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COMMON ISSUES ARISING FROM THE MORATORIUMS AGAINST ENFORCEMENT OF SECURITY AND REPOSSESSION OF GOODS UNDER QUASI-SECURITY ARRANGEMENTS

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This article analyses the scope of the specific moratorium against enforcement of security and repossession of goods under quasi-security arrangements, which is available in creditor schemes of arrangement and judicial management. It identifies common commercial arrangements that may be affected by this moratorium, and discusses some common issues that often arise in practice. It also provides other solutions that the practitioner might consider before advising a client to commence a leave application.

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I. Introduction

1 Under the Insolvency, Restructuring and Dissolution Act 2018[1] (the "IRDA"), there are moratoriums available to aid a debtor company seeking to formally restructure its debts

1 Act 40 of 2018.

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either through a creditor scheme of arrangement or judicial management[2] ("JM"):

(a) under s 64(1), which applies when a company proposes or intends to propose a compromise or arrangement with its creditors or class of creditors (with an automatic moratorium under s 64(8));[3]

(b) under s 65, which is available to a subsidiary, a holding company or an ultimate holding company of a company that obtains an order under s 64 (together with the moratorium in (a) above, the "scheme moratoriums");

(c) under s 95, when a company applies for JM,[4] or lodges a written notice of appointment of an interim judicial manager (in a voluntary JM);[5] and

(d) under s 96(4), when a company enters JM.

2 This article examines common financing arrangements and how they interact with the specific moratorium against the enforcement of security and repossession of goods under quasi-security arrangements[6] (the "Security Moratorium"):

> … no step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes …

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2 There are other moratoriums available in a restructuring of a company, *eg*, s 210(10) of the Companies Act (Cap 50, 2006 Rev Ed) and s 72K of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (under the Simplified Debt Restructuring Programme). These will not be discussed further here.

3 This automatic moratorium comes into effect upon application for s 64(1), and ends on the earlier of (a) 30 days, and (b) the date on which the application is decided by the court: see s 64(8) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018).

4 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 91.

5 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 94(5)(*a*).

6 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 64(1)(*e*), 64(8)(*e*), 65(1)(*e*) and 91(1)(*b*). Under s 96(4)(*d*), the judicial manager may also grant his consent to the enforcement or repossession.

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This article is not exhaustive. It aims to provide a quick starting point for any practitioner examining an arrangement between the company and a creditor in the context of a Security Moratorium.

II. Preliminary notes

3 First, certain companies and arrangements are excluded from the scheme moratoriums and the JM regime:

(a) The scheme moratoriums[7] and the JM regime are not available to certain companies, *eg*, merchant banks and securitisation special purpose vehicles.[8] Where a company applies for a scheme moratorium, the High Court now also requires that the applicant's counsel confirm at the pre-trial conference that the applicant meets the criteria of a "company" under s 63(3).[9]

(b) Security interest arrangements relating to securities contracts, derivatives contracts, master netting agreements, securities lending or repurchase agreements, and margin lending agreements are excluded from the moratoriums.[10] These exclusions are particularly relevant where, *eg*, the company has entered into an ISDA Master Agreement or a margin loan with the creditor.

4 Second, the scheme moratoriums should be interpreted by reference to case law relating to the JM moratoriums. Reference may also be made to English case law interpreting the moratoriums available in administration under the Insolvency Act 1986.[11] The scheme moratoriums were part of the amendments

7 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 64(1), 64(8) and 65(1).
8 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 63(3), 91(8)(*d*) and 94(13)(*e*) read with the Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) Order 2020 (S 619/2020).
9 See Registrar's Circular RC 01/2021 "Issuance of the Guide for the Conduct of Applications for Moratoria under sections 64 and 65 of the Insolvency, Restructuring and Dissolution Act 2018" (10 February 2021).
10 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 64(12)(*a*), 65(7)(*a*), 95(3)(*a*) and 96(5)(*a*) read with the Insolvency, Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020 (S 615/2020).
11 c 45. For example, *Re Atlantic Computer Systems plc (No 1)* [1991] BCLC 606.

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introduced in 2017 to the Companies Act[12] to enhance Singapore as a debt restructuring centre.[13] Even though the amendments were partly inspired by Chapter 11 of the US Bankruptcy Code,[14] the scheme moratoriums were not adapted from Chapter 11, but from the moratoriums already available under the JM regime.[15] The JM regime was in turn modelled after the UK's administration regime.[16]

5 Third, the moratoriums are procedural in nature and do not affect substantive rights.[17]

III. Security moratoriums

6 Generally, the Security Moratoriums prevent creditors from enforcing their rights under security and quasi-security arrangements. This sounds simple, but in practice various issues may arise. The common ones are discussed below.

A. Security arrangements

7 Generally, security interests are proprietary interests that creditors acquire in a debtor's property, to support an obligation owed by the debtor (*eg*, an obligation to repay moneys).[18] They can be created consensually, or they may arise by operation of law.[19]

12 Cap 50, 2006 Rev Ed.
13 Companies (Amendment) Act 2017 (No 15 of 2017).
14 Indranee Rajah SC, "Enhancing Singapore as an International Debt Restructuring Centre for Asia and Beyond" *Ministry of Law* (20 June 2017).
15 See, *eg*, Companies (Amendment) Bill (Bill 13 of 2017).
16 See, *eg*, Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report* (2013) at ch 6.
17 *Barclays Mercantile v Sibec Developments* [1993] BCLC 1077 at 1081–b.
18 Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 1st Ed, 2013) at para 7-001.
19 The Singapore courts have explained that a security over a property consists "of some real or proprietary interest, legal or equitable, in the property as distinguished from a personal right or claim thereon": *Electro Magnetic (S) Ltd v Development Bank of Singapore Ltd* [1994] 1 SLR(R) 574 at [11].

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8 Like English law, Singapore law recognises four forms of consensual security interests at common law, *ie*, the pledge, lien, mortgage and charge. Each is a deep and wide area of study in itself, and only a general overview is provided here.

B. *Possessory security: pledges and liens*

(1) *Pledges*

9 Pledges, said to be the oldest form of security, are often seen in pawnbroking or, in more modern times, trade financing arrangements involving documentary intangibles such as bills of lading. Pledges involve *delivery* by the pledgor of tangible property to the pledgee as security for the payment of a debt or performance of another obligation, and confer on the pledgee the right to *possess* the asset, and the right to sell the asset on default. The pledgor has the right to redeem the pledged asset by repaying the debt or repaying the obligation secured.[20]

10 In practice, issues may arise where a bill of lading is pledged to a financier (*eg*, a bank). It is also common for the financier to release the bill of lading under a trust receipt to the company (as a buyer), so that the company can sell the goods in order to raise funds to pay the financier. Here, more complex issues of re-characterisation may arise. For example, if there is no delivery by the pledgor to the financier but they agree that the pledgor shall hold the bill of lading under a "trust receipt", is that arrangement a trust receipt or a charge?[21] If the pledgor holding the bill of lading on "trust receipt" sells the goods, is the payment received held on trust for the financier, or under a charge?[22] Much will depend on the circumstances as well as the express provisions of the agreement between the parties, though in the face of a Security Moratorium it would generally benefit the financier to assert that the sums are held on trust for it.

20 Hugh Beale *et al*, *The Law of Security and Title-Based Financing* (Oxford University Press, 3rd Ed, 2018) at para 5.01.
21 See, *eg*, Hugh Beale *et al*, *The Law of Security and Title-Based Financing* (Oxford University Press, 3rd Ed, 2018) at para 5.32.
22 See *eg*, Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell 4th Ed, 2011) at para 1.71 and *Re David Allester Ltd* [1922] 2 Ch 11.

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(2) Liens

11 A lien is generally the right to *retain possession* of goods or other tangible property until the relevant indebtedness is paid or the obligations are performed. It can arise by operation of law, by statute or by contract.[23] Typically, a lien arises where the debtor transfers possession of an asset to the creditor for a purpose (that is not the creation of security), and the creditor is entitled to detain possession of the property until the debtor has repaid the relevant sums or performed the obligations. The main difference between a pledge and a lien is that the lien does not by itself carry with it a power of sale (though this can be modified by contract). Liens may feature in arrangements such as laundry and storage services, or arise under statute.[24]

12 In practice, a number of issues may arise in respect of liens as well. First, is the counterparty required to deliver up the goods to the company upon learning of the moratorium? Generally no, given the clarification by Woolf LJ in *Bristol Airport v Powdrill* that:[25]

> Unless and until someone who is entitled to possession of those goods seeks to obtain possession of the goods, the lien holder does not take steps to enforce his lien. The security which is given to the lien holder entitles him to refuse to hand over the possession of the goods, but until he makes an unqualified refusal to hand over the goods he has not in my judgment taken steps to enforce the security for the purposes of [the moratorium].

13 Second, given that the lien is a possessory security, would giving up possession in the goods result in the creditor losing its security over them? Not necessarily. Practically, the creditor should inform the company or the judicial manager that it is applying to court for leave to enforce its lien. Generally the lien holder is entitled to retain possession of the assets pending the hearing of the application,[26] and in any case even if the court

23 Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 1st Ed, 2013) at para 7-014.
24 [1990] 1 Ch 744.
25 *Bristol Airport v Powdrill* [1990] 1 Ch 744 at 768–E.
26 *Lightman and Moss on Law of Administrators and Receivers of Companies* (Gavin Lightman *et al* gen eds) (Sweet & Maxwell, 6th Ed, 2017) at para 9-018, citing

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denies leave, the court may impose terms so as to protect the lien holder.[27]

14 Third, a contractual lien with a right of sale may be re-characterised as a charge. In *Re Cosslett (Contractors) Ltd*[28] ("*Cosslett*"), the English court examined a term in a standard form contract giving the employing council the right to expel the contractor from the site, to sell the plant and materials, and to apply the proceeds of sale towards the satisfaction of any sums due to it. While this appeared to give the council a lien coupled with a right of sale, the court held that it in effect created a charge. Generally the court found that the council's rights to the plant and materials were not attributable to any delivery of possession by the company (which was required for a finding of a pledge or lien), and were derived by contract. In so far as the rights were conferred by way of security, such security constituted an equitable charge, rather than a lien.

15 In Singapore, the Public Sector Standard Conditions of Contract for Construction Works 2020 similarly purports to contractually create a lien over property in favour of the employer, where the contractor's employment is terminated under cl 31.2(1).[29] This article expresses no position on this clause, save to note that the relevant clause is drafted slightly differently from that examined in *Cosslett*.

16 Whether the security arrangement constitutes a lien or a charge, generally the Security Moratorium should apply to prevent a counterparty from enforcing its rights thereunder. However, where there is a risk that the security arrangement may be re-characterised as a charge, a further issue arises as to

Bristol Airport v Powdrill [1990] 1 Ch 744 at 768. See also *Re Sabre International Products Ltd* [1991] BCC 694.

27 Where the judicial manager has been appointed and a moratorium under s 96(4)(*d*) is in effect, the judicial manager can work out a practical arrangement with the creditor, so that parties need not expend further costs on a court application.

28 [1998] Ch 495.

29 PSSCOC for Construction Works 2020 (8th Ed, July 2020) <https://www1.bca.gov.sg/procurement/post-tender-stage/public-sector-standard-conditions-of-contract-psscoc> (accessed 22 November 2021).

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whether it will be void against the liquidator and the creditors of the company for want of registration.[30] Where this issue surfaces in the context of a scheme moratorium or JM, there may still be opportunity to apply for leave to file the charge out of time, given that the company has not entered liquidation.[31]

C. Non-possessory security: mortgages and charges

(1) Mortgages

17 A mortgage is a non-possessory security, and can be legal or equitable. A legal mortgage involves the assignment of legal title from the mortgagor to the mortgagee, with the mortgagor having an equity of redemption.[32] However, in Singapore, a mortgage over registered land shall not operate as a transfer of the land mortgaged, but shall have effect as a security only.[33] Such mortgages are often encountered when security is granted over real property, *eg*, by a director, as credit support for a loan to the company. This is common where loans are granted by traditional financial institutions, such as banks, to corporate entities.

18 In practice, where the bank has a mortgage over the company's property, the parties are likely to have commenced negotiations on the restructuring of the company's debts prior to any commencement of formal restructuring proceedings. Even if both the bank and the company agree that the property should be sold, their views may diverge on whether the sale should be carried out as a mortgagor's sale (*ie*, by the company) or as a mortgagee's or receiver's sale. Often the company will argue that the property is likely to fetch a higher price in a mortgagor's sale, on the basis that it appears less like a distressed sale. However, the bank may not be willing to allow the company to have carriage of the sale process, if there is a risk that the

30 Companies Act (Cap 50, 2006 Rev Ed) s 131. See also *Diablo Fortune Inc v Duncan, Cameron* [2018] 2 SLR 12, in which the Court of Appeal affirmed that shipowner's lien over sub-freights is a registrable charge.
31 See para 21 below.
32 Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 1st Ed, 2013) at para 7-015.
33 Land Titles Act (Cap 157, 2004 Rev Ed) s 68.

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company will conduct the sale slowly (and continue using the premises in the meantime).

19 The Security Moratorium presents the company with a bargaining chip (assuming it is willing to proceed to a formal restructuring), as it prevents the bank from enforcing its mortgage. In such circumstances it would be either for the bank to apply for leave to enforce its rights under the mortgage,[34] or to negotiate with the company for greater oversight over the sale process (*eg*, weekly progress reports).

(2) Charges

20 A charge is a non-possessory equitable security, under which the chargor retains ownership and possession of the asset, but the creditor obtains a new form of proprietary interest over the asset.[35] Charges can be taken over existing and future assets, and over tangible or intangible property. In practice, charges are usually taken over, amongst others, bank accounts,[36] dematerialised securities, or the assets of the company generally. Depending on the agreement amongst parties (whether in writing or as evidenced by their actions), a charge may be fixed or floating.[37]

21 In the context of the Security Moratorium, two issues often arise in practice.

(a) Where notice is required to crystallise the floating charge, would the Security Moratorium bar the issuance of such notice? While this appears to be untested in Singapore, it has been observed that the service of a notice crystallising a floating charge is not a step to

34 See para 32 below.
35 See Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 1st Ed, 2013) at para 7-018.
36 Including a bank account that the debtor has with the creditor bank, *ie*, a chargeback: see *Re BCCI (No 8)* [1998] AC 214.
37 See *Re Spectrum Plus Ltd* [2005] 2 AC 680.

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enforce security.[38] If so, it should not be barred by the Security Moratorium.

(b) Can a creditor take steps to register a charge out of time, in the face of a Security Moratorium? Technically, an application to register a charge out of time perfects the security, and does not constitute enforcement of security. If so, it should not be barred by the Security Moratorium. As to whether such an application may be barred by the moratorium against commencement of proceedings against the company,[39] there is authority that such an application does not actually constitute a proceeding "against the company"[40] (though it is noted that in Singapore the company is likely to be named as respondent in the application). If this is correct, then leave should not be required for this application. That said, even if this is put into issue, the court should be able to dispose of it in the same hearing in which it decides whether to grant leave for registration out of time.

D. Quasi-security arrangements

22 The Security Moratorium also purports to bar repossession under certain types of quasi-security arrangements. This article will explain each arrangement briefly and highlight common issues arising in relation to the Security Moratorium.

23 Under each of these arrangements, title remains with the creditor, but the company is in possession of the asset in question. The Security Moratorium bars the creditor from taking possession of the asset, even though the creditor is the owner.

38 Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 4th Ed, 2011) at para 11-59.

39 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 64(1)(*c*), 64(8)(*c*), 65(1)(*c*), 95(1)(*c*) and 96(4)(*c*).

40 Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 4th Ed, 2011) at para 11-67. The authors reason that the application "could equally well be made by the company, and the court would not compel the absurdity of an application for leave to make an application for leave to register out of time", citing *Re Barrow Borough Transport Ltd* [1990] Ch 227.

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24 At the outset, when reviewing any English case law on quasi-security arrangements and the moratoriums available in administration, note that under the Insolvency Act 1986, "hire-purchase agreement" is defined to include a conditional sale agreement, a chattel leasing agreement, and a retention of title agreement.[41] This differs from the Singapore approach, under which "hire-purchase agreement", "chattels leasing agreement" and "retention of title agreement" are each separately defined.

(1) Hire-purchase agreement

25 Hire-purchase agreements are commonly encountered where the company has obtained financing for a vehicle or for construction equipment. "Hire-purchase agreement" is defined at s 2(1) of the Hire Purchase Act[42] (the "HP Act") as:

> an arrangement, other than a conditional sale agreement, under which —
>
> (*a*) goods are bailed in return for periodical payments to the hirer; and
>
> (*b*) the property in the goods will pass to the hirer if the terms of the agreement are complied with …

26 In practice, an issue may arise where the financier terminates the hire-purchase agreement prior to the commencement of the company's formal restructuring proceedings. Would the Security Moratorium still prevent the financier from repossessing the goods, given that there is technically no longer any "hire-purchase agreement"? Adopting a purposive approach to interpreting a similar moratorium in administration, the English court in *Re David Meek*[43] ("*David Meek*"), held that all the provision requires is (a) that the goods be in the company's possession at the relevant time; and (b) that

41 Insolvency Act 1986 (c 45) Schedule B1, para 111.

42 Cap 125, 2014 Rev Ed. See also s 88(1) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018). Under the UK Insolvency Act 1986 (c 45), the term "hire-purchase agreement" is defined to include a conditional sale agreement, a chattel leasing agreement, and a retention of title agreement. However, it appears that the approach in Singapore involves having each term defined separately.

43 [1994] BCLC 680.

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possession should be attributable to, or derive its legal origin at some time from, a hire-purchase agreement. However, it need not be a hire-purchase agreement still subsisting.[44]

(2) Chattels leasing agreement

27 A "chattels leasing agreement" means an agreement, which is capable of subsisting for more than three months, for the bailment of goods.[45] Given that a "chattels leasing agreement" involves a bailment of goods (which involves the transfer of possession and the mutual consent of the bailor and the bailee),[46] generally it should apply only to tangible goods. A common example is a bareboat charter.

28 Can an intangible asset be subject to a chattels leasing agreement? Probably not. In the context of crypto-assets held by intermediaries, the UK Jurisdiction Taskforce has stated that crypto-assets are "purely 'virtual'" and therefore "cannot be the object of a bailment".[47] If this principle applies, then the custody of crypto-assets should not be characterised as a "chattels leasing agreement".[48]

(3) Retention of title agreement

29 A "retention of title agreement" means:[49]

> an agreement for the sale of goods to a company, being an agreement —

44 *Re David Meek* [1994] BCLC 680 at 684–I.
45 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 88(1).
46 See generally Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 1st Ed, 2013) at para 2-067.
47 The LawTech Delivery Panel, UK Jurisdiction Taskforce, "Legal Statement on Cryptoassets and Smart Contracts" (November 2019). See, however, Hin Liu, Louise Gullifer & Henry Chong, "Client-intermediary Relations in the Crypto-asset World" Paper No 18/2021 (March 2021), in which the writers recognise the legal position that "possession" does not apply to intangibles, but note the possibility of a quasi-bailment of crypto-assets.
48 In the intermediary's insolvency it would probably benefit the client most to argue that the intermediary held the assets on trust for the client.
49 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 88(1). This is similar to the definition of the same term under s 251 of the UK Insolvency Act 1986 (c 45). This definition has been criticised as "distinctly

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(*a*) that does not constitute a charge on goods; but

(*b*) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods.

30 As mentioned above, "hire-purchase agreements" as defined under the Insolvency Act 1986 to include "conditional sale agreements",[50] and so any moratorium against repossession under a "hire-purchase agreement" would bar repossession under a "conditional sale agreement". In Singapore "conditional sale agreements"[51] are specifically excluded from the definition of "hire-purchase agreements".[52] As such it would seem that repossession under a "conditional sale agreement" would not be barred by the Security Moratorium. However, practically this may be less of an issue as there is likely to be overlap between a "conditional sale agreement" and a "retention of title agreement",[53] such that an agreement that appears to be a "conditional sale agreement" may also fall within the scope of a "retention of title agreement", to which the Security Moratorium applies.

IV. Apply for leave or find a consensual solution?

31 Even if the arrangement falls within the scope of the Security Moratorium, the creditor may apply for leave to enforce its security or repossess the goods in question. The principles

odd and almost certainly unnecessary": see Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 4th Ed, 2011) at para 11-63.

50 Insolvency Act 1986 (c 45) Schedule B1, para 111.

51 A conditional sale agreement means "an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the owner (notwithstanding that the hirer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in that agreement are fulfilled": Hire-Purchase Act (Cap 125, 2014 Rev Ed) s 2(1).

52 Hire-Purchase Act (Cap 125, 2014 Rev Ed) s 2(1).

53 Goode also notes that "it is hard to think of a retention title agreement which does not fall within the definition of conditional sale agreement": see Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 4th Ed, 2011) at para 11-63.

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for leave are set out in *Re Atlantic Computer Systems plc (No 1)*,[54] as accepted by the Singapore Court of Appeal in *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores*.[55] In summary:

(a) The starting point is that the creditor's proprietary rights will be respected, and the creditor should not be prevented from exercising its property rights if doing so is unlikely to impede the company's attempts to restructure.

(b) In all other cases, the court should carry out a balancing exercise between the legitimate interests of the secured creditor and the legitimate interests of the other creditors.

(i) In doing so, great importance and weight is typically given to the creditor's proprietary interests. This is because the restructuring process for the benefit of unsecured creditors should not take place at the expense of the secured creditors who are seeking to exercise their property rights.

(ii) Leave should be granted if the secured creditor is able to show that a significant loss would be caused by a refusal. In this regard, loss comprises any kind of financial loss (direct or indirect), loss by reason of delay and may extend to loss which is not financial in nature. However, if the creditor is fully secured, delay in enforcement is likely to be considered less prejudicial than in cases where the security is insufficient to cover the outstanding debt.

(iii) However, if substantially greater loss is likely to be caused to others by granting leave, the court may refuse to do so. The court will assess these losses with regard to, *inter alia*, the

54 [1991] BCLC 606.
55 [2001] 3 SLR(R) 119. *Re Atlantic Computer Systems plc (No 1)* [1991] BCLC 606 was concerned with leave applications in administration (from which judicial management was adapted). The same principles should apply in the context of a scheme moratorium as well.

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company's financial position and the prospects of a successful restructuring.

32 In practical terms this involves a balancing exercise of the company's needs during the restructuring and the rights of the creditor, and the prejudice caused to each party if leave is granted or denied. Generally the court should be able to dispose of the matter in a half-day hearing (and often, together with the hearing for the scheme moratorium or JM).

33 However, seeking leave may not always be the best solution for the creditor. For example, where the creditor has security over more than 20 different types of equipment that the company says it still requires for completion of various construction projects, it may not make sense to expect the court to scrutinise the circumstances around each of them and decide whether, in each case, leave should be granted for enforcement. Instead, it may make more sense for the company to produce a timeline showing when each project is expected to end, when the specific piece of equipment can be released to the creditor or sold, and what compensation it can reasonably offer to the creditor in the meantime. A consent order may be entered into in respect of this agreement, if need be.

34 Where the creditor is satisfied that the company can properly restructure its debts or there is little to be gained from taking immediate enforcement action (*eg*, where the security consists of an assignment of receivables from a third party that is amenable to processing payment only if the company remains in the picture), there may also be more value in leaving the asset with the company but exercising greater oversight over how the company deals with it.

35 The authors note also that in practice, the company or judicial managers would typically be keen to continue engaging with larger creditors so to obtain support for the proposed

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restructuring plan.[56] In such cases parties may be encouraged to work out consensual solutions in the interim.

56 For schemes, the threshold for approval is: (a) a majority in number of the creditors or class of creditors (unless the court orders otherwise) present and voting either in person or by proxy at the meeting; and (b) such majority in number, or such number as the court may order, representing three quarters in value of the creditors or class of creditors present and voting either in person or by proxy at the meeting: see ss 210(3AB)(*a*) and 210(3AB)(*b*) of the Companies Act (Cap 50, 2006 Rev Ed). The judicial manager's proposals have to be approved by a majority in value and number of the creditors present and voting on the proposals: see s 108(3) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018).

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