation.[41] As a result, the conditions eventually required to approve a reorganisation plan should be met. That means that evidence supporting the lack of sufficient support for the approval of a reorganisation plan can lead to the rejection of an application for, or the extension of, a moratorium.[42] Additionally, creditors can lift the moratorium if they show that they will be better off under other alternative scenarios (e.g., liquidation or judicial management), as it generally occurs when a company is not economically viable or the business is not run by diligent and efficient managers.[43] In those

[37] In Singapore, there are two procedures potentially used for debt restructuring: judicial management (equivalent to the administration in the United Kingdom) and the scheme of arrangement. However, a judicial management procedure does not necessarily lead to reorganisation. This factor, along with the unattractiveness of judicial management from the perspective of debtors, has made the scheme of arrangement the most attractive reorganisation procedure in Singapore. For an analysis of the scheme of arrangement as the primary restructuring tool in Singapore, see Wan, Watters and McCormack (n 18).

[38] The new moratorium applies automatically upon application is made for a scheme of arrangements. See Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") s 64. The moratorium may also have worldwide effects. See IRDA s 64(5). Finally, the court can also extend the moratorium to subsidiaries, holding company, or the ultimate holding company. See IRDA s 65. Compared to the limited moratorium existing under the previous regime (that did not even affect secured creditors), the new moratorium is more powerful in terms of scope, duration and effects.

[39] For an overview of the reforms of these reforms, see Gerald McCormack and Wai Yee Wan, 'Transplanting chapter 11 of the US bankruptcy code into Singapore's restructuring and insolvency laws: Opportunities and challenges' (2019) 19 (1) Journal of Corporate Law Studies 69. See also Wee Meng Seng and Hans Tjio, Singapore As International Debt Restructuring Center: Aspiration And Challenges, NUS Law Working Paper 2021/004.

[40] In most schemes of arrangements, the debtor remains in possession. In some countries, however (e.g., Malaysia), a supervisor can be appointed.

[41] See *Hyflux Ltd v SM Investments* [2020] 4 SLR 1265.

[42] *Re Kobian Pte Ltd* (OS 1269/2020, Singapore High Court).

[43] For an analysis of the concept of viability, and why non-viable (or economically distressed) firms should be liquidated and viable companies (or economically efficient firms) just facing a problem of financial distress should be reorganized, see Michelle J White, 'The Corporate Bankruptcy Decision' (1989) 3(2) Journal of Economic Perspectives 129; Michelle J White, 'Does Chapter 11 Save Economically Inefficient Firms?' (1994) 72 Washington University Law Quarterly 1319; Douglas G Baird, 'The Hidden Virtues of Chapter 11: An Overview of the Law and Economics of Financially Distressed Firms' (1997) Chicago Working Paper in Law & Economics No 43, 9-10; John Armour, 'The law and economics of corporate insolvency' (2001) ESRC Centre for Business Research University of Cambridge, Working Paper 197 <https://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp197.pdf> accessed 4 August 2020; Alan Schwartz, A 'Normative Theory of Corporate Bankruptcy' (2005) 91 Virginia Law Review 1199, 1200-1201.

cases, a reorganisation plan will probably be rejected, and even if the debtor wants to impose the plan on dissenting classes of creditors, it is unlikely to meet some of the conditions generally required to cram down on a plan, such as the 'fairness test' traditionally required for the approval of a scheme of arrangement,[44] and the best interest test required under Singapore's new restructuring laws when the power of cramdown is used on dissenting classes of creditors.[45]

Second, even though the conditions required for the imposition of a plan on dissenting classes of creditors share some similarities in Singapore and the United States, the requirements for the use of cramdown provisions are stricter in Singapore. Indeed, in addition to the general requirements existing under the US Chapter 11 reorganisation procedure (including the fact that the plan needs to be 'fair and equitable' and it cannot discriminate unfairly), a Singapore scheme of arrangement intended to be imposed on dissenting classes of creditors must be approved by a majority in number, representing at least 75% of the value of all the creditors present and voting at the meeting.[46] Therefore, creditors representing more than 25% of the company's debts have a *de facto* veto power in a scheme of arrangement in Singapore.[47]

Third, in the context of debts incurred *outside* the ordinary course of business, the system of rescue financing in Singapore is very similar to the debtor-in-possession (DIP) financing regime existing in the United States. Both approaches provide similar priorities (administrative expense priority, priority over other administrative expenses, junior lien, new lien, and senior lien) and similar protections to pre-petition creditors, and especially secured creditors.[48] However, there are some divergences in terms of debts and expenses incurred in the ordinary course of business. Under the US Chapter 11, court approval is not required for these debts and expenses and the debtor's counterparty still gets an administrative expense priority. In Singapore, however, all types of debts potentially leading to a priority require court approval, even if they are incurred in the ordinary course of business.

Fourth, the Singapore pre-packaged scheme was modelled on the pre-pack reorganisation plan popularised in the United States.[49] Therefore, it differs from other forms of pre-packs observed around the world, such as the pre-packaged administration procedure (mainly consisting of a pre-arranged sale of assets instead of an actual debt restructuring) existing in the United Kingdom.[50] The pre-packs in Singapore and the US are functionally equivalent in the sense that they both consist of accelerating the approval of a reorganisation plan, and

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[44] *The Royal Bank of Scotland NV v TT International Ltd* [2012] 2 SLR 213 at [70].
[45] See IRDA s 70(3).
[46] Companies Act (Cap 50, 2006 Rev Ed) (SG) s 210(3AB).
[47] Aurelio Gurrea-Martinez, 'The Future of Reorganisation Procedures in the Era of Pre-Insolvency Law' (2020) 21(4) European Business Organization Law Review 829.
[48] See 11 U.S. Code § 364 and IRDA s 67.
[49] For the primary features of the pre-pack scheme in Singapore and how it was inspired in the US pre-pack, see Debby Lim, 'Pre-packs in Singapore' *(Singapore Global Restructuring Initiative*, 5 February 2021) <https://ccla.smu.edu.sg/sgri/blog/2021/02/06/singapores-first-pre-packaged-scheme-arrangement> accessed 1 July 2021.
[50] For an analysis of the pre-packs in the United Kingdom, see John Armour, 'The Rise of the "Pre-Pack": Corporate Restructuring in the UK and Proposals for Reform' (2012) in RP Austin and Fady JG Aoun (eds), *Restructuring Companies in Troubled Times: Director and Creditor Perspectives* (Sydney: Ross Parsons Centre of Commercial, Corporate and Taxation Law 2012); Sandra Frisby, '*A preliminary analysis of pre-packaged administrations*', Report to the Association of Business Recovery Professionals (2007). For an analysis of the types of pre-packs existing around the world, see Aurelio Gurrea-Martinez, 'The Rise of Pre-Packs as a Restructuring Tool: Theory, Evidence and Policy' (2021), Singapore Management University School of Law Research Paper 15/2021 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3920332> accessed 9 October 2021.

minimising the costs and duration of insolvency proceedings, by soliciting the votes prior to subjecting the scheme of arrangement to court approval (Singapore) or filing for bankruptcy (United States). Still, there are important differences when it comes to the regulatory framework of both procedures. Among others, pre-packs are not regulated in the US Bankruptcy Code. Therefore, it can lead to uncertainty and forum shopping among different bankruptcy courts.[51] In Singapore, however, the pre-pack scheme is formally regulated in the Insolvency, Restructuring and Dissolution Act.[52]

Fifth, another divergence between a US Chapter 11 and the Singapore scheme of arrangement can be found in the governance model of the procedure. In both regimes, the debtor remains in possession without being subject to the management or supervision of any insolvency practitioner. However, while the US Bankruptcy Code permits the appointment of an examiner (or even a trustee) in certain scenarios, this option is not available under the Singapore regime. In Singapore, the scheme of arrangement is based on the assumption that the debtor should remain in possession because the company is run by honest, competent and reliable managers. If that is not the case, creditors can force the termination of the scheme of arrangement by either lifting the moratorium or not approving the plan. Then, if they believe that the company is being poorly managed but the business should be saved, they can seek to put the company under judicial management. Under these circumstances, an insolvency practitioner will take over the company while submitting a proposal to the creditors to decide on whether the firm should be reorganised, or the assets should be sold on a break-up basis or in a piecemeal liquidation which can be more advantageous than that of a winding-up.[53] Therefore, even though both jurisdictions can lead to similar outcomes, the way they achieve this outcome may differ significantly.

Finally, a scheme of arrangement and a US Chapter 11 have many formal and procedural differences. In fact, while the US Chapter 11 is an insolvency proceeding mainly seeking to promote the reorganisation of viable companies in financial distress, the scheme of arrangement is not necessarily used for debt restructuring.[54] For that reason, it has not even been traditionally considered a formal insolvency proceeding.[55] The different goals and nature of these procedures may justify some of their differences, especially with it comes to the initiation of the process, the submission of a reorganisation plan, the voting, disclosure and approval requirements, and the role and power of creditors.[56] Hence, even though the 2017-2018 reforms have made the Singapore scheme more similar to a US Chapter 11

[51] For an overview of the pre-packs in the United States, see Dennis F Dunne, Dennis C O'Donnell and Nelly Almeida, 'Pre-packaged Chapter 11 in the United States: An Overview' (*Global Restructuring Review*, 11 December 2019) <https://globalrestructuringreview.com/guide/the-art-of-the-pre-pack/edition-1/article/pre-packaged-chapter-11-in-the-united-states-overview> accessed 16 July 2021.
[52] IRDA s 71.
[53] Namely, a judicial management procedure seeks to achieve one or more of the following purposes: (i) the survival of the company, or the whole or part of its undertaking, as a going concern; (ii) the approval of a compromise or an arrangement between the company and its creditors; or (iii) a more advantageous realisation of the company's assets or property than on a winding up. See IRDA s 89(1).
[54] For an analysis of the features and uses of the scheme of arrangement, see Payne (n 18).
[55] For that reason, the English scheme of arrangement was not listed in the annex to the European Insolvency Regulation as one of the insolvency proceedings available in the United Kingdom. See Horst Eidenmüller, 'What is an Insolvency Proceeding' (2016) European Corporate Governance Institute (ECGI) – Law Working Paper No. 335/2016.
[56] For an analysis of the general features of a scheme of arrangement, see Payne (n 18). For a comprehensive analysis of the US Chapter 11 reorganisation procedure, see Richard Squire, *Corporate Bankruptcy and Financial Reorganization* (Wolters Kluwer 2016); Barry E. Adler, Anthony J. Casey and Edward R. Morrison, *Baird and Jackson's Bankruptcy: Cases, Problems, and Materials* (Foundation Press 2020, 5th Edition).

reorganisation procedure, there are still some formal and procedural differences between both procedures.

3.2.2.2. International elements of the 2017 reforms

Along with the improvement of restructuring procedures, Singapore adopted two additional reforms in 2017. First, it adopted the Model Law on Cross-Border Insolvency.[57] Thus, Singapore joined the group of jurisdictions embracing the idea of modified universalism as the primary approach to deal with a situation of cross-border insolvency. Second, the reforms clarified the type of debtors that are eligible to initiate insolvency and restructuring procedures in Singapore. To that end, the law states that debtors with a 'substantial connection' with Singapore are allowed to use Singapore's insolvency and restructuring laws, establishing a variety of factors showing this substantial connection.[58]

3.2.3. The Insolvency, Restructuring and Dissolution Act of 2018

In 2018, the Singapore Parliament passed the Insolvency, Restructuring and Dissolution Act ("IRDA"). The IRDA consolidates Singapore's personal and corporate insolvency, and debt restructuring laws into a single piece of legislation. Moreover, the IRDA included additional reforms seeking to modernise Singapore's insolvency and restructuring laws.[59] These reforms included: (i) the imposition of restrictions on the enforcement of *ipso facto* clauses; (ii) new directors' duties and liability in the zone of insolvency; (iii) new provisions to facilitate litigation funding; (iv) a new licensing regime for insolvency practitioners; (v) a summary dissolution procedure; and (vi) a more modern framework for avoidance actions.[60] These provisions, as well as a comprehensive package of subsidiary legislation, came into force on 30 July 2020 with the commencement of the IRDA.[61]

3.3. ***Third Pillar: Strengthening Singapore's Restructuring Ecosystem***

In the past decades, Singapore has managed to become one of the world's leading centres for arbitration, international trade, and legal and financial services.[62] However, in the restructuring space, Singapore has traditionally been behind other financial centres, such as the United Kingdom and the United States. Various factors can probably explain this result. First, compared to the United States, Singapore had a less attractive restructuring framework for debtors. In fact, this factor encouraged the Singapore Government to embark on a major

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[57] For an analysis of the adoption of the Model Law in Singapore and other countries in Asia and the Pacific, see Wai Yee Wan and Gerard McCormack, 'Implementing Strategies for the Model Law on Cross-Border Insolvency: The Divergence in Asia-Pacific and Lessons for UNCITRAL' (2019) 36 Emory Bankruptcy Developments Journal 59.

[58] This substantial connection can be established by showing that the debtor's assets or centre of main interest is located in Singapore, its contracts are governed by Singapore law, the debtor's business is primarily conducted in Singapore, or the debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to a loan or other transactions. See IRDA s 246 and *RE PT MNC Investama TBK* [2020] SGHC 149 at 13.

[59] Aurelio Gurrea-Martinez, 'Singapore's New Insolvency Restructuring and Dissolution Act' (*Singapore Global Restructuring Initiative*, 23 July 2020) <https://ccla.smu.edu.sg/sgri/blog/2020/07/23/singapores-new-insolvency-restructuring-and-dissolution-act> accessed 1 July 2021.

[60] *Ibid*

[61] *Ibid*.

[62] Gundy Cahyadi, Barbara Kursten, Dr. Marc Weiss, and Guang Yang, 'Singapore's Economic Transformation' (*Global Urban*, 2004), 5, 8 and 11 <https://globalurban.org/GUD%20Singapore%20MES%20Report.pdf> accessed 1 July 2021. See also Lindya Y.C. Lim, *Singapore's Economic Development: Retrospection and Reflections* (World Scientific 1998), 67.

revision of the insolvency and restructuring framework.[63] Second, since the enactment of the European Insolvency Regulation and until its exit from the European Union, the United Kingdom has enjoyed the advantages of having a system of automatic recognition and enforcement of insolvency proceedings within the European Union.[64] Therefore, it was able to attract many European companies interested in using UK's insolvency and debt restructuring laws.[65] In Asia, despite recent efforts to promote harmonisation and cooperation in insolvency-related matters,[66] a similar system of automatic recognition and enforcement does not exist.[67] Therefore, the United Kingdom has traditionally had an advantage over Singapore. Third, even though Singapore has a sophisticated judiciary and a strong industry of insolvency professionals, the restructuring ecosystem has been less developed than in the United Kingdom and the United States. Due to the small size of Singapore, the number of actors, organisations and initiatives contributing to the restructuring ecosystem will hardly reach the figures existing in the United Kingdom and especially in the United States. Despite this, various projects and initiatives launched in past years are expected to strengthen the restructuring ecosystem in Singapore.

In 2016, the Supreme Court of Singapore, along with other courts from various jurisdictions around the world, led the drafting team contributing to the enactment of the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters, also

[63] Insolvency Law Review Committee, *Final Report* (2013) <https://www.mlaw.gov.sg/files/news/announcements/2013/10/ReportoftheInsolvencyLawReviewCommittee.pdf> accessed 1 July 2021.

[64] For an analysis of the EU Regulation on Insolvency Proceedings, see Gabriel Moss, Ian Fletcher, and Stuart Isaacs, *Moss, Fletcher and Isaacs on the EU Regulation on Insolvency Proceedings* (OUP 2016, 3rd Edition). For the impact of Brexit on the recognition and enforcement of UK insolvency proceedings, see Susan Block-Lieb, 'The UK and EU Cross-Border Insolvency Recognition: From Empire to Europe to "Going It Alone" (2017) 40(5) Fordham International Law Journal 1373; Gerard McCormack and Hamish Anderson, 'The Implications of Brexit for the Restructuring and Insolvency Industry in the United Kingdom', in *The Implications of Brexit for the Restructuring and Insolvency Industry: A Collection of Essays* (INSOL International, 2017) 1-21. More recently, see Katharina Crinson, Nicholas Cooper, 'Ouch, it's a hard Brexit for UK restructuring and insolvency – but life goes on' (*Freshfields Bruckhaus Deringer*, 11 January, 2021) <https://transactions.freshfields.com/post/102gof4/ouch-its-a-hard-brexit-for-uk-restructuring-and-insolvency-but-life-goes-on> accessed 1 July 2021.

[65] Examples of these companies include *Hellas Telecommunications* (2009), *Rodenstock GmbH* (2011) and *SEAT Pagine Gialle* (2012), and various Spanish companies such as *La Seda de Barcelona* (2010), *Metrovacesa* (2012), *Cortefiel* (2012), *Orizonia* (2013) and *Codere* (2015).

[66] A recent project launched by the Asian Business Law Institute and the International Insolvency Institute seeks to promote this type of cooperation and harmonisation in Asia. See International Insolvency Institute and the Asian Business Law Institute, *Asian Principles of Business Restructuring Questionnaire* (2019) <https://abli.asia/Projects/Asian-Principles-of-Business-Restructuring>. In terms of cooperation and enforcement, some initiatives have been promoted in the past months. For instance, Hong Kong and Mainland China have reached an agreement to facilitate cooperation and assistance in insolvency-related matters. See <https://www.info.gov.hk/gia/general/202105/14/P2021051400219.htm> accessed 7 October 2021. Another bilateral agreement to promote cooperation in cross-border insolvency has also been reached between Malaysia and Singapore. See <https://www.supremecourt.gov.sg/news/media-releases/media-release--malaysia-and-singapore-implement-protocols-on-court-to-court-communication-and-cooperation-in-admiralty--shipping-and-cross-border-corporate-insolvency-matters> accessed 7 October 2021.

[67] In fact, many Asian jurisdictions have not even adopted the Model Law on Cross-Border Insolvency. Among others, Asian jurisdictions that have not yet adopted the Model Law on Cross-Border Insolvency includes Brunei, Cambodia, China, Hong Kong, India, Indonesia, Malaysia, Thailand, South Korea and Vietnam. For the promotion of international cooperation in insolvency-related matters, however, some of these jurisdictions are reaching bilateral agreements. See (n 66).

known as the Judicial Insolvency Network ("JIN") guidelines.[68] In fact, the JIN guidelines were launched during a conference held in Singapore in 2016. The JIN guidelines address key aspects to facilitate communication and cooperation amongst courts, insolvency representatives and other parties involved in cross-border insolvency proceedings, including the conduct of joint hearings. Therefore, they are expected to contribute to the preservation of enterprise value and the reduction of legal costs in cross-border insolvency cases.[69] Moreover, since these guidelines facilitate the exchange of information and knowledge, they can also lead to the improvement of insolvency practices in complex cases. As a result of the success of the JIN guidelines, other jurisdictions have joined this initiative, and new instruments and policy recommendations, such as the modalities of court-to-court communications, have been developed to keep promoting cooperation and assistance in cross-border insolvency cases. To that end, while the JIN guidelines focus on the *principles* of court-to-court communication, the modalities provide the *mechanics* for initiating communication.[70]

In 2017, a Singapore-based institution – the Asian Business Law Institute – in collaboration with the International Insolvency Institute started the 'Asian Principles of Business Restructuring' project.[71] This initiative involves leading judges, scholars, practitioners, regulators, and policymakers from all over the world, and it seeks to contribute to the understanding and improvement of insolvency and restructuring laws in Asia. To that end, the project is divided into two phases: (i) a first phase consisting of a mapping exercise of the business reorganisation regimes existing in a significant number of jurisdictions in Asia and the Pacific; and (ii) the publication of the Asian Principles of Business Restructuring directed at judges, practitioners, regulators and policymakers.[72]

In 2018, the Ministry of Law in Singapore organised an 'Insolvency Stakeholders' Lunch', which brought together insolvency and restructuring experts from the judiciary, academia and the private and public sector in an informal setting. This type of informal gatherings, often organised by the Ministry of Law, the judiciary or the insolvency industry, seeks to foster cooperation among different stakeholders involved in the insolvency and restructuring industry, ultimately strengthening the restructuring ecosystem in Singapore.

In 2019, the world's major organisation of insolvency professionals, INSOL International, chose Singapore as the location for the opening of its first international office.[73] Since the

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[68] Other members include the United States Bankruptcy Court for the District of Delaware, The United States Bankruptcy Court for the Southern District of New York, The Chancery Division of England and Wales, the Supreme Court of New South Wales, The Grand Court of Cayman Islands, The Federal Court of Australia and The Seoul Bankruptcy Court. See 'JIN Guidelines' <http://www.jin-global.org/jin-guidelines.html> (*Judicial Insolvency Network*) accessed 1 July 2021.

[69] *Ibid.*

[70] See Judicial Insolvency Network, 'Modalities of Out-of-Court Communications' <http://jin-global.org/content/jin/pdf/Modalities_for_court-to-court_communication.pdf> (*Judicial Insolvency Network*) accessed 1 July 2021.

[71] This led to the publication of a compendium. See International Insolvency Institute and the Asian Business Law Institute, *Corporate Restructuring and Insolvency in Asia 2020* (2020) ABLI Legal Convergence Series.

[72] See Justice Kannan Ramesh, 'The Asian Business Law Institute-III Project: speech', University of Cambridge's Centre for Corporate and Commercial Law and SGRI (February 2021) <https://www.linkedin.com/feed/update/urn:li:activity:6774705991117238272/?updateEntityUrn=urn%3Ali%3Afs_feedUpdate%3A%28V2%2Curn%3Ali%3Aactivity%3A6774705991117238272%29> accessed 1 July 2021.

[73] 'INSOL International Establishes First Overseas Office in Singapore' (*Ministry of Law Singapore*, 3 May 2019) <https://www.mlaw.gov.sg/news/press-releases/insol-international-establishes-first-overseas-office-in-singapo> accessed 1 July 2021.

creation of the INSOL Asia Hub in Singapore, this office has organised many projects and activities, some of which are in collaboration with industry partners and many local, regional and international associations comprising of scholars, judges, academics and policymakers from Singapore, other parts of Asia and beyond.

In 2020, the Singapore Global Restructuring Initiative (SGRI) was launched.[74] The SGRI is a project launched by the Singapore Management University, with the support of the Ministry of Law, which seeks to promote cutting-edge research on restructuring and corporate insolvency law while promoting cooperation between academics, practitioners, judges and policymakers from all over the world.[75] To provide academic and industry guidance and advice, the SGRI has created an advisory board formed by some of the leading insolvency experts in Singapore, as well as an international advisory council comprising prominent judges, scholars and policymakers from all over the world. The SGRI is currently working on various research projects covering seven major areas: (i) insolvency law in times of COVID-19; (ii) Singapore's new insolvency and restructuring framework; (iii) insolvency law in emerging markets; (iv) comparative insolvency law; (v) cross-border insolvency; (vi) treatment of micro, small and medium-sized enterprises in insolvency; and (vii) the impact of new technologies on insolvency law.[76] Moreover, to promote cooperation, research and awareness in the insolvency and restructuring space, the SGRI regularly organises events with other leading institutions, including INSOL International, the Asian Business Law Institute, and the University of Cambridge's Centre for Corporate and Commercial Law.[77]

In 2021, the Singapore Global Restructuring Initiative joined forces with the SMU Law Academy with the purpose of disseminating the research work conducted by the SGRI while promoting cooperation with and learning from the experience of leading practitioners from the industry. The first event organised as part of this collaboration provided a comprehensive and interdisciplinary analysis of the new rescue financing regime existing in Singapore. It also analysed how the Singapore courts have been interpreting these provisions, the opportunities and challenges of rescue financing in Singapore, and the similarities and divergences between the rescue financing regimes existing in Singapore and the United States.[78]

In addition to these new projects and initiatives emerging in the past years, pre-established institutions such as the Insolvency Practitioners Association of Singapore, the Asian Business Law Institute, the Singapore Academy of Law, the Law Society of Singapore, and the local universities continue to play an essential role in promoting education, research and awareness in the insolvency and restructuring ecosystem. Moreover, the collaboration between these institutions with other regional and international organisations, such as INSOL International and the International Insolvency Institute, are expected to contribute to the development of the restructuring ecosystem in Singapore.

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[74] See https://news.smu.edu.sg/news/2020/07/23/smu-launches-global-research-initiative-corporate-restructuring (23 July 2020).

[75] For a full description of the goals and mission of the Singapore Global Restructuring Initiative, see <https://ccla.smu.edu.sg/sgri> accessed 1 July 2021.

[76] See Singapore Global Restructuring Initiative, 'Research Projects' (*Singapore Management University*) <https://ccla.smu.edu.sg/sgri/research/research-projects> accessed 1 July 2021.

[77] Singapore Global Restructuring Initiative, 'Events' (*Singapore Management University*) <https://ccla.smu.edu.sg/sgri/> accessed 1 July 2021.

[78] See SMU Law Academy, 'Recent Developments in Rescue Financing in Singapore; A Case Study Approach' (*Yong Pung How School of Law*, 2021) <https://law.smu.edu.sg/node/32536?newsletter> accessed 1 July 2021.

4. Comparing Restructuring Frameworks in the United States, the United Kingdom, Hong Kong and Singapore

4.1. Methodology

The insolvency literature has often classified jurisdictions into 'pro-debtor' or 'pro-creditor' insolvency systems.[79] This article shows that this classification can be misleading, especially when pro-debtor is interpreted as 'anti-creditor', and 'pro-creditor' is interpreted as anti-debtor or the other way around. As it will be shown, some jurisdictions can be pro-debtor *and* pro-creditor, anti-debtor *and* anti-creditor, or somewhere in the middle. Unfortunately, the indexes traditionally used to measure the attractiveness of insolvency regimes fail to capture these different realities.[80] Moreover, even if an insolvency system is classified as a 'creditor-oriented' jurisdiction, a deeper analysis of the insolvency framework may show that only certain creditors, such as secured creditors, or a given group of unsecured creditors (e.g., employees or tax authorities), are effectively enjoying this high level of protection. Also, while some procedures within a jurisdiction can be attractive to debtors, other insolvency procedures can be more attractive to creditors. Therefore, classifying a particular jurisdiction as a pro-debtor or pro-creditor insolvency system can be misleading.

By relying on a new index assessing the attractiveness of reorganisation procedures from the perspective of debtors, secured creditors and general unsecured creditors,[81] this article compares the attractiveness of the restructuring frameworks existing in various leading financial centres such as the United States, the United Kingdom, Singapore and Hong Kong, and how these frameworks have evolved in the period from 2000 to 2020.

From the perspective of debtors, this index measures the attractiveness of a reorganisation procedure by coding a variety of variables with different weights, depending on the importance of each variable for debtors seeking to conduct a debt restructuring. Then, it assigns a score within the minimum and maximum score potentially obtained for each variable. The variables measuring the attractiveness of a reorganisation procedure for *debtors* include: (1) Financial conditions needed for the commencement of the reorganisation procedure [0-2]; (2) Flexibility of directors' duties in the zone of insolvency [0-1]; (3) Scope and duration of the moratorium [0-3]; (4) Debtor in possession [0-3]; (5) Cross-class cramdown [0-2]; (6) Post-petition financing and expenses [0-2]; (7) Directors' special liability regime during the reorganisation procedure [0-3]; (8) Restriction of *ipso facto* clauses [0-2]; (9) Prohibition of set-offs in reorganisation [0-1]; (10) Fast-track reorganisation procedure [0-1]; (11) Subordination of

[79] For a critical analysis of this classification, see Gerard McCormack, Corporate Rescue Law: An Anglo-American Perspective (Edward Elgar 2008) 292-296; Sefa Franken, 'Creditor- and Debtor-Oriented Corporate Bankruptcy Regimes Revisited' (2004) 5 European Business Organization Law Review 645.

[80] For early indexes mainly focusing on the protection of creditors, see Rafael La Porta, Florencio Lopez de Silanes, Andrei Shleifer and Robert Vishny, 'Law and Finance' (1998) 106 Journal of Political Economy 1113; Simon Djankov, Caralee McLiesh, and Andrei Shleifer, 'Private Credit in 129 Countries' (2007) 84 Journal of Financial Economics 299. For a more comprehensive index, see John Armour, Simon Deakin, and Mathias Siems, *University of Cambridge Centre for Business Research*, *Leximetric Datasets* (2016) <https://doi.org/10.17863/CAM.506> accessed 1 July 2021. For an index traditionally seeking to measure the efficiency of insolvency systems, see The World Bank, 'Resolving Insolvency' (*Doing Business*, 2019) <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency/what-measured> accessed 1 July 2021. See also EBRD Insolvency assessment on reorganisation procedures (April, 2021) https://www.ebrd-restructuring.com/storage/uploads/documents/94228029cc1b26d88b75222c6a9d0df0.pdf accessed 1 July 2021.

[81] This index has been built by the author with the purpose of comparing the attractiveness of reorganisation procedures around the world. It is part of a broader project assessing the attractiveness of reorganisation procedures in more than 60 jurisdictions.

shareholder loans [0-1]; (12) Debtor's exclusive right to propose a reorganisation plan [0-2]; (13) Rejection of value-destroying contracts [0-1]; (14) Preservation of value-creating contracts [0-1]; (15) Reorganisation plan approved by shareholders' meeting [0-1]; (16) Debtor's ability to sell essential assets between the commencement of the procedure and the approval of a reorganisation plan [0-1]; (17) Majority rule [0-3]; (18) Accrual of interests during the procedure [0-2]; (19) Ability to bind all types of creditors [0-3]; (20) Shareholders' risk to wiped out without their consent [0-3]. The maximum score potentially obtained in the index measuring the attractiveness of a reorganisation procedure for debtors is 38.

From the perspective of creditors, the index measures the level of attractiveness of a reorganisation procedure for both secured creditors and general unsecured creditors. The variables measuring the attractiveness of a reorganisation procedure for *secured creditors* include: (1) Ability to enforce security interests during procedure [0-6]; (2) Priority of fixed charge holders in a hypothetical liquidation [0-3]; (3) Existence of an insolvency practitioner (IP) in the procedure [0-1]; (4) Ability to initiate the procedure [0-1]; (5) Ability to reject an application for reorganisation [0-1]; (6) Ability to appoint or remove an IP [0-1]; (7) Risk of being negatively affected by a cross-class cramdown [0-2]; (8) Risk of being negatively affected by post-petition financing and expenses [0-2]; (9) Approval of assets subject to a security interest when they are sold during the procedure [0-2]; (10) Restriction of *ipso facto* clauses [0-1]; (11) Ability to terminate the procedure any time prior to the approval of the reorganisation plan [0-1]; (12) Ability to obtain information during the procedure [0-1]; (13) Ability to be part of a committee of creditors with monitoring functions [0-1]; (14) Accrual of interests during the procedure [0-1]; (15) Treatment of rejected executory contracts [0-1]; (16) Treatment of assumed executory contracts [0-1]; (17) Risk of being bound by a reorganisation plan if it is approved by the relevant majorities [0-4]. The maximum score potentially obtained in the index measuring the attractiveness of a reorganisation procedure for secured creditors is 30.

The variables measuring the attractiveness of a reorganisation procedure for general *unsecured creditors* include: (1) Best interest of creditor test [0-2]; (2) Existence of IP [0-1]; (3) Set-off rights [0-1]; (4) Ability to appoint or remove IP [0-1]; (5) Ability to initiate the procedure [0-1]; (6) Risk of being negatively affected by cross-class cramdown [0-2]; (7) Risk of being negatively affected by post-petition financing and expenses [0-2]; (8) Approval of asset sales during procedure [0-1]; (9) Restriction of *ipso facto* clauses [0-1]; (10) Ability to be part of a committee of creditors with monitoring functions; [0-1]; (11) Risk of being negatively affected by statutory priorities in a hypothetical liquidation [0-2]; (12) Ability to terminate the reorganisation procedure [0-1]; (13) Ability to obtain information during the procedure [0-1]; (14) Availability of avoidance actions in reorganisation [0-2]; (15) Moratorium [0-3]; (16) Accrual of interests during procedure [0-1]; (17) Risk of having to bear the costs of a committee of secured creditors [0-1]; (18) Treatment of rejected executory contract [0-1]; (19) Treatment of assumed executory contract [0-1]; (20) Ability to reject an application for reorganisation [0-1]; (21) Risk of being bound by a reorganisation plan if it is approved by the relevant majorities [0-4]; (22) Creditor's ability to recover their claims through the liability of shareholders or directors [0-2]; (23) Subordination of shareholder loans [0-1].[82] The maximum score potentially obtained in the index measuring the attractiveness of a reorganisation procedure for general unsecured creditors is 34.

[82] Even if some of these variables will measure the treatment of creditors in liquidation, they will also be relevant in reorganisation due to their *ex ante* impact in the negotiation and bargaining power of debtors and creditors based on the hypothetical treatment received in the event that a reorganisation plan cannot be approved and the company ends up in liquidation.

4.2. Limitations and scope of the index

This index is subject to several limitations. First, even though the index measures several aspects of liquidation procedures potentially relevant in reorganisation (e.g., ranking of secured creditors), it focuses on reorganisation procedures. To that end, it will include both formal reorganisation procedures such as the US Chapter 11, as well as pre-insolvency and hybrid procedures such as the scheme of arrangement. It will also include insolvency proceedings potentially leading to reorganisation, even if reorganisation is not the only outcome. These latter procedures will include the administration procedure existing in the United Kingdom, the judicial management procedure available in Singapore, and the provisional liquidation procedure used in conjunction with a scheme of arrangement used as a restructuring tool in Hong Kong.[83] The index, however, will exclude purely liquidation procedures, as well as special insolvency proceedings such as those potentially existing for financial institutions,[84] individuals,[85] and micro, small and medium-sized enterprises (MSMEs).[86] Therefore, it will focus on ordinary reorganisation procedures for non-MSMEs.

Second, the variables included in this index do not assess the desirability or efficiency of a particular insolvency system. Instead, they focus on how attractive some specific insolvency provisions are from the perspective of debtors, secured creditors and general unsecured creditors. For example, if an insolvency legislation makes the shareholders liable for the company's debts, this solution can be very attractive for creditors. However, it can be socially undesirable due to the harmful economic effects associated with abolishing the principle of limited liability. Therefore, while this solution would increase the attractiveness of a reorganisation procedure for debtors, it does not mean that it should be adopted.

Third, this index exclusively focuses on the law on the books, including, when appropriate, established case law. Therefore, it does not measure the attractiveness or desirability of a particular provision within the legal, economic and institutional features of a jurisdiction. For example, in jurisdictions with sophisticated and independent insolvency practitioners, the appointment of an insolvency practitioner can be helpful for the protection of creditors (as this index assumes). However, in jurisdictions without sophisticated insolvency practitioners, appointing an insolvency practitioner paid by the estate can end up doing more harm than good for the creditors. Other local factors affecting the desirability of certain insolvency provisions include the sophistication, efficiency and credibility of the judiciary, the level of financial development, and the types of debt and corporate ownership structures prevailing in a country.

Fourth, other issues potentially affecting the choice of insolvency forum are not covered in the index. For instance, some jurisdictions have adopted pre-insolvency frameworks. In the

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[83] Howard Lam, Flora Innes, Jeffrey Wong, 'Restructuring and Insolvency in Hong Kong', in *ALB Asia Insolvency and Restructuring Handbook 2020* (Latham & Walkins 2020).

[84] For an analysis of the special treatment of these institutions, see Matthias Haentjens and Bob Wessels (eds.), *Research Handbook on Cross-Border Bank Resolution* (Edward Elgar 2019). See also Rosa M. Lastra, *Cross-Border Bank Insolvency* (OUP 2011).

[85] Analysing the goals and features of insolvency regimes for individuals, see Jason Kilborn, *Comparative Consumer Bankruptcy* (North Carolina Press 2007); Ian Ramsay, *Personal Insolvency in the 21st Century A Comparative Analysis of the US and Europe* (Hart Publishing 2017).

[86] For the treatment of MSMEs in insolvency, see Riz Mokal, Ronald Davis, Alberto Mazzoni, Irit Mevorach, Madam Justice Barbara Romaine, Janis Sarra, Ignacio Tirado, and Stephan Madaus, *Micro, Small, and Medium Enterprise Insolvency: A Modular Approach* (Oxford University Press 2018). See also Aurelio Gurrea-Martinez, 'Implementing an Insolvency Framework for Micro and Small Firms' (2021) 30 International Insolvency Review 44-66 <https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1422>.

absence of a proper coordination between pre-insolvency and insolvency proceedings, non-viable companies can opportunistically delay the commencement of liquidation procedures by using several reorganisation procedures.[87] Therefore, value can be destroyed at the expense of the creditors, making the insolvency framework less attractive to lenders. Second, even if this index focuses on reorganisation procedures, the treatment of directors in liquidation can also be relevant when deciding on an insolvency forum, especially if a liquidation procedure is automatically opened if the reorganisation procedure fails. Third, the ability to recognise a reorganisation procedure overseas may make a reorganisation procedure more or less appealing. Since this aspect depends on various external factors, such as the reputation of a jurisdiction, as well as the approach to cross-border insolvency adopted in other jurisdictions, this aspect is not captured by the index.

Finally, the index does not measure the overall efficiency of an insolvency system. Instead, it just seeks to provide regulators, policymakers, judges and practitioners with a useful measure to understand, analyse and compare the attractiveness of reorganisation *laws* from the perspective of debtors, secured creditors and general unsecured creditors. The assessment of the overall efficiency of an insolvency system requires a more comprehensive analysis of the legal, economic, and institutional features of a jurisdiction. For instance, even if an insolvency system is not eventually used, the design of insolvency law may still affect how debtors and creditors make decisions. Therefore, it can affect the real economy. As a result, any attempt to analyse the overall efficiency of an insolvency system should measure not only the ability of an insolvency regime to efficiently allocate the debtor's assets (*ex post* efficiency), where the recoveries of the creditors can probably serve as a proxy,[88] but also the *ex ante* effects of an insolvency legislation. This latter aspect will help determine, among other aspects, how an insolvency system may affect entrepreneurship, innovation and access to finance.[89]

4.3. Data and analysis

4.3.1. Attractiveness of reorganisation procedures for debtors

As shown in Table 1, the most attractive reorganisation procedure for debtors has traditionally been found in the United States. This is due to several factors, including the existence of a DIP regime as a general rule, the lack of a special liability regime for corporate directors, the availability of DIP financing, the restriction on *ipso facto* clauses, and a cross-class cramdown. The attractiveness of the US Chapter 11 reorganisation procedure has not significantly changed over time. The only significant change was implemented in 2005 after a reform limiting the debtor's exclusivity period to propose a reorganisation plan.[90]

In the past years, however, various regulatory developments in the United Kingdom and Singapore have changed the traditional dominance of the United States as the most attractive jurisdiction for debtors. In 2017, Singapore implemented a major insolvency reform that significantly enhanced the attractiveness of both the scheme of arrangement and the judicial

[87] Aurelio Gurrea-Martinez, 'The Future of Reorganisation Procedures in the Era of Pre-Insolvency Law' (2020) 21(4) European Business Organization Law Review 829.
[88] The recoveries of the creditors are included in some insolvency indexes traditionally used to measure the efficiency of an insolvency system. See, e.g., The World Bank, 'Resolving Insolvency methodology' (*Doing Business*) <https://www.doingbusiness.org/en/methodology/resolving-insolvency> accessed 1 July 2021.
[89] See Gurrea-Martinez (n 1).
[90] See Foteini Teloni, 'Chapter 11 Duration, Pre-planned Cases and Refiling Rates: An Empirical Analysis in the Post-BAPCPA Era' (2015) 23 American Bankruptcy Institute Law Review 571.

management procedure.[91] Then, the IRDA included additional reforms that came into force in 2020.[92] After these reforms, the index shows how, from the perspective of debtors, the Singapore scheme of arrangement has become more attractive than the US Chapter 11 as a result of several factors.

First, the current scheme of arrangement in Singapore adopts most of the restructuring tools existing in the US Chapter 11, including a powerful moratorium, the restriction of *ipso facto* clauses, the availability of rescue financing, and a cross-class cramdown.[93] Second, unlike what happens in the US Chapter 11, where an examiner or trustee can eventually be appointed, the Singapore scheme of arrangement is always managed by the debtor without the appointment of any supervisor or insolvency practitioner.[94] Third, in a US Chapter 11 reorganisation procedure, the creditors are entitled to submit reorganisation plans once the debtor's exclusivity period has expired.[95] Moreover, creditors play an important role when an asset sale takes place prior to the approval of a reorganisation plan.[96] Under the Singapore scheme of arrangement, as in most (if not all) schemes of arrangement around the world, these powers are exclusively enjoyed by debtors. Since a scheme of arrangement has not traditionally been considered as a formal 'insolvency proceeding',[97] creditors have not typically enjoyed the rights existing in these procedures. Finally, the shareholders cannot be forced to be wiped out in a typical scheme of arrangement. Therefore, while the shareholders' interests can be at risk in a US Chapter 11 reorganisation procedure, shareholders are not exposed to the risk of losing the company in a scheme of arrangement, including the Singapore enhanced scheme.

Therefore, all of these factors make the Singapore scheme of arrangement the most attractive reorganisation procedure for debtors in 2020. As it was mentioned in section 4.2, however, it should be noted that this index only measures the law on the books. Therefore, this conclusion does not mean that, in practice, Singapore provides the most attractive restructuring venue for companies. This latter aspect will be determined by many other legal, market and institutional factors, as well as the particular features of the company seeking to conduct a debt restructuring.[98]

In 2020, the United Kingdom also implemented a very ambitious insolvency reform that, among other aspects, included the introduction of a new restructuring plan that adopts various features of the US Chapter 11.[99] However, while this procedure is very similar to the Singapore scheme, it is less attractive to debtors in two primary aspects. First, it does not provide debtors with the comprehensive system of rescue financing existing in Singapore and the United States. Second, the moratorium enjoyed by debtors is more limited. Once again, the overall

[91] See Section 3.2
[92] *Ibid*
[93] *Ibid*
[94] *Ibid*
[95] 11 U.S. Code § 1121(c).
[96] 11 U.S. Code § 363. See also *In re Lionel Corp*., 722 F.2d 1063 (2nd Cir. 1983)
[97] See Eidenmüller (n 55).
[98] For example, if a debtor has a creditor with 25% of the company's debts, and this creditor is not interested in approving a reorganisation plan, the United States will be a more attractive forum than Singapore. As it has been mentioned in Section 3.2, creditors with more than 25% of the company's debts have a de facto veto right under the scheme of arrangement in Singapore. In the United States, a plan can be imposed on dissenting classes of creditors provided that various conditions are met. These conditions, however, do not include a minimum percentage of creditors supporting the plan.
[99] For an analysis of this reform, see Professor Gerard McCormack, 'Permanent changes to the UK's corporate restructuring and insolvency laws in the wake of Covid-19', INSOL International Special Report (October, 2020).

attractiveness of a procedure should be understood within the particular market and institutional environment existing in a jurisdiction. For example, in jurisdictions with deep financial systems and a developed market for distressed assets, such as the United Kingdom, some viable but insolvent firms might not have trouble having access to new finance. If so, the adoption of rescue financing provisions may not strictly be needed.[100] Therefore, even if the lack of these provisions render a reorganisation procedure less attractive on the books (and therefore in this index), the overall attractiveness of a restructuring framework should be analysed taking into account these legal, economic, institutional and market features.

Among the legal and financial centres analysed in this article, the least attractive restructuring framework for debtors is found in Hong Kong even if, as it will be mentioned below, some reorganisation procedures in Hong Kong are more debtor-friendly than the administration and judicial management procedures existing in the United Kingdom and Singapore, respectively. The lack of an attractive restructuring framework in Hong Kong, compared to their counterparts in the United States, the United Kingdom and Singapore, is due to the fact that Hong Kong does not even have a formal reorganisation procedure. It only provides debtors with a hybrid procedure such as the scheme of arrangement. Moreover, unlike the schemes of arrangement existing in other jurisdictions,[101] the Hong Kong scheme of arrangement does not provide debtors with a moratorium. For that reason, many debtors use the scheme of arrangement in conjunction with a provisional liquidation. Since the initiation of a provisional liquidation provides debtors with a statutory moratorium, and the Hong Kong Courts have allowed debtors in provisional liquidation to propose a scheme of arrangement provided that it is in the best interests of the creditors,[102] many debtors have chosen this option as an avenue for debt restructuring.[103]

In terms of reorganisation procedures, however, the most unattractive procedures for debtors are the administration and judicial management procedures existing in the United Kingdom and Singapore, respectively. This is due to several factors. First, administration-style administration procedures typically imply the replacement of the debtor's management team. Therefore, the directors are replaced by an external administrator (judicial manager) that takes over the company's property and business affairs. This is a primary difference with the US Chapter 11, the UK restructuring plan, and any type of scheme of arrangement. Second, administration and judicial management procedures do not necessarily promote reorganisation. Actually, the procedure can even end up with a realisation of the debtor's

[100] In fact, the availability of rescue financing under the existing market and regulatory framework, along with the harmful effects potentially experienced in lending markets if new financing provisions potentially affecting the order of priority were adopted, was an argument given in the United Kingdom to reject the implementation of rescue financing provisions. See UK Insolvency Service, 'A Review of the Corporate Insolvency Framework: Summary of Responses (September 2016) para 5.52. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578524/Summary_of_responses_26-10-16_Redacted.pdf> at 11.

[101] Exceptions include Malaysia and Singapore even before the 2017 reform.

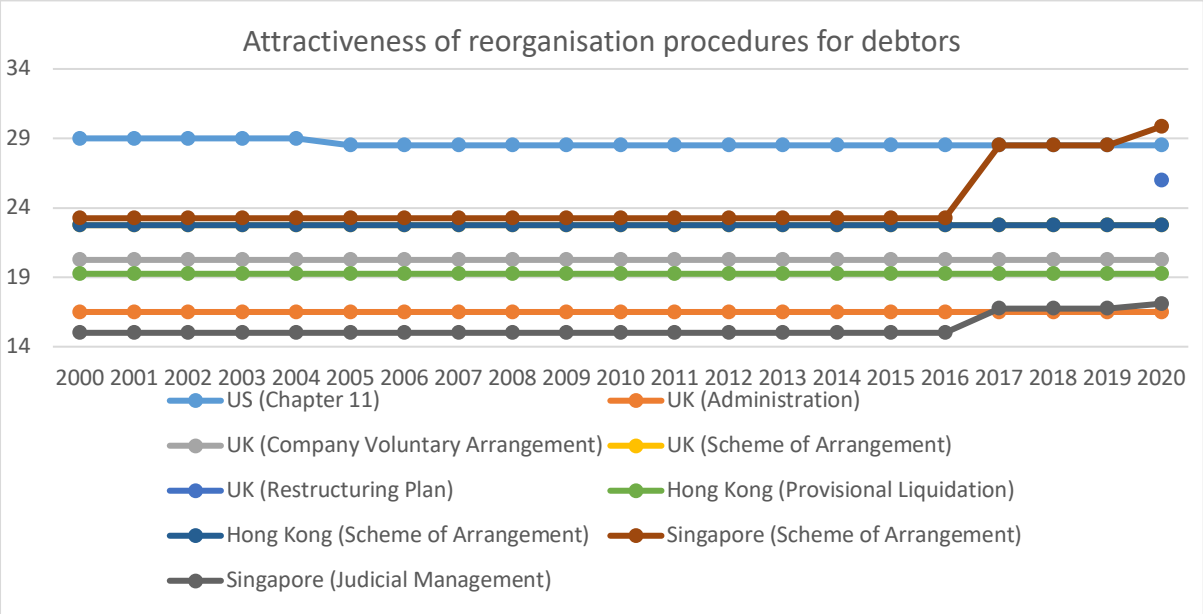
[102] Hong Kong courts have interpreted the purpose of provisional liquidation broadly, allowing companies to conduct a scheme of arrangement when a company is in a provisional liquidation. See Howard Lam, Flora Innes, Jeffrey Wong, 'Restructuring and Insolvency in Hong Kong', in *ALB Asia Insolvency and Restructuring Handbook 2020* (Latham & Walkins 2020). The Hong Kong Court of Appeal clarified that provisional liquidation can be ordered to facilitate a scheme of arrangement only where the company's assets are in jeopardy. See *China Solar Energy Holdings Limited* [2018] HKCFI 555 and *Re Legend International Resorts Ltd* [2006] 2 HKLRD 192.

[103] Restructuring utilising both the scheme of arrangement and provisional liquidation include *HIH Insurance (Aria) Ltd & Others, Re* [2001] HKCU 1405, *National Arts Entertainment and Culture Group Ltd (In Provisional Liquidation for Restructuring Purposes), Re* [2020] HKCU 402 and also *Re The Joint Provisional Liquidators of Hsin Chong Group holdings Ltd (provisional liquidators appointed) (for restructuring purposes only)* [2019] HKCU 1189.

assets. Third, administration, and especially judicial management, subject corporate directors to a liability regime that may eventually be very tough. This is another important difference between these procedures and a US Chapter 11 reorganisation procedure, as well as a scheme of arrangement. Finally, administration-style procedures have not traditionally provided debtors with a cross-class cramdown, the availability of DIP financing, and other debtor-oriented provisions existing in the US Chapter 11. Since some of these provisions have been adopted in the judicial management procedure in Singapore as part of the 2017-2018 insolvency reforms, the index shows how this procedure has become more attractive for debtors than the UK administration procedure. Therefore, while Hong Kong has the most unattractive restructuring framework, the least attractive reorganisation procedure for debtors is found in the United Kingdom.

Table 1: Attractiveness of reorganisation procedures for debtors

Attractiveness for debtors (0-38)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
United States (Chapter 11)	29	29	29	29	29	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5	28.5
UK (Administration)	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5
UK (Company Voluntary Arrangement)	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25	20.25
UK (Scheme of Arrangement)	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75
UK (Restructuring Plan)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	26
Hong Kong (Provisional Liquidation)	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25	19.25
Hong Kong (Scheme of Arrangement)	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75	22.75
Singapore (Scheme of Arrangement)	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	23.25	28.5	28.5	28.5	29.85
Singapore (Judicial Management)	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	16.75	16.75	16.75	17.1



4.3.2. Attractiveness of reorganisation procedures for secured creditors

Consistently with the traditional creditor-oriented insolvency laws existing in the United Kingdom and Singapore, Table 2 shows that the most attractive procedures for secured creditors are found in these jurisdictions. Namely, the most attractive procedure for secured creditors is the UK Company Voluntary Arrangement due to the fact that, without their consent, secured creditors cannot be bound by any solution potentially adopted under this procedure. Then, the Singapore judicial management procedure is the next most attractive reorganisation procedure for secured creditors even though, after the 2017-2018 reforms, secured creditors do not enjoy some of the powers that they had traditionally possessed in this procedure (e.g.,

floating charge holders are no longer entitled to veto an application for judicial management). Other attractive reorganisation procedures for secured creditors include the remaining procedures in the United Kingdom, as well as the reorganisation procedures existing in Hong Kong.

Interestingly, even though the United States has traditionally been described as a pro-debtor jurisdiction, Table 2 shows that the US Chapter 11 reorganisation procedure is also an attractive jurisdiction for secured creditors. In fact, it provides almost the same level of protection existing in the UK/Hong Kong scheme of arrangement as these latter procedures do not provide any significant rule that interferes with creditors' rights, apart from the majority rule which generally exists in a typical insolvency proceeding. Therefore, this aspect supports the idea that the US Chapter 11 provides an attractive restructuring framework for debtors while still remaining very protective of the interests of creditors – or, at least so far, secured creditors.

Finally, the Singapore scheme of arrangement has traditionally provided secured creditors with the same level of protection existing under the schemes of arrangement in the United Kingdom and Hong Kong. However, the 2017-2018 insolvency reforms reduced the power of secured creditors in the scheme of arrangement. First, unlike the previous regime, secured creditors are currently subject to the statutory moratorium typically enjoyed by the debtor. Therefore, even though this moratorium can be lifted in certain cases,[104] secured creditors are generally prevented from enforcing their security interests. Second, despite the adoption of various safeguards, secured creditors can be affected by the existence of the new rescue financing and cramdown provisions. Finally, under the new framework, secured creditors can also be prevented from terminating their contracts upon the commencement of a reorganisation procedure due to the restrictions on the enforcement of *ipso facto* clauses which came into force in 2020. Therefore, even if these restrictions on creditors' rights are consistent with those existing in other jurisdictions such as the United States (Chapter 11) and the United Kingdom (restructuring plan), they have reduced the powers traditionally enjoyed by secured creditors in the Singapore scheme of arrangement.

Yet, as mentioned in the previous section, this index only seeks to assess the attractiveness of reorganisation *laws* from the perspective of debtors, secured creditors and general unsecured creditors. The overall attractiveness of an insolvency system should be analysed in conjunction with the particular features of a jurisdiction. For instance, due to the developed restructuring ecosystem existing in the United States, the US Chapter 11 can eventually be more attractive than the Singapore scheme, even if this index shows otherwise. Similarly, the lack of rescue financing provisions penalises the United Kingdom in this index. However, these provisions may not be needed in countries with developed financial systems such as the United Kingdom. Something similar occurs when assessing the overall protection of secured

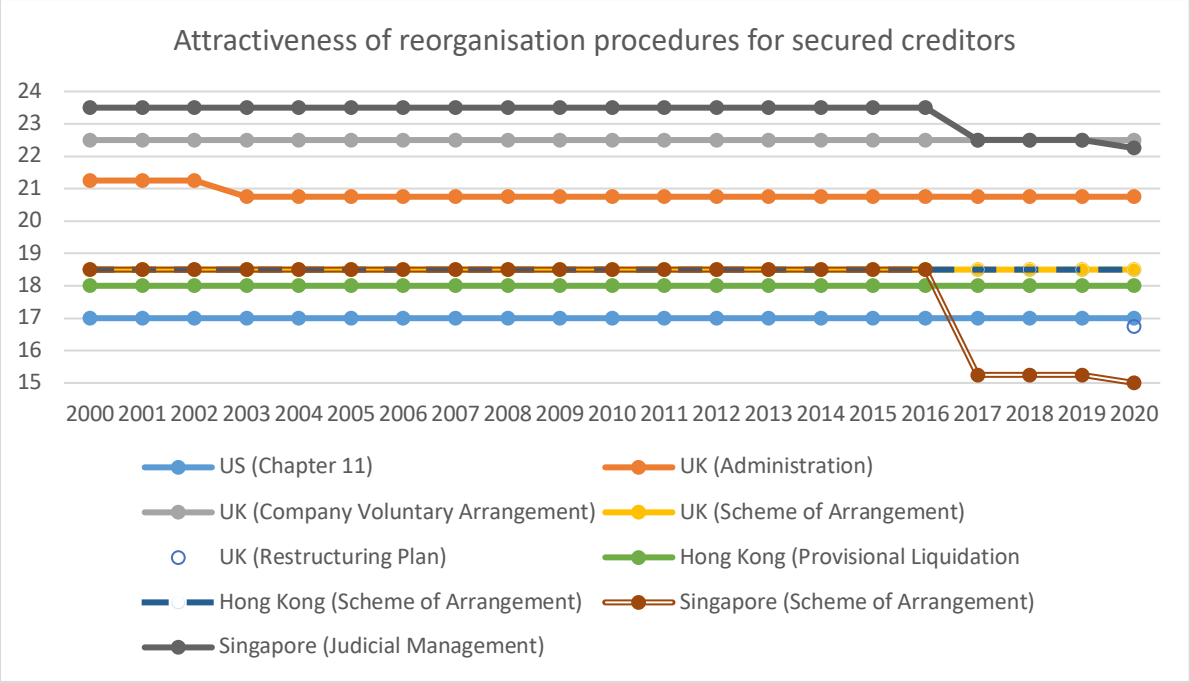
[104] To that end, the court will seek to strike a balance between allowing the restructuring company space and time to reach a reorganisation plan without the added distraction of fending off claims by creditors, and avoiding unnecessary delays in the satisfaction of creditor claims. See *Hyflux Ltd v SM Investments* [2020] 4 SLR 1265. Other considerations to lift the moratorium include: (i) the impact of lifting the stay on the purpose achieved by the moratorium (e.g., reorganisation of a viable company facing financial trouble); (ii) the legitimate interests of secured creditors against those of other creditors; and (iii) the potential losses caused to the secured creditor if the stay is not lifted. See Manoj Pillay Sandrasegara and Sim Kwan Kiat, "Jurisdictional Report: Singapore" (2020) Asian Business Law Institute, *Corporate Restructuring and Insolvency in Asia 2020* (ABLI Legal Convergence Series), 650. In the case law, see *In re Atlantic Computer Systems plc (No 1)* [1992] Ch 505, [542]–[544]; *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119. More recently, see also *Re Kobian Pte Ltd* (OS 1269/2020 Singapore High Court (lifting the moratorium due to lack of sufficient support by creditors).

creditors under the Singapore scheme of arrangement. In the index, the protection of secured creditors has decreased after the 2017-2018 reforms, mainly as a result of their inability to enforce their security interests while a debtor conducts a scheme of arrangement. However, the case law has shown that the moratorium can be lifted if creditors show that, due to a variety of factors (e.g. lack of sufficient creditor support), the debtor is unlikely to be able to approve a reorganisation plan.[105] Moreover, the existence of the best interest of creditors test, among other safeguards, ensures that secured creditors subject to a cramdown are not worse off compared to the 'most likely scenario' if the scheme fails,[106] and similar protections have been provided in the context of rescue financing. Therefore, the level of protection enjoyed by secured creditors will ultimately depend on the efficiency, sophistication and close scrutiny of the courts overseeing the reorganisation procedure. If courts can prevent the opportunistic use of the moratorium by debtors that are unable to approve a reorganisation plan, either because they are not economically viable[107] or because they do not have the minimum level of support needed to approve the plan,[108] secured creditors should not be worse off in terms of their expected recoveries. Thus, due to efficiency and sophistication of the Singapore judiciary, the risk of opportunism of debtors vis-à-vis creditors will be significantly reduced. As a result, in term of their recoveries, secured creditors should not be worse off after the 2017-2018 reforms.

Table 2: Attractiveness of reorganisation procedures for secured creditors

Attractiveness for secured creditors (0-30)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
United States (Chapter 11)	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17
UK (Administration)	21.25	21.25	21.25	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75
UK (Company Voluntary Arrangement)	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5	22.5
UK (Scheme of Arrangement)	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5
UK (Restructuring Plan)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	16.75
Hong Kong (Provisional Liquidation)	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18
Hong Kong (Scheme of Arrangement)	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5
Singapore (Scheme of Arrangement)	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	15.25	15.25	15.25	15
Singapore (Judicial Management)	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	22.5	22.5	22.5	22.25

[105] *Re Kobian Pte Ltd* (OS 1269/2020 in the Singapore High Court.
[106] IRDA s 70(4)(*a*).
[107] For an analysis of the concept of viability, see (n 43).
[108] As mentioned in section 3.2, creditors representing 25% of the company's debts can block a reorganisation plan. Therefore, if more than 25% of the company's creditors (in value) express their opposition to the reorganisation of the company, there will be reasonable grounds to lift the stay. See *Re Kobian Pte Ltd* (OS 1269/2020 in the Singapore High Court.



4.3.3. Attractiveness of reorganisation procedures for unsecured creditors

The index shows that the most attractive procedure for unsecured creditors is the Singapore judicial management. In fact, Table 3 shows that the 2017-2018 insolvency reforms that took place in Singapore have increased the protection of unsecured creditors in judicial management, mainly because of the new liability regime for corporate directors potentially existing under this procedure.[109] The next most attractive reorganisation procedure for unsecured creditors is the UK administration procedure, followed by the provisional liquidation in Hong Kong. The fact that these procedures provide more protection to unsecured creditors is consistent with the idea that unlike the US Chapter 11 reorganisation procedure (or a typical scheme of arrangement), administration-style insolvency proceedings are primarily run for the interests of the creditors through the appointment of an external administrator that takes over the company.[110]

More surprising seems to be the results of the US Chapter 11 reorganisation procedure and, to a lesser extent, the UK restructuring plan and the Singapore scheme of arrangement. Once again, the US Chapter 11 reorganisation procedure shows that a country can provide debtors with an attractive restructuring framework while remaining protective of the interests of the creditors, including general unsecured creditors. Compared to the new restructuring

[109] For an analysis of the new regime of directors' duties and liabilities in the zone of insolvency in Singapore, see Stacy Steele, Ian Ramsay, Miranda Webster, 'Insolvency Law Reform in Australia and Singapore: Directors' Liability for Insolvent Trading and Wrongful Trading' (2019) 28(3) International Insolvency Review 363. See also Aurelio Gurrea-Martinez, 'Towards an Optimal Model on Directors' Duties in the Zone of Insolvency: An Economic and Comparative Approach' (2021) Journal of Corporate Law Studies <https://www.tandfonline.com/doi/full/10.1080/14735970.2021.1943934> accessed 1 July 2021. It should be noted that the liability for wrongful trading can only be imposed in liquidation and judicial management. Therefore, it cannot be imposed in a scheme of arrangement.

[110] Due to the inefficiencies often generated by replacing managers for external administrators, some jurisdictions have started to develop some 'light touch' administrations. These developments have taken place, for example, in the United Kingdom and Hong Kong. See Kartikeya Sharma, 'Covid-19 and Insolvency: The Case for 'Light-touch' Administration', (*University of Oxford*, 8 May 2020) <https://www.law.ox.ac.uk/business-law-blog/blog/2020/05/covid-19-and-insolvency-case-light-touch-administration> accessed 1 July 2021.

procedures in the United Kingdom and Singapore, the US Chapter 11 is more attractive to unsecured creditors because, among other factors, it allows the creation of a committee of unsecured creditors paid by the estate, and it also facilitates the avoidance of harmful transactions entered into by the debtor in the zone of insolvency. The use of the avoidance actions typically provided in the insolvency legislation, however, are not available in the new restructuring procedures in the United Kingdom and Singapore.

From the perspective of unsecured creditors, the primary difference between the UK restructuring plan and the Singapore scheme of arrangement can be found in the governance of the restructuring process. While the Singapore scheme of arrangement has adopted an entirely debtor in possession regime without the appointment of any insolvency practitioner, the UK restructuring plan requires the appointment of a monitor to oversee the process. Interestingly, for the purpose of this article, both procedures provide debtors with an attractive restructuring framework while remaining protective of the interests of unsecured creditors. In fact, in the case of Singapore, the insolvency reform implemented in 2017 not only improved the attractiveness of the scheme of arrangement for debtors but it also made this procedure more attractive for unsecured creditors. The higher level of protection enjoyed by unsecured creditors under the enhanced scheme of arrangement is mainly due to the more powerful moratorium available to debtors. In the previous regime, secured creditors were always allowed to enforce their security interests in a scheme of arrangement. After the reform, however, the moratorium has been extended to secured creditors.[111] Therefore, in the context of viable companies seeking to conduct a debt restructuring, the existence of this enhanced moratorium facilitates the preservation of going concern value, thereby increasing the expected recoveries for unsecured creditors.

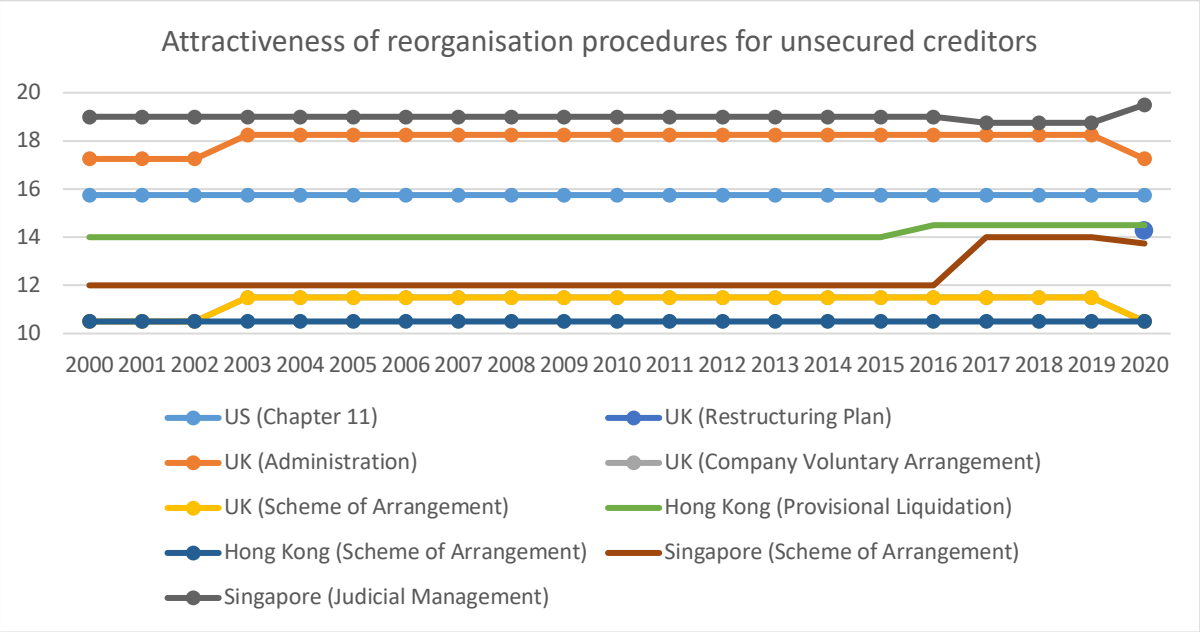
Finally, the schemes of arrangement existing in the United Kingdom and Hong Kong provide a lower level of protection to unsecured creditors. This is due to the nature of the traditional scheme of arrangement. Since a scheme of arrangement has not even been considered to be a formal insolvency proceeding, creditors involved in this procedure have not traditionally enjoyed the powers and protections usually existing under a formal insolvency proceeding.

As mentioned in other sections, however, in practice, the effective level of protection provided to unsecured creditors will greatly depend on the judiciary. Therefore, due to the efficiency and sophistication of the judiciary in the United Kingdom and Hong Kong, it is expected that within the limited protections available in a scheme of arrangement, unsecured creditors will be properly protected in these jurisdictions.

[111] See IRDA s 64. There are nevertheless exceptions to the moratorium e.g., exercise of any legal right under any arrangement that may be prescribed under Singapore regulations, see IRDA s 64(12). The company, creditor, receiver or the manager of the whole (or substantially the whole) of the property of the company may apply to the court to lift the moratorium as well, see IRDA s 64(10).

Table 3: Attractiveness of reorganisation procedures for unsecured creditors

Attractiveness for unsecured creditors (0-34)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
United States (Chapter 11)	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75	15.75
UK (Administration)	17.25	17.25	17.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	18.25	17.25
UK (Company Voluntary Arrangement)	10.5	10.5	10.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	10.5
UK (Scheme of Arrangement)	10.5	10.5	10.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	11.5	10.5
UK (Restructuring Plan)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	14.25
Hong Kong (Provisional Liquidation)	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14	14.5	14.5	14.5	14.5	14.5
Hong Kong (Scheme of Arrangement)	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5
Singapore (Scheme of Arrangement)	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	14	14	14	13.75
Singapore (Judicial Management)	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	18.75	18.75	18.75	19.5



4.4. Summary

The insolvency literature has often classified jurisdictions into debtor-oriented or creditor-oriented insolvency systems. The reality is far more complex than this classification. Using a novel index measuring the attractiveness of reorganisation procedures from the perspective of debtors, secured creditors, and unsecured creditors, this article has shown that the fact that a country is pro-debtor or pro-creditor jurisdiction does not necessarily mean that it has to be anti-creditor or anti-debtor, respectively. In fact, it has been shown that the United States has managed to design an insolvency system that is pro-debtor and pro-creditor, and the recent insolvency reforms adopted in Singapore and the United Kingdom provide debtors with a more attractive restructuring framework while continuing to be attractive jurisdictions for lenders. Moreover, even if a jurisdiction has been traditionally classified as a 'creditor-oriented' insolvency system, a deeper analysis of the insolvency framework may show that only certain creditors, such as secured creditors or certain unsecured creditors (e.g., employees or tax authorities), are effectively enjoying this high level of protection. Also, while some procedures within a jurisdiction can be attractive to debtors, other insolvency procedures can be more attractive to creditors. Therefore, classifying a particular jurisdiction as a pro-debtor or pro-creditor insolvency system can be misleading.

5. Challenges and lessons

Building a restructuring hub can be a challenging task. First, a jurisdiction seeking to enhance the restructuring framework for debtors needs to make sure that the new regime remains protective of the interests of the creditors. Otherwise, lenders may respond with an increase in the cost of debt, ultimately harming firms' access to finance and the promotion of economic growth.[112] Moreover, in the context of global financial centres, such as the United Kingdom, Hong Kong and Singapore, an undesirable reform for creditors can also undermine the leadership of these jurisdictions as international hubs for legal and financial services. As a result, a reform seeking to support the real economy may end up doing more harm than good. Therefore, any attempt to enhance the profile of a jurisdiction as a restructuring hub, and more generally to implement an insolvency reform seeking to improve the attractiveness of reorganisation procedures for debtors, should also be carefully examined from the perspective of the creditors. To that end, the experience of the United States and, more recently, Singapore and the United Kingdom, show that a country can provide debtors with an attractive restructuring framework while continuing to be attractive jurisdictions for lenders.[113]

Second, the market and institutional environment play an essential role in the development of a restructuring hub. In fact, it can even be more important than the insolvency framework itself. For instance, as shown in section 4.3, the UK administration procedure is not an attractive reorganisation procedure for debtors, at least on the books. Also, the scheme of arrangement does not provide many tools to facilitate an effective debt restructuring. Yet, the United Kingdom has traditionally been one of the world's leading restructuring hubs. This is due, at least in part, to the developed market and restructuring ecosystem existing in the United Kingdom, as well as the level of sophistication, predictability, and efficiency of UK courts.[114]

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[112] A recent study has shown that various insolvency reforms favouring debtors at the expense of debtors adopted in the European Union have led to an increase in the cost of debt for firms, resulting in companies cutting investments and employee pay by about 2%. See Frédéric Closseta, Christoph Großmanna, Christoph Kaserera, Daniel Urban, 'Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms' (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3768436> accessed 6 September 2021.

[113] In fact, the Singapore experience seems to have inspired the current insolvency reform process initiated in Australia, where the Government is considering the adoption of new restructuring tools in the scheme of arrangement. See The Australian Government Treasury, 'Helping Companies Restructure by Improving Schemes of Arrangement' (Consultation Paper, 2 August 2021) <https://treasury.gov.au/sites/default/files/2021-08/c2021-190907-cp1_0.pdf> accessed 9 October 2021. Advocating for this reform in Australia, see also Andreas Bauer, Sean Craig, José Garrido, Kenneth H Kang, Kenichiro Kashiwase, Sung Jin Kim and Yan Liu and Sohrab Rafiq, 'Flattening the Insolvency Curve: Promoting Corporate Restructuring in Asia and the Pacific in the Post-C19 Recovery' (2021) IMF Working Paper No. 2021/016 <https://www.imf.org/en/Publications/WP/Issues/2021/01/29/Flattening-the-Insolvency-Curve-Promoting-Corporate-Restructuring-in-Asia-and-the-Pacific-in-49997> p 20; Aurelio Gurrea-Martinez (interviewed with Dr. Kai Luck), 'Developments in Singapore's insolvency and restructuring regime: What lessons can Australia learn from Singapore's recent insolvency law reform process?' Australian Restructuring Insolvency & Turnaround Association Journal (June 2021) <https://ccla.smu.edu.sg/sites/cebcla.smu.edu.sg/files/2020-12/SGRI/ARITA.%20Interview%20to%20Aurelio%20Gurrea%20Martinez.pdf> p. 21.

[114] As it has been mentioned in section 2, other factors contributing to the leadership of the United Kingdom in the restructuring space include the automatic recognition of procedure within the EU and the attraction of many companies from other European countries with more inefficient frameworks. It should be noted, however, that the comparative advantage of the United Kingdom will be reduced after the implementation of the EU Directive on Preventive Restructuring Frameworks, that adopts many of the features existing in reorganisation procedures in the United States and Singapore. Moreover, since the UK is no longer part of the European Union, it cannot take advantage of the automatic recognition and enforcement of insolvency proceedings provided by the European Insolvency Regulation.

Unfortunately, while enacting an attractive insolvency law for debtors (and creditors) is relatively easy, assuming that there is political will,[115] improving a market and institutional environment is far more difficult and it usually takes time and more ambitious reforms. For this reason, while the market and institutional framework in some jurisdictions has improved, it has been argued that it might make more sense to reduce the usage of formal insolvency proceedings and, instead, promoting workouts, hybrid procedures, as well as contractual and market-based solutions.[116]

Third, even if the market and institutional framework of a jurisdiction is improved, developing a restructuring ecosystem can also be challenging. Still, the Singapore experience has shown that developing the restructuring ecosystem can still be a feasible goal.[117] It only needs the active involvement of the actors involved in the insolvency industry, including practitioners, judges, academics, lenders, and policymakers.

Fourth, the ability of a jurisdiction to become a restructuring hub also depends on other external factors. For instance, the international recognition of reorganisation procedures may play a significant role in the positioning of a jurisdiction as a restructuring hub. This international recognition depends on several aspects, including: (i) how foreign jurisdictions deal with a situation of cross-border insolvency;[118] (ii) whether a third country follows the rule in Gibbs;[119] (iii) the nature of a particular reorganisation procedure from the perspective of

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Therefore, these two factors will probably undermine the leadership of the UK in the restructuring space, at least when it comes to attract European companies. For an overview of the primary features of the new preventive frameworks in the European Union, see Gurrea-Martinez, 'The Future of Reorganization Procedures in the Era of Pre-Insolvency Law' (n 17). For the impact of Brexit on the insolvency and restructuring industry in the United Kingdom, see (n 64).

[115] See Aurelio Gurrea-Martinez, 'Insolvency in Emerging Markets' (2020) Ibero-American Institute for Law and Finance, Working Paper 3/2020, <https://ssrn.com/abstract=3606395> accessed 1 July 2021.

[116] *Ibid*.

[117] See Section 3.3

[118] The general approaches to deal with cross-border insolvency include universalism (consisting of adopting a single insolvency forum for the commencement of an insolvency proceeding with an international component), territorialism (consisting of opening insolvency proceedings in those places where the debtors have assets and creditors), and contractualism (suggesting that debtors should have the ability to decide where to initiate insolvency proceedings). There are various variations of these procedures, being the 'modified universalism' the most success approach. Regional and international organisations embracing a 'modified universalism' approach include the European Union and the United Nation Commission on International Trade Law (UNCITRAL). For the primary models and challenges in cross-border insolvency, see Ian Fletcher, *Insolvency in Private International Law* (2nd Ed, OUP 2007); Bob Wessels, Bruce A. Markell and Jason Kilborn, *International Cooperation in Bankruptcy and Insolvency Matters* (OUP 2009); Look Chan Ho, Cross*-Border Insolvency: Principles and Practice* (Sweet & Maxwell 2016); Reinhard Brok, *Principles of Cross-Border Insolvency Law* (Intersentia 2017). In favour of universalism, see Lucian A Bebchuk and Andrew T Guzman, 'An Economic Analysis of Transnational Bankruptcies' (1999) 42 Journal of Law and Economics 775; Jay L Westbrook, 'A Global Solution to Multinational Default' (2000) 98 Michigan Law Review 2276; Andrew T Guzman, 'International Bankruptcy: In Defence of Universalism' (2000) 98 Michigan Law Review 2177; Jay L. Westbrook, 'Global Insolvency Proceedings for a Global Market: The Universalist System and the Choice of a Central Court' (2018) 96 Texas Law Review 1473. In Defence of territorialism, see Lynn M. LoPucki, 'Cooperation in International Bankruptcy: A Post-Universalist Approach' (1999) 84 Cornell Law Review 696. Advocating for a contractual approach for cross-border insolvency, see Robert K. Rasmussen, 'A New Approach to Transnational Insolvencies' (1997) 19 Michigan Journal of International Law 1.

[119] This rule, still applied by UK courts, prevent foreign proceedings from discharging debts subject to UK law. More generally, under the rules in Gibbs, debts can only be discharged if a reorganisation procedure takes place in the country of the applicable law. Analysing the challenges of the rule in Gibbs for the success of value-enhancing reorganisation procedures with an international component, see Kannan Ramesh, 'The Gibbs Principle: A Tether on the Feet of Good Forum Shopping' (2017) 29

private international law;[120] and (iv) the international reputation and economic relevance of a jurisdiction.[121]

Finally, just as businesses compete with each other, jurisdictions also compete to attract foreign companies and investments. The United States and the United Kingdom have traditionally dominated the global markets for corporate restructurings. However, it is not guaranteed that this trend will continue in the future – especially in such a rapidly changing and competitive environment. Similarly, even though Singapore's comprehensive efforts to enhance the restructuring ecosystem is expected to increase the number of foreign companies conducting a debt restructuring in the country,[122] Singapore's success will ultimately be decided by the market. At this stage, it can only be affirmed that the country seems to have taken the right steps to strengthen its position as an international hub for debt restructuring.

6. Conclusion

This article has sought to analyse the legal, market and institutional features needed to build a restructuring hub. Moreover, it has also challenged the assumption that a pro-debtor insolvency system necessarily needs to be anti-creditor or the other way around. Relying on a novel index measuring the attractiveness of reorganisation procedures from the perspective of debtors, secured creditors and general unsecured creditors, this article has shown how the United States managed to design a pro-debtor and pro-creditor insolvency system, and how Singapore and the United Kingdom have enhanced their restructuring frameworks while continuing to be attractive jurisdictions for lenders. It has also been argued that overcoming the debtor-creditor dilemma is only one of the various challenges faced by jurisdictions interested in becoming a restructuring hub. The sophistication of the judiciary, the development of the restructuring ecosystem, and other external factors mainly related to the international recognition of reorganisation procedures will also play an essential role in the success of a jurisdiction seeking to become an international hub for debt restructuring.

Singapore Academy of Law Journal 42. See also *Pacific Andes Resources Development Ltd* [2016] SGHC 210.

[120] Irit Mevorach and Adrian Walters, 'The Characterization of Pre-Insolvency Proceedings in Private International Law' (2019) 21 European Business Organisation Law Review 855 (providing a comprehensive analysis of the treatment and challenges faced by pre-insolvency proceedings from the perspective of private international law); Aurelio Gurrea-Martinez, 'International Recognition of Singapore's New Restructuring Framework' (*Oxford Business Law Blog*, 24 September 2020) <https://www.law.ox.ac.uk/business-law-blog/blog/2019/09/international-recognition-singapores-new-restructuring-framework> accessed 16 July 2021 (commenting the recognition of a Singapore scheme of arrangement in the United Kingdom in *H & CS Holdings Pte Ltd v Glencore International AG*). For some of the challenges associated with the recognition and enforcement of schemes of arrangements, see Look Chan Ho, 'Making and Enforcing International Schemes of Arrangement' (2011) 26 Journal of International Banking Law and Regulation 434; Jennifer Payne, 'Cross-Border Schemes of Arrangement and Forum Shopping' (2013) 14 European Business Organization Law Review 563.

[121] The international reputation and economic relevance of a country may affect the willingness of third parties to respect the decisions adopted in other jurisdictions, even if they are not formally bounded by those decisions. For instance, even if a country allows debtors to enjoy a moratorium potentially having worldwide effects, in practice, this rule will only be effective if third countries respect the universal effects granted by a foreign court. Therefore, the international reputation and respect of a country will play an essential rule in the extraterritorial effects of many insolvency rules.

[122] Arguing that Singapore is expected to attract more restructuring in the medium and long-term, see Noel McCoy, 'Will Singapore become an international centre of debt restructuring', INSOL International Special Report (November, 2018).