

Restructuring & Insolvency

## Voluntary Arrangements in Bankruptcy – Duties of the Debtor and Nominee

### Introduction

As an alternative to bankruptcy, debtors may explore voluntary arrangements, whereby the debtor seeks to obtain the creditors' approval of a debt settlement proposal. In *Re Aathar Ah Kong Andrew* [2017] SGHCR 4, the High Court explored novel issues regarding such voluntary arrangements, including the scope of the duties of the debtor and the nominee supervising the arrangement.

The case involved several applications by creditors to revoke the approval given at a creditors' meeting as the debtor had not provided sufficient information of his alleged assets and liabilities, and the nominee had failed to discharge his duties in assessing the same.

The High Court allowed the application, determining that the debtor and the nominee had breached their duties regarding the voluntary arrangement and the creditors' meeting. The Court thus revoked the approval and ordered that no further meetings be held.

Jansen Chow and Priscilla Soh of Rajah & Tann Singapore LLP successfully represented one of the creditors in this matter.

### Brief Facts

The insolvent debtor in this case (the "**Debtor**") had applied for and obtained an interim order to propose a voluntary arrangement ("**VA**"). Pursuant to this, a nominee (the "**Nominee**") was appointed to supervise the implementation of the VA. The Nominee then called a creditors' meeting to consider the proposed VA.

At the meeting, approval for the VA was given by 83% of the creditors. However, a group of creditors sought to review and revoke the approval. The creditors submitted that:

- (i) The Debtor had not provided sufficient information regarding his liabilities and assets. At the meeting, he had distributed only a very general summary of the source of his debts.
- (ii) The Nominee had failed to properly adjudicate over whether the creditors listed by the Debtor in the VA should be allowed to vote and as to the appropriate weight to be assigned. The Nominee had essentially deferred entirely to the Debtor on the amount of debt owed by each creditor and the weightage of their vote.

### Holding of the High Court

The High Court considered the extent of the duties owed by the Debtor and the Nominee with regard to the VA and the creditors' meeting, and held that they had breached these duties. As the breaches were material, the approval given to the VA at the creditors' meeting was revoked. Further, the Court ordered that no further meetings would be sanctioned.



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### **Duties of a debtor**

The Court held that a debtor has a duty of full and candid disclosure, and he must be honest and provide all relevant facts to the creditors.

- (i) The debtor's proposal must be completely transparent to the creditors.
- (ii) The nominee must be provided with sufficient information for him to exercise his professional judgment and assess whether a meeting should be called, or whether certain claims should or should not be admitted.

Here, the Debtor had provided inadequate information as to the debts he claimed to owe. Further, there was no documentary evidence of the alleged loans and claims. As such, the Court found that the Debtor had failed to provide a full and candid picture of his liabilities.

### **Duties of a nominee**

The Court held that a nominee owes a duty to exercise his professional judgment and to cast a critical eye over the debtor's proposal and statement of affairs. Importantly, the nominee is not a mere post-box or rubber stamp for a proposed voluntary arrangement.

Therefore, the nominee must act independently, and cannot simply take information and reasons provided by the debtor at face value. The nominee must ensure he has sufficient information to determine the debtor's actual positions corresponds with what he represents.

Here, the Nominee had insisted that he was entitled to rely on the statement of affairs submitted by the Debtor, and had failed to cast a critical eye over the statement. The Nominee had not been presented with any evidence of the debts owed, and thus could not have properly come to a conclusion regarding the admission and weightage of the claims in the VA.

Further, the Nominee had excluded certain creditors from the meeting simply on the basis that they were not on the list of creditors prepared by the Debtor. He had not applied his mind nor properly exercised his discretion.

### **Concluding Words**

Prior to this decision, there were no Singapore decisions dealing with the above issues. The Court's judgment thus provides an insight as to the duties owed by a debtor and a nominee, and as to how a creditors' meeting over a voluntary arrangement should be conducted.

It is vital that a debtor provide sufficient information regarding his assets and liabilities. Further, nominees must ensure that they dutifully exercise their professional judgment and seek the necessary information and documents; they cannot merely rely on the word of the debtor.

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

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### ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

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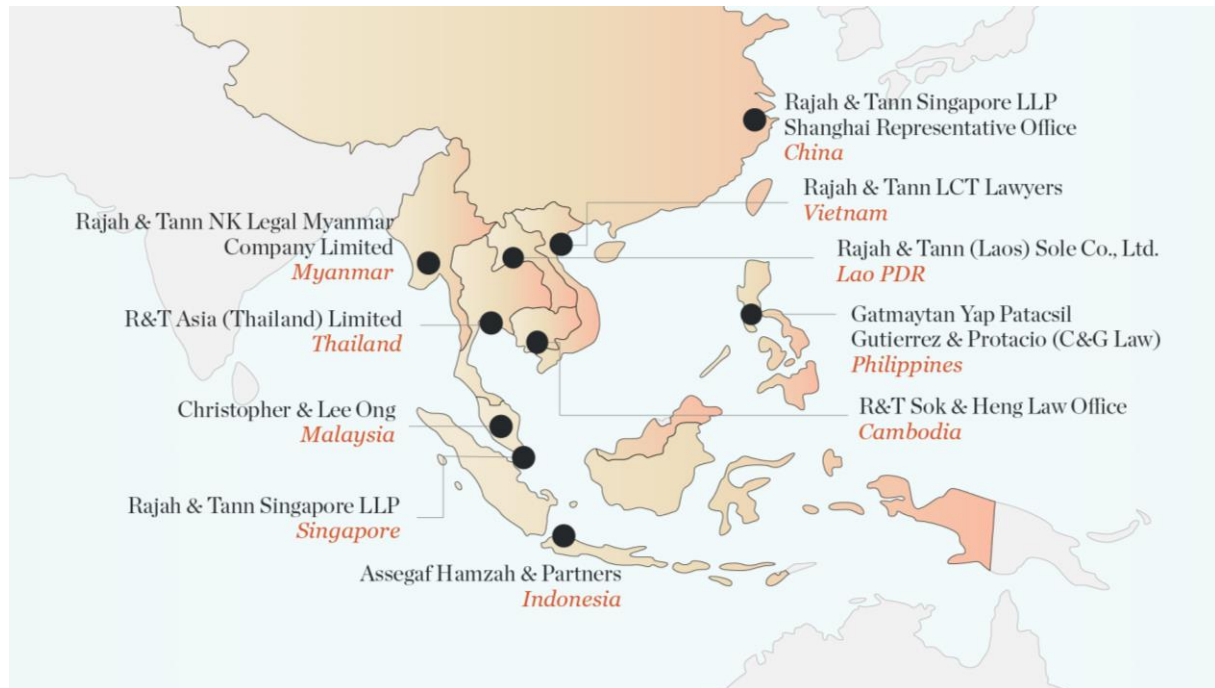
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