INTRODUCTION

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1 Many things have changed in the restructuring and insolvency landscape since 2013, when the *Final Report of the Insolvency Law Review Committee* was released. Its main recommendation was for the enactment of a "New Insolvency Act", which would "consolidate and update the core areas of Singapore's personal and corporate insolvency regime" in addition to setting out common principles and procedures relating to personal and corporate insolvency.[2] This was followed closely in 2016, when the *Report of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring*[3] ("DRC Report") was released.

2 As we know by now, the DRC Report recommended, amongst other things, the introduction of automatic moratoriums in support of restructurings, pre-packaged restructurings and adoption of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law"). Fast forward to end-2023, and many of these recommendations are now integral parts of the restructuring and insolvency regime that we are familiar with.

3 Putting this issue together gave us the opportunity to reflect on how much work and creative energy have gone into taking Singapore, as a jurisdiction, from the individual bankruptcy and corporate insolvency regimes previously housed in the Bankruptcy Act[4] and Companies Act 1967[5] respectively, to where it is with the Insolvency, Restructuring and Dissolution Act 2018[6] (the "IRDA") today. The collaborative efforts behind the various committee reports culminated in the IRDA, which sets out the statutory framework for the bankruptcy, restructuring and insolvency regime in Singapore. Then, the insolvency Bench and Bar had

1 This Introduction was prepared by Jo Tay, as co-Guest Editor, on behalf of Professor Wee Meng Seng, with whom she worked to put together this Special Issue. All errors remain her own. The Guest Editors thank the Singapore Academy of Law for this editorial opportunity.
2 *Summary of Recommendations by the Insolvency Law Review Committee* (Ministry of Law, October 2013).
3 Ministry of Law, 20 April 2016.
4 Cap 20, now repealed.
5 2020 Rev Ed.
6 2020 Rev Ed.

to give life to the statute by applying its various provisions, whether in court proceedings or behind the scenes, in out-of-court restructurings and other matters.

4 It is easy to forget that the features of a country's debt restructuring and insolvency regime are relevant not only when a business *fails*, but also in determining the competitiveness of its financial environment. If an investor were to enter into certain arrangements with a counterparty in Singapore, is there a risk of being hopelessly entangled in the insolvency proceedings of that counterparty? It is in this context that in the first article of this issue, Andrew Chan, Tan Zhi Feng and this author explore how Singapore's ambitions as a debt restructuring hub interacts with its status as a global financial centre. It is admittedly an ambitious effort, which examines the extent to which regulation and intervention feature in the insolvency regimes that apply to entities in the financial sector.

5 Against the rapid growth of the market for schemes of arrangement in Singapore, the second article examines a very practical question that counsels for debtors and creditors alike have come across in recent years. That is, whether the secured claims of under-secured creditors should be bifurcated into secured and unsecured portions for the purposes of voting in a scheme of arrangement. This article shares case studies based on various schemes that have been proposed in Singapore, before considering the approaches in other jurisdictions and other practical considerations for insolvency practitioners involved. We thank Mitchell Yeo for his generosity in sharing such experience and insights; a practitioner who was not part of these restructurings would otherwise have had to rely only on word-of-mouth for any insight on how to approach this issue.

6 In the third article, Wilson Zhu reflects on the cross-class cramdown mechanism that was introduced to Singapore's framework for corporate rescues in 2017, for which there remains no reported judgment. If we were to hazard a guess, perhaps this issue has not been put before the court because it is a powerful mechanism which forms the backdrop against which negotiations amongst commercial parties often take place. Nevertheless, it would not be a stretch to expect that this issue is likely to be litigated one day (if not in the next couple of years), and the author's views are likely to be of valuable assistance. We also particularly appreciated the candour with which this article was written, especially in the sharing of known strategies by creditors and debtors in respect of creditor classes.

7 In the fourth article, Kwong Kai Sheng and Clayton Chong clearly and thoughtfully examine two questions that once again are likely to be litigated one day. The authors ask how insolvency set-off is to be

approached when a company transitions from judicial management to winding up, and whether the judicial management regime prevents the crystallisation of a floating charge over a company's book debts. They have too humbly referred to the topic of insolvency set-off as "esoteric", but every practitioner will know that it is hardly so. In fact, we would venture to say that it is one of the handiest tools in the shed, especially for financial creditors of a company, and we agree with the authors that it is an important quasi-security device in assessing commercial risk.

8 We set aside the last three articles of this issue to reflect on Singapore's cross-border insolvency journey from the perspective of writers from the Government (though all views are personal to the author), academia and private practice.

9 Beginning with Harold Foo's article, we are taken on a journey back in time to 2016, which was a bumper year of cross-border insolvency judgments like *Re Opti-Medix*,[7] *Re Taisoo Suk*,[8] *Re Gulf Pacific*[9] and *Re Pacific Andes*.[10] We venture a guess that these were the first few encounters with cross-border insolvency for the younger practitioners amongst us, and one wonders if it would be too much to admit to getting a little misty-eyed at the memory of those days. These developments in local case law were just one of the many important milestones we have seen in our journey to where we are today, with the Model Law on Cross-Border Insolvency, the JIN Guidelines and the Singapore International Commercial Court (the "SICC").

10 Casey Watters and Paul Omar (based in Australia and the UK respectively) offer a similar view, albeit from afar. With this article we are taken back even further, to the 19th century. We learn with interest from these authors that Singapore had a spectre of a model for cross-border assistance much earlier than 2017. Perhaps, then, it can be said that what we have here today has indeed been a long time coming and, as the authors recognise, is the result of successful legal transplantation.

11 We end with another view from afar, this time from the perspective of foreign practitioners. Scott Atkins and Dr Kai Luck bring into focus the SICC and its expanded jurisdiction to hear international insolvency matters. They then ask where we can go from here – with judicial diplomacy and soft law approaches, will we be seeing greater convergence in procedural and substantive insolvency laws in the region?

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7 *Re Opti-Medix Ltd* [2016] 4 SLR 312.
8 *Re Taisoo Suk* [2016] 5 SLR 787.
9 *Re Gulf Pacific Shipping* [2016] SGHC 287.
10 *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125.

12 We see this Special Issue not only as a collection of articles from various contributors, but also a celebration of the past decade of work of the Government, academics, practitioners and the courts, that has gotten us to where we are today. We are grateful to all authors for generously sharing their knowledge, insights and perspectives in each article. Their contributions reflect not only the intellectual effort that has been put into developing the restructuring and insolvency space in Singapore, but also the professionalism and collegiality that this space is marked by. We hope you not only enjoy your first reading of this Issue, but also that you will come back to it from time to time, and find something new and helpful each time you read it.