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## Singapore's Legal and Economic Response to the COVID-19 Crisis: The Role of Insolvency Law and Corporate Workouts

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### Synopsis

The international spread of the coronavirus has forced many countries to put their economies into 'hibernation', leading to one of the worst recessions observed in modern times. Since Singapore is not isolated from this crisis, the Government had to intervene by adopting a very ambitious package of legal and financial measures to support businesses, households and employees. Among these measures, the Government has implemented various temporary changes to the insolvency legislation, and the use of out-of-court agreements has been encouraged for debtors facing financial trouble. This article argues that, while insolvency law can play an important role in the current situation, especially in countries with efficient insolvency frameworks such as Singapore, there are some limitations associated with the use of insolvency proceedings. For this reason, the use of workouts should be promoted as a way to facilitate the financial restructuring of debtors affected by the COVID-19 crisis. Besides, several factors make the use of workouts particularly feasible in Singapore. In our view, the existence of the comprehensive package of legal and fiscal responses adopted by the Singapore Government, along with the important role potentially played by insolvency law and corporate workouts, will significantly help minimise the economic impact of the COVID-19 crisis in Singapore.

### I. Introduction

The international spread of the coronavirus ('COVID-19') has forced many countries to subject their economies to a period of 'hibernation' by imposing measures that include temporary closure of businesses, stay home obligations, and travel restrictions. While these measures will help mitigate the public health crisis generated by COVID-19, these lockdowns will lead to the worst recession the world's economy has experienced since the Great Depression.<sup>1</sup> Therefore, a significant number of businesses will be forced to permanently close their doors, and many people will lose their jobs and their primary sources of income.

Singapore is not immune to this situation. For this reason, the Government quickly reacted with a very comprehensive package of measures that seeks to keep the economy afloat while battling the pandemic. These measures include various legal reforms seeking to provide debtors affected by COVID-19 with a breathing space to perform their obligations,<sup>2</sup> as well as a various economic and financial responses that seek to support businesses, employees, and households.<sup>3</sup>

This paper examines the comprehensive package of reforms implemented by the Singapore Government to minimise the economic effects of COVID-19, and how insolvency law and corporate workouts are expected to play a significant role in the current situation. Section II provides a brief overview of the legal and economic responses implemented by the Singapore Government. Section III analyses the role and limits of insolvency law in the COVID-19 crisis. Section IV

### Notes

- 1 G. Gopinath, 'The Great Lockdown: Worst Economic Downturn Since the Great Depression' <<https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/>>, 14 April 2020.
- 2 This breathing space seeks to serve as a 'legal circuit breaker'. See Ministry of Law, 'Second Reading Speech by Minister for Law, Mr K Shanmugam, on the COVID-19 (Temporary Measures) Bill' <[www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-minister-for-law-mr-k-shanmugam-on-the-covid-19-temporary-measures-bill](http://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-minister-for-law-mr-k-shanmugam-on-the-covid-19-temporary-measures-bill)>, 7 April 2020.
- 3 The combination of these legal and economic measures make the Singapore response one of the most ambitious ones observed internationally. For a summary of the responses adopted by many countries around the world, see INSOL International and World Bank Group, 'Global Guide: Measures adopted to support distressed businesses through the COVID-19 crisis' <<http://insol-techlibrary.s3.amazonaws.com/5685f850-7835-478a-ac58-688cc832e4ba.pdf?AWSAccessKeyId=AKIAJA2C2IGD2CIW7KIA&Expires=1593854840&Signature=yEFEhzCveb9n0x6PrINbvvd3wuw%3D>>, 3 July 2020.

examines the importance of out-of-court restructurings ('workouts') to support businesses affected by the COVID-19 pandemic, and why they will probably play a major role in Singapore. Section V concludes.

## II. Singapore's legal and economic response to the COVID-19 crisis

### A. Economic and financial measures

The economic and financial measures introduced by the Government target three different aspects of a business.<sup>4</sup> First, it improves the financial situation of businesses by helping them solve their *cash flow* needs. This is achieved through a variety of measures, including co-funding of wages for their employees. By subsidising wages, it is expected that, in addition to improving a business's financial position, companies will be able to retain their employees. Therefore, it will also reduce the level of unemployment generated by the COVID-19 crisis. Other measures seeking to solve the cash-flow needs of companies include the deferral of various taxes and Government fees and charges.

Second, the economic measures adopted by the Government also seek to help lower *costs* for businesses. Rent, which contributes towards a significant portion of business expenses, has been waived under a rental relief framework which shares the burden of relief between the Government and landlords. In addition, a cash grant, totalling about SGD 2 billion, is provided to property owners who are required to pass on this benefit to their tenants. To assist landlords who are facing financial hardship and derive a significant portion of their income from rental revenue, there is the possibility for their share of obligated rental relief to be halved. Concurrently, some industries have been hit harder by COVID-19. As such, there is greater support by the Government to these sectors, such as aviation and tourism, in the form of greater rental relief, rebates and co-sharing of additional costs during this period.

Third, the Government has also provided businesses with greater opportunities to obtain *credit*. This includes financial assistance through Government-supported loans for businesses to meet their operational cash flow and trade-financing needs, as well as the option to defer capital and interest repayments for some

of these loan options. The Government has also increased its maximum risk share so that the cost of borrowing will be kept low and manageable for borrowers. There is also a Loan Insurance Scheme which allows lenders to co-share the risk of default with commercial insurers for short-term trade loans. Taken together, the measures provide ample opportunities to businesses to obtain new credit lines while ensuring that the financial industry is not overburdened with the risk of non-performing loans.

At the same time, it is clear that the economy cannot simply return to how it was before the pandemic. To that end, the Government has emphasised the importance of emerging stronger from this crisis through digitalisation and upskilling. This is supported by various grants and cash incentives which will help businesses tap on new sources of revenue and improve the skills of the workforce.

In total, the Singapore Government has dedicated SGD 92.9 billion to support the real economy, making it one of the most ambitious fiscal responses in the world.<sup>5</sup>

### B. Legal measures

#### I. Introduction

The legal measures introduced by the Government as a response to the current pandemic are encapsulated in the COVID-19 (Temporary Measures) Act 2020 (the 'COVID-19 Act'). Taking only 9 days to be drafted and passed by Parliament, the COVID-19 Act is the product of a quick legislative response by the Government to provide much needed relief to businesses.<sup>6</sup> Apart from this, it also provides alternative arrangements to statutorily required meetings and court proceedings by permitting the use of electronic and remote communication technology. This ensures that such institutions can still operate during this time when there are restrictions on the movement of people. Regardless, given the great amount of uncertainty surrounding the pandemic, it is important that a degree of flexibility was retained by the Government to expand the scope of relief without the need to go back to Parliament. This ensures that help can be provided as quickly as possible to those that need it most.<sup>7</sup>

#### Notes

- 4 For a comprehensive summary of the measures adopted in Singapore, see A. Gurrea-Martinez, INSOL International and World Bank Group, 'Global Guide: Measures adopted to support distressed businesses through the COVID-19 crisis: Singapore Chapter' <<http://insol-techlibrary.s3.amazonaws.com/db38b138-a2fe-4ca0-951c-78379bf80d84.pdf?AWSAccessKeyId=AKIAJA2C2IGD2CIW7KIA&Expires=1593854877&Signature=YAfZuEQ%2BjTYj244nXHvROE0daQo%3D>>, 3 July 2020.
- 5 For an overview of the fiscal responses adopted around the world as a response to the COVID-19 crisis, see International Monetary Fund, 'Policy Responses to COVID-19' <[www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#S](http://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#S)>, 30 June 2020.
- 6 COVID-19 (Temporary Measures) Act 2020 (No.14 of 2020).
- 7 For example, within a month of the COVID-19 Act entering into force, the Ministry of Law decided to extend relief to additional types of contracts relating to the purchase of property after receiving feedback from the public. See Ministry of Law, 'Enhancements to the COVID-19 (Temporary Measures) Act to Cover Two New Contracts and Prohibit Unilateral Increase of Charges' <[www.mlaw.gov.sg/news/press-releases/](http://www.mlaw.gov.sg/news/press-releases/)>

## 2. Pre-insolvency moratorium

The main tool which the COVID-19 Act introduces is a notification of relief mechanism. Under this mechanism, a party which is unable to perform its obligations under a contract may notify the counterparty of its inability to perform. This has the effect of imposing a form of moratorium which restricts the counterparty's right to commence various legal actions, including commencing or continuing enforcement actions, terminating the contract, and commencing insolvency proceedings. Therefore, a notification of relief can serve as a pre-insolvency tool to protect debtors affected by the COVID-19 crisis.

However, in order to avoid the opportunistic use of the protections provided by the COVID-19 Act, there are certain requirements which have to be satisfied. First, it only applies to obligations that is to be performed on or after 1 February 2020. This was taken as the cut-off date for relief because it is the date when the economic effects of COVID-19 started to be felt in Singapore. Second, the inability to perform the obligation must, to a material extent, be caused by COVID-19. Third, it only applies to certain contracts found in the Schedule, including certain loan facilities, hire-purchase agreements, lease agreements, and event and tourism-related agreements. In particular, the loan agreements found in the Schedule are only those given to Small and Medium Enterprises ('SMEs') and not larger enterprises.<sup>8</sup> The reason for this is that SMEs constitute the majority of business in Singapore and account for 72% of employment. In addition, they are more vulnerable to the dramatic and sudden loss of revenue during this period and are disproportionately affected compared to larger businesses.<sup>9</sup> Thus, while larger businesses have the ability to explore more options to repay their financial obligations, this is not the case for SMEs and the focus of the relief is on the latter and not the former.

## 3. Temporary changes to the insolvency legislation

Apart from introducing a notification of relief mechanism, the COVID-19 Act also includes temporary amendments to the insolvency regime.<sup>10</sup>

First, it restricts creditors' rights to commence insolvency proceedings by making it more difficult to compulsorily wind up a company by relying on the presumption that the company is unable to pay its debts. The threshold sum to rely on the presumption is raised from SGD 10,000 to SGD 100,000 and the statutory period to respond to a letter of demand has been increased from three weeks to six months. While this does not suspend a creditor's right to commence an insolvency proceeding, it can effectively deter such action due to the higher burden of proof.

Second, a safe harbour provision was introduced to allow a business to carry on trading even while insolvent. Directors will not face personal liability for wrongful trading if they incurred the debt or liability in the ordinary course of business. This will ensure that directors are not unduly deterred from continuing business operations during this time. This defence does not extend to directors who acted fraudulently.

Third, the lookback periods of avoidance actions are extended for the duration of the moratorium relief period. Otherwise, if the company were to subsequently commence insolvency proceedings, judicial managers or liquidators would be unable to take such actions to recover certain assets for the benefit of the creditors. By extending the lookback period, it prevents individuals from opportunistically relying on the mechanism to run down the clock on the lookback period.

## III. The role and limits of insolvency law

Insolvency law can play a significant role in the current situation.<sup>11</sup> This is due to, among other aspects, the ability of insolvency law to preserve value and facilitate an adjustment of debts.<sup>12</sup> However, even in countries with sophisticated insolvency frameworks such as

### Notes

enhancements-to-the-covid-19-temporary-measures-act-to-cover-two-new-contracts>, 13 May 2020.

- 8 This is defined as entities which: (1) have not less than 30% ownership held by Singapore citizens or permanent residents of Singapore or both; and (2) have a group turnover not exceeding SGD 100 million in the latest financial year. See the COVID-19 Act, paragraph 2 of The Schedule.
- 9 The Organisation for Economic Co-operation and Development, 'Coronavirus (COVID-19): SME policy responses' <[www.oecd.org/coronavirus/policy-responses/coronavirus-covid-19-sme-policy-responses-04440101/](http://www.oecd.org/coronavirus/policy-responses/coronavirus-covid-19-sme-policy-responses-04440101/)>, 19 May 2020.
- 10 These temporary changes to the insolvency legislation have also been implemented in many other countries. For an overview of the insolvency reforms taking place around the world as a response to the COVID-19 crisis, see A. Gurrea-Martinez, 'Insolvency Law in Times of COVID-19' (2020) 41(7) *The Company Lawyer* 191. See also A. Gurrea-Martinez, S. Brodie and P. Mahajan, 'Global Guide: Measures Adopted to Support Distressed Businesses Through the COVID-19 Crisis – Report' <<http://insol-techlibrary.s3.amazonaws.com/a8d909e7-532c-489a-b7fb-3a05cc15377a.pdf?AWSAccessKeyId=AKIAJA2C2IGD2CIW7KIA&Expires=1593867026&Signature=PjVLZCUpSFC5f0yKGQ1kTUeKsOU%3D>>, 3 July 2020.
- 11 A. Gurrea-Martinez, 'Insolvency Law in Times of COVID-19' (2020) 41(7) *The Company Lawyer* 191; J. Elias and G. Triantis, 'Congress is Ignoring Congress is Ignoring the Best Solution for Troubled Companies: Bankruptcy', <<https://fortune.com/2020/05/14/bankruptcy-cares-act-aid-coronavirus/>>, 14 May 2020.
- 12 A. Gurrea-Martinez, 'Insolvency Law in Times of COVID-19' (2020) 41(7) *The Company Lawyer* 191, 191-193.

Singapore,<sup>13</sup> insolvency law is subject to various limitations. First, it involves the commencement of a costly insolvency procedure that is particularly prohibitive for SMEs.<sup>14</sup> Second, many companies may not have the financial resources needed to even initiate an insolvency proceeding.<sup>15</sup> Finally, the current situation may lead to a wave of insolvency cases that can be unmanageable for any judicial system.<sup>16</sup>

While the legal and economic responses implemented by the Singapore Government will reduce the number of companies initiating insolvency proceedings and those running out of cash, there are still some challenges ahead, especially for SMEs. Namely, if SMEs are not provided with an efficient alternative to sort out their financial trouble, various costs can be created for society. First, due to the costs of insolvency proceedings, many viable but financially distressed SMEs may not be able to survive (even commence) the procedure. Therefore, value will be destroyed. Second, in the absence of an alternative mechanism to help SMEs facing financial trouble, the current situation may lead to a wave of insolvency cases initiated by SMEs. As a result, unless an alternative solution is provided, this wave of insolvency cases by SMEs may potentially swamp the judicial system.

The following section will focus on the solution that regulators should promote to solve the aforementioned problems, explaining how it has been incentivised, and why it is expected to play a major role in the COVID-19 crisis in Singapore.

## IV. The importance of workouts

### A. Introduction

An informal workout involves a consensual renegotiation of the debtor's contractual arrangement with its creditors without a court's intervention.<sup>17</sup> While this solution does not allow debtors to enjoy some of the tools existing in formal insolvency proceedings (e.g., moratorium, cramdown, rescue financing, etc), a workout has many advantages. First, since a workout is not regulated, they can serve as a flexible mechanism to reach a debt restructuring agreement with the creditors. Second, if combined with a standstill agreement, debtors can still enjoy a form of moratorium in a workout.<sup>18</sup> Third, the use of a workout can avoid the direct and indirect costs of insolvency proceedings.<sup>19</sup> Therefore, it can be a more desirable option for many companies – especially SMEs.<sup>20</sup> Finally, the use of workouts will also reduce the wave of insolvency cases potentially arising from the COVID-19 pandemic. Therefore, it can also be a desirable mechanism to preserve a well-functioning judicial system. As a result of these factors, it seems to be a desirable policy to promote the use of workouts as a response to the wave of insolvencies generated by the COVID-19 crisis.<sup>21</sup>

### B. Formal or informal mechanisms implemented to facilitate workouts as a response to the COVID-19 crisis

Due to the advantages and importance of workouts in the current situation, Singapore has implemented various formal or informal mechanisms to incentivise and

## Notes

- 13 The attractiveness of Singapore's insolvency regime is the product of a sophisticated judiciary as well as the efficient restructuring framework implemented in the past years. For an overview of these reforms, see I. Rajah, 'Enhancing Singapore as an International Debt Restructuring Centre for Asia and Beyond' <[www.mlaw.gov.sg/files/NoteonDebtRestructuring.pdf](http://www.mlaw.gov.sg/files/NoteonDebtRestructuring.pdf)>, 3 July 2020.
- 14 E. R. Morrison and A. C. Saavedra, 'Bankruptcy's Role in the COVID-19 Crisis' <[www.ssrn.com/abstract=3567127](http://www.ssrn.com/abstract=3567127)>, 30 June 2020.
- 15 K. Ayotte and D. Skeel, 'Bankruptcy Law Needs a Boost for Coronavirus' <[www.wsj.com/articles/bankruptcy-law-needs-a-boost-for-coronavirus-11585608800](http://www.wsj.com/articles/bankruptcy-law-needs-a-boost-for-coronavirus-11585608800)>, 30 March 2020.
- 16 Some authors have even estimated the precise number of judges that would be needed to handle the wave of insolvency cases in some countries such as the United States. See B. C. Iverson, J. A. Ellias and M. J. Roe, 'Estimating the Need for Additional Bankruptcy Judges in Light of the COVID-19 Pandemic' <[www.ssrn.com/abstract=3624529](http://www.ssrn.com/abstract=3624529)>, 30 June 2020.
- 17 J. M. Garrido, *Out-of-Court Debt Restructuring* (World Bank Group, 2011) <[www.openknowledge.worldbank.org/handle/10986/2230](http://www.openknowledge.worldbank.org/handle/10986/2230)>, 3 July 2020, 1.
- 18 World Bank, *A Toolkit For Out-of-Court Workouts* (World Bank Group, 2017) <[www.openknowledge.worldbank.org/handle/10986/28953](http://www.openknowledge.worldbank.org/handle/10986/28953)>, 3 July 2020, 16.
- 19 These costs can be very significant especially for SMEs. In a study done of SMEs in the United Kingdom, the cost of insolvency liquidations has the potential to subtract 20% to 40% of the company's proceeds. See J. Granks and O. Sussman, 'Financial Distress and Bank Restructuring of Small to Medium Size UK Companies' (2005) 9 *Review of Finance* 65. For a review of the costs of bankruptcy, see J. B. Warner, 'Bankruptcy Costs: Some Evidence' (1977) 32 *Journal of Finance* 337, showing that the direct costs of bankruptcy were 3% to 4% of the pre-bankruptcy market value of total assets in large firms. These figures are relatively consistent with L.A. Weiss, 'Bankruptcy resolution: Direct costs and violation of priority of claims' (1990) 27 *Journal of Financial Economics* 285. However, other authors have shown that the costs of financial distress represents 10-20% of the market value of the firm. See G. Andrade and S. N. Kaplan, 'How Costly Is Financial (not Economic) Distress? Evidence from Highly Leveraged Transactions That Became Distressed' (1998) 53 *Journal of Finance* 1443.
- 20 E. R. Morrison and A. C. Saavedra, 'Bankruptcy's Role in the COVID-19 Crisis' <[www.ssrn.com/abstract=3567127](http://www.ssrn.com/abstract=3567127)>, 30 June 2020.
- 21 As a way to facilitate workouts, some authors have even suggested that countries should impose creditors duties to cooperate in corporate workouts. See H. Eidenmuller and K. V. Zwieten, 'The Case for Creditor Cooperation Duties in Corporate Workouts', <[www.clsbluesky.law.columbia.edu/2020/05/13/the-case-for-creditor-cooperation-duties-in-corporate-workouts/](http://www.clsbluesky.law.columbia.edu/2020/05/13/the-case-for-creditor-cooperation-duties-in-corporate-workouts/)>, 13 May 2020.

facilitate workouts. First, the Government is actively encouraging debtors to attempt negotiations with creditors as their first port of call before relying on the notification of relief mechanism. This ensures that the extraordinary relief provided during this time is only available to those that have no other options. Otherwise, there is the real possibility that the measures may be kicking the can down the road and once the relief period has expired, a new wave of insolvency cases can be expected.

Second, the notification of relief available to firms which are unable to perform their obligations due to COVID-19 does not relieve them from their obligations to pay creditors. The consequence of this is that firms which rely on the notification of relief may find themselves paying more to their creditors at the end of the relief period due to the accrued interest and other charges. While mechanisms which increase the amount of interest and late payments cannot be relied upon by creditors,<sup>22</sup> the greater quantum of liability which accrues until the end of the relief period may incentivise firms to pursue other options first before relying on the notification of relief. This would include attempting an informal workout with their main creditors.

Third, the Monetary Authority of Singapore and the financial industry have collaborated to offer deferments on loans and are committed to negotiating with debtors on adjusting their loan repayment schedules.<sup>23</sup> This includes the possibility of extending the tenure of the loans so that firms are not faced with increased monthly payments and financial difficulty in the future.<sup>24</sup> Thus, as the financial institutions, which represent one of the main creditors among companies in Singapore, are willing to participate in negotiations, debtors are further incentivised to engage in informal workouts.

Fourth, financial creditors are also willing to offer new loans and other temporary bridging credit lines. Besides, 90% of the risk of these loans will be borne by the Government to ensure that the financial sector is not over-burdened by the risk of future non-performing

loans and to also decrease the cost of debt for borrowers.<sup>25</sup> Debtors would want to take advantage of the lower cost of borrowing and attempt negotiations with the financial institutions.

Taken together, the COVID-19 measures have created a conducive system which directly and indirectly promotes workouts. In the first few months, more than 2,500 applications have been made by SMEs to defer their principal payments with almost all being approved by the financial creditors. This has resulted in more than SGD 4.5 billion in secured loan facilities benefiting from these measures. An additional SGD 1.9 billion have also been extended as loans with a lower interest rate of 2-3% for most borrowers.<sup>26</sup> In comparison, only 97 notifications of relief were served on secured creditors to prevent any form of enforcement actions.<sup>27</sup>

### *C. The expected success of workouts in Singapore*

In our view, workouts are expected to play a very important role in the current situation in Singapore, not only as a result of the measures and incentives implemented to promote this debt restructuring tool, but also for other legal, economic and market conditions existing in the country.

First, in the past few years, Singapore has developed a culture of 'corporate rescue' to assist viable companies facing financial trouble. On one hand, this rescue culture has been developed as a result of the set of guidelines to facilitate workouts promulgated by the Association of Banks in Singapore.<sup>28</sup> On the other hand, the recent insolvency reforms implemented with the purpose of enhancing Singapore's position as an international hub for debt restructuring are also contributing to the development of a strong culture of business rescue in Singapore.

Second, Singapore has a rigorous framework for mediation. This involves appointing a third-party

## Notes

- 22 Ministry of Law, 'Cap on late payment interest or charges for specific contracts' <[www.mlaw.gov.sg/covid19-relief/cap-on-late-payment-interest-charges](http://www.mlaw.gov.sg/covid19-relief/cap-on-late-payment-interest-charges)>, 20 June 2020.
- 23 Monetary Authority of Singapore, 'MAS and Financial Industry to Support Individuals and SMES affected by the COVID-19 Pandemic' <[www.mas.gov.sg/news/media-releases/2020/mas-and-financial-industry-to-support-individuals-and-smes-affected-by-the-covid-19-pandemic](http://www.mas.gov.sg/news/media-releases/2020/mas-and-financial-industry-to-support-individuals-and-smes-affected-by-the-covid-19-pandemic)>, 20 June 2020.
- 24 Monetary Authority of Singapore, 'Additional Loan and Cashflow Support for Landlords and Businesses Affected by COVID-19' <[www.mas.gov.sg/news/media-releases/2020/additional-loan-and-cashflow-support-for-landlords-and-businesses-affected-by-covid-19](http://www.mas.gov.sg/news/media-releases/2020/additional-loan-and-cashflow-support-for-landlords-and-businesses-affected-by-covid-19)>, 20 June 2020.
- 25 Enterprise Singapore, 'SME Working Capital' <[www.enterprisesg.gov.sg/financial-assistance/loans-and-insurance/loans-and-insurance/enterprise-financing-scheme/sme-working-capital/overview](http://www.enterprisesg.gov.sg/financial-assistance/loans-and-insurance/loans-and-insurance/enterprise-financing-scheme/sme-working-capital/overview)>, 20 June 2020; Enterprise Singapore, 'Temporary Bridging Loan Programme' <[www.enterprisesg.gov.sg/financial-assistance/loans-and-insurance/loans-and-insurance/temporary-bridging-loan-programme/overview](http://www.enterprisesg.gov.sg/financial-assistance/loans-and-insurance/loans-and-insurance/temporary-bridging-loan-programme/overview)>, 20 June 2020.
- 26 Monetary Authority of Singapore, 'Reply to Parliamentary Question on relief measures for SMEs' <<https://www.mas.gov.sg/news/parliamentary-replies/2020/reply-to-parliamentary-question-on-relief-measures-for-smes>>, 20 June 2020.
- 27 Ministry of Law, 'Oral Answer by Senior Minister of State for Law, Mr Edwin tong, to Parliamentary Question on Notifications for Relief' <[www.mlaw.gov.sg/news/parliamentary-speeches/oral-answer-by-senior-minister-of-state-for-law-mr-edwin-tong-to-parliamentary-question-on-nfrs](http://www.mlaw.gov.sg/news/parliamentary-speeches/oral-answer-by-senior-minister-of-state-for-law-mr-edwin-tong-to-parliamentary-question-on-nfrs)>, 20 June 2020.
- 28 The Association of Banks in Singapore, 'Principles & Guidelines for Restructuring of Corporate Debt' <[www.abs.org.sg/docs/library/spore\\_approach.pdf](http://www.abs.org.sg/docs/library/spore_approach.pdf)>, 20 June 2020.

mediator who facilitates the dispute resolution process in order to promote an amicable settlement between the parties. Thus, a debtor can rely on mediation to help facilitate the negotiation process with its creditors. Specifically, they can make use of a specialised scheme for insolvency-related disputes offered by the Singapore Mediation Centre.<sup>29</sup> Under this scheme, the mediation fees commensurate to the sum in dispute and will be much lower than if parties chose to commence proceedings in court. Even if parties commenced court proceedings, the court may refer the case to mediation instead at no costs to the parties.<sup>30</sup> Therefore, mediation supplements the use of informal workouts and increases the likelihood of successful negotiations.

Third, the presence of concentrated debt structures among SMEs, and even in many larger enterprises, are expected to facilitate workouts. Indeed, with fewer creditors, the issues associated with the asymmetries of information and coordination among creditors are less severe. Therefore, it will be easier to achieve an agreement with the debtor.

Fourth, the fact that doing business in Singapore often involves repeated players incentivises a more cooperative behaviour to resolve disputes. This is contributed by the small size of the country and the existence of many groups and controlled firms. Therefore, since many market actors are likely to know each other, and local creditors often have business with some companies related to the debtor or their controlling shareholders, there will be a higher chance to reach an agreement.<sup>31</sup>

As a result of these factors, more cooperative solutions, such as a workout, are likely to be achieved in Singapore.

## V. Conclusion

The international spread of the coronavirus has forced many countries to put their economies into 'hibernation', leading to one of the worst recessions observed in modern times. Since Singapore is not isolated from this crisis, the Government had to intervene by adopting a very ambitious package of legal and financial measures to support businesses, households and employees. This article has provided an overview of these measures, with particular emphasis on those related to insolvency. It has been argued that, while insolvency law can play an important role in the current situation, there are some limitations associated with the use of insolvency proceedings. For this reason, the use of workouts should be promoted as a way to facilitate the financial restructuring of debtors affected by the COVID-19 crisis. Besides, Singapore has several features that make the use of workouts particularly feasible. In our view, the existence of the comprehensive package of legal and financial responses adopted by the Singapore Government, along with the important role potentially played by insolvency law and corporate workouts, will significantly help minimise the economic impact of the COVID-19 crisis in Singapore.

## Notes

29 Singapore Mediation Centre, 'Insolvency' <[www.mediation.com.sg/service/insolvency/](http://www.mediation.com.sg/service/insolvency/)>, 20 June 2020.

30 Supreme Court, 'SGUnited Mediation Initiative to help litigants move on from COVID-19' <[www.supremecourt.gov.sg/news/media-releases/media-release--sgunited-mediation-initiative-to-help-litigants-move-on-from-covid-19](http://www.supremecourt.gov.sg/news/media-releases/media-release--sgunited-mediation-initiative-to-help-litigants-move-on-from-covid-19)>, 20 June 2020.

31 These factors may create a culture which promotes long term business relationships. See W. K. Chung and G. Hamilton, 'Social Logic as Business Logic: Guanxi, Trustworthiness and the Embeddedness of Chinese Business Practices', in R. P. Appelbaum, W. L. F. Felstiner and V. Gessner (eds), *Rules and Networks: The Legal Culture of Global Business Transactions* (Hart Publishing, 2001).



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