



Schemes of Arrangement: Creditor Classification and the Importance of Timely Objections from Creditors

*Re Hin Leong Trading (Pte) Ltd (in
compulsory liquidation) [2024]*
SGHC 256

22 November 2024

LEGAL UPDATE

In this Update

Can a scheme of arrangement include creditors which are potentially secured, without first having their claims to security being fully and finally determined? Will the court entertain belated objections from a creditor regarding creditor classification? This update summarises the court's views in *Re Hin Leong Trading (Pte) Ltd (in compulsory liquidation)* [2024] SGHC 256 on these issues.

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INTRODUCTION

In the recent Singapore High Court case of *Re Hin Leong Trading (Pte) Ltd (in compulsory liquidation)* [2024] SGHC 256, the liquidators of Hin Leong Trading (Pte) Ltd (“**HLT**”) applied to court for leave to convene a scheme meeting and subsequently for approval of the scheme. The court found that the requirements for approving the scheme were satisfied and there were no other reasons not to approve the scheme, and the court therefore approved the scheme.

The court’s approval was given despite objections from a creditor, UT Singapore Services Pte Ltd (“**UTSS**”). UTSS’s key objections were that the classification of creditors was wrong and that the scheme was not one which a man of business or an intelligent and honest man would reasonably approve. Notably, these objections were raised only after the court granted leave to convene the scheme meeting and UTSS lacked a good explanation as to why these objections were not raised earlier when HLT sought leave to convene the scheme meeting (“**Convening Stage**”). This finding was sufficient for the court to dismiss the belated objections. The court nevertheless went on to examine the merits of the objections.

SCHEME TERMS

HLT was in the oil trading business and a scheme was proposed to distribute certain proceeds from the sale of oil purportedly belonging to HLT (referred to in the case as “**Uninjected Proceeds**”) to all scheme creditors *pari passu*. UTSS had maintained and operated oil storage terminals at which some of that oil was stored. UTSS alleged that it had a general lien over oil at its terminals that belonged to HLT.

Under the scheme, creditors were classified into two voting classes: (a) Potential Secured Creditors; and (b) unsecured creditors. The former class referred to creditors who had asserted security interests over the Uninjected Proceeds, while the latter class referred to creditors who had not asserted security interests over the Uninjected Proceeds. To enable the *pari passu* distribution of proceeds, the scheme provided that the Potential Secured Creditors (including UTSS) would release and waive any security they had in respect of the Uninjected Proceeds.

The liquidators’ view (with which the court agreed) was that the scheme would avoid significant uncertainty in, first, the amount of recoveries the Potential Secured Creditors would receive in the absence of the scheme (because of uncertainty in ascertaining the validity of various security claims by UTSS and other creditors over the Uninjected Proceeds), and, second, the time within which the Potential Secured Creditors would be able to receive any recoveries.

BELATED OBJECTIONS TO SCHEME

A preliminary question was whether UTSS's objections should still be entertained by the court when UTSS had not raised them at the Convening Stage. The court held that if a creditor did not raise a dispute at the Convening Stage and has no good explanation or reason for its failure to do so, the court is not required to address that dispute should the creditor raise it subsequently. This is especially so if the creditor has breached court directions for the filing of reply affidavits at the Convening Stage (as was the case here). Here, the court found that UTSS had no good explanation or reason for its delay.

FIRST OBJECTION: CREDITOR CLASSIFICATION ISSUES

UTSS objected to the Potential Secured Creditors class, arguing that such a class was impermissible and that there had to first be a determination of who was secured, who was unsecured and how the secured creditors ranked as between themselves. UTSS first relied on section 70(4)(b)(i) of the Insolvency, Restructuring and Dissolution Act 2018 which gives the court certain powers to cram down where there is a dissenting class of creditors. The court held that this provision had no application in this case because there was no dissenting class of creditors.

UTSS also argued that unless the various security claims were conclusively determined, it was not possible to properly compare the various creditors' rights in the appropriate comparator of insolvent liquidation. The court however agreed with the liquidators that the appropriate comparator here was not insolvent liquidation but rather, proceeding with a determination of security claims, with all the time, trouble and expense that this would entail (this would be the creditors' positions without the scheme). Using this comparator, UTSS's rights were not so dissimilar from the other Potential Secured Creditors that they could not consult together with a view to common interest. The judge went further to find that even if UTSS had a better claim than the other Potential Secured Creditors, the liquidators were entitled to adopt a fairly robust approach and classify creditors in a broad and objective manner such that UTSS could be classified together with the other Potential Secured Creditors.

With regard to UTSS's lateness in raising objections to creditor classification, the judge held that it at least went towards the weight the court should accord to such belated objections.

Notably, the scheme received overwhelming support at the scheme meeting, where all except one (i.e., except UTSS) of the Potential Secured Creditors (representing 98.7% in value) and all unsecured creditors that were present and voting voted for the scheme.

SECOND OBJECTION: “REASONABLE MAN” TEST

The court considered that UTSS’s objections were not objections such that any reasonable man might say that he could not approve the scheme. The scheme entailed Potential Secured Creditors giving up their claims to security and accepting *pari passu* payment alongside the unsecured creditors, thereby avoiding the time, trouble, expense, and uncertainty in pressing on to having the security claims fully and finally determined. The judge held that he was entitled to be strongly influenced by a big majority vote (which was the case here), provided that the scheme was fair and equitable (which he considered it to be). It was not for the court itself to judge whether there was commercial merit in Potential Secured Creditors participating in the scheme.

KEY TAKEAWAYS

Schemes are flexible tools which could allow debtors to classify creditors in a fairly robust manner. This could include classifying creditors according to their potential rights, thereby removing the need to fragment creditors into ever smaller classes.

Creditors should also be aware that any objections to schemes of arrangements must be raised promptly. Without a good explanation as to why objections were not raised earlier, a court may reject belated objections. This could significantly prejudice a creditor. With the help of experienced legal counsel, this issue can be avoided.

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