

RESTRUCTURING & INSOLVENCY

Moratorium for Scheme of Arrangement Granted over Liabilities Incurred as Trustee-Manager

Introduction

A trustee-manager, in the context of a business trust, actively runs the trust's operations while safeguarding the interests of investors. In the course of acting as a trustee-manager, the entity may incur liabilities in relation to activities of the business trust. How are these liabilities treated in a restructuring and insolvency? And can a trustee-manager propose a scheme of arrangement for debts incurred in its capacity as trustee-manager?

These were the questions faced by the Singapore High Court in *Re Dasin Retail Trust Management Pte Ltd* [2025] SGHC 6. The applicant ("**DRTM**") was the trustee-manager of a business trust ("**DRT**"), and had incurred liabilities arising from loan facilities taken for DRT's business operations. When faced with a winding up application, DRTM sought a moratorium pursuant to section 64 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") to give the company time to work towards a scheme of arrangement for liabilities incurred both in its personal capacity and as trustee-manager of DRT.

The application faced opposition from certain parties, who argued that the intended scheme of arrangement concerned the restructuring of DRT's debts rather than DRTM's debts, and that it was not permissible to propose a scheme of arrangement for a business trust's liabilities. The Court held that the liabilities incurred by DRTM as trustee-manager of DRT were to be treated as liabilities of DRTM. Further, a restructuring of DRTM's debts incurred in its capacity as trustee-manager was permitted.

This decision is notable for being the first reported case in Singapore involving an application for a moratorium by a trustee of a business trust to restructure liabilities of both the business trust and the trustee. It is also the first reported case in Singapore dealing with the novel issue of a challenge to the Court's jurisdiction on the basis that section 64 of the IRDA does not permit a trustee to apply for a moratorium to restructure liabilities of both itself and that of the business trust.

DRTM was successfully represented in this application by Chew Xiang, Priscilla Soh and Alicia Tan from Rajah & Tann Singapore LLP.

Brief Facts

DRT is a business trust registered in Singapore, owning and operating various retail malls in China. DRTM is the trustee-manager of DRT. One ZCC ("**ZZC**") holds approximately 30% of DRTM's shares.

In connection with the acquisition of DRT's portfolio of malls in China, DRTM (in its capacity as trustee-manager of DRT) and its subsidiaries obtained various loan facilities, which were in default. This caused DRTM to be liable for approximately S\$150.3 million in debts in its capacity as trustee-manager of DRT. Separately, DRTM was also liable for approximately S\$4.4 million in debts in its personal capacity.

Following a dispute between ZC and DRTM's major shareholder, ZC commenced winding up proceedings against DRTM to wind up the company. To stave off a winding up, DRTM sought a six-month moratorium under section 64 of the IRDA to give the company time to work towards a scheme of arrangement to restructure the debts incurred both in its personal capacity and as trustee-manager of DRT. The Singapore scheme of arrangement would take place as part of a global restructuring that would include a parallel consensual restructuring of DRTM's Chinese subsidiaries' debts.

ZC sought to oppose the moratorium application, arguing – among other grounds – that the intended scheme was with "DRT's creditors" and "not DRTM's own creditors". ZC also alleged that the application was intended to sidestep the fact that there is no concept of a scheme of arrangement for a business trust such as DRT.

Holding of the High Court

The Court granted a six-month moratorium as sought by DRTM. In reaching its decision, the Court held that the restructuring of debts incurred by DRTM as trustee-manager of DRT was permitted. The Court also found that the procedural requirements and substantive test for the grant of a moratorium were satisfied.

Liabilities incurred as trustee-manager

The Court was guided by the principle that a trustee acts as principal in connection with the administration of the trust, and all liabilities incurred by the trustee in this regard are personal liabilities of the trustee. The trustee is then entitled to an indemnity out of the trust property to meet such liabilities.

Following from this, the Court held that the liabilities incurred by DRTM as trustee-manager of DRT were liabilities of DRTM. Correspondingly, the creditors who were owed those liabilities were creditors of DRTM, and not of DRT. This included the liabilities under the loan facilities in respect of which DRTM contracted as borrower in its capacity as trustee-manager of DRT.

ZC argued that where the intended scheme of arrangement did not concern "creditors of DRTM in its personal capacity", it would in substance be a scheme to restructure debts of DRT, a business trust, which would not be permitted. The Court rejected this submission. Following its holding that DRTM's creditors would include creditors that were owed debts incurred by DRTM in its capacity as trustee-manager, the Court found that DRTM (as a trustee-manager of a business trust) fell within the scope of the IRDA and was not precluded from making an application under section 64 of the IRDA.

The restructuring of debts incurred by DRTM as trustee-manager of DRT was thus permitted.

Application for moratorium

The Court went on to grant the moratorium as sought by DRTM on the following grounds:

- The procedural requirements set out in section 64(2) of the IRDA were satisfied.

- The substantive test for the grant of a moratorium was satisfied. The application was brought by DRTM in good faith, borne by a genuine desire to obtain breathing room to further its efforts at debt restructuring. Further, there was a reasonable prospect of the intended scheme of arrangement working and being acceptable to the general run of creditors.

A six-month moratorium was granted in light of the intended scheme being part of a larger cross-border debt restructuring effort involving multiple offshore and onshore bank lenders, which would require time to engage the relevant stakeholders and to make meaningful progress.

Concluding Words

The Court's judgment clarifies the relationship between a trustee-manager and a business trust – in particular, how liabilities incurred by the trustee-manager in its capacity as such are to be treated. The decision avoids the conflation of trust and trustee, and highlights that the trustee is an entity capable of incurring its own liabilities and creditors, even if acting in connection with the administration of the trust.

The Court also provided guidance on how far the nature of liabilities incurred by a trustee in such capacity may be contractually altered. The Court clarified that a trustee may stipulate in an agreement with a third party that he is contracting as trustee only and not in his personal capacity, but the third party under that agreement remains a creditor of the trustee, and is entitled to sue the trustee.

For further queries, please feel free to contact our team.

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